



18 May, 2005

The Hon Donald Y K Tsang, GBM, JP
Chief Secretary for Administration
Government of the HKSAR

Dear *Donald,*

We enclose herewith a BPF response to the Fourth Report of the Constitutional Development Task Force and would welcome the opportunity to meet and explain our proposal with the Task Force. In the meantime, should you require further information, please do not hesitate to contact us or Ms Connie Hui, Secretary General of BPF (tel: ; email:).

Yours sincerely,

(Signed)

David Akers-Jones
President

(Signed)

Peter H Y Wong
Chairman



The Fourth Report of the Constitutional Development Task Force

Part I. Method for Selecting the Chief Executive In 2007

1. The Number of Members of the Election Committee

Questions

- As there are more views supporting an increase in the number of Election Committee members, could we take it that the number should be increased, and that this should form the basis for the next stage of discussion?
- If the number is to be increased, what principles and criteria should be used in considering the level of increase?

BPF Response:

- As pointed out in our submission to the Third Report of the Task Force, the current 800-strong Election Committee is very representative considering the broad range and number of organisations and individuals included. It can be relied upon to elect a candidate for the post of the Chief Executive.
- However, to facilitate more candidates and more representation the BPF would support increasing the number of members of the Election Committee preferably to 1,600. This means the number of members for each sector simply doubles while allowing room for changes to the subsectors if required.

2. The Composition of the Election Committee

Questions

- If the number of Election Committee members is increased, should the delineation of the four sectors and the proportion of seats allocated to these sectors be changed? What principles and criteria should be used when considering the method of delineation?
- If more District Council members are to be included in the Election Committee,



should we at the same time adjust the delineation of all four sectors and the proportion of seats allocated to those sectors?

BPF Response

- Again as pointed out above, it is BPF's view that the existing four sectors of the Election Committee are a comprehensive description of the entire Hong Kong community and there is no need to change.
 - The BPF also sees no merit in judging whether one particular sector should be given more weighting than any other and supports the retention of equal shares of the number of seats of the four sectors. This means that if the size of the Election Committee is to double from 800 to 1,600 members, the representatives for each sector should correspondingly double to 400 members.
 - However, some sections of the population do not belong in any one sectors at the moment. To make the Election Committee more inclusive the subsectors and their components should be carefully reexamined under the principle of broad representation by the Task Force.
 - As for the Fourth Sector, the BPF needs to be persuaded of the need for more District Council members to be included in the Election Committee, or a disproportionate increase of District Council members if the Election Committee is to be expanded. On the other hand, all Hong Kong National People's Congress Deputies and Legislative Councillors have already been included as members of the Election Committee. A suggestion which could be further explored is to have past NPC Deputies or Legislative Councillors of the SAR or their representatives to be included.
3. The Number of Members of the Election Committee required for Nominating Candidates for the Office of the Chief Executive

Questions:

- The current threshold for nomination is not less than 100 members (or one-eighth of the current total number of Election Committee members). If the number of Election Committee members is increased, should the proportion of members (one-eighth) for nomination be maintained, or should it be lowered?
- At which level should the threshold for nomination be pitched, so that on the one



hand more potential candidates could have an opportunity to be nominated, whilst on the other hand ensuring that all candidates have a certain degree of support?

- Should candidates be required to have a certain degree of support in each of the four sectors? If so, how would we ensure that candidates have such support? Should a minimum number of subscribers be required in each of the four sectors? If such a threshold is to be set, what should be its appropriate level? What principles and criteria should be used to determine the threshold for each sector?
- If an upper limit is to be set on the number of subscribers for a candidate, what principles and criteria should be used in determining the limit?

BPF Response:

- The nominating process should prevent a single candidate from securing a dominant number of nominations as well as to exclude frivolous candidates who have little or no support and stand no realistic chance of being elected. A maximum and minimum number of nominations that each candidate can receive therefore are both necessary.
- The Federation also supports the suggestion to require candidates a certain degree of support in each sector that it would enhance the degree of all round support for the eventual winner and further discourage weak or frivolous candidates. On the other hand, it is sensible that the requirement should be lower than the overall threshold for nomination, as it is natural that a candidate would command more support from one or two particular sectors than others, and should not be set so high as to becoming restrictive.
- Given the above considerations, the BPF recommends the following with regard to the number of nominations that each candidate can receive:
 - The current threshold of nomination of 12.5% (one-eighth) of all members of the Election Committee should be maintained.
 - A cap of nominations that a candidate can receive should be set at 25% (one-fourth).
 - The candidate should gather at least 1.25% of all members of the Election Committee from each sector.
- Take an example of a 1,600-member Election Committee, the recommendations of BPF will mean:



Threshold of nominations = 200

Cap on nominations = 400

Minimum nominations from each sector = 20

Composition of the minimum requirement for nominations:

Any 3 sectors: 20 x 3 = 60

Any 1 sector: = 140

Total nominations = 200

4. The Delineation and Size of the Electorate of the Election Committee

Questions

- What principles and criteria should be used in determining whether and how to increase or reduce the 38 existing subsectors?
- In which subsectors should corporate voting be replaced by individual voting? What kind of individual voting should be adopted?

BPF Response:

- Many of the subsectors are already based on individual voting. However, the BPF does not consider it appropriate for certain subsectors to be based on individual voting rather than corporate voting. This is particularly the case in respect of the commercial subsectors whose interest should be represented by the management of the companies but not necessarily by the individuals who are employed or in some way associated with the companies. Replacing corporate voting with individual voting in these subsectors would eliminate the spirit and intention behind functional constituencies.
- We however recognise the potential weakness of corporate voting, in particular the potential abuse and manipulation of packing, where a large conglomerate could pack a single FC with controlled subsidiaries and thereby increase its overall number of votes. However, we believe that the risk of this practice could be managed by introducing a cap on the number of votes a group of companies could control. For example, the aggregate voting rights of members of the same group of



companies can be restricted to 1 percent of the total voting rights of all voters. This mechanism is adopted by a number of associations in their own general meetings.

5. Others

Questions

- Should we start examining whether the Chief Executive should be allowed to have a political affiliation? How would this affect the development of political parties, as well as the relationship between the executive and the legislature?
- What are the pros and cons of setting out, at this stage, a timetable for selecting the Chief Executive by universal suffrage?

BPF Response:

- Cap 569 of the Chief Executive Election Ordinance requires the winning candidate to declare he/she is not a member of the political party. The BPF however sees no need to exclude political party members from becoming the Chief Executive. In fact, such a restriction is undesirable as the strengthening of political parties is inevitable in the development of a representative government. It is BPF's view that the winning candidate should be able to retain political affiliation but should make it known during the election.
- The BPF recommends a road map which sets the benchmarks for each stage of progress rather than a fixed timetable for selecting the Chief Executive by universal suffrage. This would allow flexibility and take into consideration the changes, progress and results made at each election, in particular 2007/08, before making the final decision.

Part II. Method for Forming the Legislative Council In 2008

1. The Number of Seats in the Legislative Council

Question

- As different sectors of the community have divergent views on whether to increase the number of Legislative Council seats, what principles and criteria should be used



in considering whether the number of seats should be increased?

BPF Response

- The principal question is whether the Legislative Council is able to function properly with its panels and committees without additional members. Hearsay is that it does not. There should be more members so that it can function properly. The BPF is looking into the bicameral system with a view of introduction in 2012 which would likely lead to an expansion of number of members of the Legislative Council. Depending on the discussion of the bicameral system, the BPF recommendation in the meantime is to expand the Legislative Council to 80 members, i.e. an increase of 20 members, in 2008.

2. The Number of Seats Returned by Geographical Constituencies through Direct Elections

Question

- The community has not expressed many views on this issue. However, if the number of seats returned by geographical constituencies through direct elections is to be increased, what are the principles and criteria to be used in considering the level of increase?

BPF Response

- If the Legislative Council expands to 80 members in 2008, there should be 40 directly elected members in accordance to Decision of the NPCSC that members returned by functional constituencies and members returned by geographical constituencies through direct elections shall respectively occupy half of the seats.
- The BPF advocates a mixed electoral system for the geographical constituencies members. Under the system, each elector casts two votes:
 - One for a local constituency member by the alternative vote. There could be 20 constituencies or districts with each constituency member representing 250,000 constituents. People in, say, Shau Ki Wan or Ma On Shan, will be able to take their concerns and issues directly to their representative in the Council and create a link between the representatives and a single geographical constituency which is not emphasised in the present electoral system.
 - One for 'national representative' by an open list similar to the existing electoral



system. The elector then also will be able to vote for the party of their choice.

3. The Number of Seats Returned by Functional Constituencies

Questions

- If the number of functional constituency seats is increased, what principles and criteria should be used in considering the level of increase?
- If new functional constituencies are created, what principles and criteria should be used in considering whether a particular functional constituency should be included?

BPF Response

- The same principle as in (2) above should apply. This means with an 80-member Legislative Council the functional representatives should increase by 10 to 40.
- New functional constituencies should be included depending on their relative importance to society. There are also anomalies in membership of some existing constituencies in which a number of professionals and social sectors are grouped together. For example, each of the sections of Architecture, Surveyors and Planning as well as Performing Arts and Culture and Publication deserves separate representation. The construction industry which plays a prominent role in our economy should be separated from Real Estate and shipping and all its associated activity requires a separate identity.

4. The Delineation and Size of the Electorate of Functional Constituencies

Questions

- On the premise that the electorate base of functional constituencies is expanded, what principles and criteria should be used in considering the creation of new functional constituencies?
- On the premise that the electorate base of functional constituencies is expanded, what principles and criteria should be used in adding, reorganising, splitting, and removing functional constituencies?
- How should corporate voting be replaced by individual voting?



BPF Response

- The same principles as mentioned in (3) above should apply – that new functional constituencies should be included on the basis of their relative importance of the sector to the community and where anomalies exist constituencies should split or be reorganised.
- Please refer to Part I (4) for detailed discussion on corporate voting. To reiterate, it is BPF's view that replacing corporate voting with individual voting would not be appropriate for certain functional constituencies, in particular the commercial constituencies whose interest should be represented by the management of the companies but not necessarily by the individuals who are employed. Replacing corporate voting with individual voting in these constituencies would eliminate the spirit and intention behind functional constituencies. However, to avoid potential abuse and manipulation of packing, measures such as a cap on the aggregate voting rights of members of the same group of companies, say to 1 percent of the total voting rights of all voters, should be introduced.

5. Provisions Regarding Nationality of Legislative Council Members

Question

- On the premise that the relevant provision in the Basic Law will not be amended, what principles and criteria should be used in preserving, reducing, or eliminating the number of the Legislative Council members who are foreign nationals?

BPF Response:

- Foreign nationals within the Legislative Council should be preserved and the BPF does not recommend any changes to the current arrangement.
- Foreign nationals are of great value in building Hong Kong into a culturally and linguistically diverse society. It will be a step back on "One Country Two Systems" and indeed to Hong Kong's detriment if foreign nationals in the Legislative Council are reduced or the liberal approach to them are tempered with.

6. Others

Questions



- Should we start examining the long-term future of functional constituencies? Likewise, should we begin to explore different forms of universal suffrage?
- What are the pros and cons of setting out, at this stage, a timetable for electing all the Legislative Council members through universal suffrage?

BPF Response

- The HKSAR is required by the Basic Law to proceed with its constitutional development in a gradual and orderly manner. Instant elimination of the functional constituencies not only would be a giant stride into an unpredictable future but also be contrary to the expressed text.
- In this regard, the BPF advocates a bicameral system to be introduced in 2012 in the SAR. Directly elected members will form its own, separate chamber whilst a Second Chamber will be created for representatives from the functional constituencies.
- Adoption of a bicameral system, which is found in more than 70 countries including many mature democracies with hundred of years of experience in democratic institutions around the world, will represent a significant step towards the evolution of constitutional development of Hong Kong. 2012 should not necessarily be the end of this evolution but we could take a step-by-step approach so that progress and results would be evaluated at each election, in particular after 2012, before deciding on further changes.
- A paper to discuss the concept of the proposal is attached for reference. The BPF is working on a full, extended paper which deliberates in detail the bicameral system, including the development of representation government in Hong Kong, models / experience elsewhere, options / proposal for Hong Kong, Interaction with the Basic Law, etc., and would submit for public deliberation when appropriate.

18 May, 2005



2012: A Bicameral Solution for the SAR

1. "Give power to the people" and "universal suffrage" were the common cry of thousands who marched in 2003 and 2004. Reacting to these marches and cries, our national leaders called for restraint and to follow the gradual and orderly progress in political development required by the Basic Law. How, then, to meet both the need for restraint and to respond to the general wish to have a fully directly elected Legislative Council?
2. To have a fully directly elected Council in 2012 and to abolish the functional constituencies would be to stride into an unpredictable future. It would not meet the gradual and orderly criteria and would not be acceptable to the Central Authorities. There are some who say "why change the existing system", but is this really a viable alternative when there is such a persistent demand for change and when we need to make progress towards the goal envisaged by the Basic Law? Will not the demand become more strident? Is there a middle way, a means to compromise between a fully directly elected Legislative Council and the need for restraint, to hear the popular voice, and to make gradual progress but to respond to the strictures of the nine requirements referred to in Section II above; to ensure, in the words of Beijing, that the management of Hong Kong's Government should remain in the hands "of all sectors of society"? The real question to ask is whether conflict between popular demand and gradual and steady progress can be avoided. The answer is that it can.
3. The National People's Congress has declared that any changes to the election of the Legislative Council made in 2008 must protect the equal



balance between the directly elected and functional constituencies and maintain the separate voting system of the Legislative Council. This clearly indicates a desire, at least for the immediate future, for a continuing role for vocational and functional representatives. Opinion surveys show that Hong Kong people's views are mixed or even contradictory, for while there is a strong wish for direct elections there is also support for the retention of functional constituencies!

4. Many countries have had to face a similar dilemma when developing their democracies, to find a balance between a directly elected legislature and the long term interests of the nation, to provide a necessary check to extremism and to give time during the legislative process for the whole community to think things out clearly. Their answer often lay in having a representative system consisting of two chambers.
5. A two-chamber system was in fact proposed for Hong Kong during the last stages of drafting the Basic Law, but there had already been five years of drafting and the proposal was made too late for it to be properly evaluated.
6. Would a bicameral system provide a solution to our dilemma - the need for gradual change and the call for immediate universal suffrage? Would a bicameral system merely lead to deadlock between the two chambers and to further procrastination in getting things done? We have time now before 2012 to examine how bicameral systems work elsewhere (previous sections have given an introduction to some of them), and how this system could lead to a more thorough examination of the issues before the community and the Government. It could lessen the tension between the two



categories of members, directly and functionally elected. It could, if properly structured, lead to greater efficiency and expedition in the conduct of government business.

7. Because of these qualities, two chambers, far from being obsolete or outdated, are found in more than seventy large and small countries around the world – the USA, Canada, Brazil, Australia and the new nations of Eastern Europe, to name but a few. Indeed of some countries which abolished them, 11 have since reinstated them and in 14 nations new second chambers have been created. Of the seventy countries with two chambers, each has adapted them to suit particular circumstances and there is no unanimity in their composition. Many have arisen from the need to give elected representation to the interests of separate federated States or Provinces. But this is not a hard and fast rule. In some countries the members are appointed, in others the members are based on vocational categories and in others there is a mixed system. It is also interesting to note that even the separate states of federal governments often themselves have a bicameral legislature, e.g. all but one of the United States of America have bicameral systems.
8. Hong Kong has had representation elected by function or vocation in the Legislative Council since 1985. Later, when the Basic Law was completed in 1990, functional representatives continued to be included and they have since become embedded in the governance of the HKSAR. As their number has grown, the composition of FCs has become imprecise. Some professions are represented, others are not, some sectors such as women's organisations are not represented at all, and the inclusion of corporate,



rather than individual electors, has been widely criticised. The system therefore has its critics both on legal and ideological grounds. Hopefully, improvements to remove some of the outstanding flaws and objections will be made in time for the next election in 2008.

9. Taking these factors into consideration, we believe the response to the popular cry to have a wholly directly elected Legislative Council lies in giving the directly elected members of the Council, who would represent parties or who are political independents, a chamber separate from the functionals, and to create a second chamber for the vocational or functional representatives.
10. At present Legislative Council consists of 60 members, 30 directly elected, and 30 functionally elected. As it is, the 60 are hard put to cope with legislation, their work as members of policy panels, special committees and so forth. With the FC representatives moved into a second chamber for the remaining number of directly elected members to perform efficiently will therefore need their present number of 30 to be increased to 40 or more. The number of functional representatives who move into the second chamber may also need to be increased so as to elect separate representatives from those sectors who are now grouped together, e.g. sports and culture, and others who are not represented at all, e.g. Green groups. It may be desirable, too, following overseas experience, to create an Appointments Committee to elect and appoint some distinguished persons to the second chamber or to increase its representativeness in some other way, e.g. regional and university representation. This is clearly a matter for further consideration.



11. It is a general pattern of bicameral systems that the first chamber is larger than the second. This is not only a reflection of the amount of work to be done but results from the nature of the respective chambers. The second chamber or senate is a place literally to allow for second thoughts to be given to bills and motions passed by the first chamber, to give careful scrutiny, to appoint an expert committee, to seek wider consultation, if necessary to propose amendments to legislation and then to refer the findings of their deliberations back to the first chamber. Ample time would need to be given to the second chamber to conclude its deliberations. The time needed would depend on the nature of the business involved.

12. The question would undoubtedly arise of how to deal with a lack of agreement between the two chambers. There are various ways to do this. It can be done for example by giving the second chamber the power to seek additional time, by appointing a joint committee of both chambers, by providing for bills to shuttle between both chambers until agreement is reached and so forth. Some may say that there will be gridlock but this criticism ignores the dynamics of the situation, the discussion which will take place in the community and the role of the media will play. An improved "ministerial" system, an improved election formula for the election of the Chief Executive, and the development of organic links between the Legislative and Executive Councils will also effect the way in which situations will play out. The whole environment of governance will have changed. It is not suggested therefore there would be a need for the second chamber itself to be given a general right of veto nor would it be desirable.



13. There may be constitutional matters and others which impinge on the powers of the Central Authorities, for these the second chamber could be given the power to exercise a special veto. For other matters, if after thorough debate in both chambers, the unusual circumstances arise that there is final deadlock between the two chambers, reserve powers to make a final decision could be given to the Chief Executive and his Executive Council. The question of the power the second chamber would exercise is important and will require careful examination, here the experience and practice of other second chambers may be helpful. These are practical matters and are capable of solution and should not detract from the general thrust and desirability of freeing the first chamber from the functional representatives and the advantages of the second chamber concept.
14. An additional factor in its favour is that the members of the second chamber, being less in the public eye, would be able to concentrate more on their vocational interests and the details of legislation and to be concerned about the wider issues of the constitution and human rights.
15. This, then, is a way to meet the need to make gradual and orderly progress, by emulating procedures which are common to many democracies, but to adapt the structure to suit Hong Kong. A second chamber of the kind described would preserve and provide a better check and balance than the present system, in separating the two components it would help to reduce tensions and dissatisfaction created by the present voting system which requires a separate majority from both the directly elected and functional members for the passage of motions, bills or amendments introduced by individual members. Having a fully elected and some what enlarged first



chamber in itself will be a big step forward and will go some way to meet popular demand for universal suffrage.

16. 2012 should not be the end of this evolution, the changes proposed represent a significant step forward and, no doubt, as we move forward thereafter further modifications can be made. The ideas have previously found support from many commentators but have been taken no further, possibly because of changes may be needed to be made to the Basic Law. Indeed the changes proposed herein may fall within the powers conferred by the Annexes of the Basic Law. Some commentators may raise objection even to these proposals, arguing that they are too conservative, we would repeat that some countries, who previously abandoned such a system, have reverted to it, and many others have adopted it, while many other mature democracies, with very many years of experience in democratic institutions, still keep the bicameral system alive and in use.
17. Hong Kong's democratic development is at an early stage, and adoption of a bicameral system would amount to gradual and orderly progress towards greater democracy, while continuing to maintain a legislative body which is representative of all sectors.
18. The BPF now puts this bicameral system forward as a practical solution to the evolution of our constitution. There will be need for further debate about the details but the essence for a middle way is there.

The Business and Professionals Federation of Hong Kong
24 May, 2005