



公民黨

就《二零一二年行政長官及立法會產生辦法諮詢文件》 的意見書

落實真普選 取消功能組別

公民黨對於政府提交的政制改革諮詢文件中，沒有交待普選路線圖深表遺憾。公民黨認為沒有完整的普選路線圖，根本難以討論中途站的選舉安排。公民黨曾經在第一階段的談判策略中，積極向政府反映民意，但當局始終是坐視不理。公民黨對於政府閉門造車、漠視民意的做法感到失望。公民黨就諮詢文件發表意見如下：

1. 《基本法》第二十五條及第二十六條早已列明香港公民在法律面前一律平等，而香港特別行政區永久性居民依法享有選舉權和被選舉權。除此之外，《公民權利和政治權利國際公約》早已為「選舉」作出清晰界定，《國際公約》第二十五條（乙）列明：「在真正的定期的選舉中選舉和被選舉，這種選舉應是普遍的和平等的並以無記名投票方式進行，以保證選舉人的意志的自由表達」；雖然特區政府堅稱，一九七六年確認《國際公約》時，英國政府作出了一項保留條文——保留不實施《國際公約》第二十五條可能要求在香港設立經選舉產生的行政局或立法局的權利。但事實上，聯合國人權委員會曾經提醒特區政府，立法會功能組別的設計違反《國際公約》第二、廿五及廿六條的規定，並且強調，從立法機關引入選舉那一刻開始，政府就有責任確保立法會透過普及而平等的選舉產生，並符合第廿五條的規定。因此，公民黨認為隨著香港引入直選，保留條文便會失效，選舉便必須符合《國際公約》第二十五條的規定。
2. 公民黨認為現時三十個立法會功能組別議席剝奪了很多人的「選舉和被選舉」權，明顯違反《公民權利及政治權利國際公約》，而功能組別更導致社會上出現一班可以享有既得政治利益的特權人士，但政制改革諮詢文件中完全沒有向公眾交待如何取消功能組別，並不符合市民多年來爭取普選的訴求。
3. 根據由一班基本法草委如王叔文及吳建璠等人在二零零六年出版的《香港特別行政區基本法導論》，其中一章寫明「立法會採用全民普選

方式產生，即一人一票直接選舉產生立法會議員」。因此，近期有意見認為功能組別可與普選並存，這一種說法完全背離了當年基本法草委們對普選的定義。

4. 就政制改革諮詢文件中，政府建議增加五個立法會功能組別議席，一般選民未能獲得選舉權、被選舉權和提名權，並不符合普及而平等的原則。而讓區議員互選的方式作為新增的功能組別容易造成單一政黨壟斷議席的局面，可見這個建議是民主倒退的做法，公民黨堅決反對新增功能組別議席。
5. 根據現時基本法附件二的規定，若然立法會內功能組別及地區直選維持議席人數不變，政府提出修改功能組別的選舉辦法，只需要立法會過半數支持便可以獲得通過，因此公民黨認為政府應該盡快廢除功能組別內以公司或團體作為選民單位的制度。
6. 公民黨曾經提出切實可行的普選路線圖，在立法會選舉方面，公民黨建議於二零一二年合併性質相近或選民人數較少的功能組別，而二零一二年選舉後，應盡快取消分組點票制度。在行政長官選舉方面，公民黨建議擴大選舉委員會之選民基礎，選舉委員會加入所有直選區議員，增加民主成份，取消現時選舉委員會的「區議會代表」席位及修訂《行政長官選舉條例》，取消政黨成員不能擔任行政長官的限制。可惜政府一直並沒有採納這項建議，公民黨深表失望。
7. 公民黨要求特區政府公開承諾不遲於二零一七年普選行政長官，並確保不存在任何預先篩選機制，並承諾提名門檻比例不高於二零零七年行政長官選舉的規定；不遲於 2020 年取消所有功能組別議席，全面普選立法會。同時，公民黨認為政府必須盡快取消區議會委任制。

最後，公民黨特此聲明：

1. 政府盡快提出可以達致「真普選」的具體路線圖
2. 「真普選」必須全面廢除功能組別
3. 政制改革不應局限於政府提出的諮詢方案，我們樂意與政府討論公民黨早前提出的普選路線圖，以探討政制發展的方向。

二零零九年十二月五日



Give us real democracy Abolish Functional Constituencies

Civic Party

Position Paper on Political Development Consultation Document No. 6 of the HK SAR Government

Civic Party deplors the Government's failure to provide a roadmap to universal suffrage in its Political Development Constitution Document No. 6. Without a roadmap and without a clear goal, it is impossible to meaningfully discuss proposals for interim arrangements. We have done everything we can to engage the government in negotiations, but have met with no response. We are deeply disappointed that the government has chosen to ignore public opinion and concoct its own proposals behind closed doors. Our views on the government proposals are set out below:

1. Article 26 of the Basic Law states that all permanent residents of the HKSAR have the right to vote and to stand for election in accordance with law. The meaning of "election by universal suffrage" has already been defined in Article 25(b) of the International Covenant on Civil and Political Rights (ICCPR) as "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". Although the SAR Government continues to rely on the reservation entered by the UK Government to article 25(b) of the ICCPR while ratifying it in 1976 insofar as it required the establishment of an elected Legislative Council or Executive Council in Hong Kong, the UN Human Rights Committee has repeatedly reminded the SAR Government that functional constituencies in LegCo are in breach of Articles 25 and 26 of the ICCPR. The UN Human Rights Committee emphasized that, from the moment elections were introduced into LegCo, the Government was dutybound to ensure that LegCo was constituted by elections by universal and equal suffrage, in compliance with Article 25. Civic Party believes that the UK's reservation was spent with the introduction of an elected Legislative Council, and all elections must comply with Article 25 of ICCPR.
2. In our view, the present 30 functional constituencies of LegCo have deprived numerous people of their right "to vote and to be elected" on the basis of equality and non-discrimination, and clearly violate the ICCPR. Further, functional constituencies have created a class of privileged people in Hong Kong who enjoy vested political

interests. The Consultation Document gives absolutely no explanation to the public on how to abolish functional constituencies, and this is in complete opposition to public opinion.

3. According to a book entitled *Introduction to the Basic Law of the Hong Kong Special Administration Region* written by a group of Drafting Committee members including Wang Shuwen, Wu Gien-pan and others, published in 2006, the Legislative Council being constituted by universal suffrage means “to select members of the Council through direct election on a one –person-one-vote basis”. This shows up recent suggestions that functional constituencies can coexist with universal suffrage are a distortion of the definition of universal suffrage by the Drafting Committee members.
4. In the Consultation Document, the Government proposes to add 5 functional constituency seats to LegCo for which the general electorate have no direct voting rights or right to stand for election. These seats do not comply with the principle of “universal” and “equal” suffrage. Moreover, allowing District Councillors to elect from among themselves to return members to the new seats can easily lead to the domination of a single political party. This proposal is therefore retrogressive. Civic Party is firmly opposed to the addition of new functional constituency seats.
5. According to the existing Annex II of the Basic Law, provided the number of seats of the functional constituencies and of the geographical constituencies remains unchanged, the government’s proposals for amending the election methods for the functional constituencies requires only the support of the majority of LegCo to be passed. Civic Party considers that the Government should abolish corporate and organization votes as soon as possible.
6. Civic Party has already proposed a viable roadmap for universal suffrage. On LegCo election, we propose that in 2012, functional constituencies of similar natures and with relatively small electorates should be combined and, after 2012, the split voting method should be abolished as soon as possible. For the election of the Chief Executive, Civic Party proposes enlarging the electorate base of the Election Committee, by including all directly elected District Councillors, abolishing the existing seats for “representatives of the District Council” and amending the CE Election Ordinance to remove the restriction against political party affiliation. To our great disappointment, the Government has never accepted our proposal.
7. Civic Party calls upon the SAR Government (1) to elect the CE by universal suffrage no



later than 2017, ensure that there will be no screening mechanism, and pledge that the nomination threshold will not be higher than the 2007 requirement; (2) to abolish all functional constituency seats no later the 2020 when LegCo shall be elected by universal suffrage. At the same time, Civic Party demands that the system of appointed District Councillor be abolished without delay.

In conclusion, Civic Party demands:

1. That the Government should as soon as possible provide a roadmap which can lead to genuine universal suffrage
2. Genuine universal suffrage requires the abolition of all functional constituencies
3. Political development should not be confined to the proposals of the Government. We are happy to discuss with the Government the roadmap Civic Party has proposed, and to explore the way forward.

5 December 2009

Civic Party