

# SMALL CIRCLE, ENTRENCHED INTEREST: THE ELECTORAL ANOMALIES OF HONG KONG DEPUTIES TO THE NATIONAL PEOPLE'S CONGRESS



D.W. Choy\* and Fu Hualing\*

*Theoretically, Hong Kong deputies to the National People's Congress (NPC) represent the interests of Hong Kong people in China's highest organ of state power. The Central Authorities, through the Standing Committee of the NPC, exert a tight control over the electoral process in Hong Kong by making electoral rules, limiting the scope of eligible voters, and by utilising other formal and informal control mechanisms. Yet, a degree of autonomy in the electoral process produces results different from those expected by the Central Authorities. This article argues that the "small circle" election creates opportunities and incentives for developing special interests. Gradually, these special interests become entrenched and develop a life of their own.*

## 1. Introduction

This article studies the anomalies of the procedure of election of Hong Kong deputies to the National People's Congress (Hong Kong NPC Election) and, through an examination of the election processes and the outcomes of the Ninth and Tenth Hong Kong NPC Elections, discusses the controversies surrounding the Hong Kong NPC Election in Hong Kong.<sup>1</sup> The Central Authorities in Beijing, through the Standing Committee of the National People's Congress (NPC), exerts a tight control over the electoral process in Hong Kong by making electoral rules, limiting the scope of eligible voters, and by utilising other formal and informal control mechanisms. Yet, a degree of autonomy in the electoral process produces results different from those expected by the Central Authorities. The principal argument of this paper is that "small circle" elections create opportunities and incentives for developing special interests. Gradually, these special interests become entrenched and develop a life of their own.

\* D.W. Choy is a Research Fellow in the Faculty of Law, The University of Hong Kong, and Fu Hualing is an Associate Professor in the Faculty of Law, The University of Hong Kong. The authors would like to thank Albert Chen, Richard Cullen, Lison Harris, and Wendy Shea for their helpful comments on the earlier versions of this article.

<sup>1</sup> This paper is based on extensive interviews with four Hong Kong deputies to the NPC and two NPC Standing Committee officials. The interviews took place in Hong Kong in 2005.

This article is divided into five sections. After this introduction, section 2 analyses the detailed control mechanisms designed to maximise the control over the electoral process, including the packing of the electoral conference, the voter organisations and government supporters, and the direct involvement of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (CLO) in the election. Section 3 introduces the special interest groups within the Electoral Conference for the Hong Kong NPC Election (Electoral Conference) and their influence in determining the election result, with a special focus on the exclusion of "democrats" from participating in the election. Section 4 is a detailed account of the dynamics and process through which entrenched interest groups work to advance their interests. Section 5 is the conclusion.

## 2. The Central Control

### *Packing the Electoral Conference<sup>2</sup>*

Since the Fourth NPC (1975 to 1978), HK NPC deputies have been grouped under the Guangdong delegation.<sup>3</sup> From the Fourth to the Eighth NPC (1993 to 1997), HK NPC deputies were nominated by Beijing and "elected" into office by the Guangdong Provincial People's Congress.<sup>4</sup> Given the absence of any substantive connection between the candidates from Hong Kong and the voters in Guangdong, those nominated were deemed "elected".<sup>5</sup>

After the handover of the territory to the People's Republic of China, Hong Kong constituted its own delegation to the NPC. Article 21 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the Basic Law) provides that the HK NPC deputies are elected by the people of Hong Kong.<sup>6</sup> The NPC formulates the procedure for the election of HK NPC deputies, a process which is different from those adopted in the Mainland People's Congress elections. In addition to the 29

<sup>2</sup> This section is drawn in part from the relevant discussion in another paper by Fu Hualing and D.W. Choy, "Of Iron or Rubber? People's Deputies of Hong Kong to the National People's Congress", in Fu Hualing, Simon Young and Lison Harris (eds), *Constitutional Interpretation in Hong Kong: The Struggle for Coherence* (Palgrave Macmillan, forthcoming 2007).

<sup>3</sup> Ng Hong-mun, *Renda Xuanju Beiwanglu: Jiujiu Renda Huigu yu Shijie Xuanju* (Memorandum of the Election of the National People's Congress: A Review of the Ninth NPC and the Election of the Tenth NPC) (Hong Kong: Cosmos Books Ltd, 2002) (in Chinese), p 26.

<sup>4</sup> There were 28 Hong Kong deputies in the Guangdong delegation in the Eighth NPC, Ng, *ibid.*, p 5.

<sup>5</sup> "Comrade Tong' wants to be the glue between the two places – Interview with Hong Kong NPC deputy Cheng Yiu-tong", *Bauhinia Magazine Online* (in Chinese), available at <http://www.zijing.com.cn/BIG5/channel3/200301/03/428.html> (Visited 9 Aug 2005).

<sup>6</sup> Paragraph 2 of Art 21 of the Basic Law provides that: "In accordance with the assigned number of seats and the selection method specified by the National People's Congress, the Chinese citizens among the residents of the Hong Kong Special Administrative Region shall locally elect deputies of the Region to the National People's Congress to participate in the work of the highest organ of state power."

seats assigned according to the NPC's formula for allocating deputies,<sup>7</sup> Hong Kong was given seven more seats in the NPC, totalling 36 seats. In the Tenth NPC (2003 to 2007), there were 2,986 deputies,<sup>8</sup> and Hong Kong deputies accounted for 1.2 per cent of the total number of deputies in that plenary.

Hong Kong held the first NPC election, the Ninth NPC Election, in 1998, and the second election, the Tenth NPC Election, in 2002. The NPC has the power to enact a special election measure for each NPC plenary for Hong Kong in accordance with the PRC Constitution, the Basic Law, and paragraph 3 of Article 15 of the Electoral Law on National People's Congress and Local People's Congresses (the Electoral Law).<sup>9</sup> However, in the Measures for the Election of Deputies of the Hong Kong Special Administrative Region of the People's Republic of China to the Ninth National People's Congress (the Ninth Election Measures), the NPC only set out the broad principles of the Ninth Hong Kong NPC Election but left the actual details to the Electoral Conference for the Ninth Hong Kong NPC Election (the Ninth Electoral Conference). This delegation of power was regarded as necessary due to the NPC's lack of experience in holding an NPC election in Hong Kong. With the experience acquired during the Ninth Hong Kong NPC Election, the NPC has repossessed all the rulemaking powers in enacting election measures for subsequent Hong Kong NPC Elections.<sup>10</sup>

An Electoral Conference is formed for each Hong Kong NPC Election, solely responsible for conducting the relevant plenary of Hong Kong NPC Election. The NPC appoints certain groups of Hong Kong residents with special status in the political systems of Hong Kong and the Mainland as members of the Electoral Conference who have the right to vote in the respective Hong Kong NPC Election.

The Ninth Electoral Conference had 424 members from:

Category 1: Members of the Selection Committee for the First Government of the HKSAR (Selection Committee) as stated in the Decision of the National People's Congress on the Method for the Formation of the First Government and the First

<sup>7</sup> Electoral Law, Chs 2–5.

<sup>8</sup> For the details about the number of deputies in each delegation, see *Zhongguo Renda Wang* (Chinese Congress Web), available at <http://www.npc.gov.cn>.

<sup>9</sup> Measures for the Election of Deputies of the Hong Kong Special Administrative Region of the People's Republic of China to the Tenth National People's Congress (hereinafter the Tenth Election Measures), Art 1.

<sup>10</sup> "Hong Kong NPC election, electoral conference expanded to 1,000 persons", *Hong Kong Economic Times*, 5 Mar 2002, p A34 (in Chinese); "Electoral conference for the next Hong Kong NPC election will be expanded to 1,000 persons", *Ta Kung Pao*, 5 Mar 2002, p A3 (in Chinese); "Explanation of the bills of the Measures for the Election of the Eleventh NPC of Hong Kong and Macau" *Xinhua Net*, 8 Mar 2007, available at *Zhongguo Renda Wang* (Chinese Congress Website), <http://www.npc.gov.cn/zgrdw/common/zw.jsp?label+WXLK&id=360320&pdm+110106> (in Chinese) (visited 8 Mar 2007) (hereinafter the Eleventh Election Measures Explanation).

Legislative Council of the Hong Kong Special Administrative Region who were Chinese nationals;

Category 2: Hong Kong residents who were members of the Eighth National Committee of the Chinese People's Political Consultative Conference (CPPCC) but not members of the Selection Committee; and

Category 3: Members of the Provisional Legislative Council (PLC) of the HKSAR who were Chinese nationals.<sup>11</sup>

The membership of the Electoral Conference for the Tenth Hong Kong NPC Election (Tenth Electoral Conference) was expanded to 956, including:

Category A: Members who had participated in the Ninth Electoral Conference (ie the three categories of people mentioned above);

Category B: Members of the Ninth National Committee of the CPPCC who were Hong Kong residents but not members of Category A;

Category C: Members of the Election Committee for the Second Chief Executive of HKSAR (Second Chief Executive Election Committee) who were Chinese nationals (ie 200 from the industrial, commercial and financial sectors; 200 from the professions; 200 from the labour, social services, religious and other sectors, 200 from government, including members of Legislative Council (LegCo), representatives of district-based organisations, Hong Kong deputies to the NPC, and representatives of Hong Kong members of the National Committee of the CPPCC);<sup>12</sup>

Category D: Chief Executive (CE) of the HKSAR;<sup>13</sup> and

Category E: Ninth Hong Kong NPC deputies who did not participate in the Ninth Electoral Conference.<sup>14</sup>

<sup>11</sup> Measures for the Election of Deputies of the Hong Kong Special Administrative Region of the People's Republic of China to the Ninth National People's Congress (hereinafter Ninth Election Measures), Art 5. In fact, there were 435 persons eligible for voting in the Ninth HK NPC Election, but only 424 had cast their votes in the relevant election. Cao Zhi, "Explanation Concerning the Name List of Members of the Electoral Conference of the Hong Kong Special Administrative Region of the People's Republic of China to the Ninth National People's Congress (Draft)", (29 October 1997) (in Chinese) (on file with authors); "Significant responsibility of the Electoral Conference' of the Hong Kong NPC", *Ta Kung Pao*, 30 Aug 2002 (in Chinese). For the political affiliation and occupation of these 424 members, see Suzanne Pepper, "Hong Kong joins the National People's Congress: a first test for one country with two political systems" (1999) 8 *Journal of Contemporary China* 319, p 331.

<sup>12</sup> Basic Law, Annex I.

<sup>13</sup> Tenth Election Measures, Art 5.

<sup>14</sup> Supplementary Provisions of the Standing Committee of the National People's Congress Concerning the Composition of the Electoral Conference of the Tenth National People's Congress of the HKSAR (29 June 2002) (on file with authors). The number of people eligible to vote in the Tenth HK NPC Election was 1029. See n 11 above.

The majority of the members came from traditionally leftist organisations, principally the Democratic Alliance for the Betterment and Progress of Hong Kong (previously known as the Democratic Alliance for the Betterment of Hong Kong) (DAB), the Chinese General Chamber of Commerce (CGCC) and the Hong Kong Federation of Trade Unions (HKFTU). The institutional interests of these organisations largely shape the outcome of the elections.

The Electoral Conference establishes a Presidium which is virtually appointed by the Standing Committee of the NPC. The Presidium of the Electoral Conference is responsible for chairing the election. Members of the Presidium are elected by the members of the Electoral Conference, based on the recommendations of the Chairmen's Committee of the NPC Standing Committee. One member of the Presidium will be selected as the executive chairman. The subsequent meetings of the Electoral Conference will be chaired by the Presidium.<sup>15</sup>

With the pro-government camp's domination of the Electoral Conference and the power of the NPC Standing Committee Chairmen's Committee to screen the candidates for the memberships in the Presidium, it was not surprising that all members in the Presidium of the Ninth and Tenth Electoral Conferences had close political ties with Beijing. In the 11-strong Presidium of the Ninth Electoral Conference, six members were members of the CPPCC, one was the convener of the Executive Council of the HKSAR (ExCo) and two concurrently served as members of the ExCo and the PLC of the HKSAR.<sup>16</sup>

<sup>15</sup> Tenth Election Measures, Art 7.

<sup>16</sup> The 11 members of the Presidium of the Ninth Electoral Conference and their backgrounds were as follows:

Name	Background
Ma Lin (马临)	Member of the National Committee of the CPPCC
Ann Tse-kai (安子介)	Vice-chairman of the National Committee of the CPPCC
Chuang Shih-ping (庄世平)	Banker and member of the National Committee of the CPPCC
Lee Cho-jat (李祖泽)	Publisher and member of the National Committee of the CPPCC
Cha Chi-ming (查济民)	Chairman of China Dyeing Group
Chung Sze-yuen (鍾士元)	Convener of the ExCo of the HKSAR
Xu Simin (徐四民)	Member of the Standing Committee of the CPPCC National Committee and publisher of Mirror Magazine
Leung Chun-ying (梁振英)	Surveyor and member of the ExCo and of the PLC of the HKSAR
Tung Chee-hwa (董建华)	Chief Executive of the HKSAR and member of the National Committee of the CPPCC
Tam Yiu-chung (谭耀宗)	Unionist and member of the ExCo and of the PLC of the HKSAR
Henry Fok Ying-tung (霍英东)	Vice-chairman of the National Committee of the CPPCC and deputy to the Eighth NPC

(Source: "Presidium of Hong Kong NPC deputies election conference elected", *Xinhua News Agency*, 10 Nov 1997 (in Chinese)).

Tung Chee-hwa (董建华), the then CE of the HKSAR and a member of the Ninth Electoral Conference, was elected as the executive chairman.<sup>17</sup>

In the Tenth NPC Election, the size of the Presidium of the Electoral Conference was expanded to 15 people. Except Ann Tse-kai (安子介) who passed away in 2000, the other ten members who served in the Presidium of the Ninth Electoral Conference had their terms of office renewed. Among the five new members in the Presidium of the Tenth Electoral Conference, namely Lee Tung-hai (李东海), Li Ka-shing (李嘉诚), Yu Kwok-chun (余国春), Chang Yung-tsung (张永珍) and Andrew Liao Cheung-sing (廖长城), four were members of the CPPCC.<sup>18</sup> Tung continued to serve as the executive chairman of the Presidium.<sup>19</sup>

### *The Electoral Procedures*

Candidates for the Hong Kong NPC deputies must be jointly recommended by at least ten members of the Electoral Conference.<sup>20</sup> The time for seeking recommendation and completing the endorsement is determined by the Presidium.<sup>21</sup> The requirement of ten recommendations proved very prohibitive of greater public participation. In the Ninth Hong Kong NPC Election, 74 candidates sought to vie for 36 seats and 72 received the recommendations of a minimum of ten members. Things improved slightly in the Tenth Hong Kong NPC Election largely due to the enlarged Electoral Conference. In the Tenth Hong Kong NPC Election, 79 registration forms were returned and only one failed to obtain the minimum of ten recommendations.<sup>22</sup>

After the closing of the recommendation period, the Presidium will deliver the candidates' list and information to all members of the Electoral Conference.<sup>23</sup> Members of the Electoral Conference are entitled to inspect the recommendations of the candidates, but the public is not.<sup>24</sup> The number of candidates should be 20 to 50 per cent greater than the number of seats available.<sup>25</sup> Since Hong Kong is given 36 seats in the NPC, there should be 44 to 54 candidates.<sup>26</sup> If the actual number of candidates is fewer than the minimum number of candidates required, the Presidium may decide to extend the time of recommendation.<sup>27</sup> If the actual number of candidates exceeds

<sup>17</sup> Tenth Election Measures, Art 6.

<sup>18</sup> "15 members of the Presidium elected, Tung was elected as the executive chairman", *Hong Kong Commercial Daily*, 2 Nov 2002, p A2 (in Chinese).

<sup>19</sup> *Ibid.*

<sup>20</sup> Ninth Election Measures, Art 7; Tenth Election Measure, Art 10.

<sup>21</sup> Tenth Election Measure, Art 12.

<sup>22</sup> "78 candidates coming from various sectors, Lee Cho-jat praised for its representativeness, Hong Kong NPC's preliminary vote to be held on Friday", *Ta Kung Pao*, 26 Nov 2002, A11 (in Chinese).

<sup>23</sup> Tenth Election Measures, Art 13.

<sup>24</sup> Carmen Cheung, "Banker Liu gets most votes", *Hong Kong Standard*, 2 Dec 1997.

<sup>25</sup> Ninth Election Measures, Art 8; Tenth Election Measures, Art 14.

<sup>26</sup> Tenth Election Measures, Art 14.

<sup>27</sup> *Ibid.*

the maximum number of candidates required, the Electoral Conference will conduct a preliminary vote.<sup>28</sup>

The method of secret ballot is adopted in both the preliminary vote and the final vote.<sup>29</sup> Each voter may vote for any number of deputies from one to 36 in the preliminary vote.<sup>30</sup> Ranking the candidates according to the number of votes received in the preliminary vote, the candidates with the greatest number of votes will fill the quota of formal candidates until the maximum number of candidates allowed is met.<sup>31</sup> In the event that two or more candidates receive the same number of votes to fill the last seat for formal candidate, all candidates with the same number of votes may become formal candidates.<sup>32</sup>

When the actual number of candidates is within the range of candidates required, or the preliminary vote is over, the Presidium may fix the date for final vote.<sup>33</sup> The procedures of final vote in the Ninth and Tenth Hong Kong NPC Elections are different in two major aspects: firstly, unlike in the preliminary vote, each voter is required to vote for all the 36 seats available in the final vote in the Tenth Hong Kong NPC Election. Any ballot in which the number of candidates selected is more than or less than the number of seats available will be invalid.<sup>34</sup> Under the Ninth Election Measure, however, the number of candidates a voter voted for could be equal to or less than the number of seats available. Only ballots in which the number of candidates voted for was greater than the number of seats available can be cancelled.<sup>35</sup>

Secondly, in the Tenth Hong Kong NPC Election, a candidate would be given a seat in the Hong Kong NPC delegation only if he or she got the highest number of votes *and* at the same time obtained a simple majority vote from the members of the Electoral Conference participating in the election<sup>36</sup> If the number of candidates receiving simple majority votes is greater than the number of seats available, seats would be filled in order of the candidates' vote totals. If there is more than one candidate fulfilling the requirements to fill the last seat in the Hong Kong NPC delegation, another vote will be held for those candidates and the candidate that receives the greatest number of votes will fill the last seat. On the other hand, if the number of candidates receiving simple majority votes is less than the number of seats available,

<sup>28</sup> Ninth Election Measures, Art 8; Tenth Election Measure, Art 15.

<sup>29</sup> Ninth Election Measure, Art 9; Tenth Election Measure, Art 16.

<sup>30</sup> Tenth Election Measure, Art 15. In fact, there is no clear provision in the Ninth Election Measures stipulating the minimum number of candidates a voter had to vote for in the preliminary vote. There is only a general provision in the Ninth Election Measures providing that a ballot was valid only if the number of candidates it voted for was equal to or less than the number of seats available.

<sup>31</sup> Ninth Election Measures, Art 8; Tenth Election Measures, Art 15.

<sup>32</sup> Tenth Election Measure, Art 15.

<sup>33</sup> Tenth Election Measures, Art 9.

<sup>34</sup> Tenth Election Measures, Art 16.

<sup>35</sup> Ninth Election Measures, Art 9.

<sup>36</sup> Tenth Election Measures, Art 17; Ninth Election Measures, Art 10.

another vote will be conducted to select candidates to fill the remaining seats.<sup>37</sup> The simple majority vote requirement was newly introduced in the Measures for the Election of Deputies of the Hong Kong Special Administrative Region of the People's Republic of China to the Tenth National People's Congress (Tenth Election Measures) and it did not exist in the Ninth Election Measures.

### *Control through the CLO*

Although there has never been any explicit requirement that there must be Chinese officials in the Hong Kong NPC delegation, it has been a norm since the Fourth NPC in 1975, with heads or deputy heads of the former Hong Kong branch of the Xinhua News Agency and the current CLO serving as Hong Kong NPC deputies.<sup>38</sup>

Li Jusheng (李菊生), the then deputy director of the Hong Kong branch of the Xinhua News Agency served as a Hong Kong NPC deputy for three terms from the Fourth NPC to the Sixth NPC (1975 to 1987). Thereafter, Xu Jiatusun (许家屯), a Xinhua director from 1982 to 1991, was also one of the 28 Hong Kong representatives to the Seventh NPC. The number of Chinese officials joining the NPC as Hong Kong deputies increased to two in the Eighth NPC in 1993, when both the Xinhua director (Zhou Nan (周南)) and his assistant, Li Weiting (李伟庭), became deputies. After the handover, the Hong Kong representatives formed an independent delegation to the Ninth NPC. Li Weiting continued to serve as a member of the delegation. In addition to Li, Jiang Enzhu (姜恩柱), director of the Xinhua News Agency, also won election to the Ninth Hong Kong NPC.<sup>39</sup>

There is one official from the CLO currently serving in the Tenth Hong Kong NPC delegation: Wang Rudeng (王如登) (assistant to the director of the CLO and the head of the Hong Kong Work Unit). Replacing Jiang Enzhu, Wang obtained a seat in the Hong Kong NPC delegation through the Tenth Hong Kong NPC Election. The current CLO director, Gao Siren (高祀仁), participates in the Hong Kong NPC delegation in the capacity of a deputy of the Guangdong delegation.<sup>40</sup>

Chinese officials serving as Hong Kong NPC deputies were not appointments of the Central Authorities. Instead, as with other Hong Kong NPC deputies, they have participated in the electoral process and obtained their seats by winning the elections. Officially, like other deputies, the Chinese officials ran in the elections and served as Hong Kong NPC deputies only in

<sup>37</sup> Tenth Election Measures, Art 17.

<sup>38</sup> Li Guoqiang and Zhong Lijuan (eds), *Ganggu Quanguo Renda Daibiao Fengcai Lu* (A Record of the Charm of the Hong Kong Deputies to the National People's Congress) (Hong Kong: Hong Kong Culture Association Limited, 2003) (in Chinese), p 14.

<sup>39</sup> *Ibid.*, pp 14–20.

<sup>40</sup> "Yuen Mo as chairman of the Hong Kong NPC delegation", *Oriental Daily*, 4 Mar 2003 (in Chinese).



their personal capacities. Interestingly, the number of votes those Chinese officials have received have been strikingly high: Jiang Enzhu obtained 397 of the 424 votes in the Ninth Hong Kong NPC Election, the highest in that election,<sup>41</sup> and Wang Rudeng received 853 of 954 votes in the Tenth HK NPC Election, the second highest.<sup>42</sup>

Legally, CLO officials are permitted to participate in the Hong Kong NPC delegation. Neither Article 21 of the Basic Law nor the measures governing the Hong Kong NPC Election require candidates for the Hong Kong NPC Election to be permanent residents of the HKSAR. As long as a person is a resident of the HKSAR, that individual is eligible to run in the election.<sup>43</sup>

The CLO's participation is said to reflect the "one country, two systems" principle and the importance of cross-border constitutional interaction. Given their familiarity with both Hong Kong and the Mainland, Mainland officials can act more effectively to bridge Hong Kong with the Mainland,<sup>44</sup> better implement the "one country, two systems" principle, and in the end better safeguard the interests of Hong Kong.<sup>45</sup>

There are of course strong objections against the inclusion of Chinese officials as Hong Kong representatives in the NPC. The main criticism relates to the constitutional propriety of such practice: Chinese officials, not regarded as Hong Kong people, would use the NPC mechanisms to meddle in Hong Kong affairs, violating the principles of "Hong Kong people ruling Hong Kong".<sup>46</sup> The purpose of the People's Congress system is to allow people of different localities to elect their representatives to the highest organ of state power to administer state affairs on their behalves. The representatives should share similar background and interests with the voters and be familiar with the community they serve in order to genuinely represent their interests. For many critics, the Chinese officials' willingness and capacity to represent is

<sup>41</sup> No Kwai-yan and Linda Choy, "NPC selectors stick to original choices", *South China Morning Post*, 7 Dec 1997, p 1.

<sup>42</sup> Chen Dong, "Is there any name list of China Liaison Office", *Ming Pao*, 5 Dec 2002, p A32 (in Chinese).

<sup>43</sup> Baby Sung, "Diplomatic Xinhua chief to stand for sake of HK", *Hong Kong Standard*, 14 Nov 1997; "Tung Chee-hwa says Jiang Enzhu's standing as NPC deputy is conducive to communication between Mainland and Hong Kong", *Wen Wei Po*, 18 Nov 1997, p A14, available in "Hong Kong chief executive supports news agency director's congress bid", *BBC Summary of World Broadcasts*, 19 Nov 1997 (hereinafter BBC (19 Nov 1997)).

<sup>44</sup> BBC (19 Nov 1997), *ibid.*; Hsu Su-min, "Jiang Enzhu duty-bound to run for NPC deputy", *Wen Wei Po*, 17 Nov 1997, p A10, available in "Support for Xinhua director, former envoy to UK to run for NPC", *BBC Summary of World Broadcasts*, 24 Nov 1997.

<sup>45</sup> Carmen Cheung, "Jiang tipped to top the poll", *Hong Kong Standard*, 18 Nov 1997; Chris Yeung, "Two systems face to face", *South China Morning Post*, 15 Nov 1997, p 21; Sung, n 43 above; Li and Zhong, n 38 above, pp 64–68; "Wang Rudeng decided to stand for the Hong Kong NPC deputies election", *Hong Kong Commercial Daily*, 19 Oct 2002, p A5 (in Chinese).

<sup>46</sup> Li Pei-ying, "Democratic Party censures Jiang Enzhu for conflict of roles and for attempting to have 'Beijing officials running Hong Kong'", *Singtao Daily*, 16 Nov 1997, p A10, available in "Democrats say Xinhua director is case of 'Beijing officials running Hong Kong'", *BBC Summary of World Broadcasts*, 18 November 1997; Sharon Cheung and Helen Luk, "Xinhua victory breaks promise, say Democrats", *South China Morning Post*, 9 Dec 1997, p 8.

seriously lacking. Jiang Enzhu had only worked in Hong Kong for five months before being elected to the Ninth Hong Kong NPC.<sup>47</sup> Many in Hong Kong argue that CLO officials can achieve the goal of facilitating better communication between Hong Kong and the Mainland, perhaps with more effectiveness, when acting in their official capacities.

There is also a potential conflict of interest for Chinese officials to become Hong Kong NPC deputies: the officials/deputies may use their personal/official capacities to influence other Hong Kong NPC deputies, and monitor the other Hong Kong NPC deputies on behalf of the Central Authorities.<sup>48</sup> The officials' position within the Central Government would severely limit their capacity to genuinely represent the interest of Hong Kong, especially when facing a conflict of interest. Although the interests of Hong Kong and that of the Mainland are not necessarily mutually exclusive, there are circumstances in which interests of one can only be safeguarded through the sacrifice of the interests of the other. In these circumstances, a Chinese official concurrently serving as a Hong Kong NPC deputy would face an impossible situation, even if the official genuinely won the Hong Kong NPC Election and serves as a Hong Kong NPC deputy in his or her personal capacity.<sup>49</sup>

Notwithstanding the critics' concerns, the function of CLO officials is actually very limited. Deputies interviewed denied any serious impact the CLO official deputies have had on the Hong Kong delegation. On the contrary, they complained of the lack of participation by Mainland deputies in the Hong Kong NPC delegation's duties. One complained that Director Gao rarely attends meetings. But when Gao does attend a meeting, according to the deputy, he would simply read from a prepared note and then would leave immediately.<sup>50</sup> Another deputy speculated that the purpose of having the official deputies is either to advance their personal standings in the Chinese political system or to reward officials who are to retire, as is commonly practiced in the Mainland.<sup>51</sup> One deputy insisted that Hong Kong deputies are mostly very independent-minded persons, and CLO officials' impact on the deputies will remain limited.<sup>52</sup>

The only useful function of having CLO officials as Hong Kong deputies is to improve the communication between the CLO and the deputies when

<sup>47</sup> "Xinhua boss' bid for NPC queried", *South China Morning Post*, 16 Nov 1997, p 2 (hereinafter SCMP (16 Nov 1997)); Sung, n 43 above. Perhaps Jiang Enzhu was well aware that his standing for the HK NPC Election had been highly controversial, he gave up the chance of running for convener of the HK NPC delegation. Linda Choy and Chris Yeung, "Xinhua boss 'rejects control'", *South China Morning Post*, 3 Mar 1998, p 6.

<sup>48</sup> Cheung and Luk, n 46 above.

<sup>49</sup> SCMP (16 Nov 1997), n 47 above.

<sup>50</sup> Deputy Interviews, Hong Kong, 2005.

<sup>51</sup> Deputy Interviews, Hong Kong, 2005.

<sup>52</sup> Deputy Interviews, Hong Kong, 2005.

needed. One deputy said that when the CLO director meets deputies in his official capacity, it is a senior official addressing his subordinates and there would be no real dialogue and communication. However, when the CLO director functions as a deputy and meets other deputies on an equal footing, they develop a common language. In this sense, it is an insurance policy to have CLO officials as deputies, who could exert some influence on other deputies in special circumstances.<sup>53</sup>

### *Excluding Democrats*

In the Electoral Law and the three Electoral Measures,<sup>54</sup> there is no explicit provision stipulating that the political background of a person would affect his or her right to run in the NPC Elections and become a NPC deputy. The only opportunity where this factor might be considered, as speculated by some people, is at the verification process, before formal appointment, of all elected deputies' qualifications by the Deputies' Qualification Verification Committee (Verification Committee) of the NPC Standing Committee.<sup>55</sup> However, the NPC has made it very clear that the deputies' qualification verification only refers to the legality of the election process. As long as the election procedure is legal, the elected persons' deputy status should be confirmed. Any problem regarding the elected person, such as poor character or prior illegal acts, is not the subject of examination by the Verification Committee.<sup>56</sup>

In fact, the authorities in Beijing have never expressly prohibited any Hong Kong residents from running in the NPC Election. The authorities' only emphasis, as stated by the Secretary-General of the NPC Standing Committee at the opening of the Tenth Electoral Conference, is that a Hong Kong NPC deputy has to "love the country and love Hong Kong":

"As members of the highest organ of state power, elected Hong Kong NPC deputies should love the country, love Hong Kong, support the directives of "One Country, Two Systems", support and abide by the Constitution, the Basic Law and laws of the HKSAR, and fulfill the duties as deputies in accordance with relevant laws and rules."<sup>57</sup>

<sup>53</sup> Deputy Interviews, Hong Kong, 2005.

<sup>54</sup> The Eleventh HK NPC Election will be held in January 2008 and the Electoral Measures for the Eleventh HK NPC Election have already been adopted by the NPC in March 2007.

<sup>55</sup> In HK NPC elections, for example, after all Electoral Conference members have voted, the chief voting supervisor will report the result to the Presidium. The Presidium will in turn announce the result of the election and report to the Verification Committee. The NPC Standing Committee will then confirm the deputies' qualification based on the Verification Committee's report. The name list of the deputies will also be announced. Tenth Election Measures, Art 20.

<sup>56</sup> "Administrative offices and working offices of the Standing Committee of the NPC", *Zhongguo Renda Wang* (Chinese Congress Web), 16 Feb 2007 (in Chinese), available at <http://www.npc.gov.cn> (on file with the authors).

<sup>57</sup> Editorial, "Hong Kong NPC deputies must love the country and love Hong Kong", *Ta Kung Pao*, 2 Nov 2002, p A2 (in Chinese).

These are abstract requirements of general application, but they were immediately applied, not by the Central Authorities, but by the conservatives through the leftist media, principally *Ta Kung Pao*, *Wen Wei Po* and *Hong Kong Commercial Daily*, to suggest excluding Hong Kong democrats (eg members of the Democratic Party (DP) and the Hong Kong Alliance in Support of Patriotic Democratic Movements in China (ASPDM) in particular):

“A few ‘democratic’ politicians have claimed to run in [the HK NPC Election]. They have long engaged in ‘anti-China activities and activities that destabilize Hong Kong’, they attack the Chief Executive and SAR government, they are against the Basic Law Article 23 legislation, they have even openly declared their intention to ‘end the one party rule’. What is the intention of such people who openly violate the Constitution and the Basic Law to run in the election? Members of the ‘Electoral Conference’ must be vigilant and must not allow such people to sneak into the Hong Kong NPC delegation.”<sup>58</sup>

For the extreme conservatives, the DP members are not qualified as NPC deputies, but the precise cause for disqualification is not explained effectively or sufficiently. The conservatives essentially made two arguments, one political, the other practical. The article by Wong Siu-yee (王绍尔) is representative of the political objections to the DP’s participations:

- “1. DP members are also members of the ASPDM, a ‘subversive’ organization aiming to overthrow the one party state in China. (Presumably, the organization is unconstitutional according to Wong’s view, and its members would not give allegiance to the Chinese state);
2. The DP is against the interpretation of the Basic Law by the NPC Standing Committee, thereby denying its constitutional authority; and
3. The DP is against the enactment of the Article 23 legislation, thereby refusing to fulfill the legal obligation to protect the national security.”<sup>59</sup>

Tsang Hin-chi (曾宪梓), a Hong Kong NPC deputy and a member of the Standing Committee of the NPC, joined Wong in relation to the first challenge. Before the Tenth Hong Kong NPC Election, Tsang was highly

<sup>58</sup> *Ibid.* “The most important emphasis in the HK NPC Election is loving the country and Hong Kong”, *Ta Kung Pao*, 15 June 2002 (in Chinese); “Refusing to recognize and implement the Constitution, the NPC will not support them”, Hong Kong NPC deputies attacked the candidates from the democrats”, *Hong Kong Economic Times*, 2 Nov 2002, p A24 (in Chinese); Angela Li, “Beijing supporters tell democrats not to run in NPC poll”, *South China Morning Post*, 11 June 2002, p 6.

<sup>59</sup> Wong Siu-yee, “NPC deputies must set example in following the Constitution and laws”, *Wen Wei Po*, 29 Oct 2002 (in Chinese).

critical of the DP and reiterated his position that they should not be allowed to run on the ground that democrats are anti-China, anti-Communist Party, and unpatriotic. Since the democrats would not give their allegiance to the Constitution, they could not be part of the system, particularly as they were fighting against this system.<sup>60</sup> Given the DP's persistent criticism of the Chinese government and its relentless call for ending one party rule, its members were allegedly not "qualified" as Hong Kong NPC deputies, and their participation in the election was just a "political show",<sup>61</sup> aimed at creating controversies.

Others took a more tolerant view. For example, the late Hong Kong NPC deputy Raymond Wu Wai-yung (伍維庸) had said that he would not necessarily exclude candidates with a democratic background.<sup>62</sup> Xu Simin, a Hong Kong representative to the CPPCC, considered participation by DP members in the election to be a good feature, although he thought their chance of winning was another question.<sup>63</sup> Both the then Chairmen of the DAB and the Liberal Party (LP) Tsang Yok-sing (曾鈺成) and James Tien Pei-chun (田北俊), respectively, also expressed their support of the DP's participation. Tien was even reported as saying that he would consider nominating candidates from the DP if he were approached.<sup>64</sup> Even the NPC Standing Committee official interviewed said he would be happy to see some pan-democratic members winning seats in the Hong Kong NPC Elections.<sup>65</sup> As the enlarged Electoral Conference included members of the pan-democratic party, the democrats have already become part of the system and could not be ignored.<sup>66</sup>

A more practical argument against the DP's participation is that deputies from Hong Kong need to communicate effectively with Central Authorities and regional governments in other parts of China. DP and ASPDM members (especially those who are barred from entering the Mainland) are not ideal candidates for this task. Their ability to engage in meaningful dialogue on behalf and for the benefit of Hong Kong is indeed limited. Ma Lik, the current DAB chairman, acknowledged that "the chance of outsiders getting nominated is very low."<sup>67</sup> One deputy also frankly admitted that few in the

<sup>60</sup> "‘Democrats’ are not welcome to run for NPC deputies", *Bauhinia Magazine Online* (in Chinese), available at <http://www.zijing.com.cn/BIG5/channel3/200207/18/251.html> (visited 9 Aug 2005).

<sup>61</sup> Yue Yin, "Embarrassment for the ‘Democrats’ to run the election", *Wen Wei Po*, 28 Nov 2002, p A11 (in Chinese).

<sup>62</sup> "Chief Executive can run for NPC deputy", *Sing Pao*, 10 Mar 2002, p A13 (in Chinese).

<sup>63</sup> "Hong Kong NPC re-election by the end of the year, members of the LegCo include the ‘democrats’ were invited to run the election", *Ta Kung Pao*, 13 June 2002, p A17 (in Chinese).

<sup>64</sup> "The first democratic legislator registered as voter, Lau Chin-shek takes the opportunity of participating in the NPC election to go back to the Mainland to visit mother", *Hong Kong Economic Times*, 11 July 2002, p A28 (in Chinese).

<sup>65</sup> NPC Standing Committee Officials Interviews, Hong Kong, 2005.

<sup>66</sup> *Ibid.*

<sup>67</sup> Chris Yeung and Genevieve Ku, "NPC poll hopefuls criticize sponsors", *South China Morning Post*, 29 Nov 1997, p 1. Another HK NPC deputy, Allen Lee, also criticised it for being a small circle election, and said that even he found that it was very difficult to solicit support.

Electoral Conference would vote for DP candidates unless the CLO expresses its clear support for these candidates and actively campaign on their behalves. This deputy added that moderates like Allen Lee Peng-fei (李鹏飞), who has been serving as a Hong Kong NPC deputy since the Ninth Hong Kong NPC, was barely elected even with heavy lobbying by the CLO and Lee himself.

Three members of the DP, Anthony Cheung Bing-leung (张炳良), Albert Ho Chun-Yan (何俊仁), and James To Kun-sun (涂谨申) participated in the Ninth Hong Kong NPC Election in 1997, but failed to obtain the minimum of ten recommendations from the 424-strong Electoral Conference. They were eliminated before the preliminary vote.<sup>68</sup> Although the DP knew the chance of winning was slim, as Cheung expressed, the DP candidates had never imagined that they would not obtain sufficient recommendations to proceed.<sup>69</sup> The three candidates attributed their failure to obtain sufficient recommendations to the “invisible hand” of the pro-China elements.<sup>70</sup> According to these democrats, many voters who had promised to nominate them subsequently changed their minds and refused their support.<sup>71</sup> While the then chairman of the DP Martin Lee Chu-ming (李柱铭) strongly alleged the NPC election to be “a sham”,<sup>72</sup> Anthony Cheung criticised the election as being highly “susceptible to influence, pressure and persuasion”.<sup>73</sup> Cheung even described his defeat in the Ninth Hong Kong NPC Election as a “‘small-scale’ white terror”.<sup>74</sup>

The defeat in the Ninth Hong Kong NPC Election did not discourage the democrats from running in the following election. After receiving the Tenth NPC's invitation of eligible individuals to register as members of the Tenth Electoral Conference and to consider running in the relevant election,<sup>75</sup> the DP mistakenly considered the invitation as a “friendly gesture” from China and concluded that it would encourage its members to register as voters and

<sup>68</sup> According to the report, while Cheung and To received two recommendations each, Ho received only one. No Kwai-yan and Genevieve Ku, “Democrats blame secret campaign for NPC failure”, *South China Morning Post*, 28 Nov 1997, p 4.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*; “HK pro-democracy politicians withdraw bid for China's parliament”, *Agence France Presse*, 27 Nov 1997 (hereinafter *Agence France Presse* (27 Nov 1997)).

<sup>72</sup> “Democrats give up seats bid in ‘sham’ Hong Kong vote”, *The Toronto Star*, 29 Nov 1997, p A25.

<sup>73</sup> *Agence France Presse* (27 Nov 1997), n 71 above.

<sup>74</sup> “Anthony Cheung expects to receive sufficient nominations in running the NPC election”, *Hong Kong Economic Times*, 1 Oct 2002, p A24 (in Chinese).

<sup>75</sup> This invitation was in fact a formal procedure according to Art 5 of the Tenth Election Measure. Any members (including the democrats) of the Second CE Election Committee would automatically be eligible for registering as a member of the HK NPC Electoral Conference, unless this person expresses an unwillingness to participate. “Lee Cho-jat ‘doesn't understand three things’ about the Democratic Party, saying that Democratic Party is facing a difficult situation and hoping to make use of participation in the election to create a false impression”, *Wen Wei Po*, 11 July 2002, p A2 (in Chinese).

to run in the election.<sup>76</sup> On 26 September 2002, the DP announced that four of its members, namely Albert Ho, James To, Sin Chun-kai (单仲楷) and Anthony Cheung, would run in the Tenth Hong Kong NPC Election.<sup>77</sup> Federick Fung Kin-kee (冯检基), the president of the Hong Kong Association for Democracy and People's Livelihood (ADPL) only obtained the application form to stand for the election less than a week before the end of the recommendation period.<sup>78</sup> This time, the five democrats managed to secure sufficient recommendations to proceed to the preliminary vote.<sup>79</sup> Despite all five democrats being defeated in the preliminary voting, being able to stand for the preliminary vote was already a remarkable improvement and an important step for the Hong Kong democrats towards representation in the Chinese congress.

### 3. Voting Blocks and the Working of Special Interest

Election campaigning is important to any genuine election. Unlike Hong Kong, as Ng Hong-mun (吴康民) observed, the election culture of mainland China is one of conciliation.<sup>80</sup> Candidates running in NPC Elections in mainland China are not permitted to, and also need not, conduct any election campaign to canvass votes. Any such activity is indeed regarded as a violation of law. Thus candidates do not need to publicise their election platform, and they are not given information about the voters. There is no election in the Mainland as understood in Hong Kong.<sup>81</sup>

The NPC Standing Committee tried to extend this Mainland election practice to Hong Kong without much success. Many in Hong Kong objected. Hong Kong legislators, such as Cheung Man-kwong (张文光) and Allen Lee, expressed their opposition to the imposition of Mainland rules on Hong Kong, for the rules would pose great difficulty to those candidates with relatively weak voter connections. More importantly, there is no rule prohibiting a candidate from running an informal election campaign. Ng Ching-fai (吴清辉), who obtained the third highest number of votes (838 votes) in the Tenth

<sup>76</sup> "Democratic Party's response to questions about the NPC election", *Democratic Party Press Release*, 13 June 2002 (in Chinese), available at <http://www.dphk.org/2003/news/index.asp?iCommentID=1281> (visited 22 Oct 2005).

<sup>77</sup> "Running the NPC election, Anthony Cheung refuses to use his capacity as member of the Democratic Party", *Singtao Daily*, 27 Sept 2002, p A9 (in Chinese).

<sup>78</sup> "Federick Fung's platform for NPC election emphasizes on people's livelihood", *Sing Pao*, 13 Nov 2002, p A11 (in Chinese).

<sup>79</sup> "All democratic candidates were annihilated in the NPC preliminary election", *Sing Pao*, 30 Nov 2002, p A14 (in Chinese).

<sup>80</sup> Ng, n 3 above, p 32.

<sup>81</sup> Ma Lik, "Hong Kong matters handled in Hong Kong ways, improving the Hong Kong NPC deputies election", *Hong Kong Economic Times*, 9 Dec 2002, p A34 (in Chinese); Cai Guoguang, "Hong Kong NPC election tests 'One Country, Two Systems'", *Hong Kong Economic Times*, 12 Nov 2002, p A34 (in Chinese).

Hong Kong NPC Election, admitted that he had made about 300 to 400 telephone calls to canvass votes.<sup>82</sup> Deputy Wang Rudeng from the CLO also admitted that he had sent out over 3,000 publicity flyers and made more than 2,000 phone calls to canvass votes for himself.<sup>83</sup>

The election campaign for deputies has become very fierce, especially for candidates without a strong party background and institutional support. There are principally two ways in which a candidate could engage in self-promotion. One is to send promotion materials to the individual electors or the representative organisations. This can be done by either the candidates or their supporters. A more effective way is to participate in meetings organised by voters of different functional groups, in which candidates would present their qualifications and achievements and answer questions from voters. During the Tenth Hong Kong NPC Election, more than 30 such forums were arranged by voter organisations. Although the events were normally not well attended by voters (largely because they were normally not well publicised, and only candidates who were well-connected and informed had the opportunity to attend), they are important occasions for candidates.<sup>84</sup> These are the best opportunities for candidates to demonstrate their past achievements, future potential, and most importantly, to show their respect to the voters and express their sincerity.<sup>85</sup>

The major obstacle for candidates is the ironic fact that many of the Electoral Conference members are not well known to the public and the Electoral Conference does not provide the contact information of its members. Potential candidates have had great difficulty in contacting the members of the Electoral Conference, unless one is an insider who has access to the Electoral Conference members through other channels.

This type of frustration has become typical in Hong Kong. Since the membership of the Electoral Conference largely overlaps with the membership of the Election Committee for the CE (CE Election Committee),<sup>86</sup> the potential candidates for the CE also have the same difficulties in seeking recommendations from the CE Election Committee members. In the case of the CE, the difficulty for the candidates appears to be insurmountable, for a candidate needs the endorsement of 100 members. While the NPC Election is governed by Chinese law and the election of the CE is governed by Hong Kong law, the problem is common. In Hong Kong, the failure to disclose the

<sup>82</sup> "Hong Kong NPC election ended", *Wen Wei Po*, 4 Dec 2002, p A2 (in Chinese).

<sup>83</sup> "Gao Siren: China Liaison Office does not have name list, it is sure that the Hong Kong NPC deputies election is fair, just and open", *Ta Kung Pao*, 6 Dec 2002, p A7 (in Chinese).

<sup>84</sup> Deputy Interviews, Hong Kong, 2005.

<sup>85</sup> Deputy Interviews, Hong Kong, 2005.

<sup>86</sup> The percentage of members in the Electoral Conference for the Ninth, Tenth and Eleventh HK NPC Elections who concurrently serve in the Election Committees for the First, Second and Third CE Elections were 92%, 84% and about 61.5% (if it is assumed that there were 1,300 members in the Eleventh Electoral Conference) respectively.



contact details of the CE Election Committee is justified on the basis of personal data protection. Similarly, a request for disclosing contact information of the Electoral Conference was denied on the ground that NPC Election does not allow election campaigning.

Another restrictive election rule is that a candidate should run in a personal capacity rather than as a political party representative. But a vast majority of the candidates have a political background and they heavily rely on the backing of their respective parties. For example, one third of the deputies are affiliated with the DAB. The DAB is also a powerful component in the Electoral Conference and can bargain effectively with other voter organisations. According to one deputy, the DAB (or other voter organisations) could produce a list of candidates, present it to other voter organisations, and arrange the trading of votes. Without institutional support, candidates would be marginalized, or would receive fewer votes even if elected. Independents, who often have weaker ties with voters, received fewer votes among the 36 deputies in the Tenth Hong Kong NPC.<sup>87</sup>

Incumbents are situated in a strategically advantageous position and have better opportunities to win an election. Hong Kong's NPC Election is probably the best example of this. In the past two NPC Elections, the incumbents proved to be so successful that losing is a rare exception. In the Ninth Hong Kong NPC Election, all 14 incumbents (who were appointed as part of the Guangdong NPC delegation) who ran in the election were elected.<sup>88</sup> In the Tenth Hong Kong NPC Election, 31 deputies decided to run for re-election and 27 of them won.<sup>89</sup> These outcomes surprised no one.

Vote trading became scandalous. Before the preliminary vote in the Ninth Hong Kong NPC Election, there were rumours that there were lists of candidates, allegedly prepared by voters themselves and Xinhua, circulating among the voters "suggesting" particular candidates. *Hong Kong Standard* even published one list the paper obtained on the day of the preliminary vote. Coincidentally (or expectedly), all 32 candidates on the list managed to win in the preliminary vote and proceed to the final vote; and in the final vote, 30 out of these 32 eventually filled the 36 seats in the Hong Kong NPC delegation.<sup>90</sup>

Strategic voting was at work again in both rounds of the Tenth Hong Kong NPC Election. Some first-time candidates received an extraordinarily high number of votes. For example, the former ExCo member, Raymond Ch'ien Kuo-fung (钱果丰), received 554 votes from the 874 members of the Electoral

<sup>87</sup> Deputy Interviews, Hong Kong, 2005.

<sup>88</sup> Shi Weimin and Liu Zhi, *Jianjie Xuanju (Shang)* (Indirect Election (Vol 1)) (Beijing: China Social Sciences Press, 2004) (in Chinese), pp 232 and 238.

<sup>89</sup> *Ibid.*

<sup>90</sup> For the details of the alleged strategic voting in the Ninth HK NPC Election, see Pepper, n 11 above, p 332.

Conference and ranked seventh in the preliminary vote.<sup>91</sup> Two young professionals, medical professor Dennis Lam Shun-chiu (林顺潮) and lawyer Ma Ho Fai (马豪辉), received 604 votes and 522 votes, ranking fifth and fifteenth respectively.<sup>92</sup> Sophie Leung Lau Yau-fun (梁刘柔芬) from the LP, who submitted a record-breaking number of recommendations,<sup>93</sup> received 502 votes, ranking eighteenth.<sup>94</sup> Another LP member, Howard Young (杨孝华), received 476 votes and ranked twenty-second.<sup>95</sup>

By contrast, some incumbent deputies to the Ninth Hong Kong NPC seeking re-election received unexpectedly low support from the voters. For example, Lau Pui-king (刘佩琼), Lee Chak-tim (李泽添) and Lee Lin-sang (李连生) only ranked forty-sixth, forty-seventh and fiftieth.<sup>96</sup> More surprising is that, Ng Hong-mun, a well-known traditional pro-China figure who has been serving as a NPC deputy since the Fourth NPC, only received approximately half the votes (ie 439 votes) and ranked thirty-fifth out of 78 candidates.<sup>97</sup>

Bearing in mind the experience of the previous election, many believed that such a result might not be an indication of the result of the final vote.<sup>98</sup> There were suggestions that the extraordinarily high number of votes received by the “new bloods” and “non-traditional patriots” were the tactics of the pro-China elements to ensure that the five democrats would not win any seats in the Hong Kong NPC delegation by ousting them in the preliminary vote.<sup>99</sup> Some traditional leftist candidates explicitly stated that such a result showed that the “name lists of the CLO” were at work.<sup>100</sup> Some voters also claimed that they had received three messages from the CLO: 1) preventing the democrats from winning in the election; 2) ousting the senior incumbent

<sup>91</sup> “Four senior deputies resigned, two new candidates being defeated, the younger are replacing the seniors, it is good to have new members”, *Wen Wei Po*, 4 Dec 2002, p A4 (in Chinese).

<sup>92</sup> *Ibid.* “Allen Lee implicitly criticized casting votes in enterprises to oust the opponents”, *Hong Kong Economic Times*, 4 Dec 2002, p A4 (in Chinese) (Hereinafter Hong Kong Economic Times (4 Dec 2002)).

<sup>93</sup> Li and Zhong, n 38 above, p 223.

<sup>94</sup> “Mrs Chow tried her best to support Howard Young”, *Apple Daily*, 2 Dec 2002, p A21 (in Chinese).

<sup>95</sup> *Ibid.*

<sup>96</sup> Choy Chi-keung, “An open, fair and just election”, *The Sun*, 5 Dec 2002, p C12 (in Chinese); “All new candidates who received high number of votes in preliminary vote were defeated, 9 new members for the Hong Kong NPC”, *Singtao Daily*, 4 Dec 2002, p A6 (in Chinese) (hereinafter Singtao Daily (4 Dec 2002)).

<sup>97</sup> See n 79 above.

<sup>98</sup> “Many professionals entered the second round, Maria Tam continued to be the ‘Queen of Votes’, all democrats were defeated in the Hong Kong NPC preliminary vote”, *Ming Pao*, 30 Nov 2002, p A6 (in Chinese).

<sup>99</sup> *Ibid.* See also n 79 above.

<sup>100</sup> “New candidates did better than incumbents in the NPC preliminary vote, five democrats were ousted, Maria Tam became the queen of votes”, *Hong Kong Daily News*, 30 Nov 2002, p A10 (in Chinese) (Hereinafter Hong Kong Daily News (30 November 2002)). There were suggestions that the CLO has influence on 400 votes. “China Liaison Office influence the NPC election”, *Ming Pao*, 9 Dec 2002, p B12 (in Chinese) (hereinafter *Ming Pao* (9 Dec 2002)).

deputies; and 3) removing those incumbent deputies whose performances were mediocre and who failed to win the hearts of the people.<sup>101</sup>

These speculations proved correct a few days later in the final vote. While the same group of people cast the votes, the results showed a dramatic change from that of the preliminary vote. Votes received by those “new bloods” substantially dropped. Dennis Lam only received 484 votes (ie 120 votes fewer than in the preliminary vote) and ranked forty-first.<sup>102</sup> Raymond Ch’ien received 358 votes (ie a drop of 196 votes) and ranked forty-fourth.<sup>103</sup> The young lawyer Ma Ho Fai also only ranked forty-third out of the 54 candidates.<sup>104</sup> These three “new bloods”, expected to have a good chance of winning seats in the election, failed. Although two LP candidates, Sophie Leung and Allen Lee, managed to win seats, their rankings in the final vote were also much lower than in the preliminary vote.<sup>105</sup> Another LP candidate, Howard Young, only received 467 votes and failed to secure a seat.<sup>106</sup>

The votes cast for these unsuccessful candidates in the preliminary round reverted to the traditional patriots and the pro-China figures in the final round. For example, Ng Hong-mun, who ranked thirty-fifth in the preliminary vote, managed to secure 697 votes (ie 258 votes more than in the preliminary vote) and ranked eighteenth.<sup>107</sup> Three incumbent deputies, Lee Lin-sang, Lee Chak-tim and Lau Pui-king had their rankings increased by 18 to 21 places.<sup>108</sup> Four other incumbents, namely Wong Ying-wai (王英伟), Yeung Yiu-chung (杨耀忠), Wong Man-kong (王敏刚) and Tsang Tak-sing (曾德成), received 300 votes more than in the preliminary round and successfully had their terms renewed.<sup>109</sup> The candidate with the greatest increase in the number of votes from the preliminary round was Cheng Yiu-tong (郑耀棠), who received 347 votes more than in the preliminary round and ranked fourth with 831 votes in the final vote.<sup>110</sup>

<sup>101</sup> *Hong Kong Daily News* (30 Nov 2002), *ibid*.

<sup>102</sup> “Scandal about Hong Kong NPC election, people won high number of votes in preliminary vote lose, senior statesmen with small number of votes got the seats”, *Apple Daily*, 4 Dec 2002, p A8 (in Chinese) (hereinafter *Apple Daily* (4 Dec 2002)).

<sup>103</sup> See n 91 above. Frederick Fung, “As expected”, *Oriental Daily*, 4 Dec 2002, p B16 (in Chinese).

<sup>104</sup> “Some of the candidates for the Hong Kong NPC election were suspected of being forced out”, *Hong Kong Economic Journal*, 4 Dec 2002, p P7 (in Chinese).

<sup>105</sup> Sophie Leung ranked 18th in the preliminary vote and 33rd in the final vote; Allen Lee ranked 9th in the preliminary vote and 27th in the final vote. Ambrose Leung, “Liberals faced NPC election blockade, says James Tien; The party chairman hits out at the tactics used by the pro-Beijing camp”, *South China Morning Post*, 5 Dec 2002, p 3; *Hong Kong Economic Times* (4 Dec 2002), n 92 above.

<sup>106</sup> Li Huixin, “Accusing the NPC election of ousting the Liberal Party is ‘pouring away the rice of Beijing’”, James Tien alleged that the leftists controlled the election”, *Singtao Daily*, 5 Dec 2002, p A14 (in Chinese).

<sup>107</sup> *Apple Daily* (4 Dec 2002), n 102 above.

<sup>108</sup> *Ibid*. See also Choy, n 96 above.

<sup>109</sup> *Singtao Daily* (4 Dec 2002), n 96 above.

<sup>110</sup> *Apple Daily* (4 Dec 2002), n 102 above.

**Table 1: Changes in the number of votes obtained by some candidates in the preliminary and final votes of the Tenth HK NPC Election**

Status/political affiliation	Name of candidate	Number of votes received in preliminary vote*	Number of votes received in final vote*	Changes in the number of votes
Democrats	Anthony Cheung	113 (57th)	/	/
	Albert Ho	64 (58th)	/	/
	Sin Chun-kai	74 (61st )	/	/
	James To	81 (65th)	/	/
	Federick Fung	110 (67th )	/	/
Liberal Party	Sophie Leung	502 (18th)	540 (33rd)	↑ 38
	Allen Lee	544 (9th )	593 (27th)	↑ 49
	Howard Young	476 (22nd)	467 (42nd)	↓ 9
Non-traditional patriots	Dennis Lam	604 (5th )	484 (41st)	↓ 120
	Raymond Ch'ien	554 (7th)	358 (44th)	↓ 196
	Ma Ho Fai	522 (15th)	465 (43rd)	↓ 57
Incumbent deputy	Ng Hong-mun	439 (35th)	697 (18th)	↑ 258
	Lau Pui-king	371 (46th)	613 (25th)	↑ 242
	Lee Lin-sang	346 (50th)	547 (32nd)	↑ 201
	Lee Chak-tim	385 (47th)	610 (26th)	↑ 225
	Cheng Yiu-tong	484 (20th)	831 (4th)	↑ 347
	Wong Ying-wai	517 (16th)	825 (6th)	↑ 308
	Wong Man-kong	486 (19th)	810 (9th)	↑ 324
	Tsang Tak-sing	463 (28th)	767 (12th)	↑ 304
	Yeung Yiu-chung	484 (20th)	812 (8th)	↑ 328

\* The number in brackets is the ranking of the deputy.

There is clearly well-orchestrated collusion between voter organisations. Anthony Cheung, who was defeated in the preliminary round, commented that the election was obviously being manipulated with the aim of “keeping the incumbents, and then the friends, and finally ousting the democrats”.<sup>111</sup>

<sup>111</sup> “Hong Kong NPC deputies election is consistent with the slogan of saving incumbents and friends, Anthony Cheung: the election was obviously being manipulated”, *Ming Pao*, 4 Dec 2002 (in Chinese).

A similar view was even shared by some pro-government figures who admitted that the CLO and some voter organisations had practiced strategic voting and circulated name lists. The win by the “non-traditional patriots” at the preliminary round of the election was alleged to be part of the strategy of the pro-China camp: vote for these candidates in order to exclude the democrats from the second round. After this purpose was achieved, these candidates were abandoned and the pro-China figures voted for their “real friends” and to “save” incumbent deputies.<sup>112</sup>

One deputy explained the strategy. At the preliminary vote, voters agreed to vote for candidates at the two ends: those who were most likely to be elected and candidates who were most likely to be defeated, so that the real enemies would be left out.<sup>113</sup> Allen Lee, who won the Tenth Hong Kong NPC Election, also strongly criticised the manipulation of the election and called for reform of the Hong Kong NPC election system.<sup>114</sup> The great disparity of the rankings of Leung and Lee in the preliminary and final votes, along with the defeat of Howard Young, led to the discontent of the LP’s chairman, James Tien, who subsequently openly complained to the Central Government, accusing the CLO, the HKFTU, the DAB, and the Hong Kong Progressive Alliance (which subsequently merged with the DAB) strategically coordinated the election against Howard Young, one of his party’s candidates.<sup>115</sup> The accusation was immediately dismissed by Gao Siren, director of the CLO and other pro-China figures.<sup>116</sup>

There is no doubt that a conspiracy or strategic voting among different political forces was at work. The election was not as “open, fair and just” as asserted by the NPC, but was it a conspiracy that was masterminded by CLO/Beijing to exclude the more liberal minded persons as commonly alleged? The NPC Standing Committee official we interviewed was offended at the suggestion that his office masterminded the final vote. He conceded that Central Authorities may not wish to have a hard-core democrat among its NPC deputies but the official insisted that there is no reason that Beijing

<sup>112</sup> *Singtao Daily* (4 Dec 2002), n 96 above; *Apple Daily* (4 Dec 2002), n 102 above; Wang Zeyan, “Beijing should thoroughly investigate the scandal of the Hong Kong NPC election”, *Hong Kong Economic Journal*, 9 Dec 2002, p P7 (in Chinese); *Ming Pao* (9 Dec 2002), n 100 above.

<sup>113</sup> Deputy Interviews, Hong Kong, 2005.

<sup>114</sup> “Allen Lee criticized that manipulation of the NPC election was serious”, *Oriental Daily*, 8 Dec 2002, p A31 (in Chinese); “Hong Kong NPC is worse than a private club, Allen Lee criticized the election was being manipulated and the result was abnormal”, *Hong Kong Daily News*, 8 Dec 2002, p A6 (in Chinese).

<sup>115</sup> May Sin-mi Hon, “Central Government told of poll-fixing claims, Liberal Party chairman complains about tactics used in the NPC election”, *South China Morning Post*, 31 Jan 2003, p 2. The LP sent three members to stand for the Tenth HK NPC Election, including Allen Lee, Sophie Leung and Howard Young. While the first two members succeeded in winning seats in the HK NPC delegation (though with fewer votes than in the preliminary vote), Howard Young was defeated.

<sup>116</sup> “James Tien puts NPC election in perspective”, *South China Morning Post*, 8 Dec 2002, p 8.

wants to exclude the moderate professionals or even moderate democrats. He insisted that whatever Beijing prefers may only be its own wishful thinking and is of some, but limited, persuasion.<sup>117</sup>

The politics in Hong Kong may not be the same as those in the Mainland. While Beijing could influence the members in the Electoral Conference, Beijing has no capacity to determine the outcome. The election is a result of a combination of forces at work, including individual preference, institutional interest, and Beijing's influence. It is largely a result of negotiations. In the end, it is the members who cast their votes anonymously. The result of an election is therefore pre-determined not by Beijing manipulating the electoral process, but by the packing of the Electoral Conference with Beijing's supporters. The kind of voters in the Electoral Conference naturally determines who will win the election.

Two deputies we interviewed largely agreed with the above assessment but from different perspectives. For one deputy, vote canvassing and strategic voting amongst people of similar political views are neither unlawful nor unethical. He insisted that the CLO should be more open in expressing its support for certain candidates rather than conducting an underground election campaign as the CLO was doing. His principal justification is that the vote is anonymous, and no one could have compelled a voter to vote in a particular way. Vote canvassing is unethical only if a voter could not cast a secret ballot. The deputy blamed the quality and conscience of the voters. There are voters who would give the votes to someone for a dinner or even a handshake. They do not consider a candidate's election platform nor seriously consider how a voter should cast his/her vote.<sup>118</sup>

Another deputy who was interviewed said that the most influential force is the CLO, but the CLO could *only* affect the result of the election when a voter is not certain how to vote or does not care who becomes elected. He insisted that there are not a large number of voters in this category and the CLO has little opportunity to manipulate the result.<sup>119</sup>

The incumbents are a powerful group within the Electoral Conference. Most of them have been working in the congressional system at the national or local levels for many years and understand well how the system works in Hong Kong and elsewhere in China. They are mostly activists and enjoy good reputations among their constituents. They openly state that they are a closely knit group and would support each other in the election. There are strong indications that they work closely with each other and have made a collective effort to win the election.

<sup>117</sup> NPC Standing Committee Officials Interviews, Hong Kong, 2005.

<sup>118</sup> Deputy Interviews, Hong Kong, 2005.

<sup>119</sup> Deputy Interviews, Hong Kong, 2005.

The most important factor is the political forces behind the 36 members, forces to which the Central Authorities have access and could rely upon when needed. The three traditional support organisations, namely the DAB, the CGCC, and the HKFTU have the control of the vast majority of the Hong Kong NPC deputies. Members in the Electoral Conference voted more for political organisations than individuals.

#### 4. Procedural Reform for the Eleventh HK NPC Election

The NPC is making efforts to rid the conservative monopoly over the electoral process by allowing wider community participation in the electoral process (eg through abolishing the preliminary vote from the Eleventh Hong Kong NPC Election). The sources of the Electoral Conference for the Eleventh Hong Kong NPC Election (Eleventh Electoral Conference) will remain unchanged.<sup>120</sup> However, as reported by Sheng Huaren in explaining to the NPC about the draft Measures for the Election of Deputies of the Hong Kong Special Administrative Region of the People's Republic of China to the Eleventh National People's Congress (Eleventh Election Measures), the size of the Eleventh Electoral Conference will further increase from 956 members in the Tenth Hong Kong NPC Election to 1,300 plus members.<sup>121</sup>

According to Article 5 of the Eleventh Election Measures, the Eleventh Electoral Conference will be composed of:

- Category A: Members who had participated in the Tenth Electoral Conference;
- Category B: Members of the Tenth National Committee of the CPPCC who were Hong Kong residents but not members of Category A;
- Category C: Members of the Election Committee for the Third Chief Executive who were Chinese nationals (Third CE Election Committee); and
- Category D: CE of the HKSAR.<sup>122</sup>

Compared with the Ninth and Tenth NPC Elections, the percentage of members in the Electoral Conference who concurrently serve in the Election Committee for the CE has decreased substantially from 92 per cent and 84

<sup>120</sup> Measure for the Election of Deputies of the Hong Kong Special Administrative Region of the People's Republic of China to the Eleventh National People's Congress (hereinafter the Eleventh Election Measures).

<sup>121</sup> Eleventh Election Measures Explanation, n 10 above. See also, Eleventh Election Measures.

<sup>122</sup> Eleventh Election Measures, Art 5.

per cent in the Ninth and Tenth Hong Kong NPC Elections respectively to 61.5 per cent in the Eleventh NPC Election.

The substantial decrease in percentage is in fact the result of a significant increase in the size of the Eleventh Electoral Conference: the members of the Eleventh Electoral Conference will increase by one third from 956 persons in the Tenth Hong Kong NPC Election to 1,300 plus persons in the Eleventh Hong Kong NPC Election.<sup>123</sup> The increase in the size of the Electoral Conference is due to the combined effect of the continuous accumulation of members in Category A (ie members who participated in the previous Hong Kong NPC Electoral Conference) and the increase in “new bloods” in Categories B and C (in the Subsectors in the CE Election Committee in particular).

As with previous Hong Kong NPC Elections, the Chinese government has firm control over the memberships of Categories A, B and D. For Category C, the percentage of memberships in this category that can be controlled by the Chinese government in the Eleventh Hong Kong NPC Election will be the lowest among all the previous Hong Kong NPC Elections. It is because the pan-democratic alliance achieved unprecedented success in the Third CE Election Committee Subsectors Elections (Subsectors Elections) in December 2006.

The pan-democratic alliance sent a total number of 137 members to run in the Subsectors Elections in 12 Subsectors. Surprisingly, the pan-democratic alliance won 114 out of 427 seats in the relevant elections; and in the elections of seven subsectors, all the pan-democratic candidates were elected.<sup>124</sup> Together with about 20 democrats in LegCo who were ex-officio members of the Third CE Election Committee, the pan-democratic alliance occupies at least 134 of 1,300 seats in the Eleventh Electoral Conference. Notwithstanding that achievement, the democrats remain a small minority in the Electoral Conference which is mainly dominated by the leftists, traditional patriots and other pro-government elements.

## V. Conclusion

The NPC has designed the electoral system to elect a particular group of people to support and legitimise the interests of the Central Government.

<sup>123</sup> Eleventh Election Measures Explanation, n 10 above.

<sup>124</sup> The 7 subsectors included: 1) law; 2) higher education; 3) accountancy; 4) information technology; 5) engineering; 6) health services; and 7) education. “100% of pan-democratic alliance candidates were elected in 7 subsectors, they intended to occupy seats in the functional constituencies in the next LegCo session”, *Ming Pao*, 12 Dec 2006, p A03 (in Chinese); “Leong gets the entry ticket for certain, Tsang face the challenge earlier, pan-democratic alliance has 134 votes in hand, Governments of China and Hong Kong are taken by surprise”, *Hong Kong Economic Times*, 12 Dec 2006, p A3 (in Chinese).



Given the composition of the Electoral Conference, it is no surprise that the Electoral Conference elects principally the representatives of organisations which are the traditional supporters of the Central Government. The election has produced an obedient, but illegitimate, ineffective, and unrepresentative body. From the perspective of the Central Government, the unforeseen is that the “small circle” election allowed the development of special interests with the institutions of Hong Kong NPC deputies, which entrench and perpetuate themselves against the interests of the Central Authorities. The controlled election, predictably, has failed to broaden the base of support for NPC from the larger Hong Kong society, especially the moderate elements in Hong Kong. The Central Government has realised the limit of an institution that has little will and even less capacity to represent Hong Kong. The 2007 reform of electoral procedure and the expansion of the Electoral Conference may be seen as a half-hearted effort on the part of the Central Government to rejuvenate this otherwise conservative institution.