

**THE PROMISE OF
DEMOCRATIZATION IN HONG KONG**

**THE SEPTEMBER 12, 2004
LEGISLATIVE COUNCIL ELECTIONS
A PRE-ELECTION REPORT**

NDI Hong Kong Report #9

August 31, 2004



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Autonomy and the Rule of Law, NDI Hong Kong Report No. 3, May 1, 1998.

The May 24, 1998 Elections - A Pre-Election Report, NDI Hong Kong Report No. 4, May 15, 1998.

The May 24, 1998 Elections, NDI Hong Kong Report No. 5, July 30, 1998.

The 2002 Chief Executive Election and the Transition Five-Years after Reversion, NDI Hong Kong Report No. 6, March 11, 2002.

Accountability without Democracy? The Principal Officials Accountability System in Hong Kong, NDI and Civic Exchange, October 16, 2002.

The Impact of July's Protest Demonstrations on the November 23 District Council Elections - A Pre-Election Report, NDI Hong Kong Report No. 8, November 17, 2003.

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NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

The National Democratic Institute for International Affairs (NDI) is a nonprofit organization working to strengthen and expand democracy worldwide. Calling on a global network of volunteer experts, NDI provides practical assistance to civic and political leaders advancing democratic values, practices and institutions. NDI works with democrats in every region of the world to build political and civic organizations, safeguard elections, and promote citizen participation, openness and accountability in government.

Democracy depends on legislatures that represent citizens and oversee the executive, independent judiciaries that safeguard the rule of law, political parties that are open and accountable, and elections in which voters freely choose their representatives in government. Acting as a catalyst for democratic development, NDI bolsters the institutions and processes that allow democracy to flourish.

Build Political and Civic Organizations: NDI helps build the stable, broad-based and well-organized institutions that form the foundation of a strong civic culture. Democracy depends on these mediating institutions—the voice of an informed citizenry, which link citizens to their government and to one another by providing avenues for participation in public policy.

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International cooperation is key to promoting democracy effectively and efficiently. It also conveys a deeper message to new and emerging democracies that while autocracies are inherently isolated and fearful of the outside world, democracies can count on international allies and an active support system. Headquartered in Washington D.C., with field offices in every region of the world, NDI complements the skills of its staff by enlisting volunteer experts from around the world, many of whom are veterans of democratic struggles in their own countries and share valuable perspectives on democratic development.

The Promise of Democratization in Hong Kong:

The September 12, 2004 Legislative Council Elections A Pre-Election Report

From July 18 to 23, the National Democratic Institute (NDI) conducted an assessment mission to Hong Kong in the lead-up to the September 12 Legislative Council elections. The assessment team comprised: Casimir Yost, Director of the Institute for the Study of Diplomacy at Georgetown University; Matyas Eorsi, Member of the Hungarian Parliament; and NDI China Program Director Christine Chung. The team's meetings included: current and former government officials, including Chief Secretary Donald Tsang, Secretary for Constitutional Affairs Stephen Lam, and Electoral Affairs Commission Chairman Justice Woo; political party leaders and legislators; nongovernmental organization representatives; academics; prominent business persons and representatives of business organizations; journalists; diplomats; and others. This report was written by Christine Chung. The following people made editorial contributions to this report: Casimir Yost; Peter Manikas, NDI Director of Asia Programs; Jennifer Ganem, NDI Senior Program Manager for Asia; and Anne Tsai, NDI Program Officer for Asia.

This report of the assessment mission is the ninth in a series prepared by NDI about the promise of democratization in Hong Kong. Since early 1997, NDI has monitored the status of autonomy and the prospects for democratization in the Hong Kong Special Administrative Region (HKSAR) in light of international standards and benchmarks outlined in Hong Kong's Basic Law. NDI has also organized study missions and issued periodic reports on political developments in the region. These reports have assessed: the development of the Hong Kong's post-reversion election framework; the political environment on the eve of reversion to Chinese sovereignty; the status of autonomy, rule of law and civil liberties under Chinese sovereignty; the various elections in the HKSAR under Chinese sovereignty; the Principal Officials Accountability Systems; and the prospects for democratization beyond the 10-year transition period set forth in the Basic Law. The Institute hopes that its monitoring efforts will contribute to better understanding of the ongoing transition process and provide support to those interested in advancing democratization in Hong Kong.

Kenneth Wollack
President

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INTRODUCTION

On September 12, Hong Kong's permanent residents will go to the polls to elect members of the Legislative Council (LegCo). This will be the third legislative election since sovereignty reverted to China in 1997. The heightened international attention paid to the Hong Kong Special Administrative Region's (HKSAR) unique autonomy status under China's "One Country, Two Systems" framework and recent events concerning the evolution of this construct enhance the significance of the upcoming elections. In addition, the Hong Kong public continues to express enthusiasm for and commitment to the electoral process despite obvious challenges. As has been the case since reversion, these elections will fall short of meeting international standards. Nevertheless, the next LegCo will have the greatest number of directly elected members to date, with 30 out of 60 members standing for "geographical constituency" seats. The other 30 members will be returned by "functional constituencies" representing various sectoral interests. This also will be the last LegCo whose terms of election are specifically detailed by the Basic Law, Hong Kong's "mini-constitution." Although the Basic Law only pledges universal suffrage as an "ultimate goal," many people hoped that Hong Kong would move to a universal franchise for the next round of elections in 2007 and 2008. However, the Standing Committee of the National People's Congress' (SCNPC) ruled in April that universal suffrage would not be established for either the 2007 or 2008 elections.

Critics claim that Hong Kong's executive-led system and the limits placed on LegCo's powers contribute to poor governance in the HKSAR. LegCo has relatively narrow powers; LegCo members, for example, cannot name or approve executive branch officials, nor can they introduce legislation involving public expenditures or government operation. The Chief Executive by law cannot represent a political party. Despite LegCo's limited powers, candidates representing parties and other organizations, as well as individuals, are running in the 2004 LegCo election and a record 70 percent of eligible voters (3.2 million) registered in order to participate in the upcoming poll even though they certainly recognize it to be a limited political process. Additionally, many of the functional constituency seats (discussed below) have more than one candidate.

Since 1997, the National Democratic Institute has conducted periodic assessments of Hong Kong's progress towards greater democracy. A number of landmark political events have taken place since NDI's last report, "The Promise of Democratization in Hong Kong: The Impact of July's Protest Demonstrations on the November 23 District Council Elections, A Pre-Election Report (NDI Hong Kong Report #8)." These events include: the upset of pro-Beijing parties in the November 2003 District Council elections; the contentious Taiwanese presidential election; high turnout for the January 1 democracy rally; the "interpretation" of the Basic Law by the Standing Committee of the National People's Congress and its subsequent ruling on universal suffrage for 2007 and 2008; the summer demonstrations, including the July 1 rally; and a possible thawing in relations between Beijing and the pro-democracy camp in Hong Kong. These events will not only affect people's decision-making process for the elections but also the direction and pace of future democracy and governance reforms in the HKSAR. This report

continues NDI's periodic reports on Hong Kong and examines the pre-election environment as well as the electoral framework and concerns regarding the integrity of the electoral process. In addition, the report seeks to address the necessary next stages of political reform and potential for progress in advancing democracy in Hong Kong.

There is a growing sentiment within Hong Kong that the electoral framework for choosing the Chief Executive in 2007 and LegCo in 2008 needs to be changed. An increasing number of people in Hong Kong also believe that governance needs to be improved; and many people feel that weak political leadership has significantly contributed to or caused the problems facing Hong Kong today. The people of Hong Kong recognize the political reality that the central authorities play a determining role in important decision-making in the HKSAR. While it appears that the central government may have overstepped the Basic Law in its April ruling regarding universal suffrage in 2007 and 2008, there does not seem to be a willingness among the electorate to confront Beijing directly on the issue. Nevertheless, enthusiasm about the upcoming elections is reflected in the high rate of voter registration and increase in the number of candidates for the functional constituency contests and indicates a growing civic awareness and determination by the people of Hong Kong to defend their existing civil liberties.

BACKGROUND: EVENTS LEADING UP TO THE PRE-ELECTION PERIOD

Since the District Council elections in November 2003, a series of political events have continued to highlight the challenges to democracy in Hong Kong. This section provides a brief chronology of those events in order to provide a better understanding of the political environment in this pre-election period.

- In November 2003 the main pro-Beijing party, the Democratic Alliance for the Betterment of Hong Kong (DAB), lost 21 seats in the District Council elections. The chairman of the party resigned and was replaced by the party's former Secretary-General, Ma Lik. Some observers indicate that this electoral loss alarmed Beijing, not only because the DAB was a sympathetic party, but because it highlighted the unpredictability of more democratic election processes. Following the election, pro-democracy forces urged Chief Executive Tung Chee-hwa not to undermine the 400 District Council members who were directly elected by the public by exercising his authority to appoint up to 102 additional councilors. Despite the urging of pro-democracy forces, Tung chose to make the maximum number of appointments.
- On January 1, 2004, the Civil Human Rights Front organized a democracy rally in Hong Kong's Central district. An estimated 100,000 demonstrators participated in the rally, far exceeding turnout expectations.
- Chief Executive Tung Chee-hwa appointed a Taskforce headed by Chief Secretary Donald Tsang, and included Secretary for Justice Elsie Leung and Secretary for Constitutional Affairs Stephen Lam. Despite having promised to release a timeline on the public consultation process over the constitutional

review before the end of 2003, Tung Chee-hwa announced during his annual policy address on January 7, 2004, that Beijing would have to be consulted before a public consultation could go forward in the HKSAR. This appears to have been in response to remarks made by President Hu Jintao to Tung Chee-hwa during the latter's visit to Beijing on December 3. The Hong Kong and Macau Affairs Office (HKMAO) issued a formal note the following day regarding political reform. The HKMAO wrote, "The central government hopes that Tung and the SAR government will conduct thorough consultations with relevant departments under the central government before making detailed arrangements."

- Two Beijing-based Basic Law experts, Xiao Weiyun and Xia Young, came to Hong Kong in mid-January expressing views that clearly opposed universal suffrage in 2007 and 2008, dismaying pro-democracy forces. They are among a group of Beijing-based scholars and officials who discussed the meaning of "One Country, Two Systems" and questions regarding the intent of the Basic Law drafters.
- February began a period of what many in Hong Kong dubbed the "Patriot Games." For a couple of months, various Chinese officials and Hong Kong figures tried to define who in Hong Kong was a patriot and who was not, implying or openly stating that those people who were not friendly to the central authorities were not fit to lead Hong Kong. These denunciations were highlighted by personal attacks against Martin Lee, a Democratic Party (DP) legislator and former DP Chairman, who testified at the U.S. Senate Foreign Relations Committee hearing in Washington about Hong Kong's political situation.
- Taiwan's contentious presidential election campaign and Chen Shui-bian's subsequent re-election in March led to increased tension between the People's Republic of China (PRC) and Taiwan, which the PRC regards as a renegade province. Beijing's rhetoric warning of imminent war in the Taiwan Strait by 2008 and angry condemnation of US arms sales to Taiwan raise concerns beyond the region.
- On March 26, media reported that the Standing Committee of the National People's Congress would consider in its upcoming meeting a draft interpretation of Article 7 of Annex I and Article 3 of Annex II of the Basic Law. On April 6, the SCNPC issued its legal interpretation of the Basic Law. It required the Chief Executive to submit a report to the SCNPC stating whether there is a need to amend the methods for electing the Chief Executive and LegCo so that the SCNPC could make a determination. This interpretation essentially allowed Beijing to determine when Hong Kong can initiate changes to the way in which HKSAR elects the Chief Executive. Many legal scholars have argued that this is contrary to the language and intent of the Basic Law.¹

¹ "As regards the *constitutionality* of the interpretation itself, the point is not simply whether the Standing Committee under *the Chinese Constitution* has power to interpret, supplement or even, within certain limits, amend the laws of the PRC. The point is whether any purported exercise of power is one which is

- On April 15, Chief Executive Tung Chee-hwa reported to the SCNPC his assessment of Hong Kong's constitutional reform needs, particularly whether to amend the Basic Law on methods for selecting the Chief Executive in 2007 and for the LegCo in 2008. This report was not expected until later in April. There was neither public notice nor consultation with LegCo. The Hong Kong public was surprised by the suddenness of its release, as it was when Beijing had announced on March 26 that the SCNPC would be issuing an interpretation of the Basic Law. Tung outlined nine conditions for electoral reform, which were apparently results of discussions with the central government.
- On April 26, the Standing Committee of the National People's Congress announced in its "decision" that "universal suffrage shall not apply" to the selection of Tung's successor in 2007 or all members of the Legislative Council in 2008, but that the HKSAR would be allowed to make changes to its electoral methods "in the principle of gradual and orderly progress." The SCNPC added the additional restriction on constitutional reform that the proportion of functional constituency to directly elected geographical constituency representatives cannot change beyond a 50-50 split. This split will take place in September for the first time, when the six LegCo members currently elected by the Election Committee will be replaced by additional geographical constituency representatives.
- On May 11, Chief Secretary Donald Tsang announced that official public consultations over constitutional reform under the new parameters would take place until August 31. The Democratic Party and many others in the pro-democracy camp have chosen to continue advocating for universal suffrage in 2007 and 2008, despite the central government's essentially final word on the matter. The consultation has been subsequently extended by another month.
- The resignation of three outspoken radio talk show hosts—Albert Cheng, Raymond Wong, and former National People's Congress delegate Allen Lee—during May has raised concern about the status of HKSAR's freedom of expression and freedom of the press. Allegations of intimidation by central authorities either directly or through triad-sponsored violence have called into

consistent with the constitutional scheme mandated *under the Basic Law*. Under the PRC Constitution, the NPC is the highest organ of State power and the Standing Committee is its permanent body....It is not disputed that under Article 158 of the Basic Law the Standing Committee has the legal power to "interpret" the Basic Law. However, Article 158 refers only to the power of interpretation and this must be distinguished from the power to partially supplement and amend, as the Court of Final Appeal is authorized to interpret the Basic Law under Article 158. Amendment of the Basic law is dealt with under Article 159 and it is a power which is vested in the NPC, not the Standing Committee which can only propose bills to the NPC for amendment of the Basic Law. The interpretation partially supplements the Basic Law by adding the requirement for the CE to make a report for the Standing Committee to make a determination on the need to change the method of selecting the CE and forming the LegCo." Article 45 Concern Group, Opinion No. 3, April 2004.

- question security for not only these individuals but also other public figures, including political figures who were assaulted or whose offices were vandalized.²
- Rumors of voter intimidation began in mid-May with reports that people were being ordered to vote for pro-Beijing candidates and to photograph their ballots with their mobile phone cameras as proof. Allegations of fraudulent voter registration by third parties have reportedly led to arrests.
 - The June 4 commemoration of Tiananmen Square was marked by two major events in Hong Kong: a rally on the weekend before the actual anniversary and a candlelight vigil on the evening of June 4. The number of participants reportedly doubled for both events from the previous year—from 2,500 to 5,600 (organizers' figure, with police estimating 3,000) for the weekend march, and the candlelight vigil in Victoria Park doubling from the previous year to the highest level since the handover to about 80,000.
 - On June 23, Martin Lee hailed an apparent beginning of a rapprochement between the pro-democracy camp and Beijing by proposing a motion in LegCo urging Hong Kong and Beijing to “join hands” to implement “One Country, Two Systems.” Independent legislators and pro-Beijing figures (including James Tien of the Liberal Party, Tsang Yok-sing of the DAB, and David Chu of the Hong Kong Progressive Alliance) have supported these efforts, encouraging Chief Executive Tung Chee-hwa to advocate for the return of two-way permits to democrats who have been prevented from entering the mainland. Beijing has been cautious but receptive, with Vice-President Zeng Qinghong announcing that communication between Beijing and the democrats should extend throughout the central government and that he would be pleased to meet representatives from different sectors in Hong Kong.
 - The much anticipated July 1 march this year had a head count ranging from 180,000 to 530,000. Regardless of where the actual figure may have fallen within the spectrum of reported numbers, the turnout was widely regarded as impressive. The pro-democracy camp pushed for the Standing Committee of the National People's Congress to reconsider the issue of universal suffrage in 2007 and 2008. Many observers believe that the July 1, 2003 march was a response to not only the

² Most prominent among them being legislator Emily Lau whose Tai Po office was subject to an arson attack in late June with a message left on her wall stating “traitors must die.” Since 1995 she had made 17 reports to police, which resulted in just two prosecutions with light fines imposed on the offenders in both cases. She said, “The attacks have deeply threatened my safety, as well as the safety of all the staff at my offices and all the volunteers...I believe somebody used these extreme measures with an intent to silence me and my supporters.” Cannix Yau, “Lau urges crackdown by police on attacks,” *The Standard*, June 25, 2004. Other politicians who have been physically intimidated include legislators Fredrick Fung and Leung Yiu-chung.

then-urgent issue of impending undesirable Article 23 anti-subversion legislation,³ but also dissatisfaction over the government's handling of the SARS outbreak and ongoing economic downturn. However, considering the circumstances surrounding this year's July 1 march—where the Hong Kong economy had improved significantly since the previous year and there was no major public crisis akin to the SARS episode—many observers view this year's demonstration as a much clearer cry for greater democracy than for other sideline causes.

- On August 1, all LegCo members, including the pro-democracy legislators, were invited to the 77th People's Liberation Army (PLA) anniversary parade at the Sek Kong barracks. Some pro-democracy legislators accepted the invitation and attended the parade. Observers regard the event as an attempt by Beijing to be more open towards pro-democracy forces, though they also note that the display of military might could be a less-than-subtle reminder to opposition groups of what sovereignty looks like in reality.

THE SEPTEMBER LEGISLATIVE COUNCIL ELECTIONS

The Legislative Council

The HKSAR's legislative body is the Legislative Council (LegCo). As mentioned earlier, its powers defined by the Basic Law are relatively narrow: LegCo has the power to pass (block or amend) legislation proposed by the government and to approve the budget. Legislators have the power to introduce private members' bills but only ones that do not involve public expenditure, political structure, or operation of the government. A split-voting system effectively divides the legislature into two chambers on any bill, motion, or amendment that a LegCo member introduces (the system is not in place for government-sponsored bills). Under this arrangement, a member's action would require a majority from both the 30 seats of directly elected members and the 30 functional constituency representatives to gain passage.⁴ LegCo members can theoretically introduce a bill relating to government policies with the written consent of the Chief Executive. However, this has never yet been done.

³ Article 23 of Hong Kong's Basic Law is the basis for a highly controversial security law which was proposed by the Hong Kong government on September 24, 2002. The proposed Article 23 legislation was an anti-subversion law which introduced "treason" against China in certain circumstances. Concerns regarding the legislation also included: the extension of mainland state security laws into Hong Kong; allowing the police to enter residential buildings and arrest people at any time without court warrants or evidence; freedom of speech infringements; and the extensive power of the law over Hong Kong permanent residents, regardless of where they actually resided, as well as visitors, regardless of nationality. In the aftermath of the July 1, 2003 protest against this proposed legislation, two cabinet ministers resigned and the bill was indefinitely shelved and later withdrawn from the legislative agenda by the Executive Council on September 5, 2003.

⁴ Basic Law, Article 74 and Annex II.

What the LegCo does have is tremendous moral authority in Hong Kong, and has the potential to act as an effective monitoring body when some amount of consensus within the body is reached.⁵ For example, its recent motions against appointed officials functioning under the new quasi-ministerial system (Principal Officials Accountability System) implemented by the Chief Executive in July 2002 led to the eventual resignation of three cabinet members.⁶

The LegCo also possesses the authority to force the Chief Executive to dissolve the LegCo or even to resign by twice refusing to pass the budget or an important bill.⁷ For this reason, some observers have warned that a more pro-democracy leaning LegCo could “paralyze” the government. Others have responded that a LegCo dominated by pro-democracy legislators would change the dynamic of executive-legislative relations by compelling the government to include those members and parties in the decision-making process and to weigh their preferences, without causing LegCo members to force a governance crisis in Hong Kong.

LegCo members are elected to four-year terms. At least 48 of the 60 members must be Chinese citizens who are Hong Kong permanent residents and not in possession of foreign passports; 20 percent of the LegCo can be permanent residents who are not Chinese citizens and possess foreign passports.

History of Legislative Elections in Hong Kong

Hong Kong’s experience with elections has been relatively limited. During most of the period under British rule, the people of Hong Kong had little or no voice in the manner in which the colony was governed. In 1991, 18 of the Legislative Council’s 60 seats were directly elected for the first time. Elections in 1995, however, were significantly different as a result of the last British governor’s efforts to expand the practice and decentralize political power. While only 20 representatives could be directly elected in 1995 in accordance with the Basic Law framework agreed upon by Britain and China, Governor Christopher Patten’s reform package included dramatic expansions in the electorates for functional constituencies, the designation of locally elected officials as the Election Committee, the establishment of District Boards, and the adoption of single-member geographical constituencies.

The Chinese leadership objected to many of these changes, asserting that they violated the Basic Law. This disagreement between the British and the Chinese effectively derailed the “through train,” which would have allowed members of the

⁵ Beyond the Basic Law, the Power and Privilege Ordinance gives LegCo power to investigate possible government wrongdoing including summoning the Chief Executive.

⁶ Former Secretary for Finance Antony Leung, Secretary for Security Regina Ip and Secretary for Health, Welfare and Food Yeoh Eng-kiong.

⁷ Basic Law, Articles 50 and 52. The Chief Executive could dissolve the LegCo if it refuses to pass a budget or important bill (though what constitutes an “important” bill is unclear) and consensus cannot be reached even after consultations. The Chief Executive would have to consult with the Executive Council and would only be able to dissolve the LegCo once during his/her term. The Chief Executive would have to resign if the replacement LegCo still refuses to pass the original bill under contention.

LegCo elected in 1995 to serve through reversion until the end of their four-year terms in 1999. Instead, China declined to recognize the validity or results of the 1995 elections and dissolved the LegCo upon reversion.

In December 1995, China established a 150-person Preparatory Committee, chaired by the Chinese foreign minister, to oversee Hong Kong's transition to Chinese sovereignty. The Preparatory Committee, in turn, established a 400-member Selection Committee. In December 1996, the Selection Committee chose Tung Chee-hwa as Chief Executive from among eight candidates and selected the 60 members of a provisional legislature. Tung and the members of the Provisional Legislative Council took office upon reversion in 1997.

The new HKSAR held legislative elections in 1998 (to complete the term of the legislature elected under British sovereignty in 1995) and again in 2000. The next LegCo elections will be held this September. In each of these elections, 30 of the 60 seats have been reserved for representatives of "functional constituencies" composed of various business and professional groups. However, the Basic Law provides for incremental increases in the number of directly elected "geographical constituency" seats in each successive election through 2004. It does not provide guidance beyond the 2004 election. In the first elections, in 1998, 20 seats were directly elected and the Election Committee chose 10. In 2000, 24 were directly elected and the Election Committee chose six. In 2004, the Basic Law stipulates that the number of directly elected seats will increase to 30 of the 60 total, and the Election Committee will no longer choose any LegCo seats.

NDI reported in both 1998 and 2000 that legislative elections in Hong Kong were well organized and well administered. Nevertheless, NDI also repeatedly has pointed out that the successful execution of elections does not resolve the underlying problem that the election framework in place restricts democratic processes.

The Electoral Framework: Geographical Constituencies (or Directly Elected Seats)

The LegCo's directly elected geographical constituency seats are divided into five districts: Hong Kong Island with six seats; Kowloon West with four seats; Kowloon East with five seats; New Territories West with eight seats; and New Territories East with seven seats.

Hong Kong has a total population of 6.9 million with 3.2 million registered voters for the geographical constituencies. More than 70 percent of eligible voters—Hong Kong permanent residents over 18 years old who actually reside in Hong Kong—registered to vote for the upcoming September election, reaching a historic high. Moreover, higher voter turnout is expected than before with recent polls showing 75 to 85 percent of voters planning to cast ballots, although in previous elections the actual turnouts were significantly lower than predicted. In 2000, 43.75 percent of registered voters turned out; in 1998, voter turnout was 53.29 percent. Conventional wisdom in

Hong Kong regards a higher voter turnout as more favorable for pro-democracy figures, with new, younger voters believed to favor these candidates over the pro-Beijing camp.⁸

Elections in Hong Kong are administered by the Electoral Affairs Commission (EAC), an independent statutory body. The election regulations are largely the same as they were in 2000.⁹ This year there will be 502 polling stations on election day. Counting will be conducted at the polling stations rather than aggregated at the district level, as they were in 2000, in order to speed up the process. For the first time, the ballots will include party or group names and logos (if they were registered within the designated period earlier this year) as well as photos of candidates. The candidate registration period was from July 22 to August 4. Candidates require a minimum of 100 electors (and a maximum of 200) in their constituencies to sign a nomination form in order to register.

Since 1998, Hong Kong has used a largest remainder, transferable vote, proportional representation system with multi-members districts to choose the directly elected seats in the LegCo. A first-past-the-post system of electing representatives from single-member constituencies was used in the 1995 polls.

The current system ensures that a party with significant but not plurality support will win a significant proportion of the available seats. A majoritarian or first-past-the-post system, given the same voting patterns, would give a greater number of seats to the party gaining the largest number of votes. Thus, in the old Hong Kong Island district with only four seats, for example, a party could win two of the four seats with just 30 percent of the vote. Other complications stem from the largest remainder, transferable vote aspect that has forced parties to recalculate repeatedly their strategies for combining and splitting lists. This system has been criticized as too complicated, thus focusing public attention on the tactics, strategies, and internal politics used by parties and groups in fielding various lists rather than on more substantive issues. Critics further highlight as a problem the inability of voters to select preferred candidates within the lists as is done in some other systems.

NDI commented in 1998 that the new system was an “unfortunate choice” for Hong Kong, particularly given the role of functional constituencies that are designed to protect minority interests, one of the main rationales for adopting a proportional representation system in other places. While Hong Kong residents have had more opportunity to become familiar with this complex electoral system, many observers have suggested that the proportional representation system be reconsidered in the larger debate about constitutional reform.

⁸ In 1998 the Democratic Party won 43 percent of the direct election vote, while in 2000 the DP share slipped to 35 percent. The DP’s loss of about 172,000 votes was attributed to the drop off in voter turnout and to a lesser extent loss of some public support. During the 2003 District Council election with record-breaking turnout, the DP claims that 2/3 of new votes went to the pro-democratic camp. Certainly, the DP did win six new seats for a total of 92 while the DAB dropped from 83 to 62.

⁹ For a brief summary, see NDI Report #5 (July 30, 1998) and Pre-Election Statement (September 7, 2000).

The Electoral Framework: Functional Constituencies

In accordance with the Basic Law, 30 of the 60 seats in the LegCo to be elected in 2004, as in the previous LegCo, are reserved for representatives of “functional constituencies” composed of various professional, social, economic, and political advisory groups.¹⁰ The functional constituencies are a fundamentally undemocratic feature of Hong Kong’s political system. The historic rationale behind their role was that business and sectoral interests would not find substantial representation in the LegCo and that safeguarding these interests was paramount to Hong Kong’s prosperity and stability. However, in 2000, only 5.25 percent of registered voters for the geographical constituency election were also qualified to vote in the functional constituency election, in effect breaching the right of permanent residents to vote.¹¹

The general arrangement of the functional constituencies remains the same as it was in 2000, with some minor composition changes to individual functional constituencies. Hong Kong has 300,000 potential voters for the functional constituencies. For the 2004 election, 199,539 of functional constituency qualified voters have registered to vote. Nine of 30 functional constituency seats were uncontested in the 2000 LegCo elections. In 1998, 10 out of 30 seats were uncontested. This year, 11 seats are uncontested.¹² However, the total number of candidates has increased from 57 in 2000 to 71 in the upcoming elections.

Although it is a positive development to see more candidates contesting the functional constituency seats, and expansion of the electorate in future elections would be an incremental improvement, the continued use of functional constituencies and corporate voting clearly diminishes the democratic character of the election process and the resulting legislative body. First and foremost, functional constituency representatives are in essence called upon to play an impossible role. If all LegCo members have to bear the same set of duties and responsibilities to act as the legislature for the HKSAR, then the functional constituency representatives’ role to advocate for special interests of their specific sectors cannot always, or perhaps even often, match that which is best for the general public.

Beyond the troublesome premise of their existence, the practical application of functional constituencies is also problematic. The functional constituencies do not cover

¹⁰ These are Commercial (2); Industrial (2); Real Estate and Construction; Tourism; District Council; Heung Yee Kuk, Wholesale and Retail; Engineering, Architecture, Surveying and Planning; Financial Services; Import and Export; Textiles and Garment; Information Technology; Agriculture and Fisheries; Sports, Performing Arts, Culture and Publication; Medical; Education; Health Services; Accountancy; Social Welfare; Catering; Tourism; Labour; Legal; Insurance; and Transport.

¹¹ Young, Simon N.M. and Anthony Law, Centre for Comparative and Public Law, University of Hong Kong, “A Critical Introduction to Hong Kong’s Functional Constituencies,” Civic Exchange, June 2004.

¹² These functional constituencies returning uncontested candidates are Heung Yee Kuk: Daniel Lam (Independent or I), Agriculture and Fisheries: Wong Yung-kan (DAB), Insurance: Bernard Chan (I), Transport: Miriam Lau (Liberal Party or LP), Real Estate and Construction: Abraham Razack (I), Commercial (First): Jeffrey Lam (LP), Industrial (First): Andrew Leung (LP), Industrial (Second): Liu Ming-wah (I), Finance: David Li (I), and Import and Export: Wong Ting-kwong (DAB).

all major economic, social, or professional sectors, but there is no systematic scheme for deciding who should be included or excluded. Some sectors that are recognized in the even narrower Election Committee, such as religious groups and Chinese medicine practitioners, are not likewise included in the functional constituencies. The disparity of sizes among the functional constituencies is vast, with the largest, Education, at 71,390 contrasting with the smallest, Heung Yee Kuk, at 148. Furthermore, there do not appear to be consistent standards imposed on membership in the functional constituencies with those that utilize umbrella organizations to determine their electorate.¹³ Finally, the use of corporate voting is also inherently problematic. One effect is that it allows foreign companies and even local governments to have a vote in the Hong Kong elections.

Integrity of the Elections

In its meetings, the NDI assessment team repeatedly questioned whether there were greater threats to the integrity of the upcoming elections over previous years. Despite widespread press reports that started in the spring about fraudulent voter registration and attempted intimidation of voters, both government officials and party representatives responded that these elections were essentially no different from previous years in their perceptions about potential malfeasance. One pro-democracy legislator said it was merely “more of the same” tricks. This attitude seems to speak to Hong Kong people’s faith in their institutions: a free press that is able to report alleged wrongdoing; free media—particularly the popular talk radio format that allows listeners to call in and voice opinions on matters which are sometimes followed up by official investigations; the Independent Commission Against Corruption (ICAC); police, judiciary, and even civil society watchdog organizations.

The reported problems that have received the most attention this season seem to fall into three very general categories: 1) voter intimidation by mainland-affiliated persons who threaten to negatively affect the voter’s business interests or family unless he or she votes for a pro-Beijing party and records evidence by photographing the completed ballot with a mobile phone camera; 2) fraudulent voter registration by third parties from pro-Beijing party-affiliated community centers; and 3) intimidation of media personalities or political figures through violence or threats of violence. As of August 28, the ICAC received 21 election-related complaints; according to the ICAC, 19 of these are “pursuable,” and there have not been any arrests so far.

The Electoral Affairs Commission has pointed out that it is already a crime to take photographs inside polling stations and to use mobile phones there if instructed by EAC officials against doing so. Penalties for violations are 5,000 Hong Kong Dollars (640 U.S. Dollars) or six months in prison. When reports about the possibility of voters being coerced into photographing ballots came to light, many Hong Kong citizens called upon the EAC to ban mobile phones from the voting booths. The EAC responded that such a ban could discourage people from voting and create administrative problems with people inevitably leaving their phones behind after casting ballots. Instead, the EAC has

¹³ Young and Law, “A Critical Introduction to Hong Kong’s Functional Constituencies,” Civic Exchange, June 2004.

proposed removing curtains from polling booths, rather than lowering the walls as some observers have suggested, in order to further discourage voters from photographing ballots.

Regarding fraudulent voter registration by third parties, the Electoral Affairs Commission noted that it is a crime in Hong Kong to forge documents. So if a person discovered that someone has registered him or her to vote with personal information provided in another context, that person must report the problem to the police. In fact, such a scenario appeared to have happened to one individual, who then complained to authorities. According to the EAC, over 400 voter registration forms received from the Tseung Kwan O Women's Centre have been forwarded to the police. A police investigation is reportedly underway, and it is expected that the police will take appropriate action upon completion of the investigation.

The ICAC noted that in the past there were complaints of individuals using false residential addresses to register as voters despite not being entitled to vote. In anecdotal terms, this is characterized as bussing in large quantities of senior citizens now residing over the border in Guangdong province (Hong Kong permanent residents who no longer regularly reside in Hong Kong proper) to vote in the elections. According to ICAC Elections Programme Coordinator Rosaline Cheung, "Complaints received during the last Legco election in 2000 involved mainly illegal activities, such as missing the deadline on election returns, followed by corrupt conduct in voting, such as registering voters using false information or bribery." Nonetheless, there do not appear to have been any prosecutions based on those allegations.¹⁴

A new factor in this year's election is the fear expressed by pro-democracy groups that mainland authorities or interests are attempting to influence the outcome through various means. While these rumors and innuendo are difficult to investigate or to prove, perceptions of such influence are a significant part of this pre-election environment. During the candidate nomination period, allegations that prospective pro-Beijing candidates were pressured not to run against other pro-Beijing candidates were rife. More damaging in impact appears to be the sex scandal involving Democratic Party candidate Alex Ho who police claimed to have caught with a prostitute in vice-raid in a Dongguang hotel just over the border in Guangdong province. Police sentenced him to six months of re-education through labor, which is essentially a form of administrative detention in China.¹⁵ The issues, beyond the problematic nature of extra-judicial sentencing to administrative detention in China, are: whether the arrest and sentencing were designed to discredit the DP during the election campaign period; whether Alex Ho's sentence was disproportionate and irregular compared to similar circumstances

¹⁴ Lee, Matthew. "ICAC warns after post offered to candidate," *The Standard*, July 22, 2004.

¹⁵ In China, security bureaus are able to circumvent criminal procedure of the legal system and sentence people to re-education through labor or custody and education detention. According to Ong Yew-kim, a research fellow at Chinese University's Institute of Asia-Pacific Studies, "The most common punishment for a Hong Kong person consorting with a prostitute on the mainland is the 15-day administrative detention. Even if the person is sentenced to re-education through labour, he would only get one to two months." Klaudia Lee And Nailene Chou Wiest, "Democrat's punishment unusual, says scholar," *South China Morning Post*, August 21, 2004.

involving Hong Kong residents; and whether Alex Ho would be disqualified as a candidate for the election.¹⁶ The Electoral Affairs Commission and Department of Justice determined that his six-month detention in Dongguan was only an administrative punishment under Article 30 of the Security Administration Punishment Act and did not constitute a conviction and imprisonment that would technically keep Alex Ho out of the race.¹⁷ While scandals of various sorts are not unknown or unique to Hong Kong elections, the circumstances of the scandals are raising wariness among Hong Kong's pro-democracy advocates about who is behind these events.

Freedom of expression and freedom of the press remain issues of serious concern in Hong Kong that could still affect the elections. These topics are discussed in a separate section in this report.

Meeting International Standards

The International Covenant on Civil and Political Rights (ICCPR), to which both China and Hong Kong are signatories, guarantees the right to "genuine periodic elections" through "universal and equal suffrage." The Universal Declaration of Human Rights and numerous other human rights instruments and international agreements have similar provisions. Even before the reversion to Chinese sovereignty, Hong Kong was asked to bring its electoral law into line with the ICCPR. In 1995, the United Nations Human Rights Committee called on the Hong Kong government to take immediate steps to comply with the ICCPR. In November 1996, the President of the United Nations Human Rights Committee condemned the failure of the Hong Kong government to respond to its previous criticisms. The Committee reported that the use of "functional constituencies" in Hong Kong was a special restricted franchise and therefore a breach of Article 25 of the ICCPR.

While the international standard is "one person, one vote" for members of the lower house of a legislature, in Hong Kong that principle is not met. One individual in Hong Kong could very well cast three ballots on September 12 as an elector in the geographical constituency based on permanent residency, as an elector in a professional or economic functional constituency, and as an authorized representative of a corporate elector in a functional constituency. In fact, according to the Hong Kong Human Rights Monitor, one individual had control over 41 votes in the 1998 election through his

¹⁶ According to an article in *The Standard*, "[S]taff at the Springwood Harbour Hotel and sources in the Dongguan City suburb of Humen say the sex trade flourishes openly in the area, and the hotel had apparently never been the subject of a genuine vice raid before. Indeed, one hotel source said the raid was made by police from Shenzhen, rather than by local Dongguan police. That may suggest Ho was caught up in a politically motivated crackdown. But it could just as easily indicate that he was unlucky enough to be in the wrong place when a genuine raid was conducted." Also, the article reports, "By contrast, David Liu, a Hong Kong police constable arrested in Shenzhen for the same offence this week, received a 15-day sentence." Dennis Chong, "Questions raised by Ho vice arrest," *The Standard*, August 21, 2004.

¹⁷ Section 39 of the Legislative Council Ordinance covers the issue of disqualification of a person from being nominated as a candidate.

ownership of various properties and businesses that were corporate electors in various functional constituencies.¹⁸

There are two main arguments for why Hong Kong does not (and implicitly or explicitly should not) meet these standards at this time. The first is espoused by officials of the Hong Kong government and many businessmen that Hong Kong is in a transitional stage in its constitutional evolution, where universal suffrage for the Chief Executive and the LegCo remains the ultimate aim as stated in the Basic Law. This view embraces the principles that Hong Kong operates under certain practical constraints, namely the need to obtain the approval of the central authorities, as well as the need to undertake more pressing governance reforms as a pre-condition for winning their confidence in the HKSAR's readiness for universal suffrage.

The other argument paints Hong Kong as merely an autonomous unit of the PRC that cannot be held to international standards for sovereign states, with the rejoinder that "One Country, Two Systems" actually means foremost one country without acknowledging any corollary need for the two systems side of the equation. The latter view, often expressed by some of Hong Kong's more outspoken businessmen, then supposes that universal suffrage will arrive in Hong Kong after the PRC as a whole is ready for greater democracy. Nevertheless, the conflict about the appropriate pace of political reform in Hong Kong does remain at the heart of the constitutional reform debate in the HKSAR. This debate is explored further in other sections of this report.

The lack of independent international and domestic election observation in Hong Kong is also troublesome. Independent election observation helps to promote the integrity of an election process, particularly in countries moving from an authoritarian to a more democratic form of governance. Nonpartisan election observation contributes to a more competitive election process by encouraging fairer campaign practices and by reducing the possibility of fraud and irregularities on election day. Domestic election observation also builds civic participation by involving citizens and non-party groups in the political process.

Since the 1998 LegCo election, the Electoral Affairs Commission has not allowed observers inside polling stations on the day of the polls. The main reason given has been that the EAC, as an independent, non-partisan statutory body, is capable of adequately supervising the vote without outside "supervision." The EAC also notes that party agents

¹⁸ "...no less than 17 companies are registered at the Salisbury Road, Tsim Sha Tsui address of the Sino-Land group of companies owned by Mr Robert Ng. Mr Ng who is also entitled to a personal vote in the same functional constituency [real estate], thus controls between 3 and 4 percent of the official registered electorate in this constituency, and about 5 percent of the real electorate after allowing for multiple registrations by persons other than himself. This would be equivalent to wielding 15,490 votes in the Hong Kong Island geographical constituency. Mr Ng additionally controls 2 votes in the Tourism constituency, through his hotel management holding company and through his ownership of the City Garden Hotel, both of which are registered voters in that constituency. Mr Ng is therefore known to control 20 votes in the functional constituencies, with their equivalent 20 votes in the election committee election, as well as his personal vote in a geographical constituency, giving him a total of 41 votes in the Legislative Council election." Hong Kong Human Rights Monitor, "Report on the 1998 LegCo Election," section 9.08.

and candidates are allowed to observe the process inside the polling stations. Reconsideration on the participation of international observers in the electoral process during debate about future electoral arrangements could help to enhance the public's confidence in the integrity of the election process.

The 2004 LegCo Campaign Highlights

The 2004 LegCo election has generated excitement in Hong Kong as new entrants contest the increased number of seats in geographical constituencies. At the close of the candidate nomination period, there were a total of 162 candidates to contest the 60 seats in LegCo; 90 of the 162 candidates will run in geographical constituencies. By August 28, three of the candidates were subsequently disqualified. The functional constituencies also have more candidates contesting the limited franchise elections in higher numbers than before. This section examines the highlights of this election campaign.

Unprecedented cooperation by the pro-democracy forces, also commonly referred to as the pan-democratic camp, led to the unveiling of a unified campaign platform.¹⁹ The members of the pan-democratic camp are the Democratic Party (DP), The Frontier, the Association for Democracy and People's Livelihood (ADPL), the Article 45 Concern Group, and various independents. However, the principles were broad as the group failed to agree on positions on solving the budget deficit or unemployment. The pan-democratic camp is quite varied. The DP, founded in 1994, has 600 members and has served as the institutional opposition party since the handover. The Frontier, founded in 1996, has less than 100 members and counts itself as a "pressure group" rather than an official party. The small ADPL has a presence limited to Kowloon West. And the last group member in the camp is the tiny group of prominent barristers and jurists who make up the Article 45 Concern Group. Nevertheless, both those within the pan-democratic camp and outside expect the pro-democracy side to gain more seats in the September election. The pan-democratic camp says that they aspire to just short of 30 seats in the LegCo, with various candidates also running in the functional constituencies.

The pan-democratic camp is cooperating to elect as many of their group to the LegCo as possible after a complex, negotiated, and drawn out process to compose and split lists among the five constituencies for maximum advantage. On Hong Kong Island, the camp split its tickets between one list with independent legislator and Article 45 Concern Group member Audrey Eu and legislator and former Frontier member Cyd Ho, and another list with DP Chairman and legislator Yeung Sum and DP legislator Martin Lee. The Hong Kong Island contest promises to be contentious with strong competition from the very popular former LegCo President Rita Fan and the DAB list with Chairman

¹⁹ The seven point platform states that the group intends to: fight for universal suffrage in 2007 and 2008; uphold the rule of law and human rights; use their power responsibly when monitoring the government; create a just society, protecting the underprivileged; work towards a government with greater transparency; implement economic policies that would balance the interests of big and small businesses and protect the interests of workers; and improve education and environmental policies.

Ma Lik with legislator Choy So-yuk.²⁰ The pan-democratic camp's campaign slogan in Hong Kong Island is to promote strategic voting by supporters with the convoluted math formula "1+1=4." This slogan is designed to urge voters to vote for one list while bringing along a friend or relative to vote for the other pan-democratic list in order to elect all four members to LegCo.

In addition to the cooperation among the pro-democracy forces, a prominent feature of this election will be the departure from the legislative arena of the legendary Szeto Wah. Citing his advancing age at 73 and the long working hours and heavy workload of LegCo, Szeto Wah is ending his 18-year legislative career. Szeto Wah, as head of the Hong Kong Alliance in Support of Patriotic Democratic Movements in China, gave rousing speeches in support of his annual motion for vindication of Tiananmen Square protestors and elicited the expected consternation from Beijing. In some respects, his principled and uncompromising stance has prevented the DP from appearing completely mainstream to the conflict-averse Hong Kong public. Some observers have criticized the Hong Kong Alliance in Support of Patriotic Democratic Movements in China for challenging the "One Country, Two Systems" prescribed separation of political arenas between the mainland and Hong Kong as the group advocates an end to one-party dictatorship. The passing of a generation of DP leaders as well as the current environment of warming relations between the DP and Beijing might pose new political opportunities for the party.

While there is the overarching theme of cooperation among the pan-democratic camp, there have been differences that have not been able to be resolved. Veteran unionist Lau Chin-shek was branded a traitor by Szeto Wah for his discussions with Beijing and is running against DP legislator James To in Kowloon West. Political activist Leung Kwok-hung, better known as "Long Hair," is running in New Territories East and could siphon away votes from the combined ticket of the DP, Frontier, and Article 45 Concern Group. Popular radio talk show host Albert Cheng's late entry into the race in Kowloon East with Frontier member Andrew To has also thrown off earlier calculations in that district by the pan-democratic camp.

The scandals besetting the Democratic Party appear to have diminished support for the party. Although Alex Ho, the 46-year-old Kwun Tong District Councillor, was only third on the DP's Kowloon East ticket behind incumbent Fred Li and Wu Chi-wai and stood minimal chance of winning a seat, his arrest on the mainland on August 13 amounts to a sex scandal that has eroded the party's popularity.²¹ Following on the heels of Alex Ho is the controversy over allegations that LegCo member James To used his LegCo allowance to pay above-market rent for an apartment that was owned by Target Link Ltd., a company set up by him and another DP member and LegCo candidate Stanley Ng, but had been transferred to the party. Apparently, James To reported his

²⁰ According to a rolling POP HKU poll commissioned by Civic Exchange released on August 24, when Hong Kong Island voters were asked which list of candidates they would vote for 38.7% said Audrey Eu and Cyd Ho, 29.2% Yeung Sum and Martin Lee, 21.1% Rita Fan, and 9.6% Ma Lik, Choy So-yuk.

²¹ Hong Kong University's Public Opinion Programme rolling poll showed support for the DP list falling to 10.1 per cent between August 18 and 22 from 12.9 per cent during the previous week.

shares in the company to the District Council Secretariat but not to the LegCo Secretariat. He claims to have made no financial gain but apologized for not being more careful in handling the matter. The DP is conducting its own investigation while the ICAC reportedly received two complaints regarding this problem.

Meanwhile, the Democratic Alliance for the Betterment of Hong Kong (DAB), established in 1992, with over 2000 members remains Hong Kong's largest party. Although the party supported universal suffrage in 2007 in its original manifesto, the DAB has not countered the SCNPC ruling against that goal. Instead, it appears to be conditionally supporting universal suffrage in 2012. Since its devastating performance in the 2003 District Council elections when it lost 21 seats, the DAB has struggled to consolidate and move forward. Many observers have remarked that the DAB has been quiet, which fits into one senior member's description of a party that is learning to listen more and talk less. In June, the DAB launched the Young DAB, their youth wing, to attract a new class of young professionals to offset the older, grassroots constituency base that has kept the DAB from appearing vibrant and able to meet the challenges of responding to middle class aspirations. Despite rebuilding efforts, observers continue to point to signs of conflict within the party. DAB Vice-Chair and legislator Ip Kwok-him, who lost to Cyd Ho in the District Council race, decided not to run for re-election. When the DAB announced shortly after the closing of the nomination period that its Chairman had been just diagnosed with colon cancer, the party had to counter unrelated rumors. In Kowloon East, Chan Yuen-han, the most popular legislator in DAB, chose not to run on the same ticket with another DAB incumbent legislator, Chan Kam-lam, who is more conservative than she is. Instead, she took Lam Man-fai on to her ticket, leaving the less popular Chan Kam-lam to fend for himself.

Another pro-Beijing party, the Hong Kong Progressive Alliance (founded in 1994), has not participated in geographical constituency races and appears to be facing its demise with its four LegCo seats having been returned by the Election Committee and functional constituencies in the past. The decision by legislator David Chu not to run has caused some controversy over whether he had been asked to do so by officials wanting to see the DAB strengthen its position in the election. Alliance Chairman Ambrose Lau announced at the last minute that he would not be seeking re-election in this term.

The Liberal Party (LP) gained substantially from the events surrounding Article 23 last year. James Tien's resignation from the Executive Council (ExCo) and subsequent withdrawal of support of his party's eight LegCo votes for the government's efforts to push through the unpopular legislation led to the LP being hailed as the hero of the public will. Ironically, the party had withdrawn its support for universal suffrage from its 10-year old party constitution at the end of 2002. Senior party members often argued that functional constituency representatives are better able to address the important issues facing Hong Kong today because they are not beholden to populist demands and that employment, housing, health, and education are more important than the universally recognized principle of one person, one vote.

Nevertheless, three senior LP members—Chairman James Tien, Vice-Chair Selina Chow and legislator Kenneth Ting—are leaving their safe seats in the functional constituencies to run for election in the geographical constituencies. A senior party official explains that the leadership has read the writing on the walls and sees Hong Kong's inexorable movement towards universal suffrage. New members have joined the party's 300 pre-existing members, reaching a total of 800 members, with many of these new members reported to be young professionals. If the LP can make this transition, it very well could become the middle class party that so many Hong Kong people have sought.

Finally, a dramatic increase in the number of contests within functional constituencies is another major feature in this year's election. The Accounting sector expects a heated contest with the departure of prominent legislator and Convener of the "Breakfast Group" (an informal caucus of unaligned legislators) Eric Li, leading to nine candidates contesting that seat. The Architectural, Surveying, and Planning sector is also a highly contested seat with six candidates. Observers credit this upsurge in interest as a result of a middle-class political awakening.

STATUS OF DEMOCRATIC PROGRESS IN HONG KONG

Hong Kong stands at a constitutional crossroads as the 10-year transition period outlined in the Basic Law ends with the 2007 Chief Executive election. The Hong Kong government promised to release by last December a timeline for public consultation on the critical constitutional issues of political reform that could lead to universal suffrage in the 2007 election. Instead, events overtook purported intentions and the central authorities issued a ruling on April 26 that shut down part of the debate before it had even officially begun.

The pan-democratic camp has adopted a unified platform for the September election that demands universal suffrage in 2007 and 2008 and has technically refused to participate in the official public consultation. Various public opinion polls last year showed that over 80 percent of Hong Kong people wanted universal suffrage for election of the Chief Executive in 2007 and all legislators in 2008. According to the Public Opinion Programme at the University of Hong Kong, that figure has dropped to 55 percent still favoring universal suffrage for electing the Chief Executive in 2007 and 66 percent in favor of universal suffrage for electing the entire LegCo in 2008.²² Although the majority of Hong Kong people still favor universal suffrage in 2007 and 2008, most observers agree that a reversal by Beijing on the SCNPC's April decision is highly unlikely.

²² "People's Opinion Towards Constitutional Reform: People's Support for General Election of the Chief Executive in 2007 and People's Support for General Election of All LC Members in 2008," Public Opinion Programme, University of Hong Kong. These surveys were conducted by telephone interviewers under close supervision, sample size of more than 1000 participants, and weighted according to gender-age distribution of the Hong Kong population target population of these surveys are Cantonese speakers in Hong Kong of age 18 or above. July 2003-May 2004.

Some leading Hong Kong figures have come out in support of universal suffrage in 2012. The DAB's campaign platform includes the promise to fight for universal suffrage for the Chief Executive and the entire LegCo in 2012. Former LegCo President Rita Fan, who is running for a geographical constituency seat this time (she was returned by Election Committee in 1998 and 2000), said in her campaign kick-off event, "I reckon it would take at least eight years for the existing political parties to mature. Therefore, I suggest the chief executive not be directly elected until 2012 at the earliest." As for a fully democratically elected LegCo, she targeted 2020.²³ Legislator Bernard Chan, who is returning uncontested to his functional constituency seat representing the Insurance sector, has also advocated universal suffrage in 2012. It remains to be seen whether a firm commitment to universal suffrage in 2012 by both the current Hong Kong government and the central government would effectively assuage Hong Kong people's disappointment about missing the opportunity presented in 2007 and 2008, while also providing enough distance for business elites who have been reticent about expanding the franchise.

Moreover, whether the pan-democratic camp will soften its stance after September's LegCo elections is also something that remains open to speculation, although total consensus within the group is not likely. At the government's first official seminar on constitutional reform, LegCo member and Convener of The Frontier Emily Lau remarked on the proposal by several prominent business men espousing universal suffrage in 2012. "This is a very good development as, short of universal suffrage in 2007 and 2008, people now would have a new hope," she said. Emily Lau also added, "If this could become a consensus the current sad atmosphere could become more relaxed."²⁴ DP Chairman Yeung Sum has said on the record that the DP will not give up on universal suffrage in 2007 and 2008.

Meanwhile, the Hong Kong government appears to have moved beyond the question of when Hong Kong will have universal suffrage for electing the Chief Executive and the entire LegCo. According to Hong Kong government officials, the next stage of the long march to greater democracy will be, upon the end of the official consultation period over the Taskforce's third report, summarizing the views expressed during the consultations into another report which will be the basis for yet another round of consultations. Beyond that, government officials did not offer any concrete commitments but expressed to the assessment team the hope that differences could be narrowed through this process. The Chief Secretary stated that, after another phase of consultations, he hoped the legislative stage would take place sometime next year or early 2006 with supplementary legislation in 2006 or 2007. He would not give a firm timeline, but he did point out that the year 2012 is "interesting" because both the elections for the Chief Executive and the LegCo would coincide for the first time since 1997.

²³ Cheung, Jimmy, "HK not ready for democracy: Rita Fan," *South China Morning Post*, July 19, 2004.

²⁴ Leung, Ambrose, "Reform ideas skirt Beijing barriers," *South China Morning Post*, May 25, 2004.

The Public Consultation on Constitutional Reform

In its decision on issues relating to the methods for selecting the Chief Executive in 2007 and for forming the Legislative Council in 2008, the Standing Committee of the National People's Congress firmly stated:

The election of the third Chief Executive of the HKSAR to be held in the year 2007 shall not be by means of universal suffrage. The election of the Legislative Council of the HKSAR in the fourth term in the year 2008 shall not be by means of an election of all the members by universal suffrage. The ratio between members returned by functional constituencies and members returned by geographical constituencies through direct elections, who shall respectively occupy half of the seats, is to remain unchanged. The procedures for voting on bills and motions in the Legislative Council are to remain unchanged.²⁵

Despite requests by pro-democracy legislators and others in the aftermath of the July 1st demonstration, it is unlikely that Beijing would reverse its decision on such a high-profile matter. Although the pan-democratic camp has not given up its demand for universal suffrage in 2007 and 2008 going into the upcoming LegCo elections, other influential advocates for political reform have engaged the government in its public consultation and are focusing on the issues that are deemed to be within the scope of possible change. According to the Hong Kong government, these areas include: the size and composition of the Election Committee; the number of nominations required for Chief Executive candidates; the number of seats in LegCo; the size composition of the functional constituencies; and the issue of nationality of LegCo members.

Currently, the 800-member Election Committee is elected by 163,500 voters, 13,500 of whom are actually corporate bodies and 150,000 are individuals. Membership is evenly split with 200 members in each of four sectors: 1) industrial, commercial and financial sectors; 2) professions; 3) labor, social services, religious and other sectors; and 4) members of LegCo, Hong Kong deputies of the National People's Congress, Hong Kong representatives of the Chinese People's Consultative Conference, and representatives of the District Councils. The government is willing to consider increasing the size and makeup of the Election Committee.

Consultations have yielded suggestions that the Election Committee be expanded to include all eligible voters in Hong Kong or that the Election Committee nominate candidates for general election. However, these more populist proposals appear to have been dismissed as being fundamentally unacceptable to Beijing. Other suggestions are that 500 members of the public be randomly selected to be on the Election Committee, similar to the principle of jury duty, and that the Election Committee be doubled in size.

²⁵ "The Third Report of the Constitutional Development Task Force: Areas which may be Considered for Amendment in respect of the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008," May 2004.

Many critics have advocated an expansion in the number of LegCo members as a needed reform, with a workload that is untenable for only 60 members as an overarching argument. With the SCNPC decision, Hong Kong is bound to keep the 50-50 ratio of directly elected members to functional constituency representatives in the next LegCo. While the pro-democracy camp seems to agree that, in principle, an expansion in the number of legislators would be positive, the DP and others will not support an expansion in the numbers of functional constituency seats. They argue that an expansion of those seats would further entrench the functional constituencies and move in a direction inconsistent with the principle of gradual progress towards greater democracy. Therefore, any change to the size of the LegCo being instituted appears contingent on the outcome of the September elections.

Various suggestions for reforming the functional constituencies focus on expanding the electorate within the existing groups, eliminating corporate voting, establishing a statutory body to govern the determination of eligible electorates within the functional constituencies, and increasing transparency regarding the identities of functional constituency electors.

Governance Reforms

When Chief Executive Tung Chee-hwa made his report to the SCNPC on April 15, he presented this along with the Taskforce's second report on constitutional reform. He noted nine factors that need to be considered in addressing the question of universal suffrage in 2007 and 2008:

Development towards the ultimate aim of universal suffrage must progress in a gradual and orderly manner, step by step. The pace should not be too fast. The progress should accord with the actual situation in the HKSAR, to preserve its prosperity and stability. When considering the actual situation, public opinions, as well as other factors, including the legal status of the HKSAR, the present stage of constitutional development, economic development, social conditions, the understanding on the part of the public of "One Country, Two Systems" and the Basic Law, public awareness on political participation, the maturity of political talent and political groups, as well as the relationship between the executive authorities and the legislature, must be taken into account.²⁶

Critics lashed out at Tung for effectively erecting new barriers to political reform above and beyond those imposed by the Basic Law.

²⁶ "Report by the Chief Executive of the Hong Kong Special Administrative Region to the Standing Committee of the National People's Congress on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2008," April 2004. The PRC refers to the 2008 LegCo as the fourth as it counts the provisional LegCo separately.

However, these so-called pre-conditions for further movement towards universal suffrage are in fact generally accepted by and reflect the opinion of many business elites and others in Hong Kong, including the pro-Beijing parties. They believe that Hong Kong has not been governed well since 1997, and that numerous factors underlie this weakness. Pro-Beijing politicians have found themselves in the awkward position of being supportive of the central government and thus thrust into being pro-Tung administration (since the central government essentially appoints the Chief Executive), despite their frustration with Tung Chee-hwa. Although many critics would blame Tung personally for the failures of his administration, most people with whom the assessment team met seem to attribute the problem of governance in Hong Kong to systemic and structural weaknesses that have been exacerbated by a lack of adequate political leadership.

While Tung Chee-hwa has been heavily criticized, Hong Kong's various institutions have also faced wide-ranging criticism, including: executive-legislative relations; the civil service; the Principal Officials Accountability System; the Executive Council; the Central Policy Unit; Hong Kong's political parties; think tanks or rather the lack of them; and even the level of civic education.

The problem of executive-legislative relations is often explained as the Chief Executive having to serve alone without any support in the LegCo. Given the complex layers of political pressure in the HKSAR, the situation was never so straight-forward. Pro-Beijing parties and individuals in the LegCo were generally expected to support the Hong Kong government and appear to have acted accordingly most of the time. Tung tried to institutionalize that support by appointing two party chairmen from the largest pro-Beijing parties to his Executive Council (ExCo) as ministers without portfolios. That ad hoc system fell apart during last year's Article 23 saga when Liberal Party Chair James Tien withdrew from the ExCo and no longer guaranteed his party's votes in the LegCo for the unpopular measure. Moreover, some observers have claimed that the ExCo actually operates as a dual-tiered system with some members privy to more information than others; that is, the five members without portfolios have been treated as "second class" members. Since the ExCo's operations are not transparent, it is difficult to verify this claim, but it seems to speak to the frustrations of those involved or close enough to them to know.

If the problem in executive-legislative relations really is as basic as the lack of support for the Chief Executive within the LegCo, it would seem to be a simple remedy to change the legislation to allow the Chief Executive to retain party affiliation upon election. The 2001 Chief Executive Election Ordinance mandates that the Chief Executive must either not have a party affiliation or renounce any upon election; this could be easily over-written by new legislation rather than be subject to the more arduous process of amending the Basic Law. This would move Hong Kong to a system more akin to established democracies around the world that utilize political parties, despite their myriad pitfalls, as an effective organizing principle. Beyond an overhaul of the current system to include political parties, critics have suggested numerous ways to improve damaged relations between the executive and legislature that both fall within the Basic

Law constraints as well as outside it. These suggestions include amending the Basic Law to allow private members bills, requiring LegCo approval of ministerial appointments, and institutionalizing a process whereby the Chief Executive and his ministers make important policy announcements and take questions at the LegCo before any press briefings.

The Executive Council and the Accountability System are frequently characterized as dysfunctional. The Accountability System is a ministerial system of sorts that created a new class of appointed government officials who are appointed by the Chief Executive with the approval of the central government. The system began inauspiciously when Tung Chee-hwa rushed the LegCo to pass legislation for a system that was designed without sufficient consultation with the legislature, civil service, or the public.²⁷ Many critics have offered suggestions to the system, described by one prominent legislator as a “veritable mess.” These include restructuring the ExCo to set up major policy committees, appointing deputy secretaries, and strengthening the role of the Chief Secretary to include liaising with the LegCo and coordinating domestic policy. In addition, the civil service is beleaguered and demoralized. There have been numerous suggestions for reforming the civil service system but these are intertwined with changes to the ministerial system.

Statutory and advisory bodies are a feature in Hong Kong’s governance whose role and organization seem to require major revamping from their colonial period construct. These bodies include statutory bodies like the Equal Opportunities Commission, which was beset by various scandals last year beginning with the government’s treatment of popular former Commissioner Anna Wu, and the Commission on Culture and Heritage. There are approximately 470 advisory committees comprising thousands of members. Criticisms of the system include: a lack of guidelines on establishing a committee or appointing or removing members; no policy for appraisal of members; no system for evaluating the effectiveness of the committees; high absenteeism among members; and bias in appointments. In a 2003 study that examined 103 of these advisory and statutory bodies with greater influence on policy-making, 60 committees had members who had served for more than the six year limit set by the government. Furthermore, 43 people came up as serving on seven or more committees despite the rule against serving on more than six simultaneously while 33 of those individuals are also members of the Election Committee.²⁸ The disproportionate power wielded by a small number of Hong Kong luminaries is stark. A recent study by the Hong Kong Council of Social Services in its Social Development Index called for change to the administration’s consultation mechanisms to help bridge the gap between people and government. Others have called for a complete overhaul of the system.

²⁷ For background on the development and implementation of the Accountability System, see NDI-Civic Exchange, “Accountability without Democracy? The Principal Officials Accountability System in Hong Kong,” October 18, 2002.

²⁸ Cheung, Fernando. “A Study on the Advisory and Statutory Bodies in Hong Kong: A Brief Report,” Power for Democracy, Office of Emily Lau and Hong Kong Democratic Foundation, May 20, 2003.

The Central Policy Unit (CPU) is the government's think tank but has become the subject of controversy as some critics claim it has become a political tool used by the government to repress dissent. There have been numerous controversial events that have raised serious concerns about this body. One event was the forced departure of CPU member Joseph Lian, apparently for his political views. Another troubling event was a June 2003 survey leaked to the *Ming Pao* newspaper that contained blatantly biased questions against democrats (sample questions from the survey include, "Are you worried that the US government will cut its trade privileges to HK under the pretext of problems in the one country two systems policy if hundreds of thousands of people attend the July 1 rally? Do you agree that the democrats who engaged in active lobbying in the US should take part of the responsibility if the US government really acts on HK?"). A third controversial action was the CPU's hiring of a commercial firm to count demonstrators in April. How the CPU could better fulfill its mission to inform the government in its decision-making processes is just one of the formidable array of governance reforms that the HKSAR should address.

Social Context and Civil Society

Until last July 2003, conventional wisdom held that the people of Hong Kong are apolitical and only interested in economic and livelihood issues. Since the groundbreaking turnout of the July 2003 protest demonstrations and their success in effecting the indefinite shelving of Article 23 legislation, Hong Kong has seen the emergence of what some people are calling a culture of protests. According to police figures, the number of public protests has risen from 1,008 demonstrations in 1996 to 2,303 in 2002. Protests may be one indication of increasing civic awareness in Hong Kong, but other indications also exist. In June, over 200 professionals and academics signed a statement in support of Hong Kong's core values—human rights, rule of law, and upholding professionalism—and expressed concern about erosion of these values. The middle class appears to be speaking up for itself directly in lieu of an appropriate political party to fulfill that role. It may be interesting to note here that in many other emerging democracies, one of the most common preconditions that people cite for further opening up of closed political systems is the absence of a sufficient mass of middle class voters.

Many critics still lament the low level of interest and activism by university students in Hong Kong. Observers ascribe this lack of civic awareness to Hong Kong's history as a colonial entity where the British deliberately minimized civic education. While colonial attitude holdovers are not disputed, public awareness is more than a prescribed program; it is an organic process that is taking hold in the HKSAR. Nevertheless, civic education appears to be an area that has been under-resourced, and it should be addressed by the government.

Think tanks in Hong Kong are emerging and expanding in both scope and breadth. Various people mentioned to the assessment team the problem of the lack of think tanks in Hong Kong. With varying areas and degrees of competence, Hong Kong's think tanks include among others Policy Research Institute, Civic Exchange, SynergyNet,

Article 45 Concern Group, the Hong Kong Democratic Foundation, Social and Economic Policy Institute, and the One Country, Two Systems Institute. Beyond these groups are Hong Kong's universities, whose scholars often times collaborate with these civil society organizations. Moreover, the academic institutes themselves produce research and are capable of producing more than the think tanks. If the development of think tanks is a priority for Hong Kong, then more support and funding needs to be channeled to these nascent groups.

Finally, a basic reform that many business people referred to was the need to expand Hong Kong's tax base. The old adage of "taxation without representation" is reversed here where the vast majority of Hong Kong people do not pay income taxes. There is a proposal for a value-added tax as well as lowering the threshold for income tax payers.

Political Parties

In the absence of strong political parties, Hong Kong has developed an unusual situation in which parties exist as only one type of group (technically, they are either registered societies or corporations) that fields candidates for elections, while labor unions and civil society organizations also function as the machinery behind representatives who run to champion those interests. Moreover, Hong Kong's political scene is populated by individuals, some more charismatic than others, who serve as independent politicians. According to various public opinion polls over time, these independents are Hong Kong's most popular public figures. Many observers regard the promulgation of a political party law as a necessary reform to strengthen Hong Kong's parties.

By most accounts, Hong Kong citizens remain skeptical of political parties. Less than 1 percent of Hong Kong's population has ever joined a party. Commentators from across the political spectrum have noted that the middle class, in particular, is ambivalent about parties without anyone adequately representing this group. The Democratic Party and other pro-democracy politicians have been viewed as being critical of the government while not offering constructive alternatives. Moreover, their contentious relationship with Beijing and with Hong Kong's Chief Executive, in the view of some political observers, has marginalized them and rendered them less effective than they might be otherwise. The Democratic Alliance for the Betterment of Hong Kong, on the other hand, has been bound to support the unpopular Hong Kong government and seen its popular support fall as a result. The pro-business, pro-Beijing Liberal Party appears to be gaining substantial popular support, although it had previously been viewed as a less cohesive party with narrow interests.

According to a recent NDI-sponsored University of Hong Kong poll, which interviewed a sample of the Hong Kong population, 53.5 percent of poll participants responded that political parties should play a larger role in the governance of Hong Kong while 13 percent preferred a lesser role (the rest were for the parties' role remaining the same or did not know). They were then asked whether party politics were more

beneficial or harmful to the democratic development of Hong Kong: 49.2 percent said they were more beneficial while 11.7 percent said they were more harmful (26.6 percent said half and half, 12.5 percent did not know).²⁹ What these figures show is that the majority of Hong Kong people are not decidedly against parties, but would like to see them play a more active role in Hong Kong's governance.

At the same time, the parties are not fulfilling the public's needs. When the respondents were asked if they believed their interests were represented by some of the parties in Hong Kong, 58.6 percent said "no" while only 28.4 percent said "yes" (13 percent did not know). Hong Kong's parties are small and constrained by both limited human and financial resources. There are numerous reasons for this.

While Tung Chee-hwa mentioned in his list of pre-conditions for universal suffrage a need for "maturity of political talent and political groups," the criticism about party development in Hong Kong may not be entirely sincere. Over the years, the Hong Kong administration, under Tung Chee-hwa's leadership, has made various policy decisions that have negatively impacted parties. The decision to eliminate Municipal Councils in 1999 removed a tier of elected government with actual policy-making powers. These Urban and Regional Councils had functioned as training grounds for politicians. On the other hand, the District Councils do not have any policy-making powers. As part of the reforms in 1999, the Hong Kong government committed to increasing the District Councils' power, but these promises have gone largely unfulfilled. The negative impact on party development of the move to a proportional representation system from first-past-the-post has already been discussed in the section on electoral framework.

Even in efforts to address party development with public financing for electoral campaigns, the government has provided a complicated system that may actually benefit individual candidates more than established parties. For the first time, public financing has been made available to candidates based on a reimbursement formula that would provide 10 Hong Kong Dollars per vote up to 50 percent of the total expenses, if a candidate captures at least five percent of the constituency vote. The catch appears to be that "donations" are not reimbursable, and money provided by a party would constitute a "donation," though a "loan" would be permissible. Some party leaders have expressed disdain for the complex scheme and said that they would not avail themselves to this opportunity. Observers in general appear to regard this development as a positive move, but one that is still more complicated than necessary.

Breaking the cycle where parties remain weak and people do not respect them will remain difficult until there are some breakthroughs in party performance. This is contingent on the emergence of a hospitable operating environment, which is ultimately a policy decision.

²⁹ Public Opinion Programme, University of Hong Kong. "Multi-party Opinion Survey on Political Development in Hong Kong," February 2004.

Freedom of Expression and Freedom of the Press

The issue of threats to freedom of expression and freedom of the press in Hong Kong is one that NDI addresses regularly in its periodic assessments of the HKSAR's political developments. A number of disturbing recent episodes continue to highlight the need to monitor the situation. In the assessment team's meetings, people were asked if they were concerned with freedom of the press. One prominent former official replied, "Yes and no." Most people with whom the team met expressed the view that Hong Kong's media are relatively free but that the ongoing vigilance was necessary. Several people, however, did express alarm over what they view as a drastically worsening situation.

In the past few years the general worry has been centered on the problem of self-censorship, given the business interests of the major media companies throughout greater China that might have kept them from pursuing certain stories. Now, however, there appear to be active efforts by what one person described as not the central authorities but Hong Kong people who are adamantly pro-Beijing who feel frustrated that their views have been sidelined. The current concerns focus on intimidation of journalists or media figures, an advertising boycott of the popular independent local newspaper, the *Apple Daily*, and the official governmental anti-graft body's raid on newspapers.

In May, the resignation of popular radio talk show hosts Albert Cheng and Raymond Wong and their sudden departures from Hong Kong left the public distressed about the silencing of outspoken administration critics. Both of the talk show hosts' businesses had been vandalized with red paint which, in Hong Kong triad parlance, signifies blood being spilt. In July, Albert Cheng returned to Hong Kong and became embroiled in a dispute with Commercial Radio about resuming his program and various arrangements regarding his contract. The very public saga culminated in Albert Cheng's expedited renouncement of his Canadian passport and last minute entry into the LegCo race in the Kowloon East district.

Allen Lee replaced Albert Cheng as host of the radio program, "Teacup in a Storm." Allen Lee is a former chairman of the pro-business and pro-Beijing Liberal Party who has become an outspoken democracy supporter. Soon after replacing Albert Cheng, Allen Lee announced his resignation from the program as well as from his position as a Hong Kong delegate to the National People's Congress. Allen Lee's announcement shocked Hong Kong as he testified in front of LegCo that a mainland official had implicitly threatened his family during a late-night phone call to him and that he felt that his position put too much pressure on his other personal relationships. Shortly afterwards, Allen Lee also resigned from his other media roles that included hosting a network TV and cable TV program.

Compounding public uneasiness over these resignations, Hong Kong was further shaken by the Independent Commission Against Corruption's raids on seven newspaper offices and arrests of six non-journalists on July 24. The raids and arrests were over the alleged breaching of the law by the newspapers who revealed the identity of a woman

being held under the anti-graft body's witness protection program (although there had been controversy over whether she was being held against her will). Many groups, both within Hong Kong and internationally, criticized the ICAC's heavy-handed use of its sweeping powers against the press. These included the Hong Kong News Executives Association, Hong Kong Press Council, Hong Kong Journalists Association, International Federation of Journalists, Hong Kong Human Rights Commission, and the Committee to Protect Journalists. The New York-based Committee to Protect Journalists stated, "The ICAC used unnecessary and heavy-handed tactics that seem designed to harass and intimidate." The *Sing Tao Daily* went to court seeking withdrawal of two search warrants used by the ICAC to raid its office and a journalist's home, as well as the return of seized materials. Indeed, the Court of First Instance ruled that the ICAC was "wrong in fact and law" to seek search warrants—that is, it had improperly used intrusive methods of search and seizure that should only have been used as a last resort and subsequently impinged on freedom of the press. The ICAC is currently appealing the ruling. Regardless of the final outcome, Hong Kong's press has felt the impact of these traumatic events.

Status of Autonomy

Independence is not an issue in Hong Kong. Even the most extreme pro-democracy advocates are proud of their Chinese heritage and support China's sovereignty over the region. What the people of Hong Kong defend are their civil liberties. They understand that these are protected by their special autonomy status guaranteeing them a legal and judicial system separate from the mainland. The question that the assessment team posed in its meetings was, "Are there credible threats to this autonomy?" Current and former Hong Kong government officials, diplomats, and business leaders all stressed that fundamental freedoms remain intact in the HKSAR.

Nevertheless, many people with whom the assessment team met concurred that the "One Country, Two Systems" construct is a fragile one. The attitude they expressed is that both Hong Kong and the international community need to be involved in ensuring that autonomy be preserved through constant vigilance.

Some recent actions taken by Beijing have raised some concern amongst pro-democracy advocates regarding the status of the HKSAR's autonomy. Demonstrations of Beijing's power remained relatively muted until May 5, when Hong Kong's Victoria Harbor was visited by two guided-missile destroyers, four guided-missile frigates, and two submarines displaying China's military strength for the first time since the territory was handed over by Britain in 1997. On August 1, Beijing invited prominent Hong Kong individuals and members of the public to the Hong Kong garrison to celebrate the 77th anniversary of the People's Liberation Army. The entire HKSAR force of 3,000 green-uniformed soldiers marched in display while 28 armored vehicles and a dozen army helicopters showed off the PLA's hardware. The event was notable for the invitations issued to pro-democracy legislators and also because the PLA had kept a remarkably low profile since the handover.

On July 20, the British government tabled its regular periodic report on Hong Kong in parliament, which this time expressed concern about the Standing Committee of the National People's Congress' "unexpected intervention" into Hong Kong's democracy. The British government said the decision had placed new limitations on Hong Kong's autonomy, particularly regarding the makeup of the LegCo which should not have been subject to Beijing's ruling. The Chinese Foreign Ministry replied with strong dissatisfaction, emphasizing that it "resolutely opposes the improper comments made by the British government on this issue."

CONCLUSION

The Basic Law created an expectation that there would be a 10-year transition to universal suffrage. However, there never was an explicit promise that this would be the case. Ultimately, the people of Hong Kong and the central government in Beijing will decide the appropriate pace and endpoint of the HKSAR's political development. Poll results and the increasing number of protests give some indication that people in Hong Kong are growing increasingly impatient because specific benchmarks for achieving universal suffrage beyond the 2007 elections have not yet been established.

Since China has opened up to the world, primarily on the economic front, Hong Kong is no longer in the privileged position of being the window into the mainland as it was in the past. Nevertheless, Hong Kong remains an important factor in U.S.-China relations, particularly since there are more than 1,100 U.S. firms operating in Hong Kong which have invested over 38 billion U.S. Dollars there. Relations between mainland China and the HKSAR are of great interest to other members of the international community as well. The mainland's posture with respect to democratization in Hong Kong affects how members of the international community view China's willingness to fulfill its international commitments.

Mainland officials have consistently maintained that they have not backed-away from the commitment to universal suffrage in Hong Kong contained in the Basic Law. However, the pace of democratization is uncertain. Despite the growing discontent in Hong Kong with recent political developments, there are signs that mainland officials and Hong Kong democrats can reach an accommodation. How democratization develops may largely depend on the central government's willingness to enter into a meaningful discussion with Hong Kong's democracy activists. Proponents of democracy in Hong Kong have shown a new inclination to tone down their rhetoric and compromise. There are at least tentative indications that mainland officials may be willing to compromise as well. The upcoming LegCo elections will indicate whether Hong Kong's democrats will remain united and maintain pressure on the central government in Beijing. If this takes place, it will be increasingly necessary for China's officials to agree to a timetable for further reforms and to answer the question: "If universal suffrage cannot take place in 2007 and 2008, why not 2012?"

APPENDIX

The details of the geographical constituency elections are below:

Hong Kong Island: Voter population 618,451; 6 seats; turnout in 2000 LegCo polls 42.03%; districts: Central and Western, Wan Chai, Eastern, Southern.

Candidates: Audrey Eu and Cyd Ho (I); Rita Fan (I); Yeung Sum, Martin Lee, Lai Chi-keong (DP); Ma Lik, Choy So-yuk, Christopher Chung, Yeung Wai-foon, Lee Yuen-kwong, Cheung Kwok-kwan (DAB); Kelvin Wong (I); Tsang Kin-shing, Chung Chung-fai, Tang Chui-chung (I).

Kowloon East: Voter population 524,896; 5 seats; turnout in 2000 LegCo polls 44.72%; districts: Wong Tai Sin, Kwun Tong.

Candidates: Alan Leong (I); Fred Li, Wu Chi-wai; Alex Ho (DP); Chan Yuen-han, Lam Man-fai, Tang Ka-piu (FTU and DAB); Chan Kam-lam, Choi Chun-wa, Chan Tak-ming (FTU and DAB); Albert Cheng (I) and Andrew To (Frontier).

Kowloon West: Voter population 420,259; 4 seats; turnout in 2000 LegCo polls 42.14%; districts: Yau Tsim Mong, Shamshuipo, Kowloon City.

Candidates: James To, Chan Ka-wai, Lam Ho-yeung, Ma Kee (DP); Lau Chin-shek (I); Frederick Fung, Bruce Liu (ADPL); Tsang Yok-sing, Chung Kong-mo, Starry Lee (DAB); Lau Yuk-shing, Leung Suet-fong, Lao Po-kwan (I).

New Territories East: Voter population 770,590; 7 seats; turnout 2000 LegCo polls 44.78%; districts: North, Tai Po, Sha Tin, Sai Kung.

Candidates: July 1 United Front—Andrew Cheng (DP), Emily Lau (Frontier), Ronny Tong (I), Wong Sing-chi (DP), Richard Tsoi (CTU), Shirley Ho (DP), Ricky Or (Frontier); James Tien (LP); Lau Kong-wah, Li Kwok-ying, Mok Kam-kwai, Chan Kwok-ki, So Sai-chi, Peggy Wong, Chan Hak-kan (DAB); Andrew Wong (I); Leung Kwok-hung (April 5th Action Group); Tso Wung-wai (Hong Kong Progressive Alliance).

New Territories West: Voter population 873,031; 8 seats; turnout in 2000 LegCo polls 43.73%; districts: North, Tai Po, Sai Kung, Sha Tin.

Candidates: Tam Yiu-chung, Cheung Hok-ming, Leung Che-cheung, Au Yeung Po Chun, Tsui Fan, Chan Han-pan, Andy Lo, Philip Ng (DAB); Ho Chun-yan and Cheung Yin-tung (DP); Leung Yiu-chung, Andrew Wan (I); Selina Chow, Kenneth Ting (LP); Lee Wing-tat and Chan Yuen-sum (DP); Albert Chan (I); Lee Cheuk-yan, Ip Ngok-fung (CTU); Yim Tin-sang, Kong Fung-yi, Tai Yin-chiu, Kwun Tung-wing (ADPL); Chow Ping-tim (I); Ng Tak-leung (I); Stephen Char (I); Liu Hau-tuen, Siu Shing-choi, Chan Choi-hi (New Century Forum).