

## 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 curbing 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 Reliance on outdated "Executive led" Model: A fundamental problem is that the current government strives to model itself on an outdated "executive led" model of government which in truth and in fact is impossible to achieve.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.
10. 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.
11. The constant and open conflict between the FC and 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.
12. 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.

13. 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.
14. 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.
15. 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.
16. 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.

17. 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.
18. **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

19. 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 pre-requisite 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 wield 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

20. 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.
21. 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.
22. 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) Democratising 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

23. 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](http://www.article45.com) or writing to the government Task Force.
24. 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.
25. 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    day of June 2004

Article 45 Concern Group