

SJ's "Letter to Hong Kong" on constitutional reform consultation (English only)

Following is the "Letter to Hong Kong" on the constitutional reform consultation by the Secretary for Justice, Mr Rimsky Yuen, SC, broadcast on Radio Television Hong Kong this morning (December 15):

Dear people of Hong Kong,

On last Wednesday (December 4), the Government published the "Consultation Document on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016" (Consultation Document) so as to formally commence a five-month public consultation exercise. The result of this consultation exercise will have important implications for the future of Hong Kong, as it concerns our future constitutional development, especially the method for selecting the Chief Executive in 2017 by universal suffrage. As stressed in the Consultation Document, the Government presently does not have any position regarding the issues raised for discussions. The aim of this first round of public consultation is to gather views from different sectors of the community. As a member of the Task Force on Constitutional Development, I would like to take this opportunity to urge all of you, whether as an individual, a group, an organisation, a political party or otherwise, to actively participate in this consultation exercise.

The Consultation Document has set out the background and the key issues that require careful consideration. The issues have legal, political and other perspectives. For the present purpose and with a view to facilitating focused discussions, I would like to highlight one important aspect, namely, the context relevant to the question of how the methods for selecting the Chief Executive in 2017 and for forming the Legislative Council in 2016 should be devised.

The Relevant Context

One may ask the questions: What context are we talking about and why is context important? The answer may appear obvious, but it is of such fundamental importance that it deserves to be kept in mind at all times. No design of political structure can be done in a vacuum. Instead, the design of any political structure has to take into account the historical background of the place in question, as well as her constitutional setup and specific circumstances. The same considerations apply when

we consider how universal suffrage can best be achieved in Hong Kong.

To begin with, Hong Kong's circumstances and constitutional status are unique. This is because the concept of "One Country, Two Systems" is unique in human or political history. Whilst being an integral part of the People's Republic of China (PRC), Hong Kong is a Special Administrative Region (SAR). Guaranteed by the Basic Law, the Hong Kong SAR enjoys a high degree of autonomy, and is vested with executive power, legislative power, as well as independent judicial power including that of final adjudication. As made crystal clear by Article 2 of the Basic Law, all these powers are the result of authorisation by the National People's Congress (NPC) of the PRC.

The position of the Chief Executive is also relevant, as he (or she) occupies a special constitutional status under the Basic Law. Apart from being the head of the Hong Kong SAR and representing the SAR, the Chief Executive is also accountable to the Central People's Government and the Hong Kong SAR in accordance with the Basic Law.

Also highly relevant are the provisions concerning universal suffrage in the Basic Law. As regards the Chief Executive, Article 45 of the Basic Law provides, amongst others, as follows: "The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principles of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with the democratic process." Similar provision in respect of the Legislative Council can be found in Article 68 of the Basic Law.

Since 2004 (if not before), there have been extensive discussions in Hong Kong on constitutional development. Having taken into account the circumstances of Hong Kong, the Standing Committee of the National People's Congress (NPCSC) has made one Interpretation and two Decisions which are both highly relevant and binding. The first one is the Interpretation made on April 6, 2004, the second one is the Decision made on April 26, 2004, followed by the Decision made on December 29, 2007.

The full text of the Interpretation and the two Decisions have been included in the Consultation Document as Annex I to III. Apart from setting out the "Five-Step Process" for amending the methods for selecting the Chief Executive in 2017 and for

forming the Legislative Council in 2016, it is pertinent to note the following:

(1) The 2004 Decision states: "Any change relating to the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall conform to the principles such as being compatible with the social, economic, political development of Hong Kong, being conducive to the balanced participation of all sectors and groups of the society, being conducive to the effective operation of the executive-led system, being conducive to the maintenance of the long-term prosperity and stability of Hong Kong."

(2) Apart from stating that the election of all members of the Legislative Council by universal suffrage can only be implemented after the Chief Executive is selected by universal suffrage, the 2007 Decision states that "in selecting the Chief Executive of the Hong Kong Special Administrative Region by the method of universal suffrage, a broadly representative nominating committee shall be formed. The nominating committee may be formed with reference to the current provisions regarding the Election Committee in Annex I to the Hong Kong Basic Law. The nominating committee shall in accordance with democratic procedures nominate a certain number of candidates for the office of the Chief Executive, who is to be elected through universal suffrage by all registered electors of the Hong Kong Special Administrative Region, and to be appointed by the Central People's Government."

The relevant provisions in the Basic Law, together with the NPCSC Interpretation and Decisions that I have just referred to, constitute the legal framework for implementing universal suffrage in Hong Kong. It also provides the proper basis for any meaningful discussions of our future constitutional development. Given its constitutional and legal nature, any departure or deviation from this legal framework would neither be appropriate nor constructive, and that is why we repeatedly stress the need to have focused discussion on the basis of this legal framework.

Postscript

The ultimate aim of achieving universal suffrage is clearly set out in the Basic Law, and leaders of the Central People's Government have repeatedly expressed support for constitutional development in this direction. The current Administration of the Hong Kong SAR has vowed to, and will, do its utmost to achieve universal

suffrage in accordance with the Basic Law and the NPCSC Interpretation and Decisions. I have no doubt that it is the common aspiration of the people of Hong Kong to attain universal suffrage.

What we need to address is the crucial question of how to devise a proposal which would enjoy the general support of the people of Hong Kong, and which would stand a realistic chance of obtaining two-thirds support of the members of the Legislative Council. This question is no simple question, and understandably people would have different views and different answers. We welcome different views, as we can devise the most appropriate methods through collective wisdom. Since universal suffrage is our common aspiration, we should all strive to reach a consensus on the way forward through rational and constructive discussions.

On this note, may I take this opportunity to wish every one of you a very Merry Christmas and a Happy New Year.

Ends/Sunday, Dec 15, 2013