

**Submission  
Methods for Selecting the Chief Executive and  
Forming the Legislative Council in 2012  
Consultation Document  
(November 2009)**

The slow pace of reform and the twist and turn with regard to the direction of reform continue to cause substantial public frustration in Hong Kong.

Since the 1980s, there has been a variety of proposals from many people and organizations of different backgrounds on the pace and direction for Hong Kong's constitutional reform to achieve universal suffrage. During the drafting of the Basic Law, some of the proposals (for example, from Louis Cha, Cha Chi Min and T S Lo) were controversial because of their conservatism. Indeed, their proposals were seen as ultra-conservative at the time. However, when those proposals are juxtaposed against the pace and direction in the 2009 Consultation Document those proposals appear quite progressive. In other words, Hong Kong people would have achieved universal suffrage by now for both the Chief Executive and the Legislature had any of those options been followed.

Since constitutional development has not progressed since 2004, many of Civic Exchange's views submitted earlier in response to various Task Force reports and the 2007 Green Paper remain relevant. We do not intend to repeat them but attach them so they become a part of this submission.

In addition, we would like to highlight the following:

**1. Follow Public Views by “Enhancing Democratic Elements”**

The Consultation Document provides a summary of views collected after the National People's Congress Standing Committee (NPCSC) Decision in December 2007 (paragraphs 2.07 and 3.09). This has the effect of excluding views prior to the Decision on the basis that they lie outside the parameters of the NPCSC Decision. There were also substantial views supporting universal suffrage for both the elections of the Chief Executive and the whole legislature in 2012.<sup>1</sup> These views may be excluded but it would be difficult to make a case that they are irrelevant.

At a minimum, a serious effort must be made to do all that is possible to address public desire for a faster pace of reform. This must include reform options for the 2012 elections that the NPCSC had not explicitly ruled out. The HKSAR Government agrees that there is “ample room for making amendments to the electoral method to enhance its democratic elements” (paragraphs 2.01 and 3.01).

**2. Urgency of Abolishing Corporate Votes and Reforming Functionally-based Elections**

How “ample” is ample? Following on from the above point, corporate votes for the Functional Constituency Elections to the Legislature and Sub-sector Elections that produce the Election

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<sup>1</sup> Views supporting universal suffrage for both the elections of the Chief Executive and the whole legislature in 2012 are in the appendices, but do not appear in the summaries in Chapters 2 and 3 of the Consultation Document.

Committee that selects the Chief Executive should be abolished. This is an aspect that the public see as unfair as it embeds commercial interests directly within Hong Kong's political system.

The Consultation Document shows the HKSAR Government is inclined not to replace corporate votes. The Consultation Document states that such a replacement process would be too complicated and would involve the interests of many different sectors and individuals (paragraphs 4.17 and 5.12). Complication is not an acceptable reason. Commercial interests were given political privileges in the political system, and they would naturally wish to retain them but there is a wider public interest that needs to be served and is being repeatedly neglected.

Some may argue that the proposal to give five new Functional Constituency seats to elected District Council members is the closest proxy to increasing the number of legislators without creating yet more commercial voting blocs. However, it would be better still to abolish corporate voting altogether, and at the same time to reform the Functional Constituency Election by amalgamating constituencies in the way that Civic Exchange had previously proposed.

The Election Committee is currently elected through Sub-sector elections and is therefore also functionally based, with corporate votes having a dominant role. If the composition and electorate bases of both the Election Committee and Functional Constituencies are not reformed, then this undesirable form of election will likely transfigure into the operating mode for the future Nominating Committee that will be created to elect the Chief Executive in 2017.

### **3. Reintroduce Election of Uncontested Candidate for Chief Executive**

In the 2005 reform package proposed by the HKSAR Government, there was one proposal related to uncontested selection of the Chief Executive. In 2005, Civic Exchange fully endorsed the recommendation that an election should take place even if there is only one candidate running for the office of Chief Executive so that the candidate can still gain a public mandate. This recommendation is now missing in the 2009 Consultation Document. We suggest it be reintroduced.

19 February 2010

# Attachment

(Previous responses)

## **Civic Exchange's Views and Proposals on Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2008**

### **I: Our Standpoint**

1.01 While we note the explicit restriction in Paragraph 1.05 of the Fourth Report of the Constitutional Development Task Force (4R), we wish to say that for the people of Hong Kong to have to continue with indirect elections and functional elections as an alternative to universal and equal suffrage is most regrettable. No other community as prosperous, stable, well-informed and pluralistic as Hong Kong in today's world is denied the right to elect their political leaders.

1.02 Nevertheless, Hong Kong people cannot afford the luxury of dismissing the invitation from the HKSAR Government, which has the backing of the Central Authorities, to review the Chief Executive election system for 2007, as well as the Legislative Council (LegCo) election system for 2008, within the confines of the 2004 Decision of the Standing Committee of the National People's Congress (SCNPC Decision).

1.03 Given these constraints, the real challenge is to examine how the respective election systems can be reformed in order to serve the public interest rather than various sectoral interests.

1.04 We would much prefer a system of direct election based on universal and equal suffrage. However, we offer our views in this Submission to address the practical issue of how can the respective election systems for the Chief Executive and LegCo be improved so as to minimise their more adverse and undemocratic features. We make no apologies that the proposals are complicated but the existing system is no less so. Our aim is to find ways to reduce the worst problems of the current system.<sup>1</sup> We believe our proposal complies with the 9 factors stated in the Report submitted by the Chief Executive to the SCNPC in April 2004 (4R paragraph 5.06).

1.05 We also wish to reiterate, as many others have (4R paragraph 3.20), and as we have done in our previous Submission that there should be a clear commitment for Hong Kong to elect its Chief Executive and LegCo by universal and equal suffrage.

1.06 Together with this Submission, we include relevant, new research studies commissioned by Civic Exchange.

### **II: Method for Selecting the Next Chief Executive**

#### ***SCNPC Decision and next election***

2.01 Arguably, the selection of the Chief Executive is the most important periodic political event for Hong Kong because the Chief Executive is both the head of the HKSAR and of the government. The Basic Law provides the Chief Executive with enormous powers to lead and govern the territory. Hong Kong people have yet to participate directly in the election of the Chief Executive and while the first constitutional opportunity was to be in 2007, the SCNPC Decision ruled it out with no commitment to whether this could be achieved at the next available opportunity after the 2007 election. In view of the fact that the next election remains a constitutional possibility for achieving universal suffrage, any new arrangements made for the next selection must ensure that Hong Kong will be closer to achieving that "ultimate aim".

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<sup>1</sup> We build upon the suggestions made in our previous submission to the Third Report dated 30 September 2004. <http://www.civic-exchange.org/publications/2004/Response3TaskForce.pdf>. In our previous submission, we had suggested that Election Committee members could be chosen at random based on each of the District Council geographical constituencies. On this basis, people from all walks of life, including those from the Annex I sectors, will be included, in addition to the ex officio sector.

### ***Task Force must state principles***

2.02 As such, the Task Force in its Fifth Report needs to state the **principles** upon which it will base the HKSAR Government's preferred options for reform for the next selection, which it has not done in its Fourth Report. The Fourth Report has merely summarized the main issues mentioned by those who submitted views to its previous consultation.

### ***Fifth Report needs to critique current system***

2.03 The Task Force made no attempt to critique the current selection system via the Election Committee and its subsector elections. We expect the Fifth Report to contain a substantive analysis of the problems related to the current system, as this will provide the necessary foundation for how best to reform the system within the ambit of the SCNPC Decision.

### ***Limit of functionally-based subsector election***

2.04 The composition of the 800-persons Election Committee is made up of various subsectors - 96 ex officio members composed of the 60 LegCo members and the 36 Hong Kong deputies of the National People's Congress; 40 members nominated by 6 designated bodies in the religious sector;<sup>2</sup> and 664 members from 35 other sub-sectors.<sup>3</sup>

2.05 The architects of the Basic Law saw the current design as a way to include participation from many sectors of society in indirectly selecting the Chief Executive. Those entitled to vote in these other sub-sectors are almost the same as those for Functional Constituencies. It could be said, therefore, that the foundation of the Chief Executive selection is functionally based. The key problem with functionally-based, indirect selection as supposed to direct election by universal and equal suffrage is that participation is restricted to a small number of people for selecting the Chief Executive, who holds the highest office in the HKSAR. As could be seen from the research on Functional Constituencies which we include in this submission, no clear logic has ever been presented to justify why certain bodies and individuals were given an additional vote on a functional basis. A similar criticism could be made of the subsector elections to generate the members to the Election Committee. We will not repeat the extensive problems related to Functional Constituencies here but we believe it is for the reasons stated in the Attachments that the Task Force has received public views on the need to allow wider participation by various means (4R paragraphs 3.02-3.11).

2.06 The current base of the various subsectors amounts to approximately 163,500 potential individual/corporate voters.<sup>4</sup> In the most recent Election Committee election (1 May 2005), the voter turnout rate to fill vacancies was unimpressive,<sup>5</sup> which indicates that even those who are privileged to have a role in indirectly selecting the Chief Executive were unenthusiastic in participating.

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<sup>2</sup> The 6 designated bodies of the religious subsector that may nominate electors are the Catholic Diocese of Hong Kong (7 nominees), Chinese Muslim Cultural and Fraternal Association (6), Hong Kong Christian Council (7), The Hong Kong Taoist Association (6), The Confucian Academy (7), and The Hong Kong Buddhist Association (7).

<sup>3</sup> The other 35 subsectors are Heung Yee Kuk (21 electors) Agriculture and Fisheries (40), Insurance (12), Transport (12), Education (20), Legal (20), Accountancy (20), Medical (20), Health Services (20), Engineering (20 nominees), Architecture, Surveying and Planning (20), Labour (40), Social Welfare (40), Finance (12), Financial Services (12), Sports, Performing Arts and Publication (40), Import and Export (12), Textiles and Garments (12), Wholesale and Retail (12), Information Technology (20), Higher Education (20), Hotel (11), Catering (11), Chinese Medicine (20), Chinese People's Political Consultative Conference (41), Employers' Federation (11), Real Estate and Construction (12), Tourism (12), Commercial 1<sup>st</sup> (12), Commercial 2<sup>nd</sup> (12), Industrial 1<sup>st</sup> (12), Industrial 2<sup>nd</sup> (12), Hong Kong and Kowloon District (21), New Territories District (21), Hong Kong Chinese Enterprises (11).

<sup>4</sup> HKSAR Government's Task Force on Constitutional Development Third Report, paragraph 2.05.

<sup>5</sup> Only 7,094 people turned out to vote in the 9 subsectors that had contested vacancies. The Accountancy subsector had 12.14% turnout rate and the Textile and Garments subsector had a 12.72% turnout rate.

### ***Need to reduce public cynicism***

2.07 It may be said that voters were unenthusiastic in 2005 because they did not expect a contested selection to take place since there is a widespread belief that the Central Authorities have already made up its mind on who would lead Hong Kong for the next two years. It is hard to deny that there is general cynicism that the Central Authorities will make the decision on who will become Chief Executive and that the cumbersome Election Committee election system is merely there for show. We expect the Task Force to address this issue in its Fifth Report. We hope the Task Force will make it clear that the reforms for the next selection will be designed to lessen the degree of public cynicism.

### ***Size of Election Committee and subsector voting base***

2.08 We believe many submissions supported expanding the size of the Election Committee (4R paragraphs 3.03-3.04) because there is a general acceptance that the current system is extremely narrowly defined. In suggesting that the numbers could be increased from 800 to 1,200 or 1,600, it appears that the suggestions were based on the present construct of 200 per sector in 4 sectors (4R paragraphs 3.05 and 3.17). We find such requests understandable as they appear to be the easiest way forward. However, they do not deal with the problems revolving around functionally-based, indirect selection and will not reduce cynicism that Hong Kong will not be allowed to achieve universal and equal suffrage in the next election, if ever.

### ***Abolish corporate voting***

2.09 One of the most serious problems with functional voting is the corporate vote. It has never been clearly explained why non-humans should be given a vote, and we urge the Task Force to explain this in its Fifth Report. We are unsurprised to see that many others have recommended that corporate voting be replaced by individual vote (4R paragraph 3.18). We strongly urge the Task Force to abolish corporate voting for the formation of the Election Committee.

### ***Alternative approach within SCNPC parameters***

2.10 Within the confines of the SCNPC Decision, it is important to allay the public's cynicism by ensuring that the reforms for the next selection are such that they are designed to make the result harder to manipulate. We propose that the size of the Election Committee subsector voting base should be increased to 400,000-500,000 people<sup>6</sup> and that the size of the Election Committee should be increased to 4,000-5,000 members.

2.11 We wish to emphasize that this proposal is in fact not so radical a departure from what others have proposed in terms of numbers since it is in fact only doubling the size of the current subsector electorate and making the Election Committee effectively 1% in size of the electorate. However, we believe the actual numbers are sufficiently large to satisfy the public's desire that the process is a useful step towards achieving universal and equal suffrage.

2.12 The other advantages of the outline proposal below is that it takes nothing away from those who currently have an individual vote in the Election Committee (4R paragraph 3.07), it includes all District Councillors, elected and appointed, since the size of the Election Committee is sufficiently large to make manipulation more difficult (4R paragraph 3.08), which would probably also satisfy those who prefer not to include District Councillors in the first place (4R paragraph 3.09), and it includes many more people to increase representation (4R paragraph 3.10). Our proposal also deals with issues raised in Paragraph 3.18 in the Fourth Report.

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<sup>6</sup> This represents approximately 13%-15.5% of all registered voters (3.2 million).

## 1. Election Committee subsectors election

2.13 There are THREE features:

- Large generic subsectors

To create 400,000-500,000 people as the voting base for the Chief Executive election at the next election, the best way is to create a number of very large, generic subsectors.<sup>7</sup> By way of illustration, these could include:

- I. **Production:** This sector includes individuals engaged in manufacturing, power generation, farming, fisheries, mining etc.
- II. **Services (1):** This sector includes individuals engaged in banking and financial services institutions, and includes insurers and stockbrokers.
- III. **Services (2):** This sector includes individuals engaged in trading and commercial services organizations (e.g. import/export; whole/retail; agency).
- IV. **Services (3):** This sector includes individuals engaged in the Publications sector (publishers, writers, distributors, media etc), Communications (marketing, public relations etc) and Arts & Cultural organizations (artists, arts administrators, designers, etc).
- V. **Services (4):** This sector includes individuals engaged in all types of Transport, Food and Beverage, Catering, Tourism, Hospitality and Personal Services organizations.
- VI. **Services (5):** This sector includes individuals engaged in or are members of social welfare organizations and community groups (registered charities).
- VII. **Technology:** This sector includes individual engaged in all the technology fields, including Information Technology.
- VIII. **Education and Training:** This sector includes all those related to the teaching profession ranging from those employed by primary, secondary, tertiary and other types of registered educational and training institutions, as well as those who sit on their boards and councils.
- IX. **Professionals (1):** This sector includes individuals engaged in all types of medical and healthcare professionals, including Doctors, TCM practitioners, Nurses, hospital/clinic employees, Naturopaths, Chiropractors, and other types of wellbeing practitioners.
- X. **Professionals (2):** This sector includes individuals engaged in all types of built environment professions, including Planners, Architects, Surveyors, Engineers, Landscape Architects, Electricians, Plumbers, Contractors, Builders, Consultants, etc.
- XI. **Professional (3):** All practitioners in the legal, accountancy and audit professionals, including clerks and employees working in these fields.
- XII. **Labour & Employers:** This includes those who are individual members of trade unions, and individual employers who employ at least 5 employees.

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<sup>7</sup> See also our proposal for reforming Functional Constituencies in this Submission. We are essentially proposing that the two systems are already very similar and that they could be merged.

- Large number of potential “Qualified Individual Voters”

### **Qualification**

2.14 To qualify as an Election Committee subsector voter, the individual has to be a member, owner, partner, director, council member, officer, or employee as the case may be of one of the above subsectors, or in the case of subsector VI, be a member of a qualified group (i.e. in the cases of registered charities); plus be a registered voter in the Geographical Constituency.

### **Choose one subsector only**

2.15 Furthermore, the individual has to register separately to be a voter for the Election Committee subsector. If an individual qualifies for more than one subsector, s/he must choose one subsector to register in.

### **Possible numbers of qualified individuals**

2.16 On the basis that there are currently approximately 150,000 potential individual voters for the subsectors,<sup>8</sup> and on the basis that the HKSAR Government believes the potential number of individual Function Constituency voters (for LegCo election) to be 280,751 for the 2004 election, it seems quite viable to boost total numbers to 400,000-500,000 for the next election.

### **First come first serve registration basis**

2.17 Should the HKSAR Government wish to put a cap on the total number of subsector voters at say 500,000, then it can encourage people to register within a certain time and give priority to the Qualified Individual Voters who registered first.

- Government to register subsector voters

2.18 The HKSAR Government will be involved in direct registration of subsector voters just as it does for the registration of Geographical Constituencies voters. Organizations can assist as they already do by encouraging qualified individuals to register.

## **2. Election Committee election**

### **Number of Election Committee members per sector**

2.19 The subsectors will elect 4,000-5,000 Election Committee members whose sole duty is to select the Chief Executive. According to the example above, where there are 12 subsectors, and adding another sector (XIII) to reflect an Ex Officio and Nominated Sector, which includes all the individuals who are the current office holders of the Hong Kong Legislative Council, District Councils, Hong Kong Deputies to the National People's Congress, Chinese People's Political Consultative Conference, and the nominated members from the religious subsector, the HKSAR Government could consider having the same number of people for each of the 12 sectors and then adding on those from sector XIII. Equal numbers for the 12 sectors can be justified as no one sector becomes dominant. Assuming that the total number of Election Committee members is 4,000, and dividing the remaining 3,500 by 12 leaves each sector electing 290 members taking out say 500 members for sector XIII, to the Election Committee.

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<sup>8</sup> HKSAR Government's Task Force on Constitutional Development Third Report, paragraph 2.05.

### ***Campaigning and voting***

2.20 This is a very large number for a subsector to elect and it may appear quite complicated for candidates to campaign and voters to choose so many members. However, the problem can be ameliorated through political parties and interest groups self-organizing to create “lists” to make it easier for both candidates and voters. These “lists”, which may have sizable batches of candidates, are most likely to be based on political or interest lines.

2.21 Admittedly, having to elect a large number of people to subsectors is problematical. It should be noted that the design of the current system itself poses many inherent problems that are also hard to resolve without major surgery or total abandonment. In particular, these include the small size of some of the subsectors and corporate voting. We believe there are benefits to giving this aspect of our proposal more thought to see how to make campaigning and voting easier. Civic Exchange is prepared to spend more time on thinking through this aspect if our overall proposal is of interest to the Task Force.

2.22 An alternative idea that would solve the complication stated above is to allow the enlarged Functional Constituency voter base to vote for the chief executive. The advantages of this formula would be the functional principle is observed for the chief executive selection, the need to widen the functional franchise is already accepted by many sectors of society, and the new larger electorate would not be so open to manipulation.

### ***Political affiliation of the Chief Executive***

2.23 We believe that politics is a necessary part of society and therefore, we also have no objection to the Chief Executive being affiliated to a political party (4R paragraph 3.19).

### ***Candidacy qualification***

2.24 The current qualification for any individual wishing to stand for election to be an Election Committee member can essentially be retained.

## **3. Number of Election Committee members required for nominating a candidate for Chief Executive**

2.25 What needs to be achieved is to ensure that a candidate genuinely has wide support but not to make it so difficult or open to manipulation that few can successfully stand for election. For a body of 4,000-5,000 members, we believe a candidate needs to have nomination from at least 5% of the members.

## **4. Transparency needs to be substantially improved**

2.26 As a policy research organization, we wish to make it known that researching the members and behaviour of the Election Committee and its subsectors is extremely difficult. While members of the public can inspect the register of electors for the Election Committee and its subsectors at the Registration and Electoral Office, the law prohibits anyone from reproducing or disseminating the information. Protecting the privacy of Election Committee members in particular is questionable when they have decided to run for, and hold, public office. Moreover, incomplete lists of Election Committee members' names are available on government websites and the HKSAR Government Gazette publicizing the results of the Election Committee subsector elections.<sup>9</sup> This excludes variously (depending on year) the names of electors in uncontested subsectors, the religious and Chinese People's Political Consultative Conference subsectors, and ex officio Hong Kong deputies to the

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<sup>9</sup> Electoral Affairs Commission [www.info.gov.hk/eac/en/ecse/function.htm](http://www.info.gov.hk/eac/en/ecse/function.htm) and [www.elections.gov.hk/elections/legco1998/result.htm](http://www.elections.gov.hk/elections/legco1998/result.htm).

National People's Congress. We urge the Task Force in its Fifth Report to explain why there is such a lack of transparency in the current system and commit to changing it.<sup>10</sup>

### **III: Method for Forming the Legislative Council in 2008**

3.01 Our chief issue has to do with the Functional Constituencies and its election system. For this Submission, we will focus on how to improve upon the current problems, which are amply noted in the Attachments to this Submission.

#### ***SCNPC Decision, 2008 and beyond***

3.02 The election of LegCo members is an important periodic political event for Hong Kong because Legco is the sole body empowered to pass legislation and approve public expenditure. It is also the most important political debating forum. Hong Kong people have yet to participate directly in the election of all their legislators and while the first constitutional opportunity was to be in 2008, the SCNPC Decision ruled it out with no commitment to whether this could be achieved at the next available opportunity in 2012. In view of the fact that 2012 remains a constitutional possibility for achieving universal suffrage, any new arrangements made for the 2008 election must ensure that Hong Kong will be closer to achieving that "ultimate aim".

#### ***Task Force must state principles***

3.03 As such, the Task Force in its Fifth Report needs to state the **principles** upon which it will base the HKSAR Government's preferred options for reform for 2008, which it has not done in its Fourth Report. The Fourth Report has merely summarized the main issues mentioned by those who submitted views to its previous consultation.

#### ***Fifth Report needs to critique current system***

3.04 The Task Force made no attempt to critique the current selection system, especially in view of the large number of objections received to the Functional Constituency election system save for a statement in Paragraph 5.04 that "some deeper issues of principles have been brought up". We expect the Fifth Report to contain a substantive analysis of the problems related to the current system, as this will provide the necessary foundation on how best to reform the system within the ambit of the SCNPC Decision.

#### ***Limit of functionally-based election***

3.05 Thirty of the 60 LegCo seats are derived from 28 Functional Constituencies.<sup>11</sup> The 2004 voter base for the Functional Constituencies was 199,539 voters, with an estimated potential base of 295,534 according to the HKSAR Government.

3.06 The architects of the Basic Law saw the current design as a way to include participation from many sectors of society in indirectly selecting legislators. As already noted in 2.05 above, those entitled to vote in the Chief Executive election subsectors are almost the same as those that form the base for Functional Constituencies. The key problem with functionally-based, indirect selection as supposed to direct election by universal and equal suffrage is that participation is restricted to a small number of people. As could be seen from the research on Functional Constituencies we include in this submission, no clear logic has ever been presented to justify why certain bodies and individuals

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<sup>10</sup> See also Paragraphs 3.23-3.24 of this Submission as the same problem also relates to Functional Constituencies.

<sup>11</sup> Heung Yee Kuk, Agriculture and Fisheries, Insurance, Transport, Education, Legal, Accountancy, Medical, Health Services, Engineering, Architecture, Surveying and Planning, Labour (3 seats), Social Welfare, Finance, Financial Services, Sports, Performing Arts, Culture and Publication, Import and Export, Textiles and Garments, Wholesale and Retail, Information Technology, Catering, Real Estate and Construction, Tourism, Commercial 1<sup>st</sup>, Commercial 2<sup>nd</sup>, Industrial 1<sup>st</sup>, Industrial 2<sup>nd</sup>, and District Councils.

were given an additional vote on a functional basis. We will not repeat the extensive problems related to Functional Constituencies here as it is provided in the Attachments.

### ***Number of seats in LegCo***

3.07 Since the SCNPC Decisions requires the ratio of directly and functionally elected seats to be the same, this has generated mixed views from the public submissions received by the Task Force. There are clearly functional bodies that are lobbying for either splitting up current Functional Constituencies into even smaller ones (e.g. Real Estate and Construction, and Sports, Performing Arts, Culture and Publications) or be given one of their own (Employers' Federation, Chinese Medicine, SMEs etc). This is not surprising as with the current system, it makes sense for vested interests to increase their influence. However, it is extremely doubtful that any such reform will "enhance the representativeness and legitimacy" of LegCo (4R paragraph 4.06-4.08). In our view, this will only further entrench public distrust of the system as a whole.

3.08 We believe our proposal to create large generic constituencies will eliminate the problem of every narrow interest group fighting for their sectoral interests in LegCo and that those elected to represent a large sector will need to have wide experience to win and thus will improve legislative capacity.

3.09 We continue to prefer leaving the number at 60 seats for the 2008 election in order not to allow Functional Constituencies to grow since we strongly believe that they should be replaced by 2012. Furthermore, there should be a total rethink of the political system by then as the current system has many problems that needs fixing and we are doubtful that they can be fixed by merely tinkering at the edges. Thus, the 2008 election should simply be an occasion to do away with some of the worst aspects of the system and to introduce some measures that points towards universal and equal suffrage.

### ***Abolish corporate voting***

3.10 One of the most serious problems with functional voting is the corporate vote. It has never been clearly explained why non-humans should be given a vote, and we urge the Task Force to explain this in its Fifth Report. We are unsurprised to see that many others have recommended that corporate voting be replaced by individual vote (4R paragraph 4.16). We strongly urge the Task Force to abolish corporate voting for the formation of Functional Constituencies.

### ***Alternative approach within SCNPC parameters***

3.11 Within the confines of the SCNPC Decision, it is important to allay the public's cynicism by ensuring that the reforms in 2008 are such that they are designed to make the result harder to manipulate. We propose that the size of the Functional Constituencies' voting base should be increased to 400,000-500,000 people.

3.12 We wish to emphasize that this proposal is in fact not so radical a departure from the current system as its main focus is to increase the voting base by approximately doubling the potential base, and it is a mid-way compromise to involve more members of the general public.

3.13 The other advantages of the outline proposal below is that it takes nothing away from those who currently already have a vote, but it dilutes the influence of the current narrowly based vested interests, which is the most objectionable aspect of the system.

## 1. Functional Constituencies voting base

3.14 There are THREE features:

- Large generic voting bases

3.15 To create 400,000-500,000 people as the voting base for the LegCo election in 2008, the best way is to create a number of very large, generic bodies. We propose that they be very similar to that for the Election Committee save that we propose adding one more constituency to include Home Economics;<sup>12</sup> and splitting Services (5) into Services (5) and (6).<sup>13</sup> Each of the 14 constituency will return 2 seats each (i.e. 28) except the Labour will return 3 seats as is the case today,<sup>14</sup> and we propose also returning seats for the Education and Training Constituency making up in total 30 Functional Constituencies seats for the 2008 election.

3.16 To have the Chief Executive and LegCo functional elections on a similar basis will also make administering the election systems for both simpler. We feel since both elections are functionally based, merging them makes sense.

3.17 By way of illustration, the LegCo Functional Constituencies could include 14 constituencies:

**Production:** This sector includes individuals engaged in manufacturing, power generation, farming, fisheries, mining etc.

**Services (1):** This sector includes individuals engaged in banking and financial services institutions, and includes insurers and stockbrokers.

**Services (2):** This sector includes individuals engaged in trading and commercial services organizations (e.g. import/export; whole/retail; agency).

**Services (3):** This sector includes individuals engaged in the Publications sector (publishers, writers, distributors, media etc), Communications (marketing, public relations etc) and Arts & Cultural organizations (artists, arts administrators, designers, etc).

**Services (4):** This sector includes individuals engaged in all types of Transport, Food and Beverage, Catering, Tourism, Hospitality and Personal Services organizations.

**Services (5):** This sector includes individuals engaged in or are members of social welfare organizations.

**Services (6):** This sector includes individuals engaged in or are members of community groups (registered charities).

**Technology:** This sector includes individual engaged in all the technology fields, including Information Technology.

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<sup>12</sup> There have been consistent calls as could be seen in the Fourth Report to create constituencies for either women or home-makers. We believe by creating a Home Economics Functional Constituency where two legislators are returned that this would satisfy the calls.

<sup>13</sup> We believe that registered charities represent a large group of non-government organizations that contribute substantially to the economy of Hong Kong as shown in the Central Policy Unit's study of the Third Sector. <http://www.info.gov.hk/cpu/english/new.htm>

<sup>14</sup> Unlike for the Chief Executive subsector election, we believe there is no need to reduce the number of seats of the Labour Functional Constituencies and to give one to employers as their voices and interests are adequately represented in the Executive Council as well as LegCo.

**Education and Training:** This sector includes all those related to the teaching profession ranging from those employed by primary, secondary, tertiary and other types of registered educational and training institutions, as well as those who sit on their boards and councils.

**Professionals (1):** This sector includes individuals engaged in all types of medical and healthcare professionals, including Doctors, TCM practitioners, Nurses, hospital/clinic employees, Naturopaths, Chiropractors, and other types of wellbeing practitioners.

**Professionals (2):** This sector includes individuals engaged in all types of built environment professions, including Planners, Architects, Surveyors, Engineers, Landscape Architects, Electricians, Plumbers, Contractors, Builders, Consultants, etc.

**Professional (3):** All practitioners in the legal, accountancy and audit professionals, including clerks and employees working in these fields.

**Labour:** This includes those who are individual members of trade unions.

**Home Economics:** This includes individuals who work full-time at home to care for family well-being.

- Large number of potential “Qualified Individual Voters”

#### ***Qualification and number of potential voters***

3.18 The current system of who qualifies to vote in Functional Constituencies can be easily adapted to suit the proposed system.

3.19 On the basis that there are currently 295,534 potential voters of which 280,751 of them are individual voters, there seems to be little problems to increase the voting base to 400,000-500,000 for the 2008 election by expanding the pool.

#### ***First come first serve registration basis***

3.20 Should the HKSAR Government wish to put a cap on the total number of voters at say 500,000, then it can encourage people to register within a certain time and priority will be given to those who registered first. In the case of the Home Economics, there could be many potential voters and a first come first serve basis can solve the problem of a large number of individuals wishing to register as voters.

3.21 A further way to limit the potential size of the constituencies may be to impose a length of experience requirement. For example, to qualify as a functional voter, except for those who already qualify under the current system, the HKSAR Government may require them to show they have at least 5 years of relevant working experience.

- No delegation of any part of the electoral process

3.22 The HKSAR Government will be involved in direct registration of voters just as it does for the registration of Geographical Constituencies voters. Organizations can assist as they already do by encouraging qualified individuals to register but there should be no delegation of the tasks of any part of the electoral process to private sector bodies.

## 2. Transparency needs to be substantially improved

3.23 As a public policy research organization, we wish to bring to the Task Force's attention that researching the Functional Constituencies is extremely difficult because of the lack of transparency and for this issue to be addressed in its Fifth Report.

3.24 The primary information provided by the HKSAR Government of Functional Constituencies is a list of recognized umbrella organizations whose members are eligible to vote in a functional election, published in the Legislative Council Ordinance (Cap 542). As many eligible voters are corporate bodies and not individuals, this adds another layer of difficulty, as researchers (nor even the candidates) have little, if any, way of knowing how these bodies decide whom to vote for, nor even whether their designated voters vote as their organizations wish them to. Any attempt at polling functional voters would be an arduous task indeed.<sup>15</sup> While members of the public are allowed to inspect the register of electors for the Functional Constituencies at the Registration and Electoral Office, since 2001, they have been prohibited from reproducing or disseminating the information. A person who "reproduces or permits another person to reproduce in any form" an electoral register in full or in part for any purpose other than a purpose relating to an election commits an offense under the Electoral Affairs Commission Ordinance sections 22(3) and 42(3) (L.N. 2001), and can be punished by up to 6 months in prison. These laws make it much more difficult for members of the public to find out the names of the people who may vote in Functional Constituencies. The rationale for such laws is unclear. The need to prevent electoral bribery is redundant in the cases of elections already past, and on its face seems to be negated by language in the legislation which permits people to obtain a copy of the register for a purpose "related to an election".

31 May 2005

Enclosures:

Kwok, YF Rowena & Chow, Chiu-tak. 2005. *The Dynamics of Social Policy-making in Hong Kong: The Role of Functional representatives 1998 – 2004*. Hong Kong: Civic Exchange.

Latter, Tony. 2005. *The Contribution of the Functional Constituencies to Economic Policy in Hong Kong, 2000-2004*. Hong Kong: Civic Exchange.

Ming, Sing. 2005. *To What Extent Have Members of the Functional Constituencies Performed the "Balancing Role" in Hong Kong (1998 – 2004)?* Hong Kong: Civic Exchange.

Van der Kamp, Jake & Lai, Carine. 2005. *Non-Positive Interventionism: How Functional Constituencies Distort the Free Market*. Hong Kong: Civic Exchange.

Young, NM Simon. 2005. *Hong Kong's Functional Constituencies: Legislators and Electors*. Hong Kong: Civic Exchange.

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<sup>15</sup> See Michael DeGolyer, *The Challenges of Researching Functional Constituencies*, July 2004, [www.hku.hk/ccpl/events/otherevents/documents/DeGolyer.doc](http://www.hku.hk/ccpl/events/otherevents/documents/DeGolyer.doc).

## **Submission by Civic Exchange on the Fifth Report of the Constitutional Development Task Force**

### **I: Overall Assessment**

Overall, we find the Fifth Report disappointing especially in view of the fact that it is such an important document setting out the electoral proposals for 2007 and 2008 that will also impact on the further development of constitutional reform in Hong Kong. While the Fifth Report provides summaries of views received during the public consultation, it provides no analysis of them. Paragraph 5.01 states that the responsibility of the Task Force is to find “a point of balance ... which would be acceptable to all parties”. We believe the Task Force should have used clearly articulated principles to measure the strength and relevance of the views received. The Fifth Report appears to regard all views to be equally valid. If indeed all views were equally valid, then it would in fact not be possible to formulate a package “acceptable to all parties” as some of the views are in fact opposing views.

This leads to the impression that thorough analysis and the setting out of well-explained principles and rationale in making proposals for constitutional reform is not the approach adopted by the Task Force. Instead, the process is based on matters that cannot be fully explained or acknowledged. This impression is reinforced by Paragraph 5.02, which lists the “principles” the Task Force followed in formulating the proposed package. The most overriding of these in practical (and constitutional terms) is that it “can be acceptable to the Central Authorities”, and yet it does not explain the criteria for acceptability.

### **II: Principles in Evaluating the Fifth Report**

In responding to the proposals made in the Fifth Report, the Task Force should have been guided by Articles 45, 68, 39 and Annex I of the Basic Law, as well as Article 25 of the International Covenant on Civil and Political Rights, which has been incorporated as a part of the Basic Law under Article 39. It should have also been guided by Article 21 of the United Nations Universal Declaration on Human Rights, to which the People’s Republic of China is a signatory. The Decision of the Standing Committee of the National People’s Congress of 26 April 2004 (“the Decision”), must of course also be included in its deliberation but the Fifth Report appears to ignore the HKSAR Government’s obligation to conform with these other legal requirements as well as with the Decision made in April last year.

### **III: Method for Selecting the Chief Executive**

- Lack of rationale

In respect of the Election Committee, the Fifth Report proposes to increase the number of EC members from 800 to 1,600 as per paragraph 5.05. In relations to the first three sectors in 5.05 (i), (ii) and (iii), the Fifth Report does not explain the rationale why the numbers have been so increased, except to say that in the public responses it had received during the consultation process more people proposed increasing the total number of Election Committee members to 1,600 than other numbers. We do not consider this a proper or

sufficient rationale and urge the Task Force to provide a fuller explanation in order to comply with requirements of democracy and openness as per Annex I (3) of the Basic Law.<sup>1</sup>

- Corporate voting not abolished

No justification has been put forward to expand the corporate vote among the first three sectors. We maintain this is contrary to the established principle of universal suffrage.

Indeed, corporate votes should be abolished altogether. We find it disingenuous that the Fifth Report remarks that those who advocated the abolition of corporate voting had not provided details on “how to implement” the abolition even though Paragraph 3.18 notes the Task Force had received views that voting rights could be given to responsible persons of companies or corporate bodies.

- “Public mandate” of District Councils

As for 5.05 (iv), a rationale for the proposed expansion has been provided in paragraph 5.08:

“The Task Force proposes including all District Council members in the Election Committee. The rationale behind the proposal is that District Council members have a public mandate, and that they are in a better position to understand and reflect the views of the general public on day-to-day livelihood issues.”

Article 97 of the Basic Law makes it clear that the District Councils have a highly restricted mandate that is advisory in nature and with a narrow set of responsibilities. We are unconvinced by this rationale set out directly above especially given the inclusion of the appointed District Councillors. While the Fifth Report notes that 80% of the District Councillors have been returned by election it ignores the fact that 20% of them have been appointed. No justification has been provided as to why appointed councillors are included. The overall rationale (above) is that the District Councils have a public mandate. Appointed members cannot be said to have any such a mandate, however. Their appointment is in clear conflict with the rationale given.

There is also an unacceptable implication in the phrase “in a better position to understand and reflect the views of the general public on day-to-day livelihood issues”. The obvious inference is that they would be in a “better position” than directly-elected members of the Legislative Council. The consequence of such an assumption is that the HKSAR Government’s proposal is likely to increase rather than modify political polarisation. Instead of encouraging the role of legislators who are elected by a broad electorate rather than on the basis of supposed socio-economic classes, this proposal would create a new functional constituency whose role may be “populist” in the sense that its justification is that its representatives would be better placed than any others to speak for the “general public on day-to-day livelihood issues”.

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<sup>1</sup> In respect of Annex I (3) of the Basic Law, there is the clear emphasis that in considering the selection method of the Chief Executive, the various sectors making up the Election Committee “shall be prescribed by and electoral law ... in accordance with the principles of democracy and openness”.

- Fundamental alteration of role of the District Councils

By giving all members a role in selecting the Chief Executive, this clearly gives them a political role which arises directly out of their being the District Councils members. District Councillors will in fact make up more than 30% of the membership of the Election Committee. We believe the proposal in the Fifth Report fundamentally alters the role of the District Council as envisaged by the Basic Law and this proposed change has neither been fully discussed nor acknowledged in the Fifth Report. (Article 97 states, at the outset, that: “District organisations *which are not organs of political power* may be established...” (emphasis added).)

- Civic Exchange’s previous proposal

We assume Paragraph 3.11 is the summary that includes the proposals made by Civic Exchange during the Fourth Report’s consultation. After fully digesting the Fifth Report, we believe our previous proposal still has merit. It also complies better with the principles we have set forth in Part II above, including complying with the Decision of 26 April 2004.

- Abolish appointments to District Councils

We would like to take this opportunity to call for the abolition of appointments to the District Councils. Furthermore, if the HKSAR Government pushes ahead with the reform package contained in the Fifth Report, we urge the HKSAR Government to only allow the elected District Council members to select the Chief Executive in 2007.

- Nomination

Annex I (4) provides that “Candidates for the office of Chief Executive may be nominated jointly by not less than 100 members of the Election Committee”. As such, the threshold can be maintained at 100. It is preferable in our view to have a lower threshold for nomination, which will likely encourage more candidates to stand.

- Political affiliation

The rationale contained on page 33 of the Fifth Report on the reasons that the Chief Executive should not have any political affiliation is not a sufficient rationale. The previous Chief Executive, the current Chief Executive, as well as ministers and government officials had from time to time stated that the government does not have a government party in the legislature. They made such statements in reference to the difficulty the executive had in mustering votes to get policies and legislation through the legislature. On the basis that the Task Force is unwilling to discuss the matter in several rounds of constitutional development reports, there is clearly no appetite for the HKSAR Government to consider the matter of designing a political system based on party politics even though it refers to developing political talent and makes frequent references to promoting political stability and good governance. No where has there been any official discussion on how these issues are related.

Of course, when the Task Force's observations on this issue are examined in the context of how the HKSAR Government actually functions, the question of political affiliations cannot be ignored. Members of political parties are included in the Executive Council. A former prominent member of a political party which is represented in the Executive Council was appointed a Policy Secretary and then Financial Secretary. The fact that he left the party only upon his first appointment does not mean that he has no party affiliation. He is widely perceived to remain close to his former party. Similarly, the Chief Executive has proposed "political" appointments in support of "ministers" in order to groom individuals for future public office. There is thus an obvious danger for the future that individuals seeking to run for the office of Chief Executive will be seen as only nominally without party affiliation but as, in practice, having close links to a political party which contests seats. At the very least, the HKSAR Government should clarify what is meant by "affiliation".

- Uncontested selection

The one proposal we wholly endorse is the recommendation that an election should take place even if there is only one candidate running for the office of Chief Executive. We look forward to the HKSAR Government releasing the relevant mechanism.

#### **IV: Method for Forming the Legislative Council**

- Corporate voting not abolished

No justification has been put forward to expand the corporate vote. We maintain this is contrary to the established principle of universal suffrage.

Indeed, corporate votes should be abolished altogether. We find it disingenuous that the Fifth Report remarks that those who advocated the abolition of corporate voting had not provided details on "how to implement" the abolition even though Paragraph 5.32 notes the Task Force had received views that voting rights could be given to responsible persons of companies or corporate bodies. The Task Force interestingly dismisses other suggestions to include employees on the basis that most of the functional constituencies would become in practice "employee constituencies", which "would not be consistent with the original intention of setting up functional constituencies".<sup>2</sup>

- Civic Exchange's previous proposal

We assume Paragraph 4.11 is the summary that includes the proposals made by Civic Exchange during the Fourth Report's consultation. After fully digesting the Fifth Report, we believe our previous proposal still has merit. It also complies better with the principles we have set forth in Part II above, including complying with the Decision of 26 April 2004.

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<sup>2</sup> We have noted the difference in Paragraph 3.19 relating to corporate voting as it relates to the Election Committee for the selection of the Chief Executive and Paragraph 5.32 as it relates to functional constituencies, and the lack of explanation and justification for the difference.

## **V: Timetable for Universal Suffrage**

We note the Draft Motions in Annexes B and C of the Fifth Report do not contain any proposals on future milestone events for the introduction of universal suffrage. In view of the clear public demand for a time table for Hong Kong to achieve universal suffrage, the HKSAR Government should consider working with the Central Authorities to provide a timetable for consultation. We wish to also emphasize that using the principles stated in Part II above, universal suffrage necessarily means also equal suffrage and that functional constituencies and the election committee system as currently envisaged must be replaced.

## **VI: Term of Office of the Chief Executive**

We note the Fifth Report indicates that its proposal on the method for selecting the Chief Executive can be implemented “through local legislation and does not require amendments to Annex I to the Basic Law”. We agree there is authority to permit clarification of the Basic Law in local legislation. We note the Interpretation by the Standing Committee of the National People’s Congress dated 27 April 2005 states that:

“... prior to the year 2007, when the Chief Executive is selected by the Election Committee with the 5-year term of office, in the event that the office of Chief Executive becomes vacant as (he/she) fails to serve the full term of office of 5-years as prescribed by Article 46 of the Basic Law, the term of office of the new Chief Executive shall be the remainder of the previous Chief Executive; ...”

The Fifth Report proposes to apply this interpretation of Article 46 to the 2007 elections. Surely, this would mean the Task Force is proposing an interpretation and not a clarification of Article 46 in local legislation. If we are correct, this would be highly risky as it would be an attempt to amend the Basic Law by amending Annex I and bypassing the procedures provided in Article 159 of the Basic Law. We do not recommend this course of action.

30 November 2005

## **Response to Green Paper on Constitutional Development (July 2007)**

We must admit to having considerable difficulty in responding to the Green Paper. A range of questions are posed in Chapter 6 but there remains an unwillingness to discuss constitutional design openly.

Civic Exchange has already conducted extensive research on many aspects of the current constitutional model and has offered extensive responses in the past to various Task Force reports.<sup>1</sup> Repeating them does not appear to be useful.

As such, we would like to offer a critique of the way the Green Paper has been framed and point out its underlying assumptions. We very much regret Hong Kong people are not given a more honest way to discuss such an important issue.

### **1. Baseless constitutional ‘principles’**

We are extremely concerned with the addition of new ‘principles’ that are not in the Basic Law but are given constitutional meaning by mere assertion.

The Green Paper asserts that there are four principles on constitutional development under the Basic Law (2.10 and Chapter 6). With respect to two of the ‘principles’ – namely ‘meeting the interests of different sectors of society’ and ‘facilitating the development of the capitalist economy’, they are in fact not found in the constitution, raising the question of whether they have any constitutional status.

The Green Paper attempts to justify the inclusion of these two phrases as constitutional ‘principles’ on the basis that they ‘can be derived from’ a speech delivered by the former Chairman of the Basic Law Drafting Committee in reference to Articles 45 and 68 of the Basic Law (footnote 2, page 9). They can just as well be not so ‘derived’.

The impression arising from the Green Paper is that the principles that are in the Basic Law – ‘gradual and orderly progress’ and ‘appropriate to the actual situation’ in Hong Kong – have been demoted in importance. Why? It seems to us that it is because they can no longer be used to defend inaction. Thus, two other reasons have to be alleviated to the height of ‘principles’ to buttress failed arguments.

After all, as time passes, it becomes less and less convincing to assert reforms are moving too quickly. Indeed, when the authorities are unwilling to commit to a time table for achieving universal suffrage, it is best not to raise too much noise on a principle that essentially relates to timing. While the Green Paper raises the issue of a roadmap and timetable for implementing universal suffrage (6.13-6.17) this is not the same as identifying a specific timeframe for the community to respond to.

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<sup>1</sup> Carine Lai and Christine Loh, *From Nowhere to Nowhere: A Review of Constitutional Development Hong Kong 1997 – 2007*, Civic Exchange, 2007.

As past efforts with the five Task Force reports issued by the authorities have shown, they have also failed to convince the people of Hong Kong that universal and equal suffrage is inappropriate for this society.

## **2. Corporatist approach is socially divisive**

The Green Paper, in expanding upon these ‘principles’, takes a corporatist approach to interpreting Hong Kong history and society, where society is sorted according to class and function (2.11), and asserts this is the way for a capitalist economy to be maintained (2.13), emphasizing Articles 107 and 108 of the Basic Law in particular (2.13 and 2.15). We find this assertion both troubling and highly incorrect. Out of the twenty-five wealthiest countries in the world in terms of GDP per capita, virtually all (except for Hong Kong and two oil-rich Gulf States) are constitutional democracies elected by universal suffrage. The Green Paper fails to explain why, in light of this fact, the corporatist model should still be appropriate for Hong Kong.

We are concerned with the continuing acceptance of the corporatist approach to designing Hong Kong’s political system because it has the effect of pitching ‘class’ vs. ‘class’ or group interest vs. group interest (‘industrial and business sectors, the middle class, the professionals, the working class’), which heightens social conflict. Nevertheless, the drafters of the Green Paper assume the currently political system is effectively in maintaining ‘prosperity and stability’ (6.04), when in fact it sows the seeds of conflict.

Civic Exchange’s extensive research into functionally-based politics points to the danger of the current political design.<sup>2</sup> The HKSAR Government has often called for social ‘harmony’ but we fear this can be hard to achieve if a corporatist political design continues to be constitutionally entrenched and the government continues to frame politics within such a divisive construct.

## **3. Green Paper’s framing of issues makes it hard for public to respond**

The Green Paper uses the corporatist approach to justify both the current Election Committee election system to select the Chief Executive, as well as the Functional Constituency election system to choose half the members of the Legislative Council. The election systems are described to be ‘broadly representative’, which we find misleading.

The Green Paper does not bother to explain why universal and equal suffrage is less worthy in terms of representativeness. At best, it has so far enabled only about 200,000 individuals and companies to vote to form the Election Committee and elect half the members of the legislature. Leaving aside the many problems inherent in corporate voting, those 200,000 individuals and companies are not even represented evenly; some seats have electorates numbering in the tens of thousands, while others are chosen by just a few hundred. Despite the embarrassment of the limited franchise, the Green Paper attempts to justify how its presentation of a corporatist

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<sup>2</sup> See Christine Loh and Civic Exchange (eds.), *Functional Constituencies: A Unique Feature of the Hong Kong Legislative Council*, Hong Kong University Press, 2006.

approach does not contravene ‘universal suffrage’ principles (2.18 to 2.28). We do not regard such avoidance as an honest way to deal with a critical aspect of the political reform.

Instead, the Green Paper merely points to how hard it will be to depart from the current election systems because to amend the Basic Law, amendments must gain majority support in the legislature and be accepted by the Central People’s Government (2.31).

The drafters of the Green Paper show no appetite for changing the corporatist construct of the current system. The Green Paper does not discuss the problems of the current system but merely asks: universal suffrage ‘aside, should the system be designed having regard to Hong Kong’s unique circumstances?’ (6.03). What is a member of the public to say?

It seems the uniqueness of the situation is that the authorities are unwilling or unable to depart from the corporatist approach and thus the Green Paper attempts to raise a range of questions on ‘principles’ by asking the public to respond to a series of reminders of the importance of ‘prosperity and stability’, ‘capitalist economy’, ‘gradual and orderly progress’, ‘actual situations’ and also ‘executive-led government’ and ‘one country’ (6.03-6.07).

Such a way of public consultation makes the public feel they are not really invited to discuss constitutional design and how to create a new design that results in good governance and a democratic political life in Hong Kong. The Green Paper is explicit that the system is hard to change because of entrenched interests in Hong Kong – so what is an ordinary citizen to say in response?

#### **4. The challenge that cannot be named**

In considering Article 45 on how the future Chief Executive is to be elected, and that there must be a ‘broadly representative Nominating Committee’, the Green Paper focuses much more on the size of the Nominating Committee rather than how it is formed. While Chapter 6 asks whether the Nominating Committee is to be formed by modeling on the composition of the Election Committee (6.08), the Green Paper has already spent much ink on explaining the corporatist approach and reminding the public of what are the ‘principles’ to keep in mind.

The same can be said in considering Article 68 on how the future Legislative Council is to be elected.

Our view is unless the authorities are prepared to truly deliberate and debate the problems of the Election Committee and Functional Constituency elections systems as we have described above, it is very difficult to explore creating a nominating process that is democratically inclined, as well as to consider replacing the functional election system.

While the Green Paper does not admit the nominating process is there to provide an effective filter for candidates that the Central People’s Government cannot accept, this is in fact the daily discussion within the community and well-reported in the media.

As for functional election, the Green Paper asks whether functionally elected legislators have ‘made contributions’ (6.12) but does not point out what systemic problems there are with the system.<sup>3</sup> This is a way the Green Paper deliberately seeks to gain positive feedback on the work of functional members in order to avoid discussing the merits of the system itself.

The question that gives the true intention of the Green Paper away is whether the public thinks ‘there may be any chance that different sectors can reach a consensus’ on which sector should be abolished first (6.12, vi, b). The Green Paper re-emphasizes yet once more the ‘reality’ of how difficult it is to change the system. If the authorities take no position, how is a member of the public to answer this?

### **Concluding remarks**

We very much regret not to be able to respond to the questions in Chapter 6. We have difficulty because the questions are framed in a way not to open but to close discussion. We do not regard the Green Paper as a genuine consultative document.

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<sup>3</sup> See Christine Loh and Civic Exchange (eds.), *Functional Constituencies: A Unique Feature of the Hong Kong Legislative Council*, Hong Kong University Press, 2006; and Marcos Van Rafelghem and P Anson Lau, *Past and Future Justifications for Functional Constituencies – An Analysis through Performance of Constituency Legislators in 2004-2006*, Civic Exchange, 2006.