

2007年4月12日會議

文件編號：CSD/GC/3/2007

策略發展委員會
管治及政治發展委員會

有關行政長官普選模式、路線圖及時間表的討論

引言

委員分別於去年七月及九月，開展了有關行政長官及立法會普選可能模式的討論，並於過去的會議上就相關的議題逐漸收窄分歧。

2. 特區政府計劃於今年年中，歸納委員會的討論，並以此為基礎，發表「政制發展綠皮書」，及進行為期三個月的公眾諮詢。綠皮書將羅列不同的普選方案及有關普選路線圖和時間表的意見，讓香港社會及市民作充分的討論。在諮詢期結束後，特區政府會就諮詢期所形成的主流意見及其他各種意見，向中央提交報告。

3. 本文件旨在：

- (a) 進一步綜合委員就行政長官普選可能模式提出的意見，讓委員能更聚焦地作深入探討；及
- (b) 按照「先圖後表」的工作方向，根據不同的普選模式及普選路線圖，讓委員討論相關議題，及對普選時間表發表意見。

4. 不同團體和人士向當局及立法會提供有關行政長官普選模式的意見撮要，分別載於附件一及附件二。本委員會秘書處收到個別委員提供的相關書面意見撮要，則載於附件三。

重點討論議題

5. 委員在過往會議及工作坊中，討論了以下三項有關行政長官普選可能模式的重點議題：

- (a) 提名委員會的組成及人數；
- (b) 提名方式；及
- (c) 提名後，如何以普選方式產生行政長官。

提名委員會的組成及人數

6. 有關提名委員會的組成及人數，委員過去深入研究了不同建議。大部分委員傾向支持以選舉委員會組成作為一個基礎，以考慮提名委員會的組成，而就提名委員會的人數方面，委員一般認為人數不應太多。

7. 有關提名委員會的組成及人數，委員已把討論範圍收窄至以下三種主要方案：

- (a) 由少於 800 人組成提名委員會(例如由 60 名立法會議員組成提名委員會)；
- (b) 由 800 人組成提名委員會，例如參照目前 800 人的選舉委員會，以考慮提名委員會的組成；及
- (c) 由多於 800 人組成提名委員會，較多意見認為可參照目前選舉委員會的組成，並把人數增至 1200-1600 人。亦有意見認為可把人數增至 3200 人。

少於 800 人：以立法會議員組成提名委員會

8. 有關由立法會議員組成提名委員會的建議，大部分委員都不表支持，主要原因包括：

- (a) 《基本法》已清楚訂明立法會的職能，當中並無賦予立法會議員提名行政長官的權力。由立法會提名行政長官不符《基本法》的設計；
- (b) 根據《基本法》，行政機關與立法機關之間的關係是互相制衡。若行政長官是由立法會提名，這將會影響行政機關發揮與立法會互相制衡的作用，並不符合《基本法》立法原意；
- (c) 《基本法》訂明提名委員會須具廣泛代表性，是要體現「均衡參與」的原則¹。單單由立法會議員組成提名委員會，並不一定能符合《基本法》的立法原意；
- (d) 在起草《基本法》時已排除以立法會提名行政長官這方案，因為這並不符合「行政主導」的原則；及
- (e) 市民投票選立法會議員時，並無授權他們代為提名行政長官。

9. 有委員提出，在現階段不應排除由 60 名立法會議員組成提名委員會的建議，認為在作出決定前應先充分考慮該建議的優點：

- (a) 立法會議員的選民基礎最廣及最具代表性；
- (b) 若立法會在行政長官提名程序上有主導權，對協調行政、立法關係能起積極作用；及
- (c) 由立法會議員組成提名委員會，相比要改變目前選舉委員會的組成，以增強提名委員會的民主成分，來得較為簡單，對市民來說亦較容易明白。

¹ 從某個角度來看，選舉委員會所涵蓋的界別範圍較立法會還要廣，例如，宗教界及中醫界在選舉委員會有代表，但在立法會卻沒有。

以選舉委員會為基礎組成提名委員會

10. 大部分委員傾向支持以選舉委員會組成作為一個基礎，以考慮提名委員會的組成，主要原因包括：

- (a) 《基本法》第四十五條及附件一分別規定提名委員會及選舉委員會同樣須具「廣泛代表性」。若以選舉委員會的組成作基礎，可能引起的爭議應該較少，有助社會就提名委員會的組成達成共識；
- (b) 選舉委員會的組成符合「兼顧社會各階層的利益」及「有利資本主義經濟的發展」等原則。參照選舉委員會的組成能確保提名委員會符合這些原則；及
- (c) 選舉委員會以四個界別為綱的組成值得參考，而且以選舉委員會作基礎，對確保提名委員會運作暢順較有把握。

11. 但對提名委員會的人數及不同界別的比重，則有多種意見。

提名委員會：800 人

12. 有委員提出參照目前選舉委員會，把提名委員會人數訂於 800 人。

13. 此外，陳方安生女士及其核心小組於 3 月 5 日向委員會提交的建議，提出將選舉委員會轉變為提名委員會，並擴大提名委員會組別的選民基礎。(至於提名門檻方面，如果提名委員會人數保持為 800 人，參選人需取得最少 80 個提名，即委員人數百分之十。)

提名委員會：1200 人

14. 廿一名立法會議員於3月27日提交的2012年政制方案，提出在未能修改《基本法》以取消提名委員會前，2012年的提名委員會改由800名選舉委員會加上約400名民選區議員共約1200人組成。(任何界別的50名委員可提名一位行政長官候選人，行政長官由市民一人一票選舉產生²。)

提名委員會：1600 人

15. 在上一次會議上，不少委員提出可參考政府於2005年提出的2007/08建議方案，以制定提名委員會的組成，並把人數訂於1600人，原因包括：

- (a) 政府已就建議方案廣泛諮詢公眾，並且得到大部分市民支持；
- (b) 增加提名委員會的人數，可提供空間擴大委員會的民主成分，例如，可加入全體區議員。(不過，有委員認為不應把委任區議員包括在內)；及
- (c) 增加提名委員會的人數，可納入一些目前未被包括在選舉委員會的界別，符合「兼顧各階層利益」的原則。

16. 此外，有委員提出在2007/08建議方案的基礎上，可先擴大現有選舉委員會作為一個過渡安排，通過實際運作並加以完善，在最終普選時把之轉化為提名委員會。

² 梁家傑議員在參選行政長官選舉期間，提出了有關行政長官普選模式的建議：由現時的選舉委員會演變為提名委員會，再加入相當數目的直接從公眾選出的委員；而提名門檻則為候選人須取得50個委員的提名。

提名方式

17. 按照《基本法》第 45 條，普選行政長官需要跨越兩個欄：

第一，要獲得提名委員會當中不同界別不同階層代表的支持；

第二，要獲得市民一人一票支持。

委員理解到，提名委員會的一個重要作用，就是要確保當選的行政長官能兼顧社會各階層利益。

18. 有關提名委員會提名行政長官候選人的方式，委員主要集中討論行政長官候選人所需的提名數目。委員傾向支持在實行普選初期，提名門檻不應太低，而候選人數目亦不宜過多，主要原因包括：

- (a) 提名程序須確保候選人的數目不會過多；
- (b) 先訂出一個相對較高的門檻，以爭取社會各界達至共識，盡早落實普選，並可在推行普選後再逐步演變；及
- (c) 即使設下較高的提名門檻，候選人也須面向市民，因為他們須經過普選的過程，要爭取市民選票。

就此，在上一次會議，有較多意見認為，提名門檻應訂於提名委員會委員總數的 20%或 25%。

19. 不過，亦有委員認為提名門檻應該訂得低一點，至少不高於目前的規定(即提名委員會委員總數的 12.5%)，讓更多人可以參與選舉。亦有委員認為若提名門檻過高，只有少數候選人能參選，不能確保選舉有足夠競爭。

提名後的普選方式

20. 委員認同候選人獲提名後，應由全港市民以一人一票方式選出行政長官。

21. 有關在提名後應只舉行一輪或多於一輪普選，委員於上一次會議上進一步討論了這議題，並提出了不同建議，包括：

- (a) 可舉行多於一輪普選，直至有候選人取得過半數有效票當選，這可增強行政長官的認受性；
- (b) 舉行兩輪普選，並規定只有兩名候選人參與第二輪普選。候選人在最後一輪普選中，只要取得過半數有效票便可當選，而這建議可確保當選者有明顯較多票數，可增加行政長官的認受性；及
- (c) 只舉行一輪普選，採取簡單多數制，由取得多數有效票的候選人當選；這可避免要花大量人力物力安排全港選民再次投票。

22. 至於在只有一名候選人的情況下，是否仍須進行投票這問題，有委員認為由於《基本法》規定，提名委員會提名行政長官候選人後須進行普選，因此，在只有一名候選人的情況下，應該仍須舉行普選，讓市民表達意願。有委員贊成這建議，並認為可規定候選人須取得過半數支持票，或一定比例的票數，方能當選，可確保當選者有認受性。不過，有委員認為若只有一名候選人仍繼續舉行普選，可能會因為反對該候選人的選民投票意欲較強，扭曲整體選民的意願，影響行政長官的選舉過程。

行政長官普選的路線圖及時間表

23. 全國人大常委員會於 2004 年 4 月 26 日所作的《決定》，規定 2007 年香港特別行政區第三任行政長官的選舉，

不實行由普選產生的辦法，但《決定》並不涉及 2012 年第四任行政長官的選舉安排。

24. 根據《基本法》附件一，要修改行政長官的產生辦法，須經立法會全體議員三分之二多數通過、行政長官同意，並報全國人大常委會批准。

25. 按照「先圖後表」的工作方向，若社會各界能就行政長官普選模式及路線圖達成共識，普選時間表便會自然浮現。

26. 此外，社會亦須就應否「先落實行政長官普選」達成共識。就行政長官普選模式須處理的議題，主要是提名委員會的組成及提名機制。就此，委員的有關討論已較為聚焦。不過，就立法會普選模式而言，特別是功能界別應如何演變，委員會內仍存有重大分歧。由此可預期，社會各界要在短期內就立法會普選模式達成共識，並不容易。相對而言，相信社會各界應較有機會就行政長官普選先達成共識。

27. 若社會廣泛支持「特首先行、立法會普選隨後」的方向，並能在第三屆政府任期內就有關行政長官普選模式及路線圖達成共識，則關於時間表的討論最重要在於是否從現時的選舉模式(即 800 人選舉委員會)：

(a) 先經過一個過渡期才落實普選；或

(b) 直接成立提名委員會，一步達至最終普選的目標。

總結

28. 總結上文，就提名委員會的組成，根據上次會議的討論，較多委員傾向支持以選舉委員會組成作為一個基礎，以考慮提名委員會的組成，但在現階段並未就委員人數及各界別的比重和劃分作任何定論。

29. 此外，我們建議委員進一步討論以下議題：

- (a) 提名委員會應如何組成及提名委員會的人數；
- (b) 提名門檻的具體水平；
- (c) 應否只舉行一輪選舉，而毋須要求候選人須取得過半數有效票，或是要求候選人須取得過半數有效票方可當選，並在有需要時舉行多於一輪選舉；
- (d) 在只有一名候選人的情況下，是否仍須進行投票；及
- (e) 行政長官普選的路線圖及時間表，包括：
 - (i) 應否先經過一個過渡期才落實普選，或直接成立提名委員會，一步達至最終普選的目標；及
 - (ii) 應否循「特首先行、立法會普選隨後」的方向推動下一步工作。

政制事務局
2007 年 4 月

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

**Discussion on Models, Roadmap and Timetable for
Electing the Chief Executive by Universal Suffrage**

Introduction

Members commenced discussion on possible models for electing the Chief Executive (“the CE”) and forming the Legislative Council (“LegCo”) by universal suffrage last July and September respectively. Members had been narrowing differences on the relevant issues in previous meetings.

2. The HKSAR Government plans to summarize the discussions of the Commission in mid-2007 and publish a Green Paper on constitutional development on the basis of the discussions. A public consultation for three months will be launched. The Green Paper will set out different options on implementing universal suffrage, as well as the views on the roadmap and timetable for universal suffrage, so as to facilitate the Hong Kong community and the public to have adequate discussions on the issues. Following the end of the public consultation period, the HKSAR Government will submit a report to the Central Authorities reflecting any mainstream views formed during the public consultation and other views expressed.

3. This paper aims at:

- (a) further summarizing members’ views on possible models for electing the CE by universal suffrage, in order to facilitate members’ further discussion on the subject in focus; and
- (b) with the approach of “formulating a roadmap before a timetable”, facilitating members’ discussion on the relevant issues based on different models and roadmaps for universal suffrage, and enabling them to express

views on the timetable for universal suffrage.

4. The summary of views of various organizations and individuals on possible models for electing the CE received by the Administration and LegCo are enclosed at Annex I and Annex II respectively. A summary of written submissions received by the Commission Secretariat is at Annex III.

Key issues discussed

5. In previous meetings and workshops, members discussed the following three key issues relating to possible models for electing the CE by universal suffrage:

- (a) composition and size of the nominating committee;
- (b) method of nomination; and
- (c) method for electing the CE by universal suffrage following nomination.

Composition and size of the nominating committee

6. Regarding the composition and size of the nominating committee, members had examined various proposals in detail. Most members were inclined to support using the composition of the Election Committee as a basis to consider that of the nominating committee. As for the size of the nominating committee, members generally considered that the size should not be too large.

7. As regards the composition and size of the nominating committee, members had reduced the scope of discussion to the following three major types of options:

- (a) to form the nominating committee by less than 800 members (for example, to form the nominating committee by 60 LegCo Members);
- (b) to form the nominating committee by 800 members, for example, by referring to the existing 800-member Election Committee as a basis to consider the

composition of the nominating committee; and

- (c) to form the nominating committee with more than 800 members. More members suggested making reference to the composition of the existing Election Committee, and increasing the size to 1200-1600 members. A member proposed enlarging the size of the committee to 3200 members.

Less than 800 members: forming the nominating committee by LegCo Members

8. Regarding the proposal of forming the nominating committee by LegCo Members, most members did not support the proposal for the following reasons:

- (a) the Basic Law had already clearly prescribed the functions of LegCo, and had not empowered LegCo Members to nominate CE candidates. The proposal of allowing LegCo to nominate CE candidates would not be consistent with the Basic Law;
- (b) according to the Basic Law, the relationship between the executive authorities and the legislature was one of mutual regulation. If CE candidates were nominated by LegCo, this would undermine the function of the executive authorities and the legislature to operate with due checks and balances, which would not be consistent with the legislative intent of the Basic Law;
- (c) it was prescribed in the Basic Law that the nominating committee should be broadly representative. This was to realize the principle of "balanced participation"¹. It may not be consistent with the legislative intent of the Basic Law, if the nominating committee is composed solely of LegCo Members;
- (d) during the drafting of the Basic Law, the option of

¹ From a certain perspective, the range of sectors covered by the Election Committee is broader than that of the Legislative Council, for example, the religious subsector and the Chinese medicine subsector are represented in the Election Committee, but not in LegCo.

nominating CE candidates by LegCo had already been ruled out, because this was not consistent with the principle of an “executive-led” government; and

- (e) when voting for LegCo Members, voters had not authorized them to nominate CE candidates on their behalf.

9. Some members suggested that the proposal of forming the nominating committee by 60 LegCo Members should not be ruled out at the current stage, and that the advantages of the proposal should be fully considered before a decision was made:

- (a) LegCo Members had the broadest electorate base and were the most representative;
- (b) if LegCo played a leading role in the nomination of CE candidates, it would be conducive to improving the relationship between the executive authorities and the legislature; and
- (c) when compared to changing the composition of the existing Election Committee, it would be simpler to form the nominating committee by LegCo Members, so as to enhance the democratic elements of the nominating committee. It would also be more easily understood by the public.

Forming the nominating committee by using the Election Committee as a basis

10. Most members were inclined to support using the composition of the Election Committee as a basis to consider that of nominating committee. The main reasons included:

- (a) Article 45 and Annex I to the Basic Law stipulated respectively that the nominating committee and the Election Committee should be “broadly representative”. If the composition of the Election Committee was used as a basis, this should give rise to fewer disputes and should

be conducive to forging consensus within the community on the composition of the nominating committee;

- (b) the composition of the Election Committee complied with such principles as “meeting the interests of the different sectors of society” and “facilitating the development of the capitalist economy”. Making reference to the composition of the Election Committee could ensure that the formation of the nominating committee would comply with these principles; and
- (c) the formation of the Election Committee by four sectors was a useful reference point. Also, using the Election Committee as a basis could help ensure the smooth operation of the nominating committee.

11. However, members held diverse views on the size of the nominating committee, and the relative proportion of different sectors in the committee.

Nominating committee: 800 members

12. Some members suggested that, by modeling on the existing Election Committee, the size of the nominating committee should be set at 800 members.

13. Recently, Mrs Anson Chan and her core group put forth a proposal to the Commission on 5 March, which proposed to convert the Election Committee into the nominating committee, and to broaden the franchise of the subsectors. (As for the nomination threshold, candidates should be required to receive nominations from 10% of nominating committee members; thus, if the size of the nominating committee were kept at 800, this would mean that prospective candidates would require a minimum of 80 nominations.)

Nominating committee: 1200 members

14. On 27 March, 21 LegCo Members put forth a proposal on constitutional development in 2012. Their proposal suggested that, before amendments could be made to the Basic Law to abolish the nominating committee, the nominating committee should be formed by about 1200

members i.e. by adding about 400 elected District Council members to 800 members of the Election Committee. (CE candidates could be nominated by 50 members from any sector, and returned by universal suffrage though “one-person-one-vote”².)

Nominating committee: 1600 members

15. At the last meeting, quite a number of members suggested using the 2007/08 proposed package put forth by the Government in 2005 as a basis for determining the composition of the nominating committee and setting the size at 1600 members. The reasons included:

- (a) the Government had consulted the public broadly on the proposed package, and had received majority support from the public;
- (b) enlarging the size of the nominating committee could provide room for enhancing the democratic elements of the committee, for example, by including all District Council (“DC”) members. (However, some members considered that appointed DC members should not be included); and
- (c) enlarging the size of the nominating committee could allow allocating the additional seats to sectors which were currently not represented in the Election Committee, in order to realize the principle of “meeting the interests of the different sectors of society”.

16. Moreover, a member proposed that, on the basis of the 2007/08 proposed package, the existing Election Committee could be expanded as a transitional arrangement. Through making improvements in the light of actual operation, it could be transformed into a nominating committee when universal suffrage was implemented.

² When running for the Chief Executive election, the Hon Alan Leong put forth a proposal for electing the CE by universal suffrage: the 800-member Election Committee should be transformed into the nominating committee by adding a significant number of members directly elected from the public; the nomination threshold should be set at 50 subscribers for nominating a CE candidate.

Method of nomination

17. In accordance with Article 45 of the Basic Law, there are two stages for electing the CE by universal suffrage:

- firstly, a CE candidate will be required to gain the support from representatives of different sectors and strata in the nominating committee;
- secondly, a CE candidate will be required to gain the support of the public through "one-person-one-vote".

Members understood that the nominating committee would play a crucial role in ensuring that the CE elect could meet the interests of different sectors of society.

18. Regarding the method of nominating CE candidates by the nominating committee, members focused their discussion on the number of subscribers required for nominating a candidate. Members were inclined to support that, at the early stage of implementing universal suffrage, the nomination threshold should not be too low and there should not be too many candidates. The main reasons included:

- (a) the nomination procedures should ensure that there would not be too many candidates;
- (b) a relatively higher nomination threshold should first be set to help forge consensus among different sectors, so as to implement universal suffrage as early as possible. The system could evolve gradually after universal suffrage had been implemented; and
- (c) even if a relatively higher nomination threshold was set, the candidates would still have to face the public because they would need to gain the votes of the public in the process of universal suffrage.

In this connection, at the last meeting, more members considered that the nomination threshold should be set at 20% or 25% of the size of the nominating committee.

19. However, some members considered that the nomination threshold should be set at a lower level, at least not higher than the existing requirement (i.e. 12.5% of the size of the nominating committee) to enable more candidates to take part in the election. Some members considered that if only a small number of candidates could run for election as a result of a high nomination threshold, there would not be sufficient competition.

Method of Universal Suffrage after Nomination

20. Members agreed that, after the nomination of candidates, the CE should be elected by universal suffrage on the basis of "one-person-one-vote".

21. At the last meeting, members further discussed the issue of whether one or more rounds of election should be held after nomination, and had put forth various options, including:

- (a) holding more than one round of election, until a candidate was returned by receiving more than half of the valid votes cast. This could enhance the legitimacy of the CE;
- (b) holding two rounds of elections, in which only two candidates could enter the second round of universal suffrage. In the final round, the candidate who received more than half of the valid votes cast would be elected. This proposal could ensure that the CE elect would obtain a clear majority of the votes, so as to enhance the legitimacy of the CE; and
- (c) holding only one round of universal suffrage and adopt a simple majority voting system. The candidate who received the highest number of valid votes cast would be elected. This could avoid having to invest an enormous amount of resources to arrange for another round of voting by all registered voters.

22. As for the issue of whether the election proceedings should continue if there was only one candidate, some members considered that as it was prescribed in the Basic Law that the nomination of the CE by the nominating committee should be followed by universal suffrage, universal suffrage should still be held even when there was only one candidate. This

would allow the public to express their wish. Some members supported this proposal and considered that the candidate should be required to receive more than half of the valid votes cast or a specified percentage of votes to get elected. This could ensure that the CE elect would have legitimacy. However, some members considered that if the election proceedings continued when there was only one candidate, this might distort the overall inclination of voters because those who were against the candidate would have a stronger intention to vote. This would in turn affect the CE election process.

Roadmap and timetable for implementing universal suffrage for the CE

23. In the Decision of the Standing Committee of the National People's Congress (NPCSC) made on 26 April 2004, it was promulgated that the election of the third CE of the HKSAR to be held in 2007 should not be by means of universal suffrage. However, the Decision did not cover the electoral arrangements for the fourth term CE election in 2012.

24. In accordance with Annex I to the Basic Law, any amendments to the method of electing the CE would require the endorsement by a two-thirds majority of all LegCo Members, the consent of the CE, and they shall be reported to NPCSC for approval.

25. With the approach of "formulating a roadmap before a timetable", if different sectors of the community could reach consensus on the model and roadmap for electing the CE by universal suffrage, the timetable for universal suffrage would fall into place naturally.

26. Moreover, the community should forge consensus on whether "universal suffrage for the CE should be implemented first". The major issues that need to be addressed in relation to the model for electing the CE by universal suffrage are the composition of the nominating committee and the nomination mechanism. In this regard, members' discussion on these issues has been more focused. However, there are still significant differences among members on models for forming LegCo by universal suffrage, particularly on how the functional constituencies (FCs) should evolve. It is, therefore, anticipated that it would not be easy for the community to reach consensus on the model for forming LegCo by universal suffrage in the short term. Relatively speaking, there should be a higher chance that the community could first reach consensus on the model

for electing the CE by universal suffrage

27. If the community generally supports the direction of “universal suffrage for the CE should precede that for LegCo”, and is able to reach consensus on the model and roadmap for electing the CE by universal suffrage within the term of the third term Government, the most critical factor in determining the timetable for universal suffrage would be whether the existing electoral model (i.e. an 800-member Election Committee):

- (a) should be transformed to universal suffrage by first going through a transitional phase; or
- (b) should be transformed to universal suffrage in one go by forming the nominating committee directly.

Conclusions

28. To conclude, according to the discussions at the last meeting, regarding the composition of the nominating committee, more members were inclined to support using the Election Committee as a basis for the formation of the nominating committee. However, members had yet to form a view on the size of the nominating committee, and the relative proportion and delineation of each sector at this stage.

29. Moreover, we propose that members should further discuss the following issues:

- (a) the composition and size of the nominating committee;
- (b) the specific nomination threshold;
- (c) whether the CE should be elected through one round of election without the requirement that a candidate should receive more than half of the valid votes to be elected, or whether there should be a requirement that a candidate should receive more than half of the valid votes to get elected, and thus more than one round of election would be held if necessary;
- (d) if there is only one candidate, whether the election proceedings should continue; and

- (e) the roadmap and timetable for electing the CE by universal suffrage, including:
 - (i) whether there should be a transitional phase before implementing universal suffrage; or whether the nominating committee should be formed directly to achieve the ultimate aim of universal suffrage in one go; and
 - (ii) whether we should take things forward on the basis that “universal suffrage for the CE should precede that for LegCo”.

Constitutional Affairs Bureau
April 2007