



Prospects for Democracy in Hong Kong: China's December 2007 Decision

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Summary

The prospects for democratization in Hong Kong became clearer following a decision of the Standing Committee of China's National People's Congress (NPCSC) on December 29, 2007. The NPCSC's decision effectively set the year 2017 as the earliest date for the direct election of Hong Kong's Chief Executive and the year 2020 as the earliest date for the direct election of all members of Hong Kong's Legislative Council (Legco). However, ambiguities in the language used by the NPCSC have contributed to differences in interpretation of its decision. According to Hong Kong's current Chief Executive, Donald Tsang Yam-kuen, the decision sets a clear timetable for democracy in Hong Kong. However, representatives of Hong Kong's "pro-democracy" parties believe the decision includes no solid commitment to democratization in Hong Kong. The NPCSC's decision also established some guidelines for the process of election reform in Hong Kong, including what can and cannot be altered in the 2012 elections.

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Since China established the Hong Kong Special Administrative Region (HKSAR) on July 1, 1997, there have been questions about when and how the democratization of Hong Kong will take place.¹ At present, Hong Kong's Chief Executive is selected by an "Election Committee" of 800 largely appointed people, and its Legislative Council (Legco) consists of 30 members elected by universal suffrage in five geographic districts and 30 members selected by 28 "functional constituencies" representing various important sectors. Hong Kong's Basic Law (adopted in 1990) establishes the goal of election of Hong Kong's Chief Executive and Legislative Council by universal suffrage, but does not establish a concrete timetable or path for such a transformation.

The Standing Committee of China's National People's Congress (NPCSC) released its "Decision on Issues Relating to the Methods of Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage" on December 29, 2007.² In its decision, the NPCSC ruled out the direct election of Hong Kong's Chief Executive and Legco by universal suffrage in the elections of 2012. However, the decision also stated that the Chief Executive may be directly elected by universal suffrage in 2017, provided certain conditions were met. The NPCSC also decided that all members of the Legco may be elected by universal suffrage after the direct election of Chief Executive has taken place, effectively setting 2020 as the first possible year for fully democratic Legco elections. The NPCSC's decision also included a number of guidelines for the conduct of future elections in Hong Kong, as well as possible changes in election procedures that can and cannot be made before 2017.

The decision was in response to a report on Hong Kong's constitutional development and the need to amend its election methods submitted to the NPCSC by Hong Kong's current Chief Executive Donald Tsang Yam-kuen on December 12, 2007. According to an NPCSC decision of 2004, in order to amend Hong Kong's methods or voting procedures, Hong Kong's Chief Executive must submit a report justifying its need.³

The initial responses to the NPCSC's decision—both within Hong Kong and internationally—were varied both in their interpretations of the content of the decision and the implications for democratization in Hong Kong. Tsang welcomed the decision as a clear timetable for democratization. Opinions from Hong Kong's various political parties ranged from strong approval to strong disappointment. U.S. and U.K. government representatives gave the decision a more mixed review, while Taiwanese officials considered the decision more proof that "one country, two systems" model would not work for Taiwan.

¹ For more information about the establishment of the HKSAR and its potential democratization, see CRS Report RL34071, *Hong Kong: Ten Years After the Handover*, by (name redacted).

² Official English translation of the decision is available at http://news.xinhuanet.com/english/2007-12/29/content_7334596.htm.

³ The full text of the NPCSC's decision of April 6, 2004 is available at http://english.peopledaily.com.cn/200404/06/eng20040406_139598.shtml.

Details of the Decision

In part, the differences in the response to the NPCSC's decision may be attributed to the perceived ambiguity of its wording, which allows for differing interpretations of its content. However, the apparent ambiguity of the decision's wording might also be the result of the NPCSC's efforts to abide by the technical legal aspects of the issues addressed by the decision.

Portions of the decision are unequivocal. The first sentence of the first section of the decision clearly prohibits the election of the Chief Executive by universal suffrage in 2012, and the second sentence clearly prohibits the election of Legco by universal suffrage in 2012.⁴ The second sentence also prohibits altering the 50-50 split in the Legco between members elected by geographic regions and members selected by functional constituencies in the 2012 election.⁵

Other portions of the decision are more open to interpretation. Regarding both the Chief Executive and Legco elections of 2012, the decision states that “appropriate amendments *may be* [emphasis added] made to the specific method” of selection. However, the original Chinese—*keyi zuo chu shidang xiugai*—could be construed either as the NPCSC granting Hong Kong permission to make appropriate amendments or that Hong Kong may propose appropriate amendments, without implying that the amendments would be necessarily accepted by the NPCSC. Similarly, regarding the Chief Executive election of 2017 and subsequent Legco elections, the decision states it “may be implemented by the method of universal suffrage” [*keyi shixing you puxuan chansheng de banfa*], but the language is subject to the same ambiguity of interpretation between the granting of permission or the statement of possibility.

Regardless of one's interpretation of these phrases, the decision does provide a clear statement of how election changes are to be made. Amending the election process involves a six-step process.⁶ First, the Chief Executive “shall make a report” [*ti chu baogao*] to the NPCSC on the need for amendment of Hong Kong's election process. Second, the NPCSC will make a determination [*queding*] on the issue of the need for amendment, but not on specific changes. Third, the Hong Kong government shall introduce a bill of amendments to the Legco. Fourth, Legco must pass the bill of amendments by at least a two-third majority. Fifth, the Chief Executive must approve the bill passed by Legco. Sixth, the bill shall be reported to the NPCSC for its approval [*pizhun*] when amending the election of the Chief Executive, and “for the record” [*beian*], when amending the election of Legco.

The decision also is clear that a nominating committee [*timing weiyuanhui*] is also a required part of any process of selecting the Chief Executive, and that the nominating committee “may be formed with reference to” [*ke canzhao*] the Election Committee that currently selects the Chief Executive.

⁴ In both sentences, the original Chinese, *bu shixing you puxuan chansheng de banfa*, was translated as, “shall not be implemented by the method of universal suffrage.”

⁵ The original Chinese, *weichi bu bian*, is translated as, “shall remain unchanged.”

⁶ In his explanation of the decision, NPCSC Deputy Secretary General Qiao Xiaoyang outlined “five procedures” to amend Hong Kong's election process that combined the third and fourth steps mentioned above. They are separated in this report because they involve two different parties (the Hong Kong government and Legco) taking significantly different actions.

Hong Kong's Response

On the day of the decision, Tsang issued an official statement, saying “The HKSAR Government and I welcome this decision, which has set a clear timetable for electing the Chief Executive and Legislative Council by universal suffrage.”⁷ He also called on the people of Hong Kong to “treasure this hard-earned opportunity” and urged “everyone, with utmost sincerity, to bring an end to unnecessary contention, and to move towards reconciliation and consensus.” Tsang set a goal of settling the election reforms for 2012 by the end of his second and final term in office, and hopes to “have formulated options” by the fourth quarter of 2008. To that end, he asked Hong Kong’s Commission on Strategic Development “to consider the most appropriate electoral methods for the elections of the Chief Executive and the Legislative Council in 2012.”

Opinions among Hong Kong’s political parties were mixed, generally along established ideological lines, with disagreement on the general and specific implications of the decision. According to Jackie Hung Ling-yu, a member of Hong Kong’s Civil Human Rights Front (CHRF),⁸ “Beijing only tries to play with words to cheat Hong Kong people. There has not been any promise that we can have universal suffrage in 2017.”⁹ Civic Party leader, Audrey Eu Yuet-mee, echoed Hung’s view, maintaining that this was the second time that the NPCSC had ruled out universal suffrage in a specific election in Hong Kong.¹⁰ Martin Lee Chu-ming, founding chairman of Hong Kong’s Democratic Party, called the decision “hollow and empty,” providing neither a detailed roadmap nor a clear model for universal suffrage.¹¹

In an interview on RTHK radio in Hong Kong, Tam Yiu-chung, chairman of the Democratic Alliance for the Betterment of Hong Kong (DAB), said that, in light of the NPCSC’s decision, the focus should be on how the functional constituencies could work with universal suffrage.¹² However, Yeung Sam, current Legco member from the Democratic Party, disagreed, stating that the functional constituencies were incompatible with universal suffrage.¹³ Liberal Party chairman James Tien Pei-chun took a broader view of the decision, stating, “No matter how you see it, you should try your best to ensure Hong Kong’s three million-odd registered voters have a chance to elect the Chief Executive in 2017.”¹⁴

⁷ The full text of Donald Tsang’s statement is available at <http://www.info.gov.hk/gia/general/200712/29/P200712290099.htm>.

⁸ The Civil Human Rights Front (CHRF) a coalition of more than 40 non-governmental groups (NGOs) in Hong Kong, was formed on September 13, 2002, “aiming at providing” a platform for joining solidarity efforts together pushing forward movements on the promotion of human rights and the development of civil society. For more information, go to the organization’s website, http://www.civilhrfront.org/aboutus/index_e.htm.

⁹ Eva Wu, Ng Kang-chung, and Joshua But, “Democracy Activists Planning Big March Protest Set for January 13 after Beijing Rules Out Introducing Universal Suffrage in 2012,” *South China Morning Post*, December 31, 2007.

¹⁰ In April 2004, the NPCSC prohibited the election of the Chief Executive by universal suffrage in 2005, but did state that the method of selection could be “appropriately modified.”

¹¹ Carrie Chan and Nishika Patel, “Risk Jail to Press Beijing, Leader Urges Democrats,” *Hong Kong Standard*, December 31, 2007.

¹² Eva Wu, “Divisions Surface on Functional Constituencies,” *South China Morning Post*, December 31, 2007.

¹³ *Ibid.*

¹⁴ “Pan-democrats May Fight On, but Try to Cut Best Deal They Can,” *South China Morning Post*, December 30, 2007.

Public opinion polls taken after the announcement of the decision have revealed a generally positive response. A telephone-based poll of over 1,000 Hong Kong residents conducted by a Hong Kong radio station on December 30 and 31, 2007, found half of the respondents were satisfied with the overall content of the decision, but 35% were dissatisfied.¹⁵ In a survey of 500 people done by Hong Kong University for the Hong Kong newspaper, *Ming Pao*, 42.7% of the respondents had welcomed the decision, 28.7% were opposed, and 23.6% were “half and half.”¹⁶ A similar poll done by Chinese University of Hong Kong found 72.2% of the 909 respondents found the decision acceptable and 26.7% considered it unacceptable.¹⁷

A coalition of groups supporting universal suffrage in 2012 are organizing a public rally to be held on January 13, 2008.¹⁸ In support of the planned rally, members of Hong Kong's Democratic Party have pledged to continue their hunger strike—began on December 23, 2007, the day the NPCSC opened their meeting to consider Tsang's report—until the day of the rally.

International Response

A spokesperson for the U.S. consulate in Hong Kong indicated that the U.S. government was disappointed that the NPCSC had ruled out election by universal suffrage in 2012, but hope that all parties would work to make election reforms possible in 2012 and 2017.¹⁹ British Foreign Secretary David Miliband called the prohibition of direct elections in 2012 “a disappointment to all,” but then noted that “the NPC's statement clearly points towards universal suffrage for the Chief Executive election in 2017 and the Legislative Council election thereafter.”²⁰

Taiwanese officials were more critical of the NPCSC's decision. Tung Chen-yuan, a member of Taiwan's Mainland Affairs Council, stated that the decision indicated that “the Chinese Communist Party does not allow genuine democracy,” and demonstrated that the “one country, two systems” policy would not be accepted by the people of Taiwan.²¹

Critical Issues

In light of the NPCSC's decision, Hong Kong's advancement towards democracy faces three critical issues. First, the status of Legco's functional constituencies will need to be resolved. Some Hong Kong politicians and analysts maintain that the functional constituencies are incompatible with the concept of universal suffrage and they will eventually have to be eliminated. Other Hong Kong politicians and analysts—as well as the NPCSC—hold that functional constituencies are not irreconcilable with universal suffrage, and that they represent sectors of the community which are considered important to Hong Kong's economic stability and

¹⁵ Survey results available (in Chinese) at <http://www.rahk.org/research/340/340chart.pdf>.

¹⁶ Survey results available (in Chinese) at <http://www.mingpaonews.com/>.

¹⁷ Survey results available (in Chinese) at <http://www.cuhk.edu.hk/hkiaps/telpress.htm>.

¹⁸ Wu, Ng, and But, op. cit.

¹⁹ “Disappointment in Washington, Taipei,” *South China Morning Post*, December 31, 2007.

²⁰ Albert Wong, Ambrose Leung, and Gary Cheung, “2017 Suffrage Goal Hinges on Progress by 2012, HK Told Tsang, NPC Warn Movement Must be Made in Next 5 Years,” *South China Morning Post*, December 30, 2007.

²¹ Ibid.

development. A wide range of proposals have already been offered on how to handle the functional constituencies (including changing the number of functional constituencies and altering their voter eligibility requirements so that every Hong Kong voter could vote for at least one functional constituency Legco member), but finding a suitable compromise may prove to be difficult.

Second, the composition of the nominating committee for the Chief Executive, and the requirements necessary to officially be nominated are possibly the greatest challenges facing the direct election of the Chief Executive. Currently, to be nominated, a person must receive the support of at least 100 of the 800 members of the largely appointed Election Committee. There have been calls to increase the number of members on the committee by including more people, and, in particular, the elected members of Hong Kong's District Councils. However, adding more people to the committee would either increase the possible number of nominees (assuming the 100 votes requirement was kept) or would necessitate changing the number of votes required to be nominated.

Third, possibly the greatest challenge will be finding a proposed set of amendments for the elections in 2012 and 2017 that will receive the support of at least two-thirds of Legco. A proposal in 2005 to amend the election process for the 2007 Chief Executive election and the 2008 Legco election failed when a coalition of the various "pro-democracy" parties and the Liberal Party voted against the proposed amendments because they were seen as being too modest.²² In 2008 and beyond, the Hong Kong government will need to develop proposed legislation that provides enough "democracy" to obtain support from a sufficient number of Legco members associated with the parties that opposed the 2005 proposal without losing too many Legco members associated with parties (such as DAB) that supported the 2005 proposal.

Implications for Congress

Support for the democratization of Hong Kong has been an element of U.S. foreign policy for over 15 years. The Hong Kong Policy Act of 1992 (P.L. 102-383) states, "Support for democratization is a fundamental principle of United States foreign policy. As such, it naturally applies to United States policy toward Hong Kong. This will remain equally true after June 30, 1997."

Congress might act to assist Hong Kong's progress towards universal suffrage and democracy by closely monitoring the development of "appropriate amendments" to the 2012 election process for both the Chief Executive and Legco. Congress might also encourage the State Department to provide greater assistance to its democracy-promotion efforts in Hong Kong. In FY2006, the State Department's Human Rights and Democracy Fund allocated \$450,000 to a project in Hong Kong designed to strengthen political parties and civil society organizations.²³ In addition, Congress could opt to pursue greater contact with Legco via provisions set out in Section 105 of the U.S.-Hong Kong Policy Act. Finally, Congress could include language in suitable legislation

²² For a more detailed analysis of the 2005 proposal, see Carrie Lai and Christine Loh, *From Nowhere to Nowhere*, Civic Exchange, 2007.

²³ FY2007 figures unavailable at the time the report was written. Under P.L. 110-161, Congress appropriated \$15 million for "democracy and rule of law programs in the People's Republic of China, Hong Kong, and Taiwan." No specific amount was allocated to Hong Kong.

to reactivate the Section 301 provision of the U.S.-Hong Kong Policy Act that requires an annual report from the State Department to Congress on the status of Hong Kong.

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