

## After the December Decision: Eight Hurdles on the Road to Full Democracy

By Michael C. Davis

The December 29, 2007 decision by the Standing Committee of the National People's Congress (available at <http://www.cmab-gpcd.gov.hk/en/consultation/index.htm>), which suggested that Beijing would allow universal suffrage for elections starting in 2017, has been met with a degree of skepticism from Hong Kong's democratic camp. The NPCSC decision offers only a tentative timetable for approving a potential future Hong Kong Government report that would suggest universal suffrage be used for direct election of the Chief Executive in 2017 and the Legislative Council (Legco) sometime thereafter, possibly in 2020. It does not allow universal suffrage in the elections of 2012, and requires continuing the present equal balance of functional constituency and directly elected seats in Legco plus voting for Chief Executive by the existing Election Committee system. However, the decision does allow some flexibility in 2012 about the size and makeup of Legco and the Election Committee.

Many in the pro-Government camp and even a few more neutral commentators have praised this decision as the long-awaited democracy timetable and called for celebration. But such calls fail to appreciate the realistic concerns of democracy-supporters. There are at least eight serious hurdles on the road to full suffrage in Hong Kong. These are the sources of mistrust on the part of pan-democrats, and are areas in which the government and its supporters should provide assurances and make firm democratic choices, or otherwise expect great public resistance.

The first two hurdles relate to existence of a double standard in the basic approach to Hong Kong's democratic development. The first is grounded in an attitude some commentators bring to their assessment, that of lowering the bar when it comes to China. In this view, China operates the world's largest authoritarian government and Hong Kong should be grateful that it would actually allow "a provincial government to directly elect its governor," as David Zweig of the Hong Kong University of Science and Technology has written. One sometimes hears a similar sentiment from elites in the business sector. The problem with this argument is that Hong Kong is not a Chinese provincial government but, rather, a Special Administrative Region subject to China's solemn commitments in the Sino-British Joint Declaration and the Basic Law; these are intended to insure a high degree of autonomy and that Hong Kong people rule Hong Kong. The latter commitment ultimately promises universal suffrage. To liken Hong Kong to just another Chinese province is to tear the Sino-British Joint Declaration and the Hong Kong Basic Law to shreds. China's solemn commitments were made because of Hong Kong's unique status, not because it was just an ordinary region. China's authoritarian status hardly justifies any diminution of its international treaty obligations to a long-established open society in Hong Kong—quite the contrary. That the Chinese government has deferred the realization of its solemn commitments to nearly the half-way point in the 50 years covered by that treaty hardly seems like cause for celebration.

The second hurdle on the road to genuine democracy relates more precisely to China's international obligations. In the Hong Kong government's July 2007 Green Paper and

December 2007 White Paper on political reform, it took the view that it was not bound by the requirements of Article 25 (b) of the International Covenant on Civil and Political Rights (ICCPR) respecting “universal and equal suffrage.” When Britain acceded to that covenant respecting Hong Kong, it included a reservation that Hong Kong, then a colony without democracy, would not be covered by those democratic provisions. This reservation was very much at odds with the treaty. Consequently, the ICCPR Human Rights Committee has long held that, with the end of colonial rule and promises of local self-rule in the Sino-British Joint Declaration, this reservation was no longer operative. By ignoring the Human Rights Committee’s opinion, the Government appears to be setting the stage to ignore widely applicable international standards of democratic governance, especially those relating to the equality of voting rights. One can only wonder whether this dismissal of international human rights obligations aims to set the stage for maintenance of the unequal voting system now practiced in the legislature’s functional constituencies.

A third hurdle is directly encountered on the road to democratic reform. Will the model established for the 2012 elections constrain the full democracy promised for 2017 and beyond? The Hong Kong government has already appointed 30 unofficial members to a Task Group on Constitutional Development which is being created by its Commission on Strategic Development. Of the 30 appointees, only five are from the democratic camp and half are from the pro-government camp. Pan-democrats have already sought a widening of the scope of discussion by this taskforce, noting that it will be difficult to put in place a model for 2012 without considering the ultimate model to be in place for 2017 and beyond. The democrats have long worried about further entrenching elements of the existing small-circle electoral system, especially the role of functional sectors. The more that sectoral interests become entrenched, the more difficult it will be to undo this system and establish universal and equal suffrage on a one person, one vote basis. This was why the democratic camp rejected earlier, moderate electoral reforms proposed by the government for the 2007/2008 elections. So the immediate challenge is to avoid putting in place further hurdles caused by wrong-headed reforms for 2012.

A fourth hurdle arises out of the order of the reform process. This poses an additional problem beyond the vesting of sectoral interests. The government is fond of citing the Basic Law requirement that reform be gradual and orderly. At the same time, any Government proposals for reform must receive the approval of two-thirds of Legco, effectively giving the democratic legislators a veto over Government designs. The Government was very upset about the democratic camp’s Legco rejection of the earlier reforms proposed for 2007/2008. Chastened by that experience, the Government may take a more aggressive posture this time, perhaps using acceptance of its ultimate proposals for reform in 2012 as a condition for taking the next step toward universal suffrage in 2017. In turn, the NPCSC decision requires that direct election of the Chief Executive must precede the introduction of universal suffrage for Legco seats. This raises the possibility that the Government will exercise considerable leverage in each case. It may hold a figurative gun to the heads of the democrats: take our proposals or we will not allow further reform on this proposed timetable. This will surely present the democrats with a conundrum.

A fifth hurdle lurks in the general uncertainty of commitments in the NPCSC decision. Is the timetable for democratic reform really fixed? The language of the decision hardly justifies a judgment that it is. As noted above, the decision first blocks any substantial democratic reform in 2012. The decision then merely allows that “appropriate amendments may be made” respecting universal suffrage in 2017 for the Chief Executive and after that for Legco. This is hardly a firm promise that such amendments will be made. It assumes that a Chief Executive, elected by a small group, will issue a report endorsing universal suffrage and that a Legco in which the 50/50 ratio has been maintained will muster a two-thirds vote to abolish the constituencies of half its members. Added to this is the hope that a future NPC Standing Committee will support the recommendation. If history is any guide, one would expect Beijing, through various official comments and advice from mainland “experts” and supporters, to signal what is expected. The Central Government thereby will likely shape the future Chief Executive’s report and thus the content of the electoral model it will be called upon to approve.

The sixth hurdle is the risk that democracy will simply be deferred again. It has long been obvious that leaders in Beijing do not favor democracy in Hong Kong. Through years of international and local pressure, this has been the consistent Beijing concern. Can one be confident that the Chief Executive, the pro-government politicians and the Central Government will not wiggle out of this latest commitment? This has happened before. Prior to the last consultation exercise relating to electoral reform for 2007/2008, both pro-Government parties appeared to back off from their earlier commitments to support democratic reform for those scheduled elections. The Liberal Party’s platform once called for democratic reform for 2007/2008 but those planks were repealed. Whether leading pro-Government parties will reverse their positions again is something reasonable people may ask. Why should this time be any different?

The seventh and eighth hurdles confront Hong Kong with the more daunting risk that democracy will simply be redefined into an unacceptable form before the goal is reached. The Hong Kong Basic Law specifies the ultimate aim as universal suffrage. The proposed celebration of a democratic victory at present assumes that what will be achieved in furtherance of the Standing Committee’s decision will in fact be democratic. This seventh hurdle relates to how universal and equal suffrage will be defined for Legco purposes. Those who fear democracy have long argued that universal suffrage includes retaining Legco’s functional constituencies. Indeed, the Chief Executive’s report to the Standing Committee included the statement that “views were still very diverse” on “models for forming Legco by universal suffrage and how functional constituencies should be dealt with.” This conclusion tends to lend legitimacy to the notion of including functional constituencies as a form of universal suffrage. Responsible Chinese officials Zhang Xiaoming and Li Fei recently stated this view, while the Chair of the Liberal Party, James Tien Pei-chun, has argued that trade-based functional constituencies should be eliminated by 2020. Is this a clear repudiation of functional constituencies by a leading pro-Government party or is something left unsaid? Will the Liberal Party change its position if it does poorly in the forthcoming 2008 Legco elections, or if it perceives a Beijing desire to maintain such constituencies? Will Hong Kong have true democracy after 2017? Will the unequal voting system that allows government supporters to dominate Legco be maintained?

The eighth hurdle relates to the election of the Chief Executive. Will there be an even more daunting power grab to insure continued Beijing control of the highest office in Hong Kong? The Basic Law requires that the Chief Executive be nominated by a broadly representative nominating committee according to democratic procedures. Pro-Beijing and pro-Government politicians have long suggested that a Nominating Committee be used to vet candidates. It is now assumed that the favored strategy for achieving this purpose is to model the Nominating Committee on the existing Election Committee, and then mandate that it nominate only a limited number of candidates by a vote of Committee members. It is not difficult to imagine that such a culling of candidates by a less-than-representative Nominating Committee may result in the elimination of one or more popular choices. The democrats may have invited some of this risk by showing some willingness to accept the current Election Committee as the model for a future Nominating Committee, as long as the threshold for nomination is kept sufficiently low so that a democrat can be successfully nominated. The risk now is that this concession will be accepted without adding a low nominating threshold.

Indeed, the Chief Executive's December 2007 report noted wide support for the view that the process for nominating Chief Executive candidates "make reference to the existing Election Committee" and that there "be two to four CE candidates at most." The NPC Standing Committee's latest decision suggests that, "the nominating committee may be formed with reference to the current provisions regarding the Election Committee in Annex I to the Hong Kong Basic Law." Tsang Yok-sing, the former Chair of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) party and a current member of the Government's Executive Council (cabinet), appeared to reject strategies for vetting democrats when he recently stated, "I don't believe a so-called fake universal suffrage would work." However, his party in the recent consultation favored using the existing Election Committee as the model for the Nomination Committee, and held that only two to four CE candidates be approved for the final electoral contest. So will the party's position or the former chair's position prevail? Given the history of the Election Committee's unrepresentative nominations and selections to date—over the past 10 years always selecting pro-Government figures—is there any doubt that a "democratic procedure" within the Nominating Committee to lower the list of approved candidates to two to four would eliminate contenders from the democratic camp? Will democracy in Hong Kong be stillborn?

It may be premature for the democratic camp to celebrate the democratic timetable. Because Beijing leaders remain distrustful of democracy, the risk that they will set up one or more of these hurdles is high. It remains for Hong Kong people to carry on their struggle to convince them otherwise. Rather than celebrate, the Hong Kong democratic camp will surely aim to lead this effort. The Hong Kong Government and its supporters could avoid this political struggle by removing the hurdles.

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