

Speech by Secretary for Justice on motion debate "The Fourth Report of the Constitutional Development Task Force"

Following is the speech by the Secretary for Justice, Ms Elsie Leung, in a motion debate on "The Fourth Report of the Constitutional Development Task Force" moved by the Hon Albert Jinghan Cheng at the Legislative Council today (January 5): (Translation)

Madam President,

The main thrust of the Hon Albert Cheng's motion is to express regret that the Hong Kong Special Administrative Region Government has rejected the public demand for the election of the Chief Executive and all Members of the Legislative Council ("LegCo") for the next term by universal suffrage and that the Government has failed to put forward a specific proposal. The motion also urges the Government to expeditiously present to this Council a constitutional reform proposal, which includes the methods for selecting the Chief Executive in 2007 and for forming the LegCo in 2008 so as to facilitate discussion by the public and the LegCo.

The Constitutional Development Task Force was set up on 7 January 2004. One of its objectives, as the Hon Albert Cheng has said, is to present to the LegCo and the public a constitutional reform proposal which includes the methods for selecting the Chief Executive in 2007 and forming the LegCo in 2008, so as to facilitate discussion by the public and the LegCo.

The Task Force has published four reports since its establishment. It has fully consulted Honourable Members and the public and has taken on board their views in the process. In the First Report published in late March last year, the Task Force informed the public of the findings of its study on issues of legislative process, including the legislative process for amending the methods for selecting the Chief Executive and for forming the LegCo; the view that there is no need to invoke Article 159 of the Basic Law for making any amendments; the procedures for initiation of amendments; the view that the method for forming the third term LegCo in Annex II continues to apply if there is no amendment; and that the method for selecting the third term Chief Executive may be amended although he or she is to be selected in 2007.

In the Second Report released by the Task Force in mid-April last year, the public was informed of the constitutional basis of the HKSAR and the actual situation at present, and the views of the community over the issues of principle to be considered in constitutional development. The report summed up the factors to be taken into account in constitutional development, and recommended that

the Chief Executive should, in accordance with the NPCSC's interpretation of Article 7 of Annex I and Article III of Annex II to the Basic Law promulgated on 6 April 2004 and in the light of the views collected, submit to the Standing Committee of the National People's Congress (NPCSC) a report with recommendation that the methods for selecting the Chief Executive and for forming the LegCo be amended. The consultation conducted before the release of the Second Report has been set out in Chapter Two of that report.

The Task Force published its Third Report on 11 May last year. On the basis of the "Decision on issues relating to the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in the year 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in the year 2008" adopted by the NPCSC on 26 April last year, the Task Force set out the areas that could be considered for amendment and invited various sectors of the community to put forward specific amendment proposals. After the publication of the Third Report, the Task Force received more than 480 submissions from groups and individuals by e-mail, post and facsimile, and organised a number of seminars and group discussions. The participants of these activities included members of the LegCo, District Councils and the Election Committee, and representatives of professional bodies, chambers of commerce, academic institutions, women groups, youth groups, labour organizations and neighbourhood and community associations. They came from different backgrounds, sectors and political parties. With the exception of those kept confidential at the request of some individuals, all of the views collected are contained in the appendices of the Fourth Report. Details of the consultation exercise can be found in Chapter Four of that report.

When the Task Force commenced its work, the general public had varying degree of knowledge of the political framework of the SAR and the provisions of the Basic Law regarding our constitutional development. For this reason, the Task Force has provided the public with relevant information and conducted extensive consultation exercises each step of the way. Taking a step-by-step approach, the Task Force examined the issues together with the public, drew the conclusions and made gradual and steady progress. By so doing, the Task Force tried its best to ensure that the proposal put forward in the future would be representative of the mainstream views of the public as well as a consensus of the community. As the Chief Secretary for Administration said in his address to this Council on 15 December last year, the Fourth Report set out every area which could be amended and their spectrum in the hope that differences of opinion could be narrowed so that a mainstream proposal could be formulated. The results of our last consultation exercise indicate that public opinions are still very much divided in certain areas. It might be difficult for us to reach a consensus if insufficient consultation is conducted. Therefore, the Administration has not disregarded the public opinions as alleged by the Hon Albert Cheng. On the contrary, we take public opinions very seriously. The consultation exercise concerning the Fourth Report has begun. In this connection, the Chief Secretary for Administration has announced the consultation plan of the Task Force.

Secondly, I would like to respond to the Hon Albert Cheng's statements on the issue of universal suffrage. Honourable Members should be aware that Article 7 of Annex I and Article III of Annex II to the Basic Law set out the procedures for amending the methods of the two elections. The decision made by the NPCSC on 26 April last year also clearly states that the method of universal suffrage shall not be applied to the selection of the Chief Executive in 2007. In the election of the fourth term LegCo in 2008, the method of universal suffrage shall not apply to the election of all members of the LegCo and the half by half ratio for members of the LegCo returned by functional constituency election and by direct geographical election shall remain unchanged. In his visit to Hong Kong to explain the decision by the NPCSC on 26 April last year, Mr Qiao Xiaoyang, Deputy Secretary-General of the NPCSC, said that the decision was a prudent and responsible political decision. The NPCSC had not only considered the views of the Task Force and the public opinions set out in the appendices of the First and Second Reports, but also the views they gathered from different sectors of the Hong Kong community, including the views from many Honourable Members here, in particular those demanding universal suffrage in the two elections in 2007/2008. The decision was made after the pros and cons of the issue had been carefully considered and weighed. He had also explained why it was not appropriate to introduce universal suffrage in the two elections in 2007/2008.

As a matter of fact, the role played by the Central Authorities in the constitutional development of Hong Kong is clearly provided in the Basic Law. The NPCSC has made a clear and authoritative decision on the issue of universal suffrage for the 2007/2008 elections. Insistence on the introduction of universal suffrage for the two elections in 2007/2008 will not be supported by the Central Government and will not be in compliance with the relevant provisions in Annexes I and II to the Basic Law. The HKSAR Government cannot lead the public to discuss a proposal that could not be implemented in 2007/2008. Such a proposal will lead to nothing, causing the election methods in 2007/2008 to remain in place. As stated in the Second Report, although views of the community on universal suffrage differ, there appears to be a consensus in the community that constitutional development should proceed, and that the methods for selecting the Chief Executive and for forming the LegCo should be amended. Thus, it is unrealistic to demand the government to put forward a constitutional reform proposal which includes amendments to the methods for selecting the Chief Executive in 2007 and for forming the LegCo in 2008 by universal suffrage.

Although the pivotal task of the Task Force is to put forward proposals for amendments to the methods for selecting the Chief Executive in 2007 and for forming the LegCo in 2008, it has not overlooked other issues relating to constitutional development which fall outside the scope of the two election methods. Some examples include: a timetable to be set and organization made in preparation for elections by universal suffrage; the roles of the functional constituencies and their future

development. All these should be discussed within the community in the future. The Task Force considers that these long term issues deserve further discussion by the community (see Chapter Five of the Fourth Report), but are too complex to be dealt with at present; otherwise amendments to the two election methods in 2007/2008 respectively will be delayed.

I would like to take this opportunity to clarify briefly what I said about "universal suffrage" to the Panel on Constitutional Affairs on 20 December last year. I have leafed through the records. At that meeting, the discussion touched on among other things that "universal suffrage" could in principle include direct elections and indirect elections since that term was not defined in the Basic Law. The meeting also discussed the election rights in the Handbook on Elections under the International Covenant on Civil and Political Rights. At that time I read out certain principles from the United Nations Handbook on Elections, i.e. there is no single political system or electoral methodology which is appropriate for all peoples and all states. In 1987, the European Court of Human Rights, in the leading case of *Mathieu-Mohin and Clerfayt v Belgium* (1987) 10 E.H.R.R., recognised that, as regards the method of appointing the legislature, the Contracting States had a wider margin of appreciation to fulfil their obligation in this regard, given that their legislation on the matter varied from place to place and from time to time. I therefore suggested that universal suffrage did not necessarily mean that it must be carried out through direct election on a geographical basis. Other election methods of one man, one vote including indirect elections could achieve the ultimate aim of universal suffrage.

It was on the basis of this jurisprudence that I gave my view at the Constitutional Affairs Panel meeting. I stated that the ultimate aim of universal suffrage does not necessarily mean that the selection of the Chief Executive, and the election of all members of the Legislative Council, will ultimately have to be by one man, one vote by direct election. In my view, indirect elections could lawfully be retained consistently with the ultimate aim of universal suffrage.

Assigning constituencies according to the geographical area in which the elector resides is only one way of delineating constituencies. Functional constituencies provide an alternative means of grouping together individual electors with common interests. Should all eligible electors be able to vote in functional constituency elections in the future, this could be one of the models for universal suffrage. The balancing of the weight of votes is a separate issue which requires to be addressed.

These statements were an expression of legal opinion. I was not expressing any view as to whether, as a matter of policy, functional constituencies should or should not be retained in the long run.

The Task Force has deliberately refrained from seeking to determine that important policy

question at this stage. I would like to explain the reason for this.

Firstly, as members are aware, the Standing Committee of the National People's Congress has decided that the ratio between members of the LegCo returned by functional constituencies and members returned by geographical constituencies through direct elections in the year 2008, who shall respectively occupy half of the seats, is to remain unchanged. This being so, there is no urgent need to determine the form that universal suffrage should take when it is implemented.

Secondly, it is clear that this is a highly controversial issue. If there was an attempt to determine that issue at this stage, it is quite likely that this would derail the plan for other constitutional reforms in 2007 and 2008. That would cause our progress towards greater democracy to remain stagnant.

Thirdly, any further polarisation of the issue of universal suffrage at this stage could be counter-productive for the long-term resolution of this issue. Political stability will help us achieve our goal of universal suffrage. Political instability will not.

The Task Force therefore decided that we should adopt a measured, step-by-step, approach to constitutional reform. I hope that Members will agree that this is in the best interests of the community, and is most conducive towards achieving the ultimate aim of universal suffrage.

The above issues illustrates that we must carefully deliberate long term issues concerning constitutional development. The Task Force is of the view that such kind of issues should not be avoided, yet they should not be handled prematurely which would provoke unnecessary arguments. In the long run, the public should consider this issue thoroughly and discuss it at an appropriate time. For now, it would be best if everybody could concentrate on handling the election methods for the two elections in 2007 and 2008.

Madam President, it is the common wish of the Central Authorities, the Hong Kong people, Members and the Government that the democratic political system should develop progressively. We very much hope that we will all approach this issue which has a profound impact on Hong Kong by striving to find common ground and accommodating differences in a pragmatic manner, so that any preconceived ideas can be put aside and a consensus reached. This way, we may come up with a proposal that is both consistent with the Basic Law and the NPCSC's Decision and acceptable to all, so that we could move ahead in the development of a democratic political system that suits Hong Kong's circumstances. Polarising the issue of elections would only be counter-productive for our long-term development and affect social stability and prosperity. The Task Force is very much willing to cooperate with Members in formulating a specific proposal on the two election methods in 2007/2008.

Ends/Wednesday, January 5, 2005

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