

**HONG KONG  
NDI PRE-ELECTION REPORT #4**

*May 15, 1998*

**TABLE OF CONTENTS**

- I. [PREFACE](#)
- II. [ABBREVIATIONS](#)
- III. [EXECUTIVE SUMMARY](#)
- IV. [THE ELECTION FRAMEWORK](#)
  - i. Shortcomings of the Election Framework
  - ii. Directly Elected Seats
  - iii. Functional Constituency Seats
  - iv. Election Committee Seats
- V. [ELECTION PREPARATIONS](#)
  - i. Supervision and Administration of the Election Process
  - ii. New Geographical Constituencies
  - iii. Voter Registration
  - iv. "Shelf Companies"
  - v. Voter Confusion
  - vi. The April 2 Selection of Election Committee Members
- VI. [ELECTION DAY ARRANGEMENTS](#)
  - i. Balloting and Counting Arrangements
  - ii. Lack of Party Identification
  - iii. Corporate Voting
  - iv. Election Observers
- VII. [THE CAMPAIGN](#)
  - i. Impact of the Election System on Party Campaigns
  - ii. Lack of Electoral Alliances Among Parties
  - iii. Campaign Finance
  - iv. Political Advertising
  - v. Media Access
  - vi. "Small Circle" Elections
- VIII. [TOWARD A DEMOCRATIC FUTURE](#)
  - i. Relationship Between the Legislature and the Government
  - ii. Local Government Restructuring
  - iii. Reaching the "Ultimate Aim" of Full Democracy
  - iv. Attitudes Toward Full Democracy
  - v. Future Selection of the Chief Executive
  - vi. Prospects for Participation in Future Elections
- IX. [ENDNOTES](#)

---

**PREFACE**

This report is the fourth in a series prepared by the National Democratic Institute for International Affairs about democratization in Hong Kong. NDI expects to continue to monitor the status of autonomy and the prospects for democratization in the new Special Administrative Region in light of international standards and benchmarks outlined in the Basic Law. The Institute hopes that this and its other reports will contribute to better understanding of the ongoing transition process and assist those interested in promoting democratization in Hong Kong.

This report was written by Eric Bjornlund, NDI Senior Associate and Regional

Director for Asia, and Andrew Fuys, NDI Program Assistant, with substantial assistance from Program Officer Sophie Richardson. The report is based in part on the findings of NDI teams that visited Hong Kong from December 2 to 5, 1997 and from March 15 to 18, 1998. Bjornlund, Richardson and Fuys participated in both missions. The December mission was led by Eugene Eidenberg, NDI board member and former senior White House official during the Carter administration, and included Sue Wood, former head of the National Party of New Zealand, who had also participated in an NDI study mission to Hong Kong earlier in 1997. Former US Attorney General and Pennsylvania Governor Dick Thornburgh led the March mission, which also included Kamal Hossain, former Foreign Minister of Bangladesh, and Somchai Homlaor, Secretary General of the Asian Forum for Human Rights and Development. The teams met with a broad range of political and governmental actors, including Chief Executive Tung Chee-hwa, other senior government and election officials, former Legislative Council members, Provisional Legislative Council members, political party leaders, representatives of domestic and international NGOs, members of the domestic and international media, academics and representatives of the diplomatic, business and legal communities. NDI previously sent missions to Hong Kong in March and August 1997.

NDI wishes to thank all of the many people in Hong Kong who have met with representatives of the Institute. The Institute acknowledges the support of the National Endowment for Democracy, which has funded this project.

Kenneth D. Wollack  
NDI President

---

## **ABBREVIATIONS**

**ADPL** Association for Democracy and People's Livelihood

**AR** Authorized Representative

**BEC** Boundary and Elections Commission

**CAB** Constitutional Affairs Bureau

**CPPCC** Chinese People's Political Consultative Conference

**DAB** Democratic Alliance for the Betterment of Hong Kong

**DP** Democratic Party

**EAC** Electoral Affairs Commission

**EC** Election Committee

**ExCo** Executive Council

**HKPA** Hong Kong Progressive Alliance

**HKSAR or SAR** Hong Kong Special Administrative Region

**ICAC** Independent Commission Against Corruption

**LegCo** Legislative Council

**NPC** National People's Congress

**RTHK** Radio Television Hong Kong

---

## **EXECUTIVE SUMMARY**

On May 24, 1998, residents of Hong Kong will go to the polls to choose the first elected Legislative Council since reversion to Chinese sovereignty and the advent of "Hong Kong people ruling Hong Kong." 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 in September 1997 and election guidelines issued in February 1998.

The Basic Law, Hong Kong's new constitution, establishes a complex and cumbersome process for elections. The Basic Law does not provide for full democracy, at least in the short term. During a 10-year transition period, the Legislative Council (LegCo) is to be elected in three separate ways. In the first legislature of the new Hong Kong Special Administrative Region (HKSAR), 20 of the 60 LegCo seats are to be elected by geographically defined constituencies through direct elections, 30 are to be returned by so-called functional constituencies comprising various business and professional groups, and 10 are to be chosen by a specially constituted 800-member Election Committee (EC) that is composed of political and economic elites. The Basic Law does, however, provide for incremental increases in the number of directly elected seats in the legislature in the future and establishes the "ultimate aim" of elections for the legislature and the Chief Executive through universal suffrage.

Beyond these constitutional limitations, as NDI has previously reported, the new election law limits public participation and interferes with the will of the majority of voters. The reintroduction of corporate voting and other changes dramatically reduce the number of voters eligible in indirect elections for two-thirds of the legislature, and the adoption of proportional representation for the other one-third of the seats, given that indirect elections already protect minority interests, distorts the election results. The system's restrictions unfortunately go beyond the limitations established by the Basic Law for the period of transition to full democracy.

### *Election Preparations*

By all accounts, the Electoral Affairs Commission (EAC) has carried out its administrative duties in a highly competent and professional manner. Few if any party leaders in Hong Kong have doubted the EAC's ability to administer a clean, well-run election. To their credit, the government and the EAC have committed substantial financial and human resources to election preparations, particularly voter registration and voter education.

Despite these efforts, the results of a voter registration drive have been disappointing, and recent surveys show that much of the public is confused about the new election system. The system used this year will be the third in as many

elections. Moreover, there will in effect be three separate elections taking place on May 24 with three distinctly different sets of rules and procedures. Critics have argued that no amount of time or money can build interest in an election in which the public can only vote for one-third of the seats and which will result in a body with relatively limited powers. Low registration figures for the indirect elections suggest that many members of business and professional groups are similarly uninterested.

#### *Election Arrangements*

The arrangements for election day are complicated and unfamiliar:

- Each polling site will have 29 separate ballots, one for each functional constituency and one for the direct elections, making balloting procedures potentially confusing.
- Candidate lists on ballots will not include any party identification.
- An individual eligible in the indirect elections is entitled to cast two ballots: one in the direct elections and one in the indirect elections. An individual designated to cast a ballot on behalf of a corporate elector may be able to cast up to three votes: one in the direct elections, one as an individual in the indirect elections, and one as a corporate representative.
- International and nonparty domestic observers will not be permitted to observe the balloting or counting processes.

#### *The Campaign*

The system of proportional representation and small districts adopted for Hong Kong gives parties a more prominent role. Under the list system for the directly elected seats, parties must choose where to place their candidates on the lists, in most cases determining from the outset who has a serious chance to be elected. The Democratic Party, in particular, has been forced to determine which former legislators, incumbents from the LegCo elected in 1995, will likely lose their seats because of their placement on the party lists.

In addition, parties have had to adapt to campaign finance and political advertisement regulations:

- Some party leaders criticized a substantial increase in campaign spending limits.
- As in past elections the EAC has provided opportunities for candidates to mail campaign materials to constituents, but it has adopted extensive restrictions on political advertising.
- The government-owned broadcasting company provides some opportunities for campaign broadcasts and candidate forums, but paid campaign advertisements on television and radio are prohibited.

#### *"Small Circle" Elections*

Given the relatively "small circles" involved, the nomination process for the indirectly elected seats has in many cases determined the outcome of the elections themselves. Ten of the 28 functional constituencies, for example, will only have one candidate running. Likewise, even before the selection of Election Committee members that took place on April 2, a number of seats on the EC had already been determined. Members of the provisional legislature and Hong Kong delegates to the Chinese National People's Congress (NPC) became part of the Committee automatically. In addition to these *ex officio* seats, 95 candidates for seats on this Committee were unopposed.

### *Limitations of Political Institutions and Prospects for Reform*

Beyond elections, Hong Kong will likely need to address the structure of its new political institutions, including the legislature, the office of the Chief Executive and local government bodies. The legislature elected in May, like past Hong Kong legislatures, will not have as broad legislative powers as bodies in most democratic systems. The public does not elect, even indirectly, a government. The legislature is essentially a monitoring body that can block or amend government legislation and call on the administration to defend government policy. LegCo members cannot introduce bills that involve public expenditure, the political structure or the operation of the government. While a simple majority can pass government-sponsored legislation, private-member bills and amendments to government bills require separate majority support of both the 30 functional constituency representatives and the 30 members elected through the direct elections and by the Election Committee.

The method for forming the legislature and electing the Chief Executive after 2007 (10 years after reversion) is to be determined by a two-thirds majority of LegCo members with the consent of the Chief Executive. Thus, 40 votes will be required to determine the method of elections after 2007 or to amend the Basic Law to change the method of electing the LegCo or Chief Executive before 2007.

Political parties of various points of view have thrown their support behind universal suffrage, and several parties support accelerating the pace of democratization. Chief Executive Tung Chee-hwa, however, has not committed to any specific timetable for introducing full democracy, including the 10-year timeframe set out in the Basic Law. If the HKSAR is to live up to the promise of democratization, it must allow the people of Hong Kong to directly choose their entire legislature, as well as their Chief Executive. Only then can residents truly assume the role of "Hong Kong people ruling Hong Kong."

### **THE ELECTION FRAMEWORK**

On May 24, 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 in September 1997 and election guidelines issued by Hong Kong's Electoral Affairs Commission (EAC) in February 1998.

#### *Shortcomings of the Election Framework*

The Basic Law--Hong Kong's new constitution, which was agreed upon by Britain and China and promulgated by the National People's Congress--establishes a complex and cumbersome process for elections in Hong Kong. As NDI has previously reported, the Basic Law does not provide for full democracy in the HKSAR, at least in the short term.<sup>(1)</sup> Thus, the 1998 elections, like the 1995 elections held under British sovereignty, will not meet international standards for democratic elections.

The Basic Law does, however, provide a framework for incremental increases in the number of directly elected seats in the Legislative Council, "in accordance with the principle of gradual and orderly progress," until a decision is made about fully democratic elections.<sup>(2)</sup> Nonetheless, compared to the framework for elections in 1995, the new election law enacted in September 1997 seemingly fails to meet this requirement for incremental progress toward full democratization. Specifically, the new system, by reintroducing corporate voting and eliminating broad functional constituencies, 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 and will already protect minority interests, interferes with the will of the majority of voters and distorts the election results.

Under the Basic Law, at least during the transition period, the Legislative Council is to be elected in three separate ways. In the first HKSAR legislature, 20 of the 60 LegCo seats are to be elected by geographically defined constituencies through direct elections, 30 are to be returned by so-called functional constituencies comprising various business and professional groups, and 10 are to be chosen by a specially constituted Election Committee that is composed of political and economic elites.<sup>(3)</sup> (See Appendix I.)

#### *Directly Elected Seats*

For the 1998 elections, the 20 geographical constituency seats, the only directly elected seats in the 60-person legislature, will be elected using a system of proportional representation. This is a change from 1995. Candidates will run as part of lists, although the system permits independent candidates to form "single-candidate" lists. Ballots will not include any party identification but only a list of names and a number according to the order in which the list appears on the ballot.

Seats will be allocated using 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 or lists with the largest number of remaining votes. In the upcoming elections, the quota for Kowloon East and Kowloon West will be one-third of the total votes cast; Hong Kong Island, one-fourth; and New Territories East and New Territories West, one-fifth.

To illustrate this system, assume the following results in the Hong Kong Island race:

List A 58 percent

List B 34 percent

List C 8 percent

The quota for this four-seat constituency is 25 percent of the total votes cast. In the initial allocation, List A would win two seats, one for each quota of 25 percent, and have 8 percent of its votes remaining (58 percent minus 50 percent); List B would earn one seat for its quota of 25 percent, and have 9 percent of its votes remaining (34 percent minus 25 percent). The remaining seat would go to List B, because it would have more votes remaining (9 percent) than either List A or List C (8 percent 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.

#### *Functional Constituency Seats*

The nature of the functional groups given representation in the legislature varies considerably. (See Appendix II.) Some constituencies are made up of professional groups composed of individual members. Many others are industry or trade groups made up of corporate members of specifically named trade associations. In a few, such as the information technology and social welfare constituencies, both

individuals and corporate bodies are voters. The members of local government bodies--the Provisional Urban Council, the Provisional Regional Council and the Heung Yee Kuk (rural councils)--also have separate functional seats. One constituency, for registered trade unions, has three seats under the new system.

Between particular functional constituencies, the number of electors varies greatly. For example, there are 137 registered corporate electors in the transport constituency and more than 60,000 individual voters in the education constituency. Because of these substantial differences in functional constituency size, the relative electoral strength of functional constituency electors varies significantly.

Under the reforms introduced by then-Governor Patten for the 1995 elections, more than one million voters together elected nine of 30 functional seats (representing "broad" functional constituencies). The electoral system used in 1998 replaces those nine broad functional constituencies with narrow ones. While six of those nine are derived from the functional constituencies that were new in 1995, the number of eligible electors within those constituencies has been dramatically reduced.<sup>(4)</sup> 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 196 corporate electors.

For 24 of the 30 functional constituencies, voting is to be conducted in accordance with the simple majority or "first past the post" system.<sup>(5)</sup> That is, for constituencies electing one representative, each elector casts one ballot, and the candidate who obtains the greatest number of votes wins. In the labor constituency each elector casts three votes, and the three candidates who receive the three largest numbers of votes are elected.

Six functional constituencies will be elected by the "preferential elimination" system of voting.<sup>(6)</sup> These include the three constituencies for local government bodies and the constituencies for agriculture and fisheries, insurance and transport. Government officials have explained that these constituencies will use this voting system because of their small sizes. 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.

#### *Election Committee Seats*

In the May elections, an 800-member Election Committee will choose the 10 remaining members of the Legislative Council.<sup>(7)</sup> In separate elections held on April 2, most of the 800 Committee members were chosen from a modified version of the functional constituency system. Other public officials and political leaders became members of the EC automatically. Thus, there are two stages of elections for these 10 seats: the first to elect the 800 members of the Election Committee, which took place on and before April 2, and the second on May 24 in which those members choose the 10 final members of the Legislative Council. (See Appendix III.)

Of the 800 members of the EC, one block or "sector" of 200 represents commercial, industrial and financial functional groups; another 200 members represent the professional sector; and a third block of 200 represents labor, social services and religious organizations. The final group of 200 includes Hong Kong delegates to the National People's Congress, Hong Kong members of the National Committee of the

Chinese People's Political Consultative Conference (CPPCC), members of the provisional legislature, and representatives of the district, rural and municipal boards.

The 200 EC seats in each of these four sectors were distributed among the relevant functional constituencies. For the first sector (made up of groups involved in commerce, finance and industry), 17 separate subsectors each chose 11 or 12 members each. For the second sector (representing the professions), each of 10 subsectors selected 20 members. For the third sector (representing labor, social services and religious groups), each of the five subsectors elected 40 members. In addition to the existing functional constituencies, the EC includes representatives of groups that are not part of functional constituencies. These groups make up seven subsectors: catering, Chinese medicine,

the Employers' Federation of Hong Kong, higher education, the Hong Kong Chinese Enterprises Association, hotels and religion.

The April 2 process to choose the members of the Election Committee used the simple majority or "first past the post" system.<sup>(8)</sup> At the general election in May, each EC member 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. This means if a majority voting bloc emerges in the EC it will be able to choose all 10 legislators in this part of the elections.

## **ELECTION PREPARATIONS**

Since the election law was passed on September 29, 1997, the EAC and various government bureaus have been preparing the arrangements for election day. To its credit, the government has committed substantial financial and human resources to electoral preparations, particularly voter registration and voter education. Despite this effort, the results of voter registration were at best mixed, and recent surveys show that much of the public is confused about the new election system. Critics of the election framework have argued that no amount of time or money can build interest in an election in which the public can only vote for one-third of the seats and which will result in a body with relatively limited powers.

### *Supervision and Administration of the Election Process*

Several different independent and government bodies are involved in the administration of the elections. In September 1997, a government ordinance established the EAC as an independent body to oversee practical arrangements for the elections. The EAC replaced the Boundary and Elections Commission (BEC), which had been established in 1993 to supervise elections under the colonial government. The BEC administered legislative elections in 1995 and elections for local district board members in 1994. The EAC is chaired by Justice Woo Kwok-hing, a High Court judge who was previously the BEC Chairman. Two other judges are also members of the EAC.

The EAC is responsible for developing and implementing election arrangements within the scope of the election law. The Commission has delineated constituency boundaries for the geographical elections, supervised voter registration, and issued guidelines and regulations for the conduct of the elections. The EAC has also, among other tasks, managed the voter registry, developed and printed ballots, and reviewed nominations of candidates. It will supervise polling sites on election day, conduct the vote count and declare the results of the elections.



By all accounts, the EAC has carried out its administrative duties in a highly competent and professional manner. Few if any party leaders in Hong Kong have expressed concern that there will be significant irregularities on election day or have doubted the EAC's ability to administer a clean, well-run election.

Two government bodies are closely involved in the elections, the Constitutional Affairs Bureau (CAB) and the Home Affairs Department. The CAB, headed by Secretary Michael Suen Ming-yueng, is in charge of developing the SAR's election-related policies. Last year, for example, the CAB drafted the new election law and a separate law that detailed campaign spending limits. The CAB is also responsible for developing strategies to publicize and educate residents about the elections.

The Home Affairs Department implements government policies for election-related activities. This department coordinated last year's effort to organize 30,000 volunteers to conduct an SAR-wide voter registration campaign. The responsibilities of Home Affairs include government voter education efforts.

A second independent body, the Independent Commission Against Corruption (ICAC), will be involved in the resolution of election-related disputes. Under the provisions of the Corrupt and Illegal Practices Ordinance, the ICAC is responsible for investigating cases involving possible electoral fraud. The ICAC, however, cannot initiate investigations but rather acts only in cases referred by the EAC. After investigating a case, the ICAC submits its findings to the SAR's Department of Justice. This department then decides whether to prosecute. In addition to its investigative duties, the ICAC has worked with the EAC to educate candidates and residents about the danger of election fraud.

#### *New Geographical Constituencies*

One of the EAC's first tasks was to demarcate boundaries for the new geographical constituencies, which will elect 20 of the legislature's 60 seats. This task was necessary because, under the new electoral framework, five large constituencies replaced the 20 smaller ones in place in 1995. The EAC designated Hong Kong Island, Kowloon East, Kowloon West, New Territories East and New Territories West as the five new constituencies. These incorporated four old constituencies on Hong Kong Island, seven in Kowloon and nine in the New Territories. The new constituencies range in size from Kowloon West with just over with one million residents to New Territories West with 1.6 million residents. The number of seats in each constituency varies to reflect population. Hong Kong Island will elect four seats, Kowloon East and West will have three seats each, and New Territories East and West are allocated five seats each.

The EAC first proposed the new constituency boundaries in mid-October. In its initial proposal, the Commission divided one town in the New Territories, Yuen Long, between the New Territories East and New Territories West constituencies so that the populations of the two constituencies would be comparable. During a two-week period of public consultation on the proposed boundaries, the EAC received complaints from local leaders and residents of the town who sought all of Yuen Long to be part of the same constituency. The EAC also received public criticism from several members of the Executive Committee (ExCo), an appointed body of advisors to the Chief Executive that functions as a *de facto* cabinet.

After the consultation period concluded, the EAC reversed itself and decided not to divide the town. Justice Woo pointed to this change as evidence that the consultation process effectively took account of public opinion. He denied that the Commission had changed the boundary arrangements because of political pressure

from the ExCo.

### *Voter Registration*

The administration and the EAC have put great emphasis on increasing the number of registered voters and improving on past voter turnout. Home Affairs officials described this year's voter registration drive as much more active than in the past. The EAC and the administration certainly devoted serious effort and resources to the exercise. It is also likely, however, that the government felt additional pressure to increase registration figures in order to legitimize an election system that has received much criticism.

In December 1997, the government undertook an ambitious effort to increase voter registration. The government spent a reported HK \$61 million (approximately US \$8 million) on the exercise.<sup>(9)</sup> For two weeks, the Home Affairs Department mobilized 30,000 students to conduct door-to-door voter registration. These "voter registration ambassadors" visited households throughout Hong Kong to verify the existing voter list and to assist residents to sign up to vote. The government also conducted a concurrent public education campaign, using television ads, banners and posters to encourage people to register. Residents had until January 16 to join the voter rolls.

The government also sought to increase the number of voters on the functional constituency rolls. As part of the registration drive, the EAC mailed registration forms and information to individuals and corporate bodies eligible for the indirect elections. The EAC automatically kept on the voter rolls any electors who were registered in 1995 and remained eligible in the narrowed functional constituencies in 1998, unless they specifically declined to be registered. Each corporate voter was asked to indicate the name of a specific individual, its Authorized Representative (AR), who would cast the vote for that company or association in the functional constituency elections.

After completing the registration drive, the EAC compiled a preliminary list of voters. The lists were made open to the public for one week beginning February 13, during which time residents could verify whether their names were on the voter rolls. Residents had two weeks to appeal mistakes or omissions to the EAC.

After completing the last round of public inspection, the EAC reported final voter registration figures in March. Nearly 2.8 million residents registered for the geographical constituency elections, or 70 percent of the estimated 4 million eligible voters. (See Appendix IV.) This represented an increase of about 280,000 from 1995. Although a number of observers considered this a disappointing response, EAC and government officials proclaimed themselves satisfied. David Lan Hong-tung, Secretary for Home Affairs, for example, claimed that he was "not disappointed" and called the registration numbers "quite satisfactory."<sup>(10)</sup> The EAC Chairman and other government officials echoed these statements.

A smaller percentage of eligible electors registered for the indirect elections. The final count showed only 138,984 corporate and individual voters on the functional constituency rolls, or 59 percent of those eligible.<sup>(11)</sup> The lowest registration rates were for constituencies composed primarily of corporate voters, such as textiles and garments (14 percent), import and export (16 percent), commercial I (38 percent) and commercial II (32 percent). (See Appendix V.)

The EAC also released registration figures for the subsectors that were to choose Election Committee members on April 2. The overall registration rate for groups in

Sector I (commercial, financial and industrial subsectors), which primarily uses corporate voting, was only 25.1 percent. Groups in Sector II (professional subsectors) had the highest rate at 70.2 percent.<sup>(12)</sup> (See Appendix VI.)

Although the EAC and the government publicly declared their satisfaction with the registration rate for the indirect elections, many observers considered the process an even clearer failure than the registration of voters for the direct elections. The low registration rate for the indirect elections was likely a combination of several factors: the complexity of the election system, the difficulty of registering companies as opposed to individuals and a low level of interest in the elections among the eligible electorate.

Several political leaders suggested that many of those eligible to participate in the indirect elections did not understand the registration procedures, which contributed to the low registration rates. After a provisional legislature panel meeting in early January on voter registration, many panel members themselves were left confused about the process.<sup>(13)</sup> The election guidelines specify that voters who were registered in a 1995 functional constituency "bearing the same name" as one of the 28 constituencies in place in 1998 did not need to re-register.<sup>(14)</sup> Because of the number of functional constituencies that were removed, added or reconstituted since the 1995 elections, however, many of those electors on the old functional voter rolls needed to register again as part of a new constituency. It is possible that many eligible voters did not understand this regulation and neglected to reregister. One candidate for the textile and garment seat, Sophie Leung Lau Yau-fun of the Liberal Party, for example, said that because the associations included within the constituency had changed, "a lot of the members did not realize they were eligible under the current electoral arrangement."<sup>(15)</sup>

Registering corporate voters became a difficult task for the EAC because the Commission has no easy means of identifying who is eligible for a given functional constituency. The EAC sought to send information on the registration process to each individual and corporate body eligible to vote in the indirect elections. To this end, the Commission solicited names of eligible corporate and individual voters from professional and trade associations--such as, for example, the Hong Kong Bar Association, the Association of Retailers and Tourism Services or the Hong Kong Live Pig Trade Merchants Association--that constitute or make up part of the functional constituencies. If an association did not respond to the commission's request, however, there was no sure way to identify all of that group's eligible voters. In December, the EAC Chairman reported that the Commission was experiencing difficulty acquiring membership information from many associations. This handicapped the EAC in its effort to register functional voters, particularly eligible corporate electors in constituencies that had been reconstituted since 1995.

The low registration figures for the indirect elections may also suggest that potential electors do not have much interest in the elections. Furthermore, the lowest rates were in constituencies that employ corporate voting, namely those that cover the commercial, financial and industrial sectors. When defending the use of indirect elections, government officials often argue that such a system allows the people and groups that "have made Hong Kong successful" to continue to play a leading role in politics. The low registration rates among functional constituencies and subsectors suggest that many members of these groups may not be interested in taking up this special role.

#### *"Shelf Companies"*

One unexpected result of the functional constituency registration process has been

the emergence of "shelf companies" established for the primary purpose of giving their owners additional votes. This development came to light in late February, when reports surfaced that certain property developers had paid fees of HK \$2,000 to register subsidiary companies as members of the Real Estate Developers' Association. As a result, one developer secured 18 votes out of a total 410 in the Real Estate and Construction constituency.

Secretary Suen dismissed this development as a minor problem, stating that "there are imperfections in the system, and we all know that functional constituencies are a transitional arrangement."<sup>(16)</sup> Justice Woo also denied that this was an abuse of the electoral system, contending that shelf companies existed before the current electoral system was even developed and that their inclusion in the functional constituencies merely represented an oversight on the part of the government and the EAC.<sup>(17)</sup>

The shelf company phenomenon is a fitting metaphor for the functional constituencies. Functional constituencies, by their nature, allow economic elites disproportionate electoral influence. In the real estate and construction constituency, developers can literally buy themselves more votes, neatly demonstrating the influence that those with economic power can wield under the current electoral framework.

The disclosure of the problem of shelf companies reinforces criticism of the functional constituency process for allowing individuals with controlling interests in several companies to amass significant voting power. During the period of public consultation on the new election law, the Hong Kong Human Rights Monitor documented the number of votes that certain individuals and business conglomerates controlled when corporate voting was last used in 1991. At least two tycoons each amassed more than 20 functional votes. One real estate developer controlled 21 votes in a 373-person constituency, or more than five percent of the vote.<sup>(18)</sup> This problem will be particularly acute in the smaller constituencies, in which races will be close enough that an individual who controls four or five percent of the total votes could essentially determine the outcome.

#### *Voter Confusion*

Also troubling are indications that the public does not understand the election system and voting arrangements. In March, the Social Sciences Research Centre at the University of Hong Kong, which has conducted public opinion research on a range of social and political issues since 1991, released findings from a survey it conducted in February. More than 90 percent of people surveyed could not identify the election system that will be used in the geographical constituency polls, namely proportional representation. When asked if they were familiar with this system, nearly 90 percent responded that they either did not understand proportional representation at all or knew very little about it.<sup>(19)</sup> A similar survey conducted in April showed little improvement in these figures. Justice Woo himself recently hypothesized that "95 percent of voters can't tell you what [proportional representation] is."<sup>(20)</sup>

The survey showed that the functional constituency electors were also confused about the complex election system. Nearly 90 percent of eligible functional constituency electors questioned did not know the functional constituency to which they belonged. In a similar poll, 81 percent of people questioned did not know the function of the Election Committee, and 87 percent could not correctly give the number of seats that will be elected from geographical constituencies.<sup>(21)</sup>

Election and government officials admit that the system for the May elections is highly complicated. Nonetheless, officials have repeatedly contended that the convoluted nature of the election system should not prevent residents from registering to vote and participating in the elections. The EAC Chairman has suggested that most residents need not try to understand the entire system in all its complexity because they will only participate in the direct elections.

The government has conducted a HK \$37 million (US \$4.8 million) campaign to publicize the elections, on top of the money it spent on the voter registration campaign. It has paid to air television and radio ads about the elections, has placed posters and banners advertising the polls around the city, and has produced a short video about the elections for exhibition in public places. Despite this effort, the survey results and the low registration figures suggest that the election system remains a puzzle to many, if not most, residents.

One common explanation for the low registration rates and voter confusion is that the people of Hong Kong are primarily interested in livelihood issues and "making money" rather than politics. This is arguable. The low registration rates for the functional constituencies and the public's poor understanding of the election process seem as much to be results of the complexity of the system. Apathy may also derive from the fact that the system greatly limits popular political power. Just one-third of the legislature is directly elected. Moreover, rather than choosing a government, the process results in a legislature that can serve only as a "watchdog" body.

Interestingly, the February poll indicated that more than 40 percent of residents thought that it was possible for the Chinese government to interfere in the May elections.<sup>(22)</sup> Despite the general success that the SAR administration has had in establishing its autonomy, these survey results suggest that many residents consider Beijing to be the real source of political authority in Hong Kong. This perception also helps to explain the apparent low level of interest in the elections and in local politics more generally.

#### *The April 2 Selection of Election Committee Members*

The selection of Election Committee members took place on April 2. A number of seats on the EC, however, were determined even before these polls. Members of the provisional legislature and Hong Kong's delegation to the National People's Congress, the Chinese national legislature, became part of the Committee automatically.<sup>(23)</sup> The six organizations that constitute the religious subsector, which comprises 40 EC voters, separately chose EC members in mid-March. This technically left 683 seats up for election on April 2.

In addition to the *ex officio* members and the religious subsector members chosen in March, four subsectors nominated only as many candidates as there were seats: commercial II, industrial II, the Hong Kong Chinese Enterprises Association and the Chinese People's Political Consultative Conference. In these four subsectors, therefore, everyone who was nominated became part of the EC. Notably, the first three subsectors comprise mainland companies operating in Hong Kong and the latter consists of Hong Kong delegates to the CPPCC, an important mainland political body that meets once a year in Beijing. This could indicate that groups or individuals with ties to the mainland or who are accustomed to operating within the mainland political system may be more likely to choose political representatives through consensus than through competitive nomination and election. These four subsectors returned 95 EC electors, leaving the April vote to decide 588 of the 800 EC seats.

Only 23 percent of the 143,435 eligible subsector electors cast ballots on April 2. Turnout ranged dramatically among the subsectors, from a voting rate of 92 percent in the agriculture and fisheries subsector, which contained less than 200 electors, to less than 10 percent turnout in the health services subsector, which includes more than 27,000 electors.<sup>(24)</sup>

Election and government officials commented afterwards that the turnout for the April vote need not suggest that there will be a similarly poor turnout at the May elections. A few days after the vote, the EAC Chairman noted that, discounting the four subsectors with the lowest participation rates, the overall turnout was 35 percent. This, he suggested, was low but still comparable to turnout at the last legislative election.<sup>(25)</sup> Secretary Suen suggested that voters would consider the May polls more important and that the low turnout in April was because "an Election Committee rather than a legislative council is to be returned."<sup>(26)</sup>

Critics of the indirect elections, however, seized upon the apparent apathy of business and professional elites as evidence that the people of Hong Kong had rejected the concept of indirect elections. Although turnout is likely to be higher for the May elections, the voting rates on April 2 indicate that subsector voters either did not understand or had little interest in the indirect elections.

## **ELECTION DAY ARRANGEMENTS**

The system used to elect legislators this year will be the third one used in as many elections. Moreover, there will in effect be three separate elections taking place on May 24 with three distinctly different procedures for voting. In addition to creating much confusion among the general electorate, this has forced the EAC to make certain difficult decisions regarding election day arrangements.

### *Balloting and Counting Arrangements*

In 1995, residents with two votes, one geographical and one functional, cast their ballots at the same site as residents with only one vote. Each polling site therefore had 30 separate ballot sheets, one for the appropriate geographical constituency and one ballot for each of the 29 functional constituencies.<sup>(27)</sup> A different color was used for the ballot sheet of each functional constituency. After the elections, there was criticism that this system created confusion during the vote and the vote count because many of the ballots looked similar in color.

To avoid this confusion and streamline the process in 1998, Justice Woo proposed that the EAC designate a specific voting site for each functional constituency. At these sites, eligible functional constituency electors would cast their ballots for both functional and geographical seats. Under this arrangement, each designated functional constituency polling station would need only six ballots, one for the specified functional constituency and one for each of the five geographical constituencies. Furthermore, most polling sites would only need one ballot, for the relevant geographical constituency. Since the majority of residents are not part of a functional constituency, most people would still vote at a polling site near where they lived, as they did in 1995. Justice Woo considered this system to be much simpler and less confusing than the one used in 1995.

When the EAC put this proposal forward for public consultation, however, many functional

electors protested. They considered it more convenient to cast their ballots at sites near their homes rather than having one central place for each functional

constituency, particularly since the election will take place on a Sunday when most will not be at work. In the end, the EAC acceded to these protests and, as in the last election, will use a combined polling arrangement in which functional and geographical constituency voting will take place at the same sites. Thus, there will be 29 ballots at each polling station, one for the relevant geographical race and one for each of the 28 functional constituencies.<sup>(28)</sup>

There will be 496 polling sites established throughout the SAR. Included among these will be four polling stations exclusively designated for the 800 members of the Election Committee. Notwithstanding its name, the Election Committee does not actually meet to select its 10 LegCo members. Since EC members can vote for up to 10 candidates, the EAC will use computers to scan the EC ballots and tabulate results of the vote. This computer equipment will only be in place at the four sites across the SAR designated for members of the Election Committee to cast their ballots.

The EAC will count all the ballots from both the direct and indirect elections at one central location. This counting center will be divided into 34 counting zones, one for each geographical or functional constituency plus one for the EC seats. Ballots will arrive at the central site inside the envelopes in which they were placed by voters at the polling stations. These envelopes will not be removed until the ballots from one polling station have been mixed with those of another. Thus, results will not be available on a polling station basis. Only the EC votes will be counted using computers.

#### *Lack of Party Identification*

Government and election officials make no reference to parties when describing the use of the list system in the upcoming elections. In addition, government voter education materials contain no mention of parties in their descriptions of the list system.

Ballots for the directly elected seats will not include party logos, party colors, candidates pictures or even party names. The only feature by which voters can identify a list, besides the names of candidates on the list, will be a number assigned at random to the list indicating the order in which it appears on the ballot, e.g., List 1, List 2, List 3.

Officials from the EAC and the government give several reasons for not including any party identification on the ballot. They contend that including party identification would unfairly hinder any independent candidates in the race. In addition, Justice Woo has noted that Hong Kong does not yet have a law governing political parties, purportedly because the government is waiting for a more legitimate legislature to enact such a law. Without such a law in place, he has argued, there is no legal basis to determine which party names or symbols could appear on the ballot. Moreover, he has said that he feared that several party names look similar and would confuse voters.<sup>(29)</sup>

Justice Woo's arguments are unpersuasive. In most countries that use proportional representation, the list system reinforces and depends on the role of political parties and the lists are referred to explicitly as "party lists." It is common practice among countries that use a list system to have some form of party identification on the ballot. Even in majoritarian systems in which candidates do not run on lists, such as the United States, party names are typically included on the ballot. Including party identification on ballots would provide parties increased incentive to build up their level of recognition and support among the electorate. It would also make it easier

for voters to identify their choices when casting their ballots.

Although parties will not be identified on the ballots, the EAC will offer each list of candidates the opportunity to include its party name and logo, pictures of its candidates and a brief statement describing its platform in an introductory leaflet. The EAC plans to distribute these leaflets to voters and will display enlarged copies outside polling stations on election day. Voters will not, however, see any of this information on the ballot. The decision to not include any party identification on the ballot but to make it available in these leaflets is curious and seems likely to add to voter confusion.

#### *Corporate Voting*

For functional constituencies that employ corporate voting, each corporate entity must designate an Authorized Representative to cast its vote. (See Appendix II for constituencies that use corporate voting.)

This arrangement has caused some confusion among eligible functional electors. During the registration period, government and election officials repeatedly stated that no resident would be eligible to cast more than two votes in the election, one vote in a geographical constituency and one vote in either a functional constituency or the Election Committee. In other words, the 800 members of the EC could not also exercise a functional constituency vote, even though they may otherwise have been included in one of the functional constituencies. According to the EAC and the government, however, voting as an AR is not equivalent to casting an individual vote. One official in the Constitutional Affairs Bureau described it as simply "discharging a duty." There are no official regulations for how a company chooses its AR or chooses the candidate for whom the AR should vote.

Thus, a person will be allowed to cast a vote in two functional constituencies if he or she is an individual elector in one and a designated AR in the other. For example, a person may vote as an individual in the legal constituency and in one of the geographical constituencies. He or she may additionally vote as the Authorized Representative for his or her company in the finance constituency. Similarly, a person may vote as part of the EC, in a geographical constituency and as an AR for his or her company. This means that a given person may theoretically cast ballots in three separate constituencies.

In addition, people eligible to vote in the functional constituency elections were also eligible to vote on April 2 for a representative on the EC. This allowed them to indirectly influence the Committee's selection of the 10 EC legislators, on top of the votes they themselves will cast in the May 24 elections.

#### *Election Observers*

EAC regulations specify which individuals may gain admission to polling sites on election day. In addition to various election officials responsible for administering the vote, candidates' agents will be allowed into polling sites to observe the voting. At least one police officer is also supposed to be present at each site. Up to two candidates' agents, chosen at random, are entitled to accompany a polling agent and police officer who deliver the ballots to central counting site after the close of voting.

The EAC and the administration have made clear that other observers will not be permitted inside the polling stations on election day. Government and election officials have adamantly argued that doing so would be tantamount to inviting



outside supervision of the vote. This, they maintain, would suggest to the people of Hong Kong that the EAC could not adequately supervise the vote and that there was some question about the integrity of the administration of the election. They have expressed their strongest objections to the prospect of international observers at the polling stations but have stated that nonparty domestic groups and members of the press will also be excluded from polling sites.

Apparently in response to criticism, the Commission has invited the public to visit two specific polling stations on May 22, two days before election day, to explain the balloting process. Justice Woo commented that "We always say the poll is fair and open. Now everybody can see for themselves whether it is true or not."<sup>(30)</sup> Although this might be a valuable voter education exercise for the few people able to participate, it hardly substitutes for actual observation on polling day. Observers cannot make any inferences or judgments even about how well administered the process is if they do not see any part of the actual process.

It is common international practice to allow credentialed observers, including representatives of independent domestic and international groups and members of the press, into polling sites on election day. International election observation takes place within certain guidelines established by election authorities. Electoral authorities may, for example, require groups to go through an accreditation process to ensure that only serious, credible groups will enjoy access. Election authorities also retain the right to limit the number of observers allowed into a site at one time or to limit the time that observers may stay inside the polling station. In this way, observation can take place without interfering with the administration of the elections or compromising the secrecy of the ballot. Except in cases in which a multilateral organization administers elections, such as the UN-administered elections in Cambodia in 1993, observers do not act in a supervisory capacity or have any official role. They do not administer the vote, nor do they have power to regulate its conduct or adjudicate any election-related disputes.

Most, if not all, Hong Kong political leaders and observers consider the EAC to be a highly competent administrative body and consider the likelihood of election day irregularities to be minimal. Nonetheless, the May 24 elections will attract close attention because they are the first elections held since the return to Chinese sovereignty and the advent of "Hong Kong people ruling Hong Kong." Given this attention, the EAC and the government ought to consider observers to be an opportunity to demonstrate the efficiency of the process to the people of Hong Kong and to the international community.

#### **IV. THE CAMPAIGN**

The system of proportional representation and small districts adopted for Hong Kong puts parties in the position to determine which of their candidates have a serious chance to be elected in the direct elections. In the indirect elections, given the relatively "small circles" involved, the nomination process has already determined who will hold many of the seats. Indeed, 10 of 28 functional constituencies will only have one candidate, and, as discussed above, there was no competition for many of the places on the Election Committee. Because the number of directly elected seats is expected to increase, parties that currently rely on indirect elections will, in the future, have to learn how to compete in direct elections.

##### *Impact of the Election System on Party Campaigns*

Hong Kong's political parties did not come into existence until the early 1990s, and while they continue to involve only a small number of activists, parties have become important political actors in a short time. The new system gives parties a more

prominent role by giving them greater control of which of their members can get elected in the direct elections. The use of the list system for the directly elected seats has forced parties to choose where to place their members on the lists, in most cases determining from the outset who will and will not be elected.

By all accounts, the Democratic Party (DP) is the most popular party in Hong Kong. In 1995, the party won 12 of the 20 directly elected seats, and it consistently registers the most support in public opinion polls. Part of the party's success can be attributed to a strong core of party activists, particularly young politicians working at the grassroots level. In formulating its lists for the geographical constituency elections, the DP had to choose in several cases between its more experienced senior members and younger politicians who have strong support among their constituents. Although the party held a general vote among its members to choose its candidates, decisions regarding placement on the party lists made by the party's central committee. The central committee placed several junior party members relatively low on the party lists, making it difficult, if not impossible, for them to get elected. Several of these members are former legislators, incumbents who lost their seats when the LegCo elected in 1995 was disbanded upon reversion.

In one instance, party members protested the central committee's placement of a popular former legislator, Albert Chan, in the fourth position on the New Territories West list. This constituency has five seats, making it extremely unlikely that the fourth DP candidate on the list will be elected. In late February, the DP held a special general meeting to address Chan's placement, at which party members voted to place the former legislator third on the list instead of fourth.<sup>(31)</sup> One other DP candidate who had been placed fourth on a list, Tsang Kin-shing, chose to not run rather than face near certain defeat in the Hong Kong Island constituency.

These cases demonstrate the potential for internal disputes that can develop in large parties under the list system, particularly when each constituency has only a few seats. It is significant that in the case of Chan's placement, the DP resolved its internal dispute through a democratic process. This probably helped to preserve party unity after the dispute.

The Democratic Alliance for the Betterment of Hong Kong (DAB), the largest party among those considered to be "pro-China," has not experienced this problem to the same degree as the Democrats. One party leader considered the list system to pose less of a problem to the DAB because the party has fewer popular young members who would be hurt by a low list placement. Furthermore, unlike the Democrats, none of the DAB members who are lower on the party's list are incumbent legislators, and thus the party will not necessarily lose any seats compared to its showing in 1995.

In past elections, almost all of the legislators from the Liberal Party and the Hong Kong Progressive Alliance (HKPA), two staunchly pro-business parties, returned the bulk of their legislators through the indirect elections. In 1995, Liberal Chairman Allen Lee was the only member of either party elected from a geographical constituency. By comparison, nine Liberals won indirectly elected seats in 1995.

If future legislatures are directly elected, these parties will be forced to develop both campaign skills and grassroots appeal to maintain their relevance. Liberal Party leaders have stressed the importance of party members competing in the direct elections this year. In late 1997, party chairman Allen Lee reported said that "it is our plan to train party members to be more and more interested in direct elections . . . because of the reality that direct elections have become part of Hong Kong

politics."<sup>(32)</sup>

At the same time, the Liberal Party does not want to give up its advantage in the functional and EC races. Thus, the party has chosen to run only two candidates for election in the geographical constituencies. Lee himself later supported the strategy of concentrating on the small circle elections, asking rhetorically "when we have better chances in the functional seats, why should we give up and let other party take the seats?"<sup>(33)</sup>

This strategy has caused at least one major dispute within the party. One senior party member, Jennifer Chow Kit-bing, quit in late February after party leaders insisted that she run for one of the 10 EC seats rather than for a geographical seat. Chow had planned to run for one of four seats in the Hong Kong Island constituency. After the return of veteran politician Ada Wong to the Liberal camp, however, party leaders preferred to allow Wong to run on Hong Kong Island. Chow chose to resign rather than compete for the EC seat, and 19 members of the party subsequently resigned in support of her. Earlier in the year, another Liberal Party member, vice-chairman Steven Poon, similarly decided to drop out of the elections rather than switch from a geographical to a functional race. Some observers have suggested that this choice reflects a common feeling among candidates that winning a directly elected seat is a greater political accomplishment than winning a seat through the indirect elections.

The HKPA, like the Liberal Party, is focusing on winning seats in the indirect elections. Party leaders, however, never considered this year's election as a chance to gain much-needed campaign experience. As one party leader admitted, HKPA members have little or no experience in grassroots campaigning, and the chances of the party winning any geographical seats this year would be virtually nil.

Three small pro-democracy parties will compete in the upcoming elections: the Association for Democracy and People's Livelihood (ADPL), the Frontier and the Citizens Party.<sup>(34)</sup> All three groups were either founded in the last year or have only recently taken on the functions of a political party. They will rest their election hopes primarily on the strength of their leaders, Frederick Fung, Emily Lau and Christine Loh, respectively. These individuals, who all have high name recognition and a small but firm base of support, generally share the democratic ideals of the Democrats and worked loosely together with DP members in the legislature before reversion. Because of their limited resources and relatively small number of well-known political personalities, these smaller parties are running lists in only one or two geographical constituencies and have not included more than two names on those lists.

#### *Lack of Electoral Alliances Among Parties*

None of parties in Hong Kong have formed electoral alliances. Alliances between or among parties would have benefited parties by maximizing the support that a large political camp could receive under the largest remainder system. For example, assume the following results for a constituency electing five seats:

List A 45 percent

List B 14 percent

List C 13 percent

List D 11 percent

List E 10 percent

List F 6 percent

List G 1 percent

In a five-person constituency, a list of candidates needs 20 percent of the vote to receive one seat. Thus, List A would receive two seats for having won at least 40 percent of the vote. The three other seats will be allocated to the parties with the highest remaining vote totals. After the initial allocation, the remaining vote totals would be as follows:

List A 5 percent

List B 14 percent

List C 13 percent

List D 11 percent

List E 10 percent

List F 6 percent

List G 1 percent

Lists B, C and D would thus win the three other seats in the constituency.

Assume, however, that parties A, E and F form a pre-electoral alliance and run candidates on a combined list. If the same number of voters vote for the combined list as for the parties separately, List A-E-F will receive 61 percent of the vote. This would give them three seats together instead of the two they received running independently.

The conflicts that would come with electoral alliances have, however, caused parties to shy away from forming them. For example, in the scenario described above, the three parties would need to negotiate for which one received the third seat, a likely source of conflict. Given that each constituency will elect only a small number of seats, parties have at most one seat to gain from combining their lists. This return was apparently not large enough to entice parties to form alliances in the May elections.

### *Campaign Finance*

In December, the government proposed a bill to raise the campaign spending limit for directly elected seats from HK \$200,000 (US \$28,000) per seat to HK \$500,000 (US \$70,000). Government representatives claimed that this 150 percent increase was necessary to keep spending in line with inflation and to allow candidates to campaign in the larger constituencies. The spending ceilings for the functional constituency and EC seats were also increased. The limit for the functional races is between \$100,000 and \$480,000 per seat, depending on the size of the

constituency, and the limit for each EC seat is \$160,000.

Several political parties protested the increase and argued that the higher spending ceiling would seriously impede their ability to compete. The increase meant a party running a full slate of 20 candidates in the direct elections would need to raise roughly HK \$10 million. The DP, DAB, Frontier and ADPL all criticized the increase, which they contended would hurt parties with primarily grassroots bases. The DP suggested that the ceiling be raised slightly to HK \$230,000 per seat, and the Frontier called for an increase to only reflect the rate of inflation over the three years. In the provisional legislature, the DAB and the ADPL sought to amend the government's bill and cut the spending ceiling in half to \$250,000 per seat. Members of the HKPA and Liberal Party, the two parties that would seem to benefit the most from the increased spending limit, blocked this measure when it came to a vote.

Proponents of the increase suggested that parties with strong grassroots networks enjoy a distinct advantage in their ability to mobilize a large number of supporters for their campaigns. Thus, they argue, these parties will not be as dramatically affected by the spending increase as they suggest. One member of the Executive Committee openly conveyed this sentiment when he remarked that the EAC ought to "let those who have time spend time [and] let those who have money spend money."

Current campaign finance regulations require individual candidates to disclose their sources of funding but do not require parties to do the same. A candidate could claim that she received all of her funding from the party without disclosing the sources of the party's funding. In accordance with Hong Kong law, parties are prohibited from raising funds from overseas groups. Parties are allowed, however, to raise funds from among individual supporters overseas, where pro-democracy groups such as the DP and the Frontier have significant support.

It is likely that grassroots-based parties will not garner as much financial support as parties with links to the business community. The effect of the increased campaign spending, however, will likely be felt more acutely not during these election but in the coming years. With legislative elections scheduled again for 2000 and local-level elections expected for 1999 and 2002, parties will have to quickly replenish their coffers. In addition, the number of directly elected seats, which have higher spending ceilings than the indirectly elected seats, is expected to increase over the next 10 years. This will increase the cost of elections even if the amount per seat does not change.

#### *Political Advertising*

In early 1998, party signs and other forms of political advertising that were present throughout the SAR were taken down in preparation for the campaign period. Political advertisements remained down until late April. During the campaign, parties and candidates were allowed to display political advertisements in public at "designated spots."<sup>(35)</sup> The EAC allocated these spots to each list of candidates, either through agreement or through a random draw. Designated spots were not to be transferable or negotiable after the allocation took place.

In the functional constituencies, candidates have also received designated spots at which to display campaign advertising. Because these advertisements specifically target members of the various functional groups, the EAC has allowed candidates to suggest where their political ads should be located.

Candidates are also allowed to place political ads in "private spots," sites on private

property, as long as they have the consent of the owners. In the election guidelines, the EAC nonetheless "appeals to owners and occupiers of private premises to give all candidates and lists competing in the same constituency **fair and equal treatment** in the display of election advertisements."<sup>(36)</sup> The Commission recommends that if an owner allows one candidate or list of candidates to display political ads, he or she should allow all candidates to do so. The EAC, however, has no mechanisms to enforce this guideline, and the suggestion that private landowners must provide support to all parties equally seems strange and misguided. The EAC requires that candidates consider the market value of private spots to be an election-related donation and include it in the sum of their election spending.

To assist candidates to reach out to voters, the government has provided an opportunity for all individual candidates and lists to distribute campaign materials free of charge. Candidates and lists received two free mailings to their constituents, which the EAC suggested they use on or before April 30 and May 8, respectively. In addition, candidates for the EC subsectors received one free mailing the week before the April 2 vote.

#### *Media Access*

As in previous years, paid campaign advertisements on television or radio are prohibited. The administration provides opportunities for candidates to air brief radio spots on the government-funded public broadcaster, Radio Television Hong Kong (RTHK). Each list in a given constituency is supposed to receive an equal amount of airtime. The total time for each constituency, however, may differ. The RTHK television station has also organized candidate forums, as have private television stations. These are the only ways through which parties and candidates can reach voters using the airwaves.

Some party leaders complain that this arrangement does not allow candidates much opportunity to get across their message. Neither these forums nor the government-funded campaign messages allows candidates as much editorial control as they would have if they produced their own campaign commercials for broadcast.

Television, radio and print media outlets are expected to follow a general "equal time" principle in their coverage of parties and candidates during the campaign period. This requires the media to give equal time to all candidates during election forums and to provide "fair and equal treatment" in news coverage so that no candidate could get an "unfair advantage."<sup>(37)</sup> There is no mechanism through which this the EAC enforces this principle, nor is there any indication how this principle can be reconciled with freedom of the press concerns. In the past, the press has generally covered all competing parties. Party leaders have not indicated significant concern about press coverage of the campaign period.

#### *"Small Circle" Elections*

Many in the Hong Kong public have referred to the functional constituency and Election Committee elections as "small circle" elections because of the small size of the electorates involved. Nine functional constituencies include fewer than 500 voters, and another four comprise fewer than 1,000. Three EC subsectors that do not also represent functional constituencies--hotels, the Hong Kong Chinese Enterprises Association and CPPCC deputies--contain fewer than 125 electors. These constituencies and EC subsectors are groups of peers and colleagues, in many of which it may be possible for candidates to know each voter personally. These characteristics make the election process within these small circles significantly different from that of the directly elected seats.

One party leader who plans to run for an EC seat suggested that in small constituencies there are individuals who are logical or even obvious choices for candidacy. The nomination process within these small professional and corporate circles involves building consensus and feeling out for support. The nomination process for candidates in the functional constituencies and EC subsectors has frequently determined the outcomes of the elections themselves. Ten of the 28 functional constituencies will only have one candidate running in the elections, which means that one-sixth of the legislature will be elected unopposed.<sup>(38)</sup> The Government Gazette has already confirmed the "victories" of the unopposed candidates running for these seats.

Likewise, even before the selection of Election Committee members that took place on April 2, a number of seats on the EC had already been determined. Members of the provisional legislature and Hong Kong delegates to the Chinese National People's Congress (NPC) became part of the Committee automatically. In addition to these *ex-officio* seats, 95 candidates for seats on this Committee were unopposed.

Moreover, members of several parties cannot compete in indirect elections because so few of their supporters are included in these small circles. Although the results of the indirect elections are not necessarily pre-determined, parties with primarily grassroots bases of support have limited access to the process because their supporters are not represented among most of the groups that make up the functional constituencies and EC subsectors. This problem existed in previous elections but will be more pronounced in this year's elections because of the return to corporate voting in many functional constituencies.

## **TOWARD A DEMOCRATIC FUTURE**

Drawing on the institutions and experiences of Hong Kong under British colonial rule, the Basic Law does not provide for full electoral democracy in the HKSAR, at least in the short term. It does, however, as discussed above, explicitly establish the "ultimate aim" of electing a legislature and a Chief Executive through "universal suffrage" after a transition period of about 10 years.<sup>(39)</sup> Beyond elections, Hong Kong will likely need to address the structure of its new political institutions, including the legislature, the office of the Chief Executive and local government bodies.

### *Relationship Between the Legislature and the Government*

The legislature elected in May, like past Hong Kong legislatures, will not have as broad legislative powers as bodies in most democratic systems. The public does not elect, even indirectly, a government. The legislature is essentially a monitoring body that can block or amend government legislation and call on the administration to defend government policy. LegCo members have the power to introduce private members bills, but not ones that involve public expenditure, the political structure or the operation of the government.<sup>(40)</sup>

Bills introduced by the government need to be endorsed by a simple majority to become law. Private-member bills, legislative motions and amendments to government bills, however, require majority support of both the 30 functional constituency representatives and the 30 members elected through the direct elections and by the Election Committee.<sup>(41)</sup> In this manner, the two groups will at times function as if they were two separate houses in a bicameral legislature.

Members of the administration are drawn from the ranks of the SAR's civil service. Upon reversion, the new SAR government kept in place heads of government departments who had served under the colonial administration, a sort of "through

train" for the government. As was the tradition

under the colonial administration, even senior government officials are politically neutral in that they are not aligned with any one political party or movement. Because the Chief Executive like the Governor during the colonial era is not popularly elected and because he and his administration are officially neutral, there is no "government party" in Hong Kong.

As the number of directly elected seats in the legislature increases in the future, however, political parties will play an increasingly important role in the legislative process. Both political party leaders and members of the now disbanded provisional legislature suggest that as parties develop their political clout, the government will need to build a relationship with at least some parties in the legislature in order to pass legislation. Moreover, if the Chief Executive is popularly elected in the future, party politics will presumably enter the executive branch. These developments would lead to both an official government party and a functioning opposition party (opposed to a specific governing party rather than the administration generally) in the legislature. This would likely both strengthen party politics and expand the role of the legislature in the governing process.

#### *Local Government Restructuring*

Since 1983, Hong Kong has had a three-tiered government structure, including the Legislative Council as the highest tier, the Urban Council and the Regional Council as the middle tier and district boards as the lowest tier. The Urban Council and the Regional Council, 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 councilors, 32 of whom were directly elected members from 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 in 1983 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 September 1994, in accordance with Governor Patten's reform package, when 346 members were directly elected.

Since the introduction of direct election to both the district boards and municipal councils, the local bodies have become an important training ground for younger politicians. It is less clear whether direct elections at the local level have led to increased public interest and participation in politics.

After reversion the membership of these local bodies was increased by 25 percent. The same selection committee that chose the provisional legislature appointed the additional members, and the bodies became known as provisional district boards and provisional municipal councils.

The current administration plans a review of the local government structure. This review will include a period of public consultation that will take place sometime after the May elections, possibly as early as this summer. Several political leaders have



expressed concern that Hong Kong is too small to have three levels of government and that institutional reform may be necessary to increase the efficiency of the local bodies. Pending the results of the consultation exercise, the government may propose to change the responsibilities of these bodies, to merge the Urban and Regional Councils, or consolidate the two lower levels of local government.

#### *Reaching the "Ultimate Aim" of Full Democracy*

The timetable for moving to full electoral democracy has already been pushed back a year as a result of the failure of the "through train" and the establishment of the provisional legislature. The Basic Law, which does not provide for any appointed or provisional legislature, did not factor this body's term into the transition period it establishes for progress toward elections through universal suffrage. Rather it was proposed under the assumption that members of the legislature elected in 1995 would continue until 1999. Thus, the 10-year timetable will actually begin after the LegCo elected this May assumes its seats, rather than immediately after reversion in July 1997.

The Basic Law provides for the number of directly elected seats in the second LegCo after reversion--now expected to be elected in 2000--to increase from 20 to 24 of the 60 total. The number of 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 (10 years after reversion) 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.<sup>(42)</sup>

In other words, 40 votes will be required to determine the method of elections to the LegCo after 2007. Likewise, it takes 40 votes to amend the Basic Law at any time, including any amendment to the method of electing the LegCo before 2007.<sup>(43)</sup> Thus, even if all 30 directly elected members 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 also have to agree. This means, in effect, they will have to be willing to put themselves out of office, for the promise of democratization to be fulfilled.

#### *Attitudes Toward Full Democracy*

Political parties of various points of view have thrown their support behind universal suffrage. Several parties explicitly support accelerating the timetable of introducing democracy and have included this in their platforms for the May 1998 elections. Last year, a DAB member in the provisional legislature sought to debate the issue of amending the Basic Law to speed up the democratization process, but few members of the appointed body supported this effort.

Neither the HKPA nor the Liberal Party has committed itself to supporting full democratization, even after the transition period established by the Basic Law. One HKPA leader remarked that he considered it helpful to maintain functional constituencies as currently constituted in the future. He suggested that if there were no indirect elections, the business community would be shut out of the legislature, which would have a detrimental effect on the economy. One Liberal running for office has supported full democracy by 2007, but another party leader has speculated that the move to full democratization could take more than 10 years, during which time additional incremental steps would be taken to reduce, but not

eliminate, the number of indirect seats.

Over the past year, government officials and many political observers in Hong Kong have fended off criticism of the current electoral framework by arguing that the use of indirect elections is only temporary and that full democracy will come to Hong Kong according to the timetable that the Basic Law provides. Secretary Suen expressed this attitude when, after receiving criticism about the participation of shelf companies in the functional elections, he suggested that "there are imperfections in the system. . . . Eventually all the seats will be opened up for direct election--that's the proper way of looking at it."<sup>(44)</sup>

For his part, Chief Executive Tung has not made any commitment to any specific timetable for introducing full democracy, including the 10-year timeframe set out in the Basic Law. During his visit to the United States in September 1997, the Chief Executive referred to this timeframe in an interview on the Lehrer News Hour, a national news show aired over the US Public Broadcasting System. Tung stated that the Basic Law "says very clearly that at the end of that time we are going to move into universal suffrage if it is at that time the wish of the Hong Kong people." The Chief Executive noted that, although the Basic Law can be amended to accelerate the process, "we got it about right, a 10-year process going forward, and looking at ultimately universal suffrage."<sup>(45)</sup>

When meeting with an NDI delegation in March, the Chief Executive emphasized that the decision on how and when to move to introduce full democracy is not currently under consideration. Significantly, he was unwilling to state that the move to a fully elected legislature and direct election of the Chief Executive would necessarily take place by 2008. Rather he said that the government, the legislature and the Hong Kong community would consider the issue at that time. Thus, he suggested, direct elections of the Chief Executive and all members of the LegCo could be more than 10 years away.

#### *Future Selection of the Chief Executive*

Tung Chee-hwa's current five-year term will expire in 2002. According to the Basic Law, an 800-member committee will select the next Chief Elective at that time. Such a committee will presumably be similar in makeup to the Election Committee that will choose 10 legislators in this year's elections.<sup>(46)</sup> The government must still draft a law governing this process. The Basic Law does not specify how the Chief Executive will be selected beyond 2002, leaving open the possibility that the position could be popularly elected beginning in 2007. This, like the introduction of full democracy in the legislative elections, would require support of at least two-thirds of the legislature, as well as the Chief Executive who is in office at the time.

The nomination process for the selection of the Chief Executive in the future, whether he or she is selected by a committee or in direct elections, is also yet to be determined. If the process resembles the selection of 1996 or the recent selection of Hong Kong delegates to the National People's Congress, it will likely be difficult for many political leaders with strong party ties or pro-democracy credentials to be nominated.<sup>(47)</sup> Nonetheless, several party leaders suggest that political parties may publicly endorse one of the candidates for the office in 2002. This would allow parties to influence the selection process to a certain degree, although not nearly to the extent they could if the Chief Executive was elected through universal suffrage.

#### *Prospects for Participation in Future Elections*

Many in Hong Kong express concern that the residents of Hong Kong may soon experience "voter fatigue." As explained above, the elections in 1998 were not

envisioned in the Basic Law or contemplated before reversion. On top of this year's vote, legislative elections will again take place in 2000 and 2004, and elections to local government bodies could, depending on future reforms to the local government structure, take place in 1999 and 2002. Five elections in seven years may well be too many for the people of Hong Kong, particularly in light of the low level of interest in this year's process.

If Hong Kong is to live up to the promise of democratization, it must allow the public to directly elect all of the seats in the legislature and the Chief Executive. Such a system would resonate with residents, who could then truly assume the role of "Hong Kong people ruling Hong Kong."

---

## ENDNOTES

1. For a detailed analysis of the 1998 election framework, see *The Promise of Democratization in Hong Kong: The New Election Framework*, NDI Hong Kong Report No. 2, October 23, 1997 (NDI Hong Kong Report No. 2).
2. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Basic Law), Article 68.
3. Decision of the National People's Congress on the Method of 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 on 4 April 1990.
4. 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 II.)
5. Legislative Council Bill, Section 49.
6. Legislative Council Bill, Section 48.
7. Legislative Council Bill, Schedule 2. See NDI Hong Kong Report No. 2 for a more detailed description of the makeup of the Election Committee.
8. Legislative Council Bill, Section 50.
9. Simon Buerk, "Ambassadors Come Knocking for Voters," *South China Morning Post*, December 6, 1997, p. 17.
10. "Uneven Response as Voter Drive Ends," *South China Morning Post*, January 17, 1998.
11. "Zhengshi Xuanmince Gongbu, Duanji Lu Qi Cheng (Final Voter Registration List Released, Registration Rate at 70 Percent)," *Ming Pao Daily News*, March 14, 1998,

p. A14

12. *Ibid.*

13. No Kwai-wan, "Legislators Lost in Registration Maze," *South China Morning Post*, January 10, 1998.

14. Electoral Affairs Commission, *Guidelines on Election-related Activities in respect of the 1998 Legislative Council Elections*, February 28, 1998, (Election Guidelines), Chapter 1, Section 10.

15. "Voters Baffled, Deterred by Complex Procedures," *South China Morning Post*, January 15, 1998.

16. Gren Manuel, "LegCo Vote Loophole an 'Imperfection'," *South China Morning Post*, February 24, 1998.

17. No Kwai-wan, "No Vote-Buying Through Loophole," *South China Morning Post*, February 25, 1998.

18. Hong Kong Human Rights Monitor, "Response to Consultative Document on the Delineation of the electorate for the New Functional Constituencies and the Election Committee for the First Legislative Council Election of the Hong Kong Special Administrative Region," Section 15, July 28, 1997.

19. Linda Choy, "Ignorance About Poll Increasing," *South China Morning Post*, March 19, 1998, p. 4.

20. No Kwai-yan, "Early Polling Booths View for Public," *South China Morning Post*, May 7, 1998.

21. See the Hong Kong Voice of Democracy, "Most Hong Kong People Fail to Understand What is 'Election Committee Election'," April 1998, citing the Social Sciences Research Centre at the University of Hong Kong. This article may be available Hong Kong Voice of Democracy Web site at <http://www.freeway.org.hk/~democracy..>

22. Chiu Kit-fun, "Xuanweihui Bu Zuo 'Sha Shi' Ju Waiguo Guanchayuan Lan Xuan (Election Affairs Commission Will Not be Made to 'Look Foolish,' Resists Foreign Election Observers having a Look) ," *Apple Daily*, March 19, 1998, p. A17.

23. Because a number of the 60 provisional legislators are also part of Hong Kong's 36-person NPC delegation and eight members of the two bodies declined their seats, the actual number of *ex officio* Election Committee members is 77, rather than 96.

24. "23pc Turnout as Complexity Confuses Subsector Voters," *South China Morning Post*, April 3, 1998.

25. Carmen Cheung, "Laggards Pull Down Vote Rate," *Hong Kong Standard*, April 4, 1998.

26. "23pc Turnout as Complexity Confuses Subsector Voters," *South China Morning*

*Post*, April 3, 1998.

27. In 1995, the labor constituency elected two seats, bringing the total number of functional constituency seats to 30.

28. In 1998, the labor constituency will elect three seats. Thus, the 28 functional constituencies will elect a total of 30 legislators.

29. In particular, Justice Woo noted the Association for Democracy and People's Livelihood, the Citizens Party, the Democratic Party and the Democratic Alliance for Betterment of Hong Kong. The names for these parties all begin with the Chinese character *min*, meaning "citizen" or "democracy."

30. No Kwai-yan, "Early Polling Booths View for Public," *South China Morning Post*, May 7, 1998.

31. Chan later withdrew from the race when it was discovered he had not given up his right of abode in Canada, which disqualified him for running in the direct elections.

32. Baby Sung, "Liberals Field Three Candidates for Polls," *South China Morning Post*, November 5, 1997.

33. Chloe Lai, "Party Shuns Direct Elections," *Hong Kong Standard*, March 30, 1998.

34. Frontier leaders describe the organization as a "pressure group," not a party, but the organization will run candidates on lists in the upcoming elections.

35. Election Guidelines, Chapter 5, Section 10.

36. Election Guidelines, Chapter 5, Section 16. (Bold in original.)

37. Election Guidelines, Chapter 9, Section 4.

38. These are: architectural, surveying and planning; commercial I; commercial II; finance; Heung Yee Kuk (rural councils); import and export; industrial II, social welfare; textiles and garment; and tourism.

39. Basic Law, Articles 45 and 68.

40. Basic Law, Article 74.

41. Basic Law, Annex II. After the 1998 elections, this second group will include 20 directly elected members in 10 members selected by the EC. After the vote in 2000, it will include 24 directly elected members and six members chosen by the EC.

42. Basic Law, Annex III.

43. Basic Law, Article 159.

44. Gren Manuel, "LegCo Vote Loophole and 'Imperfection'," *South China Morning*

*Post*, February 24, 1998.

45. See "Conversation with Tung Chee Hwa," a transcript of the Chief Executive's September 10, 1997 interview on the Lehrer News Hour, PBS. This transcript may be available on the [www.pbs.org](http://www.pbs.org) Web site.

46. Basic Law, Annex I.

47. For a detailed analysis of the 1997 selection of Hong Kong delegates to the NPC, see *The Promise of Democratization in Hong Kong: Autonomy and Rule of Law*, NDI Hong Kong Report No. 3, May 1.

Copyright © National Democratic Institute for International Affairs (NDI). All rights reserved. Portions of this work may be reproduced and/or translated for non-commercial purposes provided that NDI is acknowledged as the source of the material and is sent copies of any translation.

National Democratic Institute for International Affairs, 1717 Massachusetts Avenue, 5th Floor, Washington, D.C. 20036, Tel.: 202-328-3136, Fax: 202-939-3166