



*The Promise of Democratization in Hong Kong
NDI Pre-Election Statement*

September 7, 2000

Introduction

Residents of the Hong Kong Special Administrative Region (SAR) will go to the polls on September 10 for the second time since the former British colony returned to Chinese sovereignty. But these elections, like previous ones in Hong Kong, will only be partly open and democratic. The vote will take place under a restrictive framework that ensures the 2000 elections will not meet international standards for democratic elections.

While the Basic Law, which serves as Hong Kong's constitution, does not provide for full democracy before 2007, it does establish the "ultimate aim" of electing a legislature and chief executive after a 10-year transition period.¹ This provision clearly allows the possibility – if not the expectation – of full democracy after 2007. Despite widespread public support for full democracy, however, there remains substantial opposition to democratic elections among government leaders and business elites who benefit most from the system of indirect elections to the legislature.

Directly Elected Seats

The Basic Law does not provide for full democracy in Hong Kong, at least in the short term. During a 10-year transition period after reversion, only part of the 60-member Legislative Council (Legco) is to be directly elected through universal suffrage.

Following the Basic Law's timetable, 24 of 60 seats – just 40 percent of the full legislature – will be directly elected on September 10, with the rest chosen by specified political and economic elites. As in the last elections, there will be five geographical constituencies that will choose the directly elected legislators. Candidates will run on lists (although without party names or logos), with seats allocated to winners using the "largest remainder" variation of proportional representation.

Functional Constituencies: "Small Circle Elections"

Of 36 indirectly elected seats, "functional constituencies" that represent business and professional interests will select 30. As in 1998, the election law will restrict participation in these indirect elections by limiting many constituencies to corporate electors. This system replaced the one used in the 1995 elections (the last elections held under colonial rule), in which nine broad functional constituencies accompanied 21 narrow functional electorates. That system had allowed more than one million voters to take part in the functional group elections.

By contrast, under the current arrangement the total number of functional constituency voters is less than 200,000, or about 6 percent of the more than 3 million registered voters overall. The continued use of functional constituencies and corporate voting – what in Hong Kong is referred to as "small circle elections" – clearly diminishes the democratic character of the election process and the resulting legislative body.

¹ The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Basic Law), Articles 45 and 68.

Election Committee

The final six indirectly elected seats in the upcoming elections will be chosen by an elite 800-person Election Committee (EC), itself composed of functional constituency representatives. On July 9, registered functional constituency voters had the chance to choose members of the EC, which will not only select six Legco seats on September 10 but, in all likelihood, also chose the next Chief Executive in 2002.² Turnout at these “elections” was a mere 19 percent of those eligible, suggesting that there is very little interest in indirect elections even among the elite and professional groups whose interests the process supposedly represents.

Election Administration

Election day administration in Hong Kong is world class, and administration of the upcoming elections should again include many “best practices.” The regulations for the elections are largely the same as in 1998, with a few minor changes:

- Voters will use chops (stamps) to mark their ballots rather than marking them with a pen. This method was introduced during last year’s District Council elections and cut down on the number of invalid ballots.
- Alternative polling sites will be publicized in advance, in the event of flooding (which in 1998 made several polling stations impassable) or other unexpected calamities.
- Counting will take place at the district level for the five geographical constituencies, rather than at the central level. A central polling station will count the ballots for the indirectly elected seats.

The election commission initially planned to allow party identification (party names and logos) on the ballots, a change from the 1998 polling arrangements, but the Legco voted this proposal down earlier this year. As such, only the names of candidates will appear on the ballots.

The “Ultimate Aim” of Democratization

The Basic Law specifies that in the third legislative elections after reversion, now slated for 2004, 30 legislators will be elected directly through universal suffrage, another 30 will be chosen by functional constituencies and the EC will be eliminated. Beyond these polls, the Basic Law does not specify arrangements for subsequent legislative elections (beginning with those in 2008) although, as noted above, it does specifically state the “ultimate aim” of fully democratic elections through universal suffrage. Despite this provision, however, there remain serious challenges to introducing full democracy after 2007.

² While the government has yet to confirm that this EC will also choose the next Chief Executive, it is widely expected to do so. Many have criticized the government for failing to explain before the EC selection process in July whether or not the Committee would play that role; in effect, Chief Executive CH Tung has been able to wait to see the makeup of the EC before determining whether it will be the body to choose the next chief executive.

Any change to the electoral system used in 2004 would constitutionally require support from two-thirds of the sitting Legco.³ Even if all 30 directly elected members voted in favor of fully direct polls, at least 10 functional constituency representatives would also have to agree – essentially voting themselves out of office. Although the Basic Law establishes the “ultimate aim” of a direct election for the chief executive under universal suffrage, it does not specify how the chief executive will be selected in 2002 or after the transition period. Introducing popular election for the position would also require both two-thirds support from Legco and, as with introducing fully democratic legislative elections, the consent of the sitting chief executive.⁴

More troubling, however, is the clear lack of government commitment to democratization at the end of the constitutionally prescribed transition period. Public opinion polls, editorial opinion, statements of political party leaders (including parties outside the “democratic camp”) and the results of past elections all suggest that there is broad and strong support for full democracy as soon as possible. Nonetheless, there remains substantial opposition to democratic elections among the SAR leadership, as well as the business elites who benefit most from the system of indirect elections to Legco. In particular, Chief Executive C.H. Tung has consistently refused to support the introduction of democratic elections, whether at the end of the 10-year transition period or at any other point in time.

Broader Political Reform

Beyond the obstacles to introducing fully democratic elections, the people of Hong Kong face a broader challenge of increasing the level of accountability and representation in their political institutions. Under Hong Kong’s executive-led system of governance, a legacy of colonial rule, the legislature has relatively narrow powers and does not form a government. Legco is essentially a monitoring body; its members cannot introduce bills that involve public expenditure, the political structure or the operation of the government. Government secretaries are generally senior civil servants, not political appointees, and parties in the Legco are not represented in either the government or the Executive Council, the Chief Executive’s cabinet.

Directly elected representatives are further restricted by a split-voting system that effectively divides the legislature into two chambers on any bill, motion or amendment that a Legco member introduces (the system is not in place for government-sponsored bills). Under this arrangement, a member’s action would require a majority from both the 30 seats that include directly elected members and EC representatives (beginning in 2004, this half will wholly comprise directly elected members) **and** the 30 functional constituency representatives to gain passage.⁵ Without bases of support among the functional constituency seats, directly elected members and the parties they represent face a significant uphill battle in taking action in the assembly.

Under the colonial government, there was a second tier of elected government, known as the Municipal Councils, which administered public health, cultural affairs and

³ Basic Law, Annex II.

⁴ Basic Law, Annex I.

⁵ Basic Law, Article 74 and Annex II.

community recreation. The councils were eliminated last year in the wake of a series of public health crises that they had handled poorly and amid contention that Hong Kong was too small to warrant three levels of government. While eliminating the councils on these grounds may be defensible, the effect of the move was to remove an elected body that had real powers, albeit over very local matters, and that was accountable to the public through regular elections.

Hong Kong's 18 District Councils are neighborhood-level advisory bodies that serve as forums for local consultation on public policy (the councils themselves do not possess any authority). The predecessors to the councils, District Boards, were fully directly elected for the first time in 1994, 12 years after the colonial government created them in 1982.

After reversion, the government increased the councils' membership by 25 percent by appointing additional members to the existing boards. Only 390 of the 519 District Council members across Hong Kong are now directly elected. Of the remaining members, 27 are former rural committee chairmen from the New Territories who serve ex-officio and 102 are appointed by the Chief Executive. Government representatives have contended that the inclusion of these appointed seats ensures that the local councils include individuals with specific technical expertise as well as politicians – although the Councils have no technical responsibilities and are solely intended to represent local community interests to the government.

Conclusion

In a recent article outlining the SAR government's position toward political reform, the Secretary for Constitutional Affairs, Michael M.Y. Suen, acknowledged that the primary obstacle to democratization comes from the Hong Kong business community: "In brief, some businessmen believe that economic developments are in conflict with political rights, and that the second would give way to the first. They are also concerned that a directly elected legislature will be filled with grassroots politicians who are more interested in pursuing welfare politics than preserving the overall interests of the community. They have argued that functional constituencies should not abdicate their role in the legislature."⁶ As for the actions and statements of those who support full democracy for Hong Kong, Suen continued, "they have done little to allay the fears and misconceptions of those who do not share their aspirations and visions" – a vision, that is, of full and equal representation for all citizens, rather than the position of privilege that the constitution currently maintains for a select group of elites.

It is disappointing, if not ironic, that Hong Kong's political and economic elites constitute the principal threat to democratization in the SAR. Furthermore, it of deep concern that the Hong Kong government takes seriously the position that certain citizens, by virtue of their membership in a privileged class, should be constitutionally guaranteed a greater political voice than others. The International Covenant on Civil and Political Rights, to which both China and Hong Kong are signatories, guarantees the right to "genuine periodic elections" through "universal and equal suffrage." The Universal Declaration of Human Rights and numerous other human rights instruments and

⁶ Michael M.Y. Suen, "Hong Kong's Path to Democracy," *CSIS Hong Kong Update*, Summer 2000, p. 2.

international agreements have similar provisions. Whether to respect this right, therefore, is hardly a question to be left to the preference of a society's elites.

The people of Hong Kong, given the former territory's 156 years of colonial rule, have never had the opportunity to consider and determine their community's political structures and processes. The government, well aware of this, has already begun an internal study of political reform issues, including arrangements for direct elections and relations between the legislative and executive branches. There is not, however, any plans as yet to open this study to the public – perhaps the most important element in developing a political arrangement that will be appropriate for the people of Hong Kong. Earlier this year, in fact, members of the Legco's Constitutional Affairs Panel urged the SAR government to take just such a step, calling for a comprehensive public consultation exercise on political reform.

In recent months, meanwhile, thousands of Hong Kong residents have taken to the streets to protest various government policies on housing, education and health services. Without the necessary political reforms to create channels for meaningful representation and public participation in politics, such actions may become more commonplace.

Indeed, political party leaders, civil society activists, legislators and representatives of the legal and academic communities have called on the SAR government to introduce fully democratic elections and to allow for a genuine and popular consideration of Hong Kong's political system. If SAR is to live up to the promise of democratization set forth in the Basic Law, it must allow the people of Hong Kong to elect their entire legislature and their chief executive directly, as well as to actively participate in a discussion of broader political reform. Only then can its citizens truly assume the role of Hong Kong people ruling Hong Kong.

This statement is based on the findings of NDI study missions that have visited Hong Kong over the past four years, most recently in July 2000. During the course of these study missions, the Institute has met extensively with Hong Kong government officials, political party leaders, election administrators, community and human rights activists, legal and academic experts, and representatives of the business and international communities.

Past NDI reports on the 1998 election process and Hong Kong's political transition are available at www.ndi.org/ndi/worldwide/asia/hongkong/hongkong.htm.

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NDI WORLDWIDE ACTIVITIES

The National Democratic Institute for International Affairs (NDI) is a nonprofit organization working to strengthen and expand democracy worldwide. Calling on a global network of volunteer experts, NDI provides practical assistance to civic and political leaders advancing democratic values, practices and institutions. The Institute works with courageous democrats who are struggling to promote peaceful political reform. It establishes partnerships with political leaders who have begun the difficult task of building stable pluralistic institutions and creating better lives for their citizens.

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

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

Safeguard Elections. NDI promotes open and democratic elections. Political parties and governments have asked NDI to study electoral codes and to recommend improvements. The Institute also provides technical assistance for political parties and civic groups to conduct voter education campaigns and to organize election-monitoring programs. NDI is a world leader in election monitoring, having organized international delegations to monitor elections in dozens of countries, helping to ensure that polling results reflect the will of the people.

Promote Openness and Accountability. NDI responds to requests from leaders of government, parliament, political parties and civic groups seeking advice on matters from legislative procedures to constituent service to the balance of civil-military relations in a democracy. NDI works to build legislatures and local governments that are professional, accountable, open and responsive to their citizens.

International cooperation is key to promoting democracy effectively and efficiently. It also conveys a deeper message to new and emerging democracies that while autocracies are inherently isolated and fearful of the outside world, democracies can count on international allies and an active support system. Headquartered in Washington DC, with more than 40 offices in every region of the world, NDI compliments the skills of its staff by enlisting volunteer experts from around the globe, many of whom are veterans of democratic struggles in their own countries and share valuable perspectives on democratic development.