

**Commission on Strategic Development
Committee on Governance and Political Development**

**Conclusions on Discussions on the Concepts
and Principles Relating to Universal Suffrage**

Introduction

Since November last year, the Committee has held three meetings to discuss in detail the concepts and principles relating to universal suffrage. Moreover, the Committee organized a workshop in February to further understand how, in overseas legislatures which adopted universal suffrage, the systems were designed to meet the interests of different sectors of society.

2. This paper aims to conclude discussions on the concepts and principles relating to universal suffrage. This will form a basis to commence discussion in the second half of this year on possible models for electing the Chief Executive (CE) and the Legislative Council (LegCo) by universal suffrage.

Conclusions on Discussions on the Concepts and Principles Relating to Universal Suffrage

3. Conclusions on the discussions on the concepts and principles relating to universal suffrage fall into the following three areas.

(i) Guiding Principles on Constitutional Development

The Four Main Principles

4. Members noted that the Basic Law had clearly stipulated the basic policies of the Central Government regarding Hong Kong, and how the principle of “One Country, Two Systems” shall be implemented. Members agreed that universal suffrage should be attained as early as possible in Hong Kong in accordance with the Basic Law, and that any proposal relating to universal suffrage should be made on the basis of the constitutional framework stipulated in the Basic Law.

5. Members recognized that the Constitution of the People’s Republic of China (the Constitution) and the Basic Law formed the constitutional basis of

the political structure of the Hong Kong Special Administrative Region (HKSAR). It is stated in the Preamble to the Basic Law that upholding national unity and territorial integrity, preserving the prosperity and stability of Hong Kong, and taking account of its history and realities, the State decided that, upon its resumption of the exercise of sovereignty over Hong Kong, the HKSAR shall be established in accordance with the provisions of Article 31 of the Constitution. Under the principle of “One Country, Two Systems”, the socialist system and policies will not be practised in Hong Kong. In accordance with the Constitution, the National People’s Congress (NPC) enacted the Basic Law, prescribing the systems to be practised in the HKSAR, in order to ensure the implementation of the basic policies of the State regarding Hong Kong.

6. Regarding the constitutional status of the HKSAR, Article 12 of the Basic Law explicitly provides that “the HKSAR shall be a local administrative region of the PRC, which shall enjoy a high degree of autonomy and come directly under the Central People's Government (CPG).” The high degree of autonomy enjoyed by the HKSAR is conferred by the NPC in accordance with the law. In other words, all powers exercised by the HKSAR are derived by way of authorization by the Central Authorities, and there are no “residual powers” on the part of the HKSAR. Moreover, the Basic Law also provides that the HKSAR comes directly under the CPG.

7. Members noted that the Central Authorities had the ultimate power to determine the constitutional development of the HKSAR, including the timetable for attaining the ultimate aim of universal suffrage, and the model and design of the universal suffrage system. The HKSAR was not an independent political entity and could not decide its political structure on its own.

8. Members also noted that the Basic Law had prescribed that the ultimate aim was to elect the CE and all the members of the LegCo by universal suffrage. The political structure of the HKSAR was prescribed in Chapter IV of the Basic Law and Annexes I and II.

9. Article 45 of the Basic Law provides that “the CE of the HKSAR shall be selected by election or through consultations held locally and be appointed by the CPG. The method for selecting the CE shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures. The specific method for selecting the CE is prescribed in Annex I: ‘Method for the Selection of the CE of the HKSAR’.”

10. Article 68 of the Basic Law provides that “the LegCo of the HKSAR shall be constituted by election. The method for forming the LegCo shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the LegCo by universal suffrage. The specific method for forming the LegCo and its procedures for voting on bills and motions are prescribed in Annex II: ‘Method for the Formation of the LegCo of the HKSAR and Its Voting Procedures’.”

11. The above provisions clearly stipulate that the ultimate aim is the election of the CE and all the members of the LegCo by universal suffrage. Members agreed that, in the process of attaining the ultimate aim of universal suffrage and in designing a model for implementing universal suffrage, we must ensure that the basic policies of the People’s Republic of China regarding Hong Kong¹ and the following four principles² could be fully implemented:

- (a) meeting the interests of different sectors of society;

¹ The basic policies of the People’s Republic of China regarding Hong Kong are elaborated in Annex I to the Sino-British Joint Declaration.

² In submitting the Basic Law (Draft) and related documents at the Third Session of the Seventh NPC on 28 March 1990, Director JI Pengfei made the following explanations:

“The political structure of the HKSAR should accord with the principle of ‘One Country, Two Systems’ and aim to maintain stability and prosperity in Hong Kong in line with its legal status and actual situation. To this end, consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy in the Region. While the part of the existing political structure proven to be effective will be maintained, a democratic system that suits Hong Kong’s reality should gradually be introduced.”

The four principles on constitutional development can be derived from the above explanations of Director JI on political structure and the provisions in Article 45 and Article 68 of the Basic Law.

According to Prof XIAO Wei-yun (ed.) *One Country, Two Systems and the Basic Law of the HKSAR* (in Chinese) p.135-141, under the basic policies of the People’s Republic of China regarding Hong Kong as stipulated in the Sino-British Joint Declaration, the provisions on Hong Kong’s political structure after 1 July 1997 are relatively brief and concise, and there is no provision on the kind of political structure to be adopted. During the drafting of the provisions relating to political structure in Chapter IV of the Basic Law, the Special Group concerned with the Political Structure of the Basic Law Drafting Committee proposed some guiding principles on designing the political structure of the HKSAR after 1997. We may also derive the four principles on constitutional development from these guiding principles.

- (b) facilitating the development of the capitalist economy;
- (c) gradual and orderly progress; and
- (d) appropriate to the actual situation in the HKSAR.

(a) *Meeting the Interests of Different Sectors of Society*

12. Members recognized that, as could be seen from the history of Hong Kong's economic development, economic prosperity was largely dependent on the joint efforts of the industrial and business sectors, the middle-class, the professionals, the working class, and other sectors of society. To achieve the aim of preserving prosperity and stability, we must properly ensure that the interests of different sectors of society could be met.

13. In accordance with the Decision of the Standing Committee of the National People's Congress (NPCSC) of 26 April 2004 on the methods for selecting the CE in 2007 and forming the LegCo in 2008, the two methods shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress, with universal suffrage as the ultimate aim. The Decision also states that any change relating to the two methods "shall conform to principles such as being compatible with the social, economic, political development of Hong Kong, being conducive to the balanced participation of all sectors and groups of the society, being conducive to the effective operation of the executive-led system, being conducive to the maintenance of the long-term prosperity and stability of Hong Kong."

(b) *Facilitating the Development of the Capitalist Economy*

14. As a major international trade and financial centre, it is necessary for Hong Kong to ensure that the principle of "facilitating the development of the capitalist economy" could be fully implemented to preserve its prosperity. This is an important principle underlying the concept of "One Country, Two Systems". In this regard, the Committee had detailed discussion on how to ensure that the principle of "facilitating the development of the capitalist economy" as stipulated in the Basic Law could be fulfilled when designing a universal suffrage system for the CE and LegCo.

15. Members agreed that, to preserve Hong Kong's prosperity and stability, it was necessary to maintain its previous capitalist system and way of life. Hence, in the process of attaining universal suffrage and in designing a model for universal suffrage, we must take into account the implications of the relevant

arrangements on Hong Kong's economic development and fiscal position. Members agreed that democracy and capitalism were not in conflict with each other.

16. Member agreed that implementation of universal suffrage should not affect the long established principles of our public finance policy of "low and simple tax regime" and "keeping expenditure within the limits of revenues", and of our economic policy of "big market, small government".

17. Members expressed different views on whether implementation of universal suffrage would impinge on the principles of "facilitating the development of the capitalist economy" and "meeting the interests of different sectors of society", or whether it might even push Hong Kong towards "welfarism". Some Members considered that the Basic Law had already explicitly stipulated that the socialist system and policies should not be practised in the HKSAR, and that the previous capitalist system and way of life should remain unchanged. Also, there was broad consensus in the community on the budgetary principle of keeping expenditure within the limits of revenue. Thus, this should greatly reduce the possibility of the HKSAR moving towards "welfarism".

18. However, some Members considered that although democracy might not necessarily lead to "welfarism", overseas experience had shown that in certain countries where democratic electoral systems were implemented, the tax rates were higher and the tax bases wider. Also, politicians in these countries faced greater public pressure to provide more welfare and public services. In the case of Hong Kong, although there were clear provisions in the Basic Law regarding public finance policies, these policies might come under pressure during the process of implementing universal suffrage.

19. Although Members held diverse views on the above issues, they generally agreed that the ultimate aim of universal suffrage had been clearly prescribed in the Basic Law and that we should move along this direction. They also agreed that in the process of democratic development, our public finance policy of "low and simple tax regime" and "keeping expenditure within the limits of revenues" should be maintained.

(c) *Gradual and Orderly Progress*

20. Members noted that it was generally understood that "gradual and orderly progress" meant proceeding step by step in an orderly fashion to move forward. It involved a step by step transition, and different stages of evolution over time. With regard to arriving at the ultimate aim of selecting the CE and

electing all members of LegCo by universal suffrage, the evolutionary process should proceed in stages, and the process could not be taken forward too rapidly.

(d) Actual Situation

21. Members noted that the “actual situation” of the HKSAR referred to in the Basic Law included political, economic, and social conditions. In his speech delivered on 26 April 2004 titled “Striving for the truth in a pragmatic spirit in finding the right path for the constitutional development of Hong Kong”, Mr QIAO Xiaoyang, Deputy Secretary-General of the NPCSC mentioned that when the NPCSC considered the Decision on that day, it took the view that Hong Kong’s constitutional development must give due consideration to some actual situations³.

The Principle of an Executive-led System

22. Apart from the four principles on constitutional development mentioned in paragraph 11 above, Members recognized that an executive-led system was

³ The actual situations required to be considered, as mentioned by Mr QIAO Xiaoyang, Deputy Secretary-General of the NPCSC, included:

- (a) Many people of Hong Kong still had an inadequate understanding of “one country, two systems” and the Basic Law. The concepts of “one country”, national identity, the legal status of Hong Kong and meaning of universal suffrage were not so clear to the general public.
- (b) The status of the Basic Law as the constitutional law of Hong Kong had not been really established, or alternatively put, had not been securely entrenched.
- (c) Hong Kong was a highly market-oriented and international society, and was a rather mature capitalist society. To maintain the previous capitalist system, Hong Kong’s political system must cater to the interests of different strata, sectors and groups, including the interests of the working class as well as those of the industrial and business sectors, balancing the participation of each group.
- (d) Hong Kong was an economic city, and an international trading centre, financial centre, etc. Hong Kong’s constitutional development had to be in line with such economic status.
- (e) Executive-led government was an important principle underlying the HKSAR’s political system as stipulated in the Basic Law. Since Hong Kong’s reunification some six years ago, the operation of the political system had still not met the requirements of the Basic Law. The co-ordination between the executive authorities and the legislature was still in a stage of mutual adjustment.
- (f) At the present time there were major disagreements in the Hong Kong community over the introduction of universal suffrage in 2007/08.

also an important principle underlying the political structure of the HKSAR. According to the Basic Law, the CE shall be accountable to the CPG and the HKSAR. The CE is the head of the HKSAR. He also leads the HKSAR Government. The CE is responsible for implementing the Basic Law, ensuring that the principle of “One Country, Two Systems” is fully implemented in Hong Kong, and developing and implementing the systems and policies of the HKSAR, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judiciary systems, and the relevant policies. To meet these requirements, an executive-led system must be implemented. Hong Kong’s constitutional development should not deviate from the principle of an executive-led system.

(ii) Concepts and Principles of Universal Suffrage

23. Members held discussion on the concepts and principles relating to universal suffrage based on the constitutional basis and principles of design of Hong Kong’s political structure, as well as the concept of “universal suffrage” as generally understood internationally. Having regard to the constitutional basis, Members generally agreed that the concept of universal suffrage should include the principles of universal and equal suffrage.

24. Members noted that the universal suffrage system commonly adopted in overseas jurisdictions was a one-person-one-vote system which could take the form of direct or indirect election. This could serve as a reference when Members later explored the model for implementing the ultimate aim of universal suffrage in Hong Kong.

25. Members generally agreed that the general principle of equality of voting power did not necessarily require precise arithmetic equality in the power of each vote. For example, in geographical constituency elections, there could be reasonable variations amongst the constituencies in respect of the ratio between the number of seats and the size of registered voters.

26. Members agreed that there was no single electoral system that suit all places, and that one should not seek to impose any particular political model or electoral system on any place. As far as an individual jurisdiction was concerned, while conforming to the general understanding of universal suffrage held internationally, it could also develop its electoral system having regard to the particular needs and aspirations of its people, the uniqueness of its socio-economic situation, and its historical realities.

(iii) Other Considerations

27. A few members considered that, in the process of attaining universal suffrage, we should promote development of political parties, groom political talents, enhance public awareness of civic rights and responsibilities, and promote understanding of the Basic Law and the principle of “One Country, Two Systems”.

Preliminary Study on the Models for Implementing Universal Suffrage for the CE and the LegCo

28. Apart from discussing the concepts and principles relating to universal suffrage in detail, the Committee also had preliminary discussion on possible models for implementing universal suffrage for the CE and the LegCo in accordance with the principles and provisions under the Basic Law.

Model for Implementing Universal Suffrage for the CE

29. Members noted that, in accordance with Article 45 of the Basic Law, the selection and appointment of the CE involved three steps when universal suffrage was attained:

- (a) nomination by a broadly representative nominating committee in accordance with democratic procedures;
- (b) selection by universal suffrage following nomination; and
- (c) appointment by the CPG.

30. According to the above provisions, the composition of the nominating committee should be broadly representative. However, the Basic Law had not stipulated specifically the composition of the nominating committee. In considering its composition, Members generally agreed that consideration should be given to the principles of “meeting the interests of different sectors of society” and “facilitating the development of the capitalist economy”.

31. Members noted that different people had put forward various possible options regarding the composition of the nominating committee, including:

- (a) to use the composition of the Election Committee (EC) prescribed in Annex I to the Basic Law as a blueprint for that of the nominating committee, as the composition of the EC

prescribed in Annex I to the Basic Law had included the element of meeting the interests of different sectors of society; or

- (b) to form the nominating committee through other broadly representative methods.

32. After being nominated by a broadly representative nominating committee in accordance with democratic procedures, candidates for the CE office shall be elected by universal suffrage on the basis of one-person-one-vote. Thereafter, the CE shall be appointed by the CPG.

33. As compared with the model for implementing universal suffrage for LegCo, Members agreed that the model for selecting the CE by universal suffrage was relatively less complicated. As the Basic Law had already provided a relatively clear framework, there was a higher chance of the community reaching consensus on the way forward for selecting the CE by universal suffrage, and hence, the issue could be first explored. Moreover, a CE returned by universal suffrage would have a stronger public mandate, which could enhance effective governance. In the long run, this would be conducive to realizing the principle of an executive-led system. When further discussing a universal suffrage model for the CE, members generally agreed that it was necessary to examine the issue on how to ensure that the composition of the broadly representative nominating committee could meet the interests of different sectors of society.

Model for Implementing Universal Suffrage for the LegCo

34. Regarding the discussion on a model for implementing universal suffrage for the LegCo, members generally agreed that the relevant important considerations included the following:

- (a) the ultimate aim of electing all the members of LegCo by universal suffrage as stipulated in the Basic Law must be attained;
- (b) in the process of attaining universal suffrage, all democratic countries had made specific arrangements according to their actual situation and had taken into account the interests of various parties, enabling different sectors of society to participate in the process of election and governance;
- (c) the issue of universal suffrage should be handled in accordance with the actual situation in Hong Kong. Overseas experiences

could not be applied directly to Hong Kong. As “One Country, Two Systems” was practised in Hong Kong, which had its special circumstances, overseas examples could not be directly applied.

- (d) To take forward Hong Kong’s constitutional development, we must proceed from a pragmatic point of view so as to forge consensus within the community. One important political reality was that 30 out of the 60 LegCo seats were returned by functional constituencies. As any amendment to the electoral method for the LegCo shall require the endorsement of a two-thirds majority of all the members of the LegCo, in practice, this meant that the endorsement and support of members returned by functional constituencies as well as those returned by geographical constituencies through direct elections would be required.

35. In moving towards the ultimate aim of forming the LegCo by universal suffrage, the future of functional constituencies was one of the key issues to be considered. In this regard, Members generally agreed that the following were the major considerations:

- (a) we must have regard to the special needs, aspirations and historical background of Hong Kong; and
- (b) we must ensure that the interests of different sectors were taken into consideration, and that the principle of “balanced participation” was upheld. In this regard, the role which the functional constituencies had been playing should be considered.

36. Members also discussed preliminarily what parliamentary model should be adopted, including whether to retain a “unicameral system” or to implement a “bicameral system”, when the ultimate aim of universal suffrage for the LegCo was attained.

37. Quite a number of Members had reservations about adopting a “bicameral system”, and had pointed out that:

- (a) a “bicameral system” might undermine the efficiency of the executive authorities and make governance by the executive authorities more difficult;

- (b) a “bicameral system” as a possible model for the LegCo had been examined in detail during the drafting of the Basic Law, and had not been adopted eventually. Hence, this option should not be re-examined again now; and
- (c) unless a “bicameral system” was a transitional arrangement leading towards universal suffrage, it might be inconsistent with the Basic Law, or it would involve amendments to the Basic Law, which could not be accomplished easily.

38. However, some Members supported further studying a “bicameral system”. The reasons included:

- (a) a “bicameral system” would be conducive to achieving balanced participation, and enable the legislature and the executive authorities to operate with checks and balances;
- (b) in view of the political reality that it would be difficult to persuade members returned by functional constituencies to agree to abolishing their own LegCo seats, a “bicameral system” could be an alternative worth considering; and
- (c) the issue of whether there was a need to amend the principal provisions of the Basic Law or the Annexes for implementation of a “bicameral system” could be further examined.

39. Members agreed that regardless of which parliamentary model was to be adopted, the ultimate aim of electing all the members of LegCo by universal suffrage, as stipulated in the Basic Law, must be attained.

40. Moreover, members had a preliminary discussion on the transitional arrangements before universal suffrage was attained for the LegCo. Options that had been considered included:

- (a) to broaden the electorate base of functional constituencies;
- (b) to reduce the number of functional constituencies; and
- (c) to allow members of functional constituencies to nominate candidates for election by universal suffrage.

41. On the electoral model set out in paragraph 40(c) above, some members considered that this could also be a possible model when the ultimate aim of

universal suffrage was attained. Moreover, some members had proposed other possible models when the ultimate aim of universal suffrage was attained, including abolition of all functional constituency seats.

Way Forward

42. The conclusions on the discussions summarised above will form a basis to commence discussion in the second half of the year on possible models for implementing universal suffrage for the CE and LegCo.

43. In the light of the discussion conclusion as mentioned in paragraph 33 above, starting from July, members may first explore the model for implementing universal suffrage for the CE, including the composition and operation of the nominating committee. This could be followed by discussion on the model for implementing universal suffrage for the LegCo. Conclusions on the discussions on possible models for implementing universal suffrage for CE and LegCo could then be drawn by early 2007.

Constitutional Affair Bureau
June 2006