



30 September 2004

Secretariat
Constitutional Development Task Force
3/F, Main Wing
Central Government Offices
Lower Albert Road
Hong Kong

Dear Sir / Madam,

**Re: Response to the Third Report of the Constitutional Development Task Force:
Areas which may be Considered for Amendment in respect of the Methods for Selecting
the Chief Executive in 2007 and for Forming the Legislative Council in 2008**

We would like to submit the following views:

a) On the Method for Selecting the Chief Executive in 2007

We note the Standing Committee of the National People's Congress (SCNPC) unfortunately decided that 2007 is not the right time for the Chief Executive of the HKSAR to be elected directly by the people of Hong Kong.

We note from media reports that there are suggestions that one way to make the 2007 election "more democratic" is to increase the number of Election Committee members. It needs to be recognized that increasing the number of members to 1,600 or some such figure cannot truly be described as "more democratic" and is a far cry from achieving universal and equal suffrage.

Since the SCNPC acknowledged that under the Basic Law, the first available opportunity for the Chief Executive to be elected by means of universal suffrage was in 2007 even though it also decided that 2007 would not be the right time, it may be argued that the acknowledgement did imply that there should be an attempt made for the HKSAR to achieve universal suffrage the next time, that is in 2011. Indeed, we would make this argument because the constitutional mission of the Basic Law is clear that the "ultimate aim" is to achieve universal suffrage, and thus there has to be a determined movement towards that direction on each and every available occasion. Therefore, adjustments made in 2007 must have the effect of moving the election system towards universal and equal suffrage.

With this principle in mind, we suggest that the Election Committee be made as large as possible and in any event not less 5,000 people. Furthermore, we believe the voter base should be very much larger as it should be a significant step towards achieving universal suffrage. We have noted one particular suggestion made that the voter base may even

been made up of 500,000 people;¹ and that the Liberal Party has recently proposed a voter base of 300,000 people.

For the Election Committee members, apart from the ex officio members, such as members of the Hong Kong Legislative Council (LegCo), Hong Kong deputies to the NPC and Hong Kong deputies to the CPPCC, the others members can be chosen at random based on each of the District Council geographical constituencies. On this basis, people from all walks of life (this will likely include members from the various sectors in Annex I of the Basic Law) will be included and this method can accommodate the selection of 5,000 people. For the voter base, the same random selection process can be used to select 500,000 relatively easily.

As regards the number of people needed from the Election Committee to nominate candidates standing for Chief Executive, the principle should be to keep it relatively small to encourage competition. According to the suggestion we made above, for an Election Committee of 5,000 members, nomination from 250 would be sufficient. For an Election Committee of 500,000 made up essentially of members of the public, we suggest getting 2,500 nominations from registered voters in Hong Kong rather than from among the 500,000.

b) On the Method for Forming the Legislative Council in 2008

We note that the SCNPC Decision in April 2004 stated that the number of functional constituency seats and the number of seats returned by geographical constituencies through direct elections should be the same in the fourth term LegCo. We regret that the SCNPC decided to keep functional constituencies because we believe more and more they will be seen by the public as representing an inherently unfair election system thereby increasingly becoming a element for instability in Hong Kong.

We believe the argument we made in relation to the Chief Executive election in 2007 also applies here because the Basic Law also provides that the "ultimate aim" is for all LegCo members to be directly elected. Thus, whatever steps are taken for the 2008 election, they must be aimed at achieving universal and equal suffrage by 2012.

To move towards universal and equal suffrage, increasing the number of legislators is not essential. If an argument is put forward that Hong Kong would be better served by having more legislators to keep up with the work load in LegCo, our suggestion is to require legislators to be full-time members.

The real issue involved is the representativeness of the elected legislators from functional constituencies. The size and the composition of the functional constituencies are problematic. Some of the functional constituencies have fewer than 200 voters. Some of the electors are not even humans but corporate bodies.

We believe 2008 presents an opportunity for Hong Kong to revamp functional constituencies significantly towards the direction of universal and equal suffrage. The guiding principles for reform should be to:

- (a) Do away with corporate voters altogether as this system provides little transparency and votes for legislators should never have been given to non-humans;

¹ By Mr Allan Zeman.

- (b) Ensure all functional constituencies have no less than a sizable number of human voters to encourage competition [5,000 in our view may be regarded as a sizable number]; and
- (c) Ensure the determination of who qualifies as a voter should not be handed over to some corporate body as it is today in situations where corporations are allowed to vote, or in mixed constituencies where corporations and some individuals are entitled to vote.

Indeed, Civic Exchange sees the functional constituency election system as a major issue Hong Kong needs to resolve in order to move towards universal suffrage. Civic Exchange has embarked on a project to research this subject. Three papers have already published between July-August. We enclose them here as part of our submission since various insights and suggestions have been made in them, such as proposals by Dr. Simon Young. We expect to publish a number of other papers as a part of this project before the end of January 2005 and will be sending them to you for consideration.

c) Other comments

i) A need for a timeframe

While the SCNPC has decided that 2007-2008 was not yet the right time for Hong Kong to achieve universal suffrage, it has unfortunately not put forward a timetable for democracy to be achieved in the HKSAR. While the Task Force is inviting views on the possible amendments in respect of the methods for selecting the Chief Executive in 2007 and for forming the LegCo in 2008, we believe that it would be useful for the SCNPC and the HKSAR Government to state a firm timeframe for Hong Kong to achieve democracy as it would be a unifying factor for the people of Hong Kong.

From various surveys conducted about how Hong Kong people see political reform, their desire for democracy to be achieved sooner rather than later is clear. We attach the survey commissioned by Civic Exchange and carried out by the Hong Kong Transition Project for your record. Tables 61, 63, 64 and 65 of the survey report, *Countdown to Decision: The Final Days of 2004 LegCo Election Campaign*, reveals a high percentage of respondents (over 70%) supported direct election of the Chief Executive and all LegCo seats, and over 40% of the respondents stated in early September 2004 that election of both should be implemented in 2007/08 even though the SCNPC decision has made its decision in April.

ii) Voting methods

The use of three types of voting methods in Hong Kong for the election of LegCo members presents an additional level of complexity for voters that cannot be justified. We recommend the Task Force to take into account David Webb's commentary, *One Vote, Wrong System*, published on www.webb-site.com on 24 September 2004. We entirely endorse his conclusions and recommendations. For ease of reference, we attach a copy of his commentary here.

Yours sincerely,

(Signed)

Christine Loh
Chief Executive Officer

(Editor's Note: Four papers are attached to this submission, namely "A Critical Introduction to Hong Kong's Functional Constituencies" by Simon N.M. Young and Anthony Law, "Government and Business Alliance: Hong Kong's Functional Constituencies" by Christine Loh, "Functional Constituencies: The Legal Perspective" by Gladys Li and Nigel Kat, and "Countdown to Decision: The Final Days of 2004 LegCo Election Campaign" by Hong Kong Transition Project. In view of their volume, they are not reproduced in this Annex. Copies of these four papers have been deposited with the District Offices of the Home Affairs Department at Wanchai, Yau Tsim Mong, Kwun Tong, Sha Tin and Tsuen Wan for public reference. They can also be accessed at www.civic-exchange.org.)

Table 61 shows that among those who strongly support direct elections of all Legco seats, 75 percent say they definitely will vote. Conversely among those strongly opposed to direct elections, only 46 percent indicated they intended to vote. The issue is thus a much stronger motivator to those supporting the principle.

Table 61 Do you support or oppose direct election of all Legco seats?

	Strongly support	Support	Oppose	Strongly oppose	DK
Feb 2003	29	43	12	2	14
Nov 2003	29	47	13	2	8
Apr 2004	20	44	17	4	14
May 2004	23	40	16	5	15
June 2004	26	41	17	3	14
July 2004	28	42	19	4	8
Aug 2004	28	44	16	1	10
Sept 2004	28	46	17	2	7

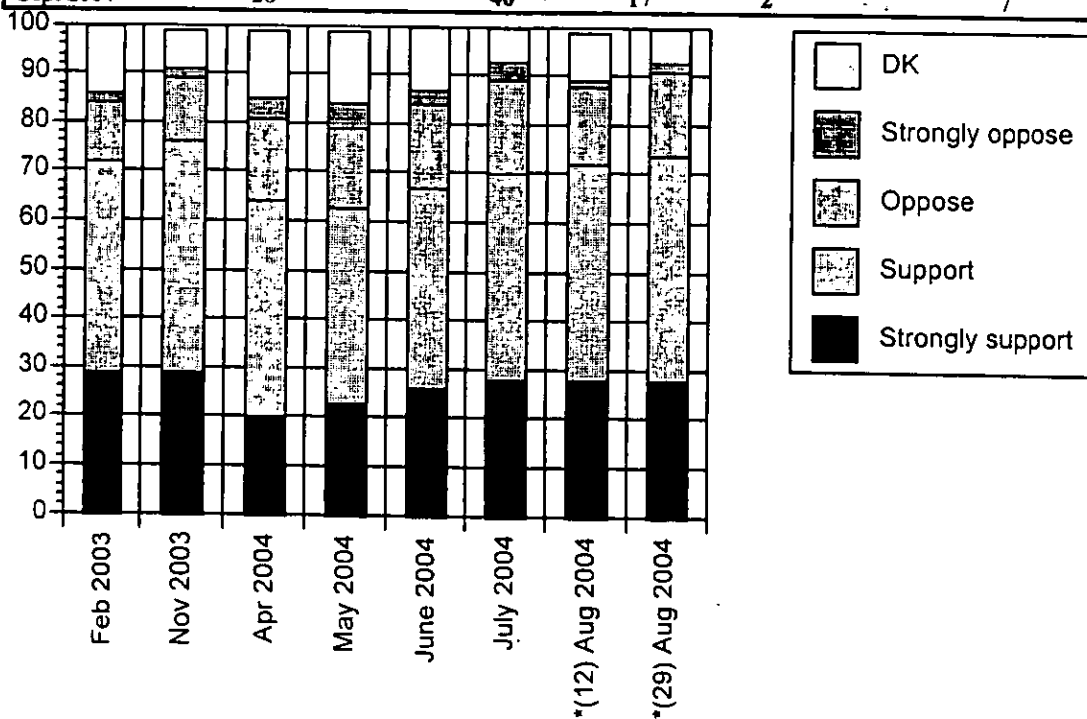


Table 63 shows that the Standing Committee intervention did have an effect in changing minds about when direct elections should be implemented. However, nearly two thirds want direct elections in 2008 or 2012.

Table 63 If you support direct elections of all Legco seats, when would you implement?

	Feb 03	Nov 03	Apr 04	May 04	June 04	July 04	Aug 04	Sept 04
2008	60	69	44	42	43	43	46	45
2012	4	3	11	12	15	17	17	21
2016 or later	8	5	9	9	9	10	10	7
(DK + opposed)	28	23	36	37	33	30	27	26

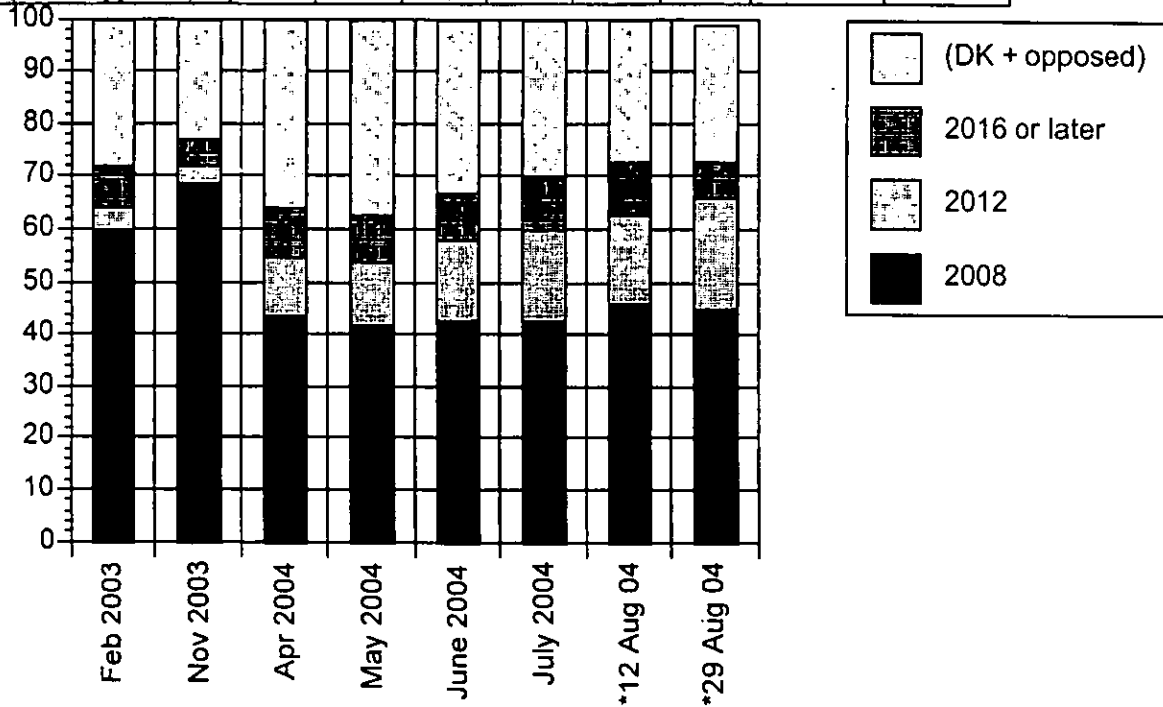


Table 64 shows the responses to the same question about support or opposition to direct election of the Chief Executive. The Standing Committee intervention had an effect, but just as quickly it passed as with support for direct election of the Legco.

Table 64 Do you support or oppose direct election of the Chief Executive?

	Strongly support	Support	Oppose	Strongly oppose	DK
Feb 2003	36	41	10	3	10
Nov 2003	33	48	11	2	6
Apr 2004	22	43	16	1	16
May 2004	27	41	17	4	11
June 2004	29	42	16	2	11
July 2004	30	46	15	2	7
Aug 2004	29	47	14	2	8
Sept 2004	32	46	15	2	6

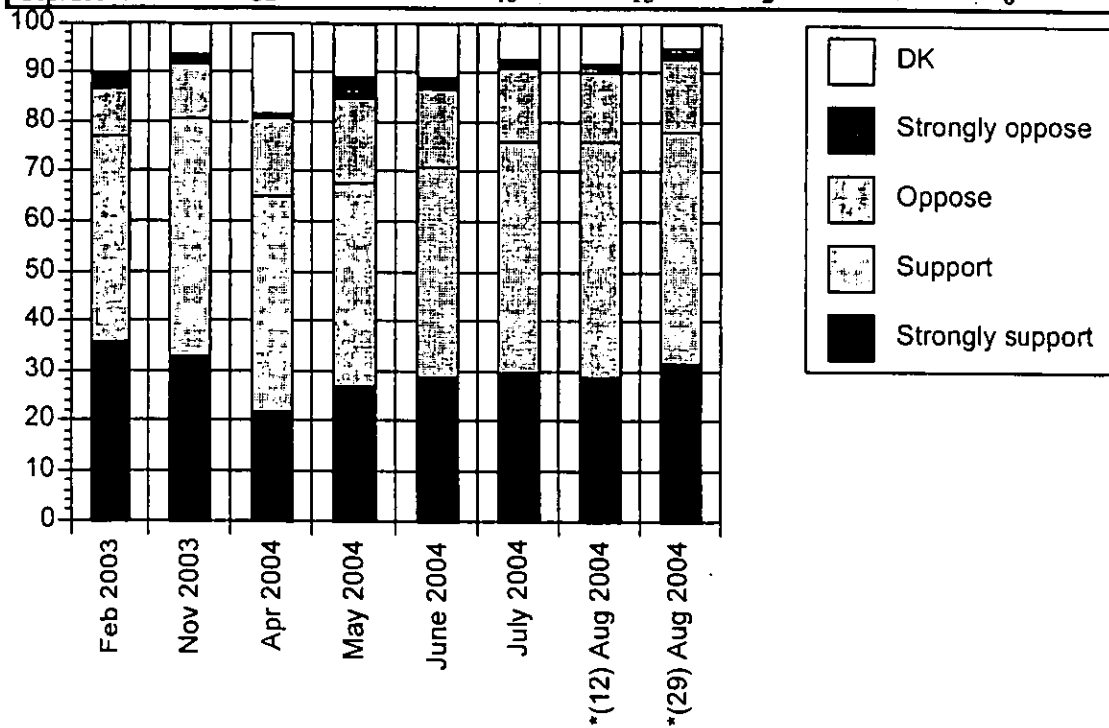
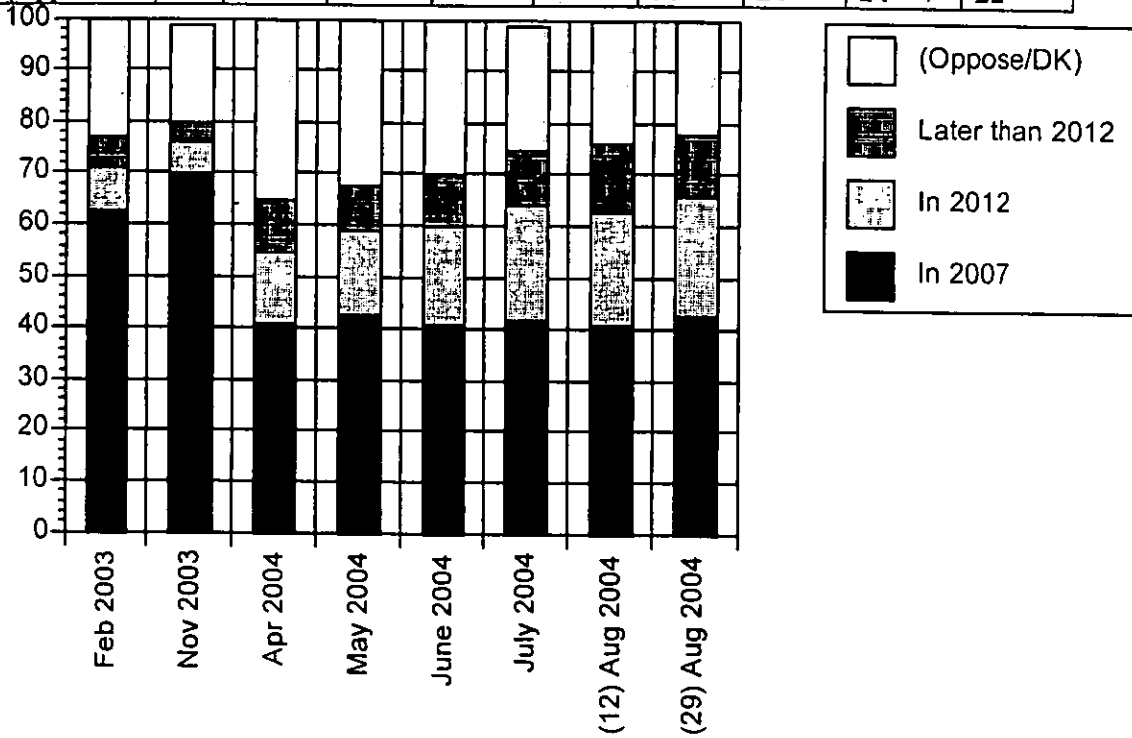


Table 65 shows the same pattern of change in terms of preference for when to implement direct election of the Chief Executive as with direct elections for the Legco. Overall, there is a great majority of support for implementing direct elections sooner than later, and as soon as possible for the plurality.

Table 65 When should direct election of CE be implemented?

	Feb 2003	Nov 2003	Apr 2004	May 2004	June 2004	July 2004	Aug 2004	Sept 2004
In 2007	63	70	41	43	41	42	41	43
In 2012	8	6	14	16	19	22	22	23
Later than 2012	6	4	10	9	10	11	13	12
(Oppose/DK)	23	19	35	32	30	24	24	22



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Webb-site.com takes a close look at the unfair form of proportional representation practiced in Hong Kong's geographic constituencies. As we will show, the devil is in the details, which mathematically favour short lists, 1-person lists and lunatics. The system also excludes candidate choice within parties and wastes a lot of votes. We make several proposals for electoral reform, the best of which would be a Single Transferable Vote system.

One Vote, Wrong System

24th September 2004

In the aftermath of the 2004 Legislative Council elections, it is high time that Hong Kong reviewed its unusual and unfair method of proportional representation, put in place by the unelected Provisional Legislative Council in 1997. As we will show, the devil is in the details, which mathematically favour short lists, 1-person lists and lunatics. They also exclude voters from candidate choice within parties. We make several proposals for electoral reform.

Wrong Quota

Hong Kong operates, for the half of its 60-seat Legislative Council that is now directly elected, a closed party-list proportional representation system using what is known as a "largest remainder" seat allocation method. The 30 seats are divided into 5 geographic constituencies with seats allocated broadly proportional to the population of those areas, resulting in constituency sizes of 4,5,6,7 and 8 seats. Electors cast a single vote for a list consisting of 1 or more candidates.

The total number of votes in each constituency is divided by the number of seats, to determine a "quota". Any list which gets 1 or more quota of votes is allocated one seat per quota, then for those lists which have unelected candidates, the remaining votes are ranked by size, and the remaining seats are allocated to the lists with the largest remainders. The type of quota used in Hong Kong is known as the **Hare quota** after English solicitor Thomas Hare (1806-1891).

As we will show, this is the wrong type of quota for Hong Kong's system, because the votes discarded are non-transferable, so there is no allocation of unused remainders or from an exhausted list, where all the candidates on that list have been elected and there are votes left over, nor are votes transferred from the minority lists which are not elected.

The combination of the Hare quota and the non-transferable vote has some mathematical consequences:

1. The first candidate on each list does not need to get a full Hare quota to be sure of election. For example, in a $S=4$ seat constituency with $V=100,000$ votes, the Hare Quota is 25,000, but any list with 20,001 votes can be certain of their first candidate being elected, because it is impossible for 4 other lists to each have more votes than that. This lower target is known as the **Droop quota**, after English lawyer and mathematician Henry Droop (1831-1884) and the general formula is $V/(S+1)$ votes, rounded up to the nearest vote. This is always less than the Hare quota, V/S , and in constituencies with the smallest number of seats the percentage difference between Hare and Droop is greatest.
2. When there are not more lists (L) than seats, that is, if $L \leq S$, then the number of votes needed for election of the first candidate reduces even further. For example, if there are 4 lists of candidates for 4 seats and 100,000 votes, then we know that at least one list will get a full Hare quota of

25,000, removing those votes from the remainders. So that will leave 3 seats and not more than 75,000 votes. Any list which gets at least 18,751 votes can be certain of their first candidate being elected because it would be impossible for 3 other lists to each have more than that number. The general formula for this quota is $V * (L-1) / SL$ (rounded up), as long as $L \leq S$.

3. Note that these lower targets are mathematical absolutes, regardless of voting patterns. In practice, the more quotas that are filled by the most popular party lists, the easier it gets for the first candidate on an unpopular list. This is simply because each successive candidate elected by quota on a list absorbs a full Hare quota, whereas the first candidate on a competing list only needs a Droop quota at worst.
4. The use of the "largest remainder" is also favourable to small lists, because in the worst case, if all except 1 quota is absorbed by the lists, then that only leaves 1 seat to fight over with the remainders. If the remainders are evenly distributed amongst the lists, then a candidate could be elected with only $1/L$ quotas or V/LS votes. For example, in a 8-seat constituency with 12 lists, the minimum vote for a winning candidate could be as low as $1/96$ of the vote, or about 1.05%, giving him 12.5% of the seats. This encourages people to split their lists, because the more lists you have, the greater the number of tickets you have in the "remainder lottery". It also encourages lunatics who have a theoretical chance of being elected with a tiny vote but are almost certain to result in wasted votes that might otherwise have gone to the leading parties.
5. So you see that our system favours, in the following order: lunatics, 1-person lists and short lists over long lists. Not only do 1-person lists have an easier target to ensure election, but their surplus votes tend to draw support away from the popular parties, and for the complete outsiders, they have just a chance of being elected (probably for 1 term only, unless they turn out to be sane after all).

Highest average

Within the constraints of non-transferable voting, there is a better way to handle the remainder vote than the current "largest remainder" used in HK. The alternative is the "highest average" and in essence it allocates seats to lists so as to achieve the highest average votes per seat.

There are two ways to do this, and the fairest and most popular method is the Sainte-Lague method, published in 1910 by the French mathematician Andre Sainte-Lague (1882-1950). It is also known as Webster's method. This method results in rounding to the nearest whole seat for each list. The alternative is the d'Hondt method described in 1878 by Belgian mathematician Victor d'Hondt (1841-1901). This rounds down and so generally favours large parties over small ones.

The Sainte-Lague method in effect finds the highest quota which, when divided into the actual votes for each list and rounded to the nearest whole number, allocates all the seats. The d'Hondt method finds the highest quota which, when divided into the actual votes for each list and rounded down to a whole number, allocates all the seats.

Example 1: HK Island

Now for some real-life examples. Let us first consider the 2004 race for HK Island, where anti-democrat Rita Fan was running alone. She was one of 6 lists for 6 seats. As a consequence, regardless of how people voted, she only needed $5/36 = 13.89\%$ of the vote to be certain of election. When you further consider that, due to their popularity, 3 of the other lists were nearly certain to each fill a Hare

quota (absorbing exactly half the votes), then you realise that there were only 3 seats and 50% of the vote left to fight over, and she only needed 12.5% to be sure of election.

In the end, she got 18.54% of the vote, which was 21,399 votes more than she needed. She almost certainly drew her surplus wasted votes from people who would otherwise have voted for the DAB list. Here are the actual votes (pro-democracy lists in blue, anti-democracy in red, unknowns in green):

List	List size	Votes	Share of vote	Hare quota method			
				Seats by Quota	Rmndr	Alloc by rmndr	Total alloc
DP-Yeung Sum	3	131,788	37.22%	2	13,756	-	2
DAB-Ma Lik	6	74,659	21.08%	1	15,643	1	2
Audrey Eu Yuet Mee	2	73,844	20.85%	1	14,828	-	1
Rita Fan	1	65,661	18.54%	1	6,645	-	1
Tsang Kin Shing	3	5,313	1.50%	-	5,313	-	-
Wong Kam Fai	1	2,830	0.80%	-	2,830	-	-
<hr/>							
	16	354,095	100.00%	5	59,015	1	6

Look also at the pan-democrat strategy. In HK Island they split their 4 main candidates onto two separate lists, headed by barrister Audrey Eu Yuet Mee and the Democratic Party's Yeung Sum and with a third member on the Democratic Party list. The split lists was a risky gamble which did not pay off, but you can't blame them for trying, because the main strategic goal of the pan-democrats in this election was to give themselves a slight chance of getting 30 or 31 of the 60 votes in LegCo, even if it meant increasing the downside risk. Politically, there isn't much difference between 24 and 26 votes (they won 25) but 30 or 31 would have made a big difference. Other factors, such as the pecking order for 3rd and 4th place on a combined list, also may have kept them apart.

The leading 2 candidates on the 2 lists were near-certain of election, absorbing a Hare quota, or 16.67% each. They also knew that the anti-democrat DAB would fill 1 Hare quota. So the pan-democrats next 2 candidates each needed only 12.5% of the vote to be sure of a win. So if the votes were evenly split on the two lists, they could be certain of victory with **58.33%** of the vote, and they also had 2 tickets in the remainder lottery.

By comparison, if they had run on a single list, then to get 4 candidates elected, they would have filled 3 Hare quotas with 50% of the vote, one quota would go to the DAB, and then the pan-democrats would need 11.11% to be certain of the 4th seat, for a total target of **61.11%**.

So you can see that because of HK's biased Hare quota, the two-list strategy required a lower percentage of pan-democrat support than a 4-in-1 list, but it did require that the votes be split evenly to have the highest chance of success.

In the end, the twin lists polled a combined 58.07%, but their distribution was so skewed that the remainder system allowed the second DAB candidate to win the 6th seat by 815 votes, or 0.23%. This skew has been attributed to a last-minute switch by voters, egged on by the DP, who saw that opinion polls put one list ahead of the other and chose to switch their votes to the trailing list. So many people did this that it skewed the result in the opposite direction to the opinion poll. In fact, if another 1,887 people had switched to the DP, they would have got a 3rd seat on the remainder, bringing the pan-democrats to 4.

While the media were quick to jump on the result as faulty strategy, it was really

the faulty system that was to blame, as it incentivises the splitting of lists and penalises the all-in-1 approach. It was always a long shot to expect 200,000 voters to split their votes evenly on two lists.

But let's see what happens if you use the Droop quota of 50,586, removing the bias in the Hare quota of 59,016 which favours short lists:

	List size	Votes	Share of vote	Droop quota method			
				Seats by Quota	Rmndr	Alloc by rmndr	Total alloc
DP-Yeung Sum	3	131,788	37.22%	2	30,616	1	3
DAB-Ma Lik	6	74,659	21.08%	1	24,073	-	1
Audrey Eu Yuet Mee	2	73,844	20.85%	1	23,258	-	1
Rita Fan	1	65,661	18.54%	1	15,075	-	1
Tsang Kin Shing	3	5,313	1.50%	-	5,313	-	-
Wong Kam Fai	1	2,830	0.80%	-	2,830	-	-
	16	354,095	100.00%	5	101,165	1	6

As you can see, the DP would have won a 3rd seat on its remainder, bringing the pan-democrat total to 4. Both the Sainte-Lague and d'Hondt methods of highest average would also have given the DP 3 seats, taking the pan-democrats to 4 in total. Similarly, if they had run a combined list and attracted the same votes, they would also have won 4, using either Hare or Droop.

Example 2: NT East

In another example, in New Territories East, there were only 6 lists for 7 seats, which meant that tycoon James Tien and veteran protester Leung Kwok Hung, each running on their own lists, only needed $5/42=11.90\%$ of the vote, or 51,311 votes, to be certain of election. In the end, they got 15.91% and 14.14% of the vote respectively, which was 17,249 and 9,614 votes more than they needed.

Example 3: NT West

Here, there were 8 seats, 12 lists and 30 candidates! Albert Chan Wai Yip, running alone, won 36,278 votes or just 7.83% of the vote, less than the 11.11% Droop quota but enough to win a seat, which of course is 12.5% of the seats.

Closed Lists v Open Lists

Another defect in the list system is that unless the candidate runs on a solo list, you cannot vote for a particular candidate, only for a party. Hong Kong has what is known as a "closed list" voting system. Many jurisdictions which have the party-list system have "open lists" so that with a single tick you can vote for a particular candidate, and the vote also counts for the party list. The votes within the list then determines the order in which candidates on a party list are awarded seats, while still giving the list the same number of votes.

Such a system, if employed in Hong Kong, would remove any arguments about the pecking order when pro-democracy candidates team up and run on the same list, because the voters would determine the order. If you combine that with a change from the Hare quota to the Droop quota, then the system would be fairer to all parties, large and small.

Singe Transferable Vote - the way forward

Although HK's party-list system could be corrected with the use of the Droop quota and an Open List, it would still be structurally defective in the sense that voters cannot express any order of preference between lists or between candidates running on different lists. This means that any vote for an outside list with no real hope of election is a wasted vote (unless they get very lucky in a largest-remainder system). Votes are also wasted when a list of candidates is exhausted by quota.

While maintaining proportional representation, a better way to give representation to electors would be to abandon the party list system and move to a system which allows electors to express an order of preference for candidates. In multi-seat constituencies, this is known as the "Single Transferable Vote" or **STV** system. An elector places a "1" next to his favourite candidate, a "2" next to his second choice, "3" against the third choice, and so on. The elector does not have to prioritise the entire list - she can stop at any point after indicating her first choice. The elector does not have to stick with a particular party - the candidates can be ranked in any order, regardless of party. It also allows those who wish to lodge a protest vote for a minority candidate to still put a leading party's candidate as their second choice.

When the votes are counted, the first choices are ranked, and any candidate with a Droop quota is elected. His surplus votes, and the votes of the lowest ranked candidate, are then transferred to the second-choice candidates (where the elector has expressed a preference). Anyone with a quota is elected, and the process repeats itself until all the seats are allocated. In single seat constituencies, this type of election is known as the "Alternative Vote" (**AV**) system. The counting mechanics are fairly complicated and need to be centralised, but they are perfectly manageable and well documented. The use of machine-readable voting papers can accelerate the count while still providing an auditable paper trail.

From the elector's point of view, the voting process is simple. Anyone who ranks all the candidates (or all but one) can then be certain that their vote has counted towards determining the outcome of the election, because their vote will end up either electing their first choice or being transferred to another candidate. It encourages voter participation and tends to lead to higher turn-outs. The STV system is used by, amongst others, Ireland (since independence in 1922), Malta and the Australian Senate, and is gaining increasing popularity due to the fairness and increased participation and choice that it offers electors. The Scottish Parliament recently adopted STV for local council elections.

It may also surprise you to learn that the AV system (which is the STV system for a 1-seat constituency) is actually used in Hong Kong for 4 of the 30 Functional Constituencies: Heung Yee Kuk, Agriculture and Fisheries, Insurance and Transport. At least, it would be used if these constituencies ever have contested elections, which they don't most of the time as the electorates are so small (ranging from 149 to 182, and mostly corporates many of which have common control) that they just agree amongst themselves rather than put it to a vote. But if anyone tells you that STV wouldn't work in HK, just remind them that we've already got it.

Conclusions and recommendations

We have shown that the Hare quota and largest remainder system of Hong Kong's proportional representation are structurally biased in favour of short lists, 1-person lists and lunatics, while failing to allow electors to vote for an individual candidate. The quota problem could be easily addressed by a legislative change to the Droop quota, and we could easily move to an open-list system, but it would still leave the defects of the largest-remainder, which can result in a lottery for the remaining seats in which a minority candidate with minimal support can be elected if the distribution of remainders is even. If the party-list system is to be retained, then it

would be better to forget fixed quotas and move to the Sainte-Lague method of seat allocation, which allocates seats based on largest average votes.

A more forward-looking approach, in line with Hong Kong's ambitions to be a world-class city, would be to abandon party lists and move to a Single Transferable Vote system in which every vote can count, and electors express an order of preference for the candidates. So, in order of preference, our recommendations are:

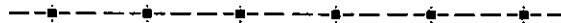
1. Scrap party lists in favour of a Single Transferable Vote system
2. Failing that, open the party lists and scrap the largest remainder in favour of the Sainte-Lague method of seat allocation
3. Failing that, as a minimum change, open the party lists and change from the Hare quota to Droop quota

Of course, none of this discussion changes the fact that a legislative assembly can hardly be called "proportional" so long as the general public only gets to elect half its members. That is a separate problem, but the correction and enhancement of our proportional representation system can take place in parallel with the push for universal suffrage.

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