

Constitutional Development in Hong Kong

FAQ

Fact 1 – Universal suffrage is only mentioned in the Basic Law

Q: Does the Sino-British Joint Declaration provide for universal suffrage in post-1997 Hong Kong?

A: No. The Joint Declaration (JD) signed in 1984 does not mention the election of the Chief Executive (CE) by universal suffrage. It only states in Article 4 that: “The chief executive will be appointed by the Central People’s Government (CPG) on the basis of the results of elections or consultations to be held locally.”

It is only the Basic Law – and national law of China and Hong Kong’s constitutional document promulgated in 1990 – that states the ultimate aim of selecting the CE by universal suffrage. In 1990, there was not a single directly elected seat in the Hong Kong legislature.

Constitutional development is an internal matter for the PRC and Hong Kong within the framework of the Basic Law.

Fact 2 – Democratic progress since 1997

Q: Has there been any progress in electoral reform since 1997?

A: Yes. Since Hong Kong’s return to China in 1997 almost every election of the CE and Legislative Council (LegCo) has been more democratic than the previous one. This was achieved in accordance with the Basic Law’s stipulation for “gradual and orderly progress” and in light of the actual situation in Hong Kong.

The current CE was selected by a 1200-member Election Committee. The National People’s Congress Standing Committee’s (NPCSC) Decision of 31 August 2014 allows for the CE election involving up to five million eligible voters in Hong Kong to start from 2017 onwards.

Fact 3 – Progress in 2017 for the CE Election

Q: What was the NPCSC Decision and how does it make the process more democratic?

A: In line with Article 45 of the Basic Law, the NPCSC has decided that the 2017 CE Election by universal suffrage should have two to three candidates nominated by a “broadly representative Nominating Committee” modelled on the current Election Committee (i.e. 1200 members from four sectors). Potential candidates must be nominated by at least 50% of the Nominating Committee. This is because the substantive power to nominate is vested in the Nominating Committee as a whole. The requirement for a Nominating Committee is nothing new. It has been in the Basic Law since it was promulgated in 1990.

How the Nominating Committee is formed, the thresholds for potential CE candidates and the nominating procedures have yet to be discussed. These will be the issues for discussion in our Phase 2 public consultation starting soon.

If a deal can be reached and the enabling legislation is passed by the required two-thirds majority of the LegCo, then Hong Kong politics will enter a new era with five million eligible voters having the final say on who gets to be CE after a full-fledged election campaign. This whole process will be more open, democratic and accountable.

Fact 4– Status quo means no progress until at least 2022

Q: What happens if it is rejected by LegCo?

A: If rejected, Hong Kong will not only miss an opportunity to elect the CE by “one person, one vote” in 2017; it will also miss the opportunity to return all members of the legislature by universal suffrage in 2020, since the legislature’s electoral reform is premised on reform of the CE election. This means that the next opportunity for progress will be the 2022 CE election and then 2024 LegCo election at the earliest.

Fact 5 – China has upheld its promises in the JD

Q: Has China violated its promises in the JD with any “screening requirement”?

A: Not at all. Universal suffrage was not mentioned in the JD. The JD only mentions that the CE be returned by “elections or consultations held locally”. The Basic Law goes some way further than this. It states that the ultimate goal is electing the CE by universal suffrage upon nomination by a broadly representative Nominating Committee. The recent NPCSC’s Decision is completely in line with the Basic Law and is legally and constitutionally binding on the Hong Kong Special Administrative Region.

Fact 6 – Nominating procedures have yet to be discussed

Q: What did the NPCSC’s Decision say about the formation of the Nominating Committee or the threshold for candidates to be considered by the Nominating Committee?

A: The NPCSC’s Decision of 31 August 2014 stated that the Nominating Committee should be formed in accordance with the number of members, composition and formation method of the current Election Committee i.e. 1200 members from four sectors. How the four sectors are composed, how people are elected within those sectors, how potential CE candidates are nominated by the Nominating Committee are all still open for discussion.

The NPCSC’s Decision states that the Nominating Committee will nominate two to three candidates who will then face the electorate of the whole community via “one person, one vote”. Thus, an uncontested election will not happen. The successful candidates will need to take their missions and platform to the public to earn their support on polling day.

Prior to that, there will be strong competition among eligible persons who wish to join the Nominating Committee. Then, there will be strong competition among potential candidates who wish to be considered by the Nominating Committee for endorsement as one of the two to three final candidates. Then, five million eligible voters will be involved in the election campaign and eventually get to choose their preferred candidate. These are profound changes to the electoral system in Hong Kong.

The NPCSC's Decision does not rule out the possibility of further changes to the method for selecting the CE after 2017. The system can be further refined after the implementation of universal suffrage.

Fact 7 – The CPG appoints the CE

Q: Does the CPG still appoint the CE after election by universal suffrage?

A: Yes. Both the JD and the Basic Law state that the winner of a CE election will be appointed by the CPG.

Whatever the election method, the Chinese Government's constitutional authority in this regard cannot be ignored. There is a good reason for this. Hong Kong is not an ordinary local democracy. The CE enjoys a far higher level of executive power than the mayors of Western democracies, and is accountable to the Beijing and the people of Hong Kong.

Fact 8 – Democratic reform must be legally sound

Q: The students are demanding that civic nomination be one of the methods for nominating CE candidates. Is this possible?

A: No, civic nomination of candidates is not allowed under the Basic Law. Only the Nominating Committee has the substantive power to nominate CE candidates and such power cannot be undermined in any form. This is a constitutional and legal requirement. As a city that cherishes the rule of law, Hong Kong must work within its constitutional and legal framework to realise the goal of allowing Hong Kong's five million eligible voters to elect the CE by "one person, one vote" in 2017.

As the Hong Kong Bar Association said in a statement of 8 October 2014: "Whatever views one may now have about the constitutional regime laid down by the drafters of the Basic Law 24 years ago, the inescapable fact is that any discussion of electoral progress must be conducted within the framework of what is constitutionally permitted." As the Honourable Mr Andrew Li, former Chief Justice of the Court of Final Appeal of Hong Kong said in his article on 15 August 2014: "I hope that there will be rational discussions within the parameters of the Basic Law."

Fact 9: - Police have exercised restraint in handling the protests

Q: There has been some concern about the use of tear gas by Police on September 28 and their handling of the protests. Why was tear gas used?

A: The use of the tear gas on 28 September 2014 was prompted by violent clashes at the cordon line coupled with the huge pressure of a surging crowd. The decision to use it was taken by the front-line Police and only after repeated warnings to protesters to stop charging the Police line. This was an extremely dangerous situation for protesters and Police that warranted an appropriate response. There was a real fear of severe injuries caused by people being trampled or crushed. The tear gas was deployed to relieve the crowd pressure. As soon as the crowd dispersed and the front-line pressure was relieved the Police withdrew. The crowd eventually spread out and the protesters have since then remained *in situ*.

The Hong Kong Police have strict guidelines on the use of force and are fully accountable for their actions under the Police Force Ordinance and other relevant Hong Kong law. They along with many others in society have made repeated requests to those involved to clear the streets. Such appeals have been made in a sincere, calm and rational manner. Protesters are being asked on a daily basis to carry out their activities in a lawful and peaceful manner. The Hong Kong SAR Government's major concerns are the safety of those taking part, the maintenance of law and order and access for emergency vehicles.

Fact 10 - Right to protest and freedom of expression fully respected

Q: Why does the government keep reminding the protesters to leave?

A: The Hong Kong SAR Government fully respects people's rights and freedoms. We remain steadfastly committed to the rule of law, social stability and an inclusive and harmonious political climate.

Freedom of speech and freedom of assembly are fundamental rights guaranteed by our Basic Law and cherished by Hong Kong people. The local and international media have complete freedom to cover the protests. This can be seen by the extensive and local and international media coverage on events. Telecom and internet services continue to operate smoothly (indeed, social

media has played a pivotal role in these protests, including the circulation of false rumours).

However, the protesters continue to unlawfully occupy key locations in Hong Kong at Admiralty/Central, Causeway Bay and Mong Kok. Their activities have not only created huge inconvenience to the working and travelling public but are also starting to have serious impact on small, medium and large businesses alike in those areas. The Government, Police and other concerned groups such as District Council members will continue to urge protesters to stop illegally blockading roadways so that normal life can resume, in particular transport services and unhindered access to business establishments. We have urged protesters, without success, to consider other protest areas to reduce disruption to the public.

During the protests, school classes in affected areas were suspended for a number of days. Access to the Central Government Offices was initially blocked, which prevented 3,000 civil servants and officials from returning to work there. Social order has been disrupted. Conflicts are continuously erupting between pro- and anti- Occupy supporters in Mong Kok, which has caused injuries to citizens and Police and resulted in a number of arrests. Trouble flared again in Mong Kok on the night of 11 October.

The Chinese University Vice-Chancellor's stated on 9 October 2014: "If occupation activities persist, social cleavage and internal wastage will only continue to afflict the community of Hong Kong."

The Government responded positively to student requests for talks on constitutional reform. However, their insistence on overturning the NPCSC's Decision, civic nomination and calls for the CE to step down mean there is no basis for meaningful dialogue at this stage. The Government remains sincere about holding talks with students within the relevant legal and constitutional framework. We have been maintaining contact with them.

Fact 11 – Despite the disruption in protest zones, Hong Kong continues to function smoothly everywhere else

Q: What has been the overall impact of the protests on Hong Kong?

A: Despite severe disruption to traffic and business in the affected areas, life in Hong Kong continues to remain calm and orderly. Hong Kong's important financial sector including financial regulators and financial institutions, have activated business contingency plans. The banking and financial systems, including the stock, futures, gold and foreign exchange markets have operated smoothly without major service interruption. The exchange rate of the Hong Kong Dollar remains stable. There is ample liquidity in the interbank markets. Business services, tourism, trade shows, aviation, shipping all continue to operate smoothly.

However, a prolonged protest will cause more disruption and damage the economy. Some businesses in affected areas have experienced severe downturns in sales and revenue and may need to consider laying off staff if the protests linger.