Summary of the views expressed at the Workshop for the Committee on Governance and Political Development of the Commission on Strategic Development held on 6 November 2006

(Translation)

The Head of the Central Policy Unit welcomed members and guest speakers to the workshop. He hoped members could further explore in greater details possible models for forming the Legislative Council (LegCo) by universal suffrage during the workshop.

Presentation by Members and Guest Speakers

- 2. The following members and guest speakers expressed their views on models for forming the LegCo by universal suffrage at the workshop:
 - (a) Mr Chan Chung-bun (Mr Chan's written submission at Annex 1);
 - (b) The Hon Lee Cheuk-yan (Mr Lee's written submission at <u>Annex</u> 2);
 - (c) Professor Cheng Kwok-hon (Professor Cheng's written submission at Annex 3);
 - (d) Sir David Akers-Jones of the Business and Professionals Federation of Hong Kong (BPF) (BPF's written submission at Annex 4); and
 - (e) Mrs Regina Ip of the Savantas Policy Institute (Mrs Ip's written submission at Annex 5).

Discussion Session

Long term arrangements for LegCo Functional Constituency (FC) seats

3. Members generally agreed that FC seats should not continue to be returned by the existing election method. However, their views were diverse as to whether the FC seats should be retained in some form when universal suffrage was implemented.

- 4. A member opined that FC members had made significant contribution to the community and had been playing an important role in LegCo and in the community. He proposed that FC seats should be retained in some form when universal suffrage for LegCo was implemented. Nevertheless, there could be certain changes in the electoral system so as to comply with the principle of universal and equal suffrage. Besides, some members considered that the directly elected geographical constituency (GC) members and FC members provided checks and balances in LegCo.
- 5. However, some members opined that FC seats should not be retained when universal suffrage for LegCo was attained.
- 6. Mrs Regina Ip considered that retaining FC seats was not consistent with the requirement stipulated in the Basic Law that all members of the LegCo should ultimately be returned by universal suffrage. Thus, it should only be treated as a transitional arrangement. The length of the transitional period would depend on the community's consensus on the timetable for implementing universal suffrage.

Possible models for forming LegCo by universal suffrage

- (I) To return all seats by GCs through direct elections and abolishing all FC seats
- 7. A member put forward the following two proposals for consideration:
 - (a) all seats to be returned by GCs through direct elections, with half of the seats returned by a "single-seat-single-vote" system on a district basis, and the other half by a proportional representation system, under which the entire territory would form a single constituency. Each voter would have two votes in electing LegCo members under this option; and
 - (b) all seats to be returned by "one-person-one-vote", such that the number of seats allocated to different political parties would be proportional to the respective number of votes they received. This proposal would be conducive to promoting the development of political parties. However, some members considered that any electoral system should ensure that independent candidates

would have the opportunities to stand for election, and voters could vote for candidates without political party affiliation.

- 8. A member had reservation against abolishing all FC seats because such arrangement could not meet the interests of different sectors of society. He was of the view that only an electoral system with universal and equal suffrage allowing participation of different sectors of society would meet the principle of "balanced participation". Another member remarked that in view of the political reality, any proposal to abolish all FC seats would unlikely secure enough support in LegCo at present.
- 9. Mrs Regina Ip opined that the proposal of "one-person-two-votes" was worth further examination. She proposed that each voter could have two votes: one vote to return directly elected GC members and another vote to return a candidate on a party list. The number of candidates returned from each party would depend on the number of votes cast for the candidates on the party list. She considered that this proposal was consistent with the Basic Law and could allow elite members of the FC, including members of the business and professional sectors, to stand for election. It would also have a better chance of gaining the support of different sectors of the community.
- (II) Apart from returning seats by GCs through direct elections, the FC seats would not continue to be returned by the existing election method
- 10. A member proposed including all voters who were currently not entitled to vote at FCs. In other words, each voter would have two votes in electing LegCo members: one vote to return directly elected GC members, and another vote to return FC members. As long as every voter would be entitled to vote for FC members, the principle of "universal" and "equal" suffrage would be met. However, a member considered that there would be great disparity in the number of voters among different FCs under this proposal, leading to inequality in the "value" of each vote. This could hardly comply with the principle of "equality".
- 11. A member remarked that universal suffrage for LegCo should be attained by phases and the number of phases should be determined in advance. For example, to expand the electorate base of FCs and abolish corporate voting in the first phase; to allow FC members to nominate candidates for election by all voters through a "one-person-multiple-votes"

system (i.e. one vote to return directly elected GC members, and multiple votes to return FC members) in the second phase; and to abolish all FC seats finally in the third phase when all LegCo members would then be elected by "one-person-one-vote".

12. A member proposed that consideration could be given to returning half of the seats by "occupational constituencies" through direct elections (i.e. eligibility for candidature for these seats would be defined by occupation, and the seats would be returned by universal suffrage). This could ensure that candidates would have regard to both the interests of the sectors and the overall interests of Hong Kong. This model also allowed non-affiliated individuals to stand for election.

(III) Bicameral system

- 13. Sir David Akers-Jones considered that a bicameral system was an appropriate model for forming the LegCo by universal suffrage. The main reasons included:
 - (a) in view of the political reality, it would be difficult to persuade the Central Authorities and different sectors of the community to support the abolition of all FC seats in one go.
 - (b) the upper house and the lower house could provide the checks and balances which would be conducive to maintaining social stability and economic prosperity.
 - (c) the electorate base of FCs could be expanded in phases in a gradual and orderly manner to enhance their representativeness.
 - (d) many overseas legislatures adopted the bicameral system. He saw no reason why it was not applicable in Hong Kong only.
- 14. Mrs Regina Ip, however, held that the bicameral system did not meet the requirement stipulated in the Basic Law that all LegCo members should ultimately be returned by universal suffrage. Moreover, under the bicameral system, the process of scrutinizing bills and motions would be delayed as they had to be scrutinised by the upper house again after the lower house had passed them.

- 15. A member pointed out that in overseas legislatures where a bicameral system was implemented, the lower house was led by the ruling party. However, given the executive-led political system in Hong Kong, the implementation of a bicameral system might result in a "legislature-led" situation.
- 16. A member opined that a "unicameral system with two groups" (i.e. separate voting on passage of bills by the FC group and the group returned by universal suffrage) was more appropriate than a bicameral system as the former could be attained under the existing mechanism without amending the Basic Law.

<u>Transitional arrangements before attaining the ultimate aim of universal suffrage</u>

- 17. A member suggested exploring proposals for implementing universal suffrage on the basis of the 2007/08 package proposed by the Government in 2005 (i.e. increasing the number of LegCo seats returned by the District Council Functional Constituency).
- 18. A member proposed phasing out the FC seats over three terms of LegCo until all the seats were returned by direct election. He opined that this arrangement, which allowed the FCs more time to prepare for universal suffrage, would be more readily acceptable by the community and members of the FCs. However, a member held the view that implementing universal suffrage in phases would only further defer the current problems (such as setting a long-term direction for FCs). Moreover, it was difficult to forge a consensus on which the FC seats were to be abolished before the others.

Other issues

19. A member pointed out that the main concern of the business sector on the implementation of universal suffrage was whether there would be implications on Hong Kong's economy. For instance, it might be possible for a Chief Executive to significantly increase welfare expenditure in order to secure votes for another term, thereby leading to tax increase. He opined that with the development of political system becoming mature, there would be a higher chance of reaching a consensus on the constitutional development if those participating in politics could take into account the concerns of the business sector.

- 20. A member pointed out that those patriotic parties and the parties which advocated democracy had different views on the constitutional development of Hong Kong. If these parties could not seek common ground while accommodating differences, it would be difficult to implement universal suffrage or have the consent of the Central Authorities to a fundamental change to the electoral system of Hong Kong. He opined that Hong Kong should adopt a pragmatic and accommodating attitude in dealing with the issues of constitutional development. There should not be any suggestions that Hong Kong should seek to change the political system of the Mainland. Another member echoed that there should not be any worry about not having the blessing of the Central Authorities, so long as the proposal was developed in line with the principles stipulated in the Basic Law and was widely accepted by different sectors.
- 21. While recognising that the Central Authorities had the power to determine the constitutional development of Hong Kong, a member opined that the SAR Government should also give due consideration to the aspiration of the public. Another member opined that rather than asking the public to change their values in resolving the constitutional problem, the public should be left to choose an electoral system that was suitable to Hong Kong.

Conclusion

- 22. The Secretary for Constitutional Affairs made the following concluding remarks:
 - (a) Under the framework of the Basic Law, Hong Kong's political structure was a system designed for the executive authorities and the legislature to complement each other, and operate with due checks and balances. The principle of an executive-led system was embedded in the provisions of the Basic Law. Under the principle of an executive-led system, the Government had to work with different political parties/groups and seek the support of LegCo members.
 - (b) According to the Basic Law, the executive authorities and the legislature were constituted through two different routes. Thus,

- this situation could not be changed by changing the electoral system for the LegCo or enacting a political party law.
- (c) It was clear that members had reservations on adopting a bicameral system for forming the LegCo by universal suffrage. The main reason was that a bicameral system would entail amendments to Annex II to the Basic Law and even the principal provisions. Since amending the Basic Law would entail complicated procedures, members were of the view that it would not be worth the effort. Members could decide at the Committee's meeting to be held on 23 November 2006 whether to set aside the discussion on bicameral system for the time being.
- (d) Members had further narrowed their differences over the models for forming the LegCo by universal suffrage. For example, members agreed that the ultimate aim of electing all the members of LegCo by universal suffrage must be attained, but further discussion was necessary on the model of universal suffrage, i.e. whether "one-person-two-votes" or "one-person-multiple-votes" should be adopted for forming LegCo. Some members proposed that transitional arrangements should be considered for universal suffrage for LegCo, but there were also suggestions that universal suffrage for LegCo should be implemented as soon as possible (say in 2012). Besides, members generally agreed that our political system should allow room for non-affiliated individuals and different organisations to participate.
- (e) The Government was optimistic that a broad consensus could be reached by the community on the model for universal suffrage, and agreed that any proposal for implementing universal suffrage must suit Hong Kong. As such, it would be of paramount importance to strive for a consensus within the community.
- 23. The Head of the Central Policy Unit was pleased to note that discussion amongst members had deepened. Through discussion, members were able to have a better understanding of each other's views. A consensus had been taking shape over the ruling out of certain unsuitable options.

24. The attendance list is attached at <u>Annex 6</u>.

Secretariat to the Commission on Strategic Development December 2006

對香港政制發展的一些意見 陳振彬 (2006年1月20日)

基本原則

- ◆ 經濟民生發展及社會團結和諧爲首要。
- ◆ 均等權利是對的,但不可演變成針對性削減某界別權利或有較少權利。
- ◆ 發展普選之餘,不應全盤否定其他選舉方法,如間選、功能組別 選舉並非不民主選舉方法,問題或只在制度實行方法及如何體 現。

建議

甲、 行政長官選舉方面

- 大量增加選舉委員會人數,包括政府原建議的所有區議會議員成為選舉委員會委員,是適當及合理的。因民選區議員本由全港合資格登記選民選出,某程度上這建議已等如間接普選,所有合資格登記選民亦因此參與了選舉行政長官的過程。
- 事實上,政府的原建議在社會上已獲得廣泛不同界別人士支持, 未能在立法會通過主因個別議員自身政治考慮,在適當時候,在 各方面配合更好的時候,這建議應可再提上立法會,獲通過正式 實行。

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乙, 立法會選舉方面

- 基本法有說明立法會最終達至全部議員由普選產生,一般理解是立法會最終沒有功能團體選出的成份。但前立法局自一九八五年開始有功能界別,至現在社會上基本已沒有質疑功能界別的聲音,功能界別在立法會內及在香港整個政制內差不多已成爲不可或缺的一部份,如果真要全面取消功能界別,相信在社會上會有頗多反對的聲音,亦可能引起分化,不利社會團結及和諧。最近社會上開始有討論在符合基本法之餘,如何保留功能團體,基於上述情形,我會贊成應研究如何保留功能界別,並鞏固其角色、運作及作用。
- 現在有很多社會人士仍未納入任何功能界別,變成屬於某功能界別的人士在選舉時有兩個投票權,但不屬現有功能界別的人士只有一個投票權。我認爲這違反了均等權利的原則,有需要研究出一個可行的安排,令所有有關人士都同樣有兩個投票權,這包括沒有正式工作的人士如家庭主婦,亦應有兩個投票權。
- 在實際功能界別選舉方面,仍有一些團體或商會採用內部協調的方法,我認爲在可行的情況下,所有團體都應該以公開及有競爭的過程,讓所有界別內選民可投票選擇他們在立法會的代表。

對策略發展委員會管治及政治發展委員會 "有關普選原則和概念討論的總結"文件 (編號 CSD/GC/6/2/2006)的意見 陳振彬 (2006年5月26日)

- 1. 赞成文件所述委員認同的四項政制發展指導原則,即「兼 領社會各階層利益」、「有利於資本主義經濟的發展」、「循 序漸進」、及「適合香港實際情況」。
- 2. 同意文件末股所建議委員會的下一步工作。
- 3. 文件提及立法會功能界別的安排,在這方面我有如下意 見:
 - a. 我十分同意功能界別在立法會及我們的整體社會發揮 了很重要甚至已是不可或缺的作用,因此應認真考慮保 留功能界別在立法架構內的角色,一些這方面的建議亦 已提了出來。但問題似乎是概念上全面普選的立法會不 會再有功能界別,即使我們現在再加強功能界別,亦會 是暫時性質,最後需要取消。
 - b. 我想提出一個看法,就是含有功能界別議席的立法會未必就是不符合全面普選的立法會。關於普選的原則及概念,在上述文件內亦有提及,就是委員普遍認同,普選的概念應包括「普及」及「平等」選舉的原則。如果功能組別能符合這些原則,是不是應該可以在立法會繼續保留?
 - C. 若然有足够意見支持覺得可以考慮保留功能界別,我會 覺得方向是現有界別包括組成及選舉方法不作改變,這 才符合我們認為功能界別已是不可或缺的看法。另一個 重要考慮,正如文件有述,從現實角度看,任何修改立 法會選舉辦法的議案,要得到立法會三分二議員多數通 過,即同時要得到現有大部份地區選出及功能界別議員 通過。

- d. 其實政府早前提出的建議方案,將立法會「區議會功能 界別」議席由一席增至六席,是一個非常理想及合適的 構思,因為區議員乃由全港所有地區選民選出,再由他 們互選出的立法議員,應可在立法會內代表所有選民。 若這界別在會內佔有六席,加上其他現有功能界別,應 可符合「普及」及「平等」的原則,亦應可在立法會繼 續保留,不需取消。
- c. 另一個可能性是在立法會加入新的功能界別,讓現時未納入功能界別的合資格選民,例如家庭主婦、商業機構的員工、一些非專業人士、達選民年龄的學生等,都納入在功能界別內,最終是所有合資格選民都屬於功能界別。在這模式下,所有合資格選民都在選舉時有兩個投票權,即除地區的一票外,他們都可在功能界別投票。功能界別因此應符合了「普及」及「平等」選舉的原則,在概念上符合了普選,可在立法會保留。
- f. 現時香港對可以登記成為選民的要求並不嚴苛,只要是香港特別行政區水久性居民、通常在香港居住及年滿18歲,基本上無其他如國籍限制,正是在一國兩制下,充份體驗香港作為國際都會的包容性。如果所有選民都可在地區及功能界別投票,以我們廣潤的選民基礎,立法會可更充分全面地代表全港不同居住地區、及所有社會各不同界別,達到均衡參與,亦符合長遠整體利益。

香港職工會聯盟秘書長李卓人 呈交策略發展委員會 管治及政治發展委員會的意見書 2006年1月

政制改革的原則

普及而平等的選舉權利,是(世界人權宣言)與(公民權利和政治權利國際公約)確認的一項基本人權,除非反對實行普選的一方能夠提出確實和具凌駕性的論據,否則任何個人或組織(包括政府)不得剝奪、限制、拖延或以任何其他形式阻撓市民行使這項權利。單是意見分歧並非否決普選的充分理由,而政府以社會未有共識而不肯訂立實行普選的時間表,亦不符合人權公約的精神。

2. 當局在管治及政治發展委員會 CSD/GC/1/2005 號文件中提出,在討論香港政制發展時,須考慮「兼顧社會各階層利益」、「有利資本主義經濟發展」和「行政主導」等原則。我們認爲,在草擬《基本法》時,這些原則已被反覆考慮,並已寫成《基本法》的具體條文,只要嚴格按照《基本法》的條文處理政改問題,即可充分體現有關原則。

- 3. 我們認爲,「兼顧各階層利益」是指來自不同階層的每一個個人,都 享有平等的政治權利。可是現時的政制安排,令某些階層(特別是工商界) 享有政治特權,不完全符合「兼顧各階層利益」。
- 4. 普選行政長官和立法會是《基本法》訂明的最終目標,證明全國人民代表大會(人大)在通過《基本法》時,已確認普選是最能「兼顧各階層利益」的政制安排。事實上,由於商界擁有雄厚的經濟實力,任何執政者或政黨都必須照顧商界的需要,維持營商信心;因此,普選是最能夠兼願商界和普羅市民利益的選舉方法。

有利資本主義經濟發展

5. 普選行政長官和立注會是《基本法》訂明的最終巨標,證明人大在這

過(基本法)時,已確認普選是最「有利資本主義經濟發展」的政制安排。 事實上,所有發達的經濟體系,都是由普選產生行政機關和立法機關,由 此可見,普及而平等的選舉制度,是最有利於經濟發展。

行政主導

7. 所謂「行政主導」,只是一個籠統的概念,沒有明確的定義。有關行政和立法的關係,在〈基本法〉中已有具體條文,界定行政長官、行政機關和立法機關的職權,以及三者之間的關係。改變選舉方法,並不涉及修改上述條文,也不影響該等條文的實施。例如,無論行政長官是由小圈子即或是由普選產生,又或者立法會有部分議員是由功能組別產生抑或是全部由普選產生,根據〈基本法〉的規定,都是由行政機關提出法律草案或者撥款建議,由立法會或財務委員會通過。(基本法)並沒有規定立法會必須通過行政機關的提案,在現行的憲政安排下,所謂「行政主導」,應理解爲行政機關有較大的憲政責任,確保符合香港利益的提案獲得通過。

在 2012 年或之前實行兩個普選符合香港的實際情況和循序漸進的原則

8. (基本法)第四十五和六十八條規定,行政長官和立法會的產生方式,須根據香港的實際情況循序漸進,最終達至由普選產生·我們認為「實際情況」和「循序漸進」應一併理解,其意思是指政制設計必須跟香港的實際情況協調和相適應。倘若香港的社會和經濟結構已出現根本性的轉變,政制發展亦必須加快腳步,作出相應的改動,再不能一步一步地走,否則會導致不協調的情況,輕則影響社會和諧及經濟發展,嚴重的更可能引起動蕩。

- 根據香港的實際情況循序漸進發展政制時,我們需要處理兩方面的問題:
 - 現行的政治制度是否跟香港的社會和經濟情況協調和相適應;及
 - 香港是否具備實行某種選舉安排(例如普選)的客觀條件。

現行政制跟不上香港的實際情況

- 10. 回歸後,香港不時出現管治危機,主要是源於政治制度跟不上社會和經濟情況的轉變。現行的政制設計,基本上是承襲上世紀80年代殖民地統治的一套,其特點是透過委任或有限度的選舉(例如功能團體選舉),吸納資本家和精英階層的代表進入建制,換取他們支持(或者最低限度不公開反對)殖民地官僚的施政。可是,20多年以來,香港的經濟結構和社會狀況已出現了根本的變化。隨著華資和中資的興起,以及經濟多元化發展,资本家和超英階層的組成,以及他們之間的利益關係,已變得極為複雜、政府希望以殖民地年代的方式贏取精英階層的支持,也變得愈來愈困難。專實上,被特區政府吸納進入建制的人士,根本不能代表資本家和精英階層的整體利益,而政府更不時因爲「分贓不勻」而被指摘厚此薄彼。在「酉九龍」事件中,有大資本家赤膊上陣,公開指摘政府官商勾結,偏袒某一財團,正是一例。
- 12. 藏然《基本法》並非完全漢觀香港須發展民主的客觀需要,否則也不會有最終達至普選的規定;不過,由於既得利益者(主要是工商界)反

對普選的壓力, (基本法) 有關特區政制的安排只能夠是妥協的「华民主」 產物。可是,當年的草擬者似乎低估了「华民主」政制的內在矛盾的嚴重 性,他們也可能沒有預料到,在沒有明確普選時間表的情況下,既得利益 者不停阻撓香港的民主進程,令「华民主」政制的內在矛盾無限期延續, 造成香港社會無休止的內耗。

- 13. 概括而言,現行「半民主」政制的內在矛盾包括:
 - 開放選舉增加了市民對民主的期望,可是現行的政制設計,卻令 社會上的多數派變成建制內的少數派,經常出現多數人服從少數 人的矛盾,造成市民「期望愈大、失望愈大」的負面效果(不幸 地,第一任行政長官施政運番失誤,卻仍然獲得 700 多名選舉委 員會成員提名,自動當選連任,這不僅令小圈子制度徹底破產, 強化了市民對普選的訴求,同時亦加劇了普羅市民和既得利益者 之間的矛盾);
 - 行政長官和立法會議員的產生方式(即選舉委員會、功能組別和分區直選),各有不同的社會基礎,不同界別或階層的利益衝突,不僅未能透過公平、公正的選舉得以化解,反而將矛盾直接移植至政治體制內,令行政與立法關係,以至立法會內部,經常出現緊張的情況,影響政府運作;及
 - 政治本是妥協的藝術,但現行的政制安排卻沒有爲行政長官和議會內各黨派提供妥協的誘因。例如功能組別選舉,將從政人士和界別利益緊緊扣在一起,局限了妥協的空間。而更重要的是,行政機關繼續壟斷制定政策的權力,議會內不同黨派只需繼續堅持原有立場,好向選民交代,根本沒有需要求同存異,跟行政當局磋商聯合綱領,共同執政。
- 14. 我們認爲, 香港現行的政制設計, 跟香港的社會和經濟狀況已出現極嚴重的脫節, 只有盡快實行普選, 才能夠令香港的政制與香港的實際情況相適應, 才能夠化解「半民主」政制的內在矛盾。

香港已具備實行普選的客觀條件

15. 根據香港的實際情況循序漸進發展政制時,我們需要處理的另一個問題是,香港是否具備實行某種選舉安排(例如普選)的條件,我們認為,需要考慮的條件,必須與選舉制度有直接關係,並且是可客觀量度或評估

- 的·某個別參政人士或組織的信念、取向或者當選機會,不應在考慮之列, 因爲這些是企圖預知、影響或限制選舉的結果,並不符合公平、公正的民 主選學原則。
- 16. 在討論實行普選時,需要考慮香港是否具備的客觀條件包括籌辦全民選舉的經驗和能力是否足夠、法律和司法制度是否健全,以及資訊是否流通等。自 1980年代開始至今,香港已有超過 20年籌辦全民選舉的經驗,而每次選舉過程均大致順利,證明我們在這方面有足夠的能力;此外,香港不僅擁有健全的法律和司法制度,更「勝在有 ICAC」,而且法治觀念深入民心,再加上發達和蓬勃的大眾傳播媒介,香港早已具備實行普選的所有客觀條件。
- 18. 綜合上文第 8 17 段所述,我們認為在 2012 年或之前實行兩個普選,是跟香港的社會和經濟狀況協調和相適應,而且香港亦早已具備實行普選的一切客觀條件,亦即符合《基本法》第四十五和六十八條,行政長官和立法會的產生方式,須根據香港的實際情況循序漸進的規定。

在 2012 年或之前實行雙普選的準備工作

19. 雖然普選是解決香港政治困局的必需條件,但我們亦得承認普選並不能解決香港所有的管治問題。正因為普選是改善管治的必需但非充分條件,我們更應立即就 2012 年或之前普選行政長官和立法會作出定案,並把提時間,盡早研究普選的集體方案和其他改善管治的配套改革。政府在管

治及政治發展委員會 CSD/GC/2/2005 號文件中,介紹了兩個普選的可能模式,我們嘗試在下文作出初步回應,並提出其他值得討論的相關議題。

提名委員會的組成

20. 選舉是包括提名和投票程序,而民主的選舉權利,是包括普及而平等的提名權、被提名權和投票權,因爲只有如此,公眾的意志才可在定期的選舉中獲得充分表達·(基本法)第四十五條訂明,提名委員會須按民主程序提名行政長官候選人,說明提名委員會的組成方式,必須體現公民擁有普及而平等的提名權和被提名權的原則·目前(基本法)附件一規定的選舉委員會的組成方式,明顯不符合普及而平等的原則,若以此作爲提名委員會組成方式的藍本,是抵觸第四十五條有關「民主程序」和「最終達至普選」的規定。

普選行政長官的投票方式

21. 我們需要考慮普選行政長官的投票方式,是採用簡單多數制,抑或是兩輪投票(即在第一輪投票時,如沒有候選人獲得過半數有效票,需要進行第二輪投票,讓選民在第一輪投票中得票最多的兩名候選人中,選出一人出任行政長官)。實行簡單多數制的一個缺點是,當有多名實力相當的候選人角逐時,得票最多的候選人可能只獲少數選民授權,影響當選者的認受性,例如 2000 年台灣總統選舉。不過,實行簡單多數制,亦有利政治立場相近的黨派整合,以避免彼此分散票源、影響勝算。

功能組別選舉的未來路向

- 22. 正如上交第 11 13 段所述,功能組別選舉是導致目前政治困局的其中一個最重要原因,我們應盡快廢除這個制度,在未廢除功能組別選舉之前,政府應引入下列兩項改革:
 - 擴大功能組別的選民基礎 將公司票或團體票轉爲個人票(例如將勞工界的選民基礎擴大至所有註冊職工會的會員)·此學可減低小圈子選舉出現操控或舞弊的可能性:及
 - 檢討競爭偏低的功能組別的存廢 在過去3屆選舉,有多個功能組別(例如商界二)部只有1名候選人,政府應研究這些組別競爭情況偏低的原因,並考慮廢除這些組別或與其他組別合供。

23. 另外,有的人建議,在立法會全面由普選產生時,全部或部分候選人 應由功能組別提名,再由選民一人一票選出。這個建議並不符合〈基本法〉 第六十八條的規定,因為普選是包括普及而平等的提名權、被提名權和投 票權,由功能組別提名候選人,並不符合普選的原則。

两院制

- 24. 當局在管治及政治發展委員會 CSD/GC/2/2005 號文件中,花了大量 篇幅介紹外國實行兩院制的方式。不過,我們對在港實行兩院制有很大的 保留,原因如下:
 - 香港立法會只是一個地方議會,一些國家(特別是聯邦制國家) 實行兩院制以平衡中央和地方利益的考慮,並不適用於香港;
 - 設立上議院的其中一個目的,是希望在少數服從多數的制度下,仍有機制保障少數人的權益,例如英國上議院多次拖延侵犯人權的法案。不過讓刺的是,在香港,由功能組別選出的議員,卻經常支持違反人權的議案,例如支持剝奪港人在內地所生子女的居港權。倘若將來設立的特區上議院,大致上参照現時功能組別選舉的模式,將很大可能無法達到保障少數人利益的目的:
 - 倘若上議院全部或部分議員由政府委任,很容易滋生私相授受的問題,令議席淪爲政客獎賞親信的禮物,有數百年議會傳統的英國亦深受這個問題困擾;
 - (基本法)並沒有兩院制的安排。根據特區政府過往的行事方式 推斷,當局爲避免打開修改(基本法)的缺口,又會想盡辦法鑽 空子,設計出非驢非馬的兩院制,然後辯稱方案符合(基本法) 的規定:倘若不幸言中,這只會爲香港添煩添亂;及
 - 當局提出研究兩院制,似乎是認為這方案較易獲得公眾和既得利益者的支持,但我們卻認為這個如意算盤很大可能會落空。一方面,如果實行兩院制是讓功能組別選舉借屍還魂,上議院的權力跟普選產生的下議院相若,公眾根本不會接受。另一方面,如果上議院的實際權力有限,並白政府委任德高望重的人士出任議員,即意味大部分決時循功能組別選舉進身議會的人士將會失去議席,這些既得利益者是否支持,是一大疑問。

立法會議席數目

25. 除國防和外交政策外,特區立法會需要處理的事務與外國的議會相若,但議席數目卻少得多,令立法會議員需要同時兼顧多個政策範疇,影響議政案質。我們應探討是否需要大幅增加立法會的議席,以分擔議員繁重的工作。倘若最終決定立法會議席數目維持在與現時相若的水平,當局亦應考慮增加議員工作開支的津貼額,讓議員有足夠的支援處理議會事務(目前・25 名泛民主派議員合共所得的津貼額,較工作量最小的政策局(例如政制事務局)一年的經常開支還要少,但議員卻要同時兼顧所有政策範疇,以及處理地區或業界事務)。

行政長官和立法會議員任期

26. 現時,行政長官和立法會議員的任期分別是 5 年和 4 年,兩者的改選年份有時只相差 1 年,可能影響政府的立法工作。例如 2007 年行政長官上任後,立法會只剩下 1 年會期,一些較複雜、鬶用較長時間審議的法案,很可能要押後推出,否則立法會改選後又要推倒重來。我們建議當局檢討是否劃一行政長官和立法會議員的任期。例如自 2012 年起,行政長官的任期改爲 4 年。倘若最終決定兩者的任期維持不變,我們亦可考慮取消立法會「換屆」的安排,並引入中期選舉,讓立法會審議法案的工作可以延續,不會因爲議會改選而必須中斷。

其他配套改革

27. 正如上交第 19 段指出·普遍是突破香港目前政治困局的必需條件·但不是解決所有管治問題的充分條件·因此,我們在研究普選的具體方案時,亦應同時考慮其他有利改善管治的配套改革,包括:

- 行政立法關係 例如研究是否需要建立 慣例,行政長官須與立 法會內的多數派組成執政聯盟,商議共同政綱:
- 促進政黨發展的措施 例如容許同一政黨的議員共用工作開支 津貼、在選舉期間容許符合某客觀標準(如議席數目達 20%以上) 的政黨進行電視辯論等;
- 立法會及轄下委員會的運作方式 例如加強事務委員會参與制 訂政策的角色、委員會組成大致反映各黨派的護席分布等;

- 政治任命官員和公務員的分工 —— 例如研究公務員應否繼續多與 推饋政策的工作:若否,政治任命官員隊伍是否需要加強;及
- 公務員的培訓 -- 例如實行普選後,可能會出現政黨輪流執政, 公務員隊伍需要有足夠的訓練和經驗,以規劃和執行可能截然不 同的政策。

結語

- 28. 有關香港政制設計的原則,在草擬(基本法)時已被反覆考慮,並已寫成(基本法)的具體條文,只要嚴格按照(基本法)的條文處理政改問題,即可完分體現這些原則,普選行政長官和立法會是(基本法)訂明的最終目標,證明人大在通過(基本法)時,已確認普選是最能「兼顧各階層利益」、最「有利資本主義經濟發展」,以及最有效實徹「行政主導」的政學、非,
- 29. (基本法)第四十五和六十八條規定,政制發展須根據香港的實際情況循序漸進,意思是指政制設計必須跟香港的社會和經濟情況協調和相適應,現行的政制設計,明顯跟不上香港社會和經濟結構在近 20 年間出現的根本變化,與香港的實際情況脫節,只有盡快實行普選,才能夠令香港的政制與香港的實際情況相適應。此外,香港亦早已具備實行普選的一切客觀條件,在 2012 年或之前實行普選,是完全符合(基本法)第四十五和六十八條的規定。
- 30. 我們期望管治及政治發展委員會在下次會議起,即開始探討在 2012 年或之前實行普選的具體方案,以及研究其他有利改善管治的配套改革, 並在今年 10 月 (施政報告)發表前,向行政長官提出建議。

香港政改獻議(之二)

華人學術網絡成員 梁美芬*、鄭赤琰、王貴國、鄭國漢* 2006年9月22日

立法會 "一會兩組"

有鑑於香港現存政黨無法在立法會上分別代表社會各階層爭取平 衡社會利益、調和社會矛盾的議會功能,因此,工商專業界與基層的 利益矛盾不能靠現有立法會制度擺平,出路可能是將原有的功能與普 選兩大組別的議員正式分成"一會兩組"分頭運作。

法律現況

全國人民代表大會常務委員會於 2004 年 4 月 26 日的解釋與決定, 為香港政制改革提出了法律框架。其規定如下:

「一、2007年香港特別行政區第三任行政長官的選舉,不實行由 普選產生的辦法。2008年香港特別行政區第四屆立法會的選舉, 不實行全部議員由普選產生的辦法,功能團體和分區直選產生的議員 各占半數的比例維持不變,立法會對法案、議案的表決程式維持不 變。

二、在不違反本決定第一條的前提下,2007年香港特別行政區第三任行政長官的具體產生辦法和2008年香港特別行政區第四屆立

策略發展委員會政治及管治小組委員

法會的具體產生辦法,可按照香港基本法第四十五條、第六十八條的規定和附件一第七條、附件二第三條的規定作出符合循序漸進原則的適當修改。」

基於上述的法律規定,我們建議,先在現有的基礎上,保留現行的立法會內功能組別及直選組別各半的比例或按比例增加,即直選議席增加多少,功能組別就增加多少議席,一切照著原有的選區讓各政黨去角逐,但原有的功能組別的三十席則另行建會;修改《基本法》易生非議,現在的建議是在不必要更動《基本法》的前題下,使功能組別與普選組別分別點票表決法例,正式將兩組分家,分頭建立各自的議事平臺,如用"一會兩組"的概念,既可符合《基本法》一院制的條文,又可符合現存兩組議員針對一個提案討論的原則。待條件成熟後,則可正名為"一會兩組"。但"一會兩組"之實施前題是現時分組投票的機制及選民基礎必須重新修訂,以避免現時分組投票機制的死胡同。

第一,可以減少現存兩組議員因著誰更有民意代表性的問題而經常互相猜疑與彼此歧視。結果是有礙議事平和、客觀的要求。如果一會兩組是建立在相應的民意基礎上,那兩組都可享有同樣的一般法案的提案權與議事權,如一個法律提案先由一個組提出,進行投票;則需要再要轉去另一個組進行討論與投票。對現行制度進行調整,兩組對議案的投票均可採取三讀的形式方能通過。如果一組三讀通過的提案被另一組三讀不通過時,可用兩組合議的出席人數多數通過,若通不過便擱置或駁回原組重新審議。(這個有關投票機制的建議不需要修改《基本法》,只需要修改直

選組與功能組的議事規則。)

- 第二,正如美國"一會兩院"制其中的參議院所代表的是州的 利益,必須要有他們州的參議員為他們看顧。眾議院所代 表的是普羅大眾的個人利益。個人與州的利益如何平衡整 合,則靠兩院的磨合才能成事。美國的"一會兩院"制是 由英國的兩院(貴族院及平民院)演變而來。同樣,香港 既然有兩個利益矛盾而又相生相長的不同階層存在的事 實,故可考慮參照類似美國"一會兩院"的模式,(但不 是照單全收,因為香港面對的政治情況及地理環境與美國 不同。) "一會兩組"可讓雙方的利益,各有各說的空 間,而又有對等協商的機制。
- 第三,美國的"一會兩院"的選舉辦法,也說明了一個國會成員可由不同的管道、不同的選舉方法選舉產生。香港的"一會兩組"的好處是不必對〈基本法〉進行大動作的修改,只須將現行功能組別的選舉通過政府政改建議加以調整。〈基本法〉說明立法會最後由選舉產生,基于現有基礎及充份照顧各階層利益的政政原則;以"普選"的方法去選出來的"功能組"議員,不但遵照〈基本法〉說明立法會最終由普選產生的規定,也能照顧到業界和各階層的利益。

(甲) 功能組別:

第一階段

(1) 擴大選民基數及組別 (循序漸進,達至普選目標)

我們建議,只要候選人出自業界的原則確定下來後,可由全部合格選民通過"選區"選舉辦法,或通過用一張候選人名單當作選票由選民在每個功能團體的候選人名單中圈選他們心目中的候選人。

(2) 取消功能組別的公司、團體或法人票 應該由有資格被界定為該界別的選民以一人一票產生界別 的代表;功能組別的選民必須界定清楚。

(3) 增加功能組別

若現實上,功能界別不能循序漸減,可以考慮到過來以增加功能組別及以重新界定功能組別的選民以達至改革的方向,曾經建議過的新增組別包括中醫界、高等教育界、環保界、出版界或其他應該有代表而在立法會沒有代表的界別,可增加一個綜合界別,讓所有其他不屬於任何功能組別的選民歸類到該界別。使所有選民都有機會在功能組別中投票,最終達至普選的功能組別立法會議員的代表性與分區直選立法會議員不相伯仲。

第二階段

當第一階段改革成功以後,可進入第二階段,即讓所有選民都有權在功能組別投票據(即選民可有一票投直選,另外亦在有在所有功能組別中投票)。在這方案中,選民一人多票;既可保留功能組別的代表性,亦可達普選之效。

第三階段

在條件成熟後,才考慮全面取消功能組別的議席,全部議席由普選產生。(由於第一及第二階段基本上達到選民在普及和平等下選出他們屬意的直選議員和功能組別議員;因此,可以維持實踐一段較長的時間)。

以上方式,既可在現有(基本法)框架下進行,基本上無須修改基本法,又可達至每名合資格的選民有同等的機會去投票(一票投直選,一票投功能組別)。保留功能組別的代表可達至平衡各方利益、循序漸進、並且滿足(基本法)最終普選的規定。

(乙) 地區直選: 單議席單票制

至於直選方面,我們支持所有由普選產生的地區直選,均以單議 席單票制進行。以上模式,是考慮到循序漸進、平衡各方利益普 及及平等的原則。相信可使政改模式順利過渡到立法會全面雙普 選的目標。

Bicameral Legislatures: those whose deliberations involve two distinct assemblies (Tsebelis, 1997)

In 1999, 67 bicameral institutions or 38% of 178 legislatures in the world:

Fully Elec Direct Indirect Suffrage Suffrage Australia Argentina Bolivia Austria Brazil Bosnia -	ted	Senates	/ Partially A ppointed Senates	ılly	Appointed
	lirect frage			nates	Dellates
		Mixed Suffrage	Direct Suffrage	Indirect Suffrage	
op	Argentina Austria Bosnia - Her Burkina Faso Ethiopia France Gabon Germany Mauritania Morocco Namibia Netherlands Russian Federation Slovenia South Africa	Belgium Spain		- L	Antigua & Barbuda Bahamas Barbados Belize Cambodia Canada Fiji (Isles) Grenada Jamaica Jordan Lesotho Saint Lucia Trinidad & Tobago United Kingdom
21	16	2	2	12	14

(Extract from Dr Sing Ming's presentation "Bicameralism – its Relevance for Better Governance in Hong Kong", Commission of Strategic Development of HK Workshop, Feb 28, 2006)

"Parallel Geographical-Party List" Electoral System by Mrs. Regina Ip

Workshop for the Committee on Governance and Political Development of the Commission on Strategic Development

Monday, November 6, 2006

- Q1 What is the "parallel geographical-party list" (PGPL) electoral system?
- A1 The PGPL system is a mixed electoral system that I proposed for the Hong Kong SAR in my master's thesis recently written at Stanford University. Under PGPL, seats in LegCo would be divided into two categories: (1) seats for multi-member geographical constituencies; and (2) seats for political party lists.

 Correspondingly, each voter would be given two votes in a LegCo election—one cast for a candidate or a list of candidate standing in her own district-wide geographical constituency, the other for a party list standing in the Hong Kong-wide constituency. In both categories, the number of elected candidates from each party list would depend on the number of votes the list receives, in accordance with the current electoral rule of proportional representation (PR).

For example, if the number of seats in LegCo is expanded to 80, then a total of 40 seats may be set aside for various geographical constituencies and the remaining 40 for the Hong Kong-wide constituency. The electoral arrangement of the former category would be identical to existing geographical constituency elections of LegCo, while each political party could put forward no more than 40 candidates for inclusion in its own party list for the latter category. Every party list would then win LegCo seats in proportion to the number of votes cast for that particular list.

- Q2 Why do you believe this system is appropriate for the Hong Kong SAR?
- A2 I believe the PGPL system complies with all the underlying principles governing Hong Kong's democratic development under the Basic Law: (1) development in light of actual situation; (2) gradual and orderly progress; (3) facilitation of a capitalist economy; and (4) balanced representation. In particular, this mixed system would meet the terms of the last two principles by facilitating the representation of interests across societal sectors. On the one hand, it would allow geographical constituency members of LegCo to focus on the local

interests of their respective districts. On the other hand, it would follow Hong Kong's fine tradition of elite participation in public service, enabling citizens whose experience and expertise transcend geographical constituencies to be returned to LegCo — provided that they are willing to stand for elections as candidates on a party list.

- Q3 Is there any other country or territory that uses a mixed electoral system, under which two different groups of members are returned to the legislature?
- A3 A mixed electoral system for national legislature is quite common. In fact, as of April 2006, a total of 30 countries and territories around the globe have adopted such an electoral arrangement. They include Germany, Italy, Mexico, New Zealand, Japan, South Korea and Russia.

In Japan, for instance, members of the Diet are returned either from the smaller, local constituencies or from the bigger, block districts. In an election for the House of Representatives, every voter has two votes — one cast for a candidate in his local constituency, the other for a political party, each of which has a list of candidates for each of the 11 block districts. The results of the 300 local constituencies are decided by plurality, whereas the 180 block seats are handed out to the parties in proportion to the number of votes they receive.

The PGPL system proposed herein is a variation of the electoral arrangement used in Japan and many other countries or territories. The increasing prevalence of a mixed electoral system manifests the worldwide recognition of the importance of balanced representation in the legislature.

- Q4 You stated that you applaud Sir David Akers-Jones's effort to promote the establishment of a bicameral legislature, which would preserve functional constituencies in LegCo. On the other hand, you suggest that all LegCo members be elected by universal suffrage, a proposal that would eliminate functional constituencies. Aren't these two assertions contradictory?
- A4 As I stated in my thesis, I do not espouse the proposal to create a second chamber in the legislature. Doing so would only unnecessarily lengthen the debate on various issues before LegCo and deepen potential schisms in society. Fundamentally, the Basic Law provides that all LegCo members be eventually returned by universal suffrage; this provision suggests that all functional

constituencies must ultimately be abolished.

It was my intention to applaud Sir David's attempt to formulate an electoral system that represents progress toward democratic development and observes the principle of balanced representation. However, preservation of functional constituencies in an upper house will not comply with the principle of universal suffrage. The proposal I put forward can resolve these problems.

策略發展委員會 管治及政治發展委員會工作坊 2006年11月6日

Workshop for the Committee on Governance and Political Development of the Commission on Strategic Development 6 November 2006

召集人

Convenor

Head, Central Policy Unit

中央政策組首席顧問

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Mrs. TSE LING Kit Ching, Cherry, JP
Permanent Secretary for Constitutional Affairs

Mr LAI Yee-tak, Joseph
Deputy Secretary for Constitutional Affairs (1)

Sir David Akers-Jones

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因事未能出席 Apologies

Mr CHAN Tak-lam, Norman, S.B.S., J.P. Prof CHEN Hung-yee, Albert, J.P. Mr CHEN Nan-lok, Philip, S.B.S., J.P. The Hon CHEUNG Hok-ming, S.B.S., J.P. Mr CHOW Cham-ki, Kenneth Mr HOO, Alan, S.B.S., J.P. Ms KO Po-ling, M.H. Mr FUNG, Daniel R., S.B.S., J.P. Prof KUAN Hsin-chi Prof LEE Chack-fan, S.B.S., J.P. Dr LEUNG Mei-fun, Priscilla Dr LO Chi-kin, J.P. Mr LUI Tim-leung, Tim, J.P. The Hon MA Lik, G.B.S., J.P. Mr MOK Hon-fai Mr NG Sze-fuk, George, S.B.S., J.P. The Hon SHEK Lai-him, Abraham, J.P. Mr TAM Kwok-kiu, M.H., J.P. Dr WANG Xiao-qiang Mr WONG Kong-hon, S.B.S., J.P. Mr WONG Ying-ho, Kennedy, B.B.S., J.P. Mr YU Kwok-chun, G.B.S., J.P.

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