

Prospects for Democracy in Hong Kong: The 2017 Election Reforms (Update)

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Summary

The United States-Hong Kong Policy Act of 1992 (P.L. 102-383) declares that, “Support for democratization is a fundamental principle of U.S. foreign policy. As such, it naturally applies to United States policy toward Hong Kong.” China’s law establishing the Hong Kong Special Administration Region (HKSAR), commonly referred to as the “Basic Law,” declares that “the ultimate aim” is the selection of Hong Kong’s Chief Executive (CE) and Legislative Council (Legco) by universal suffrage. The year 2015 may be a pivotal year for making progress toward the objectives of both of these laws. It could also be a year in which the democratic aspirations of many Hong Kong residents remain unfulfilled.

Hong Kong’s current Chief Executive, Leung Chun-ying, initiated a six-step process in July 2014 whereby Hong Kong’s Basic Law could be amended to allow the selection of the Chief Executive by universal suffrage in 2017. On August 31, 2014, China’s National People’s Congress Standing Committee (NPCSC) completed the second step of the reform process when it issued a decision setting comparatively strict conditions on the adoption of universal suffrage for the 2017 CE elections that seemingly preclude the nomination of a pro-democracy candidate. The third step of the process, the CE submitting legislation to Legco to amend the Basic Law, came on June 17. On June 18, Legco defeated the proposed election reforms by a vote of 28 against and 8 in favor of the legislation, completing the fourth step and terminating one path to universal suffrage.

Public opinion in Hong Kong over the proposed CE election reforms is split, with opinion surveys showing a sharp division of opinion on accepting the NPCSC’s conditions. In the autumn of 2014, anger in Hong Kong over the NPCSC’s August 2014 decision precipitated the occupation of several major Hong Kong roads by thousands of Hong Kong residents. These occupations were ended in December 2014 by the deployment of thousands of police officers, but scattered protests continue.

The democratization of Hong Kong not only has implications for U.S. relations with Hong Kong, but also for U.S. relations with China and the political development of Taiwan and cross-Strait relations.

In response to the pro-democracy protests in Hong Kong, Members of the 113th Congress introduced the Hong Kong Human Rights and Democracy Act (H.R. 5696 and S. 2922), to amend the United States-Hong Kong Policy Act of 1992. The Senate version of the legislation was amended by the Senate Foreign Relations Committee and placed on the Senate Legislative Calendar on December 11, 2014, but did not receive consideration by the full Senate.

The Hong Kong Human Rights and Democracy Act has been reintroduced in the 114th Congress in the House of Representatives (H.R. 1159) with some changes, but not in the Senate. In addition, the 114th Congress may consider continuing appropriations for existing programs to promote the democratization of Hong Kong.

Because the process of possibly reforming Hong Kong’s election laws is underway, this report will be updated as circumstances or conditions in Hong Kong significantly change. This update reflects Legco’s defeat of the proposed resolution and possible next steps in election reforms.

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Overview

The manner by which Hong Kong selects its next Chief Executive (CE) in 2017 may be a bellwether for the prospects for the democratization of the city's governance system. Although China's leaders have agreed in principle that the Chief Executive for the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR) may be chosen by universal suffrage in 2017, the conditions placed on the method of nominating candidates may prove to be unacceptable to the people of Hong Kong and the city's legislature, the Legislative Council (Legco).

Hong Kong's current Chief Executive, Leung Chun-ying (C.Y. Leung), submitted his proposed resolution to change the CE selection process to Legco on June 17, 2015. Controversies over restrictions on the CE's proposal to Legco imposed by an August 2014 decision of China's National People's Congress Standing Committee (NPCSC) have led to ongoing protests across Hong Kong and serious opposition from some Legco members. On June 18, 2015, Legco voted 28 against and 8 in favor, thereby defeating the resolution. It remains to be seen if this effectively ends prospects for reforming the CE selection method before the 2017 election, or if the NPCSC, CE Leung, or Legco will identify a new path toward the CE's election by universal suffrage.

Since Hong Kong's reversion from British to Chinese sovereignty in 1997, many of the people of Hong Kong have looked forward to and campaigned for the fulfilment of the promise contained in the city's Basic Law—the election of the Chief Executive and Legco by universal suffrage. Past attempts to reform Hong Kong's election process have had mixed results. In December 2005, Legco voted down proposed CE election reforms after up to 250,000 people rallied against the proposed reforms.¹ On December 29, 2007, in response to a request from then CE Donald Tsang Yam-kuen, the NPCSC issued “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,” which stated that the Chief Executive may be elected by universal suffrage in 2017.² Despite the apparent promise in the NPCSC's December 2007 decision, legislation in 2010 to make modest changes in the CE selection process were approved by Legco only after the PRC government and Hong Kong's Democratic Party struck a last-minute agreement.³

The prospects for democratic election reforms in Hong Kong are of potential interest to Congress for several reasons. First, the U.S.-Hong Kong Policy Act of 1992 (22 U.S.C. 5731; P.L. 102-383) states, “Support for democratization is a fundamental principle of U.S. foreign policy. As such, it naturally applies to United States policy toward Hong Kong.” Second, how China handles the

¹ The 2005 proposal would have doubled the size of the election committee to 1,600 members. Opponents to the proposal viewed the changes as marginal, and were pushing for a commitment for when Hong Kong could select the CE by universal suffrage. For more about the large rally and failed 2005 CE election reforms, see Keith Bradsher, “Pro-Democracy Protesters March in Hong Kong,” *New York Times*, December 4, 2005; and Philip P. Pan and K.C. Ng, “Hong Kong Rejects Modest Reforms,” *Washington Post*, December 22, 2005.

² For more details on the 2007 Decision, see CRS Report RS22787, *Prospects for Democracy in Hong Kong: China's December 2007 Decision*, by (name redacted).

³ The 2010 reforms expanded the Election Committee to 1,200 members and increased the size of Legco to 70 members. For more about the 2012 election reforms, see CRS Report R40992, *Prospects for Democracy in Hong Kong: The 2012 Election Reforms*, by (name redacted).

possible democratic election reforms in Hong Kong is one indicator of its commitment to its “one country, two systems” policy as it applies to Hong Kong, as well as its tolerance of political reform in general. Third, Hong Kong plays an important role for U.S. economic interests in Asia. If the Chinese and Hong Kong governments are unable to formulate CE election reforms acceptable to Legco and the people of Hong Kong, possibly continued and intensified political unrest could harm Hong Kong’s ability to function as an economic hub for U.S. interests in Asia. Fourth, the resolution of Hong Kong’s political reforms may have an impact on relations between China and Taiwan.

The Core Issue: The Nomination of Candidates

The crux of the political controversy around the possible CE election reforms is the process of nominating the official candidates. Article 45 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (generally referred to as the “Basic Law”) states

The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. **The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.** [Emphasis added.]

In its August 2014 decision, the NPCSC approved the selection of the Chief Executive in 2017 by universal suffrage, but restricted the number of nominees to either two or three candidates, and also stipulated that the nominating committee (NC) be “made in accordance with the number of members, composition and formation method of the Election Committee for the Fourth Chief Executive [C.Y. Leung].”⁴ In addition, the NPCSC decision stipulated that to be officially nominated, a candidate “must have the endorsement of more than half of all the members of the nominating committee.”

In the eyes of the pro-democracy Legco members (see text box, “Pan-democrats and Pro-establishment: Political Labels in Hong Kong”), many Hong Kong political analysts, and the participants in the ongoing protests in Hong Kong, the constraints contained in the August 2014 NPCSC decision effectively preclude the nomination of a pro-democracy candidate for Chief Executive, and give the Chinese government indirect control over the official nomination process. All of the pro-democracy Legco members, commonly referred to as the “pan-democrats,” have stated they will vote against any proposal that complies with the August 2014 NPCSC decision. The various pro-democracy voices in Hong

Pan-democrats and Pro-establishment: Political Labels in Hong Kong

In the local political discourse, Hong Kong’s politicians and political parties are frequently divided into two groups. One group is commonly referred to as either “pro-democracy” or “pan-democrats,” who are supportive of the early adoption of universal suffrage for the election of the CE and Legco members, as well as greater autonomy for Hong Kong. The other group is generally referred to as either “pro-establishment” or “pro-Beijing,” and prefer a more gradual adoption of universal suffrage and are more open to China’s central government’s involvement in Hong Kong’s governance. See **Appendix B** for a listing of the current Legco members into the two political groups.

⁴ An English translation of the NPCSC’s August 2014 decision is available online at <http://www.2017.gov.hk/filemanager/template/en/doc/20140831a.pdf>.

Kong have called upon the NPCSC to revise or amend its August 2014 decision to provide for more flexibility in the nomination process, and have pressed CE Leung to urge NPCSC to reconsider the constraints imposed by its decision. Neither the Chinese government nor the Hong Kong government has demonstrated a willingness to reconsider their decisions regarding the 2017 CE election reforms.

Underlying the objections to the NPCSC August 2014 decision is the perception that the constraints violate the spirit and the intent of past commitments by the Chinese government to allow Hong Kong a high degree of autonomy over its governance and a promise to allow the people of Hong Kong to elect their Chief Executive through a free and fair democratic process. These perceived promises and commitments can be traced back at least 25 years to the 1990 passage of the Basic Law, and contribute to the sense of frustration among many Hong Kong residents with the latest NPCSC decision. However, Chinese and Hong Kong officials assert that the NPCSC August 2014 decision complies with China's international commitments and the laws governing the HKSAR, and is consistent with past statements regarding the adoption of universal suffrage in Hong Kong elections.

Current Process for Selecting the Chief Executive

Annex I of the Basic Law, as amended, stipulates that “the Chief Executive shall be elected by a broadly representative Election Committee in accordance with this Law and appointed by the Central People’s Government.” Annex I requires that the Election Committee be composed of 1,200 members, with 300 members from each of the following four sectors: (1) industrial, commercial and financial sectors; (2) the professions; (3) labor, social services, religious, and other sectors; and (4) members of the Legislative Council, representatives of district-based organizations, Hong Kong deputies to the National People’s Congress, and Hong Kong members of the National Committee of the Chinese People’s Political Consultative Conference. Election Committee members serve for five years. Annex I also stipulates that

the delimitation of the various sectors, the organization in each sector eligible to return Election Committee members and the number of such members returned by each of these organizations shall be prescribed by an electoral law enacted by the Hong Kong Special Administration Region in accordance with the principles of democracy and openness.

In addition, Annex I states that candidates for CE are to be nominated by receiving the support of no fewer than 150 Election Committee members and that each member can nominate only one candidate. To elect the CE, Election Committee members “shall vote in their individual capacities” by secret ballot on a “one-person-one-vote basis,” with the specific election method stipulated in the HKSAR electoral law.

The Chief Executive Election Ordinance (CEEEO) is the main HKSAR law governing the Chief Executive selection process.⁵ The CEEEO establishes the specific procedures and rules by which candidates are nominated and the future Chief Executive is selected by the Election Committee. The CEEEO also determines the specific number of seats granted to the designated subsectors of the four sectors enumerated in Annex I of the Basic Law (see **Appendix A**), and stipulates who is

⁵ The English version of the CEEEO is available online at [http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/0B621C1E1F7C5B7A482575EF001BF072/\\$FILE/CAP_569_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/0B621C1E1F7C5B7A482575EF001BF072/$FILE/CAP_569_e_b5.pdf).

eligible to vote for Election Committee members for each of the subsectors. In some cases, the voters are individuals, and in some cases companies or organizations are entitled to vote.

According to the HKSAR government, there were just under 250,000 registered voters for the last Election Committee subsector elections held in December 2011.⁶ Nearly a quarter of the 1,200 Election Committee members were chosen in uncontested subsector elections. For the contested seats, 27.6% of the eligible voters participated in the election.⁷ (See **Appendix A** for details.)

For the last Chief Executive election held in 2012, the Election Committee nominated three candidates—Albert Ho Chun-yan, at the time, chair of the pan-democratic Democratic Party; Leung Chun-ying, a pro-establishment ex-Legco and Executive Council member; and Henry Tang Ying-yen, a pro-establishment ex-Chief Secretary of Hong Kong. On March 25, 2012, the Election Committee chose Leung Chun-ying with 689 votes. Henry Tang finished second with 285 votes, and Albert Ho received 76 votes.⁸

Process for Amending the Selection of the Chief Executive and Past Attempts to Make Amendments

Annex I of the Basic Law also establishes the procedures to amend the selection process for the Chief Executive. Article 7 states

If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval.

On April 6, 2004, the NPCSC issued an interpretation of article 7 of Annex I (as well as Article III of Annex II) stipulating a six-step procedure⁹ to amend the selection process for the Chief Executive (see text box, “Six-Step Procedure for Amending the Selection Process for the Chief Executive”).¹⁰ That six-step process has been followed in every subsequent attempt to amend Hong Kong’s election process

Six-Step Procedure for Amending the Selection Process for the Chief Executive

Step 1—Chief Executive submits report to the NPCSC “as regards to whether there is a need to make an amendment.”

Step 2—The NPCSC determines if there is a need to amend Annex I of the Basic Law.

Step 3—The Chief Executive submits legislation to amend Annex I of the Basic Law to the Legislative Council for consideration.

Step 4—The Legislative Council approves the legislation (with possible amendments) by a two-thirds majority of its members.

Step 5—The Chief Executive consents to the approved legislation and submits to the NPCSC for approval.

Step 6—The NPCSC approves the legislation.

⁶ HKSAR Government, “Voter Registration Statistics: Election Committee Subsector,” <http://www.voterregistration.gov.hk/eng/statistic20115.html>.

⁷ HKSAR Government, “Voter Turnout Rate,” <http://www.elections.gov.hk/ecss2011/eng/turnout.html>.

⁸ A total of 1,132 ballots were submitted, including 75 unmarked ballots and 7 determined to be invalid.

⁹ The HKSAR government generally refers to this as a five-step procedure by combining the introduction of legislation by the CE to Legco and the approval of the legislation by Legco as one step.

¹⁰ The English version of the April 2004 NPCSC decision is available online at [http://www.cmab.gov.hk/cd/eng/basic/\(continued...\)](http://www.cmab.gov.hk/cd/eng/basic/(continued...))

for either Chief Executive or Legco. In addition, the HKSAR government has usually conducted extensive rounds of public consultation to both ascertain if conditions in Hong Kong were appropriate for election reforms (Step 1), as well as to solicit opinions on what reforms to propose to Legco (Step 3).

The 2017 Election Reforms

The HKSAR government has repeatedly stated it intends to follow the provisions in the Basic Law and the various NPCSC decisions—including the six-step process—to propose possible changes in the CE selection process in 2017. In addition, as it did during past considerations of electoral reform, the HKSAR government has conducted public consultations to ascertain the necessity for and the nature of the electoral reforms it will propose to Legco.

Step 1: CE Report to the NPCSC

CE Leung formally initiated the six-step procedure for possible changes in the CE selection process in 2017, as well as the Legco elections in 2016, on July 15, 2014, with submission of the “Report by the Chief Executive of the Hong Kong Special Administrative Region to the Standing Committee of the National People’s Congress on Whether There Is a Need to Amend the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in 2017 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in 2016.”¹¹

The CE’s report to the NPCSC was submitted after a five-month consultation period to solicit opinions from the public on various election reform options, including possible models for electing the CE by universal suffrage in 2017. The official consultation document, entitled “Let’s Talk and Achieve Universal Suffrage,” sought opinions on the following issues related to the CE’s selection in 2017: the size and composition of the nominating committee; the electorate base of the nominating committee; the method for forming the nominating committee; the nominating committee’s procedures for nominating CE candidates; and the voting arrangements for electing the CE.¹²

During the consultation period, a range of CE election options were offered and discussed. In March 2014, two academics, Dr. Benny Tai Yiu-ting and Chan Kin-man, and Rev. Chu Yiu-ming released their “manifesto” for a new organization, Occupy Central with Love and Peace (OCLP), initiating a campaign of peaceful civil disobedience and public debate to “strive for the election of the Chief Executive by universal and equal suffrage in 2017.”¹³ During the spring of 2014, OCLP held a series of public fora and informal public opinion polls on 15 different proposals on

(...continued)

pdf/es22004080554.pdf.

¹¹ The English version of the report is available online at http://www.2017.gov.hk/filemanager/template/tc/doc/report/ce_report.pdf.

¹² The consultation document is available online at [http://www.2017.gov.hk/filemanager/template/en/doc/Con_Doc_e_\(FINAL\)_with_cover.pdf](http://www.2017.gov.hk/filemanager/template/en/doc/Con_Doc_e_(FINAL)_with_cover.pdf).

¹³ Occupy Central with Love and Peace, “OCLP: Manifesto,” press release, March 26, 2014, http://oclp.hk/index.php?route=occupy/eng_detail&eng_id=9.

how to elect the CE by universal suffrage in 2017. OCLP organized an online and in-person unofficial referendum on 3 of 15 proposals from June 20-29, 2014, in which nearly 793,000 registered Hong Kong voters—or 22.4% of eligible voters—participated.¹⁴ A plurality (42.1%) of the participants chose a proposal from the Alliance for True Democracy (ATD), which would allow candidates to be nominated by one-eighth of the members of a nominating committee, by petitions signed by 1% of registered voters and verified by the nominating committee, or by nomination by a political party that received at least 5% of the total valid votes in the last Legco elections.¹⁵ The ATD proposal also called for a “two-round, run-off” process to elect the CE.¹⁶

Tsang’s report to the NPCSC, however, offered a more limited assessment of public opinion on CE electoral reforms, including

- “The mainstream opinion is that Article 45 of the Basic Law has already made clear that the power to nominate CE candidates is vested in the NC only.... Such power must not be undermined or bypassed directly or indirectly.”
- “[T]here are relatively more views that the composition of the NC should be decided by reference to the existing methods of forming the EC....”
- “There are different view on how the NC should nominate CE candidates.... Some consider that the nominating procedures may be divided into two stages: in the first stage, the persons contending for nomination shall be recommended by a certain number of NC members, and in the second stage, the NC shall nominate a number of candidates amongst the persons so recommended.”
- “Regarding the number of CE candidates, there are two major views. One of the views is that ... it is necessary to fix the number of candidates. The other view is that there is no need to restrict the number of candidates.”
- “[T]here are relatively more views that there should be two rounds of voting so as to enhance the legitimacy of the candidate returned by election.”

In the report’s “Conclusions and Recommendations,” CE Leung acknowledged calls for “civic nomination,” (allowing the public a role in the nomination of candidates) stating:

Regarding the key issue of the nominating procedures, although there were professional bodies of the legal sector and other members of the public pointing out during the consultation period that “civic nomination” was not in compliance with the Basic Law, it is worth noting that there were still considerable views after the conclusion of the public consultation that the element of “civic nomination” should be included in the nominating procedures of the universal suffrage for the CE election.

¹⁴ The results of the unofficial referendum are available online at http://oclp.hk/index.php?route=occupy/eng_detail&eng_id=16.

¹⁵ The ATD’s proposal is available online at http://www.atd.hk/wp-content/Election_Plans/ATD_CE_Election_Plan_ENG_v2.pdf.

¹⁶ To win in the first round, a candidate would have to receive at least 50% of the vote. If no candidate receives 50% or more during the first round, a run-off election would be held between the two candidates who received the most votes in the first round.

Step 2: The NPCSC Decision of August 31, 2014

The NPCSC released their response to CE Leung's report on August 31, 2014, setting seven requirements on moving to the election of the Chief Executive by universal suffrage in 2017.¹⁷ Those seven requirements were as follows:

1. "A broadly representative nominating committee shall be formed. The provisions for the number of members, composition and formation method of the nominating committee shall be made in accordance with the number of members, composition and formation method of the Election Committee for the Fourth Chief Executive," [the Election Committee that selected C. Y. Leung].
2. "The nominating committee shall nominate two to three candidates for the office of Chief Executive in accordance with democratic procedures."
3. "Each candidate must have the endorsement of more than half of all members of the nominating committee," [more than 600 members].
4. "All eligible electors in the Hong Kong Special Administrative Region have the right to vote in the election of the Chief Executive and elect one of the candidates for the office of Chief Executive in accordance with the law."
5. "The Chief Executive-elect, after being selected through universal suffrage, will have to be appointed by the Central People's Government." [the Chinese government in Beijing].
6. "The specific method of universal suffrage for selecting the Chief Executive shall be prescribed in accordance with legal procedures through amending Annex I of the Basic Law...."
7. "If the specific method of universal suffrage for selecting the Chief Executive is not adopted in accordance with legal procedures, the method used for selecting the Chief Executive for the preceding term shall continue to apply."

NPCSC Deputy Secretary General Li Fei wrote an official explanation of the NPCSC August 2014 decision that describes the NPCSC's rationale for the seven requirements.¹⁸ Regarding the size, composition, and formation method of the NC (the first requirement), Li indicated that there was extensive discussion of the forming of the EC during the drafting of the Basic Law, and it was determined that the current structure ensures that it is "broadly representative" and provides "balanced participation" from different sectors of Hong Kong society. According to Li, the NPCSC decided to limit the number of candidates to two or three (the second requirement) because it would "ensure a truly competitive election and present voters with real choices." In addition, Li wrote that having two or three candidates would avoid complicated election procedures and possibly expensive run-off elections. He also pointed out that it is consistent with recent CE elections which have had two or three candidates.¹⁹

¹⁷ The official English translation of the NPCSC's August 31 decision is available online at <http://www.2017.gov.hk/filemanager/template/en/doc/20140831a.pdf>.

¹⁸ The official translation of Li Fei's explanation is available online at <http://www.2017.gov.hk/filemanager/template/en/doc/20140831a.pdf>.

¹⁹ Tung Chee-hwa was unopposed in 2002, and Donald Tsang was unopposed in 2005. In 2007, Alan Leong and Donald Tsang were both official candidates nominated by the Election Committee. In 2012, there were three candidates for CE nominated by the EC—C.Y. Leung, Henry Tang, and Albert Ho. C. Y. Leung was chosen by the EC, receiving (continued...)

Li stated that the rationale for the third requirement—that the candidates receive the endorsement of more than half of all the members of the NC—was based on two concepts. First, because the Basic Law requires the NC to follow “democratic procedures,” Li wrote the NC “should follow the democratic principle of majority rule.” Second, to obtain endorsement by a majority of NC members, candidates “need to obtain a certain extent of support from each sector of the nominating committee.”

The Political Reaction in Hong Kong to the NPCSC Decision²⁰

Reactions to the NPCSC’s decision varied widely, especially on some of the requirements regarding the nominating process. In particular, the requirement that candidates must be endorsed by more than half of the NC members surprised many people in Hong Kong, as it significantly increased the threshold from the current one-eighth of the EC members. The limitation to two or three candidates was also viewed as comparatively strict. Finally, views differed on how to interpret the first requirement on the size, composition, and formation method of the NC.

On the day the NPCSC decision was released, CE Leung welcomed the “precious offer” from the NPCSC.²¹ Tam Yiu-chung, leader of Hong Kong’s Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) party, said in an interview with *China Daily*, “‘One man, one vote’ is the biggest thing about universal suffrage. It is bigger than the nominating procedure, which may be improved after we have gained experience through implementation of universal suffrage.”²² Other generally pro-establishment parties in Hong Kong also expressed their support for the NPCSC decision.

Hong Kong’s pro-democracy political parties expressed a mixture of disappointment and outrage at the decision. Emily Lau, Legco member and chair of the Democratic Party, said of the NPCSC’s decision, “We are not North Korea. I don’t think they [the NPCSC] should insult the intelligence of the Hong Kong people.”²³ Frederick Fung Kin-kee, Legco member and co-founder of the Hong Kong Association for Democracy and People’s Livelihood (ADPL), described the NPCSC decision as “unacceptable.”²⁴ Ex-Legco member and past chair of the Democratic Party Martin Lee succinctly summarized the pan-democrats’ objections to the NPCSC’s decision, “Hong Kong people will have one person, one vote but Beijing will select all the candidates—puppets. What is the difference between a rotten apple, a rotten orange, and a rotten banana.”²⁵ The 27 Legco members generally considered pan-democrats²⁶ quickly pledged to vote against any proposed legislation that complies with the requirements in the NPCSC’s August 31 decision.

(...continued)

689 votes.

²⁰ For more about the initial response to the NPCSC’s August 2014 decision, see CRS Report IN10146, *China’s Leaders Quash Hong Kong’s Hopes for Democratic Election Reforms*, by (name redacted).

²¹ Hong Kong Information Services Department, “Transcript of Remarks by CE at Media Session,” press release, August 31, 2014, <http://www.info.gov.hk/gia/general/201408/31/P201408310944.htm>.

²² Joseph Li, “Universal Suffrage Is What Matters: DAB Head,” *China Daily*, September 1, 2014.

²³ “Democratic Camp Angry at NPCSC Decision,” *RTHK*, August 31, 2014.

²⁴ “NPCSC Sets Highly Conservative Framework,” *RTHK*, August 31, 2014.

²⁵ Demetri Sevastopulo and Julie Zhu, “Hong Kong Democracy Activities Vent Their Anger Against Beijing,” *Financial Times*, September 1, 2014.

²⁶ See **Appendix B** for a breakdown of Legco members into pro-establishment and pan-democrat members.

The “Umbrella Movement”²⁷

Hong Kong’s reaction to the NPCSC’s August 2014 decision was not limited to Legco members and major politicians. OCLP posted online its assessment of the decision and Li Fei’s explanation.²⁸ OCLP founder Chan Kin-man described Li’s explanation as “obscuring the facts and misleading the public.” OCLP maintained that forming the nominating committee in accordance with the election committee ensures that it is not broadly representative, and creates a non-democratic “small circle” with control over the CE’s selection. OCLP concluded, “There does not seem to be any room for genuine universal suffrage under this framework. Seeing that all chances of dialogue have been exhausted, our only way is civil disobedience and occupying Central.”

Two Hong Kong student organizations—the Hong Kong Federation of Students (HKFS)²⁹ and Scholarism³⁰—organized a week-long class boycott at the end of September 2014 to protest the NPCSC August 2014 decision. At the end of the boycott, several hundred students organized a protest march to Tamar Park in Admiralty, where Hong Kong’s Central Government Office, Legislative Council Complex, and Chief Executive’s Office are located. Supporters of the students quickly swelled to the ranks of protesters to several thousand on Saturday, September 27, and protesters began blocking major roads in Admiralty.³¹ On September 28, tens of thousands people gathered in Admiralty, including the OCLP supporters, calling for the resignation of CE Leung and “genuine universal suffrage.”

On the evening of September 28, hundreds of Hong Kong police unsuccessfully attempted to break up the demonstration, firing 87 rounds of tear gas into the crowd, spraying protesters with pepper spray, and striking demonstrators with batons.³² To defend themselves from the pepper spray, protesters held up umbrellas, giving rise to the protest’s name, the “Umbrella Movement.”

The police action against the protesters in Admiralty gave rise to demonstrations in two other locations in Hong Kong—Causeway Bay and Mong Kok—where protesters blocked roads and erected barricades. The ranks of protesters swelled to more than 100,000 people. The three occupation sites remained in place for over 70 days. The Mong Kok protest site was forcibly cleared on November 24 and 25, 2014. The Admiralty protesters were removed on December 11, 2014, and the Causeway occupation was dismantled by police on December 15, 2014.

Since the protest sites were cleared, supporters of the Umbrella Movement have continued their campaign against the NPCSC decision. Virtually every night, reportedly hundreds of people have

²⁷ For more about the Umbrella Movement, see CRS Report IF10005, *Protests in Hong Kong: The “Umbrella Movement” (Update)*, by (name redacted)

²⁸ http://oclp.hk/index.php?route=occupy/eng_detail&eng_id=21.

²⁹ HKFS is a student organization comprised of the student unions from eight of Hong Kong’s universities. For more about HKFS, see <http://www.hkfs.org.hk/>.

³⁰ Scholarism is a political organization formed by a group of university and high school students in Hong Kong. For more about Scholarism, see <http://scholarism.com/>.

³¹ Chris Buckley and Alan Wong, “Pro-Democracy Group Shifts to Collaborate with Student Protesters in Hong Kong,” *New York Times*, September 27, 2014, international edition.

³² The Hong Kong police have stated the use of tear gas was precipitated by groups of protesters “charging” police officers, raising concerns about their safety. However, video evidence and eyewitness accounts show that the tear gas was deployed over a six hour period and at times in the direction of protesters moving away from the police, raising doubts about police claims that the tear gas was used in self-defense.

gathered in Mong Kok carrying yellow umbrellas and signs, claiming to be “shopping.”³³ Supporters have also organized “flash protests” in shopping malls and locations around Hong Kong. In addition, a small group of protesters have camped outside the Legislative Council Complex and the British Consulate in Hong Kong. Members of HKFS, Scholarism, and other groups supportive of the Umbrella Movement have organized community education programs to discuss the NPCSC decision and the goal of genuine universal suffrage.

Public Opinion Polls

Several groups and organizations have conducted public opinion polls in Hong Kong on the issues of universal suffrage and the NPCSC August 2014 decision. While there has been some variation in the results of these surveys, none have consistently shown a clear majority either in favor or opposed to Legco’s passing an election reform proposal consistent with the NPCSC decision. Most public opinion surveys found a sharply divided opinion with slight pluralities either supporting or opposing the reforms.

A public opinion poll conducted by the Hong Kong University Public Opinion Programme (HKUPOP), commissioned by the *South China Morning Post* (SCMP), Hong Kong’s leading English-language newspaper, during early September 2014 found 48% of the respondents supported Legco vetoing government-proposed legislation that provided for universal suffrage based on the NPCSC August 2014 decision, and 39% said Legco should approve the legislation.³⁴ A similar HKUPOP public opinion poll in October 2014, commissioned by the National Democratic Institute (NDI), showed 54.7% of the respondents said Legco should veto any proposed legislation based on the NPCSC decision and 33.1% said Legco should approve the legislation.³⁵

Chinese University of Hong Kong’s Centre for Communication and Public Opinion Survey at the School of Journalism and Communication (CCPOS) has posted a series of monthly public opinion polls on political development in Hong Kong between September and December 2014.³⁶ One of the regular questions asked if Legco should approve or disapprove draft legislation proposed by the HKSAR government if “the proposed draft will forbid people having different political views from the Central Government to stand for the [CE] election.” In all four monthly polls, a plurality of the people said that Legco should disapprove such draft legislation.

Starting in April 2015, CCPOS began posting the results of joint surveys conducted by the CCPOS, HKUPOP, and the Centre for Social Policy Studies (CSPS) of Hong Kong Polytechnic University.³⁷ The first joint survey found 46.7% supported and 37.6% opposed “the government proposal on the 2017 Chief Executive [e]lection.” In the last survey conducted before the submission of the resolution to Legco, those percentages had shifted to 47.0% and 38.0%, respectively.

³³ For more about the new protest tactics, see CRS Report IN10232, *Protests in Hong Kong: New Groups, New Tactics*, by (name redacted).

³⁴ Results of the public opinion poll are available online at <http://hkupop.hku.hk/english/report/scmpPolReform2014/index.html>.

³⁵ Robert Chung Ting-Yiu, Karie Pang Ka-Lai, and Frank Lee Wai-Kin, et al., *Survey on Political Reform in Hong Kong*, University of Hong Kong Public Opinion Programme, Hong Kong, October 27, 2014.

³⁶ For the results of the public opinion polls, see <http://www.com.cuhk.edu.hk/ccpos/en/>.

³⁷ See <http://www.com.cuhk.edu.hk/ccpos/research/rollingsurvey-en.html>.

In January 2015, *Ming Pao*, a major Chinese-language newspaper, commissioned HKUPOP to conduct a public opinion poll with a different approach to the preceding polls.³⁸ When asked their view of the NPCSC decision, 23% considered it a step forward, 29% considered it a step backward, and 39% considered it neither a step forward nor backward for democracy. When asked what they would do if they were a Legco member, 56% said they would vote for legislation based on the NPCSC decision that would allow universal suffrage based on one person-one vote, and 34% said they would vote against the legislation “so that Chief Executive will be elected according to the old way.” To a third question in which the Hong Kong government promises “progress toward democratic election system” in 2022, 64% of the respondents said they would support legislation based on the NPCSC for the 2017 election and 23% said they would vote against the legislation.

Step 3: Proposing Legislation to the Legislative Council

In the past, the HKSAR government began a second round of public consultation after the NPCSC responded to the CE’s report on the need for election reform (Step 2) to discuss specific issues related to the contents of the legislation to introduce to Legco. This time, however, Chief Secretary (CS) Carrie Lam Cheng Yuet-ngor announced an indefinite delay of the second round of consultations on September 29, 2014, following the outbreak of the Umbrella Movement. When asked when the second round of consultation might begin, CS Lam replied:

I don’t have an exact date for the time being. I think what is important is we have to monitor the situation closely and find the right timing, the right opportunity, the right atmosphere for us to engage with different stakeholders in society in order to achieve the objective of the second-round consultation.³⁹

CS Lam formally announced the start of the second round of public consultation to Legco on January 7, 2015.⁴⁰ The second round of consultation ended on March 7, 2015. Individuals and organizations were to submit their views by mail, facsimile, or email.⁴¹

Nearly all of the pan-democrats in the Legco chamber walked out on CS Lam’s announcement on January 7, carrying yellow umbrellas, chanting for CE Leung to step down, and calling for “genuine universal suffrage.” In a press conference following their walkout, the pan-democrats restated their intent to vote against any proposed legislation that complies with the requirements in the NPCSC August 2014 decision.⁴²

³⁸ Details of the *Ming Pao* poll are available online (in Chinese) at <http://www.gcyouth.net/newsdetails.php?id=2850>.

³⁹ Hong Kong Information Services Division, “Transcript of Remarks by CS at Media Session,” press release, September 29, 2014, <http://www.info.gov.hk/gia/general/201409/29/P201409290995.htm>.

⁴⁰ The text of CS Lam’s statement to Legco is available online at <http://www.info.gov.hk/gia/general/201501/07/P201501070519.htm>.

⁴¹ Submissions were to be sent to Constitutional and Mainland Affairs Bureau, 12/F, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong; facsimile number: (852) 2563 9292; email address: views@2017.gov.hk.

⁴² Tony Cheung, Jeffie Tam, and Peter So, et al., “Politicians Condemn Public Consultation That Gives ‘Little Leeway’ for Reform Debate,” *South China Morning Post*, January 8, 2015.

The Consultation Document

The consultation document, titled “2017—Seize the Opportunity: Method for Selecting the Chief Executive by Universal Suffrage,” reiterated the HKSAR government stance that any proposal submitted to Legco must abide by the Basic Law and the NPCSC August 2014 decision.⁴³ It also delineated four issues to be considered during the second round of consultation: (1) the composition and formation method of the nominating committee; (2) the procedures for the nominating committee to nominate Chief Executive candidates; (3) the voting arrangements for selecting the Chief Executive by universal suffrage; and (4) other related issues.

Regarding the composition and formation method of the Nominating Committee, the consultation document stated, “depending on whether there is sufficient support, appropriate adjustments to the composition of subsectors under the four sectors of the NC, the number of members of each subsector, and the electorate base of such subsectors may be made during the stage of enacting local legislation.” However, the consultation document recommended that the existing subsectors be maintained, and suggested that new subsectors may be added or the distribution of seats among the 38 subsectors be adjusted if “there is sufficient support.” As for the electorate base of the subsectors, the consultation report recommended that either the base remain unchanged or “appropriate adjustments” be made if “there is sufficient support and that such adjustments are practical and practicable, are conducive to electing persons who could genuinely represent respective subsectors, and that the wishes of such subsectors are respected.”

On the nominating process, the consultation document suggested that the nomination process could be divided into two stages. In the first stage, the NC members would recommend candidates for the NC to consider; in the second stage, the NC would select two or three candidates among the recommended candidates. The consultation document recommended that if the nomination process is divided into two stages, a candidate must obtain the support of either 100 or 150 NC members, and that each NC member should be limited to supporting only one candidate. As for the selection of the candidates, the consultation document offered several different voting systems—“one person, three votes”; “one person, two or three votes”; “one person, maximum three votes”; and “voting on each person seeking nomination”—that could be adopted to select the required two or three candidates. Finally, the consultation document pointed out that a procedure needs to be adopted if fewer than two candidates obtain the endorsement of more than half of the NC members.

The key issue discussed in the consultation document regarding the voting arrangements was if a “first past the post” procedure should be adopted, or if some form of run-off should be held if no candidate obtains a majority of the vote. If a run-off system were adopted, it could take the form of an “instant run-off” where voters rank the candidates or voters subsequently choose between the two candidates with the most votes.

The other related issues cited in the consultation document included consideration of whether the terms of the NC members should terminate after the CE is sworn into office; and arrangements for selecting a new CE-elect if the winner of the CE election is not appointed by the Central People’s Government. The consultation document also recommended that the Chief Executive “should not have any political affiliation,” and as a result, the CE candidates should disavow any political party affiliation after they are nominated.

⁴³ The consultation document is available online at <http://www.2017.gov.hk/en/second/document.html>.

The Response to the Consultation Document

The response to the consultation document generally mirrored the reaction to the NPCSC August 2014 decision. The pro-establishment Legco members were generally supportive of the start of the second round of consultation and the contents of the document. The pan-democrats in Legco, as well as the organizers of the Umbrella Movement and OCLP, were very critical of the consultation document.

Alan Leong Kah-kit, Legco member and CE candidate in 2007, said, “The [HKSAR] government is selling fake [democracy] and cheating the people.”⁴⁴ OCLP founder Benny Tai Yiu-ting stated the consultation document provided “no room to accept any proposal that has a chance of satisfying global standards of universal suffrage.”⁴⁵ HKFS deemed the consultation “pointless” if the reforms must comply with the NPCSC August 2014 decision.⁴⁶ Former CS Anson Chan Fang On-sang said that the consultation document focuses on issues that “do nothing to make the overall method of electing the Chief Executive in 2017 more fair, more just or more transparent.”⁴⁷

Liberal Party leader Vincent Fang Kang concurred with Chan’s assessment, stating “the room for consultation is not big.”⁴⁸ However, Fang and fellow Liberal Party member James Tien Pei-chun indicated that they would support the HKSAR government’s election reform legislation when it is introduced to Legco. The pro-establishment DAB said it would conduct a series of public fora to gauge popular opinions about the CE election reforms.

The Consultation Report and the Government’s Proposal

On April 22, 2015, CS Lam presented the results of the second round of public consultation to Legco, and announced the main elements of the CE election reform legislation that would be introduced to Legco. The main elements were

- A 1,200-member Nominating Committee (NC) shall be formed consisting of the same 4 sectors and 38 subsectors that constitute the current Election Committee (EC), and NC members serve a five-year term.
- The allocation of NC seats among the subsectors, the manner of selecting the members of each subsector, and the electorate of each subsector shall remain largely unchanged (except for technical adjustments).
- The NC shall approve two or three nominees in two stages. In the first stage, each NC member may recommend one person for consideration. To be eligible for NC consideration, a person must receive 120 recommendations from the NC members. Each potential candidate will be allowed to receive no more than 240 recommendations. In the second stage, each NC member shall vote by secret

⁴⁴ Tony Cheung, Jeffie Lam, and Peter So, et al., “Politicians Condemn Public Consultation That Gives ‘Little Leeway’ for Reform Debate,” *South China Morning Post*, January 8, 2015.

⁴⁵ Ibid.

⁴⁶ “Govt. Launches Second Consultation on Reform,” *RTHK*, January 7, 2015.

⁴⁷ Tony Cheung, Jeffie Lam, and Peter So, et al., “Politicians Condemn Public Consultation That Gives ‘Little Leeway’ for Reform Debate,” *South China Morning Post*, January 8, 2015.

⁴⁸ Ibid.

ballot for at least two candidates and the two or three candidates who receive the most votes and at least 601 votes shall be the official nominees presented for a vote by all eligible Hong Kong voters.

- the popular vote will be held using the “first-past-the-post” system, in which the nominee with the most votes is declared the winner. To win, a nominee will not have to receive a majority of the popular vote.

During Lam’s presentation to Legco, most of the pan-democrats displayed black placards with a yellow X, indicating their intended opposition to the proposed CE election reforms. Following Lam’s presentation, the pan-democrats reiterated their pledge to vote against any proposal that complies with the NPCSC’s August 2014 decision. All but one of the 43 pro-establishment Legco members announced they would vote in favor of the proposal. Outside the Legco Building, protesters both supporting and opposing the Hong Kong government proposal gathered to express their respective views.

Resolution Submission to Legco

On June 2, 2015, the Hong Kong government informed Legco of its intent to submit the formal resolution to amend the Basic Law on June 17, 2015.⁴⁹ Secretary of Constitutional and Mainland Affairs Raymond Tam Chi-yuen reportedly said that the proposal would be unchanged from those announced by CS Lam in April.⁵⁰ The announcement came two days after most of the Legco members met with several senior Chinese officials in Shenzhen to discuss the CE election reforms. The Shenzhen meeting reportedly did not result in any breakthroughs, with Chinese officials stating that NPCSC would not reconsider its August decision and pan-democrats reiterating their intention to vote against any proposal that complies with that decision.⁵¹

Chief Secretary Carrie Lam presented the official text of the resolution to Legco on June 17, 2015.⁵² As previously indicated by the Hong Kong government, the resolution complies with the restrictions contained in the NPCSC’s August 2014 decision.

The resolution stipulated that, starting in 2017, the Chief Executive would be selected by universal suffrage, and that a 1,200 member Nominating Committee would nominate 2-3 candidates. The Nominating Committee would be composed of 4 groups of 300, identical in description to those constituting the current Election Committee. According to the resolution, a local electoral law would determine the manner by which the individual Nominating Committee members would be selected to serve a five-year term. To be considered as a possible candidate, the resolution provided that a person would have to receive the recommendation of not less than 120 members of the Nominating Committee. To be an official nominee, a person would have to receive the support of more than half of all members of the Nominating Committee (601 or more) in a secret ballot. The specific manner by which the Nominating Committee would nominate candidates would be prescribed in a local electoral law.

⁴⁹ Hong Kong Government Information Services Department, “Government Gives Notice to LegCo of Intention to Move Motion on Amendment to the Method for Selecting the Chief Executive,” press release, June 2, 2015, <http://www.info.gov.hk/gia/general/201506/02/P201506020753.htm>.

⁵⁰ “Reform Package to be Tabled on June 17,” *RTHK*, June 2, 2015.

⁵¹ Monica Chan, “Legco Vote on Reform Will Show Who’s Loyal to ‘One Country, Two Systems,’ Warns Basic Law Panel Chief,” *South China Morning Post*, May 31, 2015.

⁵² Full text of the resolution provided in **Appendix D**.

Step 4: Legco's Vote

After two days of debate, Legco defeated the proposed resolution on June 18, 2015, by a vote of 28 against and 8 for the motion. To pass, the resolution needed the support of at least 47 (two-thirds) of the 70 Legco members. Voting against the motion were all 27 pan-democrats, plus Leung Ka-lau, member for the medical functional constituency. Voting in favor of the motion were Chan Kin-por, Chan Yuen-han, Tommy Cheung Yu-yan, Chung Kwok-pan, Vincent Fang Kang, Lam Tai-fai, James Tien Pei-chun, and Frankie Yick Chi-ming.

The final tally was the result of a walkout by 32 of the pro-establishment members conducted just after Legco President Tsang called for a vote on the motion. One Legco member, Lau Wong-fat, was not present and by tradition, the President does not vote except to cast a deciding vote. Initial reports indicated that the walkout was undertaken to provide time for Lau to arrive and cast his vote. Subsequent accounts state that the walkout was a failed attempt to stop the vote by denying a quorum (35 members).

Moving Forward⁵³

Under the terms of the NPCSC's August 2014 decision, the current CE selection system will be used in 2017, given the resolution failed to pass Legco. Legco's defeat of the Hong Kong government's proposal does not necessarily end the possibility of CE election reforms by 2017, but prospects appear dimmed. Legco could reconsider the motion, but it is unlikely that a sufficient number of pan-democrats would change their vote to alter the outcome. The Hong Kong government could submit a new resolution designed to gain some support among the pan-democrats, but CE Leung has indicated he has no plans to consider that option. On June 30, CE Leung dismissed a call by Anson Chan to reopen the election reform discussion.⁵⁴

Another alternative would be for the NPCSC to revise or amend its August 2014 decision. The day after the Legco vote, China's official news agency, Xinhua, published a story in *China Daily* stating that the NPCSC's August 2014 decision "would remain in force despite being vetoed by city lawmakers."⁵⁵ According to the article, an NPCSC statement released after the Legco vote declared, "The [August 2014] decision will continue to serve as the constitutional ground for Hong Kong in the future, as it enforces universal suffrage in the chief executive election, and its legal force is unquestionable."

Finally, CY Leung could resubmit a report to the NPCSC on the conditions in Hong Kong, indicating that circumstances have changed since he submitted the previous report in July 2014. However, it seems unlikely that the NPCSC will significantly alter the conditions stated in its August 2014 decision if CE Leung submits such a report.

Following the defeat of the election reforms, focus in Hong Kong has shifted to the District Council elections to be held in November, as well as the 2016 Legco elections. Elections for Hong Kong's 18 District Councils are scheduled for November 22, 2015, with all 431 members to

⁵³ The analysis contained in this section is based in part on CRS interviews, as well as media, academic, think tank, and NGO reporting in Hong Kong.

⁵⁴ "CY Leung Dismisses Call to Restart Reform Debate," *RTHK*, June 30, 2015.

⁵⁵ Xinhua, "Decision on Reform 'Stays Despite Veto,'" *China Daily*, June 19, 2015.

be elected by a popular vote.⁵⁶ This will be the first District Council election in which all the seats will be filled by a popular vote. During the Umbrella Movement, the organizers encouraged people to register to vote. Some of the newly emerged groups involved in the protests are reportedly forming new political parties and may field candidates for the District Council elections. Also, the pan-democratic parties reportedly are trying to coordinate candidates in the District Council elections to increase their candidates' chances of being elected.

The 2015 District Council elections are important for two major reasons. First, the results will widely be construed as an indicator of public support or opposition to the pan-democrats' defeat of the CE election reforms. Second, as indicated in **Appendix A**, 117 of the District Council members will sit on the 2017 CE Selection Committee, and 5 of them will be elected as Legco members in 2016.

The 2016 Legco elections also are important for the prospects for democracy in Hong Kong. Their outcome likely will be interpreted as an expression of popular support for either the pan-democrats or pro-establishment parties, and their stances on the proposed CE election reforms. In addition, the 2016 Legco may have an opportunity to consider CE election reforms during their term in office, if the CE selected in 2017 chooses to restart the reform process, and the NPCSC amends or supersedes its August 2014 decision on CE election reforms.

The Joint Declaration and Democracy

For 155 years, the city of Hong Kong was a British Crown Colony, governed by an appointed Governor and British civil servants. On December 19, 1984, the United Kingdom's then-Prime Minister Margaret Thatcher and China's then-Premier Zhao Ziyang signed the "Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong,"⁵⁷ commonly referred to as the "Joint Declaration," agreeing to transfer sovereignty of Hong Kong to China on July 1, 1997. Both nations also agreed to register the Joint Declaration with the United Nations as a binding international treaty.⁵⁸

The Joint Declaration contains no direct reference to democracy or universal suffrage. It does, however, state that the Chief Executive will be selected either by local elections or consultations. In addition, the Joint Declaration states that the "International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong shall remain in force."

Under the terms of the Joint Declaration, China promised that Hong Kong would "enjoy a high degree of autonomy," and "the current social and economic systems in Hong Kong will remain unchanged" for 50 years. The Joint Declaration also required China's National People's Congress (NPC) to pass "a Basic Law of the Hong Kong Special Administrative Region" stipulating

⁵⁶ In the last District Council elections in 2011, 412 members were elected by popular vote; 68 members were appointed by the Chief Executive and 27 are ex officio members representing rural committees in Hong Kong's New Territories. There will be 431 members elected by popular vote in 2015.

⁵⁷ The English version of the Joint Declaration is available online at <http://www.cmab.gov.hk/en/issues/joint3.htm>.

⁵⁸ The Joint Declaration is registered as No. 23391 in Volume 1399 of the United Nations' Treaty Series, available online at <https://treaties.un.org/doc/Publication/UNTS/Volume%201399/v1399.pdf>.

China's policies on Hong Kong that were to be consistent with the terms of the Joint Declaration. The National People's Congress passed the required Basic Law on April 4, 1990.

On the selection of Hong Kong's Chief Executive, paragraph 3 of the Joint Declaration states, "The chief executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally." Annex I of the Joint Declaration, entitled, "Elaboration by the Government of the People's Republic of China of Its Basic Policies Regarding Hong Kong," states, "The chief executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government."

The International Covenant on Civil and Political Rights

Annex I also stipulates that "The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force."

The International Covenant on Civil and Political Rights (ICCPR)⁵⁹ stipulates in Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2⁶⁰ and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

At the time of the United Kingdom's accession to the ICCPR in 1976, it reserved "the right not to apply article 25(b) in so far as it may require the establishment of an elected Executive or Legislative Council in Hong Kong."⁶¹ China signed the ICCPR in 1998, but has yet to ratify the covenant.

The NPCSC's August 2014 Decision and the Joint Declaration

In the opinion of some legal analysts and other interested parties, the provisions of the NPCSC August 2014 decision violate the ICCPR, and thereby China's commitments under the Joint Declaration. Some Chinese and Hong Kong officials and scholars have responded by asserting that the Joint Declaration no longer remains in effect, and that NPCSC decision is not inconsistent with the ICCPR as it applies to Hong Kong.

According to one Hong Kong legal scholar, the Joint Declaration "contrary to Beijing's assertions, imposes substantive requirements on how Hong Kong's Chief Executive can be elected."⁶² In this scholar's opinion, the United Kingdom's reservation on the application of

⁵⁹ English version of ICCPR available online at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

⁶⁰ The distinctions mentioned in Article 2 include race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

⁶¹ See https://treaties.un.org/doc/db/survey/humanrightsconvs/Chapt_IV_4/reservations/UK.pdf.

⁶² Alvin Y. H. Cheung, "Guest Post: The International Law Case for Democracy in Hong Kong," *Opinio Juris*, October 3, 2014.

Article 25(b) of the ICCPR will no longer remain in effect once the Chief Executive is chosen by an election. Given that the CE election must comply with the provisions of the ICCPR, the scholar maintains that the restrictions contained in the NPCSC August decision contravene the ICCPR's prohibition on "unreasonable restrictions."

However, in an opinion article in *China Daily*, a Mainland scholar maintained that the NPCSC decision does not place unreasonable restrictions on the CE election.⁶³ According to this scholar, Article 2(2) of the ICCPR allows China to establish "laws and other measures" governing the CE election so long as they comply with the rights recognized in the ICCPR. Since the ICCPR contains no provisions regarding the nomination of candidates, the NPCSC decision is consistent with China's ICCPR obligations.

On November 12, 2014, in response to a question posed by Legco member Emily Lau regarding the applicability of the ICCPR to the proposed CE election reforms, Hong Kong's Acting Secretary for Constitutional and Mainland Affairs Lau Kong-wah stated

As regards the Covenant, when the Covenant was applied to Hong Kong in 1976, a reservation was made by the British government reserving the right not to apply Article 25(b). After the establishment of the HKSAR, in accordance with the Central People's Government's notification to the United Nations Secretary-General in June 1997 and Article 39 of the Basic Law, only the provisions as applied to Hong Kong should remain in force, and their implementation has to be through the laws of the HKSAR. Hence, the basis for the ultimate aim of universal suffrage for Hong Kong's constitutional development lies in the Basic Law and the relevant Interpretation and Decisions of the NPCSC, but not the Covenant.⁶⁴

China's Deputy Ambassador to the United Kingdom reportedly told the U.K.'s House of Commons' Foreign Affairs Committee that the "Joint Declaration signed by China and Britain is now void and only covered the period from the signing in 1984 until the handover in 1997."⁶⁵ However, other officials have stopped short of stating that the Joint Declaration is void, while pointing out that the Chinese and HKSAR governments have done nothing to violate the provisions of the Joint Declaration.

Implications for U.S. Policy Toward Hong Kong

The United States-Hong Kong Policy Act of 1992 effectively continues U.S. relations with Hong Kong after China's resumption of authority over the city as it did during the time the city was a British colony, so long as China abides by its international obligations with respect to Hong Kong, including the Joint Declaration. Among those international obligations are China's pledge that it would allow the Hong Kong Special Administrative Region (HKSAR) "a high degree of autonomy on all matters other than defense and foreign affairs," and the provisions of the International Covenant on Civil and Political Rights shall remain in force. In addition, the act states U.S. support for the democratization of Hong Kong "will remain equally true after June 30, 1997," the day before China resumed sovereignty over the city.

⁶³ Song Siu-chong, "NPCSC Decision Imposes No Unreasonable Restrictions," *China Daily*, September 11, 2014.

⁶⁴ Hong Kong Government Information Centre, "LCQ2: Selecting CE by Universal Suffrage," press release, November 12, 2014.

⁶⁵ Grace Tsoi, "Does China Think the Sino-British Joint Declaration Is Void?," *Foreign Policy*, December 18, 2014.

Section 202 of the act grants the President the authority to suspend treating Hong Kong differently from China with respect to a particular law if the President determines that Hong Kong “is not sufficiently autonomous to justify” such treatment. In making the determination, the President “should consider the terms, obligations, and expectations expressed in the Joint Declaration with respect to Hong Kong.”

Section 301 of the act originally mandated that the State Department produce an annual report on “conditions in Hong Kong of interest to the United States,” through 2001. That mandate was extended by subsequent legislation until 2006, but was not been extended beyond that date until Congress passed the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) in December 2014.⁶⁶ That law required the State Department provide Congress with a one-time report on the status of Hong Kong.⁶⁷ The report, released on April 10, 2015, contained a section on “electoral reforms,” including the following statement:

The United States has called for the conduct of a multi-candidate competitive election for Chief Executive in 2017, which would enhance the legitimacy of Hong Kong’s Chief Executive, would be a major step forward in Hong Kong’s political development and would bolster Hong Kong’s stability and prosperity

The Obama Administration’s Policy

The White House and the State Department have been seemingly cautious about their statements with regards to the proposed CE election reforms and the pro-democracy protests in Hong Kong. In general, U.S. government officials have stated support for the adoption of universal suffrage for the CE election, and for providing Hong Kong voters a “meaningful choice” (see below), but have refrained from commenting directly on the NPCSC August decision or the stated positions of the Chinese and HKSAR governments on CE election reforms.

On September 29, 2014, White House Press Secretary Josh Earnest stated that the United States “supports universal suffrage in Hong Kong in accordance with the Basic Law and we support the aspirations of the Hong Kong people.”⁶⁸ He indicated that the White House thinks that “the basic legitimacy of the Chief Executive in Hong Kong will be greatly enhanced if the Basic Law’s ultimate aim of selection of the Chief Executive by universal suffrage is fulfilled.” Earnest also said, “We’ve consistently made our position known to Beijing and we’ll continue to do so.”

On that same day, the U.S. Consulate in Hong Kong released a statement supporting the Basic Law’s “protections of internationally recognized fundamental freedoms, such as freedom of peaceful assembly, freedom of expression, and freedom of the press.”⁶⁹ The statement also included the following, “We do not take sides in the discussion of Hong Kong’s political development, nor do we support any particular individuals or groups involved in it.” However, on

⁶⁶ The Consolidated and Further Continuing Appropriations Act, 2015 included the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015 (H.R. 5013), as well as its accompanying H.Rept. 113-499, which stated, “The Committee directs the Secretary of State, not later than 45 days after enactment of this Act, to update the report delineated in section 301 of the United States-Hong Kong Policy Act of 1992 and transmit it to the appropriate congressional committees.”

⁶⁷ A copy of that report is available online at <http://www.state.gov/p/eap/rls/reports/2015/240585.htm>.

⁶⁸ White House, “White House Daily Press Briefing,” press release, September 29, 2014.

⁶⁹ U.S. Consulate in Hong Kong, press release, September 29, 2014.

December 11, 2014, State Department Press Secretary Jen Psaki said, “we encourage Hong Kong authorities and the people of Hong Kong to work together to ensure there is a competitive process for selection of the Chief Executive through universal suffrage.” When asked whether the United States “would support universal suffrage contingent upon approval by Beijing of candidates,” she replied, “I don’t think that’s what we said, no.”⁷⁰

President Obama and National Security Advisor Susan E. Rice met with China’s Foreign Minister Wang Yi on October 1, 2014, to discuss the President’s upcoming trip to Beijing scheduled for November 10-12, 2014. During the meeting, President Obama and Ambassador Rice indicated that the United States was “following the developments in Hong Kong closely and expressed their hopes that differences between Hong Kong authorities and protesters will be addressed peacefully.”⁷¹ They also stated, “The United States has consistently supported the open system that is essential to Hong Kong’s stability and prosperity, universal suffrage, and the aspirations of the Hong Kong people.”

Assistant Secretary of State Daniel Russel testified at a Senate Committee on Foreign Relations subcommittee hearing on Hong Kong on December 2, 2014, during which he summarized the Obama Administration’s position with respect to Hong Kong’s potential CE election reforms.⁷² According to Secretary Russel, “the legitimacy of Hong Kong’s Chief Executive will be greatly enhanced if the promise of universal suffrage is fulfilled. By this I mean an election that provides the people of Hong Kong a meaningful choice of candidates representative of the voters’ will.” With regards to the NPCSC August decision, he stated, “While the NPCSC’s decision conformed to requirements in the Basic Law in the literal sense, it was criticized by many Hong Kong groups and triggered the public protests that are still underway.” Secretary Russel also “categorically denied allegations from China that the United States is in any way involved in the protests.” He concluded by stating

The United States and China each have a vested interest in Hong Kong’s continued stability, autonomy, and prosperity.... It is in all of our interests to see electoral reform in Hong Kong that provides the people of Hong Kong with a meaningful choice of candidates, and that the 2017 elections in Hong Kong will be transparent, fair, and reflective of the opinions of the Hong Kong people.

Following the release of the CE election reform proposal on April 22, 2015, a spokesperson for the U.S. Consulate in Hong Kong was quoted as saying, “[W]e believe that the legitimacy of the CE will be greatly enhanced if the Chief Executive is selected through universal suffrage and Hong Kong’s residents have a meaningful choice of candidates.”

In their joint written testimony submitted to the House Committee on Foreign Affairs Subcommittee on Asia and the Pacific for its June 11, 2015, hearing on democracy in Asia, Assistant Secretary of State Tom Malinowski, Principal Deputy Assistant Secretary of State Scot Marciel, and USAID Assistant Administrator Jonathan Stivers stated:

⁷⁰ Department of State, “Daily Press Briefing,” press release, December 11, 2014, <http://www.state.gov/r/pa/prs/dpb/2014/12/234953.htm#HONGKONG>.

⁷¹ White House, “Readout of National Security Advisor Susan E. Rice’s Meeting with Foreign Minister Wang Yi of China,” press release, October 1, 2014, <https://www.whitehouse.gov/the-press-office/2014/10/01/readout-national-security-advisor-susan-e-rice-s-meeting-foreign-ministe>.

⁷² U.S. Congress, Senate Committee on Foreign Relations, Subcommittee on East Asian and Pacific Affairs, *Evaluating the Impact of the ‘Umbrella Movement,’* 113th Cong., 2nd sess., December 3, 2014.

We believe that the legitimacy of Hong Kong's Chief Executive and its overall governance would be greatly enhanced if the people of Hong Kong were given the opportunity to select their Chief Executive through a competitive election featuring a meaningful choice of candidates who represent the voters' will, and we have consistently called for an electoral process that would produce that result.⁷³

In this testimony, the three officials also stated with respect to the upcoming Legco vote, "We do not take a position on how Legislative Council members should vote. This is a decision for the legislators, after hearing and considering the views of the people of Hong Kong."

The U.S. Consulate in Hong Kong issued no official statement following the Legco vote. In his official remarks to celebrate U.S. independence day, Consul General Clifford A. Hart, Jr., said:

Hong Kong's 18th celebration of Establishment Day tomorrow comes less than two weeks after the Legislative Council made its decision on the Government's universal suffrage package. The preceding debate revealed sharply divergent perspectives, and, following LegCo's decision, politics in Hong Kong are, frankly, a little raw.

We encourage the Hong Kong authorities, the national government, and the Hong Kong people to continue to work together towards the goal of achieving universal suffrage in accordance with the Basic Law and the aspirations of the Hong Kong people. For now, as Hong Kong takes its breath, as a friend, I would merely urge local friends of all perspectives to fall back on their hallmark civility, forbearance, and patience in dealing with one another as they address the myriad challenges of governance before them.⁷⁴

It also was reported that electoral reform in Hong Kong was among the topics discussed during the U.S.-China Strategic and Economic Dialogue held in Washington, DC, on June 22-24, 2015.⁷⁵ However, the State Department did not mention Hong Kong in its post-Dialogue releases.

Implications for Political Reform in China

Ever since the Joint Declaration confirmed Hong Kong's reversion to Chinese sovereignty, some observers have speculated that aspects of Hong Kong's political system and traditions could influence prospects for political reform in Mainland China. According to some analysts, democratic reforms in Hong Kong would engender social pressure for similar political changes in Mainland China's political system. Other analysts suggested that the Chinese government may use Hong Kong as a testing ground for political reforms that might be adapted and adopted for implementation in Mainland China. The notion was that the "one country, two systems" policy would provide China's leaders with the leeway to permit democratic reforms in Hong Kong without what they perceived to be a risk of creating "political instability" on the Mainland.

⁷³ Testimony of Assistant Secretary of State Tom Malinowski, Principal Deputy Assistant Secretary of State Scot Marciel, and USAID Assistant Administrator Jonathan Stivers, U.S. Congress, House Committee on Foreign Affairs Subcommittee on Asia and the Pacific, *Retreat or Revival—A Status Report on Democracy in Asia*, 114th Cong., 1st sess., June 11, 2015.

⁷⁴ U.S. Consulate in Hong Kong, "Independence Day Reception Remarks in Hong Kong," press release, June 30, 2015, http://hongkong.usconsulate.gov/cg_ch_2015063001.html.

⁷⁵ Adam Renton, "Hong Kong Reform to Feature in High-Level US Talks with Chinese Officials," *South China Morning Post*, June 19, 2015.

The NPCSC August decision and the Chinese government's response to the Umbrella Movement, however, have fostered a growing concern among some Hong Kong residents about the "Mainlandization" of Hong Kong. Some observers of Hong Kong/Mainland relations perceive a gradual drift in Hong Kong towards its taking on characteristics associated with Mainland China. Such observers argue that this drift has in part been caused by greater interaction between Hong Kong and Mainland China, and has in part been the result of Chinese government policies toward Hong Kong. According to this analysis, rather than Mainland China taking on characteristics of Hong Kong, Hong Kong is slowly becoming more and more like Mainland China.

The NPCSC August decision fits with the notion that some observers have described as the "Mainlandization" of Hong Kong. The decision established a nomination process that can be controlled by the Chinese government while giving the appearance of implementing democratic reforms. In addition, the Chinese government's criticism of the Umbrella Movement—which it refers to as the "Occupy Movement" or "Occupy Central"—is seen by some as more evidence that the Chinese government intends to transform Hong Kong into a society that follows Mainland culture and norms.

Other signs that some observers suggest are indicators of the Chinese government's efforts to make Hong Kong more like Mainland China are the past attempt to pressure the HKSAR government to introduce a "moral and national education" curriculum in Hong Kong schools that critics saw as pro-Beijing propaganda, and recent suggestions that the HKSAR government introduce Mainland sedition laws for adoption by Legco. Critics also note that the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (Liaison Office) has commented publicly about local political issues in Hong Kong with greater frequency.

The possible "Mainlandization" of Hong Kong may be attributable not only to the direct or indirect actions of the Chinese and HKSAR government, according to some observers. Hong Kong's economy has become increasingly reliant on the Mainland economy, and a growing number of businesses in Hong Kong are owned by or are subsidiaries of Mainland companies. In addition, Hong Kong's retail sector is increasingly geared to serving the demand of the over 50 million Mainland visitors, and the thousands of new Mainland immigrants to Hong Kong each year. The Hong Kong press routinely contains accounts of conflict between Mainland tourists and immigrants and local Hong Kong residents over cultural and behavioral differences. Some Hong Kong residents have expressed fear that their city is being taken over by Mainland companies and immigrants.

It is too early to determine in which direction the impact of political interaction will be greater in the long run. At present, observers appear to be more concerned about the "Mainlandization" of Hong Kong than optimistic about Hong Kong's traditions of respect for human rights, the rule of law, and the aspirations for democracy spreading into Mainland China. The outcome of the current debate over CE election reforms is likely to be a significant factor in future assessments of the flow of political influence across the Hong Kong/Mainland border.

Implications for Taiwan

The "one country, two systems" model was originally intended to apply to the possible reunification of Mainland China and Taiwan—not Hong Kong. When China and the United Kingdom began negotiating the Joint Declaration in 1984, the Chinese government applied the concept for use in Hong Kong. At the time, Chinese officials apparently hoped that if they could

successfully demonstrate that “one country, two systems” worked in Hong Kong, they could persuade the Taiwanese government and people that it was a viable model for Mainland-Taiwan unification.

According to some observers, the events of 2014 in Hong Kong have undermined support in Taiwan for closer relations between Mainland China and Taiwan.⁷⁶ Some analysts maintain that disenchantment with China’s handling of events in Hong Kong may have contributed to the poor showing of Taiwan’s Kuomintang (KMT) party in local elections held in November 2014, but others point to local economic problems as the main cause of the KMT’s election losses. In addition, Hong Kong’s Umbrella Movement has established ties with Taiwan’s Sunflower Movement, during which young activists occupied Taiwan’s parliament building to protest the KMT’s allegedly rushed review of a trade deal with Mainland China.⁷⁷ The political situation in Hong Kong has allegedly contributed to a recent increase in Hong Kong residents emigrating to Taiwan.⁷⁸

The success or failure of Hong Kong to adopt CE election reforms may resonate in Taiwan. Hong Kong’s movement to a system whereby the election of its Chief Executive by universal suffrage allows Hong Kong residents to choose between candidates of differing political views would likely be well-received in Taiwan. However, failure to adopt universal suffrage in Hong Kong may swing more Taiwanese voters towards opposition to closer ties with Mainland China, and possible greater support for Taiwan’s Democratic Progressive Party (DPP).

Issues for the 114th Congress

The level of congressional interest in Hong Kong’s possible CE election reforms may depend on what transpires as the reform process moves through the third and fourth step of the proscribed six-step procedure. In addition, the HKSAR government’s treatment of alleged protest organizers may also influence congressional interest in Hong Kong, and the 114th Congress’s potential to take action. Legislation has been introduced to amend or alter current U.S. policy toward Hong Kong. Congress may also examine U.S. support for democratization in Hong Kong.

The Response of the 113th Congress

During the 113th Congress, both chambers of Congress introduced legislation that would have amended the U.S.-Hong Kong Policy Act of 1992, as well as made it possible for Hong Kong to qualify for the U.S. visa waiver program. Subcommittees of the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations held hearings about Hong Kong’s possible election reforms and the ongoing pro-democracy protests. Although none of the proposed legislation became law, some Members and committees of the 113th Congress closely

⁷⁶ For example, see Kerry Brown, “How Hong Kong’s Protests Swayed Taiwan’s Elections,” *The Diplomat*, December 1, 2014; or Barclay Bram Shoemaker, “Hong Kong: Taiwan’s Broken Mirror,” *The Diplomat*, December 11, 2014.

⁷⁷ For more about the Sunflower Movement, see J. Michael Cole, “Was Taiwan’s Sunflower Movement Successful?,” *The Diplomat*, July 1, 2014.

⁷⁸ “Increasing Number of Hong Kong People Want to Emigrate to Taiwan,” *Focus Taiwan*, February 23, 2015.

monitored the events in Hong Kong and some Members of Congress were critical of what they saw as an inadequate response from the Obama Administration and the Department of State.⁷⁹

The Hong Kong Human Rights and Democracy Act (HKHRDA; H.R. 5696 and S. 2922) was introduced in both the House of Representatives and the Senate on November 13, 2014. The legislation reaffirmed “the principles and objectives set forth in the United States-Hong Kong Policy Act of 1992,” including “support for democratization” as a “fundamental principle of United States foreign policy.” The bill also supported “the democratic aspirations of the people of Hong Kong, as guaranteed to them by the Joint Declaration, the Basic Law, the International Covenant on Civil and Human Rights, and the Universal Declaration of Human Rights.” HKHRDA supported, as well, “the establishment by 2017 of a genuine democratic option to freely and fairly nominate and elect the Chief Executive of Hong Kong....”

Section 4 of the HKHRDA would have reinstated the State Department’s annual report on the status of Hong Kong as provided by Section 301 of the United States-Hong Kong Policy Act of 1992 for 10 years. The reinstated report was to also include an accounting of “matters in which Hong Kong is given separate treatment under the laws of the United States from that accorded to the People’s Republic of China and in accordance with this Act.”

Section 5 of the HKHRDA was the source of some controversy as the Obama Administration, the HKSAR government and some supporters of the Hong Kong pro-democracy demonstrations expressed opposition to its provisions. The original version of H.R. 5696 and S. 2922 rendered Hong Kong

ineligible for treatment different from that afforded the People’s Republic of China under United States laws, agreements, or arrangements enacted or entered into after the date of the enactment of this Act unless the President certifies to Congress that Hong Kong is sufficiently autonomous to justify such different treatment.

The section did provide for a presidential waiver if the President determined that such a waiver is “in the national security interests of the United States.” The Obama Administration indicated that it would prefer the certification be done by the Secretary of State.⁸⁰ The Hong Kong government and some pro-democracy advocates from Hong Kong objected to the presumption that Hong Kong was no longer sufficiently autonomous to justify separate treatment from China.⁸¹

The Senate Committee on Foreign Relations amended and approved S. 2922 on December 12, 2014, changing the provisions of Section 5. The amended version of S. 2922 would have required the Secretary of State (not the President) to certify to Congress “[n]ot later than 90 days after the date of the enactment of the Hong Kong Human Rights and Democracy Act, and annually thereafter” that “Hong Kong is sufficiently autonomous to justify separate treatment different from that accorded to the People’s Republic of China in any new laws, agreements, treaties, or arrangements....”

⁷⁹ For example, see transcripts of U.S. Congress, House Committee on Foreign Affairs, Subcommittee on Asia and the Pacific, “Hong Kong: A Broken Promise?,” 113th Cong., 2nd sess., December 2, 2014; and U.S. Congress, Senate Committee on Foreign Relations, Subcommittee on East Asian and Pacific Affairs, “Evaluating the Impact of the ‘Umbrella Movement,’” 113th Cong., 2nd sess., December 3, 2014.

⁸⁰ CRS interviews.

⁸¹ CRS interviews.

Neither H.R. 5696 nor S. 2922 was voted on by either the House of Representatives or the Senate.

Besides the Hong Kong Human Rights and Democracy Act, the 113th Congress considered other legislation explicitly dealing with Hong Kong. As noted previously, Congress passed the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) in December 2014, requiring the State Department submit to a report on the status of Hong Kong to designated congressional committees (see “Implications for U.S. Policy Toward Hong Kong”). S. 703 would have amended the Immigration and Nationalization Act to make the Hong Kong Special Administrative Region eligible for designation as a visa waiver program country.⁸² In addition, H.R. 1923, S. 266, and S. 744 contained provisions that would have made Hong Kong eligible for the visa waiver program. None of these bills was enacted into law.

The political situation in Hong Kong was the subject of hearings during the 113th Congress. The House Committee on Foreign Affairs Subcommittee on Asia and the Pacific held a hearing entitled, “Hong Kong: A Broken Promise?” on December 2, 2014.⁸³ The Senate Committee on Foreign Relations Subcommittee on East Asian and Pacific Affairs held a hearing entitled, “Evaluating the Impact of the ‘Umbrella Movement,’” on December 3, 2014.⁸⁴ In addition, the Congressional-Executive Commission on China (CECC) held a hearing entitled, “The Future of Democracy in Hong Kong,” on November 20, 2014.⁸⁵

Legislation

On February 27, 2015, Representative Christopher Smith introduced the Hong Kong Human Rights and Democracy Act (H.R. 1159). The act reaffirms U.S. interest in “the continued vitality, prosperity, and stability of Hong Kong,” and “support for democratization” as “a fundamental principle of United States foreign policy.” It also states that it is U.S. policy “to support the establishment by 2017 of a genuine democratic option to freely and fairly nominate and elect the Chief Executive of Hong Kong....”

The provisions of H.R. 1159 are very similar to the amended version of S. 2922 approved by the Senate Foreign Relations Committee during the 113th Congress. Section 4 of the act would reinstate the State Department’s annual report to Congress as provided for in Section 301 of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5731) for 10 years or “until such earlier date that the Secretary of State certifies that Hong Kong has held free and fair elections for two consecutive Chief Executive and two consecutive Legislative Council periods.”

Section 5 of the act would amend the United States-Hong Kong Policy Act of 1992 by adding Section 202a, which would require the Secretary of State to certify to Congress not later than 90 after enactment and annually thereafter “whether Hong Kong is sufficiently autonomous to justify separate treatment different from that accorded the People’s Republic of China in any new laws,

⁸² For more information about the visa waiver program, see CRS Report RL32221, *Visa Waiver Program*, by (name redacted).

⁸³ U.S. Congress, House Committee on Foreign Affairs, Subcommittee on Asia and the Pacific, *Hong Kong: A Broken Promise?*, 113th Cong., 2nd sess., December 2, 2014.

⁸⁴ U.S. Congress, Senate Committee on Foreign Relations, Subcommittee on East Asian and Pacific Affairs, “Evaluating the Impact of the ‘Umbrella Movement,’” 113th Cong., 2nd sess., December 3, 2014.

⁸⁵ Congressional-Executive Commission on China, *The Future of Democracy in Hong Kong*, November 20, 2014, <http://www.cecc.gov/events/hearings/the-future-of-democracy-in-hong-kong>.

agreements, treaties, or arrangements entered into between the United States and Hong Kong after the date of the enactment of such Act.” The section also provides for the Secretary of State to waive the certification requirement if the Secretary determines that such a waiver is in the national interest of the United States.

On June 18, 2015, Senator Bob Corker submitted the Department of State Operations Authorization and Embassy Security Act, Fiscal Year 2016 (S. 1635), which would reinstate and extend the annual State Department report required by Section 301 of the United States-Hong Kong Policy Act of 1992 through 2020, and would require the Secretary of State to certify to Congress within 90 days of enactment and annually thereafter

whether Hong Kong Special Administrative Region is sufficiently autonomous to justify different treatment for its citizens from the treatment accorded to other citizens of the People’s Republic of China in any new laws, agreements, treaties, or arrangements entered into between the United States and Hong Kong after the date of the enactment of this Act.

The bill does provide waiver authority if the Secretary determines that such a waiver is in the national interests of the United States, and provides prior notice and justification to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs.

Hearings

The House Committee on Foreign Affairs Subcommittee on Asia and the Pacific held a June 11, 2015, entitled, “Retreat or Revival—A Status Report on Democracy in Asia.”⁸⁶ Among the locales under examination in the hearing was Hong Kong (along with Burma and Thailand). The Senate has not held a hearing on democracy and/or electoral reforms in Hong Kong during the 114th Congress.

Promoting Democratization in Hong Kong

For many years, Congress has appropriated funds through various programs to promote democracy around the world, including China and Hong Kong. These programs are administered by the State Department’s Bureau of Democracy, Human Rights, and Labor (DRL), the U.S. Agency for International Development (USAID), and the National Endowment for Democracy (NED). The Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) provided for the continuation of funding for these programs. In the Congressional Budget Justification for Fiscal Year 2015, NED stated, “The Endowment will maintain its focus on the four priority countries in Asia—Pakistan, Burma, North Korea, and China (including Tibet, Xinjiang, and Hong Kong).”⁸⁷

Past U.S. programs in Hong Kong have focused on providing technical assistance on membership recruitment, voter and media communications, and fundraising to Hong Kong’s political parties and political groups. NED and the National Democratic Institute (NDI) are currently providing

⁸⁶ U.S. Congress, House Committee on Foreign Affairs Subcommittee on Asia and the Pacific, *Retreat or Revival—A Status Report on Democracy in Asia*, 114th Cong., 1st sess., June 11, 2015.

⁸⁷ Department of State, *Congressional Budget Justification*, Appendix 1: Department of State Operations, April 7, 2014.

assistance to the Design Democracy Hong Kong project, a web-based forum (<http://designdemocracy.hk/>) where Hong Kong residents can create different models for the selection of the Chief Executive and Legco by universal suffrage. As of January 27, 2015, 716 CE election models have been created and 15 Legco models. In April 2014, NED hosted ex-CS Anson Chan and Martin Lee, who gave a talk in Washington, DC, on democracy in Hong Kong.

Some Mainland and Hong Kong publications have published allegations that the United States and other foreign sources were funding and advising the pro-democracy protesters in Hong Kong. CE Leung has on several occasions claimed that he has evidence to prove foreign support of the Umbrella Movement, but to date he has not publicly released the alleged evidence. As a result, some pro-democracy organizations and individuals in Hong Kong are apprehensive about contact and/or association with Congress, the U.S. government, and other foreign governments and diplomats.

Access to China and Hong Kong

Since the beginning of the pro-democracy protests in Hong Kong, the Chinese and HKSAR governments have periodically restricted the movement of Hong Kong residents and people from other countries allegedly associated with the protest movement. Several Legco members and students involved in HKFS or Scholarism have been denied entry into Mainland China even though they possessed the necessary official documents. At least one Hong Kong resident was not allowed to board his original return flight to Hong Kong from Taiwan reportedly because of his alleged involvement in the Umbrella Movement.⁸⁸

On December 2, 2014, members of the British Parliament's Foreign Affairs Select Committee were informed by Chinese government officials that they could not travel to Hong Kong to investigate the political situation in Hong Kong.⁸⁹ The committee's chairman, Richard Ottaway, was reportedly told by China's deputy ambassador to Britain Ni Jian that the refusal of entry was related to the Occupy movement.⁹⁰ The denial was unusual as the decision was made by the Chinese government and not the HKSAR government, which under the Basic Law has autonomy with respect to immigration policy and procedures.

⁸⁸ "Democracy Activists Worry Hong Kong Government Is Keeping a Travel 'Blacklist,'" *Wall Street Journal*, January 5, 2015.

⁸⁹ Stuart Lau, "British MPs Postpone Hong Kong Trip after Beijing Denies Entry over Occupy Fears," December 2, 2014.

⁹⁰ L Gordon Crovitz, "China 'Voids' Hong Kong Rights," *Wall Street Journal*, op-ed, December 14, 2014.

Appendix A. Composition of Election Committee

Hong Kong's Chief Executive Election Ordinance (CEEEO) allocates the 300 seats in each of the four sectors stipulated in Annex I of the Basic Law into 35 subsectors as indicated in the tables below. Also listed is the number of registered voters—with corporate and individual voters in separate columns—for each subsector in the 2011 Election Committee elections, according to the Hong Kong's Electoral Affairs Commission.⁹¹

Table A-1. Industrial, Commercial and Financial Sectors

Subsector	Seats	Corporate Voters	Individual Voters
Catering	17	728	7,206
Commercial (first)	18	860	0
Commercial (second)	18	662	1,121
Employers' Federation of Hong Kong	16	122	0
Finance	18	125	0
Financial Services	18	568	0
Hong Kong Chinese Enterprises Association	16	306	15
Hotel	17	101	0
Import and Export	18	806	628
Industrial (first)	18	610	0
Industrial (second)	18	695	0
Insurance	18	135	0
Real Estate and Construction	18	482	272
Textiles and Garment	18	3,055	133
Tourism	18	1,118	0
Transport	18	201	0
Wholesale and Retail	18	1,795	5,084

Table A-2. The Professions

Subsector	Seats	Corporate Voters	Individual Voters
Accountancy	30	0	24,630
Architectural, Surveying and Planning	30	0	6,778
Chinese Medicine	30	0	5,864
Education	30	0	86,618
Engineering	30	0	9,052
Health Services	30	0	39,128

⁹¹ See http://www.eac.gov.hk/pdf/chief/en/2012_CE_Report/2012ce_appendix_II.pdf.

Subsector	Seats	Corporate Voters	Individual Voters
Higher Education	30	0	9,106
Information Technology	30	0	5,175
Legal	30	0	6,583
Medical	30	0	11,118

Table A-3. Labor, Social Services, Religious and Other Sectors

Subsector	Seats	Corporate Voters	Individual Voters
Agriculture and Fisheries	60	159	0
Labor	60	626	0
Religious	60	not applicable ^a	
Social Welfare	60	277	14,152
Sports, Performing Arts, Culture and Publication	60	2,149	209

- a. The 60 religious subsector seats are allocated by the Chief Executive among the following religious organizations: Catholic Diocese of Hong Kong; Chinese Muslim Cultural and Fraternal Association; Hong Kong Christian Council; the Hong Kong Taoist Association; the Confucian Academy; and the Hong Kong Buddhist Association. Each organization appoints their members to the Election Committee.

Table A-4. Members of the Legislative Council, Representatives of District-based Organizations, Hong Kong Deputies to the National People's Congress, and Hong Kong Members of the National Committee of the Chinese People's Political Consultative Conference

Subsector	Seats	Corporate Voters	Individual Voters
National People's Congress (NPC)	36	not applicable ^a	
Legislative Council (Legco)	70	not applicable ^b	
Chinese People's Political Consultative Conference (CPPCC)	51	0	151
Heung Yee Kuk ^c	26	0	147
Hong Kong and Kowloon District Councils	57	0	200
New Territories District Councils	60	0	212

- a. NPC deputies automatically are members of the Election Committee.
- b. Legco members automatically are members of the Election Committee.
- c. Heung Yee Kuk (Rural Council) is a statutory body established to represent the interest of the indigenous people of Hong Kong's New Territories.

Appendix B. Legislative Council Members: Pro-establishment and Pan-democrat Factions

The 70 members of Hong Kong’s Legislative Council are frequently divided into two factions—the pro-establishment members and the pan-democrats. The table below provides a list of the current Legco members and their party affiliation, divided into pro-establishment and pan-democrat members.

Table B-I. Legco Members by Factions

Current Legco members divided into pro-establishment and pan-democrats (with party affiliations)

Pro-Establishment Members (43)	Pan-Democratic Members (27)
Chan Hak-kan (DAB)	Albert Chan Wai-yip (People’s Power)
Chan Han-pan (DAB)	Chan Chi-chuen (People’s Power)
Chan Kam-lam (DAB)	Kenneth Chan Ka-lok (Civic Party)
Chan Kin-por (Independent)	Fernando Cheung Chiu-hung (Labour)
Chan Yuen-han (FTU)	Cheung Kwok-che (Labour)
Christopher Cheung Wah-fung (Independent)	Gary Fan Kwok-wai (Neo Democrats)
Tommy Cheung Yu-yan (Liberal Party)	Frederick Fung Kin-kee (ADPL)
Chiang Lai-wan (DAB)	Albert Ho Chu-yan (Democratic Party)
Christopher Chung Chu-kun (DAB)	Cyd Ho Sau-lan (Labour Party)
Chung Kwok-pan (Liberal)	Ip Kin-yuen (Independent)
Vincent Fang Kang (Liberal Party)	Dennis Kwok Wing-hang (Civic Party)
Steven Ho Chun-yin (DAB)	Kwok Ka-ki (Civic Party)
Ip Kwok-him (DAB)	Emily Lau Wai-hing (Democratic Party)
Regina Ip Lau Suk-yea (New People’s Party)	Lee Cheuk-yan (CTU)
Kwok Wai-keung (FTU)	Joseph Lee Kwok-long (Independent)
Jeffrey Lam Kin-fung (Economic Synergy)	Alan Leong Kah-kit (Civic Party)
Lam Tai-fai (Independent)	Leung Ka-lau (Independent)
Lau Wong-fat (Economic Synergy)	Kenneth Leung Kai-cheong (Professional Commons)
Starry Lee Wai-king (DAB)	Leung Kwok-hung (League of Social Democrats)
Andrew Leung Kwan-yuen (Economic Synergy)	Claudia Mo Man-ching (Civic Party)
Leung Che-cheung (DAB)	Charles Peter Mok (Professional Commons)
Priscilla Leung Mei-fun (Professional Forum)	Sin Chung-kai (Democratic Party)
Leung Yiu-chung (NWSC)	James To Kun-sun (Democratic Party)
Lo Wai-kwok (Independent)	Ronny Tong Ka-wah (Civic Party)
Martin Liao Cheung-kong (Independent)	Helena Wong Pik-wan (Democratic Party)
Ma Fung-kwok (New Forum)	Wong Yuk-man (People’s Power)
Alice Mak Mei-kuen (FTU)	Wu Chi-wai (Democratic Party)

Pro-Establishment Members (43)	Pan-Democratic Members (27)
Ng Leung-sing (Independent)	
Poon Siu-ping (FLU)	
Elizabeth Quat Pui-fan (DAB)	
Abraham Shek Lai-him (Professional Forum)	
Tam Yiu-chung (DAB)	
Tang Ka-piu (FTU)	
James Tien Pei-chun (Liberal Party)	
Michael Tien Puk-sun (New People's Party)	
Jasper Tsang Yok-sing (DAB)	
Paul Tse Wai-chun (Independent)	
Tony Tse Wai-chuen (Independent)	
Wong Kwok-hing (FTU)	
Wong Kwok-kin (FTU)	
Wong Ting-kwong (DAB)	
Frankie Yick Chi-ming (Liberal Party)	
Yiu Si-wing (Independent)	

Source: CRS analysis.

Notes: ADPL—Hong Kong Association for Democracy and People's Livelihood; CTU—Hong Kong Confederation of Trade Unions; DAB—Democratic Alliance for the Betterment and Progress of Hong Kong; FLU—Federation of Hong Kong and Kowloon Labour Unions; FTU—Hong Kong Federation of Trade Unions; NWSC—Neighbourhood and Worker's Service Centre.

Appendix C. Functional Constituency Members by Constituency and Electorate

The table below lists the 35 functional constituency members of Hong Kong Legislative Council by the official name of the functional constituency they represent. In addition, it lists the number of registered voter eligible to vote in each functional constituency.

Table C-1. Legco Functional Constituency Members
including eligible voters for each constituency

Functional Constituency	Legco Member	Eligible Voters
Accountancy	Kenneth Leung Kai-cheong	25,174
Agriculture and Fisheries	Steven Ho Chun-yin	156
Architectural, Surveying and Planning	Tony Tse Wai-chuen	6,781
Catering	Tommy Cheung Yu-yan	7,729
Commercial (First)	Jeffrey Lam Kin-fung	876
Commercial (Second)	Martin Liao Cheung-kong	1,529
District Council (First)	Ip Kwok-him	410
District Council (Second)	Chan Yuen-han	3,219,755
	Frederick Fung Kin-kee	
	Albert Ho Chun-yan	
	Starry Lee Wai-king	
	James To Kun-sun	
Education	Ip Kin-yuen	92,957
Engineering	Lo Wai-kwok	9,172
Finance	Ng Leung-sing	106
Financial Services	Christopher Cheung Wah-fung	564
Health Services	Joseph Lee Kok-long	37,556
Heung Yee Kuk	Lau Wong-fat	147
Import & Export	Wong Ting-kwong	1,363
Industrial (First)	Andrew Leung Kwan-yuen	562
Industrial (Second)	Lam Tai-fai	772
Information Technology	Charles Peter Mok	6,687
Insurance	Chan Kin-por	120
Labour	Kwok Wai-keung	608
	Poon Siu-ping	
	Tang Ka-piu	
Legal	Dennis Kwok Wing-hang	6,482
Medical	Leung Ka-lau	10,888

Functional Constituency	Legco Member	Eligible Voters
Real Estate and Construction	Abraham Shek Lai-him	738
Social Welfare	Cheung Kwok-che	14,093
Sports, Performing Arts, Culture, and Publication	Ma Fung-kwok	2,395
Textiles and Garments	Chung Kowk-pan	2,844
Tourism	Yiu Si-wing	1,230
Transport	Frankie Yick Chi-ming	200
Wholesale and Retail	Vincent Fang Kang	7,040

Source: Handout from the Legislative Council.

Appendix D. Full Text of Resolution to Amend Annex I of the Basic Law

III. Motion

Motion concerning the Amendment to the Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region

Secretary for Constitutional and Mainland Affairs to move the following motion:

Pursuant to Article 7 of Annex I to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China of 6 April 2004, and the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016 of 31 August 2014, the "(Draft) Amendment to Annex I to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China Concerning the Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region" appended to this Motion is hereby endorsed by this Council by a two-thirds majority of all Members.

Annex

(Draft) Amendment to Annex I to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China Concerning the Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region

1. Starting from 2017, the Chief Executive shall be selected by universal suffrage upon nomination by a broadly representative Nominating Committee in accordance with democratic procedures and appointed by the Central People's Government.

2. The Nominating Committee shall be composed of 1200 members from the following sectors:

Industrial, commercial and financial sectors - 300

The professions - 300

Labour, social services, religious and other sectors - 300

Members of the Legislative Council, representatives of members of the District Councils, representatives of the Heung Yee Kuk, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference - 300

The term of office of the Nominating Committee shall be five years. In the event that the office of Chief Executive becomes vacant within the five-year term of office of the Nominating Committee and a by-election is held, the term of office of the new Chief Executive shall be the remainder of the previous Chief Executive.

3. The delimitation of the various sectors of the Nominating Committee, the organizations in each sector eligible to return Nominating Committee members and the number of such members returned by each of these organizations and how to return them shall be prescribed by an electoral law enacted by the Hong Kong Special Administrative Region in accordance with the principles of democracy and openness.

Corporate bodies in various sectors shall, on their own, elect members to the Nominating Committee, in accordance with the number of seats allocated and the election method as prescribed by the electoral law.

Members of the Nominating Committee shall discharge their duties in their individual capacities.

4. A person seeking nomination by the Nominating Committee may be recommended jointly by not less than 120 members and not more than 240 members of the Nominating Committee. Each member may recommend only one person.

The Nominating Committee shall, from the persons recommended as aforesaid, nominate two to three persons seeking nomination to become Chief Executive candidates by secret ballot. Each Nominating Committee member shall vote for at least two persons, and may at most vote for all persons seeking nomination by the Nominating Committee. Each candidate must have the endorsement of more than half of all the members of the Nominating Committee. The specific nominating method shall be prescribed by the electoral law.

5. All eligible electors of the Hong Kong Special Administrative Region who have registered in accordance with the law shall, from the list of candidates nominated by the Nominating Committee, elect one Chief Executive designate by secret ballot. The specific election method shall be prescribed by the electoral law.

(As reported at <http://www.legco.gov.hk/yr14-15/english/counmtg/agenda/cm20150617.htm>.)

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