

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)1106/13-14
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of special meeting
held on Monday, 9 December 2013, at 9:45 am
in Conference Room 1 of the Legislative Council Complex

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Paul TSE Wai-chun, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Emily LAU Wai-hing, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, BBS
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Michael TIEN Puk-sun, BBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon Gary FAN Kwok-wai
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon CHAN Yuen-han, SBS, JP
Hon Alice MAK Mei-kuen, JP
Hon Christopher CHEUNG Wah-fung, JP

Hon SIN Chung-kai, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon Martin LIAO Cheung-kong, JP
Dr Hon CHIANG Lai-wan, JP

Members attending : Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki

Members absent : Dr Hon LAU Wong-fat, GBM, GBS, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Dennis KWOK
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen

Public Officers attending : Mrs Carrie LAM CHENG Yuet-ngor
Chief Secretary for Administration

Mr Rimsky YUEN Kwok-keung, SC
Secretary for Justice

Mr Raymond TAM Chi-yuen
Secretary for Constitutional and Mainland Affairs

Miss LEE Sau-kong
Senior Assistant Solicitor General

Mr Freely CHENG Kei
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (2) 3

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Miss Cindy HO
Senior Council Secretary (2) 3

Ms Wendy LO
Council Secretary (2) 3

Mrs Fanny TSANG
Legislative Assistant (2) 3

Action

I. Consultation Document on Methods for Selecting the Chief Executive ("CE") in 2017 and for Forming the Legislative Council ("LegCo") in 2016 ("Consultation Document")
[LC Paper Nos. CB(2)451/13-14(01) and (02)]

At the invitation of the Chairman, Chief Secretary for Administration ("CS") said that further to her Statement made under Rule 28(1) of the Rules of Procedure at the Council meeting of 4 December 2013, she would like to stress that the Government attached great importance to the views of Members in this consultation exercise. CS further said that in going through the "Five-step Process", Members had a pivotal role to play as the motions on any proposed amendments to the methods for selecting CE in 2017 and for forming LegCo in 2016 could only be passed with the endorsement of a two-thirds majority of all Members. CS added that she welcomed every opportunity to exchange views with Members on the Consultation Document.

Discussion

Method for selecting CE in 2017

2. Dr KWOK Ka-ki considered that the arrangement for the Deputy Secretary-General of the Standing Committee of the National People's Congress ("NPCSC") cum Chairman of the Hong Kong Special Administrative Region ("HKSAR") Basic Law ("BL") Committee under NPCSC, Mr LI Fei, to speak on the three key issues, namely the composition of the Nominating Committee ("NC"), procedures for NC to nominate CE candidates, and the number of CE candidates that NC should nominate, at a time shortly before the commencement of this public consultation exercise was a move to set a framework for the public consultation on the electoral reform. Pointing out that BL did not mention anything called "organizational nomination", Dr KWOK queried the basis of the concept of "organizational nomination" referred to in the Consultation Document. He

Action

also queried the basis of the view that NC had to be made up of the four sectors which had made up the Election Committee ("EC"), as Article 45 of BL only stipulated that NC had to nominate candidates "in accordance with democratic procedures". He expressed worry that the Government was trying to put in place a high nomination threshold for screening out certain candidates, and that there would be no genuine universal suffrage for the CE election in 2017.

3. CS said that the Administration had all along stressed that the consultation on the nomination procedures and electoral arrangements for CE to be returned by universal suffrage would be conducted strictly in accordance with BL and the relevant Interpretation and Decisions of NPCSC. Article 45 of BL ("BL 45") provided that "The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures". CS pointed out that the timetable for universal suffrage in Hong Kong was clearly provided in the Decision adopted by NPCSC in 2007. The Decision in 2007 further stipulated that NC "may be formed with reference to" the current provisions regarding EC in Annex I to BL. As a matter of fact, election of CE by EC had taken place several times since the State resumed the exercise of sovereignty over Hong Kong. CS advised that the relevant Interpretation and Decisions of NPCSC were binding. She stressed that the relevant provisions in BL, together with the relevant Interpretation and Decisions of NPCSC, constituted the legal framework for implementing universal suffrage in Hong Kong, which provided the proper basis for any meaningful discussion of constitutional development and there must be no deviation or departure from this legal framework.

4. Dr Kenneth CHAN considered that the election of CE in 2017 even by universal suffrage would not help address the issue of governance crisis, if a screening mechanism was put in place in the procedures to nominate CE candidates. He stressed that when formulating proposals on the election of CE in 2017, it had to be ensured that the rights to make nomination, to stand for election and to vote conformed to the principles of universal and equal suffrage stipulated in Article 25 of the International Covenant on Civil and Political Rights, without any "screening" through NC.

5. CS said that the design and establishment of any political structure of a particular place had to have regard to the historical background of that place, with the constitutional basis and the characteristics of that place as the foundation. She further said that, while there was no specific international

Action

model for universal suffrage, the goal of selecting CE by the method of universal suffrage would be achieved by having CE elected by all registered voters on the basis of one-person-one-vote.

6. Mr SIN Chung-kai considered that the crux of the issue was whether there would be screening and the criteria to be applied. He asked how the Administration would gauge public views in this area. Secretary for Justice ("SJ") said that there was no such a term "screening" in BL. He pointed out that the electoral system in each jurisdiction invariably imposed certain restrictions. It would only have to be ensured that any restrictions imposed were not unreasonable. He advised that in devising a model for implementing universal suffrage on the basis of BL and the relevant Interpretation and Decisions of NPCSC, the Administration would seek to ensure that there would be no unreasonable restrictions in the electoral system.

7. Referring to paragraph 5.05(ii) and (iii) of the Consultation Document, Mr SIN Chung-kai asked why questions like 'how could the "democratic procedures" reflect the requirement of "organizational nomination"?' and 'how many CE candidates should the NC nominate?' were raised. Mr SIN pointed out that the expression "organizational nomination" had only been mentioned by Mr QIAO Xiaoyang, and there had been no such procedure called "organizational nomination" in the previous CE elections. He queried whether introducing "organizational nomination" and capping the number of CE candidates was part of the design of a screening mechanism to be put in place.

8. SJ explained that the Decision of NPCSC in 2007 had stipulated that "The nominating committee shall in accordance with democratic procedures nominate a certain number of candidates for the office of the Chief Executive,..." SJ advised that the relevant Decision was binding. The Administration was therefore obliged to consider the issue and accordingly raised the question 'how many CE candidates should the NC nominate?' in the Consultation Document. SJ also requested members to note that BL 45 and the Decision of NPCSC in 2007 provided for CE candidates to be nominated by NC in accordance with democratic procedures, as distinct from the current model of election by EC whereby individual EC members could jointly nominate candidates. The Administration considered it necessary to highlight this difference in the nomination approach between NC and EC in the Consultation Document.

Action

9. Mr IP Kin-yuen said that the literal meaning of "a certain number" was that the number only had to be plural. He further said that the Decision of NPCSC in 2007 did not require the HKSAR Government to define "a certain number" mentioned in that Decision as a specific number. Referring to footnote 12 of the Consultation Document, Mr CHAN Chi-chuen queried the basis of the suggestion that the number of CE candidates should be limited to 2 to 3, and why such a constraint should be set. Ms Starry LEE, however, supported capping the number of CE candidates to be nominated both from the legal and the practical points of view. She said that based on the experience of the 2012 LegCo Election, too many candidates had resulted in chaos in some of the election forums. She noted that while some candidates had complained being given inadequate time to articulate on their election platforms, electors had also complained being unable to understand some candidates' views due to the limited time allocated to each candidate. Ms LEE further said that in democratic countries such as the United States and the United Kingdom, the relevant presidential/prime minister elections were not returned on a one-person-one-vote basis. Moreover, candidates were drawn from the major political parties which, in a way, had restricted the number of candidates in the elections.

10. SJ said that he welcomed different views raised by members, but advised that it was inappropriate for him to give advice on the issue so as to leave room for discussion in the community.

11. Ms Emily LAU considered that other than the basic qualification criteria for becoming CE under BL44, should the Administration intend to impose additional criteria, such criteria should be given out so that Hong Kong people could consider whether or not they were reasonable. With regard to NC as provided under BL45, Ms LAU stressed that the composition and the operation of NC had to conform to principles of democracy and fulfill the requirement that it had to be "broadly-representative". Ms LAU said that the Democratic Party ("DP") had agreed that the public should be consulted on the "three-track nomination proposal". She considered that at the present stage, the Administration should not rule out civic nomination and nomination by political parties, as these proposals might be accepted in the end. She further said that DP demanded that the nomination threshold should be low, and it must not be higher, if not lower, than that adopted in the 2012 CE Election, in order to make CE election a fair and truly contested one.

Action

12. CS said that it was a common aspiration of Hong Kong people that Hong Kong could successfully implement universal suffrage for the CE election in 2017. She said that the Administration sincerely invited the community to express views on universal suffrage for the CE election in 2017 and the 2016 LegCo electoral method. The Government presently did not have any position regarding the issues raised for discussion, but would explain any legal point if necessary during the five-month public consultation. CS added that the aim of this first round of public consultation was to gather views from different sectors of the community.

13. Ms Emily LAU and Dr Helena WONG asked why the general public was required to explain how their proposals could conform to the relevant provisions of BL. Dr WONG said that some people might only be able to indicate their preferences, but were unable to give detailed justifications. CS said that the public was not required to do so in giving their proposals. In fact, the Administration would explain important issues during the consultation to facilitate the community to discuss the two electoral methods on the basis of the legal framework.

14. Dr Priscilla LEUNG considered that civic nomination was inconsistent with BL. She and Mr Christopher CHEUNG urged the Administration to make known its stance on civic nomination to avoid waste of time in discussing the option. CS advised that the legal requirements were clearly set out in the relevant Interpretation and Decisions of NPCSC, which were highly relevant and binding. The full text of these documents had also been included in the annexes of the Consultation Document. CS explained that under BL 45, the power to nominate CE candidates was vested in NC only, and that the power was a substantive one. She stressed that any proposal which sought to bypass the nomination procedures of NC or undermine the substantive power of NC to nominate candidates might be inconsistent with BL 45.

15. Mr NG Leung-sing considered that development towards the ultimate aim of universal suffrage had to progress in a gradual and orderly manner step by step. The pace should not be too fast, in order to maintain the prosperity and stability of Hong Kong.

16. Mr Kenneth LEUNG asked about the purpose behind the inclusion of the remarks by Mainland officials in the form of footnotes in the Consultation Document. Mr MA Fung-kwok asked whether Mr QIAO Xiaoyang's comments on the "organizational nomination" in footnote 10

Action

reflected the Central Authorities' view. CS said that footnotes were used in the Consultation Document to set out the legal viewpoints of some Mainland legal experts, as well as some recent views and suggestions on some of the issues to be considered. CS explained that these footnotes only sought to provide supplementary information for reference, so as to facilitate understanding of the relevant constitutional issues and the legal framework. SJ said that any views different from the views cited in the Consultation Document were also welcome and, preferably, with explanation of how such views could comply with BL so that the discussion could be constructive and objective.

17. Mr Frederick FUNG considered that the key issues to be considered included the composition of NC, the nomination procedure and the number of CE candidates to be nominated. With regard to the Decision of NPCSC in 2007 that NC "may be formed with reference to" the current provisions regarding EC in Annex I to BL, Mr FUNG said that the word "may" must not be overlooked, and his understanding was that it could mean "may" or "may not". He agreed with Mr IP Kin-yuen that the Administration's attempt to define "a certain number of candidates" as a specific figure was intended to impose a restriction with the purpose of screening. He further said that the political goal of the Task Force was to achieve universal suffrage with a screening mechanism.

18. CS said that whether the proposal on the method for selecting CE by universal suffrage could gain the general support of Hong Kong people, and whether it would stand a realistic chance of obtaining a two-thirds majority support of LegCo Members, would hinge on whether the rights to vote and to be elected would be subject to unreasonable restrictions. With regard to the composition of NC, CS read out the following extract from the explanations by Mr QIAO Xiaoyang, the then Deputy Secretary-General of NPCSC, on the Draft Decision of NPCSC in 2007 for members' reference -

"first, making it clear that the nominating committee may be formed with reference to the current provisions regarding the Election Committee is based on the fact that the formation of the Election Committee for electing the Chief Executive was the consensus achieved after wide consultation and discussion during the drafting process of the Hong Kong Basic Law, and this had consolidated wisdom from all sides, and had considerable public support and acceptance. Second, since Hong Kong's reunification with the motherland, election of the Chief Executive by the Election Committee has taken place three times and the operation has been

Action

smooth. Experience has demonstrated that the kind of composition of the Election Committee has enabled balanced participation of various strata and sectors to be achieved, and is broadly representative. Third, there are relatively more views within the Hong Kong community that the formation of the nominating committee may make reference to that of the Election Committee; making it clear that the nominating committee may make specific reference to the Election Committee will be conducive to forging consensus within the community on the method for selecting the Chief Executive by universal suffrage."

19. Referring to paragraph 3.20 of the Consultation Document, Ms Cyd HO queried whether the new form of "organizational nomination" or "collective nomination" could enable voters to have a genuine choice of candidates in the CE election. She urged the Administration to explain to the public and convince them how "organizational nomination" or "collective nomination" could serve the purpose of enabling voters to have a genuine choice. CS reiterated the need to discuss the methods for selecting CE and for forming LegCo on the basis of the legal framework constituted by the relevant provisions in BL and the NPCSC Interpretation and Decisions. BL45 specified that NC was the body empowered to nominate candidates, as distinct from the current model of election by EC whereby individual EC members could jointly nominate candidates. CS added that the Administration would abide by the law in taking forward constitutional development.

20. Mr CHAN Chi-chuen said that Hong Kong people had much experience in making civic nomination in various geographic constituency ("GC") direct elections. He did not see why civic nomination should be rejected. CS explained that electoral reform proposals were not to be considered only from a technical point of view but they would have to comply with BL and the relevant Interpretation and Decisions of NPCSC. According to BL45, "The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures." CS advised that any proposals which did not comply with the relevant legal requirements of BL and the relevant Interpretation and Decisions of NPCSC should be supported with explanation of their legal basis.

21. Mr LEE Cheuk-yan considered that the NPCSC's Decision that NC "shall ...nominate a certain number of candidates for the office of the CE" was unlawful and its purpose was to achieve screening. He considered that

Action

the references to "organizational nomination" and "a certain number of candidates" in the Consultation Document revealed that the Government, in fact, had pre-conceived positions and it was trying to steer the discussion by imposing restrictions from the outset. Mr Paul TSE enquired about the legal status of the Interpretation made on 6 April 2004, and the two Decisions of NPCSC made on 26 April 2004 and 29 December 2007 respectively. SJ advised that NPCSC was empowered to interpret BL provisions. According to BL, and the 2004 NPCSC Interpretation which was also legally binding, the "Five-step Process" must be followed in amending the methods for selecting CE and for forming LegCo. SJ said that the Decisions made by NPCSC in 2004 and 2007 were also legally binding and were made pursuant to requirements under the "Five-step Process". He pointed out that BL, together with the Interpretation in 2004 and the two Decisions of NPCSC in 2004 and 2007, constituted the legal framework which provided the basis for the discussion of constitutional development.

22. Mr WONG Yuk-man criticized that the Administration was conducting a sham public consultation as there were pre-conceived stances reflected in the Consultation Document. He considered that there was no compromise and the civic nomination had to be insisted.

(During the meeting, the Chairman warned Mr WONG Yuk-man to stop making threatening comments or he would be ordered to withdraw from the meeting.)

Method for forming LegCo in 2016

23. Referring to paragraph 4.09 of the Consultation Document, Mr Charles Peter MOK asked why there was no mention of a timetable for implementing the election of all LegCo Members by universal suffrage. CS explained that according to the NPCSC Decision in 2007, the election of all Members of LegCo by universal suffrage could only be implemented after CE was selected by universal suffrage. Given that the selection of CE by universal suffrage could be implemented in 2017 as provided for in the Decision in 2007, election of all Members by universal suffrage could only be implemented in 2020 at the earliest. SJ advised that as clearly set out in the NPCSC Decision in 2007, "after the Chief Executive is selected by universal suffrage, the election of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of electing all the members by universal suffrage". SJ said that the words were unambiguous and clear enough to dispel any doubt on the issue.

Action

24. Mr Charles Peter MOK considered that in the Consultation Document, the separate voting system under Annex II of BL should be discussed with reference to various scenarios on possible changes to the composition of LegCo. He said that, e.g. if the proportion of seats returned by direct GC elections was adjusted upward by reducing the number of functional constituency seats, the retention of the separate voting system could hardly be justified in such a scenario. Secretary for Constitutional and Mainland Affairs ("SCMA") said that the Administration welcomed any views on the voting system. He added that issues relating to the method for forming LegCo in 2016 were also set out in Chapter 4 of the Consultation Document to facilitate the public to formulate views and proposals.

25. Considering that universal suffrage for the CE election in 2017 had received more public attention than the 2016 LegCo electoral method, Mr Ronny TONG asked whether consideration would be given to submitting to the Central Authorities two separate CE's reports on the two subjects and at different time, so as to enable the community to have a focused and in-depth discussion on each subject. SCMA said that the suggestion was noted and would be considered in the light of progress of work.

26. Dr Helena WONG and Mr Gary FAN expressed concern as to how universal suffrage of the LegCo could be achieved in 2020, if no adjustment was made to the number of FC seats and the separate voting system in 2016. Mr FAN stressed that there was no compromise and he would vote against the motions to amend the methods for selecting CE in 2017 and for forming LegCo in 2016 if there was no genuine universal suffrage. He added that one of the proposals to achieve genuine universal suffrage was civic nomination. SCMA explained that as SJ had pointed out, the election of all LegCo Members by universal suffrage could be implemented only after CE was selected by universal suffrage. The selection of CE by universal suffrage was accordingly a pre-condition for the election of all Members of LegCo by universal suffrage. The work relating to the election of LegCo by universal suffrage would be handled by the next term Government. He also advised that in line with the established practice, the current term Government would only handle the electoral methods of CE and LegCo of the following term.

Publicity and way forward

27. Mr MA Fung-kwok asked how the Administration would promote understanding of the relevant provisions of BL to facilitate discussion on the constitutional development on the basis of BL. Dr CHIANG Lai-wan said

Action

that many people had misunderstood the meaning of "organizational nomination" and suggested that the Administration should explain the concept.

28. CS said that the promotion of BL and the relevant Interpretation and Decisions of NPCSC to the public would be carried out during the public consultation. In this connection, she had met with the Chairmen and Vice-Chairmen of the 18 District Councils with a view to soliciting their support for staging promotional and educational activities at the district level. She would also request the BL Promotion Steering Committee to step up publicity efforts in this area with particular emphasis on BL 45 and 68.

29. Mr Michael TIEN suggested that the Administration might consider arranging the pan-democratic camp to meet with the Liaison Office of the Central People's Government ("CPG") in HKSAR on the electoral reform. CS said that in taking forward constitutional development, it was important to maintain communication with the Liaison Office of CPG. She agreed to give thought to the suggestion.

30. Members agreed that the Panel would hold two special meetings on 11 and 18 January 2014 at 9:00 am to receive public views on the Consultation Document.

II. Any other business

31. There being no other business, the meeting ended at 11:50 am.

Council Business Division 2
Legislative Council Secretariat
19 March 2014