



THE PROMISE OF
DEMOCRATIZATION IN HONG KONG

TAKING STOCK
PASSAGE OF THE POLITICAL REFORM PACKAGE

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For further information, please contact:

Marjan Ehsassi
Program Manager, Asia

or Belinda Winterbourne
Resident Senior Program Manager

National Democratic Institute for International Affairs
2030 M Street NW, Fifth Floor Unit 1701, 17/F,
Washington, DC 20036 233 Hollywood Road, Sheung Wan, HK

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The New Election Framework, NDI Hong Kong Report No. 2, October 23, 1997.

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

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

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

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

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The 2005 Chief Executive Election, NDI Hong Kong Report No. 10, June 21, 2005.

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The 2007 District Council Elections, Legislative Council Elections, and Prospects for Constitutional Reforms, NDI Hong Kong Report No. 12, December 27, 2007.

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The Promise of Democratization in Hong Kong: Taking Stock - Passage of the Political Reform Package

From November 1 – 4, 2010, the National Democratic Institute (NDI) held meetings in Hong Kong to assess the political environment leading up to and following the passage of the political reform package. NDI's team included: Suzanne Wood, Former President of the New Zealand National Party; Thomas Barry, NDI Deputy Regional Director for Asia programs; Jennifer Hopfensperger Program, Officer NDI DC; Belinda Winterbourne, NDI Resident Senior Program Manager for Hong Kong; and Stephen Tong, NDI Program Officer for Hong Kong.

Among others, the team met with current and former government officials; political party leaders; Legislative Council members and candidates; District Councilors; nongovernmental organization representatives; academics; journalists; and diplomats.

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

Kenneth Wollack
President

Peter M. Manikas
Director of Asia Programs

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I. INTRODUCTION

Over a decade has passed since NDI began monitoring Hong Kong's democratic development. The "one country two, systems" principle continues to be the main pillar of Beijing's Hong Kong Special Administrative Region's (HKSAR) government policy.

The Standing Committee of the National People's Congress (SCNPC) ruled in December 2007 that universal suffrage for the Chief Executive (CE) and the entire Legislative Council (LegCo) could not happen before 2017 and 2020.¹ In the lead up to the discussions relating to political reform, the issue of government accountability as well as the public's increasing sense of unfairness in policy-making was becoming apparent.²

This report examines the government and political parties' attempt to reach a consensus on constitutional reform as well as the process leading up to the passage of the Hong Kong government's constitutional reform package and explores what comes next.

II. CONSTITUTIONAL REFORM – THE LONG-AWAITED PACKAGE

Speculation was rife before the constitutional package was unveiled in late 2009 that it would likely resemble the one rejected by the pan-democrats in 2005. The latest blueprint proposed expanding the LegCo by 10 seats with five directly-elected and five from the District Councils, while avoiding creating seats from "traditional" functional constituencies (FCs). In addition, the Election Committee (EC) that selects the CE in 2012 would be expanded from 800 members to 1,200. Political affiliation for the CE was not given consideration at this time.

The pan-democrats were disappointed as some commented that the proposals were worse than the 2005 package, and that it was a "step backwards" as the number of District Councilors to be added to the EC would be reduced from 500 to 100 individuals, thereby making it less likely for pan-democratic candidates to be nominated.

If broad public agreement emerged from the consultations, the reform process could set the stage for universal suffrage in the 2017 CE and 2020 LegCo elections. If the reform process ended in a stalemate, there was the potential that implementation of universal suffrage could be delayed yet again until the distant future.

Among those who were concerned about an impasse were a group of over 100 academics who in a joint statement in December 2009, called on the Central Government to assure the people of Hong Kong that the threshold for nominating the CE would not be higher than the current level, and the participation and election of

¹ "...the election of the fifth Chief Executive of the Hong Kong Special Administrative Region in the year 2017 may be implemented by the method of universal suffrage; that after the Chief Executive is selected by universal suffrage, the election of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of electing all members by universal suffrage Source: http://english.gov.cn/2007-12/29/content_847120.htm (as at 23 Nov 2010)

² See "Calm After the Storm? Hong Kong people respond to reform Hong Kong" Hong Kong Transition Project Commissioned by NDI Oct 2010

legislators would comply with fair and universal principles, which would include abolishing FCs.

Some of the key problems the Hong Kong government has been facing include a lack of political representation as well as a lack of accountability from key officials. The CE is selected from an electoral college of 800 members. In the absence of political party affiliation through restrictions in local legislation, the CE is forced to lobby every party each time the government attempts to pass a policy.

III. SPLIT IN STRATEGIES FOR UNIVERSAL SUFFRAGE

Even prior to the release of the government consultation document, it was clear from discussions that the government was going to focus only on electoral arrangements for the CE and members of the LegCo in 2012. This was directly in conflict with what most of the pan-democrats wanted; a detailed roadmap for universal suffrage. The League of Social Democrats (LSD), a political party advocating for universal suffrage by 2012 were the first to propose a “de-facto referendum” whereby a democratic legislator would resign from each constituency, forcing a by-election. This did not gain widespread support initially from within the pan-democratic camp, which feared it could detract from the universal suffrage issue.³ Ultimately, the Civic Party decided to participate in the resignation plan while the Democratic Party had refused to employ this strategy, which is explained in more detail in the following section.

BY-ELECTION/DEFACTO REFERENDUM

The Civic Party proposed its own three stage plan initially as an alternative to the LSD plan. If their 2017 and 2020 proposals were not included in the consultation, one pan-democratic legislator from each of the five geographical constituencies would step down. The resulting by-election would measure the demand for full electoral reform. If the CE refused to adhere to public opinion, all 23 pan-democratic legislators would resign in protest as should the CE himself, according to the party. This plan drew concern from certain quarters, warning that this could be “political suicide” and that though it could be seen as a powerful political gesture, what could be gained from it?”

Veteran Szeto Wah of the Democratic Party voiced his concerns over the planned resignations, fearing the camp could risk losing its veto power if they were defeated in the by-elections. Ronny Tong from the Civic Party also did not seem confident about the resignation plan, warning that the pan-democratic camp could risk losing its veto power.

The Democratic Party placed the vote before its members but the move to join the referendum plan was defeated by 229 votes to 54. However, the party’s central committee allowed individual members to campaign on behalf of individual candidates competing in the by-election. Meanwhile, the Civic Party voted to back the resignation plan at its Annual General Meeting in December, in which 76 members supported the plan, 17 disapproved of it, and 2 abstained. The Civic Party viewed this as an opportunity to advocate universal suffrage and to do something to highlight the

³ “Process derailed” SCMP 1 September 2010

inequities of the current legislative system instead of waiting until June 2010 to veto the constitutional reform package.

The candidates focused on two main issues; genuine universal suffrage as soon as possible and the abolition of FCs. The Hong Kong and Macao Affairs Office under the State Council quickly reacted by labeling the referendum exercise a “blatant challenge” to the Basic Law and the decision of the National People’s Congress Standing Committee (NPCSC). Secretary for Constitutional and Mainland Affairs Stephen Lam noted that any attempt to conduct a de facto referendum on Hong Kong’s electoral reform would be inconsistent with the Basic Law. Hong Kong has no law concerning referendum; however, international guidelines could be used to measure success with a basic criterion of more than half of all eligible voters casting their ballots to validate the referendum exercise.

The debate became more contentious as the words “*qi yi*”, or uprising, were used in promotional literature for the referendum. Maria Tam, member of the Committee for Basic Law, was reported to have declared that this implied the intent to overthrow the governing authority by force.

As the rhetoric intensified, the pro-establishment parties including the Democratic Alliance for the Betterment of Hong Kong (DAB), the Federation of Trade Unions, as well as the Liberal Party announced they would not join in the by-elections. At the same time, a poll conducted by the University of Hong Kong’s public opinion program showed the Civic Party and the LSD’s ratings declining. Although there were initial concerns that there may not be a contested election, a five member youth group, Tertiary 2012, also joined to ensure a contested election.

CE Donald Tsang announced on the eve of the by-elections that he would not be voting, and regarded the exercise as an “abuse of the electoral system and a waste of taxpayers’ money.”

The voter turnout rate was 17.1% with 579,000 voters casting their ballot for the May 16 elections. All five legislators who initially resigned regained their seats. The Chair of Electoral Affairs Commission would not comment on whether or not the decision by the CE and his team diminished people’s desire to vote, and emphasized it was a personal decision to vote or abstain. Although some were quick to mark the by-election a failure, participants in the exercise remarked that they had mobilized thousands of voters who wanted Beijing to implement full democracy. Ultimately, the by-election brought attention to the issues of electoral reform and, in particular, the FC system.

REFORM PACKAGE CAMPAIGN

The government invested significant resources in the constitutional reform campaign to ensure its passage. This included HK\$9 million in advertising for the reform package, which consisted of an Act Now Campaign. Throughout the Campaign, the CE went from district to district with his team urging people not to obstruct the “political reform vessel” from setting sail. Despite an effort to conceal their itinerary, top officials were surrounded by protesters wherever they went. During the media blitz, including political advertisements, there were an equal number of parodies or satirical versions of the advertisements. Polls showed the campaign did

not significantly boost public support for the reform package. A poll conducted by the Hong Kong University's public opinion program found that opposition to the CE election method proposal increased from 34% in May to 43% in June, while 41% still supported it.

DEBATE WITH THE CIVIC PARTY

When CE Donald Tsang invited Civic Party leader Audrey Eu for a televised debate on constitutional reform, many were puzzled. In a letter, the CE wanted to "allow the public to better understand the arguments for and against the proposal for themselves." Many commentators viewed this as a risky move for the CE. The debate greatly stimulated public interest in an important issue, and polling showed Audrey Eu outperformed the CE in the debate; however, many lauded him for taking on what seemed to be a surprising challenge.

IV. THE OTHER SIDE OF THE COIN

While the Civic Party and the LSD continued lobbying for their referendum, 11 pro-democracy groups formed a coalition that sought a dialogue with Beijing and the Hong Kong government, called the Alliance for Universal Suffrage ("the Alliance"). The Alliance hoped to present a detailed constitutional reform roadmap leading to universal suffrage for the CE election in 2017 and the legislature in 2020.

Having distanced itself from the referendum exercise, the Democratic Party, which is a member of the Alliance, indicated it would be prepared to approve electoral reforms short of universal suffrage in 2012 if Beijing provided some assurance of genuine universal suffrage in 2017.

Shortly after the by-election, the Democratic Party met with Li Gang, Deputy Director of the Central People's Government Liaison Office, in late May 2010. This was Beijing's first formal contact with the party since the handover in 1997.

Chief Secretary Henry Tang made it clear in early June that the government was unwilling to further revise the current proposal and had reached the extent of its authority to reform Hong Kong's political structure. Deputy Secretary General Qiao Xiaoyang of the NPCSC, said the core issue of universal suffrage is the protection of election rights and compliance with universality and equality principles. Moreover, he said it is internationally recognized that each country should be allowed to impose reasonable restrictions by law on electoral rights, and that each country may adopt different electoral systems to reflect the principles of universality and equality.⁴ Qiao also defined universal suffrage as the "equal right of election of all individuals," which offers the right to vote rather than stand for nomination and select candidates to run. This statement implied that the FCs will remain in the near future⁵ and has caused concern among pan-democrats.

A few days before the crucial vote in the LegCo, Beijing accepted a proposal by the Democratic Party, consisting of "one person, two votes" that allows all registered voters to select five newly-added District Council seats in the LegCo's

⁴ "Universal and equal election rights must conform to SAR's legal status" China Daily HK Edition 8 June 2010

⁵ "Beijing offers definition of HK suffrage" SCMP 8 June 2010

District Councils FC, while those who have existing votes in other FCs would be excluded.⁶

As a result of this compromise, the government garnered enough votes to secure passage of the package, thereby averting a stalemate. Talks between Beijing and the Democratic Party as well as members of the Alliance proved essential in breaking the deadlock.

The passage of the reform package however, has further split the pan-democrats. The Democratic Party later published a report detailing the timeline of exchanges between the party and Beijing to allay allegations of “closed-door” dealings.⁷ Reports emerged that the central government had repeatedly urged the Democratic Party to distance itself from the Alliance in Support of Patriotic Movements in China, a group which annually commemorates the Tiananmen massacre on the fourth of June. Chairman of the Democratic Party Albert Ho rejected the request. Following the passage of the reform package, Albert Ho reiterated that the five-new District Council-based FC seats served as a step to eventually achieving universal suffrage.

However, some from within the pan-democratic camp have expressed concern over the fact that in Annex II (III) of the Basic Law, the method for the formation of the LegCo, only requires “two thirds majority of all members of the Council and the consent of the Chief Executive and they shall be reported to the Standing Committee of the National People’s Congress for record.” It did not require the prior approval of the SCNPC. Nevertheless, given the Democratic Party’s negotiations with Beijing on details relating to the formation of the LegCo, some have felt that the principle of “one country, two systems” has further eroded.

V. THE ELECTORAL FRAMEWORK

DISTRICT COUNCILS/LEGISLATIVE COUNCIL

In 1999, NDI found that several of the HKSAR government’s actions, such as dissolving the popularly-elected Municipal Councils and increasing the number of appointed members to the District Councils, halted progress towards democratization. Currently, 405 members of the District Councils are elected and 102 are appointed by the CE. In the reform package passed in June 2010, five new functional LegCo seats will be elected by 3.2 million eligible voters from the District Councils.

Prior to the passage of the reform package, Chief Secretary Henry Tang had mentioned that the government may be prepared to consider eliminating the 102 appointed District Council seats if a portion of pan-democrats pledged to support the government’s reform proposal.

Yet, some worry that the existence of “super legislators” elected by constituents of District Councilors could further entrench this indirect method of election and make them more difficult to remove in the future. Recent debate has focused on the proposed election expense cap for the new seats, which is currently set

⁶ “Beijing accepts Democrats electoral reform compromise” SCMP 20 June 2010

⁷ <http://www.dphk.org/?p=6034> (as at 30 Nov 2010)

at HK\$6 million with a subsidy maximum of HK\$3 million. This means that a candidate would have to spend HK\$3 million of their personal funds, which is equivalent to a Legislative Councilor's salary for four years.

Many believe that competition in the upcoming District Council elections will be higher than it had been previously. With the potential to receive over 330,000 votes, each candidate could openly counter the CE's policies with the support of a popular mandate. Albert Ho, Chairman of the Democratic Party, suggested that this would be a territory-wide, referendum-style election,⁸ and the mandate behind the lawmakers would be immense. Michael DeGolyer, Director of the Hong Kong Transition Project, suggested that the pan-democrats should seize this opportunity to propose candidates for all five seats and develop a common theme such that people would be voting for ideals and an ideology rather than personalities. There will likely be a change in the voting pattern, whereby voters who previously selected candidates based on their performance at the District-level may now consider how these candidates would perform in the LegCo. This has been referred to as the 'LegCo-ization' of the District Council elections.

FUNCTIONAL CONSTITUENCIES

Public frustration with the FC system has increased over time. For instance, when the LegCo approved a HK\$66.9 billion project for a railway connecting Hong Kong's railway to Guangzhou to shortening travel time, hundreds of protesters surrounded the legislature to show their opposition to the project. Riot police were deployed for the first time since the 1997 handover to control the demonstrators. Other options proposed by professional groups were not considered prior to building the railway, causing some to point to the lack of adequate public consultation. Protesters targeted their anger at the pro-business FCs that passed the controversial project in which a village would be razed to make way for the railway.

Growing frustration with the FC system has also been evident among youth, or the "post 80s generation." This group has expressed dissatisfaction with the rising cost of education, depressed salaries and the widening wealth gap. In a survey by the Hong Kong Transition Project, conducted in October 2009, 72% of 160 respondents aged 18 to 29 believed the government made policies unfairly favoring the interests of some over others. Survey findings also showed dissatisfaction with the CE's handling of constitutional reform to be high across all groups but highest among those under 30 years of age. The youth's lack of representation in the FCs exacerbates the problem as the FCs in 2008 represented only 229,861 voters while there are 3,372,007 total registered. Moreover, a Cable TV report revealed that the consulate general of Belgium⁹ and the Vienna representative office in Hong Kong are registered as corporate electors for the Commercial (First) FC since they are members of a Chamber.¹⁰ In an announcement on local legislation for the methods for selecting the CE and forming LegCo on December 8, 2010, the government acknowledged there were concerns that "overseas government organizations should not be eligible for

⁸ "Super lawmakers to wield enormous power" SCMP 15 Nov 2010

⁹ According to news reports the Belgian consulate had taken itself off the government's list of corporate voters a few months ago. "Foreign consulates to be barred from 2012 Legco election voting" SCMP 9 Dec 2010

¹⁰ "Loophole raises LegCo vote fear" The Standard 23 August 2010

voting in the FCs.” And that “having reviewed the arrangement, the Government proposes to exclude the consular posts set out in the Consular Relations Ordinance (Cap. 557) and the international organizations set out in the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) and the International Organizations and Diplomatic Privileges Ordinance (Cap. 190) from being eligible for registration as a corporate elector.” Fourteen of the 30 FC seats were uncontested in the last elections.

Further frustration with the FC system results from the ability of the FC seats to reject motions widely supported by geographical constituency members. A recent SynergyNet LegCo review demonstrated that although not common practice, legislators of the FCs did assist the HK government in passing controversial legislation despite strong opposition from geographical legislators.¹¹

Furthermore, FC members’ attendance at LegCo sessions has been poor. An analysis of voting records by the South China Morning Post in 2008 showed at least four of the FC members accrued some of the chamber’s lowest voting records.¹²

In the latest CE Policy Address of 2010/11, the CE stated that “The business sector has to participate actively in this process. In the face of further democratic development, the business sector needs to adopt a new mindset and make greater efforts to prepare for universal suffrage.” It is clear that in the upcoming elections with the non-addition of the traditional FC seats, the business sector will have to adapt its policies and strategies to reflect that of the public.

From an international perspective, in 1999, Hong Kong’s report to the United Nations, in reference to the International Covenant on Civil and Political Rights paragraph 461(b), stated “functional constituencies are transitional.”¹³ Article 68 of the Basic Law also provides for the “election of all the members of the Legislative Council by universal suffrage.” The Hong Kong government’s reason for not addressing FCs during this recent consultation was that the public has displayed “extremely diverse views on this issue,” and that “more time is needed for the community to discuss the issue thoroughly with a view to forging consensus”.¹⁴ In fact, surveys have consistently shown support for abolishing FCs as 65% respondents support their abolition and 77% support eliminating corporate voting.¹⁵

The United Nations Human Rights Committee in 2006 stated that all “necessary measures should be taken whereby the LegCo is elected by universal and equal suffrage. It should be ensured that all interpretations of the Basic Law, including electoral and public affairs issues, are in compliance with the Covenant.”

CHIEF EXECUTIVE

¹¹ “Review of the HKSAR Legislative Council 2009-10” September 2010 SynergyNet http://www.synergynet.org.hk/en_policy_studies.php

¹² “Easy come – and easier to skip the vote” SCMP 27 July 2010

¹³ <http://www.info.gov.hk/gia/general/201004/28/P201004280163.htm> (as at 23 November 2010)

¹⁴ *ibid.*

¹⁵ “Calm after the Storm HK People respond to reform” HKTP Report Commissioned by NDI October 2010 Chart 103

Article 45 of the Basic Law provides that the CE “shall be selected by election or through consultations held locally and be appointed by the Central People’s Government” and the method for selection shall be specified” in light of the actual situation” of the HKSAR. This is “in accordance with the principle of gradual and orderly progress” with eventual selection by “universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.”

The current CE process has long been described as a “small circle election” and has called into question the CE’s political legitimacy. The method of selection closely replicates that of the FCs and, consequently, is not broadly representative of the community.

Reforms proposed by the government included the expansion of the Election Committee from 800 to 1,200 members, and increasing the number of seats for District Councilors from 42 to 117.¹⁶ Some have called this a step regressive since the 2005 proposal recommended expanding the base of the EC to 1,600 members. These members would be grouped into two sub-sectors; one for urban District Councilors and the other rural District Councilors. The “block vote system,” which would be used to return the 117, has been criticized since this is likely to favor large political parties with the most seats in the 18 District Councils. As it is a technicality, meaning the winner would take it all, which would favor the larger political parties. Some commentators have suggested that it favored the Democratic Alliance for the Betterment of Hong Kong, a pro-establishment party, which won 115 of the 405 seats in the 2007 District Council elections.

In the last contested CE elections held in 2007, a candidate needed public nominations from at least 100 of the 800 members of the Committee. Donald Tsang received nominations from 641 Committee members while Alan Leong of the Civic Party received nominations from 132 members. This was the first time that a candidate from the pan-democratic camp had managed to acquire the 100 nominations required to force the Election Committee to hold a formal ballot to choose between the candidates. Mr. Leong and his pan-democratic colleagues had greatly lobbied the voting members to receive these nominations and if the threshold is set at 150, then it may be even more difficult to achieve.

Moreover, the decision to exclude political affiliation for the CE is problematic since the CE has to spend a lot of effort lobbying for support in the LegCo for each and every policy. The CE would have no support from any particular political party and support is not always guaranteed with the pro-government parties that also need to take into account voters’ interests. Allen Lee, former NPC Delegate, said at a recent conference¹⁷ that the ideal candidate should be well aware of who he would have on his team when contesting in the upcoming CE elections. He also suggested that perhaps the candidate should try running in one of the “super legislator” district seats, since that would almost give the person the mandate of the people.

¹⁶ “Crying foul even if the numbers add up” *The Standard* 3 November 2010

¹⁷ “Hong Kong Political Reform Series Deadlock Broken – What Next?” Centre for Civil Society & Governance, Centre for Comparative and Public Law and NDI 27 November 2010

VI. POLITICAL PARTIES – THE CHANGING LANDSCAPE

DEMOCRATIC PARTY

It is clear that the LegCo by-elections, or de-facto referendum, as well as the passage of the constitutional reform package created a rift between the pro-democracy groups that has manifested in mutual attacks.

Founder of the Democratic Party, Martin Lee, expressed disappointment with the deal reached between the party and Beijing, which in his view would not lead to full democracy. He claimed that the party had forsaken its principles and was overly concerned with opinion poll findings. Others conveyed discontent with the Democratic Party for not consulting the public and the larger pan-democratic camp and also questioned the party's mandate to negotiate on behalf of Hong Kong, particularly as its 2008 campaign slogans supported universal suffrage for 2012.

Andrew Cheng, Democratic Party legislator, resigned from the party prior to the constitutional reform package vote and voted against the package while his party voted for the package. Eighteen members of the party and two former members announced the establishment of a new political group, the Neo-Democrats. They were aggrieved by the party leaders' decision to negotiate a compromise on electoral reforms with the Central Government's Liaison Office and, subsequently, vote for the government's reform package. Many of the party's critics were unable to comprehend the party's agreement to the government's reforms, which offered no guarantees for the implementation of universal suffrage or the abolition of FCs, which were conditions that the pan-democratic camp felt were essential.

A new political group, The Power Voters, had been formed in the hope that it could mobilize people who were unhappy with the Democratic Party vote. Some within the group have even been targeting Democratic Party's vice chair Emily Lau over statements she had made before she joined the party, when the Frontier (political group) merged with the Democratic Party, as they contradicted her current position.

Recent survey findings, however, reflect a rise in public satisfaction with the Democratic Party, especially amongst retirees, which has traditionally been more supportive of the DAB.¹⁸ It has been suggested that this demographic could be a new support group for the party to target in the upcoming District Council elections.

CIVIC PARTY

In a survey conducted by the Hong Kong Transition Project, commissioned by NDI shortly after the constitutional reform proposal passage, several findings are noteworthy. First, 51% of those surveyed believed that the constitutional reforms would make the government policy-making process representative of the public's needs and concerns. Second, more than three out of four respondents approved of the Democratic Party and other moderate's negotiation with Beijing. Third, for the first time ever, the majority of those 40 years and older polled are satisfied with the

¹⁸ "Calm after the Storm? Hong Kong People respond to reform" Hong Kong Transition Project Commissioned by NDI October 2010 Table 119

performance of the Democratic Party.¹⁹ Lastly, support for further reform also increased with the majority of respondents in support of abolishing corporate voting, the FCs, and directly electing the CE and all members of LegCo.²⁰

For the Civic Party, 47% of those who supported constitutional reform were also satisfied with the Civic Party's performance. This was the only party that received a very high approval rating amongst those in their 20s. According to Director of the Hong Kong Transition Project Michael DeGolyer, the public's reaction to Audrey Eu's debate may have been one of the factors that persuaded Beijing to accept the Democratic Party's proposals. In fact, some members of the public surveyed viewed this as a two-pronged approach, or "good cop, bad cop," with one side amenable to negotiation and the other side pressing for reform concessions. When asked whose performance respondents were most happy with regarding constitutional reform, Audrey Eu of the Civic Party and Albert Ho of the Democratic Party led in the polls. The Civic Party led the table of persons named category with Eu named by 47% of respondents. Consequently, it appeared that both the Democratic Party and the Civic Party benefitted most from the reform debates and passage with an increase in public support.

LIBERAL PARTY

Even while experiencing electoral losses in 2008, the Liberal Party continued to simultaneously represent the business sector and cater to the public. Following the departure of three LegCo members, including Sophie Leung and Andrew Leung who formed Economic Synergy, the Liberal Party found itself with fewer legislative councilors in LegCo. In practice, it proved difficult to represent both functional and geographical interests, as evidenced by the recent conflict between LegCo member Michael Tien and catering sector legislator, Tommy Cheung, over the issue of minimum wage and reduced lunch hour pay. Michael Tien supported a move by unionists to boycott food from a particular fast food chain, which was followed by an exchange of words between Tommy Cheung and Michael Tien. Tien later made the decision to leave the party.²¹ The party had strived to represent the business sector while at the same time listening to the voices of the people; however this task has proved easier said than done.

Michael Tien's resignation from the Liberal Party may have influenced former Liberal legislators Selina Chow and James Tien to assist with work at the District-level and to supervise the party's new strategy to compete in functional and geographical constituency elections again.²² Although they have reiterated that if Michael Tien does contest a seat in New Territories West as an independent, the party would not support a Liberal Party candidate to compete against him. Shortly after, another Liberal Party stalwart, Sai Kung District Councilor Christine Fong quit the party citing differences on issues such as the minimum wage and working hours and how to balance interests of the business sector and the community.

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ "Business has them to blame for voiceless in politics" Chris Yeung HKEJ 22 Nov 2010

²² Both James Tien and Selina Chow remained behind the scenes after their 2008 Legislative Council elections defeat, and given Michael Tien's resignation, they came back out into the limelight to reiterate the Liberal Party's resolve to continue to pursue geographical seats. - "Liberals to back Tien despite rift" SCMP 29 Nov 2010

Miriam Lau, leader of the party admitted in a press report that the departure of Tien will have an impact on the party. Michael Tien's joining of the party initially was widely seen as an opportunity to rejuvenate it; however his resignation has also impacted the party's future direction. In the run-up to the District Council elections in 2011, it will be interesting to see how the party positions itself to pursue both geographical seats and functional seats given their strong FC LegCo representation.

LEAGUE OF SOCIAL DEMOCRATS

Three LSD Legislative Councilor candidates were elected in the 2008 elections, including Raymond Wong, Albert Chan, and Leung Kwok Hung, referred to as Long Hair. The LSD has never strayed from its position of pursuing universal suffrage by 2012, and after the passage of the reform package has continued to play the role of the radical opposition. It is also not likely that the LSD would coordinate in the next District Council elections with the Democratic Party or the Association for Democracy and People's Livelihood (ADPL).

A survey conducted by the Hong Kong Transition Project showed that when participants were asked who they were most happy and unhappy with, over 35% of respondents were unhappy with the LSD, in particular 42% were dissatisfied with Raymond Wong's performance and 29% with that of Long Hair. The LSD and DAB came out with people the greatest number of people unhappy with their performance leading with 49% and 19% respectively.²³

REGINA IP – NEW PEOPLE'S PARTY

In 2006, Former Secretary for Security, Regina Ip, established the Savantas Institute and has subsequently set up three offices. She announced plans to form her own political party and hopes to encourage more professionals and commercial sector workers to engage in direct elections. She also added that given the aging population and an increasing reliance on welfare, there would be a need to review the current taxation system. The New People's Party held its first general meeting mid-December 2010 and elected Regina Ip as Chairwoman. Also, Michael Tien, who recently quit the Liberal Party, was elected Vice Chairman along with Louis Shih, Ip's running mate in the LegCo 2008 elections.

VII. TAKING STOCK

BASIC FREEDOMS - PROTESTING CONCERNS & FREE PRESS

Freedom of expression in Hong Kong is of particular concern to NDI. Members of human rights-based civil society groups who met with the political assessment team expressed concern over the way the police have handled protests in Hong Kong. The first example includes the seizure of two Goddess of Democracy statues from Times Square prior to the June 4, 2010 Tiananmen commemorations. The police force came under public criticism for seizing the statues citing that organizers had not obtained a public entertainment license for the statues. Another

²³ "Calm after the Storm? Hong Kong People respond to reform" Hong Kong Transition Project Commissioned by NDI Oct 2010

case involved Orange Ip who was arrested while celebrating Chinese dissident Liu Xiaobo's Nobel peace prize award on January 17, 2010. She had inadvertently spilled champagne on a security guard outside of the Hong Kong-China Liaison Office and was charged with common assault. Activists complained that the police over-reacted largely because the incident occurred next to the property of the Central Government Liaison Office in the Western District. The charges were later dropped after the Department of Justice decided against prosecution.

In previous reports, NDI had noted that some Hong Kong media outlets were careful to avoid offending Mainland authorities, in part because of increasingly concentrated corporate ownership of those outlets by allegedly pro-Beijing owners who are concerned about potential effects on their business interests. The NDI assessment team was previously told that the Hong Kong people have had access to one of the most active and free media sectors in the region; however, some journalists maintain a high degree of self-censorship.

According to the Hong Kong Journalists Association's (HKJA) 2010 report, free speech is in jeopardy in Hong Kong. The report cited specific incidents, which threaten media freedom such as the government's decision to retain Radio Television Hong Kong as a government department rather than allowing the media outlet to become a public service broadcaster. The government made the announcement in 2009 but did not provide any reasons as to why the broadcaster could not be corporatized. This action may have reflected the government's desire to shape public opinion. The government responded to the HKJA's report by claiming that Hong Kong is one of the freest regions in Asia and that there were more than 40 daily newspapers and 600 periodicals published in the region and many international news agencies and broadcasting companies headquartered in Hong Kong. The government also added that the police respected the right to peaceful assembly and processions as a means to express public views. On the other hand, the assessment team was told that freedoms in Hong Kong were under-going a "rusting process that you don't notice it until it collapses."

In response, the HKJA urged the government to enact a freedom of information ordinance and to review its policies towards protesters, including policing, arrests and harassment as well as the need to abolish restrictive provisions in the Public Order Ordinance, which bars unauthorized marches and rallies.

VIII. CONCLUSION

DEADLOCK BROKEN - WHAT NEXT?

There are many issues that the people of Hong Kong are concerned about. These include employment, salary cuts, inflation, an increasing wealth gap, education, political stability and basic freedoms. Surveys commissioned by NDI showed that some respondents were also skeptical as to whether direct elections would improve the government's ability to solve social problems as elections may not improve government accountability and responsiveness to public needs and concerns. Michael DeGolyer suggested that the reason behind these findings could be that it is "an indictment of the present system that stymies the impact of elections in improving accountability."

The poll findings demonstrate that a majority of respondents supported the passage of the constitutional reform package.²⁴ But when asked in a survey whether one considered the National People's Congress' timetable for direct election of the CE in 2017 and all members of the LegCo in 2020 a firm commitment, many did not believe the NPC timetable is fixed.²⁵

During the CE's Policy Address in 2007, CE Tsang reiterated that "promoting democracy is a constitutional responsibility vested in the CE of the HKSAR" and that it is his "responsibility to take Hong Kong towards universal suffrage." The CE's second term will end in 2012, and yet there is still no clear roadmap delineating how Hong Kong will implement universal suffrage in 2017.

Many political commentators predicted conflict and more violent political protests if the reform package did not pass. The constitutional reform package's passage bought the Hong Kong government time since the CE's popularity ratings were at an all time low and frustration within the community was at an all time high. According to the SynergyNet's 2010 CE Review commissioned by NDI, the governance crisis faced by the CE stems from structural problems including a legitimacy deficit, a fragile governing coalition and a lack of institutionalized communication channels between the executive and legislature. SynergyNet suggested in the short-term that the government institutionalize a negotiation mechanism between the executive and the legislature and reform advisory committee structures. In the long-term, the government should increase the pace of constitutional reform and further develop party politics.

Lawmakers from the pan-democratic camp have reiterated a call for the government to introduce legislation outlining a clear roadmap towards universal suffrage. The call had been made earlier by the Democratic Party and the ADPL but recently came from Civic Party legislator Ronny Tong in the form of an amendment to a motion of thanks to the CE's policy address. The amendment called for legislation detailing the methods by which the CE and LegCo elections would be conducted until universal suffrage was achieved as well as a plan for the FC's abolishment.²⁶ Alan Hoo, Chairman of the Basic Law Institute, referred to Article 31 of the Constitution of the People's Republic of China, which states that, "The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the NPC in light of the specific conditions." Mr. Hoo additionally noted that requesting a plan for universal suffrage would contravene the principle of gradual and orderly progress, as established in Article 45 of the Basic Law.²⁷ Professor Albert Chen, Member of the Basic Law Committee, observed that there was little room to

²⁴ "Calm after the Storm Hong Kong People Respond to Reform" Hong Kong Transition Project Commissioned by NDI Oct 2010 Chart 78

²⁵ "...the election of the fifth Chief Executive of the Hong Kong Special Administrative Region in the year 2017 may be implemented by the method of universal suffrage; that after the Chief Executive is selected by universal suffrage, the election of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of electing all members by universal suffrage Source: http://english.gov.cn/2007-12/29/content_847120.htm (as at 10 December 2010) and "Calm after the Storm Hong Kong People Respond to Reform" Hong Kong Transition Project Commissioned by NDI Oct 2010 Chart 177

²⁶ "Pan democratic parties call for suffrage law" SCMP 22 Oct 2010

²⁷ "Alan Hoo: there can be no one off legislation" (translated) Ta Kung Pao 28 Nov 2010

maneuver in terms of constitutional reform or making further amendments at this point. However, he thinks technical adjustments could be made in accordance with Article 45 of the Basic Law to increase the nomination threshold, thereby widening the voter base.

The passage of the constitutional reform package is the first step in addressing the deadlock over the pace of universal suffrage. It would have been preferable to have achieved a clear implementation plan for universal suffrage, as promised for 2017 and 2020. The haste in which the Democrats' proposal was discussed and adopted meant there was little time for public consultation or for discussion within the LegCo. Some commented that although the reforms were not significant in achieving a roadmap, there is now greater public participation in electing legislators through the five District Councilors who will become LegCo members. The Democratic Party perceived the negotiations as a break-through, and hope that negotiations with Beijing mark the beginning of open dialogue between the pan-democrats and Beijing. However, it remains to be seen whether the Democratic Party's hopes for regular communication with the Central Government will materialize.²⁸

The pan-democratic camp is currently divided over differences of opinion regarding the referendum and the manner in which the constitutional reform package was negotiated. It remains to be seen whether the shared goal of universal suffrage will be sufficient to overcome the rift and culminate in strategic cooperation in the upcoming District Council elections. The lead-up to the 2012 electoral reforms and civic engagement in the constitutional reform process will be crucial to ensure the promise of democratization in 2017 and 2020.

²⁸ "Democratic Party hopes to have a direct line to Beijing by 2012" SCMP 6 December 2010