

A dialogue within the legal bounds

With the opposition's bid for civil nomination pronounced a dead issue, reform proposals emerging prior to the Shanghai dialogue share a common goal — to address popular will for democracy under the constitution. Kahon Chan writes.

There are high hopes among the people of Hong Kong that the many different points of view under debate in the present consultation can be reconciled so that they may choose their own leader in 2017, an event unprecedented in the city's history.

First, there must be consensus among the parties. Then the political reform package has to be approved by both the Legislative Council (LegCo) and the National People's Congress Standing Committee (NPCSC).

More than 20,000 submissions have poured into the government since the commencement of public consultation four months ago. Some have been submitted by opposition die-hards who cling to the impossible dream of "civil nomination", which has been dismissed from consideration because there's no provision in law for ordinary citizens to circumvent the nominating committee.

Officials from Hong Kong and Beijing as well as many experts have made vigorous efforts to set the record straight — Hong Kong's political structure and the promise of universal suffrage can stand only on the constitutional cornerstone of the Basic Law.

Universal suffrage is a goal set out in Article 45 of the Basic Law. The date for implementation of universal suffrage for the election of the chief executive in 2017 was fixed by the NPCSC, in a decision dated Dec 27, 2007. Both the Basic Law and the NPCSC decision also set parameters for nomination procedures.

In the "one position" and "three conformities" set out by NPCSC Chairman Zhang Dejiang in early March, the central government reiterated unwavering support for Hong Kong's gradual advance to democracy within the framework of the Basic Law.

One of the three conformities is that the elected Chief Executive (CE) must meet the requirement to "love the country and love Hong Kong", as it is a matter of common sense that no central government anywhere would accept the election of a subversive local chief.

Zhang also explained that the national Constitution and the Basic Law are the bases from which the CE performs his duties. A subversive city chief would damage the Hong Kong-Beijing relationship and potentially harm the stability of the nation.

An individual's patriotism is a matter for political judgment, but Rao Geping, a member of the HKSAR Basic Law Committee under the NPCSC and a law professor at Peking University, offered a way to enshrine the requirement into the election procedures.

Speaking at a seminar on March 22, Rao proposed that candidates for the position of CE could be asked to swear an oath to uphold the reunification of Hong Kong and the Basic Law in order to reaffirm commitment to the rule of law and the national interest.

The second "conformity" is that the system of universal suffrage must be in conformity with the political reality in Hong Kong. For example, while Hong Kong enjoys a high degree of autonomy, authorized by the NPC through the Basic Law, the electoral framework must safeguard the sovereignty and security of the nation as a whole.

The third "conformity" put forth by the top legislator echoed a consistent theme articulated by several officials over the past year — the system of universal suffrage for choosing the Chief Executive must be in compliance with the provisions of the Basic Law.

A "broadly representative" nominating committee will be nominating candidates "in accordance with democratic procedures", as stipulated by the Basic Law.

Rao Geping drew a clearer line in his speech — the constitutional provisions he cited provided no ground for either "civil nomination", "civil recommendation", "party nomination" or "party recommendation".

All of these approaches for the selection of candidates for office were assessed



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RAO GEPING
HKSAR BASIC LAW
COMMITTEE MEMBER

as falling into contradiction of the legislative intent of the Basic Law.

Pre-nomination

The constitution expert told the media that contenders for the top job must be presented to the nominating committee by individuals who are members of the committee. No law should be made to require the nominees to show proof of public support.

HKSAR Basic Law Committee member and University of Hong Kong law professor, Albert Chen Hung-ye, proposed that a contender be formally presented to the nominating committee if he secured the recommendations of 150 committee members.

Chen was the first to advocate "civil recommendation" — the idea was missing from his formal proposal, but Chen maintained the view that the Basic Law does not prohibit a public petition from being presented to the nominating committee

for consideration.

Another Basic Law expert Song Sio-chong, a professor at the Research Center for Hong Kong and Macao Basic Law at Shenzhen University, said he could not see why the "recommendation" procedure would go against the Basic Law — well-written rules, in fact, could prevent contenders from abusing their political clout, he argued.

In Song's proposal, contenders could be "tabled" before the nominating committee upon endorsement by different parties, including a recognized organization, a political party, a handful of legislators, or up to 500 registered voters.

An important benefit of the proposal is that the authority could refuse excessive petitioners to ensure that no prospective candidate could outweigh others under consideration by the committee, said Song. "Who would dare to reject a person if he secured a petition of 300,000 voters?"

Another proposal endorsed by 18 schol-

ars in Hong Kong also advanced the idea of "civil recommendation", but the threshold was fixed at between 2-3 percent of all qualified voters.

Former LegCo president and a retired professor at the Chinese University of Hong Kong, Andrew Wong Wang-fat, backs the proposal, explaining that setting a cap on petitioning voters will prevent the recommendation stage from turning into a de facto pre-election.

"Pre-election"

The scholars' proposal also recognizes a guideline put forth in the NPCSC decision pertaining to 2017 — the nominating committee should be formed with reference to the electoral committee that produced the city chief in 2012.

A distinct feature of the electoral committee is the four pillar sectors (see chart). Albert Chen and the 18 scholars appealed to replace corporate or union votes with individual votes, though both proposals kept the makeup of the four sectors intact.

Proposals that lack a recommendation stage tend to broaden the voter base with big fixes in the fourth sector, which comprises legislators, district councillors, NPC deputies and other elected representatives.

The Civic Party's Ronny Tong Ka-wah and former radio host Robert Chow Yung suggested bringing all district councillors into the committee. Think tank "Hong Kong 2020" and Ho Lok-sang, an economist at Lingnan University, took a step forward by proposing a minority ratio of members chosen by the full electorate.

But Song Sio-chong argued the goal of making the committee "broadly representative" is not necessarily to be achieved with a higher headcount. An example is that companies, rather than their directors, are more suitable stakeholders to represent the business sector.

The "Hong Kong 2020" proposal was seen as a compromise put forward by the opposition camp, but Song said it was, after all, a calculated formula to guarantee at least one opposition candidate in the election.

Practicability was the core concern of senior counsel Johnny Mok Shiu-luen, who is a member of the HKSAR Basic Law Committee. A territory-wide poll ahead of the nomination and universal suffrage could confuse voters, he told China Daily. Not only would the early election potentially be troublesome for voters, it might also result in manipulation of the nominating committee.

Lau Siu-kai, vice-president of the Chinese Association of Hong Kong and Macao Studies and a former advisor to the city govern-

ment, said on the sidelines of an event that his Beijing friends expressed worries about having a de facto pre-election.

Candidates running for seats in the committee would likely declare their favorite candidates for CE, making the committee selection essentially an exercise in choosing the chief executive. Lau said that could be considered an interference in the committee's authority.

Procedures hurdle

Before the people choose their favored city chief, the candidates are nominated by the nominating committee "in accordance with democratic procedures". Li Fei, Chairman of HKSAR Basic Law Committee, said last November that this procedure must embody the collective will of the entire committee.

Rao Geping offered principles for the democratic process in his speech, "I think this procedure must address an effective and equal expression of public opinion, an open process and a vote in accordance with the majority rule."

Ip Kwok-him from the Democratic Alliance for the Betterment and Progress of Hong Kong was among the few pro-establishment politicians to set out a full proposal. Nominations, under his proposal, would only be granted on the basis of majority support of the nominating committee expressed in a block vote.

In spite of the official view that the nominating committee shall make decisions to reflect a "collective will", a number of proposals have stated that a candidate shall secure a nomination with endorsement by just an eighth of the committee members.

Both Ip Kwok-him and Lau Siu-kai maintained that in order to reflect the "collective will", the majority rule must apply in selecting the candidates. Li Fei had also told the media in November that majority rule could be one of the options.

Mok Shiu-luen held a slightly different view. He sees ample room to negotiate on the "democratic procedure" provision and hopes that all sides would eventually agree to a compromise between the two "extremes" — of majority vote and one-eighth threshold.

Compared to the nomination stage, the method for electing the CE under universal suffrage has received less attention. Instant-runoff voting and a two-round system are among the options presented in different proposals.

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Political reform: the law and the proposals

FORMATION OF NOMINATING COMMITTEE

What the law says:

"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."

— NPCSC decision dated December 29, 2007

"The Election Committee to elect the fourth term Chief Executive in 2012 shall be composed of 1200 members from the following sectors:

1. Industrial, commercial and financial sectors 300
2. The professions 300
3. Labour, social services, religious and other sectors 300
4. Members of the Legislative Council, representatives of members of the District Councils, representatives of the Heung Yee Kuk, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference 300"

-- Amendment to Annex I to the Basic Law, approved on August 28, 2010.

Proposals under consideration to democratize the four sectors:

- Increase committee membership to 1600
- Broaden the electoral base in business and labor sectors
- Include all district councillors in the fourth sector
- Replace district councillors with members chosen by full electorate
- Some members in the first three sectors to be chosen by full electorate

THRESHOLD TO SECURE CANDIDACY

ONE MAN, ONE VOTE MECHANISM

What the law says:

"...The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures."

-- Article 45, Basic Law.

Proposals

- Block vote system
Members may choose to vote for all or some of the choices. Up to five candidates may enter the race if they win majority support
- Fraction system
One member one vote. A candidate may enter the race if he is supported by 1/8 to 1/10 of committee members
- Two round system
The first round will produce two finalists or a winner if a candidate wins 50% vote. The finalist with higher vote wins the second round.
- Instant-runoff voting
1. Voters rank candidates in order of preference on the ballot.
2. The first round of ballot counting is based on the first choice — if no one wins a majority, the candidate with fewest ballots will be out.
3. Ballots that prefer the eliminated candidate will be recounted for their second preferences and results will be combined with that of the first round.
4. The recounting continues until someone wins a majority.



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BASIC LAW EXPERT