

CLARIFYING THE BASIC LAW

DAVID LAN

The Basic Law interpretation by the Standing Committee of the National People's Congress and the ensuing report submitted to Beijing by Chief Executive Tung Chee-hwa have certainly focused Hong Kong people's attention.

Standing Committee deputy secretary-general Qiao Xiaoyang spent three days in Hong Kong, meeting a wide spectrum of the community to explain why the interpretation was necessary.

These high-profile discussions helped people gain a better understanding of the relevant issues surrounding the interpretation and the methods for electing the next chief executive in 2007 and the legislature in 2008.

Despite strong objections from some sectors of the community, Hong Kong people's overall reaction can be described as relatively calm. Generally speaking, the populace seems to have accepted, whether willingly or not, that the Standing Committee's interpretation is an effective and necessary step to take.

The main objections and concerns expressed so far about the interpretation are that it undermines Hong Kong's one country, two systems and high degree of autonomy. But the Basic Law clearly stipulates that the power of interpretation shall be vested in the NPC Standing Committee. The interpretation itself clarifies two procedural steps to be taken before any changes to the election process can be initiated.

The clarification of these two procedural steps - that the chief executive must report to the Standing Committee that there is a need for change, and that the Standing Committee shall determine whether a change is necessary - has created controversy.

Others, however, do not share this concern. They see the interpretation as merely stating the obvious, in clarifying certain necessary procedural steps in the midst of many conflicting and diverging views. As the Basic Law prevents Legco members from raising issues on constitutional change in the legislature, who better than the chief executive to initiate action?

Furthermore, this new approach will help build greater harmony between the special administrative region's government and the central government. We want to avoid the

situation (unlikely though it may be) of Beijing having to turn down a resolution passed by a two-thirds majority in Legco and approved by the chief executive.

Turning to Mr Tung's report, there has been much criticism about how quickly he submitted it to Beijing, without any public consultation. But the government taskforce report on constitutional development, submitted last Thursday, was based on a three-month consultation with all parties and groups in Hong Kong.

Critics also regard the nine factors for consideration as additional hurdles to constitutional development, but the Secretary for Constitutional Affairs, Stephen Lam Sui-lung, has explained that they merely spell out more clearly what is in the Basic Law.

The nine factors are to be taken into consideration to help decide whether a consensus can be reached. For those who want nothing less than universal suffrage in the 2007 and 2008 elections, the door is not completely closed, but they feel that Mr Tung's report to the Standing Committee leaves them with almost no chance.

We must not forget, however, that the SAR government has officially announced that there is a need for change in Hong Kong's political development. If this is endorsed by the Standing Committee, Hong Kong can begin processing the various proposals on exactly what changes are necessary, through a series of consultations and public debates.

There is basically no disagreement between the central government and Hong Kong that universal suffrage is the ultimate aim for the SAR, since this is clearly spelled out in the Basic Law. The question is about exploring the time span and necessary steps and procedures towards achieving the goal.

Harmonious discussions in a positive and co-operative atmosphere are likely to encourage the central government to help Hong Kong achieve the goal earlier, whereas adopting a confrontational approach merely produces the opposite effect.

David Lan Hong-tsung is a former home affairs secretary and vice-convenor of the New Century Forum, a non-profit think-tank on public policy.

(Originally published on 21st April 2004 South China Morning Post)