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Miss Julina Chan
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Constitutional Development Task Force
Constitutional Affairs Bureau
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Lower Albert Road
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Dear Miss Chan,

I enclose a Supplement to the "Not the Task Force Report" of the Article 45 Concern Group which may be published in addition to the original document.

Yours sincerely,

(Signed)

Gladys Li, SC
on behalf of the Article 45 Concern Group

Encl.

Supplement to "Not the Task Force Report"

The recent Legislative Council Elections have highlighted the many vices of the Functional Constituencies as they are presently constituted and the fact that there is no rational basis for the existence of the particular FCs which exist or for the election rules which govern them. This potentially corrupt system is in urgent need of reform.

The Administration should articulate clearly the basis for giving representation to the particular FCs which currently exist and why not to sectors which are not represented and in those FCs with corporate voters, why representation is not accorded to the individuals who work in the sectors concerned. Unless the basis of the policy is known and understood, it is not possible to discuss reform in a meaningful way.

Corporate voting should clearly be abolished.

(i) It deliberately excludes the ordinary men and women who work in the sectors involved and without whose contribution the particular sector could not possibly survive.

(ii) It violates the basis for voting to ascertain the free expression of the will of the electors because there is no lawful way in which the (unnatural) person entitled to the corporate vote can check whether the authorised representative has cast the vote in accordance with the company or body's wishes. Thus the vote becomes instead the vote of the authorised representative not the elector enabling some people to have as many as 3 votes in an election; one in a geographical constituency, one in an FC to which that person belongs and one as the authorised representative of an elector in an FC with corporate voters.

(iii) At the same time, there is no obligation on a corporate elector to consult its membership on who should be its authorised representative and how that representative should vote. This also violates the purpose of election rules which are supposed to guarantee the free expression of the will of the electors.

(iv) The legislation and rules governing FCs are irrationally inconsistent in that in some FCs with corporate voters, the Ordinance specifies which bodies are entitled to vote; in others, it is the qualifying bodies whose members are entitled to vote in which case the Government has essentially abdicated responsibility for

overseeing who is entitled to vote. The effect is that for some FCs, legislative scrutiny is a prerequisite for becoming a voter whereas for others, a change in membership rules can enfranchise or disenfranchise.

The essence of any voting system and the requirement of Article 25 of the ICCPR is that it should guarantee the free expression of the will of the electors. Any election system should be designed with the voters in mind; the result should reflect the voters' wishes and should not be so complicated that these wishes are frustrated. Complaints against the current system of voting in geographical constituencies are that it is unnecessarily complicated, that the choice is not that of the electors and the system requires strategic voting without the voter having the necessary information to make a rational and informed choice. The present system should therefore be reviewed.

This election has also demonstrated a need for a thorough review of the regulations governing elections. Too much power is placed in petty officials to act in a way which is fundamentally contrary to the basic principles of the conduct of elections and ensuring the secrecy of the ballot and integrity of the election process. Such review should

be initiated by an independent inquiry into all that has gone wrong with the most recent election.