



余若薇立法會議員辦事處

Office of Audrey Eu, Legislative Council Member

香港中環下亞厘畢道
中區政府總部西座十二樓
政務司司長辦公室
政務司司長
會蔭權

曾司長：

閣下於二零零四年九月十七日的來信已收悉。

就香港政制發展，本人已於二零零四年六月二十九日聯同《四十五條關注組》各個成員，公開發表《非專責小組報告信》，當時亦將報告書交予專責小組參考。在報告書中，本人已就政制發展，如特區行政長官及立法會產生方法等事宜，詳細羅列意見。有關報告書亦已置於《四十五條關注組》網址 www.art45.org，供公眾人士瀏覽。現隨函附上《非專責小組報告書》中文及英文版本予 閣下參詳。

另外，在剛過去的立法會選舉中出現不少混亂的情況，相信大部份候任立法會議員對將來立法會的產生方法，亦會提出一系列改善的意見，故希望 閣下能將諮詢期由原來的九月底，延長至十月底，以收集思廣益之效。

(已簽署)

立法會議員余若薇謹啓

二零零四年九月二十一日



〈基本法〉四十五條關注組

〈非專責小組報告書〉

《基本法》四十五條關注組
《非專責小組報告書》

1. 政制改革不能抽離實況空泛地討論，而是要先找出現行制度的毛病所在，然後對症下藥，提出解決這些毛病的改革建議。政制改革專責小組原應以此為指導原則，但卻沒有這樣做。四十五條關注組為彌補不足，現在按照我們認為正確的方向，發表這份《非專責小組報告書》。

現時的弊病

2. 普及平等的選舉，是基本公民權利，但香港特別行政區現行的政制卻仍然不能落實這項權利。
3. 香港社會的一個強烈共識，就是現時政不通，人不和，亟須求變，包括修改行政長官及立法會的產生辦法。絕大多數人認為特首董建華先生與民意脫節，面對社會上逼切的問題之際，政府無以提出應對的政策，即使有適當的政策，在實施上也不得其法，收不到積極的效果。市民大眾一方面質疑特首的認受性，但另一方面亦感到立法會並無能力改變現況，過去七年裡發生的事件一次又一次地顯露了這些民怨民情。
4. 過時的“行政主導”模式：問題的核心是在於特區政府執意模擬一個已經過時，今時今日已沒有可能實行的“行政主導”政府模式。雖然所有政府某意義上都可說是“行政主導”，但特區政府所做效的卻是殖民地獨有的政府模式。在這個模式之下，政府由公務員組成，公務員由布政司統領，執行港督會同行政局所決定的政策，立法會議員由港督委任，給予港府所需要的支持。
5. 《基本法》的新憲制安排之下，特區政府模式跟殖民地政府模式截然不同。《基本法》清楚勾劃出行政與立法機構之間的互相制衡：行政當局以行政長官為首，立法會則行使立法權，負責監管政府的施政。《基本法》之下的“行政主導”模式，必需得到選舉產生的立法會支持。
6. 執意追求一個不可能現實、屬於香港的殖民地過去政府模式而不肯面對憲制及社會已經改變，結果就是無窮無盡的煩惱和挫敗。
7. 下列的因素進一步加深了上述的困局：
 - (1) 特首手操大權，但缺乏認受性；市民的印象是特首重視對中央政府及選舉委員會的「小圈子」負責，但卻繞過對立法會的監管，

忽視對香港市民負責。

- (2) 特首及管治班子不信任公務員，導致士氣低落，特首所成立的“問責制”之下的管治班子本身缺乏協調和默契，致令公務員架構被分割和分散。
8. 在《基本法》之下的政制模式要運作成功，關鍵在於行政與立法機關之間的工作關係，然而我們卻看不到政府有認真努力，嘗試建立與立法會合作所必須的憲制習慣和機制。缺乏了完善的憲制習慣和機制，一位沒有認受性的特首如董建華先生，就會傾向與他因為共同利益而產生密切關係的功能界別尋求支持。然而，功能組別的存在已經有違原則，而且《基本法》已明文規定須逐步淘汰。民望低的特首在同樣缺乏民望的議員支持之下，不停與數百萬選民選出的議員發生衝突，一面令政府更失民心，同時也令到市民對立法會整體的信心和支持下降，從而造成社會不穩定和市民所珍惜社會價值受到損害。
9. 內部分化的立法會：有些人表示，保留佔立法會一半議席的功能界別，確保“均衡參與”，事實上，香港法例之下成立的功能界別，並非“均衡參與”，只是令一小撮經濟利益集團享受到不符比例的權利，在市民的眼中成了特權階級，而且在《基本法》規定的表決方法之下，擁有過大的否決權。
10. 市民看到在重大事情上，代表他們的議員沒有足夠權力反映他們的意見和保障他們的權利，於是更感不滿。立法會分化，亦導致社會的分化。功能界別與地區直選兩部分之間長期公開對立，構成了有力的反面宣傳，令市民感到立法會內部分裂，只顧互相攻擊，結果不能為公眾帶來社會及經濟上的改善。
11. 必須正視的是，如果行政當局不決心主動與立法會合作，期望立法會會取得積極成果是不切實的；原因是幾乎全部制定政策和提出法案的主動權都在“行政主導”的政府當局手上。立法會議員除非得到特首許可，無權提出涉及公共政策的法案，而涉及香港政制改革的法案，就絕對無權提出。現行的制度形成僵局，令政府及立法會陷於癱瘓。要釋放出振興香港的能量，就先要解開這個死結。
12. 傳媒上看到的，其實只是立法會的片面。實際上立法會是行政機關管治香港特區必需的合作夥伴，立法會需要審議大量的法案，其中不少需要經過修正；香港的施政所依據的典章制度需要不住檢討維新，確保維持最高水準，並且因應時代變遷而相應改革。香港若不能維持最高質素的

施政，就會失去國際都會的聲譽。政改方案必須顧及如何維持施政高質素的問題。

13. 政黨成員身分：目前香港法例不容許行政長官有政黨成員身分，這個限制也是令現行政制無法運作的部分因素，原因如下：
 - (1) 窒礙政黨的發展：永遠無權執政的政黨，永遠不會有政治前途；
 - (2) 有志於競選特首的人不會有機會透過政黨提供的培訓和工作經驗，積聚對公共事務和管治的認識和經驗。
 - (3) 特首無法藉公眾支持他所屬的政黨而得到民眾支持。
14. 政策研究：消除了政黨執政的障礙，民間的政策研究也會同時出現生機，從而鼓勵有更多成熟的政策建議和更深入的討論，政府必須真正相信分享資訊、消除一切阻礙資訊流通不合理限制，才有望得到最好的意見。
15. 諮詢架構成員的委任：缺乏公眾支持的特首，自然而然傾向利用諮詢架構的委任制，委任自己的支持者為成員，而這樣的委任，無非在較小的規模上重複特首在整個政制中的弊病。
16. 當前需要的改革建議，因此必須以矯正時弊為首要目標，包括：
 - (1) 確保行政長官在社會上有充分的認受性，而擔任特首職位的人有所需的領導才能：由於問題源自特首由選民人數不及 16 萬的選舉委員會（“選委會”）選出，改革建議須以擴大選民基礎為起點。
 - (2) 改善立法會內的代表權的不公平和不均衡：問題的根源是，由選民總數不到 20 萬的功能界別選出的 30 席的大多數，竟可否決由選民總數超過 300 萬的地區直選選出的 30 的大多數。更甚的是，即使功能界別的議席之中，也沒有做到平均分配，而是過分集中於某些界別，使控制這些界別的少數人的私人利益凌駕於公眾利益之上。即使在某個界別裏，當選的議員也未必在該界別有代表性。有效的解決方法，至低限度要消除或減低這個不公平情況，擴闊功能界別的選民基礎。另外，否決權既然來自目前的表決方式，立法會的議決程序也須檢討。
 - (3) 建立政府和立法會憲制關係的基礎：《基本法》的意念之中，行政與立法機關是既互相制衡，亦互相配合。如何處理這個關係，不能單倚靠擔任特首或議員的人的個性、意願和技巧。可以考慮的解決方法，最低限度要提出需要訂立的典章制度，包括憲制習慣、

程序和機制，以利便合作，減省爭議，在有爭議時有方法解決。專業的立法會秘書處會使這些制度發揮最大的功效。同時，從政者及政黨越成熟，政治文化越高度發展，這些制度就越有機會運作良好。

- (4) 鼓勵發展成熟的政黨。
- (5) 加強立法會及立法會議員的辦事處，協助立法會和議員為市民提供更優秀的服務：目前的立法會秘書處日趨專業化，有資歷深厚的法律顧問和議會秘書料理事務。立法會履行職責要達到最高的水準，就必須重視秘書處繼續朝這個方向加強發展。
- (6) 改革諮詢及法定委員會的委任制度，在社會的濟濟人才之中，物色更多有識之士，使他們才幹用於服務公眾。

方案與模式

17. 《基本法》已提出的模式——即行政長官和立法會由普選產生——是最符合上述原則的模式，會消除以上指出的大部分毛病。香港人已一再顯露出他們的成熟，及對 07/08 年落實普選的願望。這仍然是香港人的目標和心願，仍然是關注組的原則立場。反對這個看法的人應提出他們代替普選的方案及認為這些方案可以解決當前問題的理據。
18. 如果政治現實不容許普選在短期內落實，其他政改方案至低限度也要符合以上討論的原則，至少能局部消滅以上提出的毛病，否則市民根本不應浪費時間考慮。例如單單增加選委會委員人數而不擴闊其選民基礎的方案，就只會加深目前的弊病而不能改善情況。另一個例子是只是增加多幾個功能界別議席而漠視不公平和不均代表等種種弊病如何得以解決，就不能算是個有用的方案。
19. 符合上述原則，可以分開或合併考慮的方案，包括以下的例子：
 - (a) 在選委會加入大數目直接由公眾選出的委員；
 - (b) 提名制度民主化：例如容許一千名登記選民經選委會 5% 委員同意就可以提名一名行政長官候選人；
 - (c) 分階段投票選舉特首，以提高最後選出的候選人所得到的支

持：

- (d) 取消行政長官選舉條例所設的限制，使行政長官能屬於政黨成員；
- (e) 檢討現行功能界別的選民成分，以取消人為設定及團體為單位的選民；
- (f) 將現行代表同一利益界別的多個功能界別議席合併為一個，然後將騰出來的議席給予現時人數龐大但不享有代表他們的議席的界別；
- (g) 收窄功能界別的否決權範圍；
- (h) 建立憲制習慣及機制以提供一個穩定的行政立法工作關係；
- (i) 恢復單議席單票制選出立法會議員，藉此鼓勵政黨的發展；
- (j) 成立一個獨立的“公共團體委任委員會”負責委任諮詢委員會的委員，不受特首或任何高官的干預。

諮詢公眾時間表

- 20. 關注組呼籲市民活躍回應這份《非專責小組報告書》，請將你的意見透過我們的網站 www.article45.com 交給我們，或書面交給政府的專責小組。
- 21. 政府不應以截止日期為理由拒絕考慮任何市民的意見。為了實際原因，我們呼籲市民儘快遞交意見書，無論如何也在政府的專責小組八月底結束諮詢前充裕的時間遞交意見。
- 22. 關注組歡迎你對政改諮詢應如何進行，以及政府提出具體方案交公眾選擇的時間表提出意見。

二〇〇四年六月二十九日

《基本法四十五條關注組》



Article 45 Concern Group
NOT THE TASK FORCE REPORT

Article 45 Concern Group
NOT THE TASK FORCE REPORT

1. Political reform cannot be considered in a vacuum. The guiding principle must be to first identify the existing vices of the current political system, and then formulate such reforms as will be effective in curing those vices. This should have been the approach of the Task Force. It is the approach we are taking in this Not the Task Force Report.

Current Vices

2. The present system continues to deny Hong Kong people the fundamental right of universal and equal suffrage.
3. The Hong Kong Community is unanimous in the strong feeling that the present system does not work and must change. There is urgent need for reform in Hong Kong's political structure, including the method of electing the Chief Executive ("CE") and members of the Legislative Council ("LegCo") members. Most regard Mr. Tung as being out of touch with public opinion, his government as ineffectual in addressing urgent problems with the right policies and unable to implement effectively even where a policy is right. The public questions the CE's mandate on the one hand, and regards LegCo as powerless to bring about needed changes on the other. These feelings and

perceptions are demonstrated in numerous events in the past 7 years.

4. **Reliance on outdated "Executive led" Model :** A fundamental problem is that the current government strives to model itself on an outdated "executive led" model of government which in truth and in fact is impossible to achieve. In a sense, all governments are "executive led". However, the HKSAR Government tries to follow the colonial model. In that model, the administration was run entirely by civil servants under a Chief Secretary who carried out the decisions made by the Governor with the advice of the Executive Council and the support of an appointed Legislative Council.
5. The model of government under the constitutional arrangements provided by the Basic Law is fundamentally different from the colonial model. It is a system of well defined checks and balance between the executive authorities under the Chief Executive, and the Legislative Council which alone exercises legislative power and has the function of overseeing the government. It is clear and inevitable that the "executive led" model of government under the Basic Law needs the support of an elected LegCo.
6. To persist in pursuing the impossible model which is part and parcel of Hong Kong's colonial past in denial of the

constitutional and social changes will only lead to frustration and failure.

7. This dichotomy is exacerbated by two other factors:
 - (1) a CE who has vast powers but no popular mandate, who is seen to be more accountable to the Central Government and to the "small circle" of electors of the Election Committee than to the general public while bypassing Legco; and
 - (2) a civil service demoralized by mistrust, and fragmented by the new "accountability system" of loosely gathered principal officials.

8. While the relationship between the Government and LegCo is crucial to the successful implementation of the political system under the Basic Law, no real effort was made to build up the necessary constitutional practices and mechanism for a workable relationship with LegCo as whole. In the absence of such a relationship, a CE without a popular mandate will tend to, and did in the case of Mr. Tung rely heavily on those members from Functional Constituencies ("FC") with which he has established a close relationship through mutual support and the creation of sectional interest. The FC system is not only contrary to the principle of equality, but is also doomed to be phased out under the Basic Law. The constant and open conflict between an unpopular CE supported by unpopular LegCo

members and the majority of popularly elected members increased the unpopularity of the Government. It also eroded confidence in and popular support for LegCo as a whole. This is a recipe for instability and erosion of treasured social values.

9. **LegCo: a House Split in Strife:** It is said that the FC seats which constitute one half of LegCo are maintained to ensure "balanced participation". However, the FCs established by Hong Kong legislation have resulted only in disproportionate influence being preserved for some elite groups of economic interest. They are perceived by the Community to be a privileged class. Moreover, under the present voting procedure in LegCo (as required by the Basic Law) they have a veto power, disproportionate to their number in LegCo, and the size of their electorate compared with the general electorate. This further exacerbates the discontent of the general public who see their representatives as powerless to voice their concern or protect their interest in major public issues. It also polarizes LegCo as well as the Community.

10. The constant and open conflict between the FC and geographically elected members of LegCo is powerful publicity portraying LegCo as a house split in half and, lost in strife and squabbles, fails to serve the public by bringing about positive, social and economic improvements.

11. It is unrealistic to expect LegCo to achieve positive results without a conscious decision on the part of the government to work with LegCo. This is because nearly all the powers to initiate policy or law are in the hands of the "executive led" government. LegCo members are deprived of the power to introduce bills touching on public policy without the CE's written consent, and the power to introduce any bill at all relating to Hong Kong's political structure or on public expenditure. The current system thus creates a near stalemate which paralyses both LegCo and government. This Gordian knot has to be cut to free the energy required to bring about Hong Kong's revival.
12. LegCo is more than what it appears to the public through the mass media. It is in fact an indispensable partner of the executive authorities in the governance of the HKSAR. This includes a substantial amount of legislation to be scrutinized and passed with or without amendment, and the constant maintenance work to ensure that the institutions and structures (including public finance) are kept up to standard and get the improvement they need to meet new challenges. The quality of the work done is vital to Hong Kong as a world class city. A major target in the political reform must be to address the question of quality.
13. **Political Affiliation:** The current legislative prohibition of a CE from being connected to political parties also contributes towards an unworkable system:-

- (1) it discourages proper development of political parties. A political party which can never come to power has no future.
 - (2) It deprives a candidate for CE of an opportunity to gain the necessary political training and insight to proper governance from working up the ladder in a political party.
 - (3) It also prevents a CE from gaining popular support through a political party favoured by the public.
14. **Policy Research:** The removal of obstacles to the coming to power of a political party will also stimulate policy research in the private sector and help to nurture mature debate and formulation of workable policies. In order to obtain the best advice, government has to be committed to the sharing of information which it has gathered and to the removal of all unreasonable barriers which prevent the dissemination of information.
15. **Appointments to advisory machinery:** A CE without public support is more likely to resort to patronage by appointing his supporters to all advisory and statutory bodies. Such appointments, however, suffer from the same vices if only at a smaller scale as those bedeviling the selection of the CE and the entire political system.

Principles of Reform

16. The foremost aim of the current proposed political reform must therefore be remedial:

- (1) To ensure that the CE will have a strong popular mandate, and that the person selected has the prerequisite leadership quality: Since the source of the problem is that the CE is currently elected by an Election Committee ("EC") with a narrow electoral base of no more than 160,000 people, a viable solution must begin with ways of enlarging the electoral base of the EC.

- (2) To redress the imbalance of power and unfair representation within LegCo: The root of the problem is that the FCs as a whole have a narrow electoral base of under 200,000 and wields a veto power over the GCs which together have an electoral base of over 3,000,000. Moreover, even among the FC seats, there is an unjustifiable concentration on certain sectors, allowing the few who control them to protect their sectoral interest against the overall public interest. Even within a particular sector, the elected member may not be representative of that sector. A viable solution must begin by removing or at least reducing the gross inequality and enlarging the electoral base of the FCs. Since the veto power is secured by the current voting procedure, LegCo's procedures for decision must be reviewed as well.

- (3) To provide a basis on which constitutional relationship between the government and LegCo can be established: The relationship envisaged by the Basic Law is the twofold relationship of check and balance, and cooperation. This cannot be left just to the individuals who happen to be elected to fill the offices and their goodwill or political skill. A viable solution must start with setting up institutions including constitutional practices and procedures to facilitate cooperation and regulate disputes and their resolution. A professional LegCo Secretariat will optimize the effect of these institutions. At the same time, the more mature the politicians and political organizations, and the more sophisticated the political culture, the more likely are such institutions to work.
- (4) To encourage the development of mature political parties.
- (5) To strengthen staff support for LegCo and LegCo members to enable LegCo to deliver better service to the public: LegCo is served by a dedicated and increasingly professional secretariat of parliamentary clerks and counsel. For LegCo to discharge its functions and duties to a stable high standard, it is crucial for the present development to be kept up and indeed enhanced.

- (6) To reform the system of appointment to consultative/advisory committees and statutory bodies so as to tap into the great reservoir of expertise and talents in the Community and channel them into public service.

Models and Options

17. As anticipated by the Basic Law, the best model which fully encompasses the above principles is the election by universal suffrage of the CE and all LegCo members. This goes a long way to address current vices. The Hong Kong Community has demonstrated time and again its maturity and its desire for such a system to be implemented in 2007/2008. This remains the goal of the people of Hong Kong, and this is our principled stand. It is for those who oppose this view to put forward alternatives and substantiate their arguments.
18. To the extent that the goal of universal suffrage is unattainable in the near term as a matter of political reality, any model for reform must at least show that it conforms with the principles set out above, and can go at least some way towards achieving those aims and curing those vices, before it can be taken seriously by the Community. For example, a model which merely expands the number of FCs without enlarging the electoral base will exacerbate and not cure the vice. A model which merely adds a few

elected seats without addressing the underlying vices outlined above is not the answer.

19. Examples of models, singly or in combination, which conform with the principles would include the following:

- (a) Introducing into the EC a substantial number of members directly elected by the public;
- (b) Democratizing the nomination process by allowing say, 1,000 registered voters with the endorsement of 5% of the members of the EC to nominate a CE candidate;
- (c) Introducing stage voting for the selection of CE to maximize support for the ultimate candidate;
- (d) Removing the restriction under the CE Election Ordinance so as to allow the CE to belong to a political party;
- (e) Reviewing the electoral make-up of the FCs with a view to eliminating artificial and corporate voters;
- (f) Combining existing FCs which are in fact multiple representation of the same interest, and utilize the seats released in this way to allow currently unrepresented sectors with potentially large electoral bases to be given FC seats;

- (g) Restricting the veto power of FCs in LegCo;
- (h) Developing constitutional practices and mechanisms to provide for a stable working relationship between the CE office and LegCo;
- (i) Reinstating the single seat single vote system in the election of LegCo members to further encourage the growth of political parties;
- (j) Setting up an independent Public Body Appointment Commission to take charge of appointments to public bodies including consultative and advisory committees without personal interference of the CE or other high ranking government officials.

Public Consultation Timetable

- 20. We invite you to respond actively to this Not the Task Force Report, by either sending your views to us via our website www.article45.com or writing to the government Task Force.
- 21. No submissions should be excluded for consideration merely because of an artificial deadline. For practical purposes, we urge you to send in your views immediately and in any event well before the government Task Force concludes its review by the end of August 2004.

22. Your suggestion on the way forward and the timetable for specific options to be put before the public for people to indicate their choice will also be most welcome.

Dated the 29th day of June 2004

Article 45 Concern Group