

傳真 (2523 3207) 及郵遞

政制事務局政制發展專責小組  
政制事務局政制發展專責小組秘書處  
香港中環下亞厘畢道  
政府總部中座三樓

敬啟者：

有關：建議行政長官選舉設立「信任票」制度

有關行政長官的產生辦法，《基本法》附件一第五款訂明：「選舉委員會根據提名的名單，經一人一票無記名投票選出行政長官候任人。具體選舉辦法由選舉法規定。」《基本法》第十一條訂明特區立法機關制定的任何法律，均不得同該法相抵觸。惟現時《行政長官選舉條例》（香港法例第 569 章）第 23 及 24 條卻規定，只有在多於一個候選人獲得有效提名的情況下才須進行投票。因此，該做法並不符合《基本法》附件一的規定。

此外，社會上一般亦認為《基本法》附件一規定候選人必須取得一百個或以上選舉委員會委員的提名門檻過高，以至容易出現如二〇〇二年行政長官選舉只有一名候選人取得足夠提名遂毋須進行投票而自動當選之情況。

對此，我們建議應修改《行政長官選舉條例》，仿效澳門現時的做法，在二〇〇七年及以後的行政長官選舉，縱使只有一名候選人選委仍須對該候選人進行的投票，候選人必須取得例如過半數選委的「信任票」方可被確認獲選。

設立「信任票」制度具有以下的好處：

1. 選委不會因為只得一名候選人而被剝奪透過投票表達意向的機會；及
2. 因為投票結果不但決定唯一的候選人能否當選，還反映該候選人在選委會的支持度，因此該候選人在取得足夠的選委提名後，仍必須努力進行選舉工作，以爭取其他選委的支持；及
3. 縱使行政長官並非由普選產生，設立信任票的制度可為選舉注入民主的元素。

我們希望 專責小組能對上述建議詳加考慮。

敬祝安康

〈基本法〉四十五條關注組（立法會）

吳靄儀 余若薇 梁家傑 湯家驊

2005年5月23日

## 基本法四十五條關注組二零零五年五月二十三日對政制發展意見書

1. 基本法四十五條關注組再三強調，要改善施政，香港特區政府必須民主化。現制的核心問題是手握大權的特首並沒有得到廣泛市民的認受。特首由北京挑選，透過小圈子「選學」產生，在市民心目中，這樣的特首關心北京的旨意遠勝於香港民意。
2. 現制另一重大問題是立法會無法發揮代表市民監察政府的作用，無力督促政府順應民意，而招致這個後果的最大障礙，是功能界別權力過大，及分組點票機制。
3. 普選是香港人的共同意願及香港的唯一路向。如果特區政府爲了任何理由不能或不願在 2007/2008 年實施行政長官或立法會全面普選，則政府有必要：
  - (a) 提出一個在政府能力範圍內最能體現普選訴求的方案； 以及
  - (b) 提出實施普選的具体時間表。
4. 關於 2007 年行政長官的選舉辦法，關注組的立場已在先前的意見書中清楚說明，我們看不到有什麼妥協的空間。假如政府堅持保留任何形式的選舉委員會，我們認爲任何撤除有份量地加入直接從廣大市民中選出的成員的改革，都是意義不大。
5. 關於立法會的產生辦法，關注組支持 2008 年全面普選的立場不變。社會上有多種改革功能組別，減低其不民主程度的建議。政府若堅持不在 2008 年取消功能議席，就必須正面回應這些改革建議。任何增加功能組別的做法，都是民主倒退。
6. 關注組重申，在修改基本法附件一及附件二的範圍之外，還有很多不涉及這兩個附件的改革，早應付諸實行，政府不應再拖延下去。這些改革包括下列項目：
  - (a) 取消功能組別的團體選民；
  - (b) 取消區議會的委任制；
  - (c) 委任更多政見不同的人士爲諮詢及法定組織的委員，以擴闊政府政策制定過程的市民參與；
  - (d) 成立公共團體委任專責委員會，負責推薦加入諮詢及法定組織及其他公共團體的委任人選，不受特首及高官干預； 並負責嚴格執行任何人士不得同時參與超過 6 個該等組織、或出任任何一個該等組織超過

6 年的規則：

- (e) 發表公眾諮詢指引，規定政府在主要政策改變上必須諮詢公眾，並訂立公眾諮詢需達到的標準，包括在方法、程序及公開發表諮詢結果等方面；
  - (f) 向立法會提交《資訊自由條例草案》，以保障政府的透明度和問責性。
7. 有說普選的一個障礙是香港缺乏成熟的政黨，關注組認為，其實剛相反，是實施普選遙遙無期，窒礙了政黨的發展。確實的普選時間表，是刺激政黨發展的最有力因素。
8. 在實施普選特首之前，政府應考慮起碼以下的中途建議，令政黨有更大機會加深施政經驗：
- (a) 加強獲取資訊的權利及經常諮詢，以鼓勵政黨及智庫提出政府以外的政策；
  - (b) 訂立政策，委任政黨成員加入各層政府諮詢組織，包括行政會議。
9. 作為普選行政長官實施前的中途措施，政府應改革行政會議，大幅減低官方成員的數目，挪出空間，大幅增加非官方成員 — 包括在立法會選舉成功的政黨領袖 — 的數目。詳細建議在附件中列出。
10. 為改善行政與立法機關之間的關係，政府必須認真履行基本法第六十四條之下，「答覆立法會議員的質詢」的義務，不是只在形式上而是須在實質上答覆質詢。政府應承認，不作答、誤導立法會或對立法會說謊，都是違反基本法的行為。特首應就上述立場公開發表聲明。

基本法四十五條關注組  
二零零五年五月二十三日

## 附件： 改革行政會議的中途建議

1. 目前行政會議由十四名官方成員及七名非官方成員組成，一共是二十一人，由行政長官主持會議。該十四名官守成員另組成一個政策委員會，由政務司司長主持。非官方成員之中有三名是現任立法會議員。關於委任行政會議成員方面，除了基本法第五十五及五十六條之外，並無規則或慣例。
2. 行政會議不能有效運作，作為行會成員向行政長官提出意見的討論場所，已是個公開秘密。政府政策的擬訂及任可統籌，其實都只在政策委員會進行。行政會議的討論理論上必須保密。
3. 行政會議太大，不利討論，應該縮減人數，應大幅減低官方成員以增闊加入更多非官方成員的空間，藉此增闊社會參與。在官方成員方面，保留政務司司長、財政司司長、律政司司長、公務員事務司司長、保安局局長已經足夠。
4. 非官方成員應大幅增加，並在下列類別選任：
  - A. 立法會內主要政黨的領袖。應成立慣例，凡在立法會選舉中取得包括至少一個直選議席的八個或以上議席的政黨，其黨魁應獲邀請入行政會議，除非該名人士不符合第五十五及五十六條。
  - B. 來自專業或商界的獨立立法會議員。
  - C. 具有社區或公眾服務功績的非立法會議員社會領袖。
  - D. 少數社群的代表。
5. 現時的政策委員會是事實上的內閣，即使不是，也應轉化為內閣角色並以內閣為名稱。內閣應由特首主持，政務司司長副之。
6. 行政長官若由普選產生，候選人應在競選時包括他的擬備內閣，但即使未有普選，也應這樣做。

7. 內閣在特首統領之下擬訂政策，但應適時諮詢行政會議，並在一個階段未獲共識之前，不應進入下一個階段。
8. 集體負責只限於內閣。行政會議不應再受集體負責限制，而保密規則也應修改以增加最大的公開透明。然而也應訂立慣例，一名行會成員若在行會討論中支持某項措施而事後公開抨擊該項措施，特首應有令該成員辭職的權利；同樣，若一名成員的意見得到行會接納，或該成員接納某個協議，則他應在立法會中支持該項決定。

基本法四十五條關注組  
二零零五年五月二十三日

FURTHER RESPONSE OF THE ARTICLE 45 CONCERN GROUP  
TO THE GOVERNMENT TASK FORCE ON  
POLITICAL DEVELOPMENT

1. We cannot emphasize enough that democratization is necessary for good governance for Hong Kong. The central problem of the present system is that the CE exercises vast powers but has no popular mandate. He is chosen by Beijing and "elected" by a small circle of electors, and seen by all to be more concerned with what Beijing wants than with public opinion in Hong Kong.
2. Another serious problem is that LegCo is powerless to act as an effective watchdog of the people on the government and to ensure that their voice is heard. This is largely due to the disproportionate power of the functional constituencies and the split voting system.
3. Universal suffrage is the common aspiration of Hong Kong people and the only way to go forward. If the SAR Government is for any reason unable or unwilling to implement universal suffrage by 2007/2008, it will be incumbent upon the government to
  - (a) put forward a model of government which is the closest possible to universal suffrage; and
  - (b) give a clear timetable for universal suffrage to be implemented.
4. On the method of electing the CE in 2007, the Concern Group has made its proposals in previous submissions and sees little room for compromise. If the Election Committee is to be retained in any form or shape, then no "reform" short of introducing a significant proportion of members to be directly elected from the general public can be regarded as meaningful.
5. On the composition of LegCo, the Concern Group maintains its position for universal suffrage for 2008. There exist many proposals in the community for reforming functional constituencies to make them less

undemocratic, and the Government must respond to them seriously if functional seats are not to be abolished in 2008. Any increase of FC seats will be retrogressive.

6. The Concern Group reiterates that, quite apart from and without having to amend Annex I and Annex II of the Basic Law, there are numerous reforms and improvements to the system of administration which are overdue and should be made without further delay. They include the following:

- (a) Abolition of corporate voters in FCs;
- (b) Abolition of appointed members in District Councils;
- (c) Allowing greater participation in the government's policy decision-making process by appointing more people from a wider spectrum of views to advisory and statutory bodies;
- (d) Setting up an independent Public Body Appointment Commission to make recommendations for appointment to public bodies including advisory and statutory bodies without the personal interference of the CE or senior officials, and to strictly enforce the rule that no one should serve on more than 6 committees at a time or on any of them for more than 6 years;
- (e) Publishing a guideline on public consultation requiring the government to consult the public on major policy changes and setting out the standards in terms of methodology, procedure and publication of the results of consultations;
- (f) Ensuring open and accountable government by introducing into LegCo a Freedom of Information Bill.

7. The absence of mature political parties is said to be an obstacle to universal suffrage. The Concern Group believes that, on the contrary, it is uncertainty about the implementation of universal suffrage which is stifling the development of political parties. The announcement of a clear timetable for universal suffrage will provide the most effective incentive.



8. As an interim measure before the election of the CE by universal suffrage is implemented, the government should consider at least the following measures to provide opportunities for political parties to gain experience:
  - (a) facilitating the formulation of alternative policies by political parties or think tanks with greater access to information and regular consultation with government;
  - (b) making it a policy to appoint members of political parties to consultative bodies on all levels, including ExCo.
  
9. As part of the interim measure before the election of the CE by universal suffrage, ExCo should be reformed by reducing the number of officials in it to make room for more unofficials who should include leaders of political parties successful in LegCo elections. A detailed proposal is set out in the Annex.
  
10. In order to bring about an improvement in the relationship between Government and LegCo, the Government must take the provision in Article 64 of the Basic Law that the Government "shall answer questions raised by members of the Council" as requiring answers not merely in form but also in substance. Failure to do so, misleading LegCo or lying to LegCo should be recognized as breaches of Article 64. The CE should make a public statement in LegCo to this effect.

Dated 23<sup>rd</sup> May 2005

Article 45 Concern Group

## ANNEX: INTERIM PROPOSAL ON THE REFORM OF EXCO

1. Currently ExCo comprises 14 officials and 7 unofficials making a total of 21 members, presided over by the CE. The 14 officials themselves form a Policy Committee which is separate from ExCo and is chaired by the CS. Three of the unofficials are current LegCo members. There are no rules or conventions regarding the appointment of members of ExCo, except the broad provisions in Articles 55 and 56 of the Basic Law.
2. It is an open secret that ExCo does not function well or at all as a forum of policy discussion through which ExCo members can meaningfully advise the CE. Government policies are in fact formulated and co-ordinated, if at all, in the Policy Committee. ExCo discussions are supposed to be confidential.
3. The overall size of ExCo should be reduced to facilitate real discussion. The number of officials should be drastically reduced to make room for unofficials, thereby broadening participation. It should be sufficient to retain in ExCo the CS, FS, SJ, the Secretary for the Civil Service and the Secretary for Security as far as officials are concerned.
4. Unofficials should be greatly expanded and should be drawn from the following categories:
  - A. Leaders of major political parties in LegCo. There should be a convention whereby the leader of a party which has won 8 or more seats in LegCo at least 1 of which is directly elected would be offered appointment provided he or she is not precluded by Article 55 and 56.
  - B. Independent LegCo members from the professional and/or business sectors.
  - C. Community leaders not currently in LegCo who have a track record in community or public service.

D. Representatives of minority groups.

5. The current Policy Committee is the *de facto* cabinet or, if not, it should be developed into one and should be known by that name. The cabinet should now be chaired by the CE with the CS as his deputy.
6. When the CE is elected by universal suffrage, but without waiting for that to happen, the CE candidate should include his potential cabinet in his election campaign.
7. The cabinet under the CE formulates policies in the course of which they must consult ExCo in a timely manner, and moving from one stage to the next only upon consensus being reached.
8. Collective responsibility will apply only to the cabinet. ExCo should no longer be bound by collective responsibility, and confidentiality should be modified to maximize openness. However, there should be a convention whereby if a person has supported a measure in ExCo discussion and then attacks it in public, the CE shall be free to require him/her to resign. If a person's views are accepted in ExCo or a person accepts a particular compromise then he/she should support that view in LegCo.

Dated 23<sup>rd</sup> May 2005

Article 45 Concern Group