

CONSTITUTIONAL REFORM
SUBMISSION

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OVERVIEW

The current Hong Kong Government is dysfunctional. This is due largely to design defects in our constitution. Unless remedied soon, it will cause the collapse of Hong Kong SAR as a viable world city, or a shining success for China.

Hong Kong has many advantages, amongst them being human talent who are widely traveled, widely exposed, intellectually mature and wily, with a can-do spirit. Yet, under such a defective system, we not only fail to garner the wisdom of the community, but create a government alienated from the governed.

3 diagrams are appended:-

Diagram A depicts the existing model.

Diagram C depicts the Proposed Model

Diagram B depicts possible interim system – as only one of the possibilities.

I deal here briefly with the Proposed Model as depicted in Diagram C, for comparison with the existing model and its defects. The Proposed Model envisages a LegCo, the majority of whose members are directly elected. LegCo selects the Chief Executive ("CE") who will then be appointed by the Central People's Government. The leader of the majority political party will be likely to become the CE. The CE forms his own cabinet of Ministers and Exco, usually from his own political party.

PRESENT SYSTEM

Diagram A depicts the existing model. Irrespective of the quality of the individuals running the system, it is submitted that the defect in its design is bound to cause or aggravate the following undesirable results:-

Legislative Council ("LegCo")

The 10 duties conferred on LegCo by Article 73 of the Basic law is biased towards raising questions and debating issues ie. none of them require members to make concrete policy proposals. Members at present rarely put forward alternative policy proposals for government to consider. This is hardly surprising when (i) they do not

have that duty, and (ii) they have no prospect under the present system to run the government.

In many systems in the West (as with the Proposed Model), the opposition party runs the risk that one day, it might itself get into power, when the same stones which it is now throwing at the government, might then boomerang. There is thus a natural form of self-discipline in the debates raised. This does not apply under the existing system. Censorious, unaccommodating, and sometimes even irresponsible criticisms of the administration are levied unchecked.

Sensational press reports amplify mistakes made by the administration. Complaints are made daily, with no encouragement for positive suggestions. Badgered civil servants become disheartened and defensive, aggravating the public perception that the government is useless and unyielding. This creates a general picture of gloom that there is no future for the city. The public is discouraged. The net result is that people who would otherwise be in a position to contribute to thinking and planning about the city's future do not bother, because they feel hopeless.

Chief Executive ("CE")

The CE is the head of the government. Under the present system, he is barred from being a member of a political party.

The CE is selected by the Election Committee in which the elected LegCo members form less than 10%. This gives little incentive to the CE to pay much weight to what the LegCo members say.

So whilst the public on the one hand reads and hears LegCo members' views splashed across the media, it sees on the other hand, government and the CE proceeding as if the views of its elected representatives go unheard and unheeded. This adds to the sense of frustration resulting in partly the recent election success of candidates who protest loudest against the government – in a seeming attempt to make themselves heard, the electorate goes for someone who complains loudest.

Presently, the CE goes into office without the backing of a group of supporters or helpers, as contrasted with the Proposed Model where the CE heads his party, with a cabinet of able ministers who shares his ideals and are familiar with each others' working style.

Furthermore, in the Proposed Model, the CE's party would have formulated its election platform on a coherent and comprehensive body of policy issues, refined from debates during elections from opposing parties. This is important, as the biggest complaint against the CE under the current system is not so much that the civil service is badly implementing policies, but that the actual policies, themselves, are not well thought out, lack vision, short-sighted and without coherence or direction.

The existing system puts an unfair and unrealistic expectation on the CE to come up with a visionary package of policies for Hong Kong in the relatively short time that he takes up his office, and virtually single-handedly. The sheer depth and complexity of many policy issues requires years of study and expertise to resolve, which the present

corner-cutting

system fails to accommodate. Instead, Hong Kong has been prone to operating on knee-jerk reactions, and delivering ~~edge-cutting~~ ventures with fanciful appeal. This often results in public objection against government measures and policies, pushing government and the public into antagonistic camps. Unless the system is changed, this scenario is likely to continue, irrespective of which individual becomes the CE.

Ministers

The system of ministers was introduced to try and overcome the lack of support for the CE. Governance is a complex issue. To merely transplant a successful candidate from the business or professional sectors to lead a section of government means taxpayers are paying heavily for steep learning curves by its ministers, and for the mistakes made. Resignation by ministers over mistakes merely results in starting another learning curve by a new candidate. It is submitted that this system is wasteful, and has little guarantee for the suitability of the person for the post.

Contrast this with the Proposed Model, where all ministers would have spent time prior to their appointment in under-studying for the job, and would be likely to be more familiar with the technical background of their portfolio, and with a coherent body of policies of the party. They would have been vetted within their own party to be suitable for taking up a particular post, instead of being a shot in the dark as in the present system.

When ministers resign, there is no constructive benefit to society, except for emotional gratification. Given the circumstances of departure, the experience acquired by the resignee is unlikely to be passed on. It merely adds to the overall gloomy atmosphere that the government is weak. On the other hand, if a resignee remains within his own party, the political wisdom gained from such experience will benefit the party and is not lost.

A political party would allow for succession planning and grooming of possible ministers which go on for years before they make the grade. This enhances the quality of the personnel and improves standards of governance.

PROPOSAL

It is submitted that by changing the design of our constitution, many of the undesirable results presently experienced as outlined above can be avoided.

The following changes are proposed for putting in place the Proposed Model: -

CE Selection

1. Change to same year as elections for LegCo;
2. Allow CE to be member of political party;
3. Abolish Election Committee;
4. Article 45 needs only slight amendment for CE to be elected by a LegCo which is formed by universal suffrage.

Forming LegCo

The membership size of 60 should be substantially increased with the setting up of a bicameral system of (i) Functional and Geographical Constituencies and (ii) Directly elected members. The actual numbers should be decided upon by public consultation, but the writer advocates 150, as the future of Hong Kong deserves to be considered by a fair number of LegCo members.

(i) Functional and Geographical Constituencies:-

- the present 160,000 electors for Functional Constituencies should be expanded to cover at least 60% of the population. This can be done by:-

- creating new Functional Constituencies,
- combining with some of the 4 sectors previously represented on the CE's Election Committee, eg. Religion, NPC deputies,
- giving a limited number of seats to elected representatives of the District Councils* so that the District Councils have a greater voice;

** At present, Hong Kong has 519 District Council members, of which 390 are elected. The District Councils' main function is to advise the Government on matters affecting the well-being of the people living and working in the districts as well as on the provision and use of public facilities and services within the districts. The Government also consults these bodies on a wide range of issues.*

(ii) Directly elected members:-

The existing system of directly electing members from a geographical constituency duplicates the purpose which the District Council is supposed to serve.

Instead, it is proposed that there should be universal suffrage in that:-

- all Permanent residents over 18 or sound mind should be entitled to one vote.
- the candidates will represent the interest of the whole of Hong Kong, and need not be attached to one geographical area.
- The voting system should be as simple as possible ie. If 150 seats, then the 150 candidates with the highest number of votes all over HK will be elected, instead of the complicated system of list voting. Simplicity in the voting system is a guarantee of the rights of the ordinary citizen under Article 26.

The actual number of seats, and the re-delineation of Functional and Geographical Constituencies are matters which the public should work on. The writer favours 50 for Functional and Geographical, and 100 for directly elected seats, as fairly representing the interests of Hong Kong, whilst at the same time, preserving stability.

It is further advocated that the District Council system should be improved upon, including the system of elections, and re-scrutinizing and expanding the functions of the District Council, and system of appointments, so that its goals can be more

effectively achieved. Particularly important is its role of giving government feedback on public sentiment regarding new policies and measures. If this system works properly, communication between government and the public can be improved.

Interim Changes

Governing a multi-faceted city like Hong Kong is a complex matter, requiring expertise and experience, plus a spirit of prudence and adventure.

For the Proposed Model to be in place, sufficient lead time and preparation has to be given for the development of political parties which are able to undertake detailed study into public policies and come up with answers and formulations.

It is proposed that:-

- a consensus should be reached as early as possible to move towards the final Proposed Model. Seeing where the final model leads, community will be able to focus upon and move towards the same direction, however long the process may take.

- in the meantime, to alleviate the undesirable results of the design defects in the existing system, an Interim Model should be put into place as soon as practicable.

There are many ways to lessen the undesirable results caused by the design defects. **Diagram B** depicts one possible model, whereby:-

- (i) LegCo has the majority vote on the Election Committee for the CE;
- (ii) Increasing the number of directly elected LegCo members from 30 to 60 gives recognition to the popular demand for universal suffrage;
- (iii) corporate votes should be abolished - they are obviously inequitable, and easily manipulated;
- (iv) Since the final model envisages abolition of the Election Committee altogether, shrinking the size of the various sectors on the Election Committee from 200 to 20 in the interim, will mean that this is less drastic, but force the sectors to focus on the best candidates in the long run, when these sectors will be merged with the Functional Constituencies.

Dated: 15 Oct., 2004.

(Signed)

S.S.Y. Cheung.

Attached: 3 diagrams

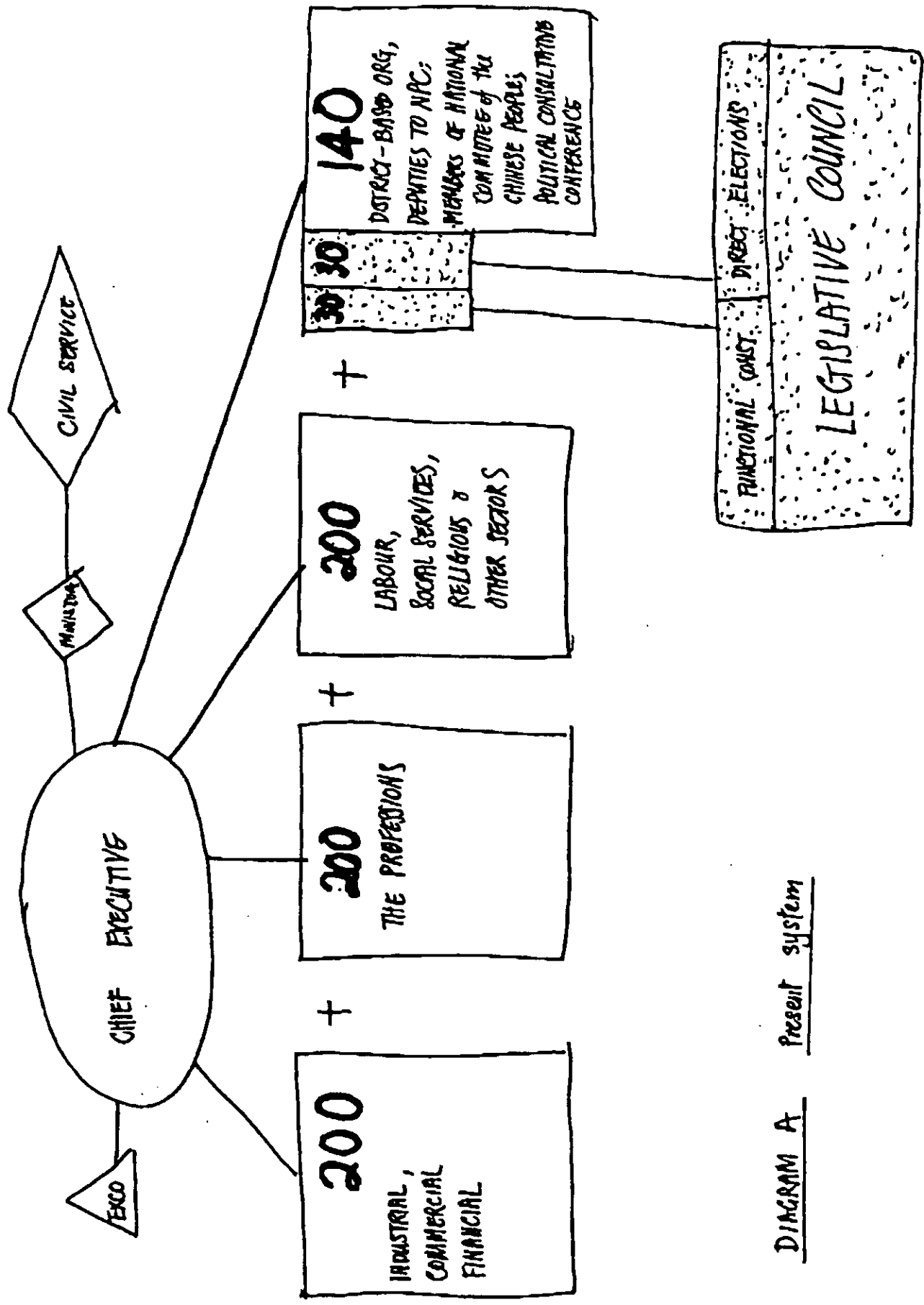


DIAGRAM A Present system

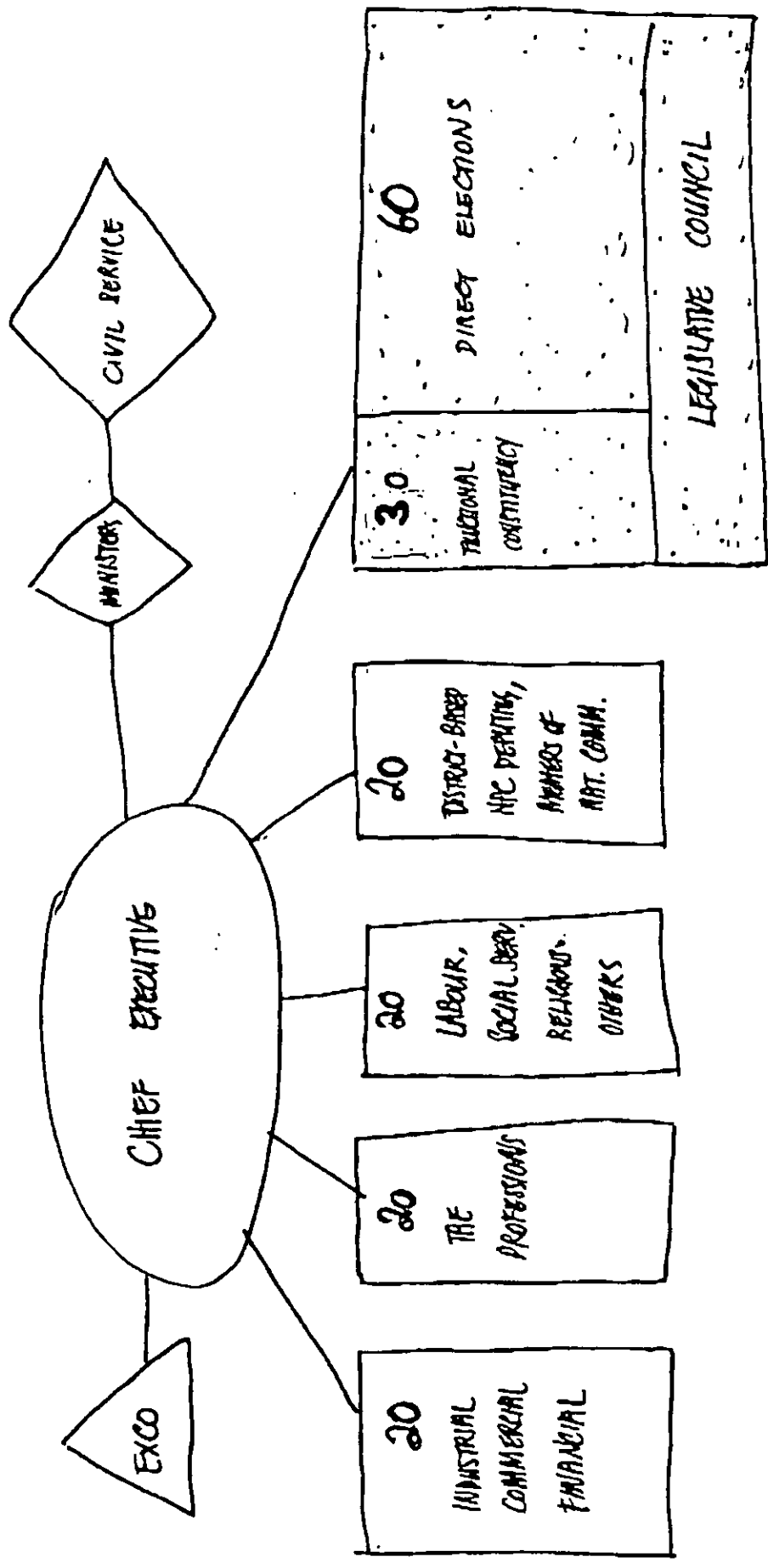


DIAGRAM B

INTERAM — one possible method

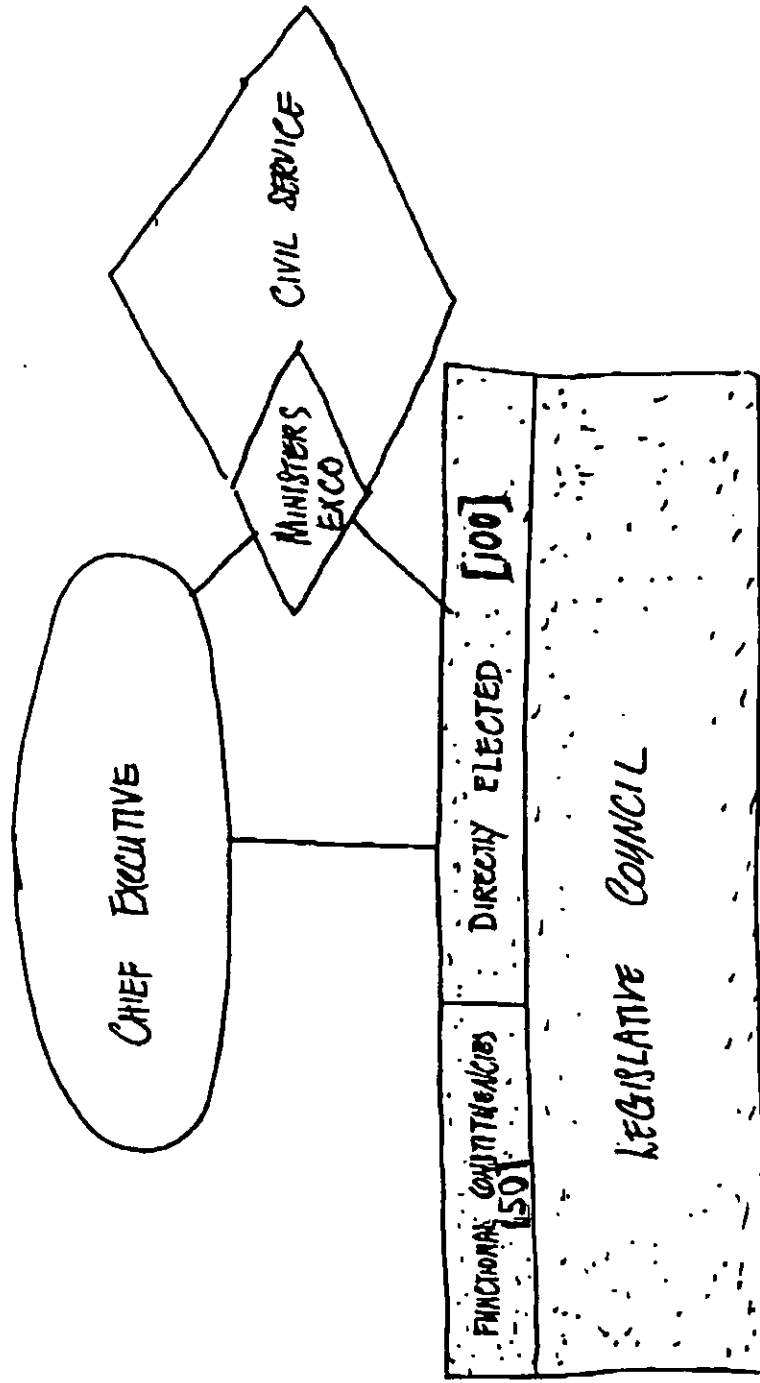


Diagram C Proposed Model