

Article 1: Progress and development of democracy

1.1 We have continued our effort in taking forward Hong Kong's constitutional development since the previous report and substantial progress has been made.

1.2 As stated in the previous report, the Constitutional Development Task Force published its Third Report in May 2004, setting out the areas which may be considered for amendment in respect of the methods for selecting the Chief Executive in 2007 and for forming the LegCo in 2008 and proceeded with a five-month public consultation.

1.3 In December 2004, the Constitutional Development Task Force published its Fourth Report, which set out and summarised the views and proposals collected from the community during the consultation on the Third Report and undertook a further consultation.

1.4 After several rounds of public consultation, the Task Force published in October 2005 its Fifth Report to put forth a package of proposals for amending the methods for selecting the Chief Executive in 2007 and for forming the LegCo in 2008.

1.5 The proposed package was aimed at enhancing the democratic elements of the two elections by including all District Council (DC) members (the majority of whom are elected members returned through one-person-one-vote by Hong Kong people) in the Election Committee for electing the Chief Executive (Election Committee), enabling DC members to elect among themselves a larger number of members to the LegCo, and increasing the number of district-based seats in the LegCo to be returned by geographical constituencies (GCs) through direct elections.

1.6 Although the proposed package received the support of some 60% of the public and more than half of all LegCo Members, it did not receive the two-thirds majority support of all LegCo Members as required under Annexes I and II to the Basic Law of the HKSAR (Basic Law) when it was put to vote in December 2005.

1.7 Notwithstanding this, during the period between end-2005 and mid-2007, the Government of the HKSAR continued to make effort in promoting discussions on the issue of universal suffrage within the community through the Commission on Strategic Development, a high-level advisory body to the Government chaired by the Chief Executive and comprising personalities from various sectors of the community, such as professionals, academics, politicians and personalities from business, labour, community services and media sectors.

1.8 Shortly after it came into office in July 2007, the third term HKSAR Government published the Green Paper on Constitutional Development for conducting a three-month public consultation. The consultation covered models, roadmap and timetable for implementing universal suffrage.

1.9 In December 2007, the Chief Executive submitted a report to the Standing Committee of the National People's Congress of the People's Republic of China (NPCSC), reflecting faithfully the aspirations of the Hong Kong's community for universal suffrage, including that:

- (a) in the opinion polls, more than half of the public supported the implementation of universal suffrage for the Chief Executive and the LegCo in 2012. The Chief Executive also made it clear to the NPCSC that these views should be taken seriously and given consideration;
- (b) at the same time, about 60% of the public accepted the implementation of universal suffrage for the Chief Executive in 2017, if this could not be attained in 2012.

1.10 Having considered the report submitted by the Chief Executive, the NPCSC adopted in late December 2007 the "Decision on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage" (the NPCSC decision).

1.11 The NPCSC decision stipulates clearly that universal suffrage may be implemented for electing the Chief Executive in 2017 and after that, universal suffrage may be implemented for electing all the members of the LegCo. Moreover, appropriate amendments conforming to the principle of gradual and orderly progress may be made to the two electoral methods for 2012 in accordance with the relevant provisions of the Basic Law.

1.12 The NPCSC decision is a very important milestone which provides a clear direction to take forward Hong Kong's constitutional arrangements towards universal suffrage. As reflected in opinion polls conducted by universities, the decision was well received by the community.

1.13 In attaining universal suffrage, the aim of the current term Government is to further democratise the electoral systems for 2012 under the framework set out by the NPCSC decision. This will pave the way for implementing universal suffrage for the Chief Executive and the LegCo.

1.14 In November 2009, the HKSAR Government launched a three-month public consultation on the "Consultation Document on the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012", setting out the directions which may be considered regarding how the democratic elements of the two electoral methods for 2012 can be enhanced. The consultation period ended on 19 February 2010.

1.15 Having considered fully the views of the public, different sectors of the community and the LegCo expressed during the consultation period, the HKSAR Government put forth on 14 April 2010 a package of proposals for the methods for selecting the Chief Executive and for forming the LegCo in 2012.

1.16 Regarding the method for selecting the Chief Executive, we proposed that:

- (a) the number of members of the Election Committee in 2012 be increased from 800 to 1200, and the number of members of the four sectors in the Election Committee be increased by the same proportion, i.e. the number of seats for each sector be increased by 100, so as to provide more room for members of the community to participate in the Chief Executive election;
- (b) three quarters of the 100 new seats (i.e. 75 seats) in the fourth sector of the Election Committee (i.e. the political sector) be allocated to elected DC members, in order to increase public participation in the Election Committee (together with the existing 42 seats, the DC subsector will have a total of 117 seats, which will be returned through election from among elected DC members); and
- (c) the nomination threshold be maintained at the ratio of one-eighth of the total membership of the Election Committee, i.e. the number of subscribers required shall be not less than 150, so as to allow sufficient competition and ensure that candidates have sufficient support.

1.17 Regarding the method for forming the LegCo, we proposed that:

- (a) the number of seats in the LegCo in 2012 be increased from 60 to 70, with a view to broadening the scope of political participation;
- (b) the number of seats to be returned by GCs through direct elections and that by functional constituencies (FCs) be increased from 30 to 35 respectively; and
- (c) all the five new FC seats and the existing DC FC seat be returned through election by elected DC members from among themselves, i.e. appointed DC members would not take part in the election.

1.18 Overall speaking, the aim of the proposed package was to further enhance the democratic elements of the two elections through increasing the participation of elected DC members, who had the public mandate.

1.19 The HKSAR Government announced on 21 June 2010 an adjusted package, proposing that the “one-person-two-votes” model should be adopted for forming the LegCo. Specifically, for the five new FC seats in 2012, the candidates would be nominated by elected DC members and elected by all registered electors who currently did not have a right to vote in the existing FCs, on a one-person-one-vote basis (the electorate base would be about 3.2 million, being the total 3.43 million registered electors less about 230,000 registered electors for the existing FCs).

1.20 The adjusted package can further enhance the democratic elements of the electoral method for the LegCo under the framework of the NPCSC decision. With the addition of five new GC seats and five new FC seats, close to 60% of all seats in the LegCo will have an electorate base of over 3 million electors. Every registered voter would have two votes in the 2012 LegCo elections, one for GCs, and the other for FCs.

1.21 The motions put by the HKSAR Government concerning the draft amendments to the methods for the selection of the Chief Executive and for the formation of the LegCo in 2012 were passed by a two-thirds majority of all the Members of the LegCo on 24 and 25 June 2010 respectively. Subsequently, the draft amendments were given consent by the Chief Executive on 29 June 2010 and approved and recorded by the NPCSC respectively on 28 August 2010.

1.22 For the first time since the establishment of the HKSAR, the HKSAR has gone through the procedures stipulated in the “Interpretation by the NPCSC of Article 7 of Annex 1 and Article III of Annex II to the Basic Law of April 2004” and the Annexes to the Basic Law to amend the electoral methods for the Chief Executive and the LegCo. This will give the Hong Kong community greater confidence in and a stronger base for forging consensus on the issue of universal suffrage in future and pave

the way for implementing universal suffrage for the Chief Executive and the LegCo in 2017 and 2020 respectively. As reflected in an opinion poll conducted by a research organisation in late June 2010, over half of the respondents considered that the passage of the 2012 constitutional reform package is conducive to rolling forward Hong Kong's constitutional development towards universal suffrage.

1.23 In order to implement the 2012 constitutional reform package, the HKSAR Government introduced into the LegCo in December 2010 two Bills to prescribe the arrangements regarding the methods for selecting the Chief Executive and for forming the LegCo in 2012. In order to respond to the aspirations of the community, the HKSAR Government will also put forth local legislative proposals regarding the abolition of the DC appointment system for consideration by the public and the LegCo.

Universal suffrage for the Chief Executive and the LegCo

1.24 The HKSAR Government is fully committed to rolling forward Hong Kong's democracy, with a view to achieving the ultimate aim of universal suffrage as enshrined in the Basic Law.

1.25 The NPCSC decision of December 2007 has made clear the timetable for universal suffrage for the Chief Executive and the LegCo. The HKSAR Government has also made it clear that future universal suffrage models for the Chief Executive and the LegCo should comply with the Basic Law and the principles of universality and equality.

1.26 We note that the Committee and commentators have expressed concerns about issues relating to the implementation of universal suffrage for the Chief Executive and the LegCo. While we will respond to the Committee's recommendation in paragraph 18 of the previous Concluding Observations in paragraphs 25.2 and 25.3 in respect of Article 25 below, we will address the points raised by commentators in the following paragraphs.

1.27 Some commentators called on the HKSAR Government to set out its understanding of the definition of universal suffrage. In the

Green Paper on Constitutional Development published in July 2007, the HKSAR Government has made it clear that in discussing the options for implementing universal suffrage for electing the Chief Executive and for forming the LegCo, we must consider, in accordance with the relevant provisions and principles, whether the relevant options can comply with:

- (a) the basic policies of the State regarding Hong Kong;
- (b) the four principles on constitutional development, namely, meeting the interests of different sectors of society, facilitating the development of the capitalist economy, gradual and orderly progress, and being appropriate to the actual situation in Hong Kong; and
- (c) the principles of “universal” and “equal” suffrage.

1.28 We have also stated in the Green Paper on Constitutional Development that as far as an individual jurisdiction is concerned, while conforming to the general international understanding of universal suffrage, it can also develop its electoral system having regard to the particular needs and aspirations of its people, the uniqueness of its socio-economic situation, and its historical realities.

1.29 As mentioned in paragraph 1.25 above, the HKSAR Government has made it clear that future universal suffrage models for the Chief Executive and the LegCo should comply with the Basic Law and the principles of universality and equality. The Hong Kong community will have sufficient time to discuss and forge consensus on the universal suffrage models for the Chief Executive and the LegCo in the coming years.

1.30 Some commentators called on the HKSAR Government to provide a roadmap for implementing universal suffrage for the Chief Executive and the LegCo in 2017 and 2020 respectively. In accordance with the NPCSC decision, the Chief Executive shall make a report to the NPCSC at an appropriate time prior to the selection of Chief Executive and the election of all the members of the LegCo by universal suffrage as regards the issue of amending the two electoral methods in accordance

with the relevant provisions of the Basic Law, including the principles of gradual and orderly progress and being appropriate to the actual situation in the HKSAR, and the NPCSC Interpretation of April 2004; a determination thereon shall be made by the NPCSC.

1.31 The current term Government has only been authorised by the NPCSC to determine the methods for selecting the Chief Executive and for forming the LegCo in 2012.

1.32 Some commentators requested the HKSAR Government to clarify its position on the abolition of the FCs when universal suffrage for the LegCo is implemented in 2020. In fact, different sectors of the community, as well as various political parties/groups of the LegCo still have extremely diverse views on the issue of how the FCs should be dealt with when universal suffrage for the LegCo is implemented. There are views that the FCs should be abolished. There are also views that the electorate base of the FCs should be broadened, for example, by adopting the “one-person-two-votes” model, i.e. registered electors can cast one vote in the GC election, and the other in the FC election.

1.33 Although the current-term HKSAR Government has only been authorised by the NPCSC to deal with the two electoral methods for 2012, we have consolidated and concluded the views relating to universal suffrage received during the public consultation on the electoral methods for selecting the Chief Executive and for forming the LegCo in 2012. We have also recommended the next-term Government to follow up actively and consider the relevant proposals seriously.

1.34 Some commentators expressed concerns that the size and the electorate base of the Election Committee are small and the nomination procedures for Chief Executive candidates when universal suffrage for the Chief Executive is implemented remain unclear.

1.35 It is stipulated in Article 45 and Annex I of the Basic Law that the Chief Executive shall be elected by a broadly representative Election Committee and be appointed by the Central People’s Government (CPG), and that the method for selecting the Chief Executive shall be specified in the light of the actual situation in the

HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

1.36 The NPCSC decision of 2007 has already made it clear that universal suffrage may be implemented for the Chief Executive in 2017 and that the Chief Executive should be elected through universal suffrage by all registered electors of Hong Kong (i.e. one-person-one-vote) after being nominated by the nominating committee in accordance with democratic procedures. With the passage of the 2012 constitutional reform package, the representativeness of the Election Committee in 2012 will be further enhanced through the increase in the number of members and the increased participation of elected DC members. The nominating committee in 2017 may be formed with reference to the current provision regarding the Election Committee in Annex I to the Basic Law.

1.37 As to how Chief Executive candidates should be nominated in accordance with democratic procedures when universal suffrage for the Chief Executive is implemented, the Chief Executive returned in 2012 will address this issue.

Implementation of “One Country, Two Systems” and the Independence of the Judiciary

1.38 Some commentators expressed concerns about the implementation of “One Country, Two Systems” and the independence of the Judiciary in Hong Kong.

1.39 The HKSAR is established under the principle of “One Country, Two Systems”. As stipulated in Article 2 of the Basic Law, the HKSAR enjoys executive, legislative and independent judicial power, including that of final adjudication.

1.40 Since the establishment of the HKSAR, the Central Authorities have been upholding Hong Kong’s high degree of autonomy, supporting the HKSAR Government to act according to the law, and respecting Hong Kong’s judicial independence in accordance with the

principle of “One Country, Two Systems” and the Basic Law.

1.41 The independence of the Judiciary is enshrined in Article 85 of the Basic Law, which states that the HKSAR courts shall exercise judicial power independently, free from any interference. As the rule of law is an important core value of Hong Kong, the consistent position of the HKSAR Government is that we should strive to preserve the independence of the Judiciary.

1.42 The executive authorities, the legislature and the judiciary of the HKSAR will continue to discharge their respective duties in accordance with the Basic Law, as elaborated under paragraphs 8 to 31 of the HKSAR Common Core Document.