



A Question of Patriotism: Human Rights and Democratization in Hong Kong

A Human Rights Watch briefing paper

September 9, 2004

Introduction	1
Background	6
The July 1, 2003 protest	6
The November Elections	9
A Question of Patriotism	12
The Patriotism Campaign	15
A Question of Interpretation	20
Intimidation of Prominent Journalists	22
The threats against Cheng and Wong	24
The Allen Lee case	27
The September Elections	33
The electoral framework: flawed democracy	33
Voter intimidation and manipulation	34
Vandalism attacks against democratic legislators	36
The Alex Ho case	39
Conclusion	41

Introduction

On September 12, the people of Hong Kong will go to the polls to elect the members of the Legislative Council. While the format for these elections falls far short of universal suffrage, the people of Hong Kong were promised the opportunity to move to universal suffrage for the elections to be held in 2007 and 2008. That promise was broken in April of this year, when the central government in Beijing ruled that there would be no large-scale changes to Hong Kong's election format, and further ruled that all changes had to be both pre-approved and finally approved by Beijing. This setback for democracy took place in the context of many incidents of criminal intimidation and threats against independent politicians, journalists and voters, much of it apparently emanating from Beijing.

Chief Executive Tung Chee hwa was on the record about universal suffrage for Hong Kong almost from the day he took office. In September 1997, just months after the resumption of Chinese sovereignty over Hong Kong, Chief Executive Tung paid his first visit to the United States as the head of the Hong Kong Special Administrative Region, or SAR. Tung had lived more than a decade in the United States, and so knew how to charm the Washington officials and New York businessmen he met with on the visit.

During the trip, Tung faced criticism for recent moves to roll back human rights and democratic reforms put into place by the outgoing British colonial administration. Each time he was asked about democracy in Hong Kong, Tung had the same response: there would be slow and steady progress toward full democracy over the first ten years. After that, as per the Basic Law, any decision about how to conduct elections in Hong Kong would be up to the people of Hong Kong.

Speaking at the U.S. Chamber of Commerce, Chief Executive Tung acknowledged that the current electoral system had come under fire. But, he said, any such criticism was misplaced:

There are those who believe that the pace of democratization in Hong Kong is too slow. Others believe that it is too fast. I believe we have struck the right balance. As far as constitutional issues are concerned, there will always be debates - in Hong Kong, America, or anywhere else. What about after 2007? *The Basic Law provides that further democratic evolution*

will depend on the wish of Hong Kong people and the overall environment at that time with universal suffrage being the ultimate objective.¹

Regardless of the audience, the answer was the same. Speaking to reporters after meeting with President Clinton on September 12, Chief Executive Tung noted that the President had expressed dismay over the format for the first Hong Kong elections, scheduled for May 1998. But, Tung implied, Clinton and Tung were largely in agreement. "It's only a question as to the speed with which we are moving forward," Tung said.²

Tung made perhaps his most extensive comments on democracy in Hong Kong during his U.S. sojourn in an interview with the journalist Jim Lehrer on the PBS newsmagazine *Newshour*:

...the important thing I think, Jim, for us to remember is that we have a constitution--we have what we call a basic law, which is our constitution, which, among other things, maps out for the next 10 years the evolution of our political institution--how the legislature will be elected every few years until the about 10th year and how the chief executive would be elected every time... *(The Basic Law) also says very clearly that at the end of that time we are going to move into universal suffrage if it is at that time the wish of the Hong Kong people.* So the ultimate aim is universal suffrage. It is all very clear.³

Asked about the possibility of speeding up the process, Tung said:

...I think we just got it about right, a 10-year process going forward, and looking at ultimately universal suffrage. ... And the important thing, Jim, is this, that we care about democracy in Hong Kong. We want Hong Kong's democratic institutions to develop. And over a 10-year period it's all met now very clearly, and we get there.

On April 6th of this year, Beijing made sure that, Tung's statements to the contrary, decisions about the future of democracy in Hong Kong will not be made in Hong Kong,

¹ "Chief Executive in USA defends electoral changes as move towards more democracy," BBC Monitoring Service, September 18, 1997 (emphasis added).

² Kohei Murayama, "Clinton, Tung differ on H.K. democratic election process," Japan Economic Newswire, September 12, 1997.

³ Interview with Jim Lehrer, PBS *Newshour*, September 12, 1997 (emphasis added).

but instead will go first through Beijing. After months of not so subtle hints that it would do so, the central government issued what it called an interpretation of the Basic Law, Hong Kong's mini-constitution, which stated that any future changes would have to be pre-approved by Beijing. Later in the month, the central government issued a Decision ruling out universal suffrage for the 2007 and 2008 elections.

2004 is shaping up to be the worst year for civil and political rights in Hong Kong since the 1997 transfer of sovereignty over the territory. If Beijing's political intervention was the only thing that had happened over the past year, that intervention would be enough to raise concerns over human rights in Hong Kong. But the past year has also seen threats against prominent journalists, vandalism attacks on the offices of pro-democratic politicians, and reports of voter intimidation and manipulation. Beijing has openly questioned the patriotism of democratic politicians, and senior Chinese government officials have attacked prominent Hong Kong legislators by name, merely for exercising their basic right to express their views on recent developments in Hong Kong.

This report is based on more than twenty interviews with politicians, journalists, NGO activists, and Hong Kong government officials. It also is based on an extensive review of the documentary record of the past fourteen months in Hong Kong, including domestic and international press reports and government documents. Because of the closed-door nature of the decision-making process in Beijing, it is impossible to describe in detail the rationale behind key decisions taken by the central government. However, the statements of senior central government officials do give some indication of Beijing's motivations. Also, the timing of certain decisions reveals some of the political factors that influenced the central government's calculations.

It is clear that, beginning at least as early as December 2003, Beijing has taken on a more active and a more direct role in Hong Kong affairs, sidestepping the SAR government under Chief Executive Tung. This move may itself violate the Basic Law, and undermines the right of Hong Kong people to freely choose their government. Under the Basic Law, Beijing is the sovereign authority in Hong Kong, and has full authority over those issues normally handled by a central government, such as defense or foreign affairs. Hong Kong and Beijing have joint authority over certain issues that are relevant to both parties. But a key element of Hong Kong's promised autonomy is its separate political system, one which should be a multi-party electoral democracy. When Beijing attempts to aid one political party or undercut another, as it has repeatedly done over the past year, it oversteps its power under the Basic Law, and, in doing so, violates the rights of Hong Kong people under the International Covenant for Civil and Political Rights.

The past ten months have seen a marked decline in the human rights situation in Hong Kong. In addition to the April 6 interpretation, the following incidents have cast a shadow over human rights in Hong Kong:

- In early March 2004, two of Hong Kong's most prominent radio journalists, Albert Cheng and Wong Yuk-man, received threatening phone calls from a prominent businessman with known triad society connections.⁴ The businessman told both men that he was calling on behalf of a senior official in Beijing, and told them that they should stop broadcasting until after the September election. After they were victimized by vandalism attacks on businesses they had invested in, both men decided to take a break.
- Allen Lee, a longtime Hong Kong politician and former Liberal Party chairman who had taken over for Cheng in the broadcast booth, announced that he too was stepping down after less than three weeks. Lee was repeatedly approached by mainland officials over his work on the show, and one former Chinese government official made reference to his wife and daughter during their conversation.
- In mid-May, a number of Hong Kong voters called in to local radio shows to report that they had been pressured to vote for pro-Beijing candidates. One caller said that he was told to take a picture of his ballot with his mobile phone, and that if he failed to do so, his business would suffer.
- Unknown individuals have vandalized the office fronts of some pro-democratic politicians, among them Emily Lau, Leung Yiu-ching, and Ray Au. One legislator had the words "All Chinese traitors must die" scrawled on his office wall. Some politicians have received intimidating phone calls and letters, a number of which have threatened violence. One politician has had her home ransacked.

Over the past year, the "one country, two systems" framework put forward by Beijing as the operating principle for governance of Hong Kong has been placed under considerable strain. In order to preserve Hong Kong's autonomy, Beijing should end its aggressive intervention in Hong Kong affairs, and allow Hong Kong's political parties to

⁴ Triad societies are organized crime gangs in Hong Kong and China that periodically have been enlisted for political ends.

rise and fall based on their own ability to win public support. If Beijing does not uphold its pledge not to intervene, then human rights protections in Hong Kong will continue to erode.

Background

The July 1, 2003 protest

Beijing's move to assert more authority over Hong Kong was triggered in part by the massive protest march of July 1, 2003, the sixth anniversary of Hong Kong's return to Chinese sovereignty, and, since then, also a day of protest in Hong Kong. An estimated half-million marchers – roughly one out of every fourteen residents in Hong Kong – took part in the protest march to defend civil liberties and press for democratic reforms, making it the largest such protest since the 1997 handover.

The historic turnout was sparked by widespread concern over the government's proposed amendments to Hong Kong's national security laws. The so-called Article 23 proposals, so named for the article of Hong Kong's Basic Law that deals with new national security legislation, put basic rights protections in Hong Kong at risk.

The government's confrontational style during the legislative process was almost as damaging as the substance of its proposals. Rather than listening to local and international critics, or trying to refute criticisms of the bill, the Hong Kong government was too often seen as engaging in the politics of attack, an approach that would later cost the government dearly in terms of public support.

The government's chief spokesperson on Article 23 was then-Secretary for Security Regina Ip, whose bruising, aggressive style alienated many in Hong Kong. Both she and the Chief Executive were seen as the public face of Article 23, and their approach to selling the legislation to the public was, in the end, seen as counterproductive. According to one local activist, "Regina Ip and Tung created a lot of anger. They were also a recruitment tool, in a way."⁵

Because the government was focused on its most vocal critics, which included pro-democratic members of the Legislative Council, local civil society groups, and prominent members of the legal community, the government may have been less aware of the impact of its proposals on Hong Kong's rank-and-file. In fact, interest in and concern about the government's proposals was widespread. "I was getting calls from social

⁵ Human Rights Watch interview with local Hong Kong activist, July 2004.

workers, teachers, the elderly. There was a wide spectrum of the community that was interested,” one activist recalled.⁶

The organizers of the July 2003 protest march were also helped by the fact that the public was dissatisfied by the government’s inept handling of the SARS crisis, and the economic slowdown brought about by the SARS outbreak. But concern over Article 23 was at the forefront, and this concern, more than any other issue, led to the large turnout on July 1.

Both the Hong Kong government and the central leadership in Beijing were caught off guard by the size of the demonstration, and, in the days following the July 1 protest, the Hong Kong government was plunged into crisis. Speculation was rife that Chief Executive Tung would be forced to step down, and a small handful of politicians emerged as potential candidates to succeed him.⁷

Behind the central government’s displeasure over the latest turn of events was the fact that it was taken by surprise by the march. Beijing was given extremely inaccurate information about the extent of local opposition to the government’s Article 23 proposals, and was told that far fewer protestors would turn out for the July 1 march.⁸ One political analyst told Human Rights Watch, “No one expected that there would be more than 500,000 people on the streets. Many people told China that (the turnout) would be less than 50,000. They were surprised and they thought that Hong Kong was out of control.”⁹

Ma Lik, head of the pro-Beijing Democratic Alliance for the Betterment of Hong Kong (DAB), was open about the central government’s chagrin over being taken by surprise by recent events: “The situation was very far from what Beijing had initially expected,” Ma told reporters. “I believe it is shocked and displeased.”¹⁰

Within days of the protest march, Beijing, obviously aware that its usual sources of information in Hong Kong had failed, dispatched the first of many envoys – both

⁶ Human Rights Watch interview with local Hong Kong activist, July 2004.

⁷ CLSA and Civic Exchange, *Hong Kong Politics: Uncharted Territory*, July 2003, p. 3.

⁸ Human Rights Watch interviews, Hong Kong, July 2004.

⁹ Human Rights Watch interview, July 2003. To some extent, Beijing can be forgiven for being taken by surprise: even the organizers of the march were surprised by the massive turnout. Before the march, the organizers of the protest had predicted that between 100,000 and 300,000 marchers would take the streets.

¹⁰ “Beijing, Hong Kong Officials Gauge Crisis,” Associated Press, July 12, 2003.

official and unofficial -- to Hong Kong to assess the political situation. Over the next few months, as many as several hundred individuals were sent to Hong Kong from the mainland, with orders to report back on the current political situation. Many were told to report back what they were told without filter and without analysis, a possible indicator that Beijing was seeking to compensate for perceived flaws in its existing channels of information on Hong Kong.¹¹

Despite the crisis of confidence that the Hong Kong government faced, the central government remained relatively quiet after the protests. In the immediate aftermath of the July protest, and even after the Hong Kong government was forced to formally withdraw its Article 23 proposals in early September, the central government continued to assess the situation and largely kept its own counsel, largely refraining from public comment on the situation in Hong Kong.¹²

There were even some initial indications that the central government was willing to adopt a favorable view of the protests. Using a word which would soon take on a charged meaning in Hong Kong politics, Liu Yandong, the director of the United Work Front Department, Beijing's organ for managing the Communist Party in Hong Kong, told a group of pro-Beijing Hong Kong political and business leaders at a meeting in Shenzhen in late August that the demonstrators were "patriotic."¹³

Soon after the protest, Beijing came to the conclusion that Hong Kong's problems stemmed from the sluggish economy. Fix the economy, the argument went, and political passions would cool, and support for Tung's government and the pro-Beijing political parties would begin to revive.¹⁴ This analysis reflected the traditional view of Hong Kong as a money city, one in which political issues were, by and large, the province of economic elites.

The primary vehicle for executing this policy of economic engagement was the so-called Closer Economic Partnership Agreement, or CEPA. Under CEPA, which was drawn up before the protests but not finalized until after July 1, Hong Kong companies are allowed greater access to China, and tariffs on a wide range of Hong Kong goods and services imported into China were eliminated. The central government also significantly eased travel restrictions to Hong Kong, thus increasing tourism revenues for the city.

¹¹ Human Rights Watch interviews, Hong Kong, July 2004.

¹² Human Rights Watch interviews, Hong Kong, July 2004.

¹³ John Pomfret, "China Trying a Softer Sell in Hong Kong," *Washington Post*, August 28, 2003, p. A18.

¹⁴ Human Rights Watch interviews, Hong Kong, July 2004.

As Beijing was formulating its new policy toward Hong Kong, the SAR government was attempting to find a way to salvage its Article 23 proposals. On July 6, Liberal Party head James Tien withdrew his party's support for the government's bill. Tien also resigned his seat on the Executive Council, Hong Kong's executive cabinet. Tien's switch meant that the government no longer had enough votes in the Legislative Council (LegCo) to pass the bill. Rather than face almost certain defeat, Chief Executive Tung announced in the early morning hours of July 7 that the bill would be delayed. On September 5, the government announced that the bill was withdrawn.

Although Beijing did not react publicly to the announcement of the withdrawal of the Article 23 bill, September 5 was widely seen as the first step in the change in Beijing's approach to Hong Kong that emerged over the next several months. According to one analyst interviewed by Human Rights Watch:

Around September, the Politburo came to some conclusions about Hong Kong, including how to deal with demands for universal suffrage. Since then, they have taken a more hands-on, proactive approach. They have become more outspoken on Hong Kong issues.¹⁵

This outspokenness and more direct intervention did not manifest itself, however, until after the November District Council Elections.

The November elections

The November 23, 2003, District Council elections offered the first opportunity for voters to express their opinion at the ballot box since the July 1 protest. Although the District Councils are not particularly powerful, a district council seat can serve as a possible springboard for a run for the Legislative Council (LegCo).

The District Council elections also offered the first opportunity for Beijing to measure the success of its strategy of increased economic cooperation, and for observers of Hong Kong politics to take the political temperature of the Special Administrative Region.

By any measure, the November elections were a strong repudiation of the pro-Beijing political parties, of the Tung administration, and, indirectly, of Beijing, which was seen as having major influence over the Tung administration in general and the Article 23

¹⁵ Human Rights Watch interview with Hong Kong-based analyst, Hong Kong, July 2004.

proposals in particular. Pro-democracy candidates dominated the elections, dealing the pro-Beijing parties a serious setback.

The pro-Beijing Democratic Alliance for the Betterment of Hong Kong (DAB) was devastated by the loss, and DAB head Tsang Yok-sing announced that he would resign the party chairmanship the day after the elections.¹⁶

The setback suffered by the DAB was a clear sign that Beijing's economic approach to Hong Kong had not been successful, and, faced with a failed strategy, the central government reverted to the politics of polarization and attack. As one pro-democracy politician observed, Beijing's money politics failed to get at the reason the people of Hong Kong took to the streets. "They wanted to bribe people of Hong Kong into not asking for democracy," said Martin Lee, a prominent Democratic Party LegCo member. "But it's not working."¹⁷

In the eyes of some, there was also a certain amount of payback in Beijing's new sharp-elbowed approach. "Beijing viewed itself as lenient, and Hong Kong, in their view, was ungrateful," one Hong Kong watcher noted. "That to them was totally unforgivable."¹⁸

Others predicted that the loss would sour Beijing on democracy: according to several observers, the Basic Law's ten-year time frame for democratization was based on the notion that, over a ten-year period, Beijing and pro-Beijing parties could win over the people of Hong Kong. The bungled move on Article 23 and the November elections were indisputable indicators that that goal was no longer attainable, at least not by 2008.

In an analysis that would soon seem prescient, both pro-Beijing and pro-democratic figures warned that the election results would change Beijing's policy on democratization. Shiu Sin-por, the head of a pro-Beijing research group in Hong Kong, noted that the election results would "make Beijing think twice or three times before they have more elections."¹⁹

Emily Lau, the head of the pan-democratic Frontier Alliance, made a similar point: "They will be more reluctant to give Hong Kong more democracy, there's no doubt

¹⁶ Keith Bradsher, "Hong Kong voters snub Beijing again," *International Herald Tribune*, November 24, 2003.

¹⁷ Human Rights Watch interview with Legislative Councilor Martin Lee, July 2004.

¹⁸ Human Rights Watch interview, Hong Kong, July 2004.

¹⁹ Keith Bradsher, "Hong Kong voters snub Beijing again," *International Herald Tribune*, November 24, 2004.

about it. Beijing may be scared off by this, but if Beijing sees many Hong Kong people want this, I hope Beijing won't be so foolish as to rush in and say you can't have it.”²⁰

At the very least, the November elections demonstrated that the July protests were not driven primarily by economic concerns, and that the people of Hong Kong did want to see progress on political reform. “After the July 1 rally, the aspirations for democracy had not died down,” said one Hong Kong journalist who covered the July protests and the November elections. “When there was an actual opportunity for people to cast their votes, they made it pretty clear what they wanted. After (the November elections), Beijing needed to make its own position clear.”²¹ Starting in early December 2003, Beijing began to do just that.

²⁰ Ibid.

²¹ Human Rights Watch interview, Hong Kong, July 2004.

A Question of Patriotism

Beijing was pressed to take action for two reasons: First, having chosen not to remove Tung, the central government was faced with a significantly weakened chief executive. Second, Hong Kong had already begun a process of constitutional review, one in which decisions would be made about whether and how to change Hong Kong's political system so as to allow for greater democratization of the electoral process. Given Tung's weak hand, it was clear that, if constitutional review were allowed to go forward without any interference from Beijing, then the SAR government would be forced to give ground and allow at least some democratization to move forward.

Under the Basic Law, Hong Kong's mini-constitution, the electoral framework is set for all elections prior to the 2007 election of the chief executive and the 2008 Legislative Council elections. If the electoral process for the 2007 and 2008 elections is to be changed, then, according to Annex I and II of the Basic Law, the changes must be approved by a two-thirds majority of the Legislative Council and the Chief Executive.

The main provisions of the Basic Law pertaining to elections are Article 45, Article 68, and Annex I and II. Articles 45 and 68 state that the “ultimate aim (for Hong Kong elections) is... universal suffrage.” Annex I of the Basic Law lays out the process for the selection of the Chief Executive, and Annex II covers the Legislative Council. Both annexes impose limits on the conduct of elections until 2007 and 2008, for the Chief Executive and the Legislative Council, respectively.

Because the method for electing the Legislative Council is not considered relevant to Beijing's interests or responsibilities in Hong Kong, the central government is not accorded any significant role in the process of changing the format for the Legislative Council elections after 2007. Beijing's role is limited to mere notification.²² Changes to the provisions covering the election of the Chief Executive, on the other hand, must be approved by Beijing.

In order for any electoral change to be made, the SAR government must first legislate. Well before the November 2003 District Council elections, the Hong Kong government announced its plans to begin consultation with the public on constitutional review – specifically changes to Hong Kong's election framework – in early 2004.²³

²² The process for changing Hong Kong's election laws for the Legislative Council is laid out in section III of Annex II. Under Annex II, the Hong Kong government must notify Beijing of any changes “for the record.”

²³ Chris Yeung, “Constitutional review plans are afoot, says Tung,” *South China Morning Post*, July 31, 2003.

Given the comparatively low popularity of the pro-Beijing parties in late 2003, real reform of the electoral system would likely have meant that the pro-democratic parties would finally regain their pre-1997 majority in the Legislative Council. By all accounts, Beijing was not ready for this.²⁴

Once the decision was made to clamp down on democratization in Hong Kong, there were two questions to answer: how and when. As for how, the central government's options were limited. If the Hong Kong government were to simply reverse course on constitutional reform, the hand of Beijing would be obvious, and the Hong Kong government's local political standing would be further damaged, perhaps irreparably. The central government would have to act on its own.

The question of when was also a political one: if the central government was going to act, it would have to act relatively quickly. If no action was taken before July 1, 2004, then the question of universal suffrage would likely bolster turnout and lead to a repeat of July 1, 2003. According to one Hong Kong political analyst, "This would have put Beijing and the Hong Kong government in a very difficult spot. The protest would have been focused on a demand that Beijing could not meet."²⁵

In addition, if no action was taken before the 2004 election season, then the pan-democratic camp would be able to use universal suffrage as a campaign issue, and likely dramatically boost turnout and their own vote total as a result. "If they allowed the process to drag on, then electoral reform would become an election issue," said one Democratic legislator. "The pro-democratic camp would use the issue to attack the DAB and other pro-Beijing parties."²⁶

Regardless of when the final decision was made, it is clear that Beijing took a new approach to Hong Kong starting in early December 2003. The new approach was more vocal and more direct. As of December 2003, the central government became less willing to merely voice its concerns to the Hong Kong government, and began implementing policy on its own. According to one pan-democratic legislator, with Tung sidelined, "it's now naked confrontation with the government. There was a shield. Now Beijing is directly responsible."²⁷

²⁴ Human Rights Watch interviews, Hong Kong, July 2004.

²⁵ Human Rights Watch interview, Hong Kong, July 2004.

²⁶ Human Rights Watch interview, Hong Kong, July 2004.

²⁷ Human Rights Watch interview, Hong Kong, July 2004.

The first indication of Beijing's more hands-on approach took place during Chief Executive Tung's visit to Beijing in early December. On December 3, Chief Executive Tung went to Beijing to consult with the central government on the political situation in Hong Kong. During the meeting, Chinese President Hu Jintao told Tung that Beijing was "highly concerned" about the ongoing constitutional review in Hong Kong. Hu's remarks were followed by comments by four senior mainland academics, all of whom argued that Beijing had a primary role deciding on in any change to Hong Kong's political structure.

Articulating publicly for the first time arguments that would become a staple of Beijing's rhetoric on Hong Kong over the coming months, the four academics stressed the "one country" aspect of the "one country, two systems" framework, which, they argued, made it clear that Beijing must play a part in virtually any major decision having to do with Hong Kong. More specifically, the Beijing academics stated that Hong Kong's electoral system "had a bearing on the relationship between the Central government and the SAR." As such, it would not be an infringement on Hong Kong's autonomy for Beijing to have an active role in decisions over how to amend that system, if at all.

This view contradicted earlier statements by the central government on the issue. In years past, Beijing had clearly stated that electoral arrangements were the exclusive province of Hong Kong. Four years before the handover, in March 1993, Lu Ping, the then-Director of the Hong Kong and Macao office of the State Council, made clear that, after 2007, further reforms would be up to the people of Hong Kong:

As for how the legislature will be constituted after its third term, all that is needed is for two-thirds of legislators to approve, the chief executive to give his consent, and then report to the Standing Committee of the National People's Congress for the record. There is no need for central government approval. How Hong Kong develops democracy in the future is entirely within the autonomy of Hong Kong.²⁸

But, as of December 2003, Beijing began to articulate a different view.

This changed view was reiterated in mid-January 2004, during the visit of mainland academics Xiao Weiyuan and Xia Yong to Hong Kong. During the visit, the academics

²⁸ Frank Ching, "Be Consistent," *South China Morning Post*, March 30, 2004. As Ching pointed out, "Mr. Lu was Beijing's top official for dealing with Hong Kong matters. He was also deputy secretary-general of the Basic Law Drafting Committee. His words certainly should be considered authoritative."

argued that direct election of the Chief Executive in 2007 was inconsistent with the Basic Law principle of “gradual and orderly progress,” and once again emphasized the importance of “one country” over “two systems.” Beijing spent the first three months of 2004 putting the substance of the interpretation – that political reform was Beijing’s business – into the public sphere, so as to prepare the political ground for the issuance of the official legal document.

The Patriotism Campaign

The second stage of Beijing’s more aggressive approach to Hong Kong was the so-called patriotism campaign, in which the central government emphasized that only those politicians with the proper “patriotic” credentials could rule Hong Kong. Patriotism was defined by the government as not only loving Hong Kong, but also, it was implied, allegiance to the Communist Party.

The campaign was not simply politics as usual: in launching an attack on the pan-democrats in general, and on its most prominent spokesmen and women in particular, Beijing was signaling to Hong Kong’s voters that supporting the pan-democrats would come with a price. “They wanted to create an environment of intimidation in which Hong Kong people might rationally choose not to confront Beijing,” one Hong Kong academic who has followed the campaign closely noted. “The intimidation makes them (voters) realize that being pro-democracy comes at a cost.”²⁹

In essence, the central government was introducing a mainland political tool to Hong Kong, that of the veiled threat made through a public ideological attack. The reference to “patriotism,” in particular, would not be lost on Hong Kong’s population, much of which had emigrated to Hong Kong both in search of greater economic opportunity and to escape political repression. For decades in China, questioning an individual’s allegiance to the state and to the party was the first step in a process of political purge, imprisonment, or worse.

The first sign of the coming campaign came in late January, when the Hong Kong newspaper *Ming Pao* published an account of an argument between Donald Tsang, Hong Kong’s chief secretary for administration, and Shiu Sin-por, the executive director of the One-Country Two-Systems Policy Research Institute. In the debate, Shiu argued that

²⁹ Human Rights Watch interview, Hong Kong, July 2004.

patriotism takes precedence over democracy, and that “one country” is more important than political reform.³⁰

The patriotism campaign had all the hallmarks of an old-style pre-reform Chinese communist propaganda campaign. Before it was over, the patriotism campaign featured the words of a venerated Chinese patriarch, violent and veiled rhetorical attacks by unnamed senior Chinese officials, and repeated references to a “small minority” of Hong Kong politicians who were allegedly not patriotic. The campaign was sustained over a period of several weeks, with new attacks on an almost-daily basis. Senior officials in Beijing chimed in, regardless of the relevance of Hong Kong affairs to their official portfolio, and local pro-Beijing officials in Hong Kong either took part themselves or, more often, stood by and said nothing.

The opening salvo of the campaign was fired in mid-February, when the official Xinhua news agency published an article emphasizing the importance of “patriotism” among Hong Kong’s leaders, and declaring that those who were not sufficiently patriotic were unfit to rule Hong Kong. Several additional articles of a similar tone followed. Although the articles named neither the Democratic Party nor any individual member of the pro-democratic camp, it was clear to all observers to whom Beijing was referring.

Although Xinhua stopped short of naming names, pro-Beijing politicians in Hong Kong did not. On February 13, Tsang Hin-chi, the head of the Chinese General Chamber of Commerce and a Hong Kong representative to the National People’s Congress, named Democratic Party legislators Martin Lee and Szeto Wah as unpatriotic.³¹

But Tsang also cast a wider net, declaring that those who opposed the government’s Article 23 proposals and those who organized the July 1, 2003 protests were also unpatriotic. “I can definitely say that those who organized the anti-Article 23 protest are not patriots, because they dared to oppose and vote down the national security law,” Tang said, effectively equating the exercise of the basic rights of free expression and free assembly with a lack of patriotism.³²

³⁰ Hong Kong Journalists Association and Article 9, *Beijing Turns the Screws: Freedom of expression in Hong Kong under attack*, 2004 Annual Report, June 2004, p. 6.

³¹ Cannix Yau, “Patriot Wars,” *Hong Kong Standard*, February 14, 2004.

³² *Ibid.*

Despite his key role in forcing the government to withdraw its Article 23 proposals, Tsang specifically exempted James Tien, head of the Liberal Party, from the ranks of the unpatriotic.

On February 16, the pro-Beijing *Wen Wei Po* published an interview with an unnamed Chinese government official who warned that Beijing might be forced to act if the democrats won the Legislative Council in the upcoming elections. According to the newspaper, the official refused to rule out the dissolution of the Legislative Council as a possible response. “I have a knife,” the official said. “Usually it is not used, but now you force me to use this knife.”³³

The next day, An Min, the central government’s vice-minister of commerce, continued the rhetorical barrage, implying that the pan-democratic camp had “distorted the principles of patriotism.” Responding to a reporter’s question, An connected patriotism to support of the Communist Party:

Patriotism is not abstract. Some people have been making ridiculous comments on the issue, deliberately distorting the principles of patriotism... There are some who deliberately made confusing remarks, saying loving the country is not tantamount to loving the Communist Party. The Chinese Communist Party represents the Chinese people and it should also represent Hong Kong compatriots.³⁴

Beijing continued its campaign on February 20th, with the republication of a twenty-year-old speech by former Chinese patriarch Deng Xiaoping on the front page of the *People’s Daily*. Ostensibly issued to mark the upcoming 14th anniversary of the publication of the Basic Law, the republication of the speech was read as another veiled attack on the democratic camp.

Ironically, in his remarks, Deng himself adopted a very broad definition of who in Hong Kong would be considered a patriot, as a number of Hong Kong newspapers pointed out:

³³ Edward Cody, “Hong Kong Reminded that China is in Charge; Beijing Issues Warnings Against Direct Elections,” *Washington Post*, February 19, 2004.

³⁴ Josephine Ma and Gary Cheung, “Patriot games anger Beijing official – don’t even think about jeopardizing stability – vice minister,” *South China Morning Post*, February 18, 2004. After making the link between patriotism in Hong Kong and support for the Communist Party, Vice Minister An hedged his remarks a bit, saying “I am not saying that you must love the Chinese Communist Party. However, for people who want to jeopardize the stability of Hong Kong and that of the People’s Republic of China: no way!”

What is a patriot? A patriot is one who respects the Chinese nation, sincerely supports the motherland's resumption of sovereignty over Hong Kong and wishes not to impair Hong Kong's prosperity and stability. Those who meet these requirements are patriots, whether they believe in capitalism or feudalism or even slavery. We don't demand that they be in favor of China's socialist system; we only ask them to love the motherland and Hong Kong.³⁵

Despite Deng's very inclusive definition, an editorial that ran with the text of the speech stated that patriots are those who support the central government. The editorial selectively quoted Deng's definition to bolster that view.

On February 24, Xinhua published an article by Tang Hua, deputy chief editor of the Xinhua magazine *Outlook*, which claimed that certain Hong Kong politicians are guilty of "subversion":

Some people continue to participate in or even lead political organizations aiming at opposing the leadership of the Communist Party and subverting the central government, using democracy as a shield.³⁶

Although Tang did not identify these alleged subversive elements by name, it was clear that he was referring to the democrats and their allies.³⁷

The rhetoric reached a crescendo just before, during and especially after Democratic legislator Martin Lee was invited to Washington to testify before the U.S. Congress on the political situation in Hong Kong in early March. As he had done several times in the past, Lee, the longtime head of the Democratic Party, testified before the subcommittee of the Senate Foreign Affairs Committee that deals with East Asia on the political situation in Hong Kong. His remarks were not particularly long, and focused on the July 1 protest, the government's Article 23 proposals, and the need for democratic reforms in Hong Kong.

³⁵ "Deng Xiaoping's remarks on 'one country, two systems,'" Xinhua News Agency, February 19, 2004.

³⁶ "China turns up the heat on HK democrats," Reuters, February 25, 2004.

³⁷ In case there were any doubts, the pro-Beijing Wen Wei Po published an article the next day, stating that Tang was referring to the democrats.

Lee's remarks, and the fact that he made them in the United States, touched off a firestorm of criticism. On March 7, Vice-Minister An Min once again took the lead, calling Lee a traitor and a liar and linking Lee's testimony in the U.S. to the activities of his father, Li Yinwo, who An called an anti-communist. "Anyone can see that (Lee's visit to the U.S.) was not good for Hong Kong. How can treachery be considered good for Hong Kong?", An told reporters.³⁸

Much of the ensuing rhetoric, if virulent, was at least colorful: the Hong Kong edition of the *China Daily* launched an attack on Lee under the headline, "Martin Lee lets U.S. Senate act as if Hong Kong was 51st State." State Councilor Tang Jiaxuan took a more metaphorical approach:

"There is no need whatsoever to go worship at a foreign temple and invite a foreign Buddha to make irresponsible remarks," Tang said.³⁹ The pro-Beijing *Wen Wei Po* dubbed Lee a "clown" and claimed that he was a "pawn" of the U.S. government.⁴⁰

By April 2004, the patriotism campaign had largely fizzled out, although some politicians still make veiled comments on the importance of patriotism, and references to the importance of patriotic credentials still appear from time to time in the pro-Beijing media.

³⁸ Cannix Yau, "Minister slams Lee, turns on journalists," *Hong Kong Standard*, March 8, 2004. Lee's father, Li Yinwo, was a general in the Guomindang army during the Chinese civil war. After the Nationalists were defeated by the Communists in 1949, Li brought his family to Hong Kong rather than follow the Nationalists to Taiwan. Lee has linked his father's choice to corruption in the Guomindang under Chaing Kai-shek.

³⁹ "HK lawmaker Martin Lee branded 'traitor' over US trip," Kyodo News International, March 9, 2004.

⁴⁰ "Hong Kong democracy leader a 'pawn of the US': critics," Agence France-Presse, March 5, 2004.

A Question of Interpretation

After months of sharp-edged public comments about Beijing's role in any decision about political reform in Hong Kong, the central government announced on March 26 that it would issue an interpretation of the Basic Law under Article 158 of the Basic Law.⁴¹

The announcement was given without warning, and the timetable given was less than two weeks. Despite repeated statements over several years that political reform would be handled by Hong Kong, the central government apparently did not even inform the Chief Executive of its intention to issue an interpretation until a day before the public announcement.⁴²

On April 6, the central government issued its interpretation. Some aspects of the interpretation were uncontroversial: the Standing Committee reflected the generally accepted view when it ruled, for example, that the reference to 2007 in the Basic Law meant that the rules governing the elections scheduled for 2007 and 2008 could be amended.

But the central element of the interpretation was deeply problematic. In its interpretation, the central government latched on to the phrase "if there is a need" in Annex 1, Section 7 and Annex 2, Section 3, and declared that Beijing was the arbiter of whether any such "need" existed.⁴³ In essence, the interpretation by the Standing Committee added a new procedural requirement in order to democratize Hong Kong's electoral system. Under the interpretation, the Legislative Council is barred from acting on election reform until after Beijing has given its blessing.

⁴¹ Under Article 158, "(t)he power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress." But Beijing's power to interpret the Basic Law under Article 158 is not unlimited. It must exercise its interpretation power in the context of other provisions in the Basic Law, including its obligation to uphold the common law system in Hong Kong, its responsibility to protect human rights in Hong Kong, and the right of Hong Kong to a high degree of autonomy under the Basic Law. Indeed, Beijing had only had issued an interpretation once before, in 1999, at the request of the Hong Kong government. Many experts believe that Beijing's Article 158 power exists mainly to resolve disagreements between different branches of the SAR government over the meaning of the Basic Law, but there was no inter-governmental dispute this time.

⁴² Foreign Commonwealth Office, "Six-monthly Report on Hong Kong, January-June 2004," p. 7.

⁴³ Article III, section 2 reads:

With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for the record.

Although the text of the Basic Law requires only that any changes made to Hong Kong's election law for the Legislative Council be "registered" with Beijing, the interpretation also states that Beijing has the power to approve – and possibly formally reject – any changes. In other words, under the interpretation, Beijing has the first and last word on the matter of electoral reform.⁴⁴

Just weeks later, Beijing ended any possibility that it would use the increased powers that it accorded to itself to speed the pace of democratization. On April 26, the Standing Committee of the NPC issued a Decision flatly rejecting the idea of direct elections by universal suffrage for the Chief Executive in 2007, or for the entire Legislative Council in 2008. The Decision also forbade any change in the ratio of directly elected Legislative Council seats to functional constituency seats.⁴⁵

Beijing's rejection of reform was admittedly not absolute, however. According to the decision, as long as the absolute ban on universal suffrage is adhered to, "appropriate modifications" of the election rules for 2007 and 2008 would be permitted. Of course, any such change would also be subject to the April 6 interpretation, and thus would have to be pre-approved by Beijing.

⁴⁴ Because the interpretation increases Beijing's power by adding procedural requirements not found in the Basic Law, it is better viewed as an amendment to the Basic Law. Under Article 159 of the Basic Law, all amendments must be approved by a 2/3 vote of the Hong Kong LegCo, and no amendment may "contravene the established basic policies of the People's Republic of China regarding Hong Kong," including those related to human rights.

⁴⁵ For more on Hong Kong's flawed election system, see Section VI below. A detailed description of Hong Kong's functional constituency system can be found in Simon N.M. Young and Anthony Law, "A Critical Introduction to Hong Kong's Functional Constituencies," Civic Exchange, July 2004.

Intimidation of Prominent Journalists

Albert Cheng and Wong Yuk-man are longtime fixtures on Hong Kong's media scene. Both are known for their on-air rants criticizing the government but, beyond that, the two men have different broadcasting styles and different pet issues. "They would be rude to callers that they disagreed with," one former listener said, remembering how callers who disagreed with the hosts would regularly be shouted down. "They were vitriolically (sic) anti-Beijing."⁴⁶

"They were immensely popular, very influential broadcasters," a former listener and expert on human rights issues in Hong Kong said. Yes, there were other broadcasters who are critical of the government, but, he added, "they were much better entertainment value."⁴⁷

Both men locked horns with the government over its handling of SARS in 2003, both were heavily critical of the government's Article 23 proposals, and both urged their listeners to take part in the July 2003 protest. The two men also took to the streets that day; Cheng marched along with his listeners, and, shouting into a megaphone, urged passersby to take part.⁴⁸

Raymond "Mad Dog" Wong Yuk-man, 53, was the host of the talk show "Close Encounters of a Political Kind," broadcast from 6.30 to 8pm on weeknights on Hong Kong's Commercial Radio. "You used to hear him in every taxi," one listener recalled. "He had an aggressive, grating style." Wong was known for his loud fulminations against pro-Beijing politicians and businessmen in Hong Kong.⁴⁹

Albert "Tai Pan" Cheng King-hon, 58, is no stranger to controversy. A millionaire many times over, Cheng made his fortune in the early 1980s by bringing out the first Chinese-language editions of *Playboy* and *Forbes* in Hong Kong. In 1995, Cheng began broadcasting "Teacup in a Storm," which quickly became Hong Kong's top-rated radio show. Cheng was almost killed in a butcher knife attack in August 1998 outside his studio at Commercial Radio. The attack came soon after Cheng made comments about organized crime in Hong Kong on his show. His assailants were never brought to justice.

⁴⁶ Human Rights Watch interview, Hong Kong, July 2004.

⁴⁷ Human Rights Watch interview, Hong Kong, July 2004.

⁴⁸ Human Rights Watch interview, Hong Kong, July 2004.

⁴⁹ Hannah Beech, "Making Waves," *Time Asia*, July 14, 2003.

Cheng ran afoul of the government in April 2003, when he attacked two government officials in separate shows for what he saw as their incompetence. Cheng called a government housing official “doglike,” and insulted a health department official for failing to protect health workers against SARS.

In a decision that raised concerns over press censorship, the government Broadcasting Authority issued an official reprimand to Cheng, citing in particular his use of language, his habit of interrupting his on-air guests, and the fact that he did not give his guests equal time.⁵⁰ Cheng pled guilty on all counts. “I’m rude, and why not? There are no laws that say I can’t be rude,” Cheng told a journalist after the warning was issued. “I’m rude, I interrupt, and I’m impolite.”

The timing of the censure also struck many observers as strange, coming just weeks before the sixth anniversary of the Hong Kong handover and the planned July 1 memorial protests. “I’ve been calling high officials dogs for many, many years,” Cheng said. “I don’t know why this is a problem now.”⁵¹

Unsurprisingly, both men are viewed – and view themselves – as barometers of press freedom in Hong Kong. Even before the handover, Cheng was held up as a man to watch, as a good yardstick of press freedom in Hong Kong. Wong, not one to mince words, told a journalist, immodestly, perhaps, but accurately, “I’m an icon of free speech in Hong Kong.”⁵²

Because of their huge audiences, both men were in a position to influence government policy, and both used their radio shows to take on the Hong Kong government. “They (the two hosts) were very effective,” one listener said. “They put a lot of pressure on the government, leading from time to time to a change of policy.”⁵³

When the SARS crisis hit Hong Kong, Cheng in particular was very vocal in his dissatisfaction with the government, voicing criticisms that found many in Hong Kong nodding their heads in agreement. “There were a lot of other incidents where (Albert

⁵⁰ Martin Regg Cohn, “Loss of free speech feared as radio show host silenced,” *Toronto Star*, June 30, 2003.

⁵¹ Rebecca Buckman, “Hong Kong is accused of gagging broadcaster,” *Asian Wall Street Journal*, June 19, 2003. Cheng stepped down from his radio show for several weeks after the government warning.

⁵² Hannah Beech, “Making Waves,” *Time Asia*, July 14, 2003.

⁵³ Human Rights Watch interview, Hong Kong, July 2004.

Cheng) was able to stir up a response,” said one listener. “And government officials felt pressure from him.”⁵⁴

But Cheng didn’t just criticize: he also tried to mobilize the public to take action. “He raised money for all health officials to have masks,” one pro-democratic legislator recalled. “Large sums of money were raised.”⁵⁵ Cheng also urged his listeners to donate oranges to health workers, reflecting the popular perception that vitamin C would be helpful against SARS.

The threats against Cheng and Wong

In March, Wong and Cheng received separate phone calls from a prominent Hong Kong businessman with known triad links. Wong and Cheng were both told by the Hong Kong businessman that he was calling on behalf of a senior Beijing official, and that this official wanted them to stop broadcasting and to leave Hong Kong until after the September elections.⁵⁶ They were told that they could come back to Commercial Radio after the elections.⁵⁷

The threats against Cheng and Wong were oddly predicted by *Next* magazine, which ran an article reporting that a Beijing official had ordered that action be taken against “one newspaper, one magazine, and two microphones.”⁵⁸ The microphones referred, of course, to Cheng and Wong, the magazine in question was *Next* itself, and the newspaper was *Apple Daily*. Both *Next* and *Apple Daily* are published by Next Media Group, and both publications are known for their pro-democratic stance and strong criticism of Beijing.

On Wednesday afternoon, March 31, soon after the phone calls, vandals splashed the offices of Innocorp Limited with red paint.⁵⁹ Innocorp is jointly owned by Cheng and a friend, although Cheng’s financial involvement with the company was not widely known. After the attack, Cheng related the incident to his outspoken criticism of the government. “The use of violence to intimidate or prevent people from expressing their

⁵⁴ Human Rights Watch interview, Hong Kong, July 2004.

⁵⁵ Human Rights Watch interview, Hong Kong, July 2004.

⁵⁶ “Revealed: How the radio hosts were intimidated,” *Spike* magazine, July 9-15, 2004.

⁵⁷ Human Rights Watch interview, Hong Kong, July 2004.

⁵⁸ Human Rights Watch interview, Hong Kong, July 2004.

⁵⁹ Stella Lee, “Albert Cheng says death threats may force him off air,” *South China Morning Post*, April 2, 2004. Red paint is often used as a symbol of blood by Hong Kong triads.

views will damage the ‘one country, two systems’ concept and affect the stability and prosperity of Hong Kong,” Cheng said.⁶⁰

The next day, Cheng announced that he was taking a few days off from his radio show to mull things over. A month later, on April 29, Cheng announced that he was going on a break of several months, but said that he would return to the show by the end of the year.

Mr. Wong also had the message brought home to him in short order. In mid-March, a restaurant owned by Wong was vandalized, and on March 16, Mr. Wong was assaulted by a group of triad members. Three men were arrested after the attack.⁶¹ On May 13, Wong issued a statement announcing that he was taking a leave from his show. In his statement, Wong related his departure to fatigue: “I am tired physically and mentally. I need a rest. I am sorry, but I can’t talk on the air for a period of time.”⁶² The week before he announced his departure, Wong also linked the attacks against him to his political views his public criticism of the government.⁶³

According to Hong Kong-based *Spike* magazine, the Hong Kong police obtained an account of the threats against Wong and Cheng. The police did question the businessman who made the threatening phone calls, but did not arrest him. “Police did go to interview him,” an informed observer told Human Rights Watch. “He was well-prepared. He had his lawyers with him, and he refused to answer any questions.”⁶⁴

As of this writing, neither Cheng nor Wong is scheduled to return to Commercial Radio after the elections. Although the reasons for the hosts’ departure are in dispute, Commercial Radio’s failure to retain its two highest-rated hosts sends a troubling message. According to one Hong Kong analyst, “There is now a fear that Commercial Radio is now playing along with what Beijing wants... the net effect is that they have been gotten rid of.”⁶⁵

⁶⁰ Michael Ng, “Attack forces job rethink,” *Hong Kong Standard*, April 2, 2004.

⁶¹ Keith Bradsher, “Radio host quits job and flees Hong Kong,” *New York Times*, May 15, 2004.

⁶² Reuters, “Another Hong Kong critic of Beijing goes off air,” May 13, 2004.

⁶³ Human Rights Watch interview, Hong Kong, July 2004.

⁶⁴ Human Rights Watch interview, Hong Kong, July 2004.

⁶⁵ Human Rights Watch interview, Hong Kong, July 2004

Although concerns over self-censorship in Hong Kong have persisted since the handover, the threats against Wong and Cheng represent a new phenomenon in Hong Kong. According to one Hong Kong human rights activist:

This is unprecedented: triads killing other triads, this has a long history. But there is no other case of a public figure being forced to give up his public post because of threats from triads.⁶⁶

The threats against Wong and Cheng have increased concerns among journalists that they have to watch what they say. According to one journalist, “you have to at least think about it... you do the calculus: will this get me in trouble?”⁶⁷

Another journalist expressed frustration over the constant back and forth with editors anxious not to cross the line: “If you write something, you are told to tone it down. It’s always a negotiation.”⁶⁸

The process at most newspapers is a subtle one, rather than one of open censorship. “Some managers have been told, you should be careful (about what you publish). But they would not tell you what to write.”⁶⁹

Despite the restrictions, however, journalists continue to file their stories, and report on the most sensitive issues in Hong Kong and in China. Many take a pragmatic approach: “If you realize that there is nothing that you can do, then you leave,” said one journalist. “Otherwise, if you can still have an impact, then you might stay... Some people have quit, but they don’t want to make a fuss because they still want to work in this industry.”⁷⁰

The pressure is subtle, and thus in some ways even more difficult to fight. “It’s difficult to think of a solution,” said Mak Yin-ting, a former head of the Hong Kong Journalists Association. “We feel helpless.”⁷¹

⁶⁶ Human Rights Watch interview, Hong Kong, July 2004.

⁶⁷ Human Rights Watch interview, Hong Kong, July 2004.

⁶⁸ Human Rights Watch interview, Hong Kong, July 2004.

⁶⁹ Human Rights Watch interview, Hong Kong, July 2004.

⁷⁰ Human Rights Watch interview, Hong Kong, July 2004.

⁷¹ Human Rights Watch interview with Mak Yin-ting, Hong Kong, July 2004.

Although the high-profile cases of Albert Cheng and Wong Yuk-man have been the subject of the most attention, other journalists have also been warned to be careful about what they write.⁷² And others have paid a price for their work, albeit a much smaller one than Cheng and Wong. One journalist told Human Rights Watch that he was transferred out of the news bureau after making comments critical of the government's Article 23 proposals. "They said that they wanted to give me more thorough training," he said, which he viewed as unusual for a journalist with his level of seniority and experience.

This journalist was eventually transferred back to his old position, but not until after he wrote a letter to his supervisor, demanding an answer. "I asked why, but no one could answer me. My direct supervisor could only tell me what he was told: you are transferred."⁷³

For some journalists, there is no need to self-censor after the threats against the talk show hosts. "Most journalists say that it's not going to happen to me, because I'm not critical of Beijing," one journalist said.⁷⁴

The Allen Lee case

After Cheng stepped down, Allen Lee Peng-fei, a former member of Legislative Council and a member of the Hong Kong delegation to the National People's Congress, agreed to take over the show until Cheng's return. Lee had taken over for Cheng before; when Cheng took time off after receiving a warning from the government in 2003, Lee filled in.

Unlike Albert Cheng, whose checkered past is part of his raffish on-air charm, Lee, 64, has long been a part of Hong Kong's elite. "You can't get more establishment than Allen Lee,"⁷⁵ a friend of his joked. A businessman and a twenty-year veteran of the Legislative Council, Lee, a former chairman of the Liberal Party, has nearly three decades in public life in Hong Kong under his belt. Before he resigned his seat in May, Lee was a member of the Hong Kong delegation to the National People's Congress.

⁷² Human Rights Watch interviews, Hong Kong, July 2004.

⁷³ Human Rights Watch interview, Hong Kong, July 2004.

⁷⁴ Human Rights Watch interview, Hong Kong, July 2004.

⁷⁵ Human Rights Watch interview, Hong Kong, July 2004.

Lee took over for Albert Cheng as the on-air host of “Teacup in a Storm” in early May. Three weeks later, on May 19, Lee resigned.

The first public sign of pressure on Lee was an editorial in the May 15th Hong Kong edition of the *China Daily*. The editorial attacked Lee for his on-air criticism of the Article 158 interpretation issued by Beijing in April, and implied that his commentary was improper, given his seat in the NPC. “As an NPC deputy, he should not criticize the NPC and show no respect for (its) interpretations,” the editorial declared.⁷⁶ Once again, the implication was made that criticism of the government, no matter how well meaning or mildly phrased, was improper.

The immediate impetus for Lee’s resignation was a phone call that Lee received from a former senior mainland Chinese official, Cheng Shousan. According to Lee,

On May 18 at 10.30pm, I received a phone call from a man named Chen. He said that he is now retired and is a guest professor. He said that we had not met for many years, and that he was now in Hong Kong, and that he had some things that he wanted to discuss with me.

He said that many years ago, he was at a fashion show, and that my daughter was the MC, and that I and my wife were also there. He said he sat next to my wife, and he said that my wife – I thanked him so much – was very virtuous, and that my daughter was very beautiful, and that she spoke English very well, and that she left quite a deep impression on him.

After I heard him say this, I asked him whether he had called me to talk about my wife or my daughter! I said it was getting late, and that the next day in the morning I had to host the “Teacup in a Storm” program, and so what was it that he wanted to say to me? He said that he knew

⁷⁶ Louis Chan, “Allen Lee’s remarks belie his role in NPC,” *China Daily*, May 15, 2004. The newspaper returned to the subject just days later, on May 19, again arguing that it was improper for Lee to criticize a body of which he was a member. Louis Chan, “Sensational Remarks no good for HK,” *China Daily*, May 19, 2004. In his testimony before Legislative Council at the end of the month, Lee stated that he had been informed that the *China Daily* articles did not in fact represent Beijing’s view. Allen Lee Legislative Council testimony, on file with Human Rights Watch.

that I was the host of the show, and so therefore he had come to Hong Kong, hoping to be able to speak to me.⁷⁷

To Lee, the import of Cheng's words was quite clear: that Lee should listen to what Cheng – and, presumably, members of the central government in Beijing – had to say to him about how to conduct himself as the host of “Teacup.” If he did not, Cheng implied, his wife and daughter were not unknown to those who would be displeased by Lee's choice.

Although Lee's decision to step down was initially linked only to the phone call from Cheng and the *China Daily* editorial, Lee later made clear that Cheng's phone call was by no means an isolated incident. Rather, Cheng's phone call was the latest in a string of calls, visits, and conversations with mainland officials. Cheng's call was not the first attempt to pressure Lee; instead, it was the final straw.

Lee testified before his former colleagues in the Legislative Council at a special session on freedom of expression on May 27. In his opening statement, Lee made reference to the repeated threats, interventions, and warnings that he received from various mainland officials.

Lee also made clear that, for whatever reason, there were things that he could not say.

There are some things I cannot speak about, but also I know that inside this hall, one absolutely cannot boast. A few relevant Chinese leaders at different levels have spoken to me. Members of this council, please understand, I have promises to keep, and so I will not speak about them.⁷⁸

One of the earliest interventions came after Lee took over as the host of “Teacup” in 2003:

Commercial Radio's Mr. Cai Dongwu and Mr. Xie Wenda approached me and asked me to take over as the host of “Teacup in a Storm.” They

⁷⁷ Allen Lee, testimony before the Legislative Council, May 27, 2004; copy on file with Human Rights Watch. Translation by Human Rights Watch.

⁷⁸ Allen Lee, testimony before the Legislative Council, 27 May 2004; copy on file with Human Rights Watch. Translation by Human Rights Watch.

told me that Albert Cheng left at the beginning of April, and they hoped that I could take over until the end of September. My answer at the time was that I needed to think it over. Actually, I started thinking about early August last year (2003), when the members of the Hong Kong delegation to the National People's Congress went on a visit to Inner Mongolia. While there, I was reprimanded by a Chinese official. Although we met alone and talked in detail, the conversation is still very fresh in my memory.⁷⁹

Some officials linked Lee's post at the NPC to the radio show, and implied that the two positions were somehow in conflict:

In March of this year, at the opening of the National People's Congress in Beijing, I went to a restaurant with a bunch of old Beijing friends that I have known for years. They said that were some people who had opinions about me being both a member of the NPC and a radio host... There were still many who believed that I was too critical during my time as a radio host, especially when I was hosting "Teacup in a Storm." I responded sincerely to my friends, saying that the Chinese leadership and they themselves needed to know my views on the democratic system. I believe that ...Hong Kong should move toward a democratic system.⁸⁰

Because of the repeated comments by mainland officials, Lee felt obliged to check with Wu Bangguo, the chairman of the NPC, before agreeing to come back to "Tempest," despite his prior work for the show. Lee sent word to Wu through an intermediary that Lee had been asked to step in once again as the host of "Teacup." Lee wanted Wu's view on whether there was any conflict between his NPC post and the radio program. Word came back to Lee that there was no conflict, and so he agreed to come back to the show.

Despite this prior approval, Lee was still approached by senior officials wanting to talk to him about the show. One interlocutor – Lee refers to him as an "old friend" – wanted Lee to meet once again with mainland officials to discuss the show. Aware of his friend's very senior standing, and doubtless aware that such influential friends cannot be put off lightly, Lee nonetheless refused.

⁷⁹ Ibid.

⁸⁰ Ibid.

The article in *China Daily* presumably appeared soon after that conversation, and Cheng's phone call came days after that. Cheng's later protestations to the contrary, Lee said that he did not know Cheng, and did not consider him a friend:

Actually, I have no impression of this Mr. Chen, and also cannot rely on what he said over the phone about being a former central government official; he of course knew I am the host of "Teacup in a Storm." But why did he want to meet with me?⁸¹

Beyond Cheng's questions about Lee's wife and daughter, Lee took Cheng's phone call as a signal that, despite his refusal, registered with his "friend," to meet with government officials to discuss "Teacup," nonetheless he would still be subject to a stream of visitors, requests for meetings, and innuendo-laden telephone calls.

Would there still be people that wanted to meet with me? After we spoke on the phone, I thought about it: besides my close friend from the mainland, there would be many other people who would want to talk to me, and how many times could I refuse? And could I refuse to meet with a Chinese official at any level or any Chinese leader who wanted to meet with me? If they wanted to meet with me, it was definitely because they had something they wanted to say to me about how I was hosting the show. I have already had this kind of experience before. In July of last year, when I stepped in as host of "Teacup," many people told me that they were dissatisfied, and even asked me to change the style of the show.⁸²

Rather than subject himself to continued pressure over the show, Lee decided, within hours of Cheng's late-night call, to resign from the show:

On this night, after many hours of reflection, I decided that I did not want to speak to anyone about things related to hosting the show. I knew that it was impossible for me to change my style of doing the show. If I changed, than that would be letting down Commercial Radio and the listeners of Hong Kong. And so I decided to step down as the

⁸¹ Ibid.

⁸² Ibid.

host of “Teacup.” This was my main reason for doing so. Of course, I have other principles and other reasons that I considered, but those were all secondary.⁸³

On May 31, Cheng Shousan stepped forward and identified himself as the man who had called Lee on the night of the 18th. Until he publicly identified himself, his name was unknown, even to Lee, who heard Cheng identify himself as “Chen.” Cheng largely confirmed Lee’s account of the phone call, but denied that he had any intent to pressure Lee.

⁸³ Ibid.

The September Elections

The electoral framework: flawed democracy

Hong Kong's Legislative Council electoral arrangements are a confusing hodgepodge of leftover British colonial arrangements designed to minimize the public's role in governing, and new rules put in place by the government after the 1997 handover to ensure Chief Executive Tung had a pliant legislature. The current electoral rules graft a "proportional representation list" system on top of one that already features small, easily controllable constituencies. However, for the first time in Hong Kong's history, the electoral system will allow half of the legislature to be elected by democratic election in geographical constituencies, up from twenty-four seats in the 2000 election.

Of sixty seats in the Legislative Council, thirty will be chosen through so-called functional constituencies, with tiny electorates and largely guaranteed control. Functional constituencies are constituencies based on professional, commercial, or industrial affiliations.

Because their business interests make them dependent, most legislators from functional constituencies are reliable backers of Tung's and Beijing's policies. Among the functional constituencies in Hong Kong are constituencies representing banking, tourism, the legal profession, and labor.

As currently constructed, the functional constituencies fall far short of the principle of universal suffrage. Of the more than three million voters who registered to vote in the geographical elections in 2000, only 160,000 had an additional vote in a functional constituency contest. The vast majority of Hong Kong's voters are therefore disenfranchised, unable to vote for any functional constituency representative.

The disparity in size also means that individual Legislative Councilors represent very different-sized constituencies. Some geographic legislators will represent hundreds of thousands of constituents and some functional legislators will represent several hundred voters. Most functional constituencies have less than 10,000 voters. Indeed, nine of the 30 functional constituency seats were returned uncontested in 2000 – the constituencies are so small, challengers have no hope of winning.

Voter intimidation and manipulation

In past elections, some Hong Kong voters reported being pressured to vote for pro-Beijing candidates. Less than six months before the 2004 election, reports began to surface that, once again, voters were being told who to vote for.

But in 2004, a new trick surfaced: the use of mobile phone cameras to verify an individual's vote. One check on voter intimidation is that, given reasonably secure voting stations and private voting booths, there is no way to verify that an individual voter responded to a threat by voting a certain way. Mobile phone cameras, a relatively recent invention, potentially eliminated that check. According to legislator Margaret Ng, attempts at voter intimidation are not a new phenomenon in Hong Kong. "What's new is that they have learned a way to monitor compliance," Ng said.⁸⁴

The discovery of the new tactic came in mid-May. On May 13, an anonymous caller told the audience of a radio call-in show that he was pressured to vote for pro-Beijing candidates. The threat was explicit, and he was told that he had to provide proof of his compliance:

A senior staff member of my company asked me to vote for pro-Beijing candidates, instead of pro-democracy candidates. To make sure I have [sic] done that, he told me to take pictures of my completed ballot sheet with my mobile phone camera... He told me that if we voted for pro-democrats, our company's business would be in trouble.

After the phone call, other cases of alleged voter intimidation came to light. Frontier Legislator Emily Lau told reporters that she had received a phone call from a Hong Kong voter with business interests in Guangdong who told her that he had been pressured to give the names and contact numbers for friends in Hong Kong.

Other voters called in to "Teacup in a Storm" to report their own experience of being pressured. Two voters reported that they were called by members of their own family on the mainland, who warned them that, if they did not vote for pro-Beijing candidates, then their relatives in China would be at risk.

According to one caller:

⁸⁴ Human Rights Watch interview with Margaret Ng, Hong Kong, July 2004.

I asked if I didn't vote for (DAB candidate) Choy So-yuk, can I vote for another? My uncle told me I have to vote for her otherwise he will be in trouble. This is outrageous.⁸⁵

Another voter reported receiving a similar phone call from her relatives on the mainland:

Elections are Hong Kong's affair and they (her relatives) never said any such things in the past. I repeatedly asked them why and they sounded terrified. I suspect someone has bugged their phone.⁸⁶

Soon after these incidents were reported, Hong Kong Human Rights Monitor, a local human rights monitoring group, set up a hotline for individuals to report cases of intimidation. Among the cases reported to the hotline:

- A Hong Kong resident who lives over the border in Guangdong but works in Hong Kong was approached by a member of the local district committee, who told him that they had orders that he should tell his family and friends to vote for pro-Beijing candidates in the September election.
- A woman who is a member of the Fujian Clan Association in Hong Kong was called by a woman identifying herself as a member of the association. The caller asked how many registered voters there were in her family, claiming that the information was for a survey. When the woman expressed some reluctance to give the requested information, the caller hung up.
- A property management company in Hong Kong owned by a pro-Beijing businessman asked its employees to fill out a survey. Part of the survey asked for information about members of the employee's family who are registered to vote. Although there was no reason given for the survey, employees believed that the information would be used to contact members of their family and urge them to vote for pro-Beijing candidates.

⁸⁵ Ambrose Leung, "More reports of alleged voter intimidation; callers to radio show say mainland relatives received threats," *South China Morning Post*, May 15, 2003.

⁸⁶ *Ibid.*

- Employees of a Hong Kong handbag manufacturing company were asked by a mainland branch office to provide it with information about family members, including the address and contact information of eligible voters in the family. Employees were asked to fill out a form with the requested information, but were not allowed to leave with the form: they had to complete it on the spot.

Such incidents raise real concerns about efforts by mainland entities to pressure voters in Hong Kong. The scope and organization of the effort are unknown. In some cases, official attempts to influence Hong Kong voters may have become so routine that such incidents are not viewed as anything out of the ordinary. One pro-democratic legislator told Human Rights Watch:

These days, when (my constituents) go back to China, back to their home village, then the village head will have an informal meeting, trying to persuade them not to vote for the pro-democracy camp. There's no money, no pressure. They are just saying that these people (the democrats) are bad.⁸⁷

The constituents were not reporting the conversations as a problem, and the legislator did not view such incidents as interference by the mainland.

After the hotline was set up, reports of voter intimidation began to decline.⁸⁸ It is possible that the publicity given to the cases of those who came forward after being approached served as a deterrent. It is also possible that the intimidation continues, and that those making the threats now issue a more stern warning to those they contact that going public will also carry consequences.

Vandalism attacks against democratic legislators

On May 19, a staffer for Legislative Council representative Leung Yiu-chung found an unpleasant surprise waiting for him when he arrived at the lawmaker's Kowloon office at 7.30am. Overnight, vandals had smeared faeces on the wall outside the office, and left a bag of excrement hanging by the office door.

⁸⁷ Human Rights Watch interview, Hong Kong, July 2004.

⁸⁸ Human Rights Watch interview, Hong Kong, July 2004.

The vandalism attack came just days after Leung introduced an amendment to a resolution in Legislative Council urging Chief Executive Tung to plead Hong Kong's case for democracy with the central government in Beijing over the recent interpretation, a step that, despite repeated public calls for him to do so, Tung was unwilling to take.

On the day that the acts of vandalism were discovered, the Legislative Council voted down Leung's proposal. The Legislative Council also rejected a motion introduced by Democratic legislator Albert Ho, expressing regret over Beijing's interpretation. Although both Ho's motion and Leung's amendment were approved by the directly-elected and election committee members of the Legislative Council, the bills were solidly rejected by the functional constituency bloc. Under Legislative Council rules, motions must be approved by both groups in order to pass.⁸⁹

This was not the first such vandalism attack in Hong Kong. In September 2003, the Sha Tin office of outspoken legislator Emily Lau had been similarly defaced when unknown vandals smeared excrement outside her door. The incident was believed to be linked to Lau's participation in a conference in Taipei organized by a Taiwanese pro-independence group.⁹⁰ Lau's office was vandalized again in June 2004, when vandals set fire to election posters and wrote, "Chinese traitors must die" on the wall outside her office in Tai Po. As in 2003, the attacks were linked to her comments on Taiwan.

Despite the repeated incidents, Lau has remained outspoken in her criticism of Beijing, and has turned her attackers' rhetoric back on them. "They call me a radical. The person who engaged in an arson attack is a radical. Those who throw (excrement) at my door, they are radical."⁹¹

Like other legislators, Lau has also been the target of threatening letters and phone calls from unidentified critics. Some callers have threatened violence. In the wake of the threats against Albert Cheung and Wong Yuk-man, such threats may seem less idle. "Last week someone called my office," Lau said. "They said they would chop my head off and hang it outside the Legislative Council."⁹² Referring to the overall situation created by such incidents, Lau said simply, "the atmosphere is very bad." But, she said,

⁸⁹ Jimmy Cheung, "LegCo rejects motion of discontent," *South China Morning Post*, May 20, 2004.

⁹⁰ Ambrose Leung, "Police inaction riles Emily Lau," *South China Morning Post*, September 13, 2004.

⁹¹ Human Rights Watch interview, Hong Kong, July 2004.

⁹² Human Rights Watch interview, Hong Kong, July 2004.

there is a positive side to the attacks: “They are motivated by a desire to get rid of me, not just (my comments on) Taiwan. In a very macabre way, it is flattering.”⁹³

Other legislators have found similar unsigned letters waiting for them in the day’s mail. “I’ve gotten threatening letters. And people have said things to me,” one democratic legislator said.⁹⁴

Pro-democratic legislator Frederick Fung has also dealt with threatening phone calls and letters. “But the calls were answered by my secretary. She has a dangerous job,” Fung joked. One letter in particular implied both violence and central government involvement: “The central government [and] the people will treat you with violence at the Legislative Council office on election day . . . Treating the democratic-camp with violence is a must.”⁹⁵

Fung also expressed some disappointment over the lack of action by the police. “I passed it to the police, and they said they would handle it. Nothing has happened after three months,” Fung said.⁹⁶ Fung’s campaign has also been the victim of low-level vandalism, although not against his office. “Some of our publicity banners were slashed,” Fung said, referring to incidents in April and May 2004.

District Councilor Ray Au, a vocal member of the democratic camp who took to the streets with a bullhorn to encourage Hong Kong’s voters to turn out for the July 1, 2004, protest, has also seen his office vandalized. In an incident that took place a few days after Emily Lau’s office was attacked, vandals set fire to several posters outside Au’s office, and left behind a gas cylinder, an implicit warning that more severe attacks could follow. On Au’s wall, one of the vandals wrote, “All Chinese traitors must die.”⁹⁷

On August 31, unknown individuals broke into Legislative Councilor Emily Lau’s home. Although nothing was taken, the intruders rifled through Lau’s personal documents. Lau voiced fears that her home may have been bugged during the break-in, and that her personal documents may have been photographed or otherwise copied. “Anything like

⁹³ Human Rights Watch interview, Hong Kong, July 2004.

⁹⁴ Human Rights Watch interview, Hong Kong July 2004.

⁹⁵ Matthew Lee, “ADPL head receives election hate letter,” *Hong Kong Standard*, May 18, 2004.

⁹⁶ Human Rights Watch interview. Hong Kong, July 2004.

⁹⁷ Anthony Spaeth, “The Battle for Hong Kong,” *Time Asia*, July 5, 2004.

this would raise eyebrows,” Lau said. “I don’t want to speculate. I don’t have evidence. I just want to know what the hell is going on in Hong Kong.”⁹⁸

All of these incidents are troubling. It is impossible to know whether any mainland officials had any direct hand in these incidents, but at the very least, it seems likely that Beijing’s harsh rhetoric has contributed to an atmosphere in which those with strong pro-Beijing sentiments have been incited to threats and acts of vandalism.

The Alex Ho case

On August 13, Democratic Party District Councilor and first-time Legislative Council candidate Alex Ho was arrested in the Guangdong city of Dongguan for allegedly seeking the services of a prostitute. Ho, 46, travels regularly to Guangdong as the manager of a Hong Kong manufacturing firm, and was in Dongguan on business. According to his wife, Ho was awakened by a phone call to his hotel room in Dongguan early Friday morning. Moments later, a group of Public Security Bureau officers entered the room. Ho was reportedly dragged from his bed and taken to the bathroom, where the PSB officers hit him and poured water on him.⁹⁹ The officers then arrested him for visiting a prostitute and took him to a detention center.

Ho’s arrest raised serious due process concerns, and also raised the real possibility that the Chinese government was using his arrest – or at least his sentencing – to advance its political aims in Hong Kong. On the same day he was arrested, Ho was sentenced to six months of administrative detention, or “reeducation through labor.” He was not given legal representation, and he was not given a trial. Instead, Ho was immediately taken to a detention center, where he continues to serve his six-month sentence.

After Ho’s arrest, Democratic Party members voiced concerns that Ho was targeted specifically to damage the democrats in the eyes of the public, and pointed to his unusually long sentence as proof that he was singled out. A Hong Kong policeman recently arrested in Guangdong for the same reason received only a fifteen-day sentence, and experts on the reeducation system in China pointed out that most individuals arrested for soliciting prostitutes receive no more than one or two month terms.¹⁰⁰

⁹⁸ “Hong Kong democrat says home burgled,” Reuters, August 20, 2004.

⁹⁹ Cannix Yau, “Democrat jailed in China,” *Hong Kong Standard*, August 17, 2004.

¹⁰⁰ Klaudia Lee and Nailene Chou Wiest, “Democrat’s punishment unusual, says scholar,” *South China Morning Post*, August 21, 2004.

Under Hong Kong law, if an individual is “serving a sentence of imprisonment” on election day, he is disqualified. The six-month term guaranteed that Ho would still be in detention on September 12, whereas a 15-day sentence would not have. Also, any individual who has served more than three months in the five years prior to the election is similarly ineligible. On August 24, the Hong Kong government announced that Ho could still stand for election, given the administrative nature of his detention.

Conclusion

The past twelve months have seen some of the most worrying violations of human rights since the 1997 handover. The toxic political climate created by Beijing's patriotism campaign is increasingly the backdrop to threats of violence. The threats against Albert Cheng and Wong Yuk-man raise the possibility of a marriage of convenience between Hong Kong triad societies and the central government in Beijing, an alliance that could have extremely negative effects on free expression, and human rights more generally, in Hong Kong. Beijing's direct intervention in Hong Kong's electoral reform process through the April 6 interpretation of the Hong Kong Basic Law means, at the very least, that Beijing takes a very expansive view of its own powers to manipulate Hong Kong's mini-constitution.

It is important not to overstate the situation. Despite the threats against the journalists and real concerns over self-censorship, Hong Kong's press remains free. Although political reforms have been stopped and universal suffrage postponed, Hong Kong is still a multi-party system, albeit one in which the electoral structure is tilted in favor of the pro-Beijing minority. Non-government groups, though they complain about central government monitoring, operate openly and freely in Hong Kong, and the courts, with the exception of the 1999 right of abode case, have been largely left alone.¹⁰¹

The events of the past year, taken together, constitute a step backward for human rights in Hong Kong. If Beijing continues to issue interpretations every time its political allies in Hong Kong are in trouble, Hong Kong's autonomy will quickly wither. If Beijing chooses as its proxy triads whose methods include criminal intimidation and assault, then freedom of expression in Hong Kong will shrink dramatically.

As of this writing, an uneasy truce exists between Hong Kong's democrats and civil society on the one hand, and the central government in Beijing and its supporters in Hong Kong on the other. While Beijing and the pan-democratic camp in Hong Kong have recently reached a rapprochement, it is too early to say whether the relative calm of recent weeks is indicative of a policy shift by Beijing, or is merely a pre-election tactic to avoid damaging the electoral prospects of the pro-Beijing Democratic Alliance for the Betterment of Hong Kong (DAB) and other parties seen as part of the pro-Beijing camp.

¹⁰¹ See Human Rights Watch, Statement by Human Rights Watch to the Senate Foreign Relations Committee East Asian and Pacific Affairs Subcommittee, threats to judicial autonomy in Hong Kong, July 1, 1999.

Both the people of Hong Kong and the international community will be looking for signals from Beijing after the election to demonstrate that the truce was more than a pre-election tactic. After the past year's rights decline, the central government urgently needs to demonstrate a commitment to human rights in Hong Kong.