

Congressional Executive Commission on China
Hearing
"Hong Kong After the Elections: The Future of One Country Two Systems"

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Mr. Chairman, let me first express my appreciation for holding this hearing on the Hong Kong election. The development of democratic governance in Hong Kong has long been a matter of great interest in the United States. In the recent flurry of reports over the Hong Kong election some international media reports highlighted that Hong Kong people had chosen stability over democracy. I think this misreads voter preferences in Hong Kong. An assessment of the complexity of and obstructions built into the Hong Kong electoral system may assist your assessment of the September 2004 Legislative Council election in Hong Kong. At 55.6 percent of the registered voters, the September 12th election had the highest voter turnout in Hong Kong history. As with the previous high turnout, just after the handover in 1998, this increased voter interest may reflect growing public concern with governance in Hong Kong. The election has exposed a number of problems in respect of Hong Kong's political development under the commitments of the Sino-British Joint Declaration and the Basic Law. While there were some concerns about the balloting process, more serious concerns have arisen over the basic fairness of the election.

Respecting the former, the balloting, though generally successful, was occasionally marred by acts of incompetence in the maintenance and availability of ballots. This involved some instances where over-filled ballot boxes lead to delays in allowing some voters to cast their vote. Some members of the democratic camp in Hong Kong have worried that when this became public knowledge it may have deterred some voters from coming to the polls. As a consequence of this problem some ballot boxes were allegedly opened in an inadequately supervised manner in order to tamp down the ballots inside. There may have been some diminution of these difficulties and greater confidence in the voting process if election officials had taken greater advantage of local and international election monitors who were on hand to observe and offer advice. Other than these cases of seeming incompetence there appeared to be generally an acceptable level of performance in respect of the mechanics of the electoral process.

More serious electoral problems arose in respect of the overall fairness of the election and its implications for Hong Kong's political development. Two key areas are of concern: (1) the fundamentally unequal voting system, and (2) the level of intimidation and seeming official bias that preceded the election. Problems in these areas undermine public confidence in the "one country, two systems" model and represent a serious challenge to Hong Kong political development. Chinese and Hong Kong officials should be encouraged to adopt a firm timetable to move forward on Hong Kong's political reform agenda as required by the Sino-British Joint Declaration and the Basic Law.

The Unequal Voting System

The stark denial of equal voting rights in this system is most simply revealed in the numerical outcome of the election: overall, candidates from the pan-democratic camp garnered approximately 62 percent of the vote but were allotted only about 41 percent of the seats in the Legislative Council. This odd numerical outcome is a consequence of a voting system designed to insure an electoral outcome favorable to the existing government and its policies. This has been combined historically with a deep-seated distrust of pro-democracy politicians. Given the relative moderation of the democratic camp in Hong Kong this distrust has long been unwarranted. Under the current system, driven by these concerns, fully half of the 60 seats in the Hong Kong Legislative Council are filled by legislators from functional constituencies representing in total just under 200,000 voters. Of the 30 functional constituencies ten have purely human voters, while twenty have either corporate voters alone or a mix of corporate and human voters. The bias of these constituencies toward the pro-government/Beijing position is revealed in the fact that pro-democracy candidates, in spite of winning fifty percent of the functional constituency vote, were only able to take eight of the functional constituency seats, the highest number they have taken in this sector to date over three elections. Eleven functional constituency candidates even ran unopposed, producing for the pro-government camp without contest nearly two-thirds of the seats that pan-democratic candidates won in the hard fought geographical constituency component of the election.

Only thirty legislators are directly elected in geographical constituencies by the 3.2 million registered Hong Kong voters. Even for the directly elected seats the government has devised a proportional representation system which aims to insure that minority parties—in Hong Kong generally meaning pro-government/Beijing parties—take several of the seats with only a small fraction of the vote. This system entails multi-seat districts with voters having only one vote for their favored candidate list. The purpose is allegedly to allow representation of minority parties and candidates. The consequence in Hong Kong has tended to be to gain some additional seats (in addition to those virtually guaranteed seats in the functional constituencies) for pro-government politicians. If one appreciates that the government itself is not directly elected then the deleterious consequence for democracy can be appreciated. This system allows pro-Beijing politician supported by a minority of voters to dominate the Legislative Council. The outcome in this election is that 34 or 35 (depending on whether one legislator is deemed an independent) seats are in the pro-government camp, while 25 are held by pro-democracy politicians. The pro-democracy camp effectively lost the election with 62 percent of the popular vote.

This proportional representation model used for the thirty geographical constituency seats in Hong Kong has other flaws. Under this system the need for parties and politicians to agree on the number and order of candidates on a list breeds endless conflict in and among political parties from all political camps, as parties seek to devise electoral lists that satisfy the electoral ambitions of their core members and allied parties. At the same time various parties in both the pan-democratic and the pro-government camps are put to predicting the level of support and devising the correct number of lists so as to maximize the number of seats taken in the direct election. A miscalculation in this regard could result in a list garnering a large number of votes that practically do not count toward the electoral outcome. This is in fact what happened in the present election for the Hong Kong Island constituency, resulting in an even split of the six candidates between the pro-democracy and pro-government camps, even though the pro-democracy camp won the popular vote by approximately 200,000 as against the pro-government

camp's 140,000 votes. This system not only confuses and angers voters but also undermines democracy by wasting many votes. Even within the parameters of a proportional representation system simply allowing voters to indicate a second choice so as not to waste votes would contribute to greater concurrence with voter intentions.

Intimidation of Voters and Candidates

The September 12 election was preceded by months of political intimidation, first over political reform and then over the election itself. This intimidation and the doubts that preceded it raise grave concern for Hong Kong's political future. The current democracy debate followed on the heels of the large demonstrations against national security legislation by over a half-million demonstrators on July 1st 2003. The overbearing and dismissive way in which the government had presented this legislation had incensed Hong Kong people and signaled the need for political reform. The national security legislation was eventually withdrawn in the face of such severe opposition. In spite of popular outrage over the style of governance the local and Beijing governments have not been significantly responsive to emerging calls for democracy. In late 2003 and early 2004 Beijing took an increasingly assertive position against democratic reform. Retreating to its long-established hostility toward the democratic camp and democratic reform, Beijing launched a campaign against democracy and severely attacked the democratic camp. This campaign constituted the backdrop to the current election. Statements from Beijing officials and supporters initiated a level of intimidation that had not been seen in Hong Kong since the attacks on the British Hong Kong government in the mid 1990s. These attacks progressively escalated as follows:

First, Beijing officials and their supporters launched the so-called patriot debate. Hong Kong was told that under any democratic reform "patriots must be the main body of those who govern Hong Kong." While Deng Xiaoping was cited for this requirement, Deng was frequently on record as indicating that patriots do not exclude people who criticize the communist party. Categories of democracy activist who were labeled unpatriotic in this campaign included those who were said to be subversive of mainland authorities, those who allegedly supported Taiwan independence, those who raised the flag of democracy but were accused of being running dogs for Western forces, and those who opposed the Article 23 national security legislation. The patriot debate reached its zenith when former Democratic Party Chair Martin Lee was attacked for testifying before a US Senate hearing on Hong Kong. He was vilified by a variety of leftists but the greatest attack came when Mr. An Min, a PRC Vice Minister of Commerce attacked even Martin Lee's father, General Li Yin-wo, who had been an officer in the KMT resistance during World War II.

The second stage of the attack on democracy was to offer a steady diet of Deng Xiaoping statements arguing the meaning of "gradual and orderly progress." This was cherry picked to suit the moment and again with no Basic Law support. As it became apparent that "Deng thought" could be used on either side this barrage slowed down. Ultimately, one suspects the best source of Deng thought is the Basic Law, which is better subject to current interpretation—rather than vague and contradictory interpretations. Such is more consistent with the rule of law.

The third stage of this attack on democratic reform became even more aggressive when the Beijing media started publishing threats to dismiss the Legislative Council if democrats took more than 30 seats in the September elections. The China Daily warned, "If those who try to use democracy to exclude the Communist Party of China and 'respect Taiwan self-determination'

take the majority of seats in Legco, Hong Kong's executive-led government will collapse and the central authority and national security will be severely challenged." The local pro-Beijing paper, the Wen Wei Po, quoted an unnamed Beijing official as saying, "I have a knife. Usually it is not used but now you force me to use it." These statements were understood locally to threaten dissolution of the Legislative Council if pro-Beijing parties lost control in the next election. It is true that the Basic Law has provisions specifying that the Chief Executive may dissolve the Legislative Council, after consultations, if it refuses to pass bills proposed by the Chief Executive. But these provisions require a new election of a new Legislative Council and specify that if the Legislative Council again refuses to pass such bill then the Chief Executive must resign. It must be seriously in doubt whether the current non-elected Chief Executive would willingly subject himself to what amounts to a referendum. This actually points to another argument for democratization, as the Basic Law constitutional design clearly contemplates the use of such provisions by an elected Chief Executive with political support. The only alternative to using these provisions for the purpose implied in the above comments is the declaration of a state of war or turmoil under Article 18, but such extraordinary provision only indicates the application Mainland laws, not dismissal of government.

The fourth phase in the crisis was to lecture Hong Kong on the "spirit" of the Basic Law and the demerits of "fake democracy." Hong Kong was told by a mainland "legal expert" that the spirit, not words, is the key to the Basic Law. The spirit in question appeared to be a very mainland-regarding spirit and offered little regard to the long ago assurances that Hong Kong people should put their hearts at ease and that the rest of the world might rely on Hong Kong's autonomy. The pro-Beijing business elite has also weighed in on this spirit, asserting a Hong Kong by and for business interests and worrying about a welfare state. At this stage the extreme rhetoric had caused such a negative response in Hong Kong it seemed to be called off.

The fifth phase in the current process was launched by the announcement that the NPC Standing Committee would interpret the above noted reform provisions in the Basic Law. The NPC Standing Committee made this interpretation behind closed doors with the advice of a Basic Law Committee made up of 6 mainland and 6 local members, the latter all being from the pro-Beijing camp. This interpretation essentially added the requirement that the Chief Executive initiate any reform process by issuing a report. The Chief Executive and Task Force reports that quickly followed effectively imposed a variety of socio-political conditions on reform. On April 26, 2004, a further NPC Standing Committee interpretation in response to the Chief Executive's report largely ruled out significant democratic reform. Essentially, Beijing has seized for itself control over not only the approval but the initiation of any future reform effort. Unless Beijing has a change of heart it is likely that it will only allow future reforms that retain Beijing control over critical political outcomes.

A sixth stage in the reform debate has seen Beijing, after its April 26th interpretation, seek to gain a favorable electoral outcome in the September 2004 Legislative Council election. This has been done through a variety of strategies. There have been allegations of heavy-handed tactics in registering voters and allegations of intimidation of popular radio talk-show hosts. More clearly visible has been support for pro-Beijing candidates (and opposition to democrats) in the Central Government controlled media and soft inducements toward patriotic support through military parades and visits by Olympic medalists. The carrot of better dialogue with the democrats, aimed at reducing the size of democratic support in public demonstrations and elections has also been tried. It is not clear whether there is any hope of reversal of the anti-democrat stance. During the election period Beijing appeared to articulate support for pro-

Beijing politicians in various pro-Beijing newspapers, especially the Hong Kong edition of the China Daily. There have also been various accusations of Beijing meddling in organizing the pro-Beijing camp, in deciding who should stay in or drop out of the elections. During this period Mainland public security officials also arrested on prostitution charges and detained without trial for six months of reeducation a member of the Democratic Party who was running for the Legislative Council. The daily diet of drawing attention to Democratic party difficulties in pro-Beijing papers has generally been seen as an effort to gain local support for pro-Beijing candidates.

The Future of “One Country, Two Systems”

The basic constitutional and electoral design in Hong Kong has long sought to privilege the Beijing appointed local government and its supporters. That elected Hong Kong politicians swear to uphold the central government is, of course, a legitimate Beijing concern. The problem for Hong Kong has been the degree of Beijing’s concern over political loyalty and the measures taken to insure full political support. One would like to see a more generous posture that aimed to keep the fundamental democracy and human rights commitments required by the Sino-British Joint Declaration and international human rights law. The Sino-British Joint Declaration provides for a high degree of autonomy in Hong Kong and that democracy and basic civil liberties be protected in accordance with international standards. By inviting international support for its “one country, two systems” model China has invited international concern for these commitments.

In respect of democracy, the Sino-British Joint Declaration requires that members of the Legislative Council be chosen by elections. The Hong Kong Basic Law, in this respect, reflects the above noted Beijing anxieties, by providing for a very slow pace of democratic development. Articles 45 and 68 and Annexes I and II of the Basic Law outline the method and pace of democratic development. These articles specify the ultimate aim as full universal suffrage both in respect of the Chief Executive and the Legislative Council. The annexes in question provide that the method for choosing the Chief Executive and the Legislative Council can be changed for elections subsequent to 2007. In April of 2004 the Chinese government, in interpreting the Basic Law, rejected any substantial changes for the upcoming 2007/2008 elections. Many pro-democracy politicians have run on a platform of trying to change this position and encourage a more firm and prompt timetable for democratic reform.

An additional factor making democratic reform of great urgency is the political impotence of the Legislative Council. The Legislative Council is currently restricted from proposing bills on public policy and bills that require public expenditure. A split voting system between directly elected and functional legislators further ties the hands of legislators who would like to take the initiative on matters of public concern in Hong Kong. The Basic Law provides a way out of this by allowing for a change in both the method of election and the methods for voting on bills from 2007. These provisions on reform were the source of the recent tension over political reform. The democratic camp pushed for democratic reform and the Beijing government refused such reform, leaving Hong Kong largely polarized over its political future. This debate became the basis for the extreme intimidation over the past few months, which carried over into the just-completed election.

In considering the future of “one country, two systems” in Hong Kong, it is obvious that the time for establishing a substantial reform agenda is fast approaching. Without reform it

appears that the level of trust in government will continue to erode. This will mean a government with decreasing legitimacy prone to crisis management and indecisiveness. Rather than congratulating themselves for avoiding a train wreck in the current election local and central officials should recognize the need for political reform before confidence is eroded further. The costs to Hong Kong of continued dithering over political reform can be enormous. Hong Kong is clearly positioned quite favorably for full democratic development. The levels of civic engagement and economic development both point to a society well positioned for a democratic transition. Without forthright movement on reform the risk that Hong Kong will fall back from this favorable posture and enter a phase of continuing political crisis and lost public confidence is high.

At this stage the only obstacle to democratic reform appears to be Chinese government anxiety about democracy and democrats. The cure to this I believe is greater Beijing engagement with the pro-democracy camp. China's leaders, the Hong Kong Government and pro-Beijing politicians should be encouraged to take a more inclusive and tolerant attitude toward democracy and democrats. The costs of stifling Hong Kong's political development have already been evident in uncertain governance and a series of crises that have emerged in Hong Kong since the handover. A government which has no popular legitimacy in a democratic process, supported by unpopular legislators who do its bidding, has clearly angered the Hong Kong public on several occasions. This was especially evident in the mass demonstrations over national security legislative proposals in 2003 and over democracy in 2004. A more inclusive system of democratic governance offers much greater promise for Hong Kong and China and would better address the human rights concerns of the local and international communities. A movement toward greater inclusiveness would appear to be the next step in Hong Kong's democratic transition. From such posture the Beijing government should work out a clear time-table for full democratic reform to be achieved as soon as possible.