

**THE PROMISE OF DEMOCRATIZATION IN HONG KONG
THE NEW ELECTION FRAMEWORK
NDI PRE-ELECTION REPORT #2**

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PREFACE

This report is the second in a series prepared by the National Democratic Institute for International Affairs about elections and democratization in Hong Kong. NDI expects to continue to monitor the development of the post-reversion election framework and the prospects for democratization in the new Special Administrative Region. The goal of this program is to examine the electoral system in light of benchmarks outlined in the Basic Law and international standards. Through this monitoring effort, NDI seeks to inform those interested in democracy in Hong Kong about this complex electoral system and its ramifications for the territory's political future.

This report was written by Eric Bjornlund, NDI Senior Associate and Regional Director for Asia, and Sophie Richardson, NDI Program Officer, with substantial assistance from Andrew Fuys, NDI Program Assistant. The report is based on the findings of a three-person NDI team that visited Hong Kong from July 29 to August 4, 1997, shortly after Hong Kong's return to Chinese sovereignty. This team included Bjornlund, Richardson and Simon Osborn, Program Director of Electoral Reform International Services in London. The team met with a broad range of political and governmental actors, including senior government and election officials, former Legislative Council members, current Provisional Legislative Council members, political party representatives, representatives of domestic and international NGOs, members of the domestic and international media, academics and representatives of the diplomatic community.

Previously, in March 1997, NDI sent a four-person survey mission to Hong Kong to assess the political environment in the period before reversion to Chinese sovereignty. The team included Tom Andrews, NDI Senior Advisor and former Member of the U.S. Congress; Sue Wood, former head of New Zealand's National Party; and NDI staff members Bjornlund and Richardson. The team assessed the prospects for democratic elections, the continued threats to democratic development and the rule of law, the role of political parties, the controversy surrounding the legitimacy of the Provisional Legislative Council, and the freedom of media. The team's report concluded that "As the future reality of Hong Kong emerges from the give and take of local politics and international diplomacy, it is important for all those concerned about democracy and civil rights in Hong Kong to monitor and actively engage the future Hong Kong government and Beijing . . . [T]hreats to democracy in Hong Kong, while extremely serious, may not be entirely overt."

In the months leading up to the May 1998 elections, NDI expects to continue to conduct periodic assessments of the prospects for

democratization in Hong Kong. NDI hopes that this and future reports will contribute to better understanding of the ongoing transition process in Hong Kong and assist those interested in promoting democratic institutions and practices in the territory.

The Institute acknowledges the support of the National Endowment for Democracy, which has funded this project.

Kenneth D. Wollack
NDI President

EXECUTIVE SUMMARY

In May 1998, residents of Hong Kong will go to the polls to choose the first elected Legislative Council since the reversion of the territory to Chinese sovereignty. This legislature will replace the Provisional Legislative Council established by the Beijing-appointed Preparatory Committee. These elections will take place under restrictive rules established by Britain and China and will be governed by a new election law enacted by the Provisional Legislature on September 28, 1997. This new law raises important questions about the commitment of Hong Kong and Beijing to further democratization in the new Hong Kong Special Administrative Region (HKSAR).

This report is the second in a series prepared by the National Democratic Institute for International Affairs (NDI) about elections and the democratic process in Hong Kong. In early August 1997, shortly after Hong Kong's return to Chinese sovereignty, NDI sent a three-member team to Hong Kong to examine the proposed new electoral system and the prospects for democracy in the territory. Building on the findings of an NDI assessment mission in March, this second NDI team focused particular attention on the development of the legal framework for elections and autonomy in Hong Kong. The report attempts to explain Hong Kong's complex electoral system and to assess what the new election law suggests about the attitudes of China and of Hong Kong's ruling elites toward democracy in Hong Kong. NDI will assess the political environment in which elections will take place, including questions of media coverage of the campaign, the protection of civil liberties and the extent of Hong Kong's autonomy from mainland China, in future reports.

Limitations of the Basic Law

The Basic Law -- Hong Kong's new constitution, which was agreed upon by Britain and China and promulgated by the Chinese National People's Congress -- establishes a complex and cumbersome process for elections in Hong Kong. Drawing on the institutions and experiences of Hong Kong under British colonial rule, the Basic Law does not provide for full democracy in the HKSAR, at least in the short term. It does, however, explicitly establish the "ultimate aim" of electing a legislature and a chief executive through "universal suffrage." During a transition period of at least 10 years, the Basic Law provides for incremental increases in the number of directly elected seats in the LegCo, "in accordance with the principle of gradual and orderly progress," until a decision is made about fully democratic elections.

Thus, the 1998 elections, like the 1995 elections held under British sovereignty, will not meet international standards for democratic elections. Hong Kong has never been a democracy and did not

become one upon reversion to Chinese sovereignty. The framework established by the Basic Law and the new election law maintains a system that maximizes political power for economic and political elites and minimizes the participation of the citizens at large.

Shortcomings of the Election Law

Perhaps more importantly, the new election framework raises questions about the willingness of China and Hong Kong's authorities to keep their promises to protect the autonomy of, and eventually to establish full democracy in, the Special Administrative Region. The new election law seemingly fails to meet the requirements of Hong Kong's Basic Law for incremental progress toward full democratization in several important respects:

- The new system dramatically reduces the number of voters who will have the right to participate in the system of indirect elections for two-thirds of the legislature.
- The adoption of proportional representation for the other one-third of the seats, given that two-thirds of the seats are indirectly elected, interferes with the will of the majority of voters and distorts the electoral results.
- Despite a specific guarantee in the Basic Law that up to 12 of the 60 legislative seats can be held by permanent residents who hold foreign passports, the new law prohibits such individuals from running for any of the directly elected seats.
- The government, the Preparatory Committee and the Provisional Legislature appear to have designed the system to minimize the representation of particular parties.

Under the Basic Law, at least during the transition period, the Legislative Council, known as LegCo, is to be elected in three separate ways. In the first elections after the establishment of the HKSAR, 20 of the 60 LegCo seats are to be elected by geographical constituencies through direct elections, 30 are to be returned by so-called functional constituencies, and 10 are to be chosen by a specially constituted Election Committee. (See Appendix I.)

Geographical Seats Chosen by Proportional Representation

Under the new election framework, the 20 members elected directly from geographical constituencies will be chosen from multi-member constituencies by proportional representation. Candidates will run on party lists. This is a substantial change from the first-past-the-post, single-member constituency system used in the 1995 elections.

While democracies around the world use proportional representation to ensure representation of minority points of view, many in Hong Kong argue that the regional government has chosen this system precisely because it will tend to dilute the electoral results of the Democratic Party and its allies. The Democratic Party has said it would not oppose proportional representation if the entire legislature were directly elected but argues that the system is profoundly unfair when two-thirds of the seats are not directly elected. In the context of Hong Kong, the system of indirect elections already protects various minority interests. Polls have shown that the public neither understands nor desires a change to proportional representation for the one-third of the seats that are directly elected.

Narrowing of Functional Constituencies

The Basic Law maintains Hong Kong's system of indirect elections that provides separate constituencies for various business and

profession groups. Each specified constituency elects its own representative to the LegCo. Functional constituency elections allow Hong Kong elites, largely supported by and supportive of Beijing, to dominate the political environment.

Governor Patten's addition for the 1995 elections of nine broad, new functional constituencies had extended voting rights in functional elections to virtually all employed people. The new election law rejects Patten's changes and reverts to the conceptual framework of the 1991 elections by returning in most functional constituencies to corporate, rather than individual, voting. Thus, the aggregate number of eligible voters in the functional constituencies is expected to number less than 200,000, compared to more than one million in 1995.

Seats Chosen by Election Committee

The new system for the 1998 elections establishes a new, 800-member Election Committee to choose the 10 final members of the Legislative Council. The Committee will be composed of permanent HKSAR residents chosen in an extremely complicated manner. Six hundred of the 800 Committee members will be selected from a modified version of the functional constituency structure. The fourth block of 200 members will be made up of designated Hong Kong political leaders. In 1995, 283 directly elected members of the district boards constituted the Election Committee. The new system essentially extends control of functional groups to the Election Committee seats.

Rights to Participate of Foreign Passport Holders Restricted

There are other questions about the fairness of the new system. The Basic Law provides, for example, that up to 20 percent of the seats in the LegCo, or 12 of the 60, can be held by permanent residents who hold foreign passports. The new law implements this limitation by designating 12 particular functional constituency seats as open to those with such rights and, therefore, prohibiting individuals with foreign passports from running for any of the other seats in the legislature, including any of the directly elected seats.

Critics claim this is an unduly restrictive means of implementing the Basic Law provision. Many believe, moreover, that it has been designed to ensure that particular individuals in the democratic camp cannot run for seats from geographical constituencies, at least unless they give up their foreign passports. In any event, the restriction of foreign passport holders to specified functional constituencies seems inconsistent with the expectation in the Basic Law that functional group elections are merely a transitional arrangement, to be replaced eventually by directly elected seats. The provision allowing up to 12 foreign passport holders to serve in the legislature is not a transitional one, and some individuals with such rights will have to be allowed to participate in direct elections in the future.

Legitimacy of Provisional Legislative Council and Power of Hong Kong Courts

In assessing the legitimacy of the Provisional Legislative Council (PLC), the Hong Kong Court of Appeal recently determined that the authority of the National People's Congress (NPC), as the sovereign lawmaking body of China, supersedes the provisions of the Basic Law. While the Basic Law clearly establishes that the Legislative Council "shall be constituted by election"⁽¹⁾ and makes no provision for any provisional or appointed legislature, a three-judge panel in July upheld the legality of the PLC. The court concluded that because the

NPC granted authority to the Preparatory Committee to take necessary steps to establish the HKSAR, the Preparatory Committee was thus empowered to establish the PLC. The Court said that because Hong Kong is now part of China as a special administrative region, actions of the NPC could not be challenged in Hong Kong.

Under this decision, the NPC can apparently legislate for Hong Kong, regardless of the terms of the Basic Law. Thus, it becomes entirely up to the NPC whether the promises of the Basic Law will be kept. Not only is this a troubling legal conclusion, it also means that the promises of autonomy and eventual democracy in Hong Kong will depend entirely on the willingness of authorities in Beijing and Hong Kong to keep those promises.

BACKGROUND ON LEGISLATIVE ELECTIONS IN HONG KONG

The Basic Law's Framework for Legislative Council Elections

In April 1990, the government of the People's Republic of China promulgated the Basic Law of the Hong Kong Special Administrative Region, which became the constitution of Hong Kong upon reversion to Chinese sovereignty on July 1, 1997.⁽²⁾ The Basic Law establishes that the Legislative Council "shall be constituted by election"⁽³⁾ and sets out the principles and overall framework that govern LegCo elections. It also establishes that the "ultimate aim is the election of all the members of the Legislative Council by universal suffrage."⁽⁴⁾ Until that aim is met, the Basic Law provides that the election method shall be specified "in the light of the actual situation" of Hong Kong and "in accordance with the principle of gradual and orderly progress."⁽⁵⁾

In the first elections after the establishment of the HKSAR, the Basic Law establishes the fundamental parameters of the election system. Consistent with the election system adopted under British colonial rule and by agreement between China and the United Kingdom, 20 of the 60 LegCo seats are to be elected by geographical constituencies through direct elections, 30 are to be returned by so-called functional constituencies and 10 are to be chosen by a specially constituted Election Committee.

The Basic Law provides for an increase in the number of directly elected seats in the second and third elections after reversion. In the second election, the number of directly elected seats will increase to 24 of 60 and the number of members returned by the Election Committee will be correspondingly reduced to six. In the third election, the number of directly elected seats will increase to 30, and the Election Committee seats will be eliminated. The number of seats elected through functional constituencies will remain at 30 in each of these elections. (See Appendix II.)

The term of the first LegCo of the Special Administrative Region will be for two years. (It had been expected that this LegCo would be made up of the members chosen in the last election under British sovereignty, and thus the members would, in effect, be completing a four-year term that began two years before the creation of the HKSAR.) Subsequent Councils will have four-year terms. This suggests that future LegCo elections will be held in 2000, 2004 and 2008, although the Basic Law calls for a decision on the method for subsequent elections by 2007. The Basic Law contemplates that the method for forming the LegCo after 2007 must be made by a vote of a

two-thirds majority of all members of the Council and the consent of the Chief Executive and "reported to" the Standing Committee of the National People's Congress.⁽⁶⁾

While the framework for the elections falls short of full democracy, relatively few Hong Kong political leaders or government officials argue for a renegotiation at present of the principles set out in the Basic Law.⁽⁷⁾ Nevertheless, there are many in Hong Kong who argue that the election framework fails to keep even the Basic Law's modest promise of gradual democratization.

1991 and 1995 Elections

Hong Kong's electoral experience has been relatively short. Only in 1991 were legislative elections held in which some seats were directly elected, and just 18 of the Council's 60 seats were directly elected on a geographical basis. Each voter cast two ballots, and two representatives were elected from each district. At that time, 21 representatives were elected by narrowly defined functional constituencies of business and professional groups, and 18 representatives were appointed by the governor. The LegCo elected in 1991 also included three *ex officio* members: the Chief Secretary, the Financial Secretary and the Attorney General. (See Appendix III.)

The September 1995 elections were significantly different as a result of the last British governor's efforts to expand the franchise and decentralize political power. The Chinese leadership objected to Christopher Patten's so-called reform package on the grounds that these changes were unacceptable and contravened the Basic Law. This disagreement between the British and the Chinese effectively derailed the "through train," which would have allowed members of the LegCo elected in 1995 to serve through reversion until the end of their four-year terms in 1999.

After the failure of negotiations between China and Britain throughout 1993, the LegCo approved in February 1994 Patten's proposal to create 18 elected district boards, responsible for managing affairs and allocating funds within their districts. In June 1994, over Beijing's strong and public opposition, the LegCo narrowly adopted Patten's reforms of the process for legislative elections. These included new functional constituencies that dramatically expanded the functional constituency electorate, the designation of locally elected officials as the Election Committee and the adoption of single-member geographical constituencies.

Accordingly, September 1995 marked the first time that all members of the LegCo were directly or indirectly elected. Of the 60 members of the Legislative Council, 20 were directly elected to represent geographic constituencies and 10 were chosen by an Election Committee made up of locally elected officials. The other 30 were elected from functional constituencies: 21 to represent narrow functional constituencies as in 1991 (three of these 18 functional constituencies sent two representatives to the LegCo) and nine to represent new, much broader functional constituencies. (See Appendix IV.)

Twelve members of the Democratic Party (DP) won Council seats in the direct elections, the most of all Hong Kong parties. The DP won an additional five seats through functional constituency elections, and the Election Committee returned another two DP members, giving the party a total of 19 members and a plurality in the LegCo. Several smaller pro-democracy parties sent a total of six members to LegCo,

and at least three prominent independents were also identified as part of the democratic camp.

The Establishment of the Preparatory Committee and the Provisional Legislature

Beijing did not accept the 1994 Hong Kong electoral law that governed the 1995 legislative elections and never recognized the validity or results of those elections. The Chinese government thus decided to dissolve 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, including the selection of a legislative body to replace the LegCo upon reversion. The Preparatory Committee in turn established a 400-member Selection Committee. In December 1996, the Selection Committee chose Tung Chee-hwa as Chief Executive and selected 60 PLC members, including 33 of the 34 existing LegCo members who had nominated themselves. Ten individuals who had failed to win election to the LegCo the year before were also appointed. LegCo members from the democratic camp chose to boycott the appointed council and protested the entire process as unnecessary, illegal and undemocratic.

Many in Hong Kong have challenged the legality of the Provisional Legislature. The Basic Law clearly establishes that the Legislative Council must be elected and makes no provision for any provisional or appointed legislature. Nevertheless, shortly after midnight on July 1, 1997, the PLC came into existence and replaced the LegCo as Hong Kong's legislative body. On July 29, as discussed below, a three-judge panel of Hong Kong's Court of Appeal upheld the legality of the Provisional Legislative Council.

Changes to Local Government Bodies

The Urban Council, Regional Council and District Boards are Hong Kong's local-level government bodies. The first two, known together as the Municipal Councils, are policy-making bodies responsible for public health and community recreation. Before reversion, the Urban Council was made up of 41 councillors, 32 of whom were directly elected members from the urban district constituencies (Hong Kong Island and Kowloon) and nine of whom represented each of the nine urban District Boards. The Regional Council had 39 members: 27 elected directly from the geographical constituencies of the Council area; one from each of the nine District Boards in the area; and the Chairman and two Vice-Chairmen of the Heung Yee Kuk (rural councils), who are *ex officio* members. The last elections for the municipal councils under British sovereignty took place in March 1995. Municipal council elections are to be held every four years.

Hong Kong's District Boards were established to provide a forum for public consultation and participation at the district level. These 18 District Boards were fully elected for the first time in 1994, in accordance with Governor Patten's reform package. The last elections before reversion took place in September 1994, when 346 members were directly elected.

The Urban Council, the Regional Council and the Heung Yee Kuk each send one functional constituency representative to the Legislative Council. The District Boards, which have representation on the Urban and Regional Councils, do not have a LegCo seat.

In March 1997, the Preparatory Committee announced that it would

increase the number of members at each level of local government by 25 percent. Representatives on the pre-reversion Municipal Councils and District Boards had to nominate themselves and be re-appointed by the Selection Committee in a process similar to the appointment of the Provisional Legislature. All members of the three bodies chose to nominate themselves -- including members of the democratic camp -- and all were reappointed. The additional 25 percent were appointed by the same Selection Committee that appointed the PLC. A member of the Preparatory Committee explained the purpose of the additional seats as an effort "to allow the provision of expert knowledge so [the bodies'] operation will be smoother and there will be a balancing effect politically as we don't want the bodies to be too radical."

Upon reversion, these local bodies became known as the Provisional District Boards and Provisional Municipal Councils. Internal elections for the chairmanships of all three were held within a week of Hong Kong's return to Chinese sovereignty. Since then, the Hong Kong government has begun a full review of the local government structure.

SYSTEM FOR 1998 LEGISLATIVE ELECTIONS

Adoption of New Election Law

In July the new Hong Kong government announced the outlines of the election system proposed for elections to be held in the second quarter of 1998. The government issued a "consultation document" and provided nine days for public comments. The government rationalized the abbreviated process on the grounds that, because the outgoing LegCo could not move on an election bill before June 30, the timetable for elections in May 1998 was extremely tight. But critics charged that the consultation period was far too short. Unfortunately, the government's decision to limit the opportunity for public input on this controversial legislation raises questions about its commitment to transparency and citizen involvement in the policy making process.

In August, the government of Chief Executive Tung Chee-hwa proposed the Legislative Council Bill, the new law governing elections to the Provisional Legislative Council. After the introduction of the bill, 12 Provisional Legislative Council members proposed some 20 amendments.⁽⁸⁾ These included proposals to return the geographical elections back to the single-seat, single-vote system used in 1995 and to radically alter the functional constituencies. PLC President Rita Fan prevented these amendments from coming to a vote, on the grounds that they were inconsistent with the guidelines established by the Preparatory Committee, but allowed a number of others to be considered.

The Provisional Legislature did, in fact, adopt amendments to add voters to the functional constituencies for garment manufacturing and social welfare. In what the South China Morning Post called a "clear conflict of interest," the provisional legislator who proposed the changes to the garment manufacturing seat apparently intends to contest that seat and the Democratic Alliance for the Betterment of Hong Kong sought to expand the social welfare constituency to include workers in district organizations, where it has strong support.⁽⁹⁾ Political analysts have suggested that these amendments have reduced the chances of Democratic Party candidates in those constituencies.⁽¹⁰⁾

The Provisional Legislative Council enacted the Legislative Council

Bill (the new election law) on September 28, 1997. The Electoral Affairs Commission, contemplated by the law, then came into existence and held its first meeting on September 30. That Commission, together with the election office of the Bureau of Constitutional Affairs, will promulgate election rules and procedures and will oversee the electoral process.

The electoral authorities must begin developing the regulations governing the process. Because the electoral system for the geographical seats is entirely new and major revisions have been made to the functional and Election Committee systems, many new rules will have to be worked out in a short time. The delineation of constituencies is tentatively scheduled to begin in November. As discussed below, voter registration canvassing will take place in December or January. The nomination process is expected to officially begin in January, after which campaigning will start.

The new election law defines the election methods and parameters for each of the three types of elections: (1) direct elections through geographical constituencies, (2) indirect elections by functional groups, and (3) indirect elections by an election committee. The details of these different election methods, and how they differ from the election system used in 1995, are explained below.

Directly Elected Seats (20 Seats)

Under the new election framework, the 20 members elected directly from geographical constituencies will be chosen from multi-member constituencies by proportional representation.⁽¹¹⁾ Candidates will run on party lists, although the new system will permit independent candidates to form "single-candidate" lists. This is a substantial change from the first-past-the-post, single-member constituency system used in the 1995 elections. It also differs from the multiple-member constituency, single-vote system favored by the Preparatory Committee.

More specifically, the new law adopts the "least remainder" system of proportional representation. Under this system, the total number of votes cast is divided by the total number of seats in a constituency. This yields a quota, and each party list gains a seat for each quota of votes it wins. The remaining seats are then awarded to the list(s) with the largest number of remaining votes.

In certain circumstances, given relatively small electoral districts, this system may lead to a less popular party receiving as many seats as the most popular party. For example, if there are three lists in a four-member constituency with a total of 100,000 valid votes cast, the quota to gain one seat would be 25,000 votes or 25 percent of the total (100,000 votes divided by four seats). Assume the following election results:

List A 58,000 votes (58 percent)
List B 34,000 votes (34 percent)
List C 8,000 votes (8 percent)

In the initial allocation, List A would win two seats, one for each quota of 25,000 votes (25 percent), and have 8,000 remaining votes (58,000 minus 50,000); List B would earn one seat for its quota of 25,000 votes and have 9,000 remaining votes (34,000 minus 25,000). The remaining seat would go to List B, because it would have more votes remaining (9,000) than either List A or List C (8,000 each). In other words, in this example, the party that won 58 percent of the vote and

the party that won 34 percent would each gain two of the four available seats.

Under this new system, the 20 single-member constituencies used in the past elections will be rearranged into five large constituencies.⁽¹²⁾ Although the electoral boundaries have yet to be officially drawn, it is expected that Hong Kong Island will serve as one district, and Kowloon and the New Territories will be divided into two each. Each district will elect three to five members, in accordance with its population.

Many concerns have been raised about the choice of proportional representation. While democracies around the world use proportional representation to ensure representation of minority points of view, many in Hong Kong argue that the HKSAR government has chosen this system precisely because it tends to dilute the electoral results for the most popular party. The Democratic Party (DP) charges that the selection of this system was designed to reduce the number of seats it could win despite its clear popularity. One member of the Preparatory Committee admitted to NDI that proportional representation was chosen to include small parties in a way that could "limit the number of seats the democratic camp could get, to ensure that they would not be over-represented."

The DP has said that it would not oppose proportional representation if the entire legislature were directly elected but argues that the system is profoundly unfair when two-thirds of the seats are not directly elected. In the context of Hong Kong, the system of indirect elections for two-thirds of the legislature already protects various minority interests. According to polls and Hong Kong analysts, the public neither understands nor desires a change to proportional representation for the directly elected seats.⁽¹³⁾

Many analysts observe that, despite Tung's professed effort to de-emphasize politics in Hong Kong, the proportional representation system will increase party identity. It will also likely encourage the proliferation of smaller parties. Hong Kong officials argue that proportional representation will give smaller parties a chance to compete and, among other things, that this will ultimately lessen resistance to full democratization in 10 years. Moreover, senior Hong Kong officials argue that since the HKSAR is moving toward direct elections from geographical constituencies for all 60 legislative seats, it should adopt at present the system that it plans to use at that time, and proportional representation is that system.

The proportional, largest-remainder system will pose several new challenges for parties. They face difficult choices in developing their party lists. The Democratic Party, for example, has several younger former LegCo members popular in particular districts, but these candidates may find themselves lower on the Party's list than more senior party members, which may make them relatively unlikely to get re-elected. One Democratic Party member suggested that a few of these popular, younger politicians might even have an incentive to run separately. Parties will also have to develop careful strategies to avoid splitting votes among several ideologically similar party lists.

Functional Constituency Seats (30 Seats)

The Basic Law maintains Hong Kong's system of indirect elections that provides separate constituencies for various business and professional groups. Each specified constituency elects its own representative to the LegCo. These elections by functional groups

became an integral part of elections under the British colonial administration and were retained, at least for the 10-year transition period, by the Chinese under the Basic Law.

The nature of the functional groups given representation in the legislature varies considerably. (See Appendix V.) Some constituencies -- such as the legal, education, accountancy, medical, health services, engineering and architecture constituencies -- are made up of existing professional groups composed of individual members. Many others are industry groups made up of corporate members of specifically named trade associations. These include, for example, the constituencies for insurance, tourism, real estate, commerce and finance. The electors for some other functional constituencies, such as the agriculture and fisheries, retail and wholesale, and transport constituencies, are the corporate entities that are listed by name in the appendix to the law. In a few, such as the Information Technology and Social Welfare constituencies, both organizations and individuals are voters. The members of the Provisional Urban Council, the members of the Provisional Regional Council and the leaders of the Heung Yee Kuk (rural committees) also have separate functional seats. One constituency, for registered trade unions, has three seats under the new system.

The changes to the functional constituencies in Patten's reform package for the 1995 elections was one of the key issues in dispute between Britain and China. Most significantly, Patten added nine "broad," new functional constituencies that included all individual workers in specified sectors of the economy. In addition, in the 21 original, "narrow" functional constituencies, the reforms replaced corporate voting with voting by individuals who owned and managed companies within the given functional groups. Thus, in the tourism constituency, for example, the Patten reforms gave votes to six board members or executives of the corporate members of the industry, as compared to the single vote that each company could cast in 1991.

Patten's nine new constituencies extended voting rights in functional elections to virtually all employed people, thus increasing the number of registered functional constituency voters by more than one million. The new election law rejects Patten's changes and reverts to the conceptual framework employed in the 1991 elections by returning to corporate, rather than individual, voting in most functional constituencies. Representatives of eligible corporate entities are empowered to vote on behalf of their entire organizations. Thus, the aggregate number of eligible voters in the functional constituencies is expected to number less than 200,000. The new law's reintroduction of corporate voting marks a particularly significant change for the functional constituencies, especially for those nine that had been created by the Patten reforms.

Between particular functional constituencies, the number of electors varies greatly. Under the Patten reforms, more than one million voters together elected only nine seats (representing "broad" functional constituencies), while about 82,000 electors collectively chose 21 seats (representing "narrow" functional constituencies).⁽¹⁴⁾ Thus, particular new functional constituencies that included more than one hundred thousand voters elected one representative with a vote in the LegCo equal to the representative chosen, for example, by few thousand members of the legal profession. Under the new law, the number of electors varies from the 154 corporate members of the Transport constituency to several tens of thousands in the education constituency. Because of this substantial variation in functional

constituency size, the relative electoral strength of functional constituency electors varies significantly.

The new electoral system replaces Patten's nine broad functional constituencies with narrow ones. While six of these nine are derived from the functional constituencies that were new in 1995,⁽¹⁵⁾ the number of eligible electors within those constituencies has been dramatically reduced. In 1995, for example, about 70,000 voters cast ballots for the representative of the insurance constituency, but for 1998 the constituency has been reduced to 221 corporate voters. The three other functional constituencies created under the Patten reforms for the 1995 elections have been eliminated: (1) manufacturing; (2) hotels and catering; and (3) community, social and personal services. These are among Hong Kong's largest employment sectors, and large numbers of people were eligible to vote in these functional group elections. In the new law, these have been replaced by new functional constituencies for (1) sports, performing arts, culture and publication, (2) information technology, and (3) labor (a third seat added to the previous two).

Interestingly, the Hong Kong Chinese Enterprises Association, a powerful group representing mainland Chinese business interests in the territory, lobbied unsuccessfully for its own functional constituency. Although the Association was given a role in selecting the members of the Election Committee, some saw the rejection of its bid for a functional constituency as a sign that Chinese interests would not always prevail.

The nomination and balloting processes also vary from one functional constituency to another. As in the past, self-nomination will generally be the first step of a largely informal process. Candidates must have been involved with the constituency's business for at least 12 months before the elections.

Election Methods for Functional Constituencies

The law provides two separate systems of voting for functional constituencies: (1) "preferential elimination" for some and (2) simple majority or "first past the post" for others.⁽¹⁶⁾

Six functional constituencies will be elected by the "preferential elimination" system of voting.⁽¹⁷⁾ These include the constituencies for the Urban Council, Regional Council and Heung Yee Kuk or rural councils and the constituencies for agriculture and fisheries, insurance and transport. In this system, each eligible elector casts a single ballot that marks the elector's preferences in descending order. In order to be elected, a candidate must obtain an absolute majority. If no candidate has a majority after the first stage of ballot counting, the candidate with the least number of votes is eliminated, and his or her votes are transferred to the candidates then remaining in accordance with the next available preferences marked on the ballot papers. This process continues until one candidate obtains an absolute majority over the other candidate(s) then remaining.

For the remaining 24 functional constituencies, voting is to be conducted in accordance with the simple majority or "first past the post" system.⁽¹⁸⁾ That is, for constituencies electing one representative, each elector casts one ballot, and the candidate who obtains the greatest number of votes wins. For a triple-member constituency -- of which there is only one, the Labor functional constituency -- each elector casts three votes, and the candidates are elected who receive the three largest numbers of ballots.

The rationale for these different election systems, even within the functional constituency portion of the legislative elections, is not apparent from the law.

Attitudes in Hong Kong toward Functional Group Elections

While the concept of functional constituencies seems at best unwieldy, if not undemocratic, a surprisingly broad cross-section of residents, party members and officials are comfortable reserving representation to those "who have contributed to the success of Hong Kong." But while the idea of functional constituencies has had support in Hong Kong, the reasons for that support have evolved. When functional constituencies were first introduced in 1985, many in Hong Kong wanted to protect and strengthen the territory's economic power, thereby further asserting its autonomy from China. Now functional constituency elections have become a means for Hong Kong elites, largely supported by and supportive of Beijing, to control the political process.

Many Hong Kong elites justify functional constituencies as a transitional mechanism for the Hong Kong community as it moves toward the ultimate goal of universal suffrage. Chief Executive Tung has defended functional elections as "interim arrangements . . . designed to maintain balance and continuity in the first decade of the SAR."⁽¹⁹⁾ Since the introduction of functional group elections in 1985, the logic has been that if full electoral democracy prevailed in Hong Kong, demands would increase for substantially increased government expenditures on social programs, such as education, housing and welfare, which would adversely affect competitiveness. One senior official explained that functional constituencies will be valuable until "Hong Kong people catch on that if too many free lunches are given away there may not be any more lunches at all." A member of the Preparatory Committee justified the use of functional constituencies as a means of gradually introducing people to the idea of representative government, claiming that Hong Kong is "not ready for mass politics yet." Another official explained the continued use of functional constituencies as a means of encouraging businesses to remain in Hong Kong.

While Hong Kong elites may defend the idea of functional constituencies as a transitional arrangement, many others object to the idea of corporate voting or dramatically narrowed constituencies. A Democratic Party representative described corporate voting as a *de facto* appointment system. A leader of the pro-Beijing Democratic Alliance for the Betterment of Hong Kong also opposed corporate voting and commented that functional elections were "not an easy system to shake off." Polls suggest little public support for the return to corporate voting or for the idea of indirect elections by functional groups.⁽²⁰⁾

Election Committee Seats (10 Seats)

In 1995, under the Patten reforms, the Election Committee established to choose 10 members for the LegCo was made up of 283 directly elected members of the district boards. The district board members chose the representatives through a list system using a single, transferable voting system.

The new system for the 1998 elections establishes a new, 800-member Election Committee to choose the 10 remaining members of the Legislative Council.⁽²¹⁾ The Committee will be composed of permanent Hong Kong residents, themselves chosen in

an extremely complicated manner. (See Appendix VI.)

Six hundred of the 800 Committee members will be chosen from a modified version of the functional constituency system. More specifically, one block or "sector" of 200 will represent the industrial, commercial and financial sector; another 200 will represent the professions; a third block of 200 will represent labor, social services and religious sectors. In addition, there will be representation among the 600 from groups that do not have representation among the functional constituencies, including catering, Chinese medicine, the Employers' Federation of Hong Kong, higher education, the Hong Kong Chinese Enterprises Association, hotels and religion.

The remaining 200 will be made up of Hong Kong political leaders. In particular, it will include Hong Kong delegates to the National People's Congress, Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, members of the PLC, and representatives of the district, rural and municipal boards.

The election law governs how the Election Committee is to be constituted. Each of the four sectors is divided into subsectors, which include specified functional groups. Each separate subsector (functional group) elects a specified number of members of the Election Committee. For the first sector (made up of functional groups involved in industry, commerce and finance), 17 separate subsectors will elect 11 or 12 members each. For the second sector (representing the professions), each of 10 subsectors will elect 20 members. For the third sector (representing labor, social services and religious groups), each of five subsectors will elect 40 members. Finally, for the fourth sector (representing political leaders), the law provides that members of the specified governmental bodies automatically become members of the Election Committee.

Thus, there are two stages of elections: the first to elect the 800 members of the Election Committee, and the second in which those members elect the 10 final members of the Legislative Council. But in fact there will be many separate elections by the different functional groups (subsectors) to the Election Committee. It is unclear when and under what supervision these elections to the Election Committee will take place.

Voting for members of the Committee is to be conducted by the simple majority or "first past the post" system.⁽²²⁾ At the general election, each member of the Election Committee is entitled to cast up to 10 votes for candidates nominated by the Committee, and the 10 candidates who receive the most votes are elected.

Voter Registration

Voter registration and voter turnout in Hong Kong pose a serious challenge. Although the total number of registered voters rose from 1.9 to more than 2.5 million in 1995, only 35 per cent turned out to vote. Senior government officials told NDI that they will judge the success of the 1998 election largely in terms of increased voter registration and turnout.

Subject to normal vetting, the more than 2.5 million voters registered before the handover will remain on the voter list. But the government is considering conducting additional voter registration through door-to-door canvassing. The door-to-door registration could take place in December or January and would involve close to 30,000 government staff members, students and community workers. Its cost

has been reported at about HK\$400 million (approximately US\$53 million).⁽²³⁾

As in the past, the electoral office will compile provisional registration lists and then post them in public places such as libraries or district offices for public scrutiny. After corrections and adjustments, final lists will be posted publicly and given to candidates and parties. A number of political leaders have attached significant importance to the early publication of the voter lists.

Several analysts described Hong Kong's population as extremely mobile and argued that the voter registration process is complicated by the number of individuals who have moved within the territory, emigrated or are simply away on business or vacation. They criticized the registration process as inadequate and unduly complicated.

The electoral framework does not provide for absentee or postal ballots. One analyst suggested that simply providing for absentee ballots could increase the number of votes cast by as much as 100,000, or more than 10 percentage points.

The election office will establish a register of electors for functional constituencies. As discussed above, the law lists by name the eligible trade associations or corporate entities and specifies the membership organizations for individual electors. Each corporate elector must select one eligible person to cast its vote at the functional group election.⁽²⁴⁾ The authorized representative of a corporate elector must be registered for a geographical constituency and have a "substantial connection" with the corporate elector. The law does not govern how a corporate elector can choose its authorized representative.

The Election Affairs Commission

An Election Affairs Commission (EAC) has been established to serve as the coordinating body for the electoral administration. The EAC has essentially the same structure and functions as the Boundaries and Election Commission, a body created as part of Patten's reform package. The EAC, overseeing the election office of the Ministry of Constitutional Affairs, is empowered to develop and implement regulations governing voter registration, constituency delineation, party registration and nomination, campaign finance, the campaign period and the voting process. This includes monitoring the use of public resources for campaign purposes.

The election office will conduct voter education efforts. These efforts are planned to focus on get-out-the-vote messages, information about voter registration and descriptions of the different offices to which people are being elected.

The Independent Commission Against Corruption (ICAC) will investigate campaign violations, electoral fraud and intimidation, and failures to comply with financial disclosure rules. The ICAC will also conduct voter education, including media broadcast of messages about corruption and financial disclosure.

As expected, the highly regarded Justice Woo Kwok-ling, who headed the election commission for the 1995 elections, was appointed to chair the EAC. Michael Suen, former Secretary for Home Affairs, has been appointed the new Secretary for Constitutional Affairs, the ministry that will oversee the electoral arrangements. Serving in the same position previously, Suen oversaw the 1991 elections.

Confidence in the independence and integrity of the EAC will be critical to the success of the election process. The 1998 election will require careful arbitration of a host of contentious issues not addressed by the election law.

Seats Open to Permanent Residents with Foreign Passports

The Basic Law provides that up to 20 percent of the seats in the LegCo, or 12 of the 60, can be held by permanent residents of Hong Kong "who are not of Chinese nationality or who have the right of abode in foreign countries."⁽²⁵⁾ This provision provided one problem for the through train because the 1995 elections did not provide any mechanism to ensure that only 12 seats would be held by persons with foreign residency rights. In fact, 16 of the LegCo members elected in 1995 had such rights. The new law implements this limitation by designating 12 particular functional constituency seats as open to foreign passport holders and, therefore, prohibiting individuals with such rights from running for any of the other seats in the legislature, including any of the directly elected seats.⁽²⁶⁾

The government argues that these particular sectors have especially significant populations of foreigners. Some officials implied that, notwithstanding the Basic Law's provision for a certain number of foreign passport holders in the LegCo, those candidates running for the directly elected seats should feel particularly compelled to renounce alternative citizenship.

Critics argue that the new law adopts an unduly restrictive means of implementing the Basic Law provision. Many believe, moreover, that it has been designed to ensure that particular individuals in the democratic camp cannot run for seats from geographical constituencies, at least unless they give up their foreign passports.

Moreover, the restriction of foreign passport holders to specified functional constituencies seems inconsistent with the expectation in the Basic Law that functional group elections are merely a transitional arrangement, to be replaced after 2007 by directly elected seats. The provision allowing up to 12 foreign passport holders to serve in the legislature is not a transitional one, and some individuals with such rights will have to be allowed to participate in direct elections in the future. Accordingly, it would seem that the framework for future elections will have to find another way to implement this provision of the Basic Law.

Christine Loh, a well-known member of the previous LegCo and founder of the Citizens' Party, recently announced that she would give up her British passport to retain her right to run in a geographical constituency. Loh stated "I don't think the system is unfair. I think if you want to be in political work in whatever country, you have to accept the nationality of that country."⁽²⁷⁾

Two prominent democratic activists and former LegCo members, Emily Lau and Huang Chen-ya, however, have indicated an intention to challenge the new election law's ban on foreign passport holders running for directly elected seats. Lau holds a British passport, and Huang holds an Australian one. They will argue that the limitation of foreign passport holders to specified functional constituency seats is unreasonable and violates the Basic Law.

Commitment to Full Electoral Democracy after 2007

The Basic Law explicitly establishes the "ultimate aim" of electing a legislature and a chief executive through "universal suffrage." As

described above, the Basic Law provides for the number of directly elected seats in the second LegCo after reversion -- expected to be elected in 2000 -- to increase from 20 to 24, and Election Committee seats will be reduced to six. In the third LegCo -- expected to be elected in 2004 -- the number of directly elected seats increases again to 30, or half of the total, and Election Committee seats disappear. The method for forming the LegCo after 2007 is to be determined by a two-thirds majority of LegCo members and the consent of the Chief Executive, and "reported to" the Standing Committee of the National People's Congress.

In other words, 40 votes are required to amend the method of elections to the LegCo. Thus, even if all 30 members elected to represent geographical constituencies in the third HKSAR LegCo -- the legislature that will determine the election system in effect after 2007 -- vote to extend universal suffrage to the election of the full legislature, at least 10 functional constituency representatives will have to agree, in effect, to put themselves out of office.

This would seem to suggest some uncertainty about the commitment to full universal suffrage after 2007. The Basic Law explicitly provides for the decision to be made "in light of the actual situation" of Hong Kong at the time. Issues that various political and governmental leaders consider relevant to this decision range from the strength of Hong Kong's economy to the state of Sino-American relations to the LegCo's relationship with the HKSAR government. The uncertainty over what will happen after 2007 raises further questions about the future of democracy in Hong Kong and makes signals about the commitment to democracy of Hong Kong's current government and political leaders all the more important.

DEFINING "ONE COUNTRY, TWO SYSTEMS"

Legitimacy of Provisional Legislative Council and Power of Hong Kong Courts

Britain and China agreed in 1990, as set out in a resolution of the National People's Congress on June 4, 1990, on the conditions for a through train for the Legislative Council.⁽²⁸⁾ Under that resolution, if the last LegCo before the establishment of the Special Administrative Region was in conformity with the Basic Law, its members would continue in office (i.e. become members of the first LegCo of the Region) if they (1) "uphold the Basic Law," (2) "pledge allegiance to the Hong Kong Special Administrative Region of the People's Republic of China," (3) "meet the requirements set forth in the Basic Law," and (4) were confirmed by the Preparatory Committee. The same resolution provided that the term of the first LegCo under the HKSAR would be two years.

Legally, as confirmed by the British House of Commons in 1985, British sovereignty over Hong Kong, expressed in the so-called royal instructions and letters patent, ceased to exist at midnight on June 30, 1997. Thus, even under the through train scenario, the LegCo elected in 1995 would cease to exist and a new one, with a term of two years, would come into existence with the creation of the HKSAR under Chinese sovereignty. The Basic Law and the corresponding resolution of the National People's Congress contemplated that the new LegCo would have the same membership, provided that the specified conditions were met.

Accordingly, in order to assess whether China has lived up to its international legal obligations and its commitment in the Basic Law, it becomes critical to assess whether the 1995 elections were consistent with the requirements of the Basic Law. Britain's critics argue that those elections violated the Basic Law because (1) they did not enforce the requirement that no more than 12 of the 60 members could hold the right of foreign abode; (2) they did not comply with the relevant National People's Congress resolution on the makeup of the Election Commission; and (3) they created nine new functional constituencies that were inconsistent with the accepted understanding of such groups and that were effectively new directly elected seats, thereby exceeding the limitation of the number of directly elected seats to 20.

Patten argued that his reforms were fully consistent with the Basic Law and that the LegCo was fully empowered to enact the reform package. He believed, further, that it was important to push the democratization agenda in Hong Kong as much as the Basic Law would allow.

In response to the Patten reforms and the 1995 elections, the Preparatory Committee established the Provisional Legislative Council. Defenders of the PLC argue that it was essential for Hong Kong to have a legislature after reversion and that, given that holding elections before July 1 was not viable in the absence of Sino-British cooperation, there was a vacuum that the Preparatory Committee had full legal power to fill. They also argue that, in any event, the National People's Congress on March 14 of this year ratified the Preparatory Committee's creation of the PLC.

The Basic Law clearly establishes that the Legislative Council must be elected and makes no provision for any provisional or appointed legislature. Nevertheless, on July 29, during the visit of the NDI team, a three-judge panel of the Court of Appeal upheld the legality of the Provisional Legislative Council.⁽²⁹⁾ The court concluded that because the NPC granted authority to the Preparatory Committee to take necessary steps to establish the HKSAR, the Preparatory Committee was thus empowered to establish the PLC. The Court upheld the argument that because Hong Kong is now part of China, as a special administrative region directly under the central government, actions of the NPC with respect to the SAR could not be challenged in Hong Kong. The Court of Appeal found that Hong Kong courts have no jurisdiction to question the legality of an act of the sovereign, such as a decision of the NPC, just as they could not have challenged the constitutionality of acts of the British parliament before July 1.

The court took the view that the PLC is not the first LegCo, which according to the Basic Law must be elected, but rather was something that the Basic Law did not provide for. Therefore, as former LegCo member Margaret Ng has pointed out, the NPC resolution may have amounted to an amendment of the Basic Law without following the procedure specified in Article 159.⁽³⁰⁾

Under the decision, then, the NPC can apparently legislate for Hong Kong in any way it sees fit, regardless of the provisions of the Basic Law. Thus, it becomes entirely up to the NPC whether the promises of the Basic Law will be kept. Not only is this a troubling legal conclusion, it also means that the promises of autonomy and eventual democracy in Hong Kong will depend entirely on the willingness of authorities in Beijing and Hong Kong to keep those promises.

Despite this decision, Hong Kong courts are expected to address whether certain PLC actions go beyond the authority granted by Preparatory Committee. One closely watched case has challenged the PLC's enactment of a law requiring that persons claiming the right to reside in Hong Kong must prove it with a certificate of entitlement. Accordingly, Hong Kong authorities moved to deport children born in China of Hong Kong parents who had not followed the prescribed procedure, notwithstanding the Basic Law's guarantee that such individuals will have the right of abode in Hong Kong. In early October, a Hong Kong court rejected arguments for a seven-year-old girl to be deported that the PLC is illegitimate, that it exceeded its authority and that its imposition of additional requirements for residency violated the Basic Law.

Election of Delegates to the National People's Congress

The five-year term of the Chinese National People's Congress begins in 1998, and 36 delegates will be elected from Hong Kong. As Hong Kong's official representatives to Beijing, these delegates can play an important role in establishing the future relationship between the Special Administrative Region and authorities in mainland China. Among other things, the Hong Kong delegation to the NPC has the power to propose amendments to the Basic Law upon the consent of two-thirds of the Hong Kong deputies to the NPC, two-thirds of the LegCo and the Chief Executive.⁽³¹⁾

In the past, Xinhua (the New China News Agency), China's *de facto* consulate in Hong Kong, played a dominant role in selecting 28 delegates from the territory. For the next Congress, the number has been increased and the delegates will be chosen by a selection committee. This selection committee will be composed of members of the 400-member selection committee formed in 1996 to choose the Chief Executive and the PLC, incumbent local deputies to the NPC, deputies to Chinese People's Political Consultative Conference and members of the PLC. Because of overlapping membership, the number of electors will total about 420.

This 420-member committee will first narrow a list of candidates to not more than 48, the maximum allowed by NPC election procedures. A second vote will take place to choose the 36 NPC delegates. Both votes will be done by secret ballot. The process appears to be one of self-nomination, and several members of the democratic camp have announced their intentions to run.

Although this indirect election process is cumbersome and is essentially controlled by Beijing, this will be the first time Hong Kong residents will be involved in the selection of the territory's delegates to the National People's Congress. The selection process must be completed by the end of January 1998.

The New Election Law and the Promise of Democratization

The new election system for 1998 elections in Hong Kong is inherently flawed because of the Basic Law's limitations on full democracy. But even beyond those limitations, the new election system unfortunately narrows the franchise for the one-half of the legislature chosen by so-called functional groups, and the choice of proportional representation and other changes seem calculated to diminish the representation of democrats. Moreover, the election law was enacted by the Provisional Legislative Council, whose existence is inconsistent with the Basic Law.

Yet all parties, including those thought hostile to Beijing, will be able to

compete in the elections, and the most prominent democratic leaders in Hong Kong will undoubtedly be returned to office. And the policy making process in Hong Kong appears to involve substantial give and take, as the government seeks to minimize the extent of criticism within the SAR or from outside. Perhaps the continued expression of public concerns will constrain the government's choices in the future.

Elections in Hong Kong next year will fail to meet international standards, but the most fundamental flaws -- imposed by the Basic Law and largely inherited from the British -- are not the most important. What is of more concern are the choices of Hong Kong's new government and ruling elites that raise legitimate concerns about their attitudes toward the long-term promise of genuine democratization in Hong Kong.

ENDNOTES

1. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the Basic Law), Article 68.

2. For general background on the Basic Law and the prospects for democratization in Hong Kong, please see National Democratic Institute for International Affairs, *Report of the NDI Survey Mission to Hong Kong*, June 10, 1997.

3. Basic Law, Article 68.

4. Basic Law, Article 68. With respect to the selection of the Chief Executive of the HKSAR, the Basic Law similarly establishes that the "ultimate aim" is selection "by universal suffrage." Basic Law, Article 45.

5. Basic Law, Article 68.

6. Basic Law, Annex II.

7. One who does is Emily Lau, who criticizes even the Democratic Party for its failure to call for a legislature fully elected, in the next elections, by universal suffrage.

8. *Attempts to change poll bill face defeat*, South China Morning Post, September 19, 1997.

9. *Editorial: Provisional functions*, South China Morning Post, September 26, 1997.

10. *Pro-Beijing parties tipped to gain*, South China Morning Post, September 29, 1997.

11. Legislative Council Bill, Section 47.

12. Legislative Council Bill, Section 16.

13. E.g., *Majority vote goes democrats' way*, South China Morning Post, August 3, 1997.

14. Suzanne Pepper, *Hong Kong in 1995: Institution-Building and Citizenship Between Two Sovereigns*, Asian Survey, XXXVI, No. 1, January 1996.

15. The six functional constituencies that nominally remain from Patten's nine broad ones are textiles and garment, import and export, wholesale and retail, transport, agriculture and fisheries, and insurance. Three were included in 1995 as subsets of broad functional constituencies: agriculture and fisheries as part of primary, production, power and construction; transport as part of transport and communication; and insurance as part of financing, insurance, real estate and business services. See Appendix V.

16. Actually, functional constituencies are divided into three parts. Those constituencies specified in Parts 1 and 2 of the law's appendix (Schedule 1 to the Legislative Council Bill) are elected by the former method, and the constituencies listed in Part 3 chosen by the latter.

17. Legislative Council Bill, Section 48.

18. Legislative Council Bill, Section 49.

19. *Tung defends cut in electorate*, South China Morning Post, September 10, 1997.

20. E.g., *Majority vote goes democrats' way*, South China Morning Post, August 3, 1997.

21. Legislative Council Bill, Schedule 2.

22. Legislative Council Bill, Section 50.

23. *SAR to use pre-handover voters' roll*, South China Morning Post, August 16, 1997.

24. Legislative Council Bill, Section 24.

25. Basic Law, Article 67.

26. The functional seats allocated to individuals with foreign right of abode are: (1) accountancy; (2) architectural, surveying and planning; (3) commercial (first); (4) engineering; (5) finance; (6) financial services; (7) import and export; (8) industrial (first); (9) insurance; (10) legal; (11) real estate and construction; and (12) tourism.

27. *Christine Loh to Give Up Passport*, South China Morning Post, August 25, 1997.

28. *Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region*, Adopted at the Third Session of the Seventh National People's Congress, April 4, 1990.

29. *HKSAR v. Ma Wai Kwan*.

30. Margaret Ng, *Decision that Resonates*, South China Morning Post, August 8, 1997.

31. Basic Law, Article 159.

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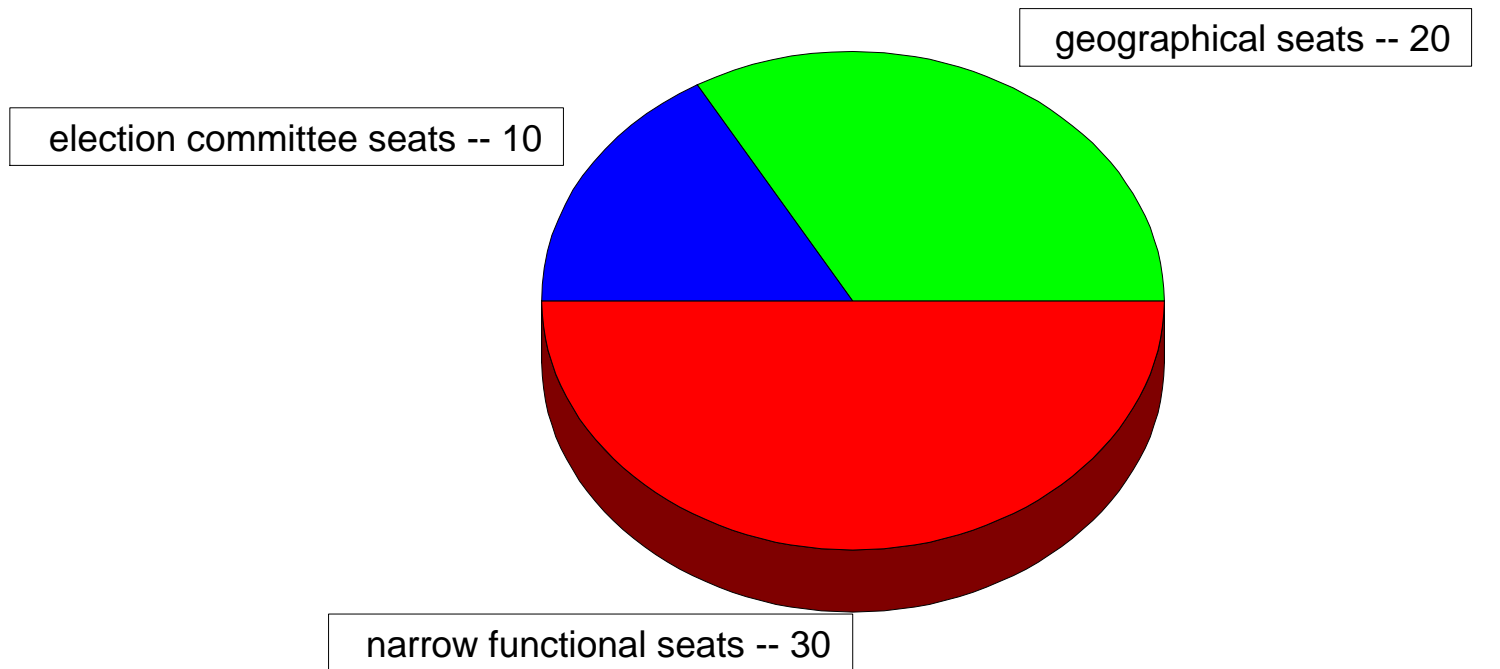
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1998 LegCo elections

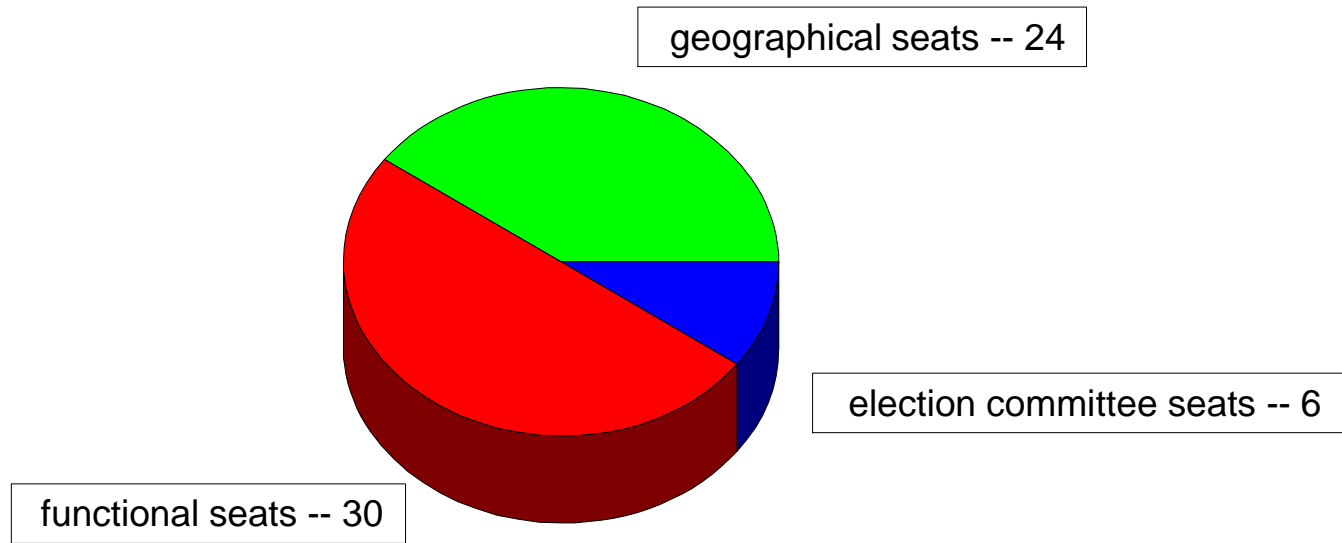
60 seats total



-  directly elected seats: elected from geographical constituencies using proportional representation
-  indirectly elected seats: chosen by 800-member election committee
-  indirectly elected seats: chosen by narrow functional constituencies

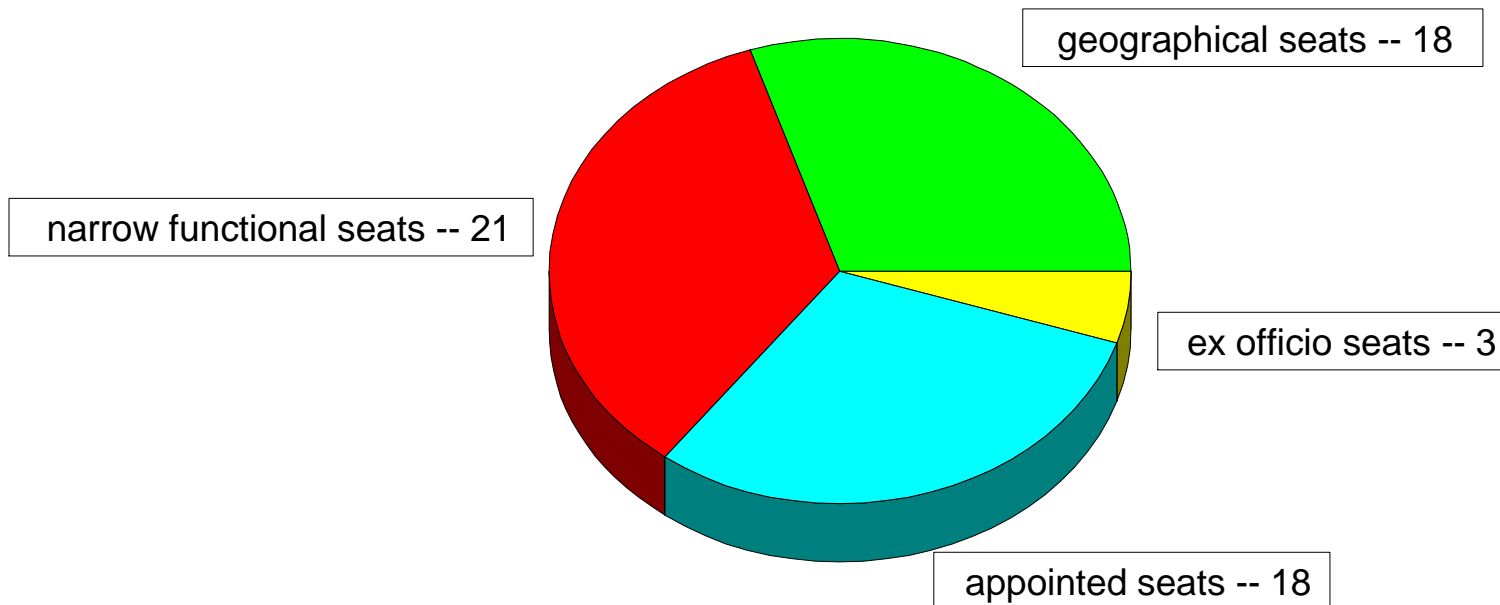
APPENDIX II





Second LegCo election after reversion, as provided for in the Basic Law
(expected to be elected in 2000)



1991 LegCo elections

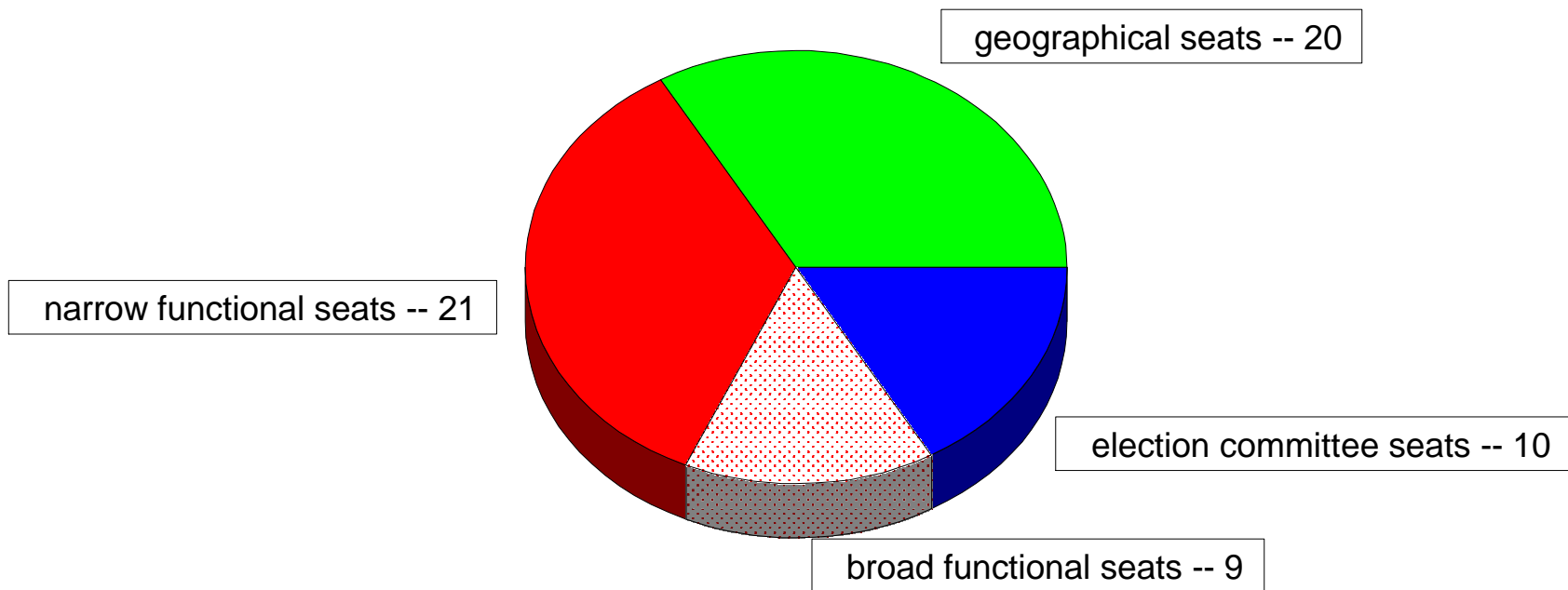
60 seats total







-  directly elected seats: elected from geographic constituencies using multi-vote, multi-seat system
-  indirectly elected seats: chosen by narrow functional constituencies
-  seats appointed by the Governor
-  ex officio seats

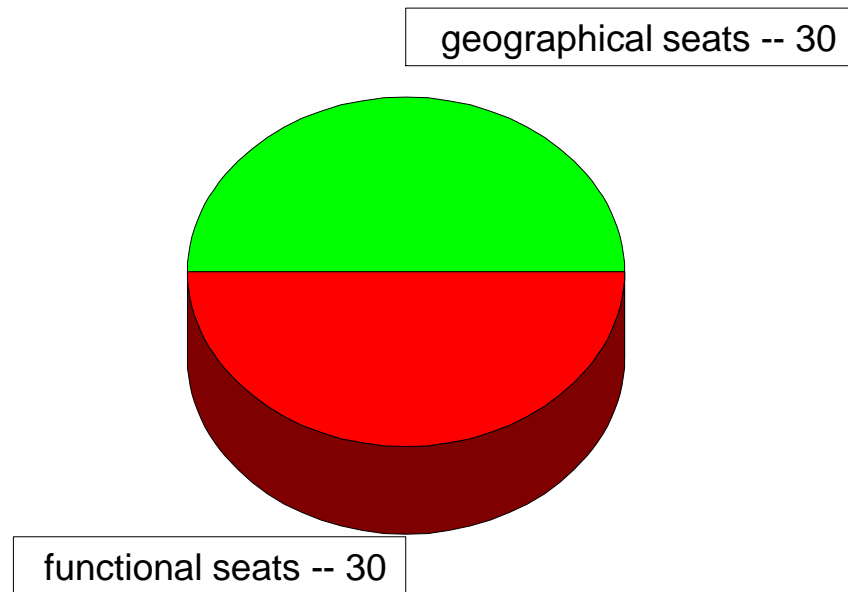
1995 LegCo elections

60 seats total



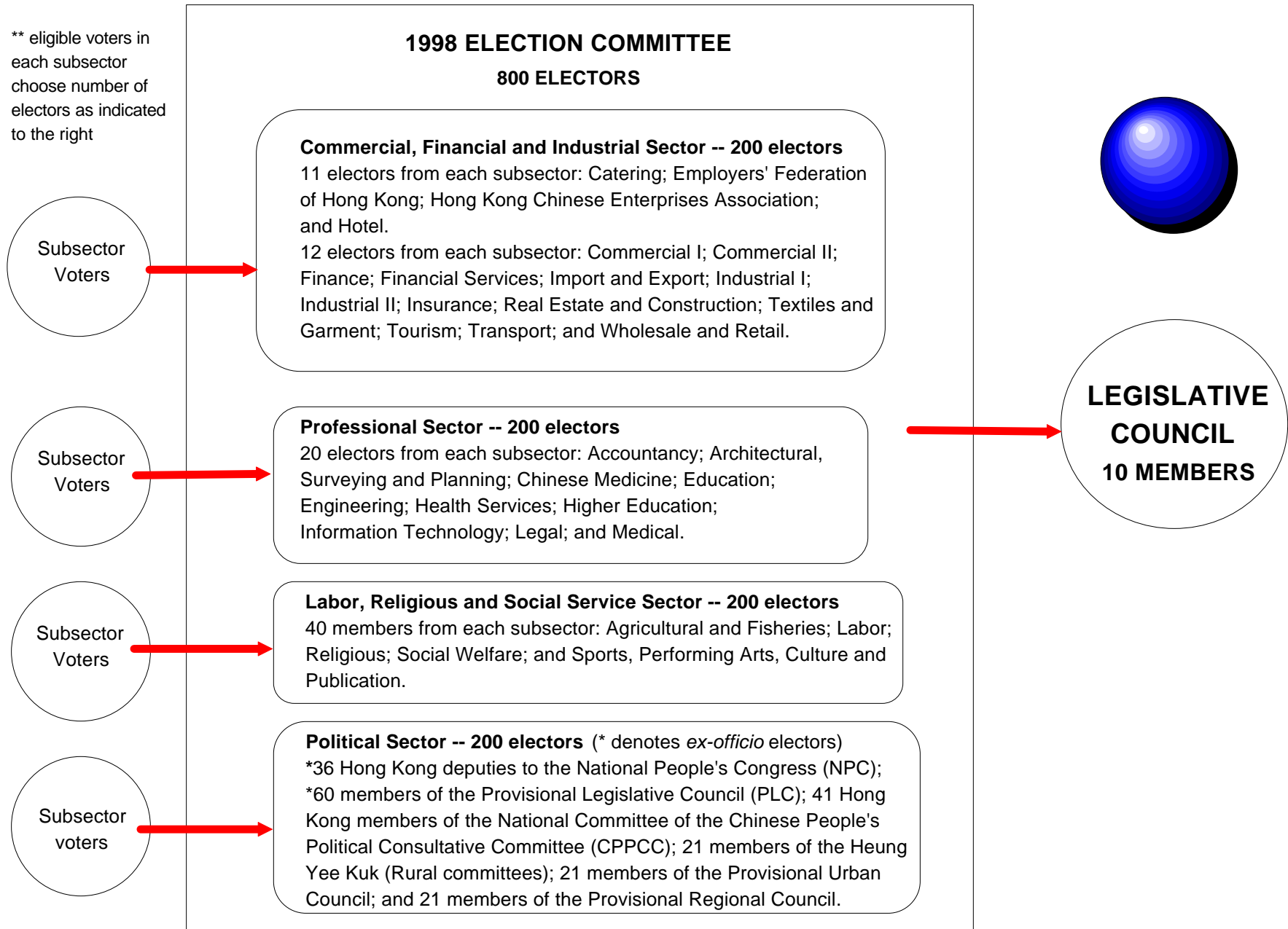
-  directly elected seats: elected from geographical constituencies using single-vote, single seat system
-  indirectly elected seats: chosen by narrow functional constituencies
-  indirectly elected seats: chosen by broad functional constituencies
-  indirectly elected seats: chosen by election committee comprising elected local officials

Third LegCo after reversion, as provided for in the Basic Law
(expected to be elected in 2004)



APPENDIX VI

** eligible voters in each subsector choose number of electors as indicated to the right



APPENDIX VII

Results of Direct Elections to LegCo (20 seats)

PARTY	NUMBER OF SEATS
Democratic Party (DP)	9
Democratic Alliance for the Betterment of Hong Kong (DAB)	5
The Frontier	4
Citizens Party	1
Independents	1

Results of Indirect Elections to LegCo (40 seats)

PARTY	NUMBER OF SEATS
Liberal Party	10
Democratic Alliance for the Betterment of Hong Kong (DAB)	5*
Hong Kong Progressive Alliance (HKPA)	5
Democratic Party (DP)	4
Independents	16

Party Representation in 1998 LegCo (60 seats)

PARTY	NUMBER OF SEATS
Democratic Party (DP)	13
Democratic Alliance for the Betterment of Hong Kong (DAB)	10*
Liberal Party	10
Hong Kong Progressive Alliance(HKPA)	5

The Frontier	4
Citizens Party	1
Independents	17

* Includes one candidate, Chan Kwok-keung, who joined the party the week after winning a seat in the labor functional constituency elections as an independent candidate.