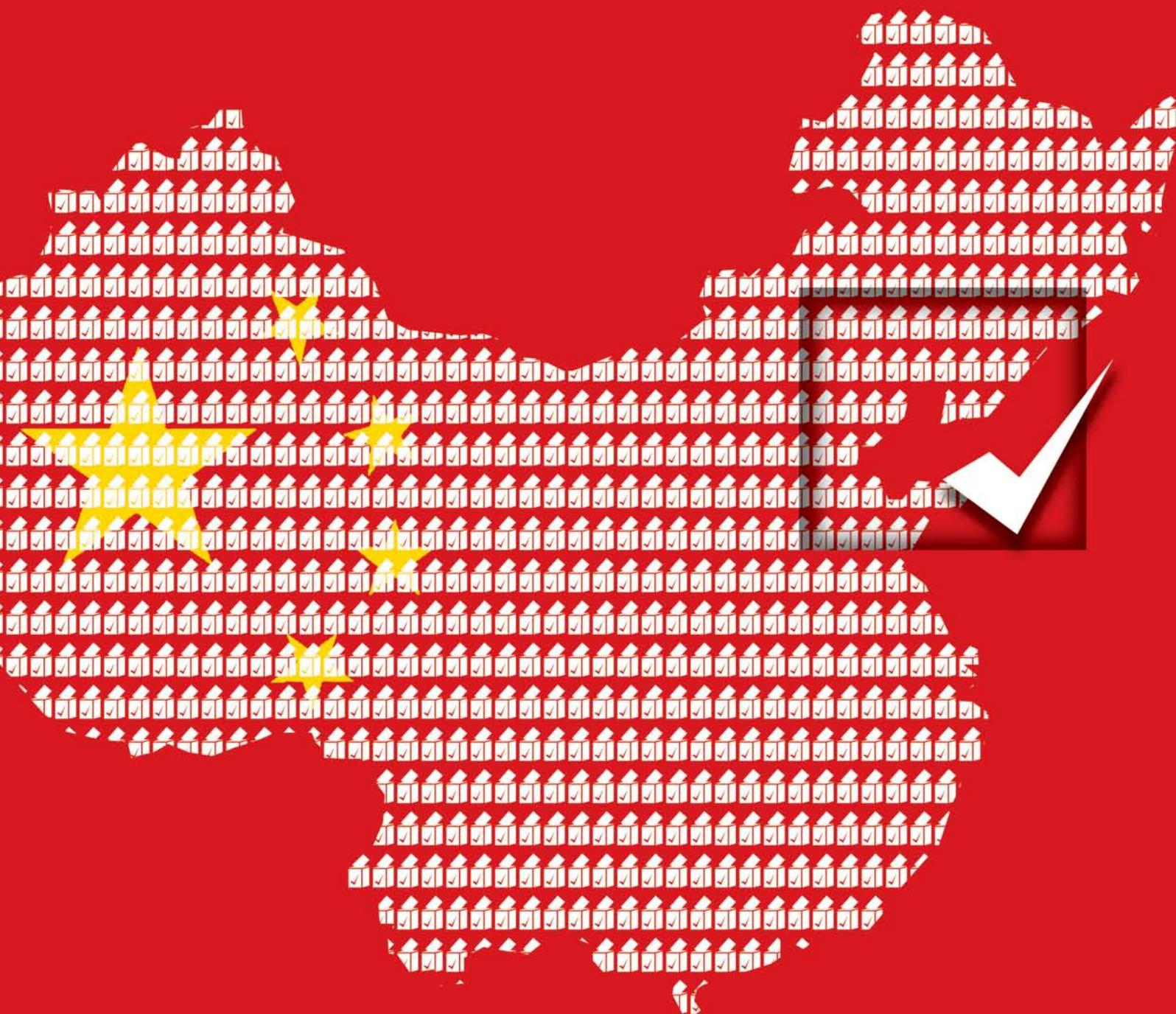


Election Reform in China: Its Context, Recent Developments, and Future

LIN Feng



January 2006



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PREFACE

Civic Exchange is pleased to have worked with Lin Feng to examine China's electoral experience. This is our think tank's first project to consider national policy issues that are of interest not only nationally but also internationally. There is wide agreement that China needs to continue to evolve its electoral arrangements for to improve governance, as well as increase the level of democratic participations of ordinary citizens. China's elections now have a sufficient long experience for scholars to draw insights from and to consider future trends, as well as make recommendations to the authorities. We expect to continue conducting mainland policy studies and engaging in dialogue across the border which is a part of nation development.

We hope this effort will also be informative to Hong Kong people, who are going through their own trials and tribulations over electoral reforms here. The more the people here know about the national experience, the better they may be able to think through challenges in charting their own course in constitutional development.

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Christine Loh
Chief Executive Officer
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1. Introduction

The 4th Plenum of the 16th National Assembly of the Communist Party of China (CPC) adopted in 2004 the Decision of the Central Committee of the CPC on Strengthening the CPC's Governance Capacity ("the Decision"). The Decision points out that strengthening the CPC's governance capacity is an important strategic issue relating to the future of the People's Republic of China ("the PRC"), the survival of the CPC, and the long-term administration and stability of the State¹. The Decision has summarised six essential lessons from the fifty five years of governance by the CPC, of which one is the insistence on scientific, democratic and lawful governance and continuing improvement of the CPC's leadership and governance style². This is held to be an important guiding principle to be followed and an objective to be achieved in the CPC's governance. The Decision also ranks the ability to develop socialist democratic politics as one of the five main tasks for the CPC, and notes that the fundamental requirement of democratic politics is the combined insistence on the CPC's leadership, democracy, and rule of law³. The development of socialist democratic politics depends essentially on the establishment of a democratic system through the introduction and operation of various proper mechanisms, norms and procedures.⁴ Rule of law is regarded as the fundamental principle and objective of democratic politics while the reform and improvement of the CPC's leadership will, as the Decision states, contribute to the development of democracy and rule of law in China⁵. On 19 October 2005, the Chinese Government issued for the first time a white paper entitled "Building of Political Democracy in China" (White Paper). These documents demonstrate the attention paid by the CPC to the development of a democratic political system. Before the opening of the 4th Plenum of the 16th National Assembly of the CPC, Hu An-gang, together with two other scholars, had already expressed the view that it was time for China to move from concentrating on economic development to concentrating on the development of various democratic systems. In their view, China had its first transformation from the old system of planned economy to a market economy in 1978 and was now ready for the second transformation from economic development to the development of various democratic systems⁶. Professor Zhou Tian-yong also opines that China's political system has come to the stage that it has to be reformed. The only issues are what to be reformed, how to reform it, and to what extent it should be reformed?⁷ It is therefore clear that both the CPC and some Chinese scholars have realised not only that it is necessary for China to reform its political system so as to establish a democratic political system, but that this is an appropriate time to do so.

¹ See "the Decision of the Central Committee of the Chinese Communist Party on Strengthening the Governing Capacity of the Chinese Communist Party" (Zhonggong Zhongyang Guanyu Jiaqiang Dang de Zhizheng Nengli Jianshe de Jueding) ("the Decision") , at: <http://www.china.org.cn/chinese/2004/Sep/668376.htm>; see also Zeng Qing-hong, "Jiaqiang Dang De Zhizheng Nengli Jianshe de Ganglingxing Wenxian" (Document on Strengthening the Governing Capacity of the CPC), People's Daily, 8 October 2004; quoted from Yu Yun-yao and Li Jun-ru (eds.), "Jiaqiang Dang de Zhizheng Nengli Jianshe Zhuanti Jianggao" (Speeches on the Theme of Strengthening the Governing Capacity of the CPC), 1st ed., Zhongyang Dangxiao Press, Beijing, 2004. Zeng Qing-hong is currently a member of the Standing Committee of the Central Committee of the CPC, and the Secretary in charge of the Secretariat of the Central Committee of the CPC, President of the School of the Central Committee of the CPC, and Vice-President of the PRC.

² Ibid.

³ See the Decision; see also Zeng Qing-hong, n. 1, p. 12.

⁴ See the Decision; see also Zeng Qing-hong, n. 1, p. 11.

⁵ See the Decision; see also Zeng Qing-hong, n. 1, p. 12.

⁶ See Hu An-gang, Wang Shao-guang and Zhou Jian-ming (eds.), "Di Er Ci Zhuanxing Guojia Zhidu Jianshe" (The Second Transformation: the Establishment of National Systems), Qinghua University Press, Beijing, 2003.

⁷ See Zhou Tian-yong, "Quanmian Jianshe Xiaokang Shehui Yanjiu Baogao Ji: Zhongguo Zhengzhi Tizhi Gaige" (Collection of Research Reports on Comprehensive Establishment of a Modestly Rich Society: China's Political System Reform), Zhongguo Shuli Shuidian Press, Beijing, 2004, p. 1.

Against this macro political background, this paper will study the electoral system, one of the essential elements of a democratic political system. China's electoral system is composed of three elements: (i) the electoral system of grassroots autonomous organisations such as village residents' committees; (ii) the electoral system of the people's congresses at all levels; and (iii) the electoral system of officials of governmental organs at all levels. Many Chinese and foreign scholars have conducted extensive and in-depth research on the electoral systems of village residents' committees and township heads. Some scholars are of the view that China's reform of its village electoral system represents the future of its political system reform, and the experimental reform of township head election will be the breakthrough point for China's political reform⁸. But an alternative view is that some experimental reform of township head election is unconstitutional and therefore impossible to be promoted in China⁹. What is then the future of China's electoral system? This paper intends to examine and analyse in detail the current status of China's electoral system reform and to predict on that basis the direction of its future development through discussion and analysis of the three kinds of electoral systems mentioned above. The paper will use the same research methodology to study the relevant legal norms, the CPC's political considerations, and the latest electoral practice. Part two of this paper will first discuss the electoral system of rural grassroots autonomous organisations, i.e. village residents' committees. Given that the election of village residents' committees has already had a history of twenty-odd years, and also that there are many research monographs and papers on the election of village residents' committees, this paper will focus on the most recent developments in the election of village residents' committees and express a view on the future of rural electoral system. Part three of this paper will discuss the electoral system of people's congresses. According to the 1979 Election Law of the PRC on the National People's Congress (NPC) and All Local People's Congresses ("the Election Law"), the deputies to township and county people's congresses will be directly elected by voters while deputies to the people's congresses above county level will be indirectly elected by the deputies to the people's congress at the next level below. The author's view is that if elections at township and county levels are successful, then direct election can be further expanded gradually up to the NPC. Otherwise, it will be meaningless to expand direct election. What should be done instead is to find and correct the problems with elections at township and county levels before considering expansion of direct election. Hence, the section on election practice in Part three of the paper will focus on elections at township and county levels. Part four will examine the electoral system of officials of governmental organs at various levels. As experimental reforms have been undertaken in the election of township and county heads in the PRC, and indeed the reform of township head elections has already had a history of seven years, we are able to analyse several different models which have already appeared for elections at the lowest two levels.

Of the three kinds of electoral systems, that of grassroots autonomous organisations is different in nature from the other two, which are about election of members and heads of governmental organs and may affect the governing status of the CPC. As far as the electoral system of village residents' committees is concerned, both legislation and the policy of the CPC expressly support their direct election. The author believes that the future of village elections is bright even though there is still a long way to go before China can truly implement democratic election of village residents' committees. Some scholars researching the electoral system of village residents' committees hold the view that direct election at this level will promote democratic development in China, including direct election of township heads¹⁰. But

⁸ See Li Fan, "Zhongguo Xuanju Zhidu Gaige" (Reform of China's Electoral System), Shanghai Jiaotong University Press, 2005, p. 3.

⁹ See Zha Qing-jiu, "Minzhu Buneng Chaoyue Falu" (Democracy Should not Exceed the Limit of Law), Legal Daily, 19 January 1999.

¹⁰ For example, see Li Fan, "Chengfeng Erlai – Wo Suo Jingli de Buyunxiang Xiangzhang Zhixuan" (The Direct Election of Township Head at Buyun Town which I Experienced), Northwest University Press, 2003, pp. 198-222.

the author is of the view that direct election of village residents' committees will not have a direct impact on the reform of the other two electoral systems. This is because from a legal perspective, a village residents' committee, as an autonomous organisation, is not part of government whereas the people's congresses and governmental organs at various levels are formal components within China's constitutional structure. They are therefore different in nature. Furthermore, statutory provisions regulating the election of village residents' committees are fundamentally different from those regulating the election of deputies to the people's congresses and officials to governmental organs at various levels. Another more important factor is that the CPC is quite determined to reform the election of village residents' committees but its attitude is still uncertain towards the reform of the other two electoral systems. As far as the electoral system of the people's congresses is concerned, one view is that China is ready to further expand direct election, from county level to municipal and provincial levels¹¹. But elections at the lowest two levels still have many problems. Though competition has appeared in the election of deputies to local people's congresses in some places, as far as the whole country is concerned, election of deputies to local people's congresses in most parts of China still has the characteristics of traditional confirmative election rather than true democratic election. Hence, the paper argues that at present the conditions in China are not ready for expansion of direct election and it would be meaningless to do so. As far as election of officials to local governmental organs is concerned, the experimental reform which has already started with various local governments with regard to direct election of township and county heads demonstrates its feasibility. However, such experimental reform is in direct conflict with the people's congress system because in law township and county heads can only be elected by the corresponding people's congresses indirectly. The author is of the view that a more feasible approach is to let a local people's congress organise or establish the people's government at the same level by following practice in a parliamentary system and remove the necessity for the people's congress to elect officials to the people's government at the same level through formal nomination and voting process. The advantage in doing so is that such an approach is not only consistent with the people's congress system but also can make the people's congress system, which is in essence a parliamentary system, really operate at local levels in China.

After analysis of the three existing electoral systems in China, it is not difficult to see that CPC organs at various levels influence either directly or indirectly the operation and the results of the three electoral systems. Hence, Part five of this paper will discuss briefly election reform within the CPC. The last part of this paper will further study the relationship between the CPC and elections in China, the relationship among the three existing electoral systems, and the future of the three electoral systems. The author takes the view that with the promotion of the CPC and the support of legislation the electoral system of village residents' committees is developing in a healthy direction. The reform of the electoral systems concerning local people's congresses and officials to local people's governments has however an uncertain future due to the lack of support of the CPC and the application of the principle of administration of officials (cadres) by the CPC. Their future mainly depends on the CPC's determination to reform them. Given that the 4th Plenum of the 16th National Assembly of the CPC has already put on the agenda the establishment of various democratic systems, and has made it clear that the current political system needs to be reformed, though without specific reform proposals, the author remains cautiously optimistic about the future of China's electoral system reform.

¹¹ See Jiao Hong-chang and Wang Yi-bai, "Gongmin dui Xuanju Gaige Qidai de Diaocha Fenxi" (Investigation and Analysis of the Expectation of Citizens towards Election Reform", in Cai Ding-jian (ed.), "Zhongguo Xuanju Zhuangkuang de Baogao" (Report on Election Circumstances in China), Law Press, Beijing, 2002, pp. 270-280.

2. Electoral System of Village Residents' Committees

The 1982 Constitution has defined both urban residents' committees and rural village residents' committees as mass autonomous organisations¹². Since both kinds of committees are of the same legal nature and village residents' committees have a longer history of direct election, this paper will only discuss the electoral system of village residents' committees.

2.1 Statutory Provisions for the Election of Village Residents' Committees

Though the 1982 Constitution has provided that a village residents' committee will be elected by village residents, it does not specify whether or not the election should be direct or indirect. Hence in fact, from the promulgation of the 1982 Constitution to the adoption of the Organic Law of the PRC on Village Residents' Committees (Trial) in 1987 ("1987 Organic Law"), China did not have any specific legislation governing the election of village residents' committees. The enactment of the 1987 Organic Law set out for the first time statutory rules governing election of village residents' committees. Some local governments have also issued corresponding local legislation¹³. From the perspective of legal norms, the 1987 Organic Law already had provisions on the nature, the legal status, rights and obligations of a village residents' committee, and defined the relationship between a village residents' committee and a township government one in which the township government should only provide guidance and coordination rather than one between a leader and the one to be led¹⁴.

In 1998, targeting the problems revealed in actual operation, the Standing Committee of the NPC (NPCSC) made some fundamental amendments to the 1987 Organic Law, and adopted the Organic Law of the PRC on Village Residents' Committee ("the 1998 Organic Law"), which contains the following main amendments. Firstly, there is formal recognition of "hai xuan" (mass nomination and mass election)¹⁵ through the statutory provision that "the head, deputy head as well as members of village residents' committee will be directly elected by village residents. No organisation or individual shall designate, appoint or replace any member of a village residents' committee"¹⁶. Secondly, the status of a village CPC organisation is clarified through the stipulation that "the CPC's grassroots organisation in rural areas, should operate according to the charter of the CPC, exercise its role of leadership, support and guarantee, according to the Constitution and Laws, that village residents organise autonomous activities and exercise directly their democratic rights". Thirdly, the relationship between a village residents' committee and a township government is further clarified by the requirement that a township government "should not interfere unlawfully with the matters within the autonomous scope of a village residents' committee".

¹² See Art. 111(1) of the 1982 Constitution, at:

<http://www.npc.gov.cn/zgrdw/common/zw.jsp?id=334617&lmfl=%C8%CB%B4%F3%CE%C4%CF%D7&label=W XZLK&pdmc=010602>.

¹³ For example, the 16th Meeting of the 7th Standing Committee of Heilongjiang Provincial People's Congress adopted on 24 August 1990 "Heilongjiang Shishi Zhonghua Renmin Gongheguo Cunmin Weiyuanhui Zuzhifa (shixing) Banfa" (Methods of Heilongjiang Province on Implementing the Organic Law of the PRC on Village Residents' Committees (Trial)).

¹⁴ See the 1987 Organic Law of the PRC on Village Residents' Committees (Trial), at:

<http://www.npc.gov.cn/zgrdw/common/zw.jsp?id=4491&lmfl=%C8%CB%B4%F3%CE%C4%CF%D7&label=W XZ LK&pdmc=010602>.

¹⁵ In 1993, Lishu County in Jilin Province created a new means of election in which the right to nominate candidates for a village residents' committee was completely given to the villagers. Voters could nominate candidates at will. Governmental organs at the next level above would not set any conditions or restrictions on the candidates. As a result, all 336 village residents' committees were elected through this new method, known as "haixuan".

¹⁶ See Art. 11(1) of the 1998 Organic Law of the PRC on Village Residents' Committees, at:

<http://www.npc.gov.cn/zgrdw/common/zw.jsp?id=4716&lmfl=%C8%CB%B4%F3%CE%C4%CF%D7&label=W XZ LK&pdmc=010602>.

Fourthly, it is clearly provided that “in electing the village residents’ committee, candidates shall be nominated by residents of the village, and the number of candidates must be more than the number of members to be elected”¹⁷. Fifthly, in order to make the election fair and democratic, various amendments have been made to the election procedure, including early publication of the list of village residents with the right to vote and to stand for election, the organisation of elections by an election committee of the village residents’ committee, the requirement that members of an election committee must be elected by either a residents’ meeting or each residents’ group¹⁸, and direct nomination rights of village residents. Sixthly, there are more detailed provisions for democratic decision and supervision. For example, the matters which must be discussed by residents’ meetings are set out and it is required that all village matters must be made public.

In addition to national legislation, 31 provinces, municipalities directly under the State Council, and autonomous regions have enacted local legislation to implement the 1998 Organic Law, regulating election of village residents’ committees in their respective jurisdictions. Most of them have also enacted relevant methods on the election of village residents’ committees¹⁹.

From the perspective of legal norms, the promulgation of the 1998 Organic Law and the enactment of local legislation for its better implementation have further improved the electoral system of village residents’ committees, and provided a channel for village residents to participate in and elect democratically and competitively the head and members of a village residents’ committee. The enactment of statutory norms has also removed from the electoral system the possibility for a village CPC organisation or township government to interfere with the election of a village residents’ committee. The addition of a series of procedural requirements has also reduced the possibility of the occurrence of undemocratic phenomena. Hence, at the level of legal norms, the 1998 Organic Law has brought forward some clear messages, i.e. it intends to improve the electoral system so as to ensure that village residents can directly exercise their democratic rights, residents can really govern themselves autonomously, and that the village CPC organisation and township government will not interfere with village’s autonomy.

2.2 Policy Analysis

From the perspective of the CPC’s policy, since the beginning of economic reform in 1978, the CPC and the Central Government (the State Council) have adopted the policy of giving village residents autonomy in running village affairs and promoted rural grassroots democracy. In June 1981, in the process of summarising historical experiences and lessons, the CPC explicitly put forward the policy that “it should gradually establish people’s direct democracy in grassroots governmental organs and grassroots society” in its Resolution on Several Historic Questions of the CPC since the Founding of the PRC²⁰. After the promulgation of the 1987 Organic Law, several different ministries and commissions of the Central Government jointly held a series of meetings between 1990 and 1994 to discuss and summarise experience of implementation for further improvement and development of self-governance by village residents. The lessons have been summarised as “four democratic processes”, including democratic election, democratic decision-making, democratic

¹⁷ See Art. 14 of the 1998 Organic Law of the PRC on Village Residents’ Committees.

¹⁸ See Art. 13 of the 1998 Organic Law of the PRC on Village Residents’ Committees.

¹⁹ See : <http://www.chinavillage.org/dffg.htm> .

²⁰ See the website of the Ministry of Civil Affairs, “Nongcun Jiceng Minzhu Zhengzhi Jianshe Fazhan de Zhuyao Jincheng” (The Main Progress of the Development of Democratic Politics in Countryside), downloaded from: http://www.mca.gov.cn/artical/content/WCM_YWJS/20031224145024.htm.

administration, and democratic supervision, and incorporated for the first time into the report of the CPC at its 15th National Assembly held in October 1997.²¹ The 3rd Plenum of the 15th National Assembly held in October 1998 spoke highly of self-governance by village residents, and made it clear that the expansion of rural grassroots democracy and the implementation of self-governance by village residents are great creations of the CPC, leading hundreds of millions of peasants to develop socialist democratic politics with Chinese characteristics²². On 14th July 2002, the General Office of the Central Committee of the CPC, together with the General Office of the State Council, jointly issued the Notice on Further Improving the Election for the Change of Term of Village Residents' Committees, the first normative document issued by the Central Committee of the CPC since it decided to promote self-governance by village residents²³. Its promulgation demonstrates that the CPC pays close attention to, accepts and supports democratic election of village residents' committees, and requires its local organisations to strengthen their leadership over and cooperation with local people's congresses and governments in the organisation of elections of village residents' committees. Hence, the development of the electoral system of village residents' committees has already had the support of the CPC at policy level, and has gradually moved ahead under the leadership of the CPC. The Decision adopted by the 4th Plenum of the 16th National Assembly of the CPC also points out the necessity to expand grassroots democracy for mass autonomous organisations (such as village residents' committees), and to ensure that people at grassroots level can exercise their democratic rights according to law²⁴. Chapter Six of the White Paper discusses specifically grassroots democracy in China. It has pointed out that grassroots democracy in the countryside is an important issue in the development of political democracy in China, and confirmed that village residents' autonomy through direct election of village residents' committees is a means suitable to the specific circumstances in rural China for the development of political democracy²⁵.

Why has the CPC been so determined to carry out democratic elections in rural areas? There could be several reasons. The first reason is that in nature a village residents' committee is a self-governance organisation and its election has nothing to do with state power, and therefore won't affect the governing status of the CPC. The second is that there are nine hundred million peasants in China, and proper handling of rural issues directly contributes to the stability of the society. The CPC is of the view that "the four democratic processes" may be effective measures to solve long-existing problems in rural areas. The third is that a village residents' committee does not control any governmental resources. If democratic election in rural areas fail, the CPC has nothing to lose. But if it succeeds, the CPC has won a lot by resolving many long-term problems in rural areas and achieving stability in rural areas.

2.3 Analysis of Election Practice

It can be seen from above analysis that the electoral system of village residents' committees has not only the full support of the CPC at policy level, but also sufficient protection from a legal perspective. What of the actual elections of village residents' committees? Since many

²¹ See Part six of the Working Report of the 15th National Assembly of the CPC: "Gaoju Dengxiaoping Lilun Weida Qizhi, Ba Jianshe you Zhongguo Tese Shehuizhuyi Shiye Quanmian Tuixiang ershiyi shiji" (Holding on to Dengxiaoping Theory and Pushing Forward Comprehensively the Establishment of Socialism with Chinese Characteristics into the 21st Century).

²² See n. 20.

²³ See the website of Ministry of Civil Affairs, "Cunji Minzhu Xuanju" (Democratic Election at Village Level), downloaded from: http://www.mca.gov.cn/artical/content/CMZZ_SY/2003122991609.htm.

²⁴ See Part five of the Decision.

²⁵ See para. 3 of Chapter six of the White Paper.

research monographs and papers have already studied election practice of village residents' committees before 2005²⁶, this paper will focus on the most recent election practice since the enactment of the 1998 Organic Law, i.e. the 2005 election practice. But before that, it is worthwhile to mention briefly two landmark events in the history of village residents' committee elections. Firstly, in 1980, two years before the enactment of the 1982 Constitution, election of a village residents' committee first appeared in China. Village residents initiated the election of residents' committees themselves in Guozuo Village, Pingnan Town, Yizhou City, as well as in some villages in Yishan and Luocheng Counties, Guangxi Autonomous Region. After their establishment, these village residents' committees started to handle village matters democratically, solved some common village problems, and achieved good results in village governance²⁷. The elections were held upon the initiation of village residents without any statutory support and were therefore pioneering.

Secondly, a new method was used by Lishu County in Jilin Province in 1993, in which the right to nominate candidates for a village residents' committee was given altogether to village residents who could nominate any candidates according to their own wishes. The township governments at the next level above did not set any guidelines or restrictions on candidates. This method is called "haixuan". The village residents' committees in all 336 villages in Lishu County were elected through this method²⁸. The importance of the adoption of this new method is that though the 1987 Organic Law was already in existence, the Law did not stipulate that the election should be direct. The actual practice at the time was that the CPC Committee at the next level above (township level) chose the candidates and the election would be held to confirm these candidates. "Haixuan" changed the election of a village residents' committee into direct election and in that sense is also pioneering.

According to the Ministry of Civil Affairs, 2005 is a year in which elections for a new term of village residents' committees need to be held in many provinces in China. By the end of June 2005, elections had already been held in nine provinces and elections were in progress in seven other provinces. Elections will be held in the second half of the year in five other provinces²⁹. In a conference recently organised by the Ministry of Civil Affairs to analyse the village election situation, attendees noted three characteristics of village elections in recent years. Firstly, village elections have become more democratic, formal, and systematic, and the ability of the CPC Committees and governmental organs at all levels to provide leadership and guidance to village elections has increased. Secondly, with the deepening of reforms in rural areas, village residents have become more enthusiastic in participating in elections and competition has therefore increased in village elections. Thirdly, many new methods have been created and used by various local governments within the limits of

²⁶ For example, see Xu Yong (ed.), "Xiangcun zhili yu Zhongguo Zhengzhi (Township and Village Administration and Chinese Politics), Chinese Social Science Press, 2003; Xu Xiu-li (ed.), "Zhongguo Nongcun Zhili de Lishi yu Xianzhuang: Yi Dingxian, Zouping he Jiangning Weili" (The History and Current Situation of Rural Administration in China: Examples of County Ding, Zouping County and Jiangning County), Social Science and Literature Press, 2004; He Zeng-ke, "Jiceng Minzhu yu Difang Zhili Chuangxin" (Grassroots Democracy and Innovation of Local Administration), Central Government Compilation and Translation Press, 2004; Tang Ming (ed.), "Cunweihui Xuanju Falu Wenti Yanjiu" (Study of Issues on the Election of Village Residents' Committees), China Social Science Press, 2004; The Carter Center Report on Chinese Elections: Observation of Village Elections in Fujian and the Conference to Revise the National Procedures on Villager Committee Elections, at: http://cartercenter.com/peaceprograms/540_cdoc.htm.

²⁷ See n. 20.

²⁸ Quoted from He Bao-gang and Lang You-xing, "Cunmin Xuanju zhong de Jingzheng: Dui Zhejiang Gean de Fenxi (Competition in Village Elections: Analysis of Cases in Zhejiang), Central-China Normal University Journal (Social Science version), Vol. 5, 2000.

²⁹ See the website of Ministry of Civil Affairs, "Minzhengbu zai Guangxi Guilin Zhaokai Quanguo Cunweihui Xuanju Qingkuang Fenxihui" (The Ministry of Civil Affairs Organised a National Conference to Analyse the Election of Village Residents' Committees in Guilin of Guangxi Province), downloaded from: <http://www.chinavillage.org/readnews.asp?newsid={25D2B725-D8F0-4AFC-AA61-3698F75B5319}>.

existing policy and legislation and have been regarded as of high reference value in practice³⁰. Hence, it is clear that the organisers of village elections hold a positive view of their development.

Also, “haixuan” has had a further development in a 2005 village election. On 27 March 2005, villagers in Tangjiali Village, Yuhang District, Hangzhou City, Zhejiang Province adopted the method of “haixuan zijian” (direct election upon self-recommendation) to elect its new village residents’ committee. This is a new development to the method of direct election through nomination of candidates for a village residents’ committee by villagers as stipulated in the 1998 Organic Law, and is believed to be a breakthrough in the electoral system. What is new is that all voters who have met the requirements for members of a village residents’ committee, are interested in village administration, and are willing to serve villagers, can register themselves to be candidates to participate in the competition for membership of a village residents’ committee. Furthermore, in the election process, voters can choose in their ballots those who have registered their candidacy or any other person. Since those who register themselves to be candidates are not regarded as formal candidates (according to the Organic Law), this new method is therefore regarded as a kind of direct election without formal candidates.

This new method is the latest interpretation of “haixuan” as stipulated in the 1998 Organic Law. It is not only in compliance with the 1998 Organic Law, but also moves a step further than “haitui zhixuan” (direct election with mass nomination). In the words of Mr Zhang Hongguo, Director of Grassroots Administration of the Civil Affairs Bureau of Hangzhou City, the new method has two advantages: “one is that it has removed the disadvantages associated with direct election with mass nomination, which has too many steps and often incurs high costs, and rectified the defect that “haixuan” has no candidates standing out for election, votes are diversified, and there is no procedure and order in seeking votes in the nomination process. The other is that through the means of self-registration, the channel for villagers to choose competent members for a village residents’ committee and for outstanding and committed persons to make full use of their skills in village administration has been expanded”³¹. This new election method has also attracted the attention of the Development Research Centre of the State Council, and the Civil Affairs Departments of Yuhang City and Zhejiang Province. They all sent representatives to observe the whole election process. One researcher at the Development Research Centre of the State Council believes that the bold innovation of Hangzhou this time is a good example to be learned from, and that it has created a new era for village elections in China³².

But was the new trial at Yuhang initiated by village residents and reflective of the true intention of voters? According to an official from the Zhejiang Provincial Civil Affairs Bureau after the election in Yuhang, “Through examination and scrutiny of self-registered candidates by the CPC organisation, the new method can better combine the wishes of the CPC with that of the mass so that both the village residents and the CPC will have confidence in the elected members of the village residents’ committee”.³³ His comment shows that the CPC Committee had conducted examination and scrutiny of the candidates before election.

³⁰ Ibid.

³¹ See Dong Hua-ping, “Zhejiang zai Quanguo Shuaixian Caiyong Zijianhaixuan Fangshi Xuanju Cungan” (Zhejiang Leads the Country in Adopting Mass Election of Village Leaders on the Basis of Self-Recommendation), *Jinri Zaobao* (Today’s Morning Post), 28 March 2005, downloaded on 15 June 2005 from <http://www.southcn.com/news/china/zgkx/200503280354.htm>.

³² See “Quanguo Shouge Zijianhaixuan Cungan Yuhang Xuanju Chansheng” (Yuhang Has the First Village Leader Elected through Mass Election on the Basis of Self-recommendation), downloaded on 15 June from <http://mzt.zjol.com.cn/05mzt/system/2005/04/12/006090025.shtml>.

³³ Ibid.

Strictly speaking, village elections are by nature social elections of a self-regulated body and should therefore fully represent the wishes of the voters in the village. The CPC Committee should not play any role in the organisation or the scrutiny of candidates as this would constitute a restriction on the election of the head and members of a village residents' committee. The wishes of the CPC should, in the author's view, only be reflected through its nomination of candidates.

The above discussion is about positive development in village elections. But is the election outlook nationwide so optimistic? With this question in mind, the author conducted field study in June 2005 in Guangdong Province where all village elections had finished in May 2005. Due to time constraints, the author chose two towns to visit, one poor town in one of the poorest counties (X town in Qingxin County, Qingyuan City, Guangdong Province), and a rich town in one of the richest cities (Y town in Dongguan City, Guangdong Province). The author interviewed the newly elected head and members of one village residents' committee, officials sent by Guangdong Provincial CPC Committee to assist the village elections, and local governmental officials who were either in charge of, or had sufficient knowledge of the village elections.

According to one official sent by the Guangdong Provincial CPC Committee to assist village elections, this year is the third round of village elections in Guangdong's history (village elections were held in Guangdong in 1999 and 2002). There exists a fundamental difference between this time and the previous two. In the previous two elections, the list of candidates for each village residents' committee was decided by the township CPC Committee. But the Guangdong Provincial CPC Committee made it clear in 2005 that the CPC Committees were not allowed to determine the lists of candidates and it was up to the voters to nominate candidates. That means voters first nominate a list of preliminary candidates, out of which formal candidates are determined according to the votes they get in the process of nomination. Elections are then held for the voters to choose the head and members of a village residents' committee from among the formal candidates. The decision of Guangdong Provincial CPC Committee is in full compliance with the 1998 Organic Law and the provisions of both the Guangdong Provincial Measures to Implement the Organic Law of the PRC on Village Residents' Committees³⁴ and the Guangdong Provincial Measures on the Election of Village Residents' Committees³⁵ promulgated by the Guangdong Provincial People's Congress.

The author found through field study that the operation of village elections in the two selected towns is completely different. In X town in Qingxin County, with the assistance of officials sent from the Guangdong Provincial CPC Committee, the elections were held in accordance with the relevant legislation and the decision of the Provincial CPC Committee. In Y town in Dongguan City, however, the lists of formal candidates were still determined by the township CPC Committee and voters were not given the right to nominate preliminary candidates of their choice. The implementation of the 1998 Organic Law was substantially different. Why has that been the case?

The most important factor is whether or not the local governments and CPC Committees concerned properly implemented national and local legislation on village elections. Both the 1998 Organic Law and the 2001 Guangdong Provincial Measures on the Election of Village Residents' Committees stipulate clearly that candidates for a village residents' committee must be nominated directly by the voters. But the existence of legislation alone is not enough.

³⁴ Adopted by the 6th Meeting of the Standing Committee of the 9th Guangdong Provincial People's Congress on 27th November 1998, and amended by the 33rd Meeting of the same body on 30th May 2002.

³⁵ Adopted by the 27th Meeting of the 9th Guangdong Provincial People's Congress.

The implementation depends very much on the understanding and operation by the grassroots government and CPC Committees, i.e. the township people's government and the CPC Committee³⁶. The village elections in Y town in Dongguan demonstrate that both national and local legislation on village elections was ignored, the previous practice was followed, and the CPC Committee at township level chose the formal candidates.

But why has the implementation of national and local legislation on village elections in these two towns in the same province been so different? In order to answer this question, one needs to examine the differences between these two towns. Their biggest difference is that one is the poorest while the other is the richest town in Guangdong Province. The annual income generated from the collective assets of the poor village I visited is less than 30,000 RMB. The annual income of Y Town is 300 million RMB and annual income of a village in Y Town must be much higher than 30,000 RMB. The village residents' committee in the poor village does not have any resources under its control whereas its counterpart in a rich village has considerable resources under its control. All persons the author interviewed during the field study, including the newly elected village head of the poor village, were of the view that the primary reason why voters and competent persons in the poor village were not enthusiastic about the village election was that they did not benefit from it. It has been recognised by many Chinese scholars that elections are driven by the interests/benefits of those who participate in the elections including voters and candidates. Only when an election is related to and affects their interests/benefits, will voters be interested in it³⁷. According to this theory, the election in Y Town should have been more democratic. But that was not the case in reality. The interests of voters and candidates won't have much influence when a local government decides to interfere with an election. But why did the people's government in Y town, the organiser of village elections, choose to put aside both national and local election legislation? There might exist many different reasons. But one of the primary reasons is, in the opinion of the author, still interests/benefits. Though the town government can't directly use the resources of a village, it is very likely to benefit indirectly from that village. Hence, it is the interests of the organiser of elections to determine the outcome of the election.

2.4 Summary

It can be seen from the above discussion and analysis that village election practice in some selected cases is developing and maturing under the support of various sectors of society. Not only have the voters in those villages expressed their interest in actively participating in village elections but also the design of the whole election system including the nomination of candidates has improved. This is the positive aspect of village elections. However, only the village elections in the early 1980s discussed above were initiated by village residents. All other good examples of village election are the result of efforts made by various parties, including local CPC Committees and people's governments (especially their civil affairs departments), scholars, and even foreign democratic organisations. In the election case in Yuhang, support was also given by Zhejiang Provincial Civil Affairs Department and the Development Research Centre of the State Council. Hence, it is fair to say that all these good examples of village election are created by the State and local people's governments. Such good examples represent the future of the election reform of village residents' committees. But they are far from being representative of current national village elections.

³⁶ The relationship between CPC organs and governmental organs will be discussed in the next sub-section.

³⁷ See Tang Juan, "Yi 2003 Nian Shenzhen Quji Renda Daibiao Jingxuan Gean Weili Laikan: Gongmin Zizhuxing Jingxuan Renda Daibiao de Dongyin" (The Motive for Citizens to Voluntarily Participate in the Election Competition for Delegates to People's Congresses: Case Study of 2003 Shenzhen People's Congress Election at District Level), in Renda Yanjiu (the People's Congress Study), vol. 1, 2004 (vol. 145 in total), at pp. 9-10.

Instead, one can say that they are just individual examples. The conclusion drawn from the author's field study is that the practice of village election in China is still quite different. There is still a long way to go before true democratic elections as stipulated in the 1998 Organic Law becomes actual practice. The author agrees with many other scholars that it is feasible to hold democratic direct elections in villages. But it is not enough to have just the 1998 Organic Law, the support of the Central Committee of the CPC, Provincial People's Congresses and Governments. These are important, but can't guarantee that the Organic Law will be really implemented and enforced in practice. This is because there exists many other factors hindering the democratic progress of village election. Among all such factors, the most important is the opposition from various persons with vested interests. It is therefore essential to establish certain mechanisms in the election procedure to remove such obstacles. Many scholars have discussed how village election procedure can be further improved and have made some very good suggestions. So far as the design of village election procedure is concerned, the author is of the view that the election system of village residents' committees would be perfect if all the recommendations made by these scholars can actually be implemented³⁸.

It is, however, not enough to consider village elections only from the perspective of election procedure. It is necessary to examine how to have true democratic village elections from a broader perspective. Firstly, given that the leadership of the CPC is not only a constitutional principle in China but also a fundamental policy of the CPC, the leading position of the CPC in China is unquestionable. Hence, it is important to ensure that local organisations of the CPC will support local people's governments in their proper implementation of the 1998 Organic Law. Since the current practice of the CPC is that the head of a local CPC Committee should also be the chair of the standing committee of the people's congress at the same level, the unwillingness of a local CPC Committee to strictly implement the 1998 Organic Law makes it impossible for the local people's congress and government at the same level to implement the Organic Law effectively. The case of Y town in Dongguan demonstrates that democratic village elections are impossible without the support and supervision of the local CPC Committee. Secondly, we should also improve the operation of local people's congresses and governments, because they are the actual organisers of village elections. They are the main organs with vested interests, and are very often indistinguishable from the local CPC Committees. Local people's congresses and governments are, however, within the constitutional structure. So it is feasible to ensure that these two institutions are not affected by their vested interests in the implementation of the 1998 Organic Law through the improvement of constitutional structure. Specifically, an independent election committee with no vested interests in the village election can be established to organise it. Thirdly, it is necessary to remove the negative impact of the vested interests of the incumbent head and members of a village residents' committee on the election. This is the easiest problem to be resolved, through the balance of interests. A mechanism can be established to make village residents fully realise that the most direct method to protect their interests is to elect a village residents' committee which can truly represent their interests. With the firm support of the CPC, the inherent advantages of democratic elections, and gradual understanding by village residents of these advantages, the future of village elections in China should be bright.

³⁸ For example, Li Fan edited a book entitled "Zhongguo Xuanju Zhidu Gaige" (Reform of the Electoral Systems in China), Shanghai Jiaotong University Press, Shanghai, 2005. He and other contributors put forward many recommendations in that book.

3. Election System of the People's Congresses

3.1 Statutory Provisions on the Election of People's Congresses

The people's congress system is the fundamental political system in China. The 1982 Constitution has defined the NPC as the national organ of state power and local people's congresses as organs of local state power. There are five levels of people's congresses: national, provincial, municipal, county and township. The 1982 Constitution³⁹ has classified the five people's congresses into two categories. One category consists of township and county people's congresses which are directly elected by voters. The other category consists of the other three levels of people's congresses which are indirectly elected by the deputies to the people's congresses at the next lower level⁴⁰. Hence, the election system of the people's congresses in China consists of both direct and indirect elections.

Detailed rules on the election of people's congresses are set out in the Election Law. The first Election Law of the PRC on the NPC and All Local People's Congresses was enacted in February 1953, which formally established the election system of the PRC⁴¹. It was properly implemented before the Cultural Revolution, but as with other national legislation, was not implemented at all during the Cultural Revolution, from 1966 to 1976. After the Cultural Revolution, in order to effectively protect the election rights of people and improve the people's congress system, the 3rd Plenum of the 11th National Assembly of the CPC decided to amend the Election Law. On 1st July 1979, the Fifth NPC adopted the second Election Law of the PRC, i.e. the 1979 Election Law. The 1979 Election Law differed from the 1953 Law in the following ways. Firstly, the scope of direct election was expanded from township to county level. Secondly, the rule that the number of formal candidates equaled the number of deputies to be elected changed so that the number of formal candidates should in general be more than the number of deputies. Thirdly, voters and deputies to a people's congress have the right to nominate candidates. Fourthly, the principle of secret ballot shall be followed in the election of people's congresses at all levels. Fifthly, very liberal provisions were incorporated for the promotion of candidates, which allowed all political parties, other organisations and voters to use various means to promote the candidates they nominated. Sixthly, if too many candidates are nominated, a pre-election can be held. Seventhly, the rule that a candidate would be deemed elected if he obtained a simple majority of the actual voters (in the case of direct election) or deputies (in the case of indirect election) present at the election was changed so that a candidate must obtain more than 50% of all eligible voters or deputies in order to be elected⁴².

Cai Ding-jian, a leading scholar on the people's congress system in China, has pointed out that in order to meet the demand of people from all sectors of society to participate in politics at the initial stage of economic reform, democracy is the primary objective of the election system established by the 1979 Election Law. He holds the view that of all the amendments, the right to make nominations, permission to use various means to promote candidates, and

³⁹ The PRC has had four Constitutions, in 1954, 1975, 1978, and 1982. The 1982 Constitution has been amended four times, in 1988, 1993, 1999, and 2004.

⁴⁰ See Arts. 59 and 97 of the 1982 Constitution.

⁴¹ For the main contents of the 1953 Election Law, at:

<http://www.npc.gov.cn/zgrdw/common/zw.jsp?id=4262&lmfl=%C8%CB%B4%F3%CE%C4%CF%D7&label=WXZLK&pdmc=010602>, please refer to Cai Ding-jian, "Zhongguo Xuanju Zhidu de Lishi he Xianzhuang" in Cai Ding-jian (ed.), "Zhongguo Xuanju Zhuangkuang de Baogao (The Report on Election Circumstances in China), Law Press, Beijing, 2002, pp. 4-6.

⁴² See Cai Ding-jian, n. 41, pp. 9-10; see also Xie Bao-fu, "Dangdai Zhongguo Xuanju Zhidu Ruogan Wenti Fenxi" (Analysis of Several Issues of Contemporary Chinese Electoral Systems), in Shenzhen University Journal (Social Science Version), vol. 1, 2002.

the rule that the number of candidates should be more than the deputies to be elected are the three essential changes which show the democratic nature of the 1979 Election Law⁴³. Another scholar believes that provisions for pre-election and the adoption of various means to promote candidates may affect the efficiency of election and therefore concludes that to a certain extent the 1979 Election Law sacrifices efficiency for the sake of democracy⁴⁴.

After its promulgation, the 1979 Election Law was amended four times: in 1982, 1986, 1995, and 2004. The most important change made by the 1982 Amendments was to the promotion of candidates. After amendment, candidates could no longer campaign by using different means to promote themselves. Instead, they could only be introduced by those who nominated them to different groups of voters at their meetings. The purpose of this amendment was obviously to restrict open competition among candidates⁴⁵. Hence, the common understanding of Chinese scholars is that the 1982 Amendments were a step backward in democratic development.

Compared with the 1982 Amendments, the 1986 Amendments were regarded as a big step forward towards democratic elections. The major changes made by the 1986 Amendments are as follows. Firstly, the quota of deputies to the NPC was reduced from less than 3,500 to less than 3,000 and the quota for local people's congresses was also dropped significantly. Secondly, voter registration procedure was simplified through adoption of the principle that voters only need to register once, with perpetual effect. Thirdly, the minimum number of voters needed to make a valid nomination of a candidate was increased from 3 to 10. Fourthly, the pre-election procedure which had been used for the determination of formal candidates in both direct and indirect elections was repealed. Fifthly, the majority required for election changed from 50% or more of all eligible voters to 50% of participating voters. Although the 1979 Election Law already established the right of voters to nominate candidates and the principle that the number of candidates should be more than the number of representatives to be elected, in practice pre-elections had often been used by election organisers to make the number of candidates equal to the number of deputies to be elected. Hence, Cai Ding-jian is of the view that these two fundamental reforms in the election system of the people's congresses were only consolidated by the 1986 Amendments⁴⁶.

The 1995 Amendments brought four major changes. Firstly, the difference of the number of voters represented by each deputy in urban and rural areas respectively was decreased in order to make representation more equal. Secondly, the pre-election procedure was reintroduced with the condition that the number of candidates must be greater than the number of deputies to be elected. Thirdly, it was provided that no less than two days should be given to nominate candidates, to ensure sufficient time for the deputies to hold discussions. Fourthly, groups of deputies were given the right to jointly nominate a candidate. Though the number of candidates to be nominated by each group of deputies cannot be more than the number of deputies to be elected, the number of total candidates must be more than the number of total deputies to be elected. Cai Ding-jian is of the view that the 1995 Amendments further improved some specific procedural rules, and made some changes to some election procedures in order to increase their efficiency⁴⁷.

The 2004 Amendments made the following main changes.⁴⁸ Firstly, the provisions for pre-elections became more detailed and specific. For direct elections, once the number of

⁴³ See Cai Ding-jian, n. 41, pp. 13-14.

⁴⁴ See Xie Bao-fu, n. 42.

⁴⁵ See Cai Ding-jian, n. 41, pp. 16-17.

⁴⁶ See Cai Ding-jian, n. 41, pp. 18-20.

⁴⁷ See Cai Ding-jian, n. 41, pp.26-28.

⁴⁸ See Xie Bao-fu, n. 42.

preliminary candidates nominated by voters is more than the maximum number of candidates set out in the Election Law⁴⁹, the election committee shall ask the groups of voters⁵⁰ within the election district to discuss, consult with each other and determine the list of formal candidates according to the majority view of voters. If voters cannot form a consistent view with regard to the formal candidates, a pre-election should be held to determine the formal candidates according to the number of votes each preliminary candidate gets in pre-election⁵¹. For indirect elections, the presidium shall submit the list of candidates nominated according to law to all deputies for consultation and discussion. If the number of preliminary candidates is less than the maximum number of candidates stipulated under the Election Law, all of them will be regarded as formal candidates for all the deputies to elect. If the number of preliminary candidates is more than the maximum statutory number of candidates, pre-election will be held to determine formal candidates according to the number of the votes each preliminary candidate gets and the maximum statutory number⁵². Secondly, in order to respond to increasing demand for democracy, candidates were allowed to meet voters and answer questions raised by voters⁵³. Thirdly, the Election Law was made more workable by clearly defining the concept of “corruption”, imposing penalties on illegal election activities, and increasing the categories of administrative penalties for unlawful activities by governmental officials⁵⁴.

It can be seen from the above discussion that after four sets of Amendments and twenty five years of development since the enactment of the 1979 Election Law, China’s electoral system of people’s congresses has made some progress towards democracy. But so far direct election is still limited to township and county levels and has not been allowed for the other three levels of people’s congresses. The degree of democracy is still not high.

Many provisions in the Election Law intend to achieve a balance between two kinds of interests. For example, in the case of direct elections, the election committee established by a people’s congress will be in charge of the election of the people’s congress at the same level, and the standing committee of a county people’s congress shall bear the responsibility of guiding the work of election committees at both township and county levels⁵⁵. So through the appointment of members to an election committee and the leadership relationship between the two organs at high and low levels respectively, indirect influence by state power over elections has been established. On the other hand, however, an election committee is

⁴⁹ Paragraph two of Art.30 of the Election Law provides that “The number of candidates for deputies to be directly elected by the voters shall be from one third to 100 percent greater than the number of deputies to be elected; the number of candidates for deputies to be elected by various local people’s congresses to the people’s congresses at the next higher level shall be from 20 to 50 percent greater than the number of deputies to be elected”. The requirement on maximum number of candidates was there since 1979. But under the original 1979 Election Law and the 1982 Amendments, the number of candidates for deputies to be directly elected by the voters shall be from 50 percent to 100 percent greater than the number of deputies to be elected. The 1996 Amendments changed the requirement to the current formulation under Art. 30 of the Election Law.

⁵⁰ Groups of voters are not defined in the Election Law and they are usually arranged according to the residence of voters. Usually Provincial People’s Congress will enact implementing rules to implement the Election Law. But it is usually provided that under such implementing rules that several voters’ groups will be established in each electorate.

⁵¹ See the 2nd amendment of 2004 Amendments (2004 Amendments contain 5 amendments); see also Art. 31 of the amended Election Law.

⁵² See Art. 31 of the Election Law.

⁵³ See the 3rd amendment of 2004 Amendments; see also Art. 33 of the amended Election Law.

⁵⁴ See the 5th amendment of 2004 Amendments; see also Art. 52 of the amended Election Law.

⁵⁵ See Art. 1 of “Several Provisions of the NPCSC on Direct Election of Delegates to People’s Congresses Below County Level (adopted by the NPCSC on 5 March 1983), at: <http://www.npc.gov.cn/zgrdw/common/zw.jsp?id=4429&lmfl=%C8%CB%B4%F3%CE%C4%CF%D7&label=WXZLK&pdmc=010602>; see also Art. 7(2) of the Election Law.

subject to various legal constraints in the exercise of its statutory authority under the Election Law⁵⁶, and has to “determine and announce the list of formal candidates according to the majority opinion of voters”. The purpose of this procedure is to prevent an election committee from arbitrarily interfering with or manipulating an election. Furthermore, the provision for the nomination of candidates to the presidiums of local people’s congresses at and above county level, the consultation and discussion procedure for the deputies to decide formal candidates, as well as the procedure in pre-election to determine formal candidates, all reflect the intention of the statutory provisions to balance state power and the right to freedom of election. One view is that such provisions have on the one hand maintained space for state power to interfere with election, but on the other hand have also established the boundaries for such interference⁵⁷. But the author is of the view that the primary objective of such statutory provisions is to ensure that state power, especially the CPC, may get involved in the election process and also maintain a certain amount of control of and influence over elections. The influence of the CPC over elections of people’s congresses is a restriction on democracy and is therefore undesirable.

The adoption of the principle that the number of candidates shall be greater than the number of deputies is regarded as one of the most important results of China’s electoral system reform⁵⁸. An election in which the number of candidates is greater than the number of deputies to be elected is more democratic than the election in which the number of candidates is equal to the number of deputies. The former can better protect the voters’ freedom of election and the realisation of their true intention. It can also make the election more competitive. It is the most democratic provision in the electoral system. Unfortunately, in practice this statutory provision has not always been properly implemented⁵⁹. The provisions in the Election Law for pre-election, discussion, consultation, and deliberation of candidates have changed several times and are now finalised as per the 2004 Amendments. Wu Guo-guang argues that pre-election is a procedure which the CPC can use to find out the voting intention of voters so that it can influence the mind of the voters before formal election⁶⁰, and that the substance of discussion, consultation and deliberation procedures is to “require voters to express to the election organiser how they will vote”⁶¹. Hence, he has come to the conclusion that in effect all these procedures “have the function of substituting for the actual election”⁶². The 2004 Amendments have maintained all these procedures, which give room to election organisers to influence the mind of the voters.

The principle of equality and provision for different treatment supplement each other. It is clearly stipulated in the Constitution and the Election Law that every Chinese citizen of the

⁵⁶ See Art. 2 of “Several Provisions of the NPCSC on Direct Election of Delegates to People’s Congresses Below County Level”

⁵⁷ For details of such limits, please refer to Arts. 21(1) and 22 of the Organic Law on All Local People’s Congresses and Governments (“the Organic Law on LPCG”), and Arts. 30, 31(2), and 35 of the Election Law.

⁵⁸ See Wu Guo-guang, “Zhongguo Dalu de Xuanju Zhidu ji qi Biange” (The Electoral System in Mainland China and its Reform), in Hu Chun-hui (ed.), “Zhong Tai Gang Sandi Xuanju Zhidu he Minzhu Fazhan” (Collection of Essays on Electoral Systems and Democratic Development in Mainland China, Taiwan and Hong Kong), Jianan Printing Co. Ltd., 2000, p. 50.

⁵⁹ For example, the Organic Law on LPCG provides that with regard to the election of heads and deputy heads of governmental organs, if there is only one candidate nominated, an election can also be held. The true intention of this provision is clear and there is nothing wrong about this provision. But in practice, this provision has often been relied on to put forward only one candidate for one position, or the same number of candidates for the same number of positions available. Hence, it has turned out that the number of candidates for heads of governmental organs has often been equal to the number of positions available.

⁶⁰ See Wu Guo-guang, n. 58, p. 41.

⁶¹ Ibid.

⁶² See Wu Guo-guang, n. 58, pp. 42-43.

age of 18 or above shall have equal right to vote and to stand for election⁶³, and Article 4 of the Election Law stipulates specifically that “one voter has only one vote in each election”. That may lead one to conclude that every person will have one vote with the same value. But in reality, that is not the case. For example, in the allocation of deputies for urban and rural areas, the relevant provision in the Election Law has maintained unequal treatment between citizens in urban and rural areas, i.e. the number of voters represented by each deputy of a people’s congress at county level or above in rural areas is four times the number of voters his counterpart in urban areas represents⁶⁴. Some Chinese scholars are of the view that this statutory provision indicates that there exist some special social and political circumstances and unique understanding of equality in China⁶⁵. In addition, the Election Law has also provided special protection to women, returned overseas Chinese and ethnic minorities to ensure that they are represented in people’s congresses⁶⁶. Most Chinese scholars are of the view that the intention of such statutory provisions is to achieve substantive justice in elections and they have had a positive contribution to achieving substantive equality. But there are also scholars who do not accept this common understanding⁶⁷.

The above discussion shows that from a legal perspective, the electoral system of the people’s congresses as established by the Election Law is not democratic in the true sense. Through its design of the electoral system and procedures, the Election Law has maintained the possibility for election organisers to interfere with and influence elections. As a result the election outcome may not truly reflect the wishes of voters. But the introduction of the principle that the number of candidates must be more than the number of deputies to be elected and the improvement of some relevant statutory provisions have introduced competition into the election of people’s congresses.

⁶³ See Art. 34 of the 1982 Constitution. Article 3(1) of the Election Law provides that “All citizens of the People’s Republic of China who have reached the age of 18 shall have the right to vote and stand for election, regardless of ethnic status, race, sex, occupation, family background, religious belief, education, property status or length of residence”.

⁶⁴ See Arts. 12(1), 13, and 14 of the Election Law.

⁶⁵ “The common understanding among Chinese constitutional scholars in early days was that cities were the centres of politics, economy and culture, where the working class was relatively concentrated. In order to create favourable conditions to ensure that the working class could exercise leadership it was necessary to have differential treatment of election rights for peasants and the working class. The current common understanding is that on the one hand the election rights for peasants and workers are unequal in formality, but on the other hand such inequality in formality is designed to achieve equality in substance. But Professor Lin Lai-fan is of the view that in constitutional theory equality in substance is in general only applicable to the protection of those groups who are relatively weak in a society and its objective is to achieve real equality. From the current positions held by different classes in Chinese society, the differential treatment in the existing electoral system for peasants and workers is against the achievement of real equality between them”. For detailed discussion, please refer to Lin Lai-fan, “Cong Xianfa Guifan dao Guifan Xianfa: Guifan Xianfaxue de yizhong Qianyan” (From Constitutional Norms to Normative Constitution: a Preface to Normative Constitutional Study), Law Press, 2001, pp. 132-133.

⁶⁶ Article 6 of the Election Law provides “[T]he NPC and the local people’s congresses shall have an appropriate number of female deputies and increase the proportion of female deputies step by step. The NPC and the local people’s congresses of the areas with a relatively large number of returned overseas Chinese shall have an appropriate number of deputies who are returned overseas Chinese”; Article 9(4) of the Election Law provides “The number of deputies of the autonomous regions and provinces where minorities are assembled, through the Decisions of the NPCSC, may additionally increase five per cent. The number of deputies of the counties, autonomous counties, townships and nationality townships where minorities are assembled or peoples reside in decentralisation, through the decisions of the standing committees of people’s congresses of provinces, autonomous regions and municipalities directly under the Central Government, may additionally increase five per cent”.

⁶⁷ See n. 65.

3.2 Policy Analysis

From a policy perspective, before taking over power in Mainland China, the CPC made it clear that it would organise democratic elections once it came into power⁶⁸. But after it actually came into power in 1949, the CPC came to the view that it would be difficult to have democracy in a country which was poor, undeveloped, and populous. Different senior officials of the CPC expressed on different occasions the view that it was not appropriate for China to have universal, equal, direct and secret elections. Cai Ding-jian has summarised their arguments as follows:⁶⁹ (1) it was difficult for China to have direct elections immediately since China had a huge population; (2) it was difficult to implement the principle of equality in elections as the population of peasants was too large. Otherwise most of deputies to the people's congresses would be peasants; (3) the education level of Chinese citizens was too low and many were illiterate. It was therefore very difficult to have a secret ballot; (4) China did not have enough experience in elections and the masses did not have a good understanding of or enthusiasm for them; (5) when the conditions mentioned above were not satisfied, it would be meaningless to have complete democratic elections. The CPC emphasised the substance of elections rather than the formality. It is therefore clear that the CPC did not accept direct elections and was not willing to do so during the early period after it came into power.

After the Cultural Revolution, the CPC realised it was necessary to reform its political system, and also its electoral system, which led to the enactment of 1979 Election Law. The direct reason for the reform is that some senior leaders of the CPC at that time were of the view that the expansion of direct election and the democratisation of the electoral system would put the masses in direct control of county people's congresses, and indirect control of provincial congresses as well as the NPC. If this were the case, nine hundred million people could participate in the administration of national affairs, and be in charge of their own, and the nation's, fortune. Furthermore, some senior officials also expressed the view that the reform of the electoral system would be a fundamental measure to prevent tragedies such as the Cultural Revolution⁷⁰. Hence, the CPC had the genuine intention to develop a democratic electoral system at the end of the 1970s. By 1987 when the CPC held its 13th National Assembly, the Secretary-General of the Central Committee of the CPC at that time discussed political reform at some length in his Working Report entitled "Moving Forward Along the Socialist Road with Chinese Characteristics" and came to the conclusion that it was time for China to undertake political reform. Especially, he made the following comments on the electoral system of the people's congresses⁷¹:

"In recent years, the degree of democracy in elections in China has been increasing. But the electoral system is still not yet satisfactory and existing statutory provisions have not been implemented fully and effectively. In the future, we should fully respect the will of voters and ensure that voters have the freedom to vote. We should insist on the principle that the number of candidates should be more than positions available, improve the methods for

⁶⁸ See "Selected Works of Mao Ze-dong (combined version)", Renmin Press, 1968 version, pp. 969-970, quoted from Cai Ding-jian, n. 41, pp. 2-3.

⁶⁹ See Cai Ding-jian, n. 41, p. 4.

⁷⁰ See Peng Zhen, "Guanyu Quanguo Xuanju Shidian Gongzuo de Jidian Yijian" (Several Opinions on National Election Work on Trial), in "Xin Shiqi de Shehui Zhuyi Minzhu yu fazhi Jianshe" (Establishment of Socialist Democracy and Legal System in New Era), Central Literature Press, 1989, pp. 38-43; see also "Difang Renda Changweihui de Gongzuo" (The Work of the Standing Committees of Local People's Congresses), also in "Xin Shiqi de Shehui Zhuyi Minzhu yu fazhi Jianshe" (Establishment of Socialist Democracy and Legal System in New Era), Central Literature Press, 1989, pp. 56-58; quoted from Cai Ding-jian, n. 41, pp. 10-11.

⁷¹ See Part V of the Working Report entitled "Yanzhe You Zhongguo Tese de Shehui Zhuyi Daolu Qianjin" (March Along the Socialist Road with Chinese Characteristics).

the nomination of candidates, and the methods to introduce candidates. Practice has proved that rigid statutory provision for the ratio of candidates of different backgrounds is against the freedom of voters to express their own will through elections. In order to ensure that candidates represent different interests, methods other than geographical election can be introduced, including functional constituencies or any other feasible methods.”

The above quotation indicates that the CPC was already considering how to reform the electoral system of people’s congresses and had identified some particular areas which needed to be reformed. But after the 4th June event⁷², the political environment became relatively tense. For the 1990 election, the Central Committee of the CPC stated the necessity to stick to the four cardinal principles and to prevent bourgeois liberalisation. But at the same time, it also confirmed the experience achieved in elections at town and county levels since 1979 and stated the requirement to organise elections according to principles established in the 1979 Election Law⁷³. In reality, however, the 1990 election was a step back in the development of democratic elections⁷⁴. Furthermore, the policy of the CPC on the election of people’s congresses had also retreated. The best example is the Working Report delivered by Jiang Ze-min, then Secretary-General of the Central Committee of the CPC, to the 14th National Assembly of the CPC, which was entitled “Jiakuai Gaige Kaifang he Xiandaihua Jianshe Bufa Duqu you Zhongguo Tese Shehuizhuyi Shiye de Gengda Shengli” (To speed up Economic Reform, Open-door Policy, and Modernisation so as to Achieve Greater Success in the Socialist Course with Chinese Characteristics). Though he mentioned political reform in his report, he only discussed it very briefly and just pointed out in principle that the objective of political reform was to establish a socialist democratic political system rather than a Western multi-party system or parliamentary system. But he did not mention at all the electoral system of people’s congresses.

After 1992, China’s political environment became more liberal. At the 15th and 16th National Assemblies of the CPC held in 1997 and 2002 respectively, Jiang Ze-min, then Secretary-General of the Central Committee of the CPC, spent one whole chapter in each of his Working Reports to discuss political reform. He mentioned in both Reports “to have democratic elections, democratic decision-making, democratic administration and democratic supervision, to protect the broad rights and freedoms enjoyed by people according to law, and to respect and protect human rights”⁷⁵. The 4th Plenum of the 16th National Assembly of the CPC adopted the Decision mentioned in Part 1 of this paper. While following the tone set down by the Working Report of the 16th National Assembly in 2004, the Decision has emphasised the establishment of democratic systems. The author’s understanding is that the establishment of democratic systems includes the establishment of a democratic system for election of the people’s congresses. The White Paper only gives a brief overview of the people’s congress system in China without mentioning any policy indications with regard to elections⁷⁶.

⁷² It refers to the students’ demonstration at Tiananmen Square which eventually led to crackdown by the Government on 4 June 1989.

⁷³ See Cai Ding-jian, n. 41, pp.24-25.

⁷⁴ See Cai Ding-jian, n. 41, pp. 25, 26 and 30.

⁷⁵ See Part VI of the Working Report of the 15th National Assembly of the CPC entitled “Gaoju Dengxiaoping Lilun Weida Qizhi, ba Jianshe you Zhongguo Tese Shehui Zhuyi Shiye Quanmian Tuixiang Ershiyi Shiji” (Holding on to Dengxiaoping Theory and Pushing forward comprehensively the Course of Establishing Socialism with Chinese Characteristics into the 21st Century), and Part V of the Working Report of the 16th National Assembly of the CPC entitled “Yanzhe You Zhongguo Tese de Shehui Zhuyi Daolu Qianjin” (March Along the Socialist Road with Chinese Characteristics).

⁷⁶ See Chapter 3 of the White Paper.

Hence, the CPC accepts in principle democratic election of people's congresses. But as to how to implement the principle through legislation and in practice, when the scope of direct election should be further expanded, and to what extent voters should be given more autonomy in the election of deputies to people's congresses, the policy of the CPC reached its apex in 1987. Unfortunately, the 4th June event made it impossible to implement the 1987 policy decision as incorporated in the 1987 Working Report of the CPC. The author is of the view that the Decision adopted by the 4th Plenum of the 16th National Assembly of the CPC has confirmed the importance of establishing democratic systems. But the Decision has not put forward any specific proposals on electoral system reform. Meanwhile it has emphasised the necessity to combine the leadership of the CPC, democracy and rule of law. That means a balance needs to be struck between the leadership of the CPC and democratic election of people's congresses. As to how to reach such a balance, or to what extent the democratic aspect of the electoral system should develop, the CPC has not made any clear policy decision yet. The future of the electoral system of people's congresses is, therefore, still uncertain to a large extent.

3.3 Study of Election Practice

As early as 1980, when direct elections were first held for district and county people's congresses, students in some universities in Beijing competed heatedly to become deputies to district people's congresses. In Beijing alone, around 100 students participated in the election. In the end, 8 student candidates who had already passed the pre-election were elected as deputies of Haidian District People's Congress⁷⁷. Later on, both Zeng Jian-yu in Luzhou City, Sichuan Province in 1992 and Yao Li-fa in Qianjiang City, Hubei Province in 1998 participated in the election of local people's congresses upon their own initiative and were successfully elected⁷⁸. Both Zeng and Yao were among the first batch of ordinary citizens standing out for election to local people's congresses upon their own initiative. Their success has been regarded as milestones in the history of direct election of deputies to local people's congresses in China. 2003 has been described by some scholars as the year of citizens' rights⁷⁹; it is also the most recent election year of local people's congresses. In 2003, society and the media once again focused their attention on ordinary citizens' participation in elections as candidates. The difference between this election year and previous ones is that in 2003 more citizens had voluntarily solicited nominations in order to become candidates for deputies of local people's congresses. Furthermore, their participation had become more organised, and their election methods had become more mature. This section will choose to study several cases which have been widely reported by media and analysed by scholars.

The first case is the 2003 election in Qianjiang City, Hubei Province. Yao Li-fa started in 1987 to participate in the election of the Qianjiang Municipal People's Congress as an independent candidate, and was eventually elected a deputy in 1998 when he participated in the election for the fourth consecutive time. In 1998, there were only two independent candidates for Qianjiang Municipal People's Congress. During his term of 5 years as a deputy, Yao Li-fa put forward 187 recommendations/bills to supervise the government. His

⁷⁷ See Wang Yi, "2003: the Year of Citizens' Rights", in *Xinwen Zhoukan* (News Week), vol. 47, 2003, p. 20; see also Luo Li-wei, "Shui Shi Shoupi Duli Jingxuanren?" (Who are the first batch of independent candidates?), in "Nanfang Zhoumo" (Southern Weekends), 12 June 2003; quoted from Zou Shu-bin, Tang Juan, and Huang Wei-ping, "2003 Nian Renda Daibiao Jingxuan de Qunti Xiaoying: Beijing yu Shenzhen Bijiao" (The Collective Effect of 2003 Election of Delegates to the People's Congresses: a Comparison of Beijing and Shenzhen), in "Makesi Zhuyi yu Xianshi" (Marxist Theory and Reality), vol. 2, 2004, p. 36.

⁷⁸ Ibid.

⁷⁹ See Wang Yi, n. 77.

existence had, however, given some local governmental officials a headache⁸⁰. In the 2003 election for Qianjiang Municipal People's Congress, in addition to candidates nominated by political parties and people's organisations, Yao Li-fa participated in the election again as an independent candidate, together with 31 other independent candidates, including current deputies to town and municipal people's congresses, teachers, heads of village residents' committees, deputy secretaries of village CPC organisations, workers and others. After getting the nominations of ten or more voters to become preliminary candidates, they started their election competition activities. But later in the process of repeated consultation and deliberation, most of them had been screened out and only two of them became formal candidates. On the election day, 28th November 2003, the two independent candidates and some other formal candidates got less than 50% of votes from voters participating in the election and therefore were not properly elected. It turned out that the number of elected deputies was less than the number of seats available. According to Article 41 of the Election Law, a by-election should be held to fill in the remaining seats and these two independent candidates would be qualified to be formal candidates in the by-election to be held. But the township election organisation committee did not organise the by-election on the ground that those candidates had no intention to participate in another election and had given up their rights to participate in a by-election. As a result, none of the 32 independent candidates were elected⁸¹. After the election, Yao Li-fa together with some voters were of the view that their rights to vote and to stand for election had been infringed, and therefore petitioned the standing committee of the Qianjiang Municipal People's Congress and some other governmental organs to address the issue. Yao Li-fa also brought a legal action to a local court which refused to accept his case. On 10th January 2004, Yao Li-fa wrote a petition letter to the NPCSC requesting it to start a special investigation procedure to investigate the problems which had occurred in the election of the Qianjiang Municipal People's Congress⁸². As of July 2005, the author is not aware of any organisations, including the NPCSC, investigating or dealing with Yao Li-fa's petition.

The second case is the election of deputies to different district people's congresses in Shenzhen in April and May of 2003⁸³. Seven people stood out to seek nomination to be candidates for deputies to different district people's congresses and were properly nominated as preliminary candidates in the election. Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University, in their analysis of the election⁸⁴, classified the seven candidates as either "independent candidates" (or "candidates nominated by the masses") or "self-nominated candidates". The former refers to those candidates nominated by ten or more voters; the latter refers to those who do not become formal candidates but go directly

⁸⁰ See "Luoxuan Renda Daibiao Shangjing Dijiao Shensu: Ti Renmin Shuohua Releshui?" (A Formal Delegate Who Lost Election Went to Beijing to Submit His Petition: What's Wrong with Speaking on behalf of People?), downloaded from: http://news3.xinhuanet.com/newscenter/2004-01/13/content_content_1272302.htm.

⁸¹ See Li Fan, "Cong Qianjiang Renda Xuanju Shijian Kan Zhongguo Jiceng Minzhu de Fazhan" (Analysis of the Development of Chinese Grassroots Democracy through the People's Congress Election Event in Qianjiang), in "The People's Congress Study", vol. 4, 2004.

⁸² See n. 80; see also "Yaolifa Tiqing Renda Diaocha Xuanju, Zijian Houxuanren Quanjun Fumo" (Yao Li-fa Petitions the NPC to Investigate the Election Incident, All Candidates Who Recommended Themselves Lost in Election), downloaded from: <http://cn.biz.yahoo.com/050117/16/68e9.html>.

⁸³ A district people's congress in Shenzhen is at the same level as a county people's congress where deputies are directly elected by voters.

⁸⁴ See Huang Wei-ping, Tang Juan and Zou Shu-bin, "2003 Nian Shenzhen Shi Quji Renda Daibiao Jingxuan Xianxiang de Zhengzhi Jiedu" (Political Analysis of 2003 Competition Phenomenon in People's Congress Election at District Level in Shenzhen City), in "Beijing Xingzheng Xueyuan Xuebao" (Beijing College of Administration Journal), vol. 6, 2003; see also Tang Juan and Zou Shu-bin (eds.), "2003 Nian Shenzhen Jingxuan Shilu" (The Actual Practice of 2003 Election Competition in Shenzhen), Northwest University Press, 2003; see also Huang Wei-ping, Tang Juan and Zou Shu-bin, "Conscious Political Participation of Citizenry and Transformation of Electoral Institutions: A Case Study of the 2003 Competitive Election for Deputies to District People's Congress in Shenzhen", in "Social Sciences in China", Spring 2004.

to the voters, asking voters to vote for them by writing their names in the space provided on the election ballots⁸⁵. According to their research, out of the seven candidates⁸⁶, one is a member of the CPC, three are members of other political parties, and the other three are without any political background. Two became formal candidates by getting nominated by ten or more voters, the other five participated in the election as “self-nominated candidates”. Out of these five people, three were initially nominated as preliminary candidates by other political parties and were then screened out during the consultation process to determine formal candidates. The other two nominated themselves⁸⁷. All seven candidates had received higher education and were aged between 35 and 50 years. All but one were financially sound, and their average annual income was around 100,000 RMB, putting them in the middle class in Shenzhen⁸⁸. Huang Wei-ping, Tang Juan and Zou Shu-bin found that all seven candidates experienced obstacles, of two main types. One is that three of them were screened out by the election organising committees within the electorates (which are in fact community residence committees). The other is that the election organising committees within the electorates had either prevented them from participating in the election, or objected to, prohibited, or removed their election campaign posters after they were posted⁸⁹. The election result was that the candidate who was a member of the CPC was elected, the other six were not.

The third case is a district/county election in Beijing, where elections for the change of term of people’s congresses were completed by December 2003. There were in total 41,637 nominated preliminary candidates, out of whom 40,906, or 98%, were nominated by ten or more voters. Out of 6,748 formal candidates, 89% were nominated by voters (only 11% were nominated by political parties or people’s organisations). 83.2% of deputies successfully elected (3,662) were initially nominated by 10 or more voters⁹⁰. The deputy head of the Beijing municipal working group in charge of the 2003 elections (and vice chairman of the Standing Committee of the Beijing Municipal People’s Congress), Mr Fan Yuan-mo, was quoted as follows: “voters can fully exercise their election rights independently. So long as the election is held in accordance with proper legal procedure, the election results should be recognised according to law, and the government will respect such election results”⁹¹.

Although in Beijing 3,662 preliminary candidates nominated by voters finally got elected as deputies to district/county people’s congresses, the media focused on about 20 preliminary candidates nominated by 10 or more voters out of whom there were university students, defenders of real estate rights, scholars, lawyers and other professionals. Some of them

⁸⁵ See Tang Juan, “Cong Querexing Xuanju Zhuanxiang Jingzhengxing Xuanju: Dongyin yu Yiyi – Yi 2003 Nian Shenzhen Quji Renda Daibiao Jingxuan Quntixing Anli wei Jiedu Duixiang” (From Confirmative Election to Competitive Election: Motive and Meaning: A Case Study of the 2003 Collective Competitive Election for Deputies to District People’s Congress in Shenzhen), in “Nanjing Social Science”, vol. 3, 2004.

⁸⁶ Six of them were named in the press: Xiao Yiu-mei, Wu Hai-ning, Zou Jia-jian, Ye Yuan-bai, Xu Bo, and Wang Liang. There was another unemployed female not named, Xie Xiao-ying. See Tang Juan, n. 85.

⁸⁷ See Tang Juan, “Cong Querexing Xuanju Zhuanxiang Jingzhengxing Xuanju: Dongyin yu Yiyi – Yi 2003 Nian Shenzhen Quji Renda Daibiao Jingxuan Quntixing Anli wei Jiedu Duixiang” (From Confirmative Election to Competitive Election: Motive and Meaning: A Case Study of the 2003 Collective Competitive Election for Deputies to District People’s Congress in Shenzhen), in “Zhengzhixue Yanjiu” (Political Science Study), vol. 3, 2004, pp. 39-41.

⁸⁸ See Tang Juan, n. 87, p. 41.

⁸⁹ Ibid.

⁹⁰ See Cui Hong, “Beijing: 804 Wan Ren Toupiao Zhixuan Shuoming Renda Daibiao de Fenliang Zhongle” (Voting by 8 Million and 40 Thousand Citizens Indicates That Deputies to People’s Congresses Are Treated More Seriously), in Beijing Chengbao (Beijing Morning Post), 11 December 2003.

⁹¹ Ibid.

were public figures, which is properly the main reason why they attracted media attention⁹². Out of those candidates, only Nie Hai-liang, defender of individual property rights, and Xu Zhi-yong, an intellectual and public figure, were elected while all the others lost in the election. Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University conducted research on the election experience of those candidates and found that some individual election campaign offices and professional election supporting groups were established in the 2003 election process⁹³, and election planning and organisation appeared. At the same time, campaign style became diversified. Candidates used posters, leaflets, propaganda vehicles, press conferences, and internet dialogues etc. to interact with voters, and to increase voters' understanding of their platforms. They also found that issues of election finance appeared in Beijing⁹⁴, and found that the candidates' consciousness of their rights to stand for election in Beijing was higher than candidates in Shenzhen. The election in Beijing was better organised and the election skills of candidates in Beijing were more mature.

The election results of the first two cases prove the difficulty for either independent or self-nominated candidates to get elected as deputies to local people's congresses. As to the 3rd case, the election results of those candidates studied by Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University prove the same point regardless of the reasons why the majority of those candidates failed in their election. But their research result is contrary to the official information about 2003 election in Beijing. Even if the official information were reliable, one could still conclude, by relying on the three cases discussed above, that it is difficult for independent or self-nominated candidates who are public figures to get elected as deputies to local people's congresses.

Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University came to a very positive conclusion after conducting research on the 2003 elections in Shenzhen and Beijing. Since some people had actively stood for election in both Shenzhen and Beijing, they came to the view that the electoral system of the people's congresses has started its transition from confirmative election⁹⁵ to competitive election. They identify five factors which have induced voters to stand for election. The first is interest-driven. The second is that village and urban residential committee elections in the 1990s have contributed to the accumulation of

⁹² For example, the lawyer Qin Bing who became famous for drafting a sales contract for real estate with 204 clauses, Wang Hai, famed for campaigning against fake products, and so on. For a detailed discussion, please refer to Zou Shu-bin, Tang Juan and Huang Wei-ping, "2003 Nian Renda Daibiao Xuanju Qunti Xiaoying: Beijing yu Shenzhen Bijiao" (The Collective Effect of Competition in 2003 People's Congresses' Election: A comparison between Beijing and Shenzhen), in "Marxism and Reality", vol. 2, 2004.

⁹³ For example, there are "Shu Kexing Public (election) Affairs Office", "Du Maowen Competition Supporting Group" etc.

⁹⁴ See Zou Shu-bin, Tang Juan and Huang Wei-ping, "2003 Nian Renda Daibiao Xuanju Qunti Xiaoying: Beijing yu Shenzhen Bijiao" (The Collective Effect of Competition in 2003 People's Congresses' Election: A comparison between Beijing and Shenzhen), in "Marxism and Reality", vol. 2, 2004, p. 36.

⁹⁵ They are of the view that, while the direct election of deputies to the people's congresses of towns and districts of cities has been in operation for more than fifty years, and the direct election of people's congresses at county level has operated for more than 20 years, there has not been a sufficiently competitive component in the election. For a long time, China's electoral system for people's congresses has been in substance a confirmative election, in which candidates for deputies are usually nominated and/or recommended by the CPC, other political parties, or people's organisations, and are confirmed as formal candidates through proper legal procedure. There is a lack of competition among them, because local CPC and governmental organs responsible for organising elections usually want to ensure these candidates win the elections in order to fulfill their tasks. Voters in reality do not have the right to choose. Their votes are in substance to confirm those formal candidates who must be elected. Within the rules of the game, if one wants to say there is any competition among candidates, the competition is for the candidates to win the trust and support of governmental officials rather than voters. The relationship between candidates and ordinary voters is not close. And ordinary citizens mainly play the role of passive voters. Their votes do not function to show their preferred interests and are not cast according to their interests. In other words, their voting has nothing to do with their interests. For details, see Zou Shu-bin, Tang Juan and Huang Wei-ping, n. 94.

democratic election experience and also laid down a democratic foundation for competitive elections. The third is that the development of a market economy for more than twenty years in China has produced a new group in society, i.e. the middle class. They not only have democratic ideals, but also have the capacity to put such ideals into action. The fourth is that relatively autonomous media have played an important role in election periods to publicise elections, stimulate voters, and build a bridge between candidates and voters. The fifth is that election organisers have shown their reasonableness, appreciation of the rule of law, tolerance and openness towards competitive election⁹⁶.

The three cases discussed above show, firstly, that China's electoral system of the people's congresses is gradually changing. Some people have stood for election on their own initiative to town and district/county people's congresses. The three cases are good evidence of this. We should, however, treat and analyse such changes with caution. On the one hand, the increase in the number of such persons is encouraging. To take the election in Qianjiang as an example, when Yao Li-fa was elected as a people's deputy to Qianjiang Municipal People's Congress, there was only one other person who stood for election on his own initiative. But by 2003, 32 voters including Yao Li-fa volunteered to stand for election as independent candidates, a sixteen-fold increase. If such momentum can be maintained, the democratic progress of electoral reform will be very encouraging in China. As to why there is such a big increase in independent candidates, the author is of the view that it is primarily the effect of the good example set by Yao Li-fa for citizens in Qianjiang City. On the other hand, as far as the whole country is concerned, the number of persons who stand for election on their own initiative and their percentage among all candidates are still very low, and the percentage of such candidates who get elected as deputies is even lower. Furthermore, whether the good example set by Yao Li-fa will continue to have an effect is also questionable, because though he was a very devoted people's deputy, he lost in the 2003 election. Yao Li-fa allegedly lost the election because local government officials unlawfully interfered with the election. But up to now, Yao Li-fa's petition has not been properly dealt with by any organ of either the government or the CPC. This indicates that China's electoral system does not have a mechanism to deal with such illegal behaviour. It also shows that the existing election system or some local governmental officials do not wish to see or encourage persons such as Yao Li-fa to stand in elections for local people's congresses. Under such circumstances, the enthusiasm of people to stand for election will be negatively affected. The election cases in Shenzhen and Beijing have also shown that the election process of those independent and/or self-nominated candidates who had been widely covered by the media were not very smooth and many of them had encountered various kinds of obstacles from local governmental organs. We should also realise that at the present time, elections are still confirmative in the majority of township and county people's congresses in China. The author's investigation in Guangdong has also shown that the election of people's congresses in the two places (one county and one town) is still confirmative and the local governments have not shown any sign or intention to reform their

⁹⁶ See Tang Juan, n. 87 above, p. 42. In another article by the same author with two other scholars, they have said the following: "(1) market economy reform and its development have provided an economic basis for citizens' voluntary participation in politics; (2) the diversification of social interests and the politicisation of diversified interests expression have provided the social basis for citizens' voluntary participation; (3) the development of democracy and rule of law, the change of governing rationale and style of governmental officials have provided a more liberal political environment and lawful room for citizens' voluntary participation; (4) the initial development of open and interactive public media has provided a platform and spiritual support for citizens' voluntary participation." For detailed discussion, please refer to Zou Shu-bin, Tang Juan and Huang Wei-ping, n. 94, pp. 36-37.

current election practice⁹⁷. Hence, there is still a long way to go before the electoral system of local people's congresses completes its transition to competitive election.

Secondly, all three cases described above indicate that the organs of both the CPC and people's governments have shown their tolerance of and even implied consent towards ordinary citizens standing for election in local people's congresses. Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University are of the view that government officials in charge of the 2003 election in Shenzhen were at first not prepared for ordinary citizens standing for election and their campaign activities, but they demonstrated their reasonableness, appreciation of the rule of law, tolerance and openness. At a later stage of the election, they even acted as advisers to one independent candidate⁹⁸. After the 2003 election was over, Shenzhen Municipal People's Congress made very positive comments about the election, treated it as a valuable experiment in democratic politics, and stated that people's wishes should be fully respected and that they would further study the 2003 election practice in order to make elections for grassroots people's congresses fairer, more transparent and democratic, and eventually promote political civilisation⁹⁹. Beijing did better than Shenzhen in that the election committees in Beijing established very formal election information dissemination systems such as press conferences, meetings of candidates with voters, websites for change of term elections, etc. All these have not only enhanced the dissemination of information but also promoted positive interaction between candidates and voters¹⁰⁰. Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University are of the view that the reason why Beijing did better than Shenzhen is because the organisers of the 2003 elections in Beijing had a better understanding of the existing electoral system and believed it had room to accommodate possible reforms of the existing political system¹⁰¹. They are also of the view that Beijing's interpretation of election legislation was more authoritative. Even in the case of the 2003 election in Qianjiang, Chinese media and some experts on village elections in China were of the view that Yao Li-fa was already very lucky even though he lost the election¹⁰². This view shows on the one hand the local government's tolerance of ordinary citizens standing for election upon their own initiative has increased, and on the other hand, there still exist a substantial number of people holding the view that a person might be ill-treated if he stands for election to a local people's congress upon his own initiative.

However, both the tolerance and implied consent of the CPC and governmental organs and the view of "luckiness" of Yao Li-fa prove from the opposite side that there was either no such tolerance before or a citizen standing for election in 2003 might not be as lucky as Yao

⁹⁷ In Qingxin County, candidates for township and county people's congresses were first nominated according to the procedure laid down in the Election Law. Formal candidates were selected through consultation by the election committee. These candidates were then submitted to voters to elect deputies to the people's congresses at township and county levels. In one town in Dongguan City, the candidates for township people's congress were decided by the township CPC Committee. Candidates for heads of the township people's government and CPC Committee were decided by the CPC Committee at the municipal level. There was neither sign nor intention to reform the status quo.

⁹⁸ For example, Futian District People's Congress in Shenzhen acted as adviser to Wang Liang in his campaign to be a deputy to Futian District People's Congress. For details, please refer to Tang Juan, n. 87. It should be noted that the election is about deputies to Futian District People's Congress. So when it gave advice to one candidate, there was apparent conflict of interests. Furthermore, it only gave advice to one candidate but not others, which was obviously unfair to the other candidates.

⁹⁹ See Zou Shu-bin, Tang Juan and Huang Wei-ping, n. 94, pp. 35-43. The concept of political civilization means in essence democratic politics and governance.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² See Yu Shi-cun, "Cui Xianglian de Caipiao he Wo de Meng" (Cui Xianglian's Lottery Ticket and My Dream), originally in "Beijing zhi Chun" (Spring of Beijing), downloaded from: http://www.boxun.com/here/yushicun/42_3.shtml.

Li-fa. The 2003 elections in both Shenzhen and Beijing were experimental. Nationwide, in the 2003 election of people's congresses, the percentage of local people's congresses where tolerance and implied consent were shown towards ordinary citizens standing for election on their own initiative was probably very low. Otherwise, the election in Shenzhen and Beijing wouldn't have attracted the attention of either the media or scholars. Hence, the author is of the view that we should not be too optimistic about the progress of electoral system reform of people's congresses, because this reform has touched upon the electoral system of a governmental organ within the constitutional structure. Such reform may affect the ruling position as well as the ruling style of the CPC. So the CPC is bound to deal with such reform very cautiously. From the previous discussion of statutory rules and the CPC's policy on the electoral system of people's congresses, we already know that the CPC has not decided anything specific about the future of the electoral system of people's congresses, and that existing statutory rules still give room to election organisers, and in fact the CPC, to interfere with and influence the election outcome. Hence, before the CPC makes any clear indication that the existing electoral system of people's congresses should be reformed, the implication of the tolerance and implied consent shown by the CPC towards ordinary citizens' standing for election on their own initiative is far from being clear and is uncertain.

Thirdly, all three cases discussed above have shown that two important factors which have caused citizens to voluntarily enter election competitions are their interests and rights' consciousness. Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University are of the view that interests of the candidates are the fundamental reason and driving force for citizens to stand for election on their own initiative¹⁰³. Their study of the seven candidates in Shenzhen has shown that all had had experience of defending the interests of the specific groups they belonged to¹⁰⁴. The very reason they stood for election was to enhance their political status and social influence so as to better protect the economic interests of their specific groups¹⁰⁵. In comparison, according to the research undertaken by the same scholars of the 2003 elections in Beijing, rights' consciousness of citizens standing for election in Beijing is much higher. Many of the candidates studied have legal backgrounds and good educations. Some even have doctorate degrees. Many have also had experience of defending specific kinds of rights of a particular group. The difference is that while some of them act for the direct, practical interests (e.g. property rights) of a particular group, a large number of them may be acting for the interests of the general public, or trying to exercise the right (to stand for election) which a citizen should enjoy, or satisfying their enthusiasm towards public affairs and politics, or their strong desire to serve the country¹⁰⁶. All of them had very high enthusiasm and ability to participate in politics. This proves that the rights' consciousness of the citizens standing for election, especially their understanding of the right to vote and to stand for election, has increased. This is another encouraging phenomenon.

Fourthly, Huang Wei-ping, Tang Juan and Zou Shu-bin are of the view that the driving force behind the change from confirmative election to competitive election, is the gradual evolution of civil society, leading to the diversification of interests and citizens' voluntary political participation throughout the current system, from the bottom up¹⁰⁷. In contrast to the reform of the village electoral system which started from the top, reform of the people's congress electoral system started from the bottom. As a result, citizens will find it much more difficult to be elected throughout China due to the lack of clear support from the CPC. This has been demonstrated by the 2003 Qianjiang Municipal People's Congress election, especially Yao Li-fa's experience.

¹⁰³ See Tang Juan, n. 87.

¹⁰⁴ See Zou Shu-bin, Tang Juan, and Huang Wei-ping, n. 94, pp. 38-40; see also Tang Juan, n. 87, p. 41.

¹⁰⁵ Ibid.

¹⁰⁶ See Zou Shu-bin, Tang Juan, and Huang Wei-ping, n. 94, pp.35-43.

¹⁰⁷ Ibid.

Fifthly, both the first and second cases discussed above demonstrate that the procedure to determine formal candidates in the existing electoral system – discussion, consultation and deliberation – can be used by election organisers to exclude those preliminary candidates they don't like so that such candidates won't become formal candidates. Even after the 2004 Amendments to the 1979 Election Law, discussion, consultation and deliberation are still used as the first procedure for the determination of formal candidates. Only if it fails, will a pre-election be held to determine formal candidates. It is fair to say that the possibility of those candidates disliked by local governments being elected as people's deputies will be greatly reduced so long as discussion, consultation and deliberation are still used as the first procedure to determine formal candidates. This reinforces the conclusion reached from the previous discussion of statutory rules and the CPC's policy on people's congress elections. If we really want to democratise the electoral system of people's congresses, reform must be undertaken to those procedures which replace formal election, and the best solution is to repeal those procedures, i.e. discussion, consultation and deliberation.

Sixthly, independent and self-nominated candidates are mainly persons from political parties other than the CPC or persons without any political background. This phenomenon is normal in China, because if a member of the CPC is keen to stand for election, he will first try to get nominated by the CPC. If that can be done, his chance of getting elected as a people's deputy will be very high. Otherwise, if he stands for election as either an independent or self-nominated candidate, he needs to compete with candidates nominated by the CPC, and he will also be regarded as not following the directions of the CPC, which will affect his future development. Hence, under current political circumstances, it is necessary to make democratic the nomination process of candidates to the people's congresses within the CPC, which will indirectly enhance the democracy of the election of people's deputies.

3.4 Summary

The election of people's congresses is related to the election of state power organs. Hence, in theory, it is the most important one out of the three electoral systems discussed in this paper. Whether or not the electoral system reform of people's congresses is successful will have a serious influence on the ruling position and style of the CPC. According to the previous discussion, the CPC has not so far made public any specific policy with regard to the direction of the electoral system reform of people's congresses. At most, it has shown its "tolerance and implied consent" towards citizens' standing for election to local people's congresses under the existing electoral system. Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University are of the view that "in an authoritative society, any reform can't succeed without interaction with the government, and the reform progress can't deviate too much from the existing system and structure"¹⁰⁸. This view is quite correct in China. On the other hand, we should make full use of the rights which already exist under current electoral system. Under current circumstances, as more and more citizens take seriously their constitutional and legal rights to vote and to stand for election, such rights under the Election Law might well become realised while the effectiveness of some procedures under the Election Law that serve to substitute for formal elections, such as discussion, consultation, and deliberation among voters, will be reduced. Hence, the Chinese citizens should take seriously the rights granted to them by China's Constitution and Laws.

As to the future of the electoral system of local people's congresses, the view of Huang Wei-ping, Tang Juan and Zou Shu-bin from Shenzhen University is that

"the democratic spirit under the electoral system established by existing legislation has been explored more and more by voters. More and more

¹⁰⁸ See Zou Shu-bin, Tang Juan, and Huang Wei-ping, n. 94, pp.35-43.

voters are making use of their statutory rights to jointly nominate candidates and to have more candidates than deputies to be elected. This has given us an important message: development of democracy and progress of a society do not depend on drastic change of the whole system. Rather, it relies on the accumulation of each and every minor case of change and the citizens' demand for the enforcement of their statutory rights. Within the framework of the electoral system under existing legislation, by following a case-by-case and progressive approach, and the rule of law principle, China may find a unique new road towards democracy, i.e. through the practical competitive election experience of citizens, to promote a new interpretation of the existing Election Law, and gradually amend and improve the Election Law and regulations so as to make them more adaptable to the needs of the development of local competitive election politics"¹⁰⁹.

There is no doubt that China should progressively develop its electoral system of local people's congresses. Having considered the absolute ruling position of the CPC in China, the progress may be extremely slow and sometimes it may be difficult to move one step forward if we rely solely on citizens' participation in competitive elections of people's deputies from bottom up. In China, only when the CPC accepts and promotes the electoral system reform of people's congresses, exercises self-restraint, and does not use informal procedures to interfere with and influence the election of local people's congresses, can the electoral system of local people's congresses possibly have any substantial changes. If one expects the CPC to actively promote the electoral system reform of the people's congresses, one must prove and convince the CPC that such reform won't affect the ruling status of the CPC, and might only affect the ruling style of the CPC.

As to the future of the election of all people's congresses, based on the previous discussion, there are still many problems with the election of local people's congresses, especially township and county people's congresses. The most fundamental problem is that the election might not reflect the true wishes of voters, and the election organisers' interference with and influence over the election is still very significant. Reform should first start with grassroots people's congresses rather than the expansion of direct election to people's congresses at higher levels. The biggest advantage of starting reform from the grassroots people's congresses is that such reform will only touch upon the ruling style of local CPC Committees rather than the ruling status of the CPC nationwide. Furthermore, if the electoral system reform of local people's congresses proves to be good, that might well contribute to the consolidation of the ruling status of the CPC.

What finally needs to be pointed out is that what have been discussed here is election of people's deputies to the people's congresses, not about the chairmen or members of the standing committees of people's congresses. The chairmen and members of the standing committees are elected by all the deputies to the people's congresses and their electoral system is the same as that of officials of governmental organs and therefore will be discussed in the next part of this paper.

4. The Electoral System of Officials of Governmental Organs

4.1 Statutory Provisions on Election of Officials of Governmental Organs

According to the theory of the people's congress system, the people's congress at each level will elect the main officials of all governmental organs at the same level. This has been

¹⁰⁹ See Zou Shu-bin, Tang Juan, and Huang Wei-ping, n. 94, p. 42.

regarded as the fundamental guarantee that the source of state power is people and state power is finally subject to the control of the people¹¹⁰. Specifically speaking, the NPC will elect or decide the following main officials of the highest governmental organs: (1) the Chairman, Vice Chairmen, Secretary-General and members of the NPCSC; (2) the President and Vice President of the PRC; (3) the candidate for Premier of the State Council; (4) Vice Premiers, State Councillors, Ministers of all ministries, Commissioners of all commissions, Auditor-General, and Secretary-General of the State Council; (5) Chairman of the Central Military Commission; (6) members of the Central Military Commission; (7) President of the Supreme People's Court; (8) Procurator-General of the Supreme People's Procuratorate¹¹¹. As far as election procedure is concerned, the Organic Law of the PRC on the NPC stipulates that candidates for the Chairman, Vice Chairmen, Secretary-General and members of the NPCSC, the President and Vice President of the PRC, the President and Vice President of the PRC, Chairman of the Central Military Commission, President of the Supreme People's Court, and Procurator-General of the Supreme People's Procuratorate, will be nominated by the Presidium¹¹². The Presidium will determine the formal list of candidates according to majority view after submitting the list of nominated candidates to each group of delegates for deliberation and consultation¹¹³; the candidate for Premier will be nominated by the President¹¹⁴. Candidates for the State Council will be nominated by the Premier¹¹⁵. The candidates for the Central Military Commission will be nominated by the Chairman of the Central Military Commission¹¹⁶. The number of candidates for all above mentioned positions will be equal to the number of positions available.

According to the provisions of the 1982 Constitution and the Organic Law on LPCG, each local people's congress shall elect the members of the standing committee of that congress, head and deputy heads of the people's government, including provincial governors and vice governors, autonomous regional chairmen and vice chairmen, mayors and vice mayors, prefectural leaders and deputy leaders, county heads and deputy heads, district heads and deputy heads, township heads and deputy heads, presidents of the people's courts, and public prosecutor-generals of the people's procuratorates.¹¹⁷ The same Organic Law stipulates that the Presidium of and deputies to the same people's congress shall exercise this right according to law¹¹⁸. Hence, the head and deputy heads of local people's governments will be elected by the people's congress at the same level and the right to nominate candidates for main officials of local people's governments will also be exercised by the Presidium of or the deputies to the people's congress at the same level.

The main difference between elections of main officials of central and local governmental organs is that for central governmental organs, the number of candidates equals the number of positions available whereas for local governmental organs the number of candidates

¹¹⁰ See Cai Ding-jian, "Zhongguo Renmin Daibiao Dahui Zhidu" (The National People's Congress System in China), 4th ed., Law Press, 2003, pp. 27-30.

¹¹¹ See the provisions in Arts. 62(4)-(8) of the 1982 Constitution. In theory, there exists difference between "elect" and "decide". If an office is for election, such as the President, different candidates could be put forward though in practice only one formal candidate will be nominated for each position and the Presidium will make a decision on the formal candidate if more than one candidates were proposed. If an office is to be decided, such as Premier, only the President can nominate a candidate for Premier and the NPC's role is to decide whether or not to accept him through voting.

¹¹² The Organic Law of the PRC on NPC does not stipulate the method to produce the Presidium. Instead, it only provides for the functions of the Presidium.

¹¹³ See Art. 13 of the Organic Law of the PRC on NPC.

¹¹⁴ See Art. 62(5) of the 1982 Constitution.

¹¹⁵ Ibid.

¹¹⁶ See Art. 62(6) of the 1982 Constitution.

¹¹⁷ See Art. 101 of the 1982 Constitution; Arts. 8(4) and (5), and 9(6) and (7) of the Organic Law on LPCG.

¹¹⁸ See Art. 21(1) of the Organic Law on LPCG.

should in principle be more than the number of positions available and only in exceptional cases can the number of candidates be equal to the number of positions available. This principle was first laid down in the 1979 Organic Law on LPCG¹¹⁹, and has had some changes thereafter.¹²⁰ The present statutory provision was incorporated by the 1995 Amendments. Article 22(1) of the Organic Law on LPCG stipulates clearly that “[T]he number of candidates for people’s congress standing committee chairmen and secretary generals, township, minority nationality township, and town people’s congress chairmen, people’s government regular leaders, people’s court presidents, and public prosecutor-generals should be generally more than one, for election balance; when there is only one nominated candidate, elections can still be held” Article 24 of the same Organic Law provides that “If the number of the elected persons who obtain more than half of the votes is less than the number of persons needed to be elected, another election shall be held to make up the difference” The latter election should be competitive and the number of candidates should be more than the positions available.¹²¹ The same Organic Law also provides that “when by-elections are held by the local people’s congresses at various levels for various positions of local governmental organs, the number of candidates may exceed or equal the number of vacancies”¹²² It can be seen from these statutory provisions that with the exception of heads of governmental organs and by-election of all heads and deputy heads of all governmental organs, election should follow the principle that the number of candidates should be more than the number of positions available.

Statutory provisions for pre-elections are also relevant to the election of officials to local governmental organs. The 1979 Organic Law on LPCG provided that pre-elections could be used to determine formal candidates when the number of candidates was more than the number of positions available in an election. But the 1982 Amendments changed this to “An election may follow the principle that the number of candidates may be more than the number of positions available. Pre-elections may also be used to determine candidates before the election is held”. Scholars’ interpretation of this provision is that the number of candidates can be equal to the number of positions available if a pre-election is held¹²³. The 1995 Amendments added a condition that the number of formal candidates must be more than the number of positions available. That is to say, when the number of preliminary candidates nominated exceeds the statutory maximum number, a pre-election should be held. But after the pre-election, the number of formal candidates must be more than the number of positions available. Hence, scholars are of the view that pre-election under the Organic law on LPCG after 1995 Amendments has become a statutory democratic procedure in determining formal candidates for indirect elections¹²⁴.

¹¹⁹ The 1954 Organic Law on LPCG was silent on whether the number of candidates should be more or equal to the number of positions available for local governmental organs. The practice was that the number was always equal to the number of positions available before 1979.

¹²⁰ The 1982 Amendments made one important change to the election of officials to local governmental organs, i.e., to change the original provision that the number of candidates must be more than the number of positions to the provision that two methods can be used, one is that the number of candidates should be more than the number of positions, the other is that a pre-election can be held to determine candidates before the formal election is held. Scholarly interpretation of the effect of the amendment is that so long as pre-election is held, the number of candidates can be equal to the number of positions in the formal election. See Cai Ding-jian, n. 41, p. 16. The main change of the 1986 Amendments is that in the election of heads to the people’s governments, the courts and procuratorates, the number of candidates should normally be more than one person, but if there is only one candidate, the election can also be held; in the election of deputy heads to those three organs, the number of candidates must be more than the number of positions (before the amendments, the number of candidates for heads and deputy heads of those three organs could either be equal to or more than the number of positions).

¹²¹ See Art. 24(3) of the Organic Law on LPCG.

¹²² See Art. 25 of the Organic Law on LPCG.

¹²³ See Cai Ding-jian, n. 41, p. 16.

¹²⁴ See Cai Ding-jian, n. 41, p. 27.

It can be seen from the above discussion that although officials of both central and local people's governments are elected by the people's congresses at the same levels there is a substantial difference between them. The nomination process for candidates for central governmental organs to a large extent is under the control of the Presidium and the number of candidates is equal to the number of positions available. Hence, the legislative intention is very clear that all nominated candidates should be elected by the NPC and/or the NPCSC and there should not be any problems in the process of determination of formal candidates and formal election. As for the election of heads of local governmental organs, the relevant statutory provisions have also left room for an election in which the number of candidates is equal to the number of positions available. As for deputy heads of local governmental organs, it is clearly provided that the number of candidates must be more than the number of positions available. Such unequal arrangements show that the degree of democracy differs in the election processes in which people's congresses at different levels exercise their statutory right to elect officials to governmental organs. The relevant people's congresses do not really enjoy the authority to democratically elect officials to central governmental organs and heads of governmental organs at local levels. For deputy heads of local governmental organs, local people's congresses enjoy comparatively more authority.

4.2 Policy Analysis

The relevant statutory provisions discussed above relate in essence to the relationship between the people's congresses' authority to democratically elect and/or appoint officials of governmental organs at the same level and the leadership of the CPC. As far as the electoral system of officials to both central and local people's governmental organs is concerned, the leadership of the CPC functions through the specific policy of the CPC that the CPC will be responsible for the selection and administration of cadres (officials). The issue becomes then the relationship between this CPC policy and the people's congress system.

The principle that the CPC is responsible for the selection of cadres is a fundamental principle of the CPC, and a reflection in practice of the Chinese Constitutional principle of insistence on the leadership of the CPC. The Central Committee of the CPC adopted in 2002 the "Regulations on the Selection and Appointment Work of Cadres of Both CPC and Governmental Organs" ("the Regulations"), which stipulates explicitly that the principle must be followed in the selection and appointment of cadres of both CPC and governmental organs¹²⁵. One scholar has summarised the principle into two aspects: one is that the relevant CPC organs enjoy the authority of appointment and administration of cadres. The other is that this principle includes administration and appointment of all cadres by the CPC organs at different levels¹²⁶.

Article 4 of the Regulations provides:

"These regulations apply to the selection and appointment of cadres to the working departments and/or internal institutes of the Central Committee of the CPC, the NPCSC, the State Council, the National People's Consultative Committee, the Central Disciplinary Committee of the CPC, officials (not including the heads) to the Supreme People's Court, Supreme People's Procuratorate and their internal institutions, officials to local CPC organs, people's congresses, people's governments, political consultative committees,

¹²⁵ See Art. 2(1) of the Regulations.

¹²⁶ See Xu Xiang-lin, "Dang Guan Ganbu Tizhi xia de Jiceng Minzhu Gaige" (Grassroots Democratic Reform under the System in which the CPC Is in Charge of Cadres), in "Zhejiang Xuekan" (Zhejiang Scholarly Journal), vol. 1, 2004, quoted from: <http://www.chinaelections.org/readnews.asp?newsid=%7BB62A622B-202A-46AE-A9BC-86146A82368D%7D>.

people's courts, people's procuratorates at and above county level, and their internal institutions, as well as officials to the internal institutions of the working organs mentioned above.

Reference should be made to these regulations for the selection and appointment of officials to institutions directly under the leadership of the CPC organs and people's governments at and above county level, trade unions, youth leagues of the CPC, women's association and any other people's organisations.

Reference should be made to these regulations in the selection and appointment of officials who are not CPC members.

Reference should also be made to these regulations in the selection and appointment of persons to non-leaders' positions above county level (Chuji)."

It can be seen from this provision that the scope of application of the Regulations is very broad, covering the selection and appointment of all cadres at and above county level, cadres of all CPC organs, and cadres of all governmental organs, whether CPC members or non CPC members.

The CPC will not give up this principle. The issue then becomes whether this principle can exist in harmony with the people's congress system, and how to reform the election of officials of both central and local governmental organs under this principle. Article 43 of the Regulations states that "when a CPC Committee recommends to a people's congress or its standing committee candidates of officials to positions which need to be elected, appointed or decided by either a people's congress or its standing committee, it should first introduce its recommendation opinions to the interim CPC organ within the people's congress or the CPC organisation of the standing committee of the people's congress. The interim CPC organ, the CPC organisation within the standing committee of the people's congress and CPC members of the standing committee and of the people's congress, should seriously implement the recommendation opinions of the CPC Committee, take the lead in doing things according to the law, and correctly perform their obligations." This provision clearly requires the CPC organisations and members within the people's congress and its standing committee to obey the decisions made by the relevant CPC organs and support the candidates recommended to the people's congress by the relevant CPC Committee. Under present circumstances where a majority of members of people's congresses at all levels are CPC members, if there is nothing unusual happening, it will be very easy for the candidates recommended by CPC Committees to be successfully elected.

While emphasising the leadership of the CPC, the Regulations also recognise the importance of democratic election procedure, and stipulate open selection and competition for post as one of the methods to select and appoint cadres of both CPC and governmental organs¹²⁷. But this method only applies to the officials of departments of local CPC Committees and local governments¹²⁸, and the whole process is also under the leadership of the CPC organisations and the final decision-making power is also in the hands of the CPC Committees (or organisations)¹²⁹.

¹²⁷ See Art. 49(1) of the Regulations.

¹²⁸ See Art. 49(2) of the Regulations.

¹²⁹ See Art. 51 of the Regulations.

Hence, from a policy perspective, the CPC Committees possess the appointment authority of cadres at county level or above and the purpose of elections of officials to governmental organs by people's congresses at the same level is to implement the decisions made by the relevant CPC Committees. As to officials below county level, their selection and appointment are not governed by the Regulations and hence there is more room for reform. The White Paper does not make any policy guidelines with regard to the reform of the election of officials to various governmental organs.

4.3 Analysis of Election Practice

As for the election of township and county heads, the usual practice in China can be summarised as follows. Firstly, the organisation department of the CPC Committee at the relevant level will conduct a review of cadres and consult the masses. Then the CPC Committee at the same level will collectively decide the candidates and recommend them to the presidium of the people's congress at the same level, and the presidium will formally nominate them as candidates to the people's congress. In law, the deputies to the people's congress have lawful rights to jointly nominate candidates and such rights should not be interfered with. But if any other candidates have been nominated who are not candidates nominated by the CPC, the usual practice of the CPC Committee actually in charge of the election is either to use political means to persuade those who made the nomination to withdraw their nomination or to prevent the candidates so nominated from participating in the election. Hence in reality, the CPC monopolises the nomination, and the lawful right of deputies to jointly nominate candidates is denied by the CPC¹³⁰. The first part of the CPC practice is consistent with the relevant statutory provisions and also in accordance with the Regulations. But the second part of it, i.e., to persuade the nominators to withdraw their nomination and to prevent such nominees from participating in elections, is neither lawful nor in accordance with the Regulations.

But since 1998 onwards, this traditional practice has faced challenges in the election of officials at township and county levels, and has attracted the attention of both Chinese and foreign scholars. In one article entitled "Research on the Reform of Township Election Method in Mainland China"¹³¹, four scholars from Shenzhen University analyse some experimental cases of township head election reform during the period from 1998 to 2001 and list five different models used in township elections. The author has found two additional models. The seven models can be put into two categories: (i) models in full compliance with existing statutory provisions but different from traditional election practice; and (ii) models deviating from statutory provisions. They are summarised as follows.

(a) Models in Compliance with Existing Statutory Provisions

Out of the seven models, only one is in full compliance with existing statutory provisions, which is the "direct nomination and election" model. At the end of 1998, eleven towns in ten counties in Mianyang City in Sichuan Province were selected to try a new method to elect

¹³⁰ See "Guanyu Rendaihui Lianhe Timing Wenti de Tanta" (Discussion of the Issue of Joint Nomination of Candidates to People's Congresses) (a group of articles), originally in "Fa Xue" (Legal Science), vol. 8, 1999, quoted from Zou Shu-bin, "Xiangzhengzhang Zhixuan yu Xiangzhen Renda de Jiaose Zhuanhuan" (Direct Election of Township Heads and the Change of Roles of Township People's Congresses), in "Renda Yanjiu" (People's Congress Study), vol. 4, 2003, downloaded from: <http://www.world-china.org/06/0603052606.htm>.

¹³¹ See Huang Wei-ping, Zou Shu-bin, Zhang Ding-wei, and Yang Long-fang, "Zhongguo Dalu Xiangzhengzhang Xuanju Fangfa Gaige Yanjiu" (Study of the Reform of Township Head Electoral System in Mainland China), in "Dangdai Zhongguo Yanjiu" (Contemporary China Study), vol. 4, 2001, (total vol. 75), downloaded from: <http://www.world-china.org/04/0402112202.htm>.

township heads in which candidates would be directly nominated and elected by deputies to township people's congresses¹³². According to the provisions of the Organic Law on LPCG¹³³, candidates in all eleven selected towns in Mianyang were jointly nominated by people's deputies to the relevant people's congresses. Twenty three candidates in total were nominated. Three out of the eleven towns had only one candidate each. In the other eight towns, the number of candidates was more than one. Throughout the election process, the organisation department of the relevant CPC Committee in charge of elections did not set any requirements or give any suggestions. Candidates were required to answer any questions raised freely by people's deputies within a fixed time limit. The order for candidates to answer questions was decided by drawing lots. When formal elections were held, deputies could cast their votes according to their own will without any interference as rooms for secret ballots were arranged in advance. After all people's deputies cast their votes and the ballots were counted, the election result was announced immediately and certificates for winning the elections were issued on site¹³⁴. The final result was that in seven towns, the incumbent township heads won the election, while in the remaining four towns new heads were elected. All those who won the elections were CPC members¹³⁵.

(b) Models in Conflict with Existing Statutory Requirements

“Zhi Xuan” (Direct Election)

Of the models which have gone beyond the limits of existing statutory requirements, the one which should be discussed first is the township head election in Buyun Town, which is regarded as the first case of direct township head election in China¹³⁶. At the end of 1998, Buyun Town in Shizhong District, Suining City, Sichuan Province started the experiment of allowing citizens to directly elect the township head. With the support of the CPC Committee of Shizhong District, the Presidium of Buyun Township People's Congress adopted the “Trial Method for Direct Election of Township Head by Voters in Buyun Town of Shizhong District of Suining City” (“the Trial Method”). According to the Trial Method, any 30 voters might jointly nominate a candidate for township head. As a result, 15 candidates were nominated in this way. Thereafter, a joint committee of 162 persons consisting of all village cadres, representatives of village residents, cadres of village residents' groups, members of the Presidium of Buyun Township People's Congress, and all officials of the township CPC Committee and governmental organs voted on the 15 candidates in a pre-election. The two getting the most votes in the pre-election became formal candidates for township head. In addition, the CPC Committee also nominated one formal candidate, so in total there were three formal candidates for direct election. Thirteen meetings were arranged thereafter in different villages for the three candidates to deliver their election competition speeches to voters and to answer any questions raised by voters. Thereafter, all voters in Buyun Town cast their votes. After the election, the Buyun Township People's Congress held a meeting in which deputies clapped their hands to recognise the township head elected by voters. So on 4 January 1999, the very first directly elected township head entered office. That township

¹³² See Organisation Department of the CPC in Mianyang City, “Zhuazhu Guanjian, Quebao Xiangzhen Renmin Daibiao Zhijie Timing Xuanju Xiangzhengzhang Shidian Gongzuo Yuanman Chenggong” (Focus on the Essentials to Ensure the Success of the Experiment in the Election of Township Heads through Direct Nomination by Deputies to the Township People's Congresses), quoted from Huang Wei-ping, Zou Shu-bin, Zhang Ding-wei, and Yang Long-fang, n. 131.

¹³³ Article 21(2) of the Organic Law on LPCG states “. . . With joint written sponsorship by over 10 delegates to township, minority nationality township, or town people's congresses, candidates can be nominated for people's congress chairmen and vice chairmen and people's government leaders.”

¹³⁴ See Huang Wei-ping, Zou Shu-bin, Zhang Ding-wei, and Yang Long-fang, n. 131.

¹³⁵ See n. 132.

¹³⁶ For a detailed description of the election process in Buyun Town, please refer to Li Fan, n. 10.

head is also regarded as the first governmental official directly elected by voters in China¹³⁷.

This model of direct election is competitive, uses ballots, and uses the one-person-one-vote method to elect the township head. According to the current Constitution and Election Law, however, it is the authority of a township people's congress to elect a township head. So the reform in Buyun Town deviated significantly from the existing electoral system and has been described as unconstitutional¹³⁸.

"Sanlun Liangpiao Zhi" (Two Ballots in Three Rounds)

In 1999 when Dapeng Town in Longgang District in Shenzhen City held its township head election, it experimented with reform. The whole town was divided into 17 small districts according to the number of voters in the CPC and governmental organs, enterprises, villages and residential communities. Each district organised meetings of voters, in which voters could nominate candidates for township head through secret ballot according to the requirements set down in advance for candidacy¹³⁹. In the end, 76 candidates were nominated in total, of whom the incumbent township head, Li Wei-wen, got the highest votes, 3,323, or 65.8% of total votes¹⁴⁰. The township CPC Committee then examined the qualifications of the six candidates who got more than 100 votes, and came to the conclusion that five out of them met the requirements and would become preliminary candidates for township head. All these five preliminary candidates were then required to give their election speeches at a gathering of 1,068 persons consisting of all CPC members, cadres, workers and representatives of all families in villages in the town. All those present at the gathering would give their comments on the 5 preliminary candidates and cast their votes to determine the best candidate. The one who got the highest votes would be recommended to the township people's congress as the only candidate after examination and confirmation by the township CPC Committee. The person who got the highest votes was Li Wei-wen, with 813 votes in total, which was 76% of all votes cast. The township people's congress then held its meeting to formally elect Li Wei-wen as township head for another term¹⁴¹. Out of the three rounds of voting, the first round represented the will of the general public; the second round represented the will of the representatives present at the gathering. Scholars called these two rounds together as recommendation votes of the people's will. The third round was the statutory election vote. That is why this election model is called "three rounds two votes"¹⁴².

Some scholars are of the view that the election in Dapeng Town created a new model in which the township head is democratically elected while the existing system for the election of township head has also been followed. It is therefore regarded as an invention. Furthermore, they are of the view that this model has combined the indirect democratic mechanism of the people's congress system with the democratic mechanism of direct election by the voters, and that the new model has combined insistence on the leadership of the CPC with giving a full role to democracy¹⁴³. Since in this model the candidate who gets the highest votes in the first two rounds is nominated as the only candidate to the township

¹³⁷ See Huang Wei-ping, Zou Shu-bin, Zhang Ding-wei, and Yang Long-fang, n. 131.

¹³⁸ Ibid.

¹³⁹ The two specific conditions are: (1) a candidate must get more than 100 votes; (2) the age of a candidate should not exceed 50.

¹⁴⁰ Among 5,259 voters in the Town, 5,048 actually voted. The returned valid votes were 5,039.

¹⁴¹ Quoted from Bai Yi-hua, "Gaige Xuanju Zhidu Kuoda Nongcun Jiceng Minzhu – Jianping Shenzhen Shi Longgang Qu Dapengzhen Zhenzhang Xuanju Zhidu Gaige Jingyan" (Reform of Electoral System to Expand Grassroots Democracy in Countryside – also Comment on the Township Head Electoral System Reform Experience of Dapeng Town of Longgang District in Shenzhen), in "Marxism and Reality", vol. 3, 2000.

¹⁴² See Huang Wei-ping, Zou Shu-bin, Zhang Ding-wei, and Yang Long-fang, n. 131.

¹⁴³ Ibid.

people's congress, it has in effect denied the deputies to the township people's congress their statutory rights to jointly nominate candidates for township head. The author is therefore of the view that this model has gone beyond existing legal norms for township head elections.

"Mintui Jingxuan" (Competition Based on Mass Recommendation)

This new model first appeared in the township head election held in November 2004 in Jiangjiashan Town, Kecheng District, Quzhou City, Zhejiang Province. Under this new model, firstly, three preliminary candidates are nominated through the recommendation of all cadres at township level, the recommendation of representatives of village cadres and residents, and the recommendation of all members of the district. Secondly, the organisation department of Kecheng District CPC Committee organises the three preliminary candidates to go to different areas in Jiangjiashan Town to deliver their election speeches and to answer questions from village residents. Thereafter all qualified village residents and employees in governmental organs in that town and in township enterprises cast their votes to elect two candidates. At last the Presidium of Jiangjiashan Township People's Congress holds a meeting to nominate these two candidates as formal candidates for township head according to statutory procedure. After the two candidates give their election speeches, all deputies to the township people's congress cast their votes and the one who gets more votes is successfully elected as township head¹⁴⁴.

Compared with the "three rounds two votes" model, this model has changed the nomination of candidates by voters to "nomination through three kinds of recommendation", and has also changed one candidate determined by the township CPC Committee to two candidates determined by a group of persons of different backgrounds. Hence, this new model could better represent the will of the general public in the town and also be more competitive. But this model does not let the deputies to the township people's congress exercise their right to jointly nominate candidates. It could also be argued that this model has gone beyond the limits of existing legal norms for elections.

"Hai xuan" (Nomination of Candidates and Election by the Masses)

Hai xuan started with the election of village residents' committees. It has in recent years been used in the election of township and even county heads. It was reported that one county head was elected through "Hai xuan" in October 2004 in Fuyu County in QiQiHaEr City, Heilongjiang Province. In this county, the right to nominate candidates for governmental officials was given to ordinary citizens. After nomination, all officials at middle level and above in the governmental organ where the elected person would work, i.e. Fuyu County, would ask the candidates questions face to face, make observations on the performance of the candidates, and then elect, through voting, six candidates. The results would be announced immediately on site. The six candidates would then go through the election procedure and one would be elected as county head. Wang Zhao-xian, aged 39, was the first county head elected through this new procedure¹⁴⁵. Du Ji-ming, the deputy secretary-general of the CPC Committee in QiQiHaEr City in charge of selection and appointment of governmental officials, was of the view that his city had gradually formed some basic norms and procedures for selection and appointment of officials based on "democratic recommendation, public evaluation, mass nomination, examination of more candidates than posts available, and decision made by ballots". He further observed that his city had given

¹⁴⁴ This model was researched by the author's assistant, Zheng Lei.

¹⁴⁵ See Cui Shi-xin, "Qiqihaer Haixuan Xianzhang: Ba Timingquan Jiaogei Qunzhong" (Qiqihaer City Experimented Election of County Head through Mass Election: Giving Nomination Right to the Mass), in *People's Daily*, 19 October 2004, p. 10.

sufficient consideration to the public's right to information, right to participation, right to selection and right to supervision. Throughout the election process, openness and transparency had been emphasised and required in order to ensure fairness and justice in election. Nomination by ordinary citizens was the key element of the whole process of election¹⁴⁶. Official media noted that the practice in QiQiHaEr City was a positive development in direct elections at the level of local governmental organs, and is a reflection of the deepening of democratic practice¹⁴⁷.

Strictly speaking, the model is not really election of a county head by the masses (haixuan). It is only the nomination of candidates for county head by the masses. Not all voters in the county could cast votes to determine the candidates, just officials at middle level or above in the county. Once the candidates are selected, the election is held according to existing election law to elect the county head from among those candidates. The method used to determine formal candidates in this model can also be argued to have gone beyond the limits of existing legal norms for elections because the right to nominate candidates has been taken away from the deputies to the people's congress.

"Gongtui Gongxuan" (Public Recommendation and Public Election)

Nanbu County in Sichuan Province decided to use "public recommendation and public election" to elect 178 deputy township heads in 79 towns in Nanbu County during the period between October and 27 December 1998. The county CPC Committee adopted "Methods for Candidates' Competition in Public Recommendation and Public Election", stipulating the requirements, conditions and specific procedures for participation in the competition. Before the formal election of township people's congresses, 1,057 people registered to participate in the election either through nomination by the CPC Committees, or through nomination by ordinary citizens, or through self-nomination. After examination by the county CPC Committee, 689 people had satisfied the basic requirements and became preliminary candidates. They made public campaign speeches and answered questions before the evaluation panel consisting of heads of the county CPC Committee, county government, county people's congress, and county people's political consultative committee. The topics for them to address and questions for them to answer were chosen from 500 topics and 3,000 questions prepared by the organisation department of the county CPC Committee. In addition, every preliminary candidate had to answer three questions from the panel and deputies to township people's congresses. Their performance was evaluated and marked by panel members and deputies to township people's congresses. For each position, the preliminary candidate who got the highest votes became a formal candidate. Ten or more deputies to a township people's congress chose another formal candidate from the remaining preliminary candidates. Then all deputies to a township people's congress cast their votes and the candidate who got more votes became deputy township head. The result was announced immediately after the election. In the whole county, a total of 175 persons became deputy township heads through this method, out of whom 46 were previously deputy township heads, 51 were previously officials of governmental organs, 15 previously held managerial posts in institutions, 12 had been teachers, 36 had been employees of institutions, 7 were officials employed previously by county or municipal governments, 4 were previously management staff in enterprises, and 4 were previously village CPC secretaries. Ten candidates who were previously deputy township heads lost in the

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

election¹⁴⁸. This model does not deny the nomination right of deputies of township people's congresses and only restricts that right by allowing them to nominate one candidate only. Although this model is better than those models already discussed above, strictly speaking, this model still restricts the nomination right of deputies to township people's congresses.

In the second half of 2003, the organisation department of the Jiangsu Provincial CPC Committee used the "public recommendation and public election" method in the selection of county head and mayor for the first time in China. The procedure was as follows. On 17 October the arrangement was announced by the secretary of the Changzhou Municipal CPC Committee. Three days were given for registration. When the registration period was over on 20 October, the organisation department of the Changzhou Municipal CPC Committee reviewed the qualifications of those who had registered¹⁴⁹. Then it was up to more than 1,000 officials at deputy county head level or above to cast the first round of votes on those registered candidates. More than 60 officials at deputy mayor level or above cast the second round of votes to select seven candidates, out of 59 who had survived the first round. They were the first batch of mayoral candidates through "public recommendation and public election" in China¹⁵⁰. On 1 November, the seven candidates formally went to Jintan City to prepare their research reports on Jintan. Seven days later, they were invited to give their campaign speeches and answer questions, and be evaluated by experts and ordinary citizens. On that basis, three candidates were chosen out of the seven as preliminary candidates. On 11 November, the organisation department of the Jiangsu Provincial CPC Committee conducted an examination of the three preliminary candidates. On 23 November, Changzhou Municipal CPC Committee held its meeting to decide through secret ballot one mayoral candidate, and Wu Xiao-dong was selected. On 17 December, the Standing Committee of Jintan Municipal People's Congress held a meeting in which Wu Xiao-dong won the support of all deputies to become acting mayor in Jintan City¹⁵¹. In this model, the nomination right of the Standing Committee of Jintan Municipal People's Congress was denied. It is therefore also possible to argue that this model has gone beyond the limits of existing legal norms for elections.

"Xinren Toupiao" (Vote of Confidence)

Before the election for the change of term of the township people's government in Zhuoli Town, Linli County, Shanxi Province, a vote of confidence was held between 1st and 18th April 1999 for all voters in the town to express confidence, basic confidence, or no confidence in the heads of the township CPC Committee, the government and the people's congress. The organiser of the voting, Linyi County CPC Committee, adopted the "Implementation Plan for the Survey of Public Confidence in Main Officials in Zhuoli Town" ("the Implementation Plan"). The Implementation Plan stipulated that if an official received over 50% no confidence votes, he could not be a candidate for the same position next time; if he got more than 40% no confidence votes, the CPC Committee at the next level above would send a person to, give

¹⁴⁸ See Organisation Department of Nanbu County CPC Committee in Sichuan Province, "Sichuan Sheng Nanbu Xian Gongtui Gongxuan Fuxiangzhengzhang Ziliao Huibian" (Collection of Materials on Public Recommendation and Public Election of Deputy Heads to Township People's Governments in Nanbu County in Sichuan Province); see also Liu Xi-tang, "Guanyu Xiangji Minzhu Fazhan de Diaocha yu Sikao" (Investigation and Study of Democratic Development at Township Level), in "Jinji Shehui Tizhi Bijiao" (Comparison of Economic and Social Systems), vol. 2, 2000; quoted from Huang Wei-ping, Zou Shu-bin, Zhang Ding-wei and Yang Long-fang, n. 131.

¹⁴⁹ According to the official in charge of the registration office of personnel evaluation and recommendation in Changzhou City, the conditions for the candidates of public recommendation and election, as laid down by the organisation department of the Provincial CPC Committee, are very strict. A candidate must be under 45 years old, with a bachelor's degree or above, be an official at county level (*chuj*), and have had more than two years of working experience at the relevant level. For details, see: <http://www.urbanstudy.com.cn/culture0007/index.asp>.

¹⁵⁰ See <http://www.urbanstudy.com.cn/culture0007/index.asp>.

¹⁵¹ *Ibid.*

him advice and a warning; if he got more than 30% no confidence votes, the organisation department of the CPC Committee at the next level above would get more information about him and help him to improve his work performance; if he got less than 15% no confidence votes, the county CPC Committee would issue a circular to commend him. Before holding the vote of confidence, at both village and township levels, relevant laws were broadly explained to the general public. Some basic information as well as the achievements of the three persons in the last three years were also widely disseminated. One open meeting was held for the three persons to report what they had done to the public. After the meeting, their basic information and the main contents of their reports delivered at the meeting were distributed to all groups of village residents for discussion and comments. Thereafter, on 18th April, 17 ballot stations were established where all voters including village residents, officials, and workers could cast their votes on the three persons. Meanwhile, an election was held for the change of term of the township people's congress. The result was that all three persons got more than 90% of votes of confidence and/or basic confidence¹⁵². Since under this model those who got less than 50% votes of confidence and/or basic confidence couldn't be candidates for heads of the township CPC Committee, people's government, and people's congress, this may conflict with the nomination rights of the deputies to the township people's government.

(c) Analysis and Comments

The appearance of seven different models for the election of officials of local people's governments indicates that some local governments have, with the support of local CPC Committees, started experimental reforms of election of heads of local people's governments in order to find an election model which is most suitable for China's democratic development. What should first be discussed is the reason behind all these experimental reforms. One scholar who was directly involved in the planning of direct elections in Buyun Town has pointed out that one of the reasons is that many officials of local people's governments wanted their towns to be the first to start political system reform in China¹⁵³. All the seven cases discussed above are regarded as the first in one or another aspect. That scholar has argued that this motivation to become China's first in election reform may become an important factor helping to break through obstacles to political reform¹⁵⁴. Though this possibility can't be excluded, if what he has suggested is the real or main reason for local governmental officials to initiate political reforms, then what those local officials cared for is not really the democratic progress of the electoral system, and it will be doubtful whether the effect of their reforms will last.

Secondly, only one out of the seven models, i.e. "direct nomination and election" tried in Mianyang, Sichuan Province, is in full compliance with existing legal norms for election. The other six models have more or less gone beyond the limits of existing Election Law. During the author's investigation in X Town in Qingxin County, Guangdong Province, some deputies to the people's congress expressed the view that it was better to let voters to directly elect

¹⁵² On the election day, 9,240 voters in total participated in the confidence vote, which is 97.8% of registered voters in Zhuoli Town. The secretary of the CPC Committee, Sun Jian-guo, got 8,318 votes of confidence, and 530 votes of basic confidence; the township head, Zhang Ya-nu, got 8,209 votes of confidence, and 660 votes of basic confidence; the chairman of the township people's congress got 8,147 votes of confidence and 623 votes of basic confidence. For details, see "Linyi Xianwei dui Zhuoli Zhen Zhugan jinxing minyi diaocha Huodong Ziliao" (Materials on Investigation of Public Confidence in Main Officials in Zhuoli Town held by Linyi County); see also Niu Weihong, "Xiangji Minzhu Jianshe de Xin Tuopo – dui Liangpiaozhi Xuanju Xiangzhen Zhuyao Lingdao de Sikao" (New Breakthrough in the Development of Democracy at Township level – Thoughts on the Election of Main Leaders in Township Governments through Two Rounds of Ballots), in "Gaike Neican" (Internal Reference Materials on Reform) (Beijing), vol. 16, 1999; quoted from Huang Wei-ping, Zou Shu-bin, Zhang Ding-wei, and Yang Long-fang, n. 131.

¹⁵³ See Li Fan, n. 10, pp. 196, 220-222.

¹⁵⁴ See Li Fan, n. 10, p. 222.

the township head because it would be more democratic. However, one newly elected village head in X town believed it would be better to let deputies to the people's congress elect the township head. His reason was that most village residents did not know the candidates at all while deputies to the township people's congress had more contact with the township government and more chance to meet the candidates, so they would know the candidates better. Furthermore, the candidates for township head were determined by the CPC Committee rather than being nominated by voters¹⁵⁵. Thus there exist different views on whether or not the existing electoral system for heads of local governments is appropriate.

One issue caused by the six models of election reform is whether or not the electoral system for heads of local people's governments will only have its future if one violates the existing statutory rules, even the Constitution. According to the provisions of the 1982 Constitution and Election Law, officials of all governmental organs will be elected by the people's congress at the same level. Hence, the heads of governmental organs are all indirectly elected, and will have similar disadvantages/problems to those of indirect elections of people's congresses. But this is determined by the nature of the people's congress system, which is in essence a parliamentary system. One essential characteristic of a parliamentary system is that parliament will organise the government. So long as China has no intention to make any substantial amendment to the people's congress system, it will then be unavoidable that officials of governmental organs at one level will be indirectly elected by the people's congress at the same level.

Some scholars specialising in political science are of the view that it is possible to violate the provisions for elections in the Constitution and Election Law and Chinese society should adopt an understanding and appreciative attitude to such experimental reform¹⁵⁶. As a legal scholar, the author holds the view that any improvement of the current electoral system should first be considered within the framework of the existing Constitution and other relevant legal norms. If it is proved that the existing electoral system does constitute an obstacle to democratic election, it should be amended first before an election is held. Every reform to be undertaken must be carried out lawfully. The "direct nomination and election" model tried in Mianyang in Sichuan Province proves that it is possible under the current system that the election of heads of local people's governments can not only be consistent with the people's congress system, but also be democratic.

The six models which have gone beyond the limits of existing legal norms have in substance violated the people's congress system, which is a parliamentary system. It is not the view of the author of this paper that the people's congress system should not or need not be reformed. On the contrary, the author holds the view that changes should be made to many aspects of the people's congress system. But the CPC has in all formal documents insisted clearly on the people's congress system. It is therefore foreseeable in the near future that the nature of the people's congress system, i.e. the nature of a parliamentary system, will not change. Hence, the author is of the view that any proposals to amend the people's congress system should not deviate from the fundamentals of a parliamentary system. In the direct election process in Buyun Town, the deputies to the people's congress only clapped their hands to show their acceptance of the candidate who had won the direct election and to confirm the validity of the direct election. The role of the people's congress was rather symbolic. That is why some scholars have challenged the constitutionality of the direct election of township heads as the Constitution and Organic Law on LPCG stipulate clearly that a township head should be elected by the township people's congress, rather than be directly elected by voters. The Legal Daily in China published a front page article on 19th

¹⁵⁵ This is the finding of the author in his investigation in Guangdong.

¹⁵⁶ See Li Fan, n. 10, p. 220.

January 1999 to argue that the direct election held in Buyun Town was unlawful and unconstitutional¹⁵⁷. Later on, the Central Committee of the CPC also issued a document, stating that no further direct elections should be held. That is why in the 2001 election in Buyun Town, only one formal candidate for township head was directly elected by voters and that candidate was put to the township people's congress to be elected as township head¹⁵⁸.

Though the other five models have also gone beyond the limits of existing legal rules, they only violate the exercise of nomination rights, and do not deny the people's congress its final authority to choose the township head or county head. Hence, they have received implied consent from the CPC. Out of those five models, "public recommendation and competition", "public recommendation and public election", and "haixuan" could have two problems. One is how to ensure that the nomination process for formal candidates is lawful, fair and just. This is because in the nomination process, CPC Committees, other governmental organs, and individuals all have the right to recommend candidates. The issue is how to choose the formal candidates out of all the candidates nominated through different channels. Once the formal candidates are decided, the second issue is how to put forward these candidates to the people's congress in compliance with the Constitution and other laws without restricting the authority of the people's congress and giving the public the impression that the people's congress is only a rubber stamp. This is also a thorny issue. Strictly according to the theory of the people's congress system, only the presidium of the people's congress at the same level has the authority to decide formal candidates. But in "mass recommendation and competition" tried in Jiangjiashan Town, "public recommendation and public election" tried in Nanbu County and Changzhou City, and "haixuan" tried in QiQiHaEr City, preliminary candidates were all selected by other organisations and later submitted to the presidium for confirmation. These models' disadvantages include: (1) the legality of the procedure to select preliminary candidates is doubtful; (2) the presidium has become a rubber stamp and does not really exercise the authority granted to it by the Constitution and other laws. Their advantage is that it is certain that all preliminary candidates will have strong public support.

Another issue worthy of attention and discussion arising from the seven models is the role of the CPC Committees in elections. Quite obviously, local CPC Committees play significant roles in six out of the seven models with the exception of the "direct nomination and election" model. This is consistent with the long-term policy of the CPC, i.e. the CPC is responsible for the administration of officials. Firstly in the process of deciding preliminary candidates, the CPC Committees have already played a positive role. Secondly, the presidium of a people's congress is usually controlled by the local CPC Committee. Hence, in fact, it can be said that the CPC Committees are in actual control of the nomination of formal candidates. Since the Decision of the 4th Plenum of the 16th National Assembly of the CPC has emphasised the need to strengthen the governance capacity of the CPC, it seems unrealistic to demand the adoption of a multi-party system in China. On the other hand, however, the CPC has also emphasised the need to have socialist rule of law in China. Furthermore, implementation of rule of law and protection of human rights have been incorporated into the Constitution through the 2004 Amendments. Hence, the top level of the CPC wants everything done by the CPC to be consistent with the rule of law principle and protection of human rights principle. The common understanding of Chinese scholars is that rule of law means first constitutionalism, i.e. to rule the country according to the Constitution. The author is not of the view that the CPC should not play any role in the procedure for nomination of preliminary candidates for officials of local governmental organs. What it should do is to get involved through constitutional and lawful means. That is to say, the CPC should operate within the framework of the Constitution, rather than outside the constitutional structure.

¹⁵⁷ See Zha Qing-jiu, n. 9.

¹⁵⁸ See Li Fan, n. 10, see in particular n. 1 on p. 236 of that book.

Nobody is saying that the CPC Committees did not get involved in the “direct nomination and election” model tried by Mianyang City in Sichuan Province. But so long as the participation of the CPC is in compliance with the Constitution and the laws, it is worthy of recommendation and study. Some scholars have expressed the view that the Mianyang model “has made full use of the nomination right granted to voters and people’s deputies by the Constitution and Election Law, and has violated the existing conventions on real political operation, i.e. nomination of candidates, and has given up the control of the CPC over voters and the selection of candidates. In so doing, it has not only enhanced the democracy of the township head election, but also moved a step towards strengthening and improving the people’s congress system”¹⁵⁹. In reality, however, it was quite obvious that Mianyang City had some control over the election. For example, it has been reported that in the election process candidates were not allowed to campaign for votes. Hence some scholars have expressed the view that this has limited the participation of ordinary voters in the election and therefore the whole election process is much less competitive¹⁶⁰. The real intention behind the prohibition on campaigning for votes is most likely that the local CPC Committee wanted to control the end result of the election.

From the previous discussion of the principle that the CPC will be responsible for the administration of officials, we know that it means the CPC enjoys authority over the appointment of officials. Under the people’s congress system, however, the people’s congress should enjoy the authority to appoint officials of local governmental organs. So there may be an irreconcilable conflict between the principle and the people’s congress system. It is therefore necessary to modify either one of the two or both of them so as to remove the conflict.

The specific suggestions of the author are as follows. Firstly, as the principle that the CPC is responsible for administration of officials is unchallengeable, what can be considered is to maintain the CPC’s authority to nominate preliminary candidates for official posts to local people’s congresses, but not the authority of final decision on such appointments. Secondly, the right of the deputies to a people’s congress to nominate candidates can be maintained if the first suggestion is adopted. Alternatively, and perhaps preferably, is that such nomination right can be repealed and handed back to voters as already tried in some of the models. If this suggestion is followed, the relevant provisions in the Constitution and Organic Law on LPCG will have to be amended. Thirdly, it is appropriate to amend the Organic Law on LPCG by stipulating that pre-elections will be held for voters to elect formal candidates from all preliminary candidates according to the maximum statutory number allowed under the Organic Law on LPCG. Fourthly, all the formal candidates selected through pre-election can then be submitted to the people’s congress for it to elect officials to local people’s governments.

What then will be the future for the electoral system of officials in local people’s governments? With this question in mind, the author conducted field study in June 2005 in two places in Guangdong Province (Qingxin County and Y Town in Dongguan City). The author found that no reform of the existing electoral system has been undertaken or planned in those two places. One official from the Standing Committee of Qingxin County People’s Congress expressed the view that any reform to the electoral system should be carried out according to the principle of gradual and orderly progress. The author believes the election of officials to most local governments in China is the same as that in the two places the author has visited. That means they still follow the traditional method to elect officials to local governmental organs. Local CPC Committees are still basically in control of appointment of

¹⁵⁹ See Huang Wei-ping, Zhou Shu-bin, Zhang Ding-wei, and Yang Long-fang, n. 131.

¹⁶⁰ Ibid.

officials to local governmental organs. Though some experimental reforms of the election of township and county heads have appeared in China, these cases won't affect the broad picture as mentioned above. That means in the near future, the traditional election method will still be widely used in China. Under such circumstances, China should start with democracy within the CPC and select officials according to the Regulations. Once that is achieved, China can further consider democratic election of officials to local governmental organs.

5. The Electoral System of the CPC and Its Reform

It is not difficult to notice from the discussion in the previous three parts that the CPC has an important role to play in these electoral systems, especially the last two. The principle that the CPC will be responsible for the selection and administration of governmental officials determines that the CPC has direct influence in not only the selection of candidates for governmental officials but also the actual appointment of those officials. If the CPC organs do not function democratically, the candidates for governmental officials recommended by them won't be the result of a democratic system. That is to say, the degree of democracy within the CPC will directly influence the degree of democracy of the election results of deputies to the people's congresses and governmental officials. It is, therefore, necessary to discuss the electoral system within the CPC and its reform.

According to the Charter of the CPC as amended in 2002, the electoral system of the CPC can be summarised as follows. The highest organ of power within the CPC is its national congress and the Central Committee elected by the national congress. The CPC's organs of power at local levels are its local congresses and the committees elected by such local congresses. A CPC Committee will be accountable to and report to the CPC's congress at the corresponding level¹⁶¹. The CPC's organs of power at all levels should be formed through election¹⁶². Hence, the electoral system within the CPC includes the election of deputies to the CPC congresses and the election of the Central Committee and various local committees. Both the deputies to all CPC congresses and the Central Committee as well as various local committees must be elected through secret ballot. The list of candidates will be formed through consultation between the CPC organs and their members. Elections can be held either directly if the number of candidates is more than the positions available or after a formal list of candidates is formed through a pre-election¹⁶³. At central level, all members of the Central Committee will elect the members of the Central Political Bureau, members of the Standing Committee of the Central Political Bureau, as well as the Secretary-General of the Central Committee who must be a member of the Standing Committee of the Central Political Bureau¹⁶⁴. At local levels, all members of a CPC Committee shall elect its head, deputy heads as well as its standing committee. The election results must be approved by the CPC Committee at the next level above¹⁶⁵. At the grassroots level, the CPC will establish its grassroots CPC organs which will be elected either by all CPC members or by their deputies¹⁶⁶. Similarly, the head and deputy heads elected by either all CPC members or their deputies should also be approved by the CPC Committee at the next level above¹⁶⁷.

¹⁶¹ See para. 3 of Art. 10 of the Charter of the CPC.

¹⁶² See para. 2 of Art. 10 of the Charter of the CPC.

¹⁶³ See para. 1 of Art. 11 of the Charter of the CPC.

¹⁶⁴ See para. 1 of Art. 22 of the Charter of the CPC.

¹⁶⁵ See Art. 27 of the Charter of the CPC. According to the same Article, the standing committee of a CPC local committee will exercise the authority of that local committee while the latter is not in session; the standing committee will continue to be in charge of routine work when the next local CPC congress is in session until a new standing committee is elected.

¹⁶⁶ See para. 2 of Art. 29 of the Charter of the CPC.

¹⁶⁷ See Art. 30 of the Charter of the CPC.

One can see from the above provisions that the design of the electoral system within the CPC is very similar to the electoral system of the people's congresses, including the pre-election of candidates. From the discussion in Part three of this paper, we know that the election will often become one in which the number of candidates will be equal to the number of positions available if a pre-election is held¹⁶⁸. One essential difference between the electoral system of the CPC and that of the people's congresses is that the election results with regard to the head and deputy heads of a grassroots CPC organ or a CPC Committee won't be effective until they are approved by the CPC Committee at the next level above. This indicates that the CPC Committee at the next level above enjoys veto power over the election results below and the relationship between the CPC organs at different levels is that of a leader and one who is led.

It was reported in 2003 that President Hu Jin-tao had already put democracy within the CPC on the agenda¹⁶⁹. It has also been reported recently by foreign media that all CPC Committees at township levels in Sichuan Province have been required to have their heads democratically elected. That report notes that the CPC is undertaking electoral reform within the CPC, of which the intention seems to design China's one party democracy in order to avoid the fate that its one party system will finally be discarded¹⁷⁰. In fact, the CPC started in the end of the 1980s a number of experiments with electoral reform within the CPC at different localities in China¹⁷¹.

The first is the reform of the CPC congresses, which has two specific aspects. One is the experiment of standing CPC congresses. The CPC started its experiment in 1998 in twelve different counties/cities in five provinces, starting with Shujiang District in Taizhou City of Zhejiang Province¹⁷². The essence of the reform is to change the deputies to a CPC congress to standing deputies, meaning that they are always available, so that a congress can be held once a year¹⁷³. The other is reform of the election of deputies. One fundamental reform is to allow all CPC members to directly elect their deputies. The direct election of deputies to a CPC congress at county level in Ya An City of Sichuan Province in December 2002 is believed to be the first of its kind in China¹⁷⁴. Related procedural reforms also include the procedure for a CPC member to nominate him/herself to compete in the election and the procedure for making campaign speeches¹⁷⁵. Other experiments relating to the election of deputies include: (1) the reduction of quota for deputies, which usually amounts to a more than 20% decrease in the number of deputies; (2) making the election units smaller so that CPC members within an election unit will have a better understanding of and supervision over the candidates; (3) the number of candidates has been increased to 40% more than the number of deputies to be elected¹⁷⁶. Comments on these experiments have not been consistent. Some are of the view that the reform will make it possible for a CPC congress to

¹⁶⁸ See discussion in section 3.1 of this paper.

¹⁶⁹ See Hong Kong Ta Kung Pao: "Dangnei Minzhu Gaig Baishang Yishi Richeng" (Democracy within the CPC is on the Agenda), <http://www.gmw.cn/03pindao/guancha/2003-06/030611/030611-12.htm>.

¹⁷⁰ See Benjamin Robertson and Wang Bo-yong, "China Tackles 'threat' of voting spreading, Scotland on Sunday, 18 September 2005, at <http://www.scotsman.com/?id=1955902005>.

¹⁷¹ See Chapter 8 of the White Paper.

¹⁷² See Li Zhi-hong, "Guanyu Dang Daibiao Dahui Changrenzhi Shidian Gongzuo de Diaocha" (Investigation of the Experiments with the Standing System of Deputies to the CPC Congresses), in "Dangjian Yanjiu Neichan" (Study of the CPC Development for Internal Reference), vol. 2, 2003, at: <http://www.djyj.com.cn/share/viewdjyinc.asp?id=477>.

¹⁷³ Ibid.

¹⁷⁴ See "Jihuo Dangnei Gaige Shidian, Sichuan Cheng Zhongguo Zhengzhi Gaige Shiyantian" (To Activate Reform within the CPC, Sichuan Has Become the Experimental Field for China's Political Reform), 9 June 2005, 11:05, from Fenghuangwang (Phoenix Net): <http://news.memail.net/050609/120,2,1525872,00.shtml>.

¹⁷⁵ Ibid.

¹⁷⁶ See n. 172.

play its role and contribute to democracy within the CPC. Others are of view that the cost for such reform is too high and the reform may well affect the efficiency of decision-making within the CPC¹⁷⁷.

The second reform is of the election of a CPC organ in a village. As early as 1997, one county in Shenyang City of Liaoning Province had, with the approval of the Organisation Department of the Central Committee of the CPC, experimented with the direct election of the head of a CPC organ in a village by all CPC members in that village¹⁷⁸. Thereafter, election reform of CPC organs in villages has been tested in different localities in China. In 2000, the Central Committee of the CPC actively promoted the reform of the selection and appointment system of members of CPC organs in villages¹⁷⁹. Reform has picked up pace since then and three different models have appeared. The first is called “two recommendations and one election”, meaning recommendation by both the masses and CPC members in a village and then election by all CPC members¹⁸⁰. The second is called “two votes system”, meaning that it will be up to the masses to cast a vote of confidence, and then all CPC members will formally cast their votes. The purpose of the “two votes system” is to win the support of villagers for a village CPC organ¹⁸¹. The third is called “direct election after public recommendation”, meaning that the CPC members and the masses will openly pre-elect candidates for the head of a village CPC organ and then an election will be held¹⁸². The essence of all three models is that the election of a village CPC organ is no longer regarded as an internal matter within the CPC. Instead, members of a village CPC organ need to get the support of not only the CPC members of that village but also the majority of the villagers (who are non-CPC members). Though the election will ultimately be held among CPC members, villagers who are non-CPC members and constitute the majority of residents in the village will almost determine the election results¹⁸³.

The third reform is of the election of township CPC Committees as well as of township and county CPC Committees themselves. The township CPC Committee election reform has mainly been about the direct election of the head of a township CPC Committee. Since Mu Lan Town in Xin Du District of Chengdu City, Sichuan Province had the head of its township CPC Committee directly elected through “direct election after public recommendation” on 7 December 2003¹⁸⁴, some local CPC Committees in other provinces have also started or are

¹⁷⁷ See n. 172.

¹⁷⁸ See Yang Hai-feng etc, “Shencheng Xiangzhen Dangwei Gaixuan Huanjie, Shixing Dang Daibiao Zhijie Xuanju Fangshi (Election for the Change of Term of the CPC Committees at Township Level in Shenyang City, the Experiment of Direct Election by Deputies to the CPC Congress at Township Level), in “Huashang Chengbao”(Huanshang Morning Post), at: <http://www.nen.com.cn/77970767572107264/20050830/1749500.shtml>.

¹⁷⁹ Ibid.

¹⁸⁰ See “Shangdong Shixing Cun Dangzhibu Zhijie Xuanju Qude Shixiao” (The Trial of Direct Election of Village CPC Organ in Shangdong Province Has Achieved Good Results), in Dongfang Wang (Dongfang Net), at: <http://www.siica.org.cn/eastday/node4796/node12163/node12166/node12183/userobject1ai731890.html>.

¹⁸¹ See Xu Yong, “Chongjian Zhengzhi Xinren de Youye Tansuo – Du “Xiangcun Xuanju zhong de Liangpiao Zhi” (Good Experiment in Re-establishing Political Confidence: Reading “Two Votes System in Village Election”) at: <http://www.weiqian.org.cn/data/detail.php?id=3463>

¹⁸² See n. 174; see also “Gongtui Zhixuan de Xianshi Yiyi – Fenghua Shi Nongcun Dangzuzhi Xuanju Zhidu Gaige de Sikao” (The Practical Meaning of Direct Election after Public Recommendation – Reflection on the Reform of the Election System of Village CPC Organs in Fenghua City), at: <http://www.zjol.com.cn>.

¹⁸³ See “Shangdong: Wuqian Duoge Cun shixing Zhixuan Zhishu” (Shangdong: Direct Election of the Heads of Village CPC Organs in More than 5,000 Villages), at: http://news.xinhuanet.com/mrdx/2005-09/26/content_3544135.htm

¹⁸⁴ See “Chengdu Kai Quanguo Xianhe, 639 Ming Dangyuan Zhixuan Chu Zhen Dangwei Shuji” (Chengdu Leads the Nation: 639 CPC Members directly Elected the Head of the CPC Committee in a Town), at: <http://www.chinaelections.org/readnews.asp?newsid={C8F5F99A-D7E1-4A18-B496-52920FBFBAE7}>.

going to start similar election reform¹⁸⁵. The focus of township and/or county CPC Committee reform has been on whether or not to retain the standing committees of township and/or county CPC Committees. Luotian County in Hubei Province abolished in 2005 the standing committee of its county CPC Committee with a history of 47 years, and its functions have been assumed by the CPC Committee elected by all deputies to the county CPC congress¹⁸⁶. It has been commented that after the reform, the actual source of power of the CPC organ at county level has changed fundamentally from CPC Committee at the next level above to the deputies to the county CPC congress¹⁸⁷.

It should be noted that the last two reforms are inconsistent with the relevant provisions of the Charter of the CPC. Despite that, all three kinds of experimental reforms within the CPC have the endorsement of the Organisation Department of the Central Committee of the CPC. This demonstrates that the top level officials within the CPC take the position that it is necessary to have electoral reform within the CPC. What is then the objective of such reform? The answer can be seen in a speech delivered by the Secretary-General of the Central Committee of the CPC, Hu Jin-tao, in April 2005. He points out in his speech that "it is necessary to insist on and promote democracy within the CPC and to rely on the masses. Democracy within the CPC is the life of the CPC . . ." ¹⁸⁸. That is to say, the existence of democracy within the CPC is regarded as an issue relating to the future and survival of the CPC. One essential element of democracy within the CPC is the democratic election system. The White Paper has made positive comments on the experimental reforms with regard to the CPC congresses, local CPC Committees, and election systems within the CPC, and states that the difference between the number of candidates for deputies to CPC congresses and the number of deputies should be increased appropriately, and that the scope for direct election of officials of grassroots CPC organs should gradually be expanded¹⁸⁹. Meanwhile, the White Paper has also noted that "it is an important content of democratic governance of the CPC to rely on the development of democracy within the CPC to promote people's democracy"¹⁹⁰. It is therefore quite clear that the objective of election reform within the CPC is to gradually expand democracy within the CPC, including the democratisation of elections.

6. Analysis of Election Problems and the Future of China's Electoral System

It can be seen from the previous discussion of the three kinds of electoral systems in China that all of them are under reform and there are many questions worthy of further in-depth study.

Many Chinese and foreign scholars have undertaken in-depth research of various issues relating to the Chinese electoral system, especially the design of election rules and processes. In this part of the paper, based on the above discussion of the three electoral

¹⁸⁵ See n. 174; see also "Sihong Shiyuan: 1.4 Wan Dangyuan Zhixuan Xiangzhen Dangwei" (Sihong Experiment: 14,000 CPC Members directly Elect the CPC Committees at Township Level); at: <http://www.chinaelections.org/readnews.asp?newsid={01BE8DED-934C-42AD-945E-9EA66B43E042}>, see also n. 178.

¹⁸⁶ See "Dangnei Minzhu Gaige Zhongda Cuoshi: Xianwei Wu Changwei" (An Important Step in Democratic Reform within the CPC: No More Standing Committee of a County CPC Congress), at: http://www.qzwb.com/gb/content/2005-06/05/content_1671372.htm

¹⁸⁷ Ibid.

¹⁸⁸ See Hu Jin-tao's speech delivered in Shangdong in April 2005, at: http://210.31.67.98/yjs/home/bx/bx_study_hsd.htm.

¹⁸⁹ See Chapter 8 of the White Paper. It actually means that the CPC wants to develop democracy within the CPC first and hope that democracy within the CPC will naturally promote democracy in the society nationwide. That has been regarded as the policy for achieving democratic governance by the CPC.

¹⁹⁰ Ibid.

systems, the author will further discuss three questions on which either not much in-depth research has been undertaken or the author holds some different views.

6.1 CPC Organs, Administrative Organs and Election

Among all the electoral system issues, the relationship between the CPC organs and administrative organs, and the role of the CPC in elections are both important and sensitive issues. One can see from above discussion of the three electoral systems that these two issues have appeared in all three electoral systems, and more prominently in village election and governmental officials' election.

6.1.1 CPC Organs and Administrative Organs

From a macro perspective, the relationship between CPC organs and administrative organs is what we usually call the relationship between the CPC and government. At the lowest level, i.e. the village level, it is about the relationship between the secretary of a village CPC organisation and the head of a village residents' committee. Strictly speaking, this is not an election law issue, but one more appropriate for constitutional law and political science. Given that village elections are provided for by the 1998 Organic Law, which contains provisions on the relationship between a rural CPC organ and a village residents' committee, and that this issue has a direct bearing on the election and operation of a village residents' committee, it is necessary to further elaborate on this issue.

The practice in Guangdong Province is to encourage CPC members to participate in the election of a village head. If the elected village head is a CPC member, he can be appointed secretary of the village CPC organisation so as to avoid potential conflict between a village CPC head and village head. In Qingxin County, the author found that in one village, the newly elected village head is not a CPC member while the candidate favoured by the township government, who is a CPC member, lost the election. The X Town CPC Committee decided to send one CPC member from X Town CPC Committee to that village. After X Town CPC officials talked to 68 CPC members in that village, the CPC member sent from X Town CPC committee was successfully elected as secretary of the village CPC organisation.

This is a method to avoid potential conflict, but not one to resolve a conflict. Due to the fact that the new secretary was sent to the village by the town CPC Committee, the election by the CPC members in that village was only symbolic and would give outsiders the impression that there was no democracy within the CPC. This method is, however, consistent with the CPC's policy on the relationship between the CPC and government. In comparison with the situation in the late 1980s, what is different now is that the CPC no longer emphasises the need to separate the CPC from the government. Instead, the CPC has emphasised the need to strengthen the leadership of the CPC at all levels of government. What has actually been done is to arrange for the secretary of the CPC Committee to hold the position of chairman of the standing committee of the people's congress at the same level. In so doing, it is expected that the CPC can strengthen its leadership over governmental organs.

What should be done if a village head and village CPC head are two different persons and conflict does arise between the two? One newly elected village head in Qingxin County was of the view that advice should be sought from the X Township CPC Committee and government. That view indicates the newly elected village head does not have a good understanding of his statutory authorities and obligations. Nor does he know much about what should be the relationship between him and the village CPC head. This is a common problem existing in rural areas in China. In the author's investigation in Y Town in Dongguan City, one governmental official expressed the view that the secretary of the CPC organisation

should have the final say if there is a conflict between him and the village head. But he added that if the conflict was really irreconcilable and the village head refused to listen to the secretary of the CPC organisation, what should be done was to remove the secretary of the CPC organisation and that was the usual practice in Dongguan. This is because a village head can only be removed from his position through normal legal procedure, i.e. removal procedure, which is complex and difficult. But removal of a secretary of a village CPC organisation only needs a decision within the CPC organ through an internal procedure, which is much simpler and easier.

The author is of the view that careful attention should be paid to the relationship between a village CPC organisation and the village head, especially if there is a conflict between them. The CPC as the ruling political party in China should nominate a capable CPC member to compete for village headship and this CPC member should be appointed village CPC head if he is successfully elected as village head. Even if he is not so appointed, it does not really matter, because as a CPC member, he should listen to the secretary of the CPC organisation. But if that CPC member loses in the village election and a non CPC member is elected as village head, the best solution for the CPC is to persuade that person to join the CPC. If he/she does, any potential conflict between the two can be avoided. In one village of X Town in Qingxin County, the newly elected village head was not a CPC member but was persuaded to join the CPC. He has also expressed his interest in becoming a CPC member. But when an elected village head is neither a CPC member nor interested in joining the CPC, the CPC should expressly recognise and respect the authority of the village head and residents' committee, and should not interfere with the latter's exercise of its lawful authority. That is the basic requirement of rule of law. Hence, the best solution is to ensure that the authorities of a village head should not be subject to any restrictions from a village CPC head. The CPC should require its village organ to exercise self-restraint by not interfering with the exercise of authority by village residents' committee.

The same reasoning applies to the relationship between the CPC and governments at township and county levels. The only difference is that at township and county levels, the relationship is between the CPC Committees on the one side and governmental organs within the constitutional structure on the other. So if the relationship is not handled properly, the ruling position of the CPC may be directly affected. In fact, the CPC wishes to strengthen its control of the people's congresses so as to achieve the objective of having control of other governmental organs through people's congresses. There is no problem with this approach in theory, because in any country adopting a parliamentary system, the ruling party is in control of the parliament and all governmental organs. The real issue is how the CPC controls people's congresses. The author's view is that the CPC should try to control people's congresses through means which are lawful and constitutional. Specifically speaking, it should do so through its members within people's congresses, rather than any other means outside the constitutional structure.

6.1.2 The Role of CPC Organs in Elections

It is not difficult to see from the discussion of the three kinds of electoral systems above that the CPC organs are in fact in control of all three kinds of electoral systems, from setting down conditions for candidates to the operation of the whole election process. That means the reform of China's electoral systems and their future entirely depend on the CPC's intention to reform and its decision on reform. But the decision of the CPC cannot depart completely from the wishes of the public. That is possibly why the CPC has already started to practice democracy within its organs. The CPC must have realised that it is almost certain that China will develop democracy. The only issue is when it will do so. Hence, the author is optimistic about the future of democratic development in China.

Under present circumstances, as far as the role of the CPC organs in elections is concerned, the author is of the view that reform should be undertaken in the following aspects. Firstly, the CPC as the ruling political party is in control of people's congresses at all levels. It should therefore be able to play a significant role in the enactment of formative rules on elections. Specifically, the CPC's control of the people's congresses actually means it controls to a certain extent the progress of democratic development in China. But in the long run, it is impossible for the CPC to prevent the development of democracy. Hence, it is better for the CPC to listen to the wishes of the people and enact a set of rules on elections which are fair and just and in compliance with the principle of democracy. As far as existing election rules are concerned, those for village elections are acceptable. But those for election of deputies to people's congresses and of officials to governmental organs still have a lot of room for further improvement. Secondly, in every aspect of the operation of the electoral systems, the CPC organs have in fact control of the election committees and the presidiums of the people's congresses, which ensure the CPC's control of the nomination and determination of formal candidates. The electoral system is, however, part of a country's constitutional system. Once election rules are laid down, the operation of the electoral system, as part of the constitutional system, should not be under the control of the CPC. Instead, it should be operated by an organ which is independent of the CPC and all other political parties so as to ensure the operation is fair and just. That is also the common practice in most countries in the world and one of the key factors which can ensure the electoral system to operate lawfully. If the CPC decides to give up its control of the operation of electoral system, it will be a short step to genuine democratic elections in China. Hence, the CPC organs should take the initiative to maintain a distance from election organisers. Thirdly, the CPC should make a good effort in putting forward its best candidates in elections and make full use of the CPC organisation network and its advantages to help those candidates it has nominated to be successfully elected, rather than using any means to impose pressure on or exclude other candidates standing for election to achieve its objective.

6.2 Village Elections, Governmental Officials' Elections, and People's Congresses' Elections

Many scholars are of the view that direct election of a village residents' committee would promote democratic progress in China, including direct election of a township head¹⁹¹. The author feels there is a necessity to examine the interaction among the three kinds of electoral systems in China, which will contribute to the discussion and analysis of the future of electoral system reform in China.

As far as the relationship between village election and governmental officials' election is concerned, the experience of village elections will no doubt enhance the experience of voters in other elections and also the voters' appreciation of their rights. From this aspect, the election experience of village residents' committees will be beneficial to the election of officials to governmental organs. It will assist especially the election of officials to grassroots governmental organs. As for the influence and impact of village election experience upon election of officials to governmental organs, the author is not as optimistic as some other scholars for the following reasons. Firstly, a village residents' committee is in nature completely different from a governmental organ such as a township government because their nature, functions and resources are all different. They are not really comparable. Secondly, though the CPC is very determined to introduce democratic election of village residents' committees, it is not so determined with regard to democratic election of government officials such as township heads. This is because democratic election of government officials may conflict with the principle that the CPC shall be responsible for the

¹⁹¹ See Li Fan, n. 10, pp. 198-222.

administration of officials and the ruling position of the CPC. Thirdly, the adoption of direct democratic election of government officials will change one fundamental characteristic of the people's congress system. This is because it is provided by both the Constitution and other laws that officials to governmental organs will be elected by the people's congress at the same level, rather than by voters directly. From the perspective of constitutionalism, this is directly related to whether China will adopt a parliamentary system or a presidential system. The author has not seen any signs that China will soon adopt a presidential system. If this judgment is correct, then any measure to expand direct election of officials to governmental organs will increase its conflict with the fundamental system established by the Constitution, i.e. the people's congress system, which is in nature a parliamentary system. Hence such measures will not be beneficial to the genuine implementation of a parliamentary system in China. Finally, and probably most importantly, the electoral system of officials to governmental organs may also be related to the principle that the CPC shall be responsible for the administration of officials. Hence, the influence of village elections upon the electoral system for officials to governmental organs will be very limited and there won't be much interaction between the two kinds of electoral systems.

As far as the relationship between the village electoral system and the grassroots people's congress electoral system is concerned, though a village residents' committee is in nature completely different from a grassroots people's congress, they do have one essential thing in common, i.e., both of them are directly elected by voters. Hence, the direct election experience of village residents' committees will no doubt be of direct help to and have an exemplary effect on direct election of people's congresses at township and county levels. We know from the discussion in Part three that the CPC has not expressed any clear decision about the future direction of reform of the people's congress electoral system. It still gets involved in and influences people's congress elections. This policy approach is quite different from the CPC's determination to introduce direct election of village residents' committees, and may very likely affect the degree of democracy in the election of grassroots people's congresses. However, given that direct election of grassroots people's congresses won't have a fundamental impact upon the ruling position of the CPC, the author is still optimistic to a certain extent about genuine democratic, direct election at township level. The implementation of genuine democratic, direct election of people's congresses at district/county level is a bit more complex. This is mainly because according to the principle that the CPC shall be responsible for the administration of officials, the chairmen and members of the standing committee of a district/county people's congress shall be decided by the relevant CPC Committee. But the pre-condition for those persons to become chairmen or members of the standing committee is that they must be deputies to the people's congress. In order to ensure that these people can be elected to the people's congress, the CPC Committee may use its influence. Hence, the village electoral system and grassroots people's congress electoral system may interact with and mutually influence each other.

As for the relationship between the electoral system of a grassroots people's congress and the electoral system of officials to governmental organs, due to the fact that officials to grassroots governmental organs are elected by the deputies elected through the electoral system for grassroots people's congresses, it is fair to say that there should exist a very close relationship between these two kinds of electoral systems. To a certain extent, the degree of democracy of the electoral system for grassroots people's congresses will influence and affect the degree of democracy of the electoral system for officials to governmental organs. But it may not necessarily be so primarily because the selection of officials at county level and above is decided by the organisation departments of the relevant CPC Committees.

6.3 The Future of China's Electoral System

Firstly, the author would like to discuss the future of democratic direct elections in China. Are the conditions in China in theory ready for direct election? Professor Xu Chong-de, a leading constitutional scholar in China, is of the view that it is not yet appropriate to have direct election at all levels in China. The reasons are: under current social circumstances, there are still a lot of Chinese who lack election experience and/or are illiterate. Such practical conditions have determined that if one unwisely adopted an electoral system which is perfect in form but does not work in practice in China, i.e. direct election, it would not only increase the difficulty of elections, but also restrict the rights of many people in practice. The aim of the Election Law should be to achieve democracy in substance rather than democracy in formality¹⁹². This is the view adopted by the CPC in the early years when it came into power. At present, there are still some scholars in China supporting this approach. Though this approach is still authoritative, it is certainly not the common understanding of all constitutional scholars in China. In fact, quite a few young scholars do not hold this view.

In an article entitled "Investigation of Citizens' Intellectual Quality and Election Reform"¹⁹³, Professor Cai Ding-jian conducted field study in twenty locations in China to explore whether direct election could be further expanded and whether the degree of democracy in election could be further enhanced. His conclusion is affirmative; he has concluded that it is wrong to say that China lags behind in economic and cultural development, or that Chinese people's intellectual quality is too low to have democracy. Many Chinese and foreign scholars have conducted in-depth research on the relationship between economic development and democracy, as well as the relationship between the intellectual quality of people and democratic progress in a country, and have come to the conclusion that there does not exist a causal relationship between the two¹⁹⁴. The author's investigation in Guangdong has also proven that there does not necessarily exist a causal relationship between economic development and the degree of democracy of election. Elections in places where the economy is less developed may well be more democratic, which is certainly the case for the two places the author visited during field study. But whether China is ready for direct election depends not only on the people, but also on whether or not the CPC is willing and ready for direct election. From the above discussion on the electoral systems of people's congresses and officials of governmental organs, it is not difficult to see that the CPC is not ready yet for direct election. Hence, under such circumstances, it is unrealistic to talk about expansion of direct election to a higher level or all levels.

In practice, democratic direct election of village residents' committees has already been clearly stipulated by legislation. Direct election of people's congresses at township and county levels is also provided for by legislation. The issue is whether direct election should be further expanded to municipal, provincial, or even national people's congresses? The author's view is that under current circumstances, the scope of direct election should not be further expanded, primarily because the election of grassroots people's congresses is still problematic. The most important problems are that the election does not really reflect the choice of voters and that the election organisers still interfere with and influence the election

¹⁹² See Xu Chong-de, "Zhonghua Renmin Gongheguo Xianfa Shi" (Constitutional History of the PRC), Fujian People's Press, 2003, p. 245.

¹⁹³ It was originally in "Zhannue yu Guanli" (Strategy and Administration), vol. 2, 2003; see also Cai Ding-jian, "Zhongguo Ren Suzhi Taidi, Gaobuliao Xuanju Zhiyi? – Jingji, Wenhua, Zhengzhi, Liyi yu Xuanju Xingwei Xiangguanxing diaocha yu fenxi" (Questioning the Argument That the Intellectual Quality of Chinese too Low to Have Election – Investigation and Analysis of the Relevance of Economy, Culture, Politics, and Interests to Election Behavior), in Cai Ding-jian, n. 41, pp. 199-261.

¹⁹⁴ See David Zweig, *Democratic Values, Political Structures, and Alternative Politics in Greater China*, United States Institute of Peace, at: <http://www.usip.org/pubs/peaceworks/pwks44.html>.

significantly. It is fair to say that basically direct elections of township and county people's governments are still confirmative elections under the control of the CPC Committees. They are not democratic election in the true sense. Under such circumstances, expansion of the scope of direct election will only increase people's indifference towards the electoral system, and will not achieve the objective of promoting democratic elections at all. Only when direct election at township and county levels becomes truly democratic, and beneficial to the development of democratic system, will it be time for expansion of the scope of direct election. Hence the reform of the electoral system should start from grassroots people's congresses, rather than expanding direct election to higher levels of people's congresses.

How big is the chance for democratic election of officials to governmental organs? From the discussion in Part four above, we know that some township governments have already started experimental reforms in direct election of their township heads. The problem with the direct election of a township head is that such an election is in violation of existing legislation. Hence, some scholars are of the view that such an election is unlawful and even unconstitutional. But there are also scholars who hold the view that such experimental reforms have their merits. For example, Professor Mao Shou-long, a distinguished political science scholar from Renmin University, has expressed the view that we should give enough room to local governments to experiment with various reforms rather than focus too much on the unconstitutionality of such reform. In China, "benign violation of the Constitution" still has a big market, and it has been the normal practice to experiment with something first, and if it proves to be good and successful, laws will then be amended. The current situation is that some local CPC Committees have obviously experimented with various bold reforms. Only in very exceptional cases where very often the bottom line of the Central Committee of the CPC or a sensitive area has been touched, would the Central Committee of the CPC call off the reform. Hence, in fact the Central Committee of the CPC has given implied consent to experimental reform of grassroots people's congress elections and wishes to find a feasible reform proposal which is not only appropriate to China's special circumstances but also consistent with democratic progress.

But unconstitutionality of direct election of a township head is only one aspect of the problem. Another more important legal issue is, once people accept direct election of a township head as appropriate, it directly denies the authority of the people's congress to elect officials to the governmental organs at the same level. Once voters have directly elected a township head, the town people's congress would only be able to exercise its authority to approve the result of the election. Otherwise, its decision would be in conflict with democratic election. But if the people's congress just simply approves the result of direct election, it would become a rubber stamp. That means direct election of a township head would deny one important authority and obligation of the people's congress, i.e. to elect officials to the governmental organs at the same level.

There are two solutions to this difficult question. One is to abolish grassroots people's congresses for the reason that they do not really have many functions to perform¹⁹⁵. The people's congress in X Town in Qingxin County, Guangdong Province only holds one meeting every year. Under such circumstances, it might be better to abolish grassroots people's congresses. This not only achieves the objective of simplifying grassroots government, but also avoids any potential conflict between a state power organ at grassroots level (township people's congress) and a democratically elected township head. The second solution is for a township people's congress to directly organise the township

¹⁹⁵ See Tian Bi-yao, "Xiangzhen Renda" (Township People's Congresses) in "2004, Zhongguo Renda Hongpishu" (2004 Red Book on People's Congresses in China), vol. 1, 2005, downloaded from: <http://www.lpci.cn/ShowArticle.asp?ArticleID=2409>.

people's government or to let the township people's congress perform the function of a township people's government. Then direct election of township heads can be abolished.

Which solution is then more preferable? In order to answer this question, one should consider it from two perspectives: constitutional and practical. From constitutional perspective, China has adopted a people's congress system. Chinese scholars' common understanding is that the Chinese constitutional system is in nature a parliamentary system and one fundamental characteristic of a parliamentary system is that parliament will establish the government. If this principle is followed, then the second choice is more in compliance with the requirement of Chinese constitutional system.

From the perspective of reality, the grassroots people's congress has never truly exercised its constitutional authority. This is because after the establishment of the PRC, candidates for officials to a township government have basically been decided by the CPC Committee at the same level, who will then be submitted to the township people's congress for confirmation. Though in recent years, some local governments have started their experimental reform of township head or deputy head elections, in the greater part of China, the election of township heads still follows traditional practice. Even in Guangdong Province where the economy is more developed than many other provinces, the traditional method is still used to elect township heads. Some pioneers in township head election reform have even gone back to using the traditional method of election. The reason for doing so is very likely to be constitutional considerations; a township government is already one level of government within the constitutional structure. The Central Committee of the CPC is bound to consider the possibility that any reform at township level might affect election at higher levels, and even the central people's government. So the CPC must be more cautious in dealing with the township head election reform. Hence from the perspective of reality, the author also believes the second solution is more preferable.

Moreover, the adoption of the second solution does not necessarily mean denying the right of citizens to have direct elections; people's right to direct election is realised through the election of deputies to a township people's congress rather than direct election of a township head. This is determined by China's constitutional system. The reason why people in China do not pay much attention to the election of the people's congresses is because people's congresses at different levels have not truly exercised their constitutional authorities. But that is not an inherent problem of a parliamentary system. Rather, it is because the people's congress system has not been truly implemented in practice.

The next issue is the future of China's electoral system. It can be seen from the discussion in Part two that the author is very optimistic about the future of village electoral system. What then will be the future of the other two electoral systems?

After analysing the history and current circumstance of China's electoral system, Cai Ding-jian has made the following observation:

“Though socialist democracy is progressive from an historical perspective, people still have great expectations for further development of democracy. Different views exist on the development of democracy and there exists disharmony between development of democratic election and the traditional method of “the administration of officials by the CPC”. The development of democratic election is in a dilemma. On the one hand, legal conscience and demand is getting stronger for doing things according to legal and democratic procedures, ensuring that election will reflect the will of the voters, having democratic election and doing things according to law. On the other hand, the

requirement is also crystal clear that election must be conducted according to the will of the CPC Committees for the purpose of ensuring the realisation of the intention of the leaders and the CPC Committees, and ensuring that the CPC Committees are in control of election results. The existence of these two different demands has made it more and more difficult to organise elections, and the development of election practice is far from meeting the expectation of the citizens.”¹⁹⁶

This comment has pointed out the key factor affecting the future of China’s electoral system, i.e., the influence of the CPC upon the electoral system. In the past 30 odd years, China’s economic reform has been spearheaded by the CPC and has achieved remarkable results. The electoral reform of village residents’ committees has also been under the support and promotion of the CPC. After more than ten years of development, the village electoral system is developing in a healthy direction. Hence, the author believes that the future of the other two electoral systems is also determined by the decision of the CPC to undertake reform. Since people’s congresses are organs of state power in China, the CPC is bound to deal with the reform of their electoral system more carefully and cautiously. Since each level of people’s government is the organ in actual control and exercise of power, the CPC will also handle its reform very cautiously. The principle that the CPC shall be responsible for the administration of officials is not only applicable to all officials at county level or above, but also applies to the selection and appointment of members of standing committees of a county people’s congress. Hence, the author is of the view that the reform of these two electoral systems shall happen concurrently, and their progress is mainly determined by the intention and decision of the CPC to reform.

Strengthening the leadership of the CPC, as has been emphasised by the 4th Plenum of the 16th National Assembly of the CPC, is also likely to be interpreted to mean strengthening the CPC’s leadership over the election process. At present, the principle that the CPC shall be responsible for the administration of officials indeed emphasises the control of election results. On the other hand, the 4th Plenum of the 16th National Assembly of the CPC has also emphasised the establishment of democratic systems and has viewed it as something relevant to the survival of the CPC. The author’s interpretation of the Decision is that the CPC has realised the necessity to reform various existing systems, including the electoral system. The author also agrees to the view raised by some scholars that China is ready to undertake reform of its political system. The issue is how to undertake the reform. As far as the election reform of people’s congresses and officials to governmental organs is concerned, the principle that the CPC shall be responsible for the administration of officials will not constitute an obstacle to the development of democratic election so long as appropriate amendments are made to the Regulations by limiting its application to officials nominated by the CPC rather than all officials. The more important thing is that the CPC should realise that amendment to the principle that the CPC shall be responsible for the administration of officials will not necessarily have a negative impact on the ruling status and capacity of the CPC. Instead, it is quite possible that the reform might enhance the reputation of the CPC among voters, which will in turn contribute to the strengthening of the ruling position and capacity of the CPC. Hence, the author is cautiously optimistic about the future of the reform of electoral systems of both people’s congresses and officials of governmental organs.

As to the reform of the electoral system within the CPC and the development of political democracy in China, some Western media have expressed the view that the publication of the White Paper demonstrates that hopes for political reform in China have suffered a

¹⁹⁶ See Cai Ding-jian, n. 41, pp. 30-31.

setback¹⁹⁷. The author holds a different interpretation of the White Paper. It is clear from the discussion in Part five that the White Paper has confirmed democratic election of village residents' committees though not giving any policy guidelines on election reforms of people's congresses and governmental officials. The White Paper has three chapters relevant to the CPC. On the one hand, the White Paper insists on the leadership of the CPC, on the other, it has made clear the necessity to develop democracy within the CPC and states that democracy within the CPC should be relied on to promote people's democracy. The author holds the view that when the CPC really achieves full democracy within itself, the inherent nature of democracy determines that the CPC will naturally develop people's democracy. Hence, the author's interpretation of the White Paper is that it has simply re-stated the relevant constitutional provisions as well as existing policies of the CPC on various issues, including the three electoral systems. But the White Paper has summarised and confirmed the experiences coming out of the experimental reforms the CPC has undertaken with regard to the electoral system within the CPC, and pointed out the direction for future development. It shows that the CPC has made a policy decision through the White Paper to give priority to the development of democracy within the CPC with the expectation that democracy within the CPC will lead naturally to the development of people's democracy, including the reform and development of the three electoral systems.

¹⁹⁷ See Jonathan Watts, Chinese Communists dash hopes of democratic reform, Friday October 21, 2005, The Guardian, at <http://www.guardian.co.uk/china/story/0,7369,1597425,00.html>.