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策略發展委員會  
管治及政治發展委員會

對“普選”概念的一般理解

引言

此文件旨在概述現今國際上對“普選”概念的一般理解。

《公民權利和政治權利國際公約》

2. 《基本法》第三十九條規定《公民權利和政治權利國際公約》(下稱“《公約》”)適用於香港的有關規定繼續有效，通過香港特區的法律予以實施。

3. 《公約》第二十五條訂明：

“凡屬公民、無分第二條<sup>註1</sup>所列之任何區別，不受無理限制，均應有權利及機會：

(子) 直接或經由自由選擇之代表參與政事；

(丑) 在真正、定期之選舉中投票及被選。選舉權必須普及而平等，選舉應以無記名投票法行之，以保證選民意志之自由表現；”

4. 當英國政府在一九七六年簽署成為《公約》締約國的時候，作出了保留聲明，說明就第二十五條(丑)款可能要求在香港設立經選舉產生的行政局或立法局，保留不實施

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註1 《公約》第二條(一)款表示本公約締約國承允尊重並確保所有境內受其管轄之人，無分種族、膚色、性別、語言、宗教、政見或其他主張、民族本源或社會階級、財產、出生或其他身分等等，一律享受本公盟約所確認之權利。

該條文的權利。在回歸後，根據一九九六年六月中央政府致聯合國秘書長的照會以及《基本法》第三十九條的規定，該保留在香港特區繼續有效。

5. 《香港人權法案條例》(第 383 章) 香港人權法案第二十一條亦規定香港永久性居民參與選舉的權利。與此同時，《條例》第 13 條保留條文規定，香港人權法案第二十一條並不要求在香港設立由選舉產生的行政會議或立法會。

### 聯合國相關刊物的觀點

6. 一九九四年聯合國出版的《人權與選舉：選舉的法律、技術和人權手冊》訂明 —

“聯合國有關選舉的人權標準性質甚為廣泛，因此可透過多種政治制度而達致。聯合國在選舉方面提供協助，並非旨在將任何一個已有的政治模式強加於任何地方。相反，這是基於我們認同沒有一套政治制度或選舉方法適合所有人和所有國家。雖然用比較例子可以提供有用的指引，用以建立一個既適合國內需要，又能符合國際人權標準的民主政體。不過，就個別的司法管轄區而言，它們本身最佳的制度，最終都要在符合國際標準的框架內，因應人民的特別需要、訴求及歷史現實而制訂出來。”<sup>註2</sup>

7. 為對《公約》第二十五條的實施作進一步的解釋，聯合國人權事務委員會（下稱“委員會”）在一九九六年通過《概括意見》第 25 項（General Comment No. 25）。有關文件沒有具體界定何謂“普及而平等”的選舉，但說明“所有人無分種族、膚色、性別、語言、宗教、政見或其他主張、民族本源或社會階級、財產、出生或其他身分等等，一律享受這些權利”（第 3 段）。該《概括意見》又指出“因肢體殘障而限制個人投票權利，或引入有關文化、教育或財產的規定”（第 10 段），均視為不合理的限制。

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註2 Office of the High Commissioner for Human Rights, United Nations, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, 第 17 段。

## 普選原則下可容許不同的制度

8. 正如聯合國人權委員會就《公約》第二十五條的《概括意見》指出，《公約》並不強加任何特定的選舉制度。聯合國的指引亦提出各個司法管轄區的制度，可因應人民的特別需要、訴求及歷史現實而制訂出來。

9. 《公約》亦無規定議會必須用哪一種模式產生。就實行兩院制的地方而言，我們留意到加拿大及英國的上議院，全部或部分成員是由委任產生，而愛爾蘭的上議院由大學及職業界別產生議員。從我們手頭上的資料顯示，雖然加拿大、英國及愛爾蘭的上議院都並非由普選產生，聯合國人權委員會最近都沒有對這些產生方式作出批評。我們亦留意到有學者認為，就實行兩院制的地方而言，至少擁有主要立法權力的一院應是由普選產生<sup>註3</sup>。

10. 此外，亦有學者認為《公約》並無限制普選是以直接或間接選舉的方式進行。例如美國總統選舉是以間接選舉方式進行，這亦符合《公約》第二十五條的規定<sup>註4</sup>。

## 總結

11. 綜合上述背景資料，我們可歸納出以下的數點：

(一) 普選的概念是包括“普及”和“平等”的原則。但投票權並非不能受到規限，這些限制應是法例所規定的“合理”規限。例如大部分地方，包括香港，會規定公民必須達到某個年紀或住滿若干年才可登記成為選民，這些年齡和居留條件可視為對“普及選舉權”的一個合理規限。

(二) “普及選舉權”關乎誰人有權投票，一般

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註3 Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 1993, p.443.

註4 同上，p.444.

的理解是所有公民均有權參與自己居住的地方所舉行的選舉，並由所屬選舉組別中當選的議員代表他們。就香港特別行政區而言，《基本法》規定所有香港特別行政區永久性居民均依法享有選舉權和被選舉權。

(三) “平等選舉權”沒有要求每一選票必須對選舉結果具有同效力。例如，在地區選舉中，地方選區之間議席數目相對登記選民數目的比例可以有一個合理幅度的差距。

(四) 國際社會認同沒有一套選舉制度能適合所有地方，亦不會將任何特定的政治模式或選舉制度強加於任何地方。不同的司法管轄區分別採用了直接選舉或間接選舉的方式，而議會亦有單議院或兩院制的不同制度。就個別地方而言，在符合國際上對“普選”概念的一般理解之餘，也可因應人民的特別需要和訴求，以及有關地方的歷史現實而發展其選舉制度。

政制事務局  
二零零六年一月

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

**General Understanding on the Concept of “Universal Suffrage”**

**Introduction**

This paper gives a brief account on how the concept of “universal suffrage” is generally understood internationally.

**International Covenant on Civil and Political Rights**

2. Article 39 of the Basic Law provides that the provisions of the International Covenant on Civil and Political Rights (“the Covenant”) as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

3. Article 25 of the Covenant stipulates that:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2<sup>Note 1</sup> and without unreasonable restrictions:

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;”

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Note 1 Article 2(1) states that each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

4. Upon ratification of the Covenant in 1976, the British Government made a reservation, reserving the right not to apply subparagraph (b) of Article 25 in so far as it might require the establishment of an elected Executive or Legislative Council in Hong Kong. After the reunification, in accordance with the Central People's Government's notification to the United Nations Secretary-General in June 1996 and Article 39 of the Basic Law, this reservation continues to apply to the HKSAR.

5. Under the Hong Kong Bill of Rights Ordinance (Chapter 383), Article 21 of the Hong Kong Bill of Rights provides that every permanent resident of Hong Kong shall have the right to participate in elections. At the same time, Section 13 of the Ordinance, a saving clause, provides that Article 21 does not require the establishment of an elected Executive or Legislative Council in Hong Kong.

#### **Views Stated in Relevant UN Publication**

6. In a 1994 UN publication entitled "Human Rights and Elections, A Handbook on the Legal, Technical and Human Rights Aspects of Elections", it is stated that,

**"United Nations human rights standards relating to elections are broad in nature and thus may be achieved through a variety of political systems. United Nations electoral assistance does not seek to impose any given political model. Rather, it is based upon a realisation that there is no single political system or electoral methodology which is appropriate for all peoples and states. While comparative examples provide useful guidance for the construction of democratic institutions that both respond to domestic concerns and conform to international human rights norms, the best formulation for each jurisdiction will ultimately be shaped by the particular needs, aspirations and historical realities of the people involved, taken within the framework of international standards."**<sup>Note 2</sup>

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Note 2 Office of the High Commissioner for Human Rights, United Nations, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Election*, paragraph 17.

7. To further elaborate on the implementation of Article 25 of the Covenant, the UN Human Rights Committee has endorsed General Comments No. 25 in 1996. Although the document has not clearly defined “universal and equal” suffrage, it states that “no distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (paragraph 3). The General Comments also point out that it is unreasonable to restrict “the right to vote on the ground of physical disability or to impose literacy, educational or property requirements” (paragraph 10).

### **Different Systems Permitted under the Principle of Universal Suffrage**

8. As pointed out by the UN Human Rights Committee in its General Comments on Article 25, the Covenant does not seek to impose any specific electoral system. The Handbook of the UN has also stated that the system for each jurisdiction should be shaped by the particular needs, aspirations and historical realities of the people involved.

9. The Covenant does not prescribe which model should be adopted in returning a legislature. We note that, among the countries which practise a bicameral system, either the whole or part of the membership of the upper houses in Canada and the United Kingdom are returned by appointment. In the Irish Senate, members are returned from universities and panels representing specified vocational interests. According to information available to us, although the upper houses in Canada, the United Kingdom and Ireland are not returned by universal suffrage, the UN Human Rights Committee has not made any criticism recently on these methods. We also note that there are scholars who hold the view that in a bicameral parliamentary system, at least the chamber with the main legislative authority should be returned by universal suffrage<sup>Note 3</sup>.

10. In addition, there are also scholars who consider that the Covenant has not specified whether universal suffrage should take the form of direct or indirect election. For example, the presidential election in the United States is a form of indirect election, and this is also compatible with Article 25 of the Covenant<sup>Note 4</sup>.

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Note 3 Manfred Nowak. *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 1993, P.443

Note 4 Ditto, p.444

## Conclusion

11. On the basis of the above background information, we may make the following summary :

1. The concept of “universal suffrage” includes the principles of “universal” and “equal”. However, the right to vote can be subject to restrictions, but any such restrictions should be “reasonable” restrictions established under the law. For example, most places, including Hong Kong, require their citizens to have reached a certain age or to have satisfied a specific period of residency before they can register as electors. These age and residency requirements can be viewed as reasonable restrictions on “universal suffrage”.
2. “Universal suffrage” is about who has the right to vote. It is generally recognized that all citizens have the right to take part in elections conducted in their own community and be represented by the elected legislators of the constituencies to which they belong. In regard to the Hong Kong Special Administrative Region (“HKSAR”), the Basic Law provides that permanent residents of the HKSAR shall have the right to vote and the right to stand for election in accordance with the law.
3. “Equal suffrage” does not require that each vote should have the same effect on the outcome of the election. For example, in geographical constituency elections, there can be reasonable variations amongst the constituencies in respect of the ratio between the number of seats and the size of registered voters.
4. The international community recognizes that there is no single electoral system that suits all places, and would not seek to impose any single political model or electoral system on any place. Different jurisdictions have adopted, respectively, direct or indirect elections and different models of unicameral or bicameral legislature. As far as an individual jurisdiction is concerned, while conforming to the general understanding of universal suffrage held internationally, it may also develop its electoral system having regard to the particular needs and aspirations of its people, and its historical realities.