

P. Y. Lo, LLB (Lond.), Barrister-at-Law

21st August 2004.

Constitutional Development Task Force Secretariat,
Constitutional Affairs Bureau,
3/F Main Wing, Central Government Offices,
Lower Albert Road, Central,
Hong Kong.

Dear Sir/Madam,

Re: No 3 Report of the Constitutional Development Task Force

I refer to the focus group discussion organized by the Central Policy Unit for 23rd August 2004 on the captioned report. I now forward to you my views on the captioned report.

I must first express serious reservations on the premise on which the captioned report was drafted. My understanding is that the captioned report was drafted by the Task Force to implement the Decision of the NPCSC of 26th April 2004. If this is the case, then I am obliged to indicate that that is a most unfortunate premise since in my respectful opinion as a lawyer with specialization in constitutional and administrative law, the said Decision well exceeded the scope and intent of the Interpretation of the NPCSC of 6th April 2004 and was reached without proper regard to recognised norms of procedural propriety.

The Task Force should therefore procure through the good offices of the Chief Executive of the HKSAR (acting in his representative capacity for the HKSAR under Article 43 of the Basic Law of the HKSAR) the modification of the said Decision, particularly paragraph 1 thereof. It can be argued that the said Decision's legality is less than satisfactory. Alternatively and as a matter of political expediency, one might argue for modification on the basis of change of factual circumstances, which are likely to be evident after the Legislative Council elections of 12th September 2004.

I now turn to the matters stated in the captioned report on the assumption that the Task Force does not intend at this stage to procure the modification of the said Decision.

The terms of the said Decision, in my opinion, allows the method of returning the candidate for appointment of the 3rd Chief Executive in 2007 to have as much participation by residents of the HKSAR as possible, short of granting universal suffrage. The expression "universal suffrage" is used in Article 25(b) of the International Covenant on Civil and Political Rights 1966 in respect of the right to vote and be elected. It has a certain definition, meaning that the right to vote may not be restricted to certain groups or classes but rather is a basic right of all individuals. See Nowak, *CCPR Commentary* (Kehl, Strasbourg and Arlington: N P Engel) p 444. Therefore, in my respectful opinion, it is unduly restrictive to confine the method of returning the candidate for appointment of the 3rd Chief Executive in 2007 to a method involving an election committee consisting of hundreds or even thousands of residents of the HKSAR.

My suggestion is for the candidate for appointment of the 3rd Chief Executive in 2007 to be returned by an electorate consisting of between 100,000 and 1,000,000 residents of the HKSAR. The electorate is to be returned by an impartial process of random selection of batches of Hong Kong Identity Card numbers. In short, the population is arranged into a number of batches on the basis of their Hong Kong Identity Card numbers. For example, if 20 batches are arranged, then an electorate of 100,000 can be returned by randomly selecting 5,000 people from each of the 20 batches.

My suggestion, as described above, cannot possibly be universal suffrage since there is no right to vote for each resident of the HKSAR. All he or she has is an opportunity to participate which may or may not be given to him or her.

The nomination process on the other hand has to be performed by a nomination committee envisaged in Article 45 of the Basic Law of the HKSAR. In my opinion, the nomination committee may compose of about 1,000 HKSAR residents who are returned as representatives of different sectors and interests of the community. There may have to be sectoral and sub-sectoral elections to return committee's members.

Persons wishing to be returned as the candidate for appointment of the 3rd Chief Executive in 2007 should secure the nomination of a threshold of at least 20% to at most 35% of the membership of the nomination committee. The nomination process is to take place on a single day on which members of the nomination committee are to attend specified locations to mark and present their nominations to the secretariat of the nomination committee. Each member of the nomination committee may mark and

present a nomination of up to two persons in order of preference. If more than 35% of the membership of the nomination committee nominate as the first preference a particular person, the relevant nomination papers will be examined as to the second preference and the excess of the 35% threshold will be transferred to the other persons in accordance with the proportion of the second preference indicated. Everyone who meets the threshold requirement in terms of nominations is to be declared as having been validly nominated for the election for the candidature for appointment of the 3rd Chief Executive in 2007 by the electorate as aforesaid.

Coming to the issues of the composition and membership of the Legislative Council, I am of the view that the present 60-person membership of the Legislative Council is adequate and should remain unchanged. There should on the other hand be amendments to the Legislative Council Ordinance (Cap 542) to eliminate corporate membership of functional constituencies.

Given that the general election for the 4th Legislative Council is to take place at the later date of 2008, there is adequate time for the Task Force to observe the operation of the 3rd Legislative Council to be returned on 12th September 2004 and then procure the modification of the said Decision within time for amendments to the Legislative Council Ordinance to be proposed, deliberated and passed.

I therefore respectfully ask that the Task Force should defer drawing any conclusions on the issues raised in respect of the Legislative Council in the captioned report by 1 year and instead make use of such time to procure the modification of the said Decision in the light of changing circumstances arising out of the operation of the 3rd Legislative Council.

Regards,

(Signed)

(P. Y Lo (Mr.))