

Submission to the Roundtable on Issues Relating to the 2017 Chief Executive Election

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I would like to talk about two issues in this submission. The first is nomination method under Article 45 of the Basic Law and the development of a constitutional convention. The second is electoral method to be used for the election of the Chief Executive.

I. Nomination Method under Art. 45 and the Development of a Constitutional Convention

Various nomination methods have been proposed by different individuals and organizations. The most controversial ones are civil nomination and political party nomination. In many other jurisdictions, civil nomination and political party nomination are two standalone alternatives to any other nomination methods.

Paragraph 2 of Article 45 of the Basic Law provides that "... The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures".

What is clear from the above sentence is that the final nomination will be made by the nomination committee which is broadly representative. As a result, it makes it impossible for either civil nomination or political party nomination to be a standalone alternative to the nomination committee nomination.

But, the relevant sentence in Article 45 says nothing about what should or can be done before the nomination committee makes its nomination. It is therefore possible to put either civil nomination or political party nomination as an additional step before the nomination committee's nomination.

Whether a civil nomination/political party nomination (before the nomination committee's nomination) will have any importance depends on whether a constitutional convention can be developed so that members of the nomination committee will vote according to either civil nomination or political party nomination.

That doesn't seem to be possible for the Chief Executive election in 2017 because the development of a constitutional convention takes time. If without such a constitutional convention, civil nomination will not affect how the members of the nomination committee will cast their votes. Then, civil nomination will lose its importance apart from giving political pressure to the members of the nomination committee.

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II. Electoral Method to Be Used for the Election of the Chief Executive

There are three possible electoral methods to be used to elect the Chief Executive of the HKSAR in 2017: (i) a First past the post plurality (FPTP) (simple majority) voting system; (ii) two-round voting system which allows for a second run-off election in the event no candidate in the first round wins a 50% +1 of the vote; or (iii) alternative vote (or an instant run-off) voting system in order to ensure that the winner will get 50% + 1 of the vote.

While acknowledging an FPTP voting system has various advantages such as being simple and easy for implementation, it has a serious disadvantage of possibility of electing a Chief Executive lack of popular governing mandates.

Two-round voting system will enhance the Chief Executive's legitimacy and accountability in the eyes of both the local population and the Central Government, and increase his ability to represent the interests of the HKSAR. While two-round voting system can produce a winner with majority, it cannot guarantee that the winner is the most popular candidate. It is vulnerable to strategic manipulation and share similar disadvantages to the FPTP system in that it is less sophisticated, highly disproportional, and favours large parties.

An alternative vote (instant run-off) voting system is a preferential system under which voters have the chance to rank the candidates in order of preference. It always produces a winner by majority decision. The winner enjoys the added legitimacy of a majoritarian mandate. In comparison, instant run-off voting system is a system which has fewer disadvantages and can completely resolve the issue of popular governing mandate and political legitimacy.