Article 25: Right to participate in public life

Constitutional Development

168. Since the submission of the previous report, and as explained in subsequent updates in our follow up to paragraph 6 of the previous Concluding Observations, we have continued our efforts in taking forward Hong Kong's constitutional development in strict compliance with the Basic Law.

169. According to the Basic Law and the *Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the HKSAR of the PRC* adopted on 6 April 2004 (the NPCSC's 2004 Interpretation), amendments to the method for selecting the CE and for forming the LegCo have to go through the following "Five-step Process":

> First Step – the CE to make a report to the NPCSC, so as to invite the NPCSC to decide whether it is necessary to amend the methods of selection / formation;
>
> Second Step – the NPCSC to make a determination on whether any amendment to the methods may be made;
>
> Third Step – if the NPCSC determines that amendments to the methods may be made, the Government to introduce to the LegCo resolution(s) on the amendments to the methods for selecting the CE or forming the LegCo, to be passed by a two-thirds majority of all the LegCo Members;
>
> Fourth Step – the CE to consent to the resolution(s) as passed by the LegCo; and
>
> Fifth Step – the CE to lodge the relevant bill(s) to the NPCSC for approval or for the record.

As such, the Central Authorities, the CE and the LegCo have their respective roles in the constitutional development of the HKSAR.

170. As stated in the previous report, the Government put forth on 14 April 2010 a package of proposals for the methods for selecting the CE and for forming the LegCo in 2012, and announced on 21 June 2010 an adjusted package after considering the views of different sectors of the community. In brief, in respect of the method for selecting the CE, the Government proposed that:

(a) the number of members of the Election Committee (EC) in 2012 be increased from 800 to 1 200, and the number of members of the four sectors in the EC be increased by the same proportion, i.e. the number of seats for each sector be increased by 100;

(b) three quarters of the 100 new seats (i.e. 75 seats) in the fourth sector of the EC (i.e. the political sector) be allocated to elected District Council (DC) members; together with the existing 42 seats, the DC subsector would have a total of 117 seats, which would be returned through election from among elected DC members;

(c) the nomination threshold be maintained at the ratio of one-eighth of the total membership of the EC (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.

Regarding the method for forming the LegCo, the Government proposed in the adjusted package that:

(a) the number of seats in the LegCo in 2012 be increased from 60 to 70;

(b) the number of seats to be returned by geographical constituencies (GCs) through direct elections and that by functional constituencies (FCs) be increased from 30 to 35 respectively; and

(c) candidates for the five new FC seats to be nominated among elected DC members and elected by all registered electors who currently did not have a right to vote in the traditional 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 230 000 registered electors for the existing FCs). In other words, each elector would have two votes, one vote for the GC and one vote for the FC.

171. The motions put forth by the Government concerning the draft amendments to the methods for the selection of the CE and for the formation of the LegCo in 2012 were passed by a two-thirds majority of all Members of the LegCo on 24 and 25 June 2010 respectively. Subsequently, the draft amendments were given consent by the CE on 29 June 2010 and approved and recorded by the NPCSC respectively on 28 August 2010. The Government introduced into the LegCo two Bills in December 2010 for implementing the proposed arrangements regarding the methods for selecting the CE and for forming the LegCo in 2012. The Bills were passed by the LegCo in March 2011. The revised methods for selecting the CE and for forming the LegCo were formally implemented in the 2012 CE Election and 2012 LegCo Election as scheduled.

<u>Universal suffrage for selection of the Chief Executive and the method for forming the LegCo in 2016</u>

172. Article 45 of the Basic Law provides 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." In addition, Article 68 of the Basic Law provides that: "The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage." The *Decision of the NPCSC on Issues Relating to the Methods for Selecting the Chief Executive of the HKSAR and for*

Forming the Legislative Council of the HKSAR in the Year 2012 and on Issues Relating to Universal Suffrage adopted by the NPCSC on 29 December 2007 has further stipulated that the election of the fifth-term CE of the HKSAR in the year 2017 may be implemented by the method of universal suffrage; and after the CE is selected by universal suffrage, the election of the LegCo of the HKSAR may be implemented by the method of electing all the members by universal suffrage.

173. The Government is fully committed to achieving the ultimate aim of universal suffrage in strict compliance with the Basic Law and the relevant Interpretation and Decisions of the NPCSC. In this connection, the Government set up the Task Force on Constitutional Development (the Task Force) in October 2013. The Government published the *Consultation Document on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016* and formally commenced a five-month public consultation to collect views from various sectors of the community on major issues and related questions on the two electoral methods. The Consultation Document set out certain key issues relating to the methods of selection/formulation within the framework of the Basic Law and the relevant Interpretation and Decisions of the NPCSC, for example, the size, composition, formation method and electorate base of the Nominating Committee (NC) as required under Article 45 of the Basic Law, procedures for the NC to nominate candidates for the CE election, voting arrangements for electing the CE by universal suffrage, etc. For the method for forming the LegCo in 2016, the key issues include the number of seats and composition of the LegCo, the composition and electorate base of FCs, and the number of GCs and number of seats in each GC.

174. After an extensive and systematic public consultation which lasted for five months, the Government consolidated the views expressed by various sectors of the community on the two electoral methods during the consultation period, including those contained in over 120 000 written submissions put forth by different groups and individuals, those garnered at 226 consultation and district events attended by the Task Force and relevant Politically Appointed Officials, and those collected through opinion polls conducted by relevant organisations. The Government published the *Report on the Public Consultation on the Methods for*

Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016 on 15 July 2014. On the same day, in accordance with the NPCSC's 2004 Interpretation, the CE submitted his report to the NPCSC to invite the NPCSC to make a determination on whether there was a need to amend the methods for selecting the CE and for forming the LegCo. In the light of the results of the public consultation, the CE had come to the view that the community of Hong Kong generally hoped that universal suffrage for the CE election could be implemented in 2017 first, so that over five million eligible electors in Hong Kong could elect the next CE through "one person, one vote" in 2017, thereby taking an important step forward in the constitutional development of Hong Kong, and that there was no need to amend Annex II to the Basic Law regarding the method for forming the LegCo in 2016.

175. Having considered the report submitted by the CE and having extensively listened to views and opinions from different sectors of the Hong Kong community, the NPCSC adopted the *Decision of the NPCSC on Issues Relating to the Selection of the Chief Executive of the HKSAR by Universal Suffrage and on the Method for Forming the Legislative Council of the HKSAR in the Year 2016* on 31 August 2014 (the 8.31 Decision). The 8.31 Decision was made in accordance with the Basic Law and the NPCSC's 2004 Interpretation, and pursuant to the specific role of the Central Authorities in the constitutional development of the HKSAR. The 8.31 Decision has formally determined that starting from 2017, the selection of the CE may be implemented by the method of universal suffrage. It has also set out a clear framework for the specific method for selecting the CE by universal suffrage. As for the method for forming the LegCo in 2016, there is no need to amend the existing method and voting procedures for the LegCo as prescribed in Annex II to the Basic Law.

176. As regards how to devise a specific model for implementing universal suffrage, one must respect the fact that the electoral system of each country or place has been devised having regard to her own history, constitutional system and actual situations. In exploring the specific method for selecting the CE by universal suffrage, the Basic Law and the relevant Interpretation and Decisions of the NPCSC must be strictly adhered to, and it must be in accordance with the principle of "one country, two systems" and the basic policies of the PRC regarding Hong Kong.

177. On the basis of the Basic Law and 8.31 Decision, the Government published on 7 January 2015 the *Consultation Document on the Method for Selecting the Chief Executive by Universal Suffrage* and launched a two-month public consultation on the method for selecting the CE by universal suffrage. Subsequently, the Government published the *Consultation Report and Proposals on the Method for Selecting the Chief Executive by Universal Suffrage* on 22 April 2015, collating and consolidating the views received, and putting forward a package of proposals which were constitutionally in order, lawful, reasonable and rational. Highlights of the package of proposals put forth by the Government included the following:

(a) the NC shall comprise of 1 200 members, the composition of which shall follow the 38 subsectors in the four major sectors of the existing EC; the existing method for returning members of the 38 subsectors and electorate base for individual subsectors should remain unchanged;

(b) the nominating procedures shall be divided into two stages, namely the stage of "members recommendation" and the stage of "committee nomination". A person who can obtain recommendation jointly by 120 NC members in their individual capacities can become a person seeking nomination for the CE election; each NC member may recommend only one person; each person seeking nomination shall obtain no more than 240 recommendations;

(c) at the stage of "committee nomination", the NC shall nominate two to three CE candidates through voting by secret ballot. Each NC member may support two to all persons seeking nomination. The two to three persons seeking nomination who can obtain endorsement of more than half of all the members of the NC and with the highest number of members' endorsement will become the candidates; and

(d) at the stage of electing the CE by universal suffrage, all eligible electors of Hong Kong will elect the CE-elect from the two to three candidates nominated by the NC using the

"first-past-the-post" system.

178. The Government does not agree to some commentators' concerns that the proposal would effectively screen out some candidates. In fact, if the proposal was implemented, all eligible voters in Hong Kong would have the right to vote for the nominated CE candidates on a "one person, one vote" basis; and the right to vote would have been universal and equal.

179. During the public consultation, some members of the public as well as certain Members of the LegCo advocated for other proposals, such as "civic nomination", that would de facto bypass or undermine the substantive powers of the NC to nominate candidates. In response, the Government has repeatedly stated that such proposals were inconsistent with the Basic Law, which explicitly stipulates that the ultimate aim is for the CE to be selected by universal suffrage upon nomination by a broadly representative NC in accordance with democratic procedures. Therefore, it would have been unconstitutional, and hence impossible, to pursue such proposals.

180. Despite the outcomes of public opinion polls conducted by different organisations which suggested that there were more members of the public supporting rather than opposing the proposals put forward by the Government, the proposals failed to obtain the endorsement by a two-thirds majority of all Members of the LegCo as prescribed in Annex I to the Basic Law at the LegCo meeting on 18 June 2015. Therefore, according to the 8.31 Decision, the method for selecting the fourth-term CE in 2012 would continue to be adopted to select the fifth-term CE in 2017, i.e. the CE was to be elected by a 1 200-member EC.

181. The Government appreciates the importance of and the public aspiration for implementing universal suffrage for the selection of the CE and the formation of the LegCo. It is also mindful of the complicated and controversial nature of issues relating to constitutional development. The Government must prudently consider all factors and seek consensus at a suitable time and in appropriate circumstances such that it can obtain a two-thirds majority support from all Members of the LegCo, and attain the ultimate aim of implementing universal suffrage within the framework of

the Basic Law and the relevant Interpretation and Decisions of the NPCSC. In this connection, the Government will do its best to work towards creating a favourable atmosphere to take forward constitutional development.

Public Elections

182. The Covenant was extended to Hong Kong in 1976 with a reservation on the application of Article 25, sub-paragraph (b), to Hong Kong. By a Note from the Government of the PRC to the United Nations Secretary-General dated 20 June 1997, the PRC Government informed the Secretary-General that the provisions of the Covenant as applied to Hong Kong shall remain in force beginning from 1 July 1997. Article 39 of the Basic Law of the HKSAR which came into force on 1 July 1997 provides that the provisions of the Covenant as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

183. Under Articles 45 and 68 of the Basic Law, the methods for selecting the CE and for forming the LegCo shall be specified "in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress" with the ultimate aim of selecting the CE and electing all members of the LegCo by universal suffrage. Notwithstanding the reservation in respect of Article 25, sub-paragraph (b), both the Central Authorities and the Government are fully committed to achieving the ultimate aim of universal suffrage in accordance with the Basic Law and the relevant Interpretation and Decisions of the NPCSC. The elections held in the HKSAR since the submission of the previous report are elaborated in the following paragraphs.

184. The position with respect to CE elections, LegCo elections, DC elections and Rural elections is set out at **Annex 25A**.

Government advisory bodies and statutory bodies

185. The network of Government ASBs continues to be a distinctive feature and an integral part of public administration in Hong Kong. ASBs play an important role in assisting the Government in the formulation of policy objectives and performance of statutory functions.

Details of ASBs are set out at **Annex 25B**.