

## **Green Paper on Constitutional Reform**

### ***1. The Current System***

Hong Kong's election system is unfair and delivers unrepresentative government. The general registered electorate elects half of LegCo in geographical constituencies ( GCs ) and a mere 6.5% enjoy the right to elect the other half in functional constituencies ( FCs ). So the 6.5% get more votes and more representation making them "first class citizens" while the 93.5% are treated like "second class citizens".

The vast majority of the Hong Kong public have no right to vote in the election of the Chief Executive. Only 800 people on the Election Committee are given that privilege. Out of these, 644 are elected by the 6.5% of "first class citizens" mentioned above. Not only does the 6.5% get to elect its representatives onto the Election Committee, their FC representatives are members of the 800. The general registered electorate is represented by the 30 GC LegCo members. 30 out of 800!

### ***2. Addressing the Problem***

The Civic Party believes that any reform of the current system must address this unfairness and as a result, the unrepresentative nature of government. While we support a flexible and open approach to how universal suffrage may be achieved, we cannot accept changes which do not address these issues. Any new system which allows one sector of the electorate to prevail over others or provides means of limiting the choice of candidates cannot be regarded as implementing universal suffrage. Such a system retains the unfairness and also reflects a lack of confidence in the ability of the people of Hong Kong to select their government.

### ***3. Sincerity of the Consultation Exercise***

Our concern is that this current consultation exercise is insincere. The 3 months consultation period from 21July co-incided with LegCo's summer recess. The inflexible method of consultation and serious lack of publicity of the public forums further strengthens the impression that the government has little sincerity in listening to the views of the public.

The Green Paper is hindering rather than advancing the realization of universal suffrage by creating confusion and uncertainty and it hides from the public the undeniable fact that our current system does not meet international standards. We are even more worried that the government is surreptitiously rewriting the definition of universal suffrage while depressing the public's expectations. Indeed the publication of the Green Paper represents a serious back-tracking on pledges given by the Administration.

### ***4. Broken Promises***

In the last Chief Executive Election campaign Donald Tsang unambiguously promised to offer the public three options for universal suffrage to be achieved, each of which was to be consistent with international standards. This promise has been broken. Moreover, although the Administration promised that it will recommend to the Central Authorities any system that secures the support of 60% of the public, now we are told that public opinion will only be one of the factors contributing to the recommendation that will eventually be made.

### ***5. Re-writing the Concept of Universal Suffrage***

The principles laid down in the Basic Law and established by international obligations under the Joint Declaration are clear for all to see. Yet since the enactment of the Basic Law, forces opposed to the development of democracy have been desperately trying to devise ways of undermining the meaning of universal suffrage and imposing conditions that would ensure that the SAR develops a system of mutant universal suffrage hedged around by conditions that detract from the central principles universally recognized as applying to this concept. We urge the Government to clarify its position to the public.

### ***6. Adhering to Legal Obligations***

The HKSAR Government has the legal obligation to implement the Basic Law. Article 45 of the Basic Law says clearly: “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 principles”. Article 68 has the same aim of universal suffrage for the election of all the members of LegCo. Article 39 enshrines the rights and freedoms Hong Kong people enjoy under the international covenants. This makes clear that “universal suffrage” in the Basic Law means the same thing as “universal suffrage” in these covenants.

### ***7. Adhering to International Agreements***

“Universal suffrage” is defined in Article 25 of the International Covenant on Civil and Political Rights. The SAR Government is under obligation to apply this and to implement it through the laws of the HKSAR. Article 25 provides for every citizen to have the right and the opportunity, without any of the prohibited grounds of distinction and without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives. It also provides that every citizen shall have the right to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage.

The Government said about the 'reservation' in paragraph 2.20 is an obfuscation. The Government claims that the 'reservation' still applied to the HKSAR: that is, the requirements under Article 25(b) of the ICCPR does not apply to Hong Kong. However, the Government fails to quote the wording of the 'reservation' in full in the Green Paper. The 'reservation' itself is not absolute. Indeed, the very issue of whether Article

25 applied to Hong Kong was determined by the court in a case in 1995. In that judgment, Mr Justice Keith decided that, in view of the fact that the Legislative Council was constituted by election, its composition was bound by Article 25 of the Covenant. From then on, the Government ceased to be able to rely on the 'reservation' as the ground for departing from the Covenant. This court decision is still in effect. The UN Human Rights Committee has reiterated three times that, once the legislature of Hong Kong becomes elected, its election must comply with the requirements of Article 25 of the Covenant.

### ***8. Establishing a Benchmark***

This then is the simple benchmark by which any reforms to enact representative government must be judged. As such there clearly is no room for one class of citizens having voting rights above others, or for a vetting procedure to curtail the freedom of citizens to vote for candidates who have secured a reasonable number of nominations.

### ***9. Nominating Committee***

The Green Paper points out that the Basic Law requires the composition of a nominating committee for the election of the Chief Executive. A genuine attempt at creating the conditions for universal suffrage should, conscientiously, avoid using this as an excuse and a device to limit the franchise and exclude candidates thought to be unwelcome by the Central People's Government. Unfortunately, the Green Paper gives the impression that the Hong Kong SAR Government favours the establishment of an onerous threshold for the nomination of a candidate. We believe the threshold of nomination and composition of the nomination committee proposed by the 23 democratic legislators are simple and reasonable.

### ***10. Striking at the heart of universal suffrage***

Chapter 6 of the Green Paper singles out certain proposals for the public's consideration. For example, the proposal that the Nomination Committee devises some procedure to limit the number of CE candidates to 2 to 4 (para. 6.09); the proposal that functional constituencies should be retained in LegCo or replaced with seats indirectly elected by District Councillors (para.6.12 (iii) and (iv)). We urge the Government to clarify whether these proposals represent universal suffrage. In our view they do not.

### ***11. Timing***

The Green Paper rightly addresses the question of timing for implementation of reform. We have long held the position that the elections of 2012 provide the opportunity for the introduction of universal suffrage for the selection of both the Chief Executive and all members of the legislature. We believe that only a precise target for implementation provides a meaningful commitment to the enactment of reform.



## ***12. Dialogue and Negotiation***

Nevertheless we are aware that reform entails negotiation and dialogue and we stand prepared to participate in this process. In the interests of achieving universal suffrage we are prepared to go the extra mile in working for its realization and will therefore take part in any sincere dialogue about timing or indeed the phasing-in of the reforms. However we stress that the extent of this flexibility cannot extend to questioning the fundamental principles that underlie the achievement of democratic government.

Civic Party  
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