Prospects for Democracy in Hong Kong: The 2012 Election Reforms

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Summary

Support for the democratization of Hong Kong has been an element of U.S. foreign policy for over 17 years. The Hong Kong Policy Act of 1992 (P.L. 102-383) states, "Support for democratization is a fundamental principle of United States foreign policy. As such, it naturally applies to United States policy toward Hong Kong. This will remain equally true after June 30, 1997." The Omnibus Appropriations Act of 2009 (P.L. 111-8) provides at least $17 million for "the promotion of democracy in the People's Republic of China, Hong Kong, and Taiwan …"

The democratization of Hong Kong is also enshrined in the Basic Law, Hong Kong's quasi-constitution that was passed by China's National People's Congress (NPC) prior to China's resumption of sovereignty over the ex-British colony on July 1, 1997. The Basic Law stipulates that the "ultimate aim" is the selection of Hong Kong's Chief Executive and the members of its Legislative Council (Legco) by "universal suffrage." However, it does not designate a specific date by which this goal is to be achieved.

On November 18, 2009, Hong Kong Chief Executive Donald Tsang Yam-kuen released the government's long-awaited "consultation document" on possible reforms for the city's next Chief Executive and Legislative Council (Legco) elections to be held in 2012. The release of the document reopens a period of public consultation on the subject that is to end on February 19, 2010. After that date, Chief Executive Tsang is expected to introduce draft legislation to Legco specifying what changes are to be made in the 2012 elections. Chief Executive Tsang suspended the public consultation process in January 2009 because of a "once in a lifetime economic crisis" precipitated by the ripple effects of the collapse of the U.S. sub-prime mortgage market. At the time, many observers were critical of the suspension, saying it violated a promise made in 2007 during his campaign for re-election as Chief Executive.

The potential 2012 election reforms are important to Hong Kong's democratization for two reasons. First, they are an indication of the Hong Kong government's willingness to press for democratic reforms. Second, the Chief Executive and Legco selected in 2012 will have the power to implement universal suffrage for the Chief Executive election in 2017 and the Legco election in 2020, if they so choose.

The document delineates the changes possible for the 2012 elections in light of the December 2007 decision by the Standing Committee of China's National People's Congress (NPCSC) that precluded the direct election of the Chief Executive and Legco by universal suffrage in 2012. These include: expanding the size of the Election Committee that selects the Chief Executive from 800 to 1,200 people; increasing the number of Legco seats from 60 to 70; and allocating the five new functional constituency seats to the elected members of Hong Kong's District Councils.

The document was immediately met by sharp criticism from representatives of Hong Kong's "pro-democracy" parties. Their comments focused on the failure to provide a path towards universal suffrage for the Chief Executive election in 2017 and the Legco election in 2020. In a press conference, Chief Executive Tsang called the document a step forward for democracy in Hong Kong. He also made a call for unity, saying, "This is a time for seeking consensus, not differences. This is a time to abandon impractical demands."

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Overview

Well before the People's Republic of China (China) resumed sovereignty over Hong Kong on July 1, 1997—an event frequently referred to as the "Handover"—Congress demonstrated its concern about the prospects for democracy in the former British colony. The Hong Kong Policy Act of 1992 (P.L. 102-383) states, "Support for democratization is a fundamental principle of United States foreign policy. As such, it naturally applies to United States policy toward Hong Kong. This will remain equally true after June 30, 1997." Section 301 of the U.S.-Hong Kong Policy Act required an annual report from the State Department to Congress on the status of Hong Kong, which was to include a description of "the development of democratic institutions in Hong Kong." Section 202 gave the President the authority to suspend Hong Kong's separate treatment from China if he determines that China is not fulfilling "the terms, obligations, and expectations expressed in the Joint Declaration with respect to Hong Kong."[1]

The 111th Congress has continued past congressional interest in Hong Kong's quest for democracy. On March 11, 2009, the Omnibus Appropriations Act of 2009 (P.L. 111-8) appropriated not less than $17 million for "the promotion of democracy in the People's Republic of China, Hong Kong, and Taiwan …"

In addition, China's stance on Hong Kong's democratization may also signal its intentions regarding political reforms on the Mainland and its preferred path to reunification with Taiwan. China's formulation of the "one country, two systems" policy in 1981 not only formed the legal basis for Hong Kong's Handover, it also provided China's framework for future relations with Taiwan.[2] Given Taiwan's recent advances in democracy, it is uncertain if the "one country, two systems" model remains viable, especially if China appears reluctant to allow significant political change in Hong Kong.

Under the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the city's quasi-constitution, the "ultimate aim" is the selection of Hong Kong's Chief Executive and the members of its Legislative Council (Legco) by "universal suffrage." However, the Basic Law also stipulates that the selection of the Chief Executive and the Legco members is to be done "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."[3] In addition, the Basic Law requires that any change in Hong Kong's election process be approved by both the Chief Executive and two-thirds of the Legco members.

[1] The Joint Declaration makes no reference to either democracy or universal suffrage. Annex I of the Joint Declaration does state that Hong Kong's Chief Executive "shall be selected by election or through consultations held locally and be appointed by the Central People's Government," and the Legislative Council "shall be constituted by elections."

[2] The concept of "one country, two systems" initially emerged following a discussion of the Standing Committee of the National People's Congress on relations with Taiwan in September 1981, that resulted in the "Nine Article Statement." In January 1982, Deng Xiao-ping made the first public reference to "one country, two systems" during a meeting with foreign officials, stating "The 'Nine Articles Statement' … actually means 'one country, two systems' … Roughly speaking, these articles apply to not only the question of Taiwan, but the issue of Hong Kong as well." For more information on "one country, two systems," see Wen Qing, "'One Country, Two Systems:' The Best Way to Peaceful Reunification," *Beijing Review*, No. 33, 1990.

[3] Articles 45 and 68 of the Basic Law.

Over the last 12 years, the issue of democratic reforms has been one of the preeminent political concerns in Hong Kong. Efforts by the Hong Kong government to modify Hong Kong's election system have been stymied by local opposition or intervention by the Chinese government. Proposed changes for Hong Kong's elections of 2007 and 2008 were rejected by Hong Kong's Legislative Council (Legco) in 2005. Formal consideration of possible democratic reforms for the 2012 elections was terminated in December 2007 when China's Standing Committee of the National People's Congress (NPCSC) issued a decision precluding universal suffrage, but allowing for some limited reforms for the 2012 elections. Since then, there has been an active and vibrant debate over if and when Hong Kong will establish a fully democratic election system.

Historical Background

From 1842 to 1997, Hong Kong was a British Crown Colony, ruled by a Governor appointed by the Queen of England. In 1843, the British Parliament passed legislation establishing a Legislative Council (Legco) in Hong Kong—appointed by the Governor—to advise the Governor and his administration. Over time, Legco's powers were expanded, giving the body an effective veto over the decisions of the Governor. In addition, the appointed Legco was transformed into a semi-democratic institution. Despite these changes, for over 150 years, Hong Kong's political system mainly consisted of a more powerful Governor and a less powerful Legco.

In 1985, Legco had its first "elected" members, including 12 selected by "functional constituencies"—professional or special interest groups considered important for the economic and social well-being of Hong Kong. Ten years later, Hong Kong's last Legco under British rule was selected under political reforms proposed by Governor Chris Patten. The final British Legco consisted of 60 members—20 elected by regional plebiscites, 10 selected by a special Election Committee, and 30 selected by 29 functional constituencies. Other important aspects of Patten's reforms were the abolishment of "corporate" votes in the functional constituencies and the expansion of the functional constituencies so that most adults in Hong Kong could vote in one of the functional constituencies.

While many hailed Patten's reforms as a belated effort to implement democratic reforms in Hong Kong, the Chinese government viewed the Governor's actions as a violation of 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 (the Joint Declaration), the official document governing the transfer of Hong Kong. Although the Joint Declaration made provision for the separate legislative power in Hong Kong, it also stipulated that the "laws currently in force in Hong Kong will remain basically unchanged." The Chinese government maintained that Patten's Legco reforms were inconsistent with this provision of the Joint Declaration. China subsequently reversed Patten's reforms by abolishing the 1995 Legco and seating the Provisional Legislative Council after the Handover.[4]

[4] For more information on Patten's reforms and the Provisional Legislative Council, see CRS Report 97-557, *Hong Kong's "Provisional Legislature" Controversy*, by Kerry Dumbaugh, available upon request.

A political movement for democracy in Hong Kong arose even before the end of British rule. A few of Hong Kong's political parties—most notably, the Democratic Party and the Frontier Party—began advocating the election of the Chief Executive and Legco by universal suffrage as soon as possible. Other Hong Kong political parties—in particular, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and the Liberal Party—supported a more gradual and cautious approach to election reforms.

The Basic Law and Hong Kong Elections

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China was passed by the National People's Congress on April 4, 1990, establishing the new government structure for Hong Kong under Chinese sovereignty.[5] Much like under British rule, the Basic Law created an executive-led government, headed by a Chief Executive, as well as a representative legislature called the Legislative Council (Legco). The first Chief Executive chosen after the Handover was to be selected by an Election Committee consisting of 800 people, largely chosen by the Chinese government, and equally divided among four "sectors" of Hong Kong society.[6] The first post-Handover Legco was to consist of 60 members, some elected based on geographical districts and some selected by functional constituencies.

Articles 45 and 68 of the Basic Law state that the "ultimate aim" is the selection of Hong Kong's Chief Executive and the members of Legco by "universal suffrage." The processes of reforming the selection process for the Chief Executive and Legco are specified in Annex I and II of the Basic Law. Both annexes precluded changes in the election process until after 2007. To amend the selection process for the Chief Executive, Annex I stipulates that the proposal must be endorsed by two-thirds of Legco, consented to by the Chief Executive, and approved by the NPCSC. To amend the selection process for Legco, Annex II requires the proposal must be endorsed by two-thirds of Legco, consented to by the Chief Executive, and "reported to" the NPCSC. As a result, both the Chief Executive and Legco in office must approve changes in Hong Kong's election laws, including the transition to universal suffrage.

Following the Handover, democratic reforms emerged as one of the main political issues in Hong Kong. The "pan-democracy" parties and other organizations (such as Basic Law Article 45 Concern Group) continually pressured the first Chief Executive, Tung Chee-hwa, and the Hong Kong government to take steps to advance democracy in Hong Kong. On March 10, 2005, Tung submitted his resignation in part because public dissatisfaction with his failure to support universal suffrage in Hong Kong.[7] Tung was succeeded his Chief Secretary for Administration, Donald Tsang Yam-kuen.

[5] The full text of the Basic Law is available online at http://www.basiclaw.gov.hk/en/index/.

[6] The four sectors are: 1. industrial, commercial, and financial sector; 2. the professions; 3. labor, social service, religious and other sectors; and 4. members of Legco, representatives of district-based organizations, Hong Kong deputies to the NPC, and representatives of the Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference. The first Chief Executive, Tung Chee-hwa was chosen in 1996 by a Selection Committee of 400 people; he assumed office on July 1, 1997.

[7] Tung's official reason for his resignation was health. In addition to fallout from his failure to support democratic reforms, Tung also suffered from a lack of popular support that has been attributed to such factors as his highly unpopular attempt to pass "anti-sedition" legislation (required by Article 23 of the Basic Law) and the poor economic situation in Hong Kong during his tenure (primarily due to the Asian Financial Crisis of 1997).

The Proposed Reforms of 2005

The new Chief Executive quickly found himself immersed in the democracy controversy, especially following his submission in 2005 of proposed reforms for the 2007 Chief Executive election and the 2008 Legco elections. Under Tsang's proposal, the size of the Election Committee would have increased from 800 to 1,600 people, and the number of seats in Legco would have increased from 60 to 70, with the 10 new seats equally divided between geographical and functional constituencies. There was apparent widespread opposition to the proposal, as indicated by the large turnout at a December 4, 2005 rally for democracy in Hong Kong.[8] Among the main objections to the proposal were the inclusion of non-elected District Council members on the Election Committee, the expansion of the number of functional constituency seats in Legco, and the lack of a roadmap to universal suffrage. On December 21, 2005, Tsang's proposal failed to obtain the necessary two-thirds vote in Legco when 24 "pro-democracy" members voted against the measure.

The failure to amend the election process in 2005 meant that the 2007 Chief Executive election and the 2008 Legco election would take place under the existing system. The focus of Hong Kong's democratic movement shifted to the concurrent Chief Executive and Legco elections scheduled for 2012.[9] Chief Executive Tsang initiated a process of public consultation on the subject of "constitutional development," that involved the formation of the Commission on Strategic Development to study the issue of universal suffrage in Hong Kong. The pro-democracy forces advocated the selection of the Chief Executive and all members of Legco by universal suffrage in the 2012 elections, while others favored more modest, incremental election reforms. In July 2007, the Commission completed its work and the Hong Kong government released the "Green Paper on Constitutional Development."[10]

The Decision of December 2007[11]

A heated debate about election reforms brewed in Hong Kong until December 29, 2007. In response to a report from Chief Executive Tsang, the Standing Committee of the National People's Congress (NPCSC) released its "Decision on Issues Relating to the Methods of Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage."[12]

[8] Estimates for the turnout vary depending on the source. The Hong Kong Police's official estimate was 63,000 people. The organizers of the event, the Civic Human Rights Front, said at least 250,000 people attended the rally. Estimates from two university research teams placed the figure at 60,000 to 80,000 and 80, 000 to 100,000 people, respectively. Given the population of Hong Kong at the time, using the police estimate, it meant one out of every 100 Hong Kong residents attended the rally.

[9] The Chief Executive serves for a five-year term; Legco members serve for four years. As a result, the end of the Chief Executive and Legco terms in office coincide in 2012.

[10] The "Green Paper on Constitutional Development" is available online at http://www.cmab-gpcd.gov.hk/en/consultation/index.htm

[11] For more information about the NPCSC's decision, see CRS Report RS22787, *Prospects for Democracy in Hong Kong: China's December 2007 Decision*, by Michael F. Martin.

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

In its decision, the NPCSC ruled out the direct election of Hong Kong's Chief Executive and Legco by universal suffrage in the elections of 2012. However, the decision also stated that the Chief Executive may be directly elected by universal suffrage in 2017, provided certain conditions were met. The NPCSC also decided that all members of the Legco may be elected by universal suffrage after the direct election of Chief Executive has taken place, effectively setting 2020 as the first possible year for fully democratic Legco elections.

However, the NPCSC's decision also indicated that it was possible to make changes in election procedures before 2017, subject to certain constraints. While the Chief Executive would still be selected by the Election Committee, it was possible to alter the size, constitution, and regulations governing the conduct of the Election Committee. Also, while the 50-50 split between the geographical and functional constituency seats in Legco could not be altered, the number of seats in Legco could be changed and nature of the functional constituencies could be amended or revised.

A final important element of the decision was its specification of the process whereby changes in Hong Kong's election system were to be made. The NPCSC decision laid out a multi-step process that began with the Chief Executive presenting a report to the NPCSC on the need to amend the current process and ended with the Chief Executive presenting the approved amendments to the NPCSC for its approval or its records.

The 2008 Legco Elections

Legco elections were held in Hong Kong on September 7, 2008, with the future of democratic reforms one of the key issues of the campaign. A pan-democratic coalition—consisting of the newly-formed Civic Party, the perennial Democratic Party, the Hong Kong Confederation of Trade Unions, the League of Social Democrats, and a few other smaller political parties—campaigned in support of a quick transition to universal suffrage in Hong Kong. The "pro-Beijing" parties—the DAB, the Liberal Party, and the Hong Kong Federation of Trade Unions—advocated a more gradual transition towards democracy.

The outcome of the 2008 Legco election produced a few surprises (see **Table 1**). First, one of Hong Kong's longest standing political parties—the pro-business Liberal Party—faired poorly, losing all three of its geographical constituency seats. Second, the DAB did well, gaining three seats. Third, despite the supposed public concern about democratic reforms, the pan-democratic parties lost two seats, but still retained enough seats in Legco—23 seats—to veto proposed election reforms.

Table 1. Results of the 2008 Legco Elections

by Political Party and Type of Constituency

Coalition	Political Party	Geographical Constituency Seats	Functional Constituency Seats
Pan-democrats	Civic Party	4	1
	Democratic Party	7	1
	Hong Kong Confederation of Trade Unions	1	0
	League of Social Democrats (LSD)	3	0
	Other	5	2
Pro-Beijing	Democratic Alliance for the Betterment and Progress of Hong Kong (DAB)	9	4
	Hong Kong Federation of Trade Unions	0	1
	Liberal Party	0	7
	Other	1	12
Non-aligned	Unaffiliated	1	2

Source: CRS analysis.

No sooner than the 2008 Legco was sworn into office, its pan-democrat members began lobbying Chief Executive Tsang and the Hong Kong Government to submit a proposal for Hong Kong's transition to full democracy. While the League of Social Democrats continued to push for universal suffrage in the 2012 elections, other pan-democrats shifted their attention to the possible 2012 election reforms and a possible roadmap to universal suffrage in 2017 and 2020. For their part, the pro-Beijing Legco members generally accepted the terms of the NPCSC decision, and focused their comments on the possible changes to be made in the 2012 elections.

The 2012 Elections

Although the NPCSC's decision effectively ended the discussion about universal suffrage before 2017, it left open the possibility of modest election reforms in 2012. Based on the contents of the decision, Chief Executive Tsang initiated a period of study and public consultation on possible amendments to Hong Kong's election process for the 2012 elections, with the Commission on Strategic Development once again responsible for the process. However, the work of the Commission has been fraught with problems.

During his campaign before the May 2007 Chief Executive election, Tsang had promised that, if elected, by the end of his term he would provide a proposal that would "focus on the final resolution, not a midterm resolution, for universal suffrage." To many, this campaign pledge indicated that his next election reform proposal would not only include changes for the 2012 elections, but would also specify when and how Hong Kong would make the transition to universal suffrage. On October 15, 2008, Tsang stated in his annual policy address that "In the first half of 2009, we will consult the public on the methods for electing the Chief Executive and for forming the Legislative Council in 2012." According to his critics, Tsang has broken both of these promises.

On January 15, 2009, Chief Executive Tsang announced that the public consultation on the 2012 elections would have to be delayed until the fourth quarter of the year due to a "once in a lifetime economic crisis." He went on to state that the economic crisis had hit "faster and broader than what we expected," and that it was necessary to focus on "boosting the economy, creating jobs and facilitating business operations." Tsang also affirmed that "Postponing the consultation to the fourth quarter this year does not mean canceling it," and that the postponement still left ample time to make and implement amendments to Hong Kong's election process before the 2012 elections. In the meantime, the Commission would continue its work on election reform.

The release of the Consultation Document on November 18, 2009 was viewed by some as Tsang breaking his campaign promise to provide a "final resolution" for universal suffrage. While the document contains analysis and recommendations on possible reforms for the 2012 elections (see **Table 2** below), it purposely avoids presenting a roadmap or blueprint for Hong Kong's eventual election of the Chief Executive and Legco by universal suffrage. According to the Consultation Document, "… in accordance with the NPCSC decision, the HKSAR can only propose amendments to the two electoral methods for 2012." The document asserts that reforms for the 2017 can only be dealt with after the elections of 2012 and by implication, after Tsang leaves office.

The Consultation Document

The purpose of the Consultation Document is to identify for the public the key issues to be considered when proposing amendments for Hong Kong's 2012 elections and narrowing the list of possible amendments to propose to Legco after the public consultation is completed in February 2010. Regarding the Chief Executive election process, the document identifies five key issues: 1. the number of members in the Election Committee; 2. the composition of the Election Committee; 3. the electorate base of the Election Committee; 4. the nomination process for Chief Executive candidates; and 5. the political affiliation of the Chief Executive. Regarding the Legco election process, there are only three key issues identified: 1. the number of seats in Legco; 2. the electorate base of the functional constituencies; and 3. restrictions on the number of seats that can held by people who are not of Chinese nationality or who have the right of abode in foreign countries. In addition to identify various alternatives associated with these eight key issues, the consultation document indicates the view of the Hong Kong government at this time on each of these issues. **Table 2** lists the Hong Kong government's recommendations.

Most of the key issues and the Hong Kong government's views are self-explanatory, except for those involving the "electorate base" of the Election Committee and the functional constituencies. Under the current system, the registered "voters" for some of the functional constituency seats in Legco are actually corporations and other legal entities, not people. In addition, when selecting representatives to the Election Committee, the some of the "voters" are corporations. Critics of this system see this as an anti-democratic provision that violates the goal of election by universal suffrage. It had been suggested that the voting rights be transferred to the specific directors or executives of the corporations or entities in question.

Table 2. Hong Kong Current Election System and Hong Kong Government's Views for 2012 Election Reforms

Election	Issue	Current System	Hong Kong Government View for 2012 Elections
Chief Executive	Number of member on Election Committee	800 members	"Not more than 1,200"
	Composition of Election Committee	Equally divide members among the four sectors	Equally divide additional members among the four sectors; include elected District Council members in Committee as part of the fourth sector (see note below)
	Electorate base of Election Committee	Some votes by individuals, some by corporation	Continue to allow "corporate votes"
	Nomination process for Chief Executive	Nomination by "not less than 100 members"	Continue requirement of being nominated by at least one-eighth of the members of the Committee
	Political affiliation of the Chief Executive		Maintain the requirement that the newly-selected Chief Executive disavow his or her affiliation with a political party
Legislative Council	Number of seats in Legco	60 seats; 30 by geographical constituency and 30 by functional constituency	Increase from 60 to 70; Legco members for the five new functional constituency seats to be selected by the elected members of Hong Kong's District Councils
	Electorate base of functional constituencies	Some votes by individuals and some by corporations	Continue to allow "corporate votes"
	Restrictions on the number of seats that can held by people who are not of Chinese nationality or who have the right of abode in foreign countries	12 functional constituency seats are open to people who are not of Chinese nationality or who have the right of abode in foreign countries	Continue to allow such candidates to run for the 12 functional constituency seats open to people who are not of Chinese nationality or who have the right of abode in foreign countries

Source: Hong Kong Government, "Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012," Consultation Document, November 2009.

Note: The fourth sector includes "representatives of district-based organizations."

The Initial Response

The immediate comments following the release of the Consultation Document generally fell along the expected political lines with the "pro-democratic" voices expressing their disappointment and the "pro-Beijing" voices expressing their general support with some reservations. Legco member and vice chairman of the Democratic Party Emily Lau Wai-hing flatly stated, "This is not a democratic proposal."[13] Lau and Lee Cheuk-yan, a fellow Legco member and the general secretary of the Hong Kong Confederation of Trade Unions, criticized the documents lack of a "roadmap" to universal suffrage.[14] Alan Leong Kah-kit, Civic Party member and a candidate for Chief Executive in the 2007 election, called the new proposals worse than those offered in 2005.[15] DAB chairman Tam Yiu-chung expressed his party's disappointment at the exclusion of appointed District Council members as candidates for the new functional constituency seats, but then said, "We will accept this to advance democratic development for the city."[16] An unnamed representative of the Liberal Party reportedly was also unhappy about the "unfair treatment" of appointed district councilors, and was disappointed that the proposal did not include voting rights for company directors and managers.[17] Former Chief Secretary and Legco member Anson Chan Fang On-sang summarized her view of the situation by saying, "The Hong Kong public is now left like someone pedaling a bicycle with no chain—the pedals spin round, but no forward progress is made."[18]

Immediately after Legco received its briefing on the contents of the Consultation Document, the pro-democracy parties staged two separate rallies. The Democratic Party and the Civic Party organized a march to Hong Kong's Central Government Offices. The League of Social Democrats (LSD) led a march to Government House, the residence of Chief Executive Tsang.

In addition, the LSD is organizing a "mass resignation" of supportive Legco members to force a midterm Legco election as a de-facto referendum on universal suffrage. The Civic Party have reportedly decided they will support the action.[19] The Democratic Party voted against participation on December 13, 2009.[20] It is unlikely that Legco members from the DAB, the Liberal Party or other pro-Beijing parties will support the LSD initiative. The DAB is reportedly organizing the pro-Beijing parties to field only one candidate for each of the vacated Legco seats if the resignations occur.[21]

[13] "HK Unveils 'Democracy Blueprint'," *BBC News*, November 18, 2009.

[14] Scarlett Chiang, "Laying Siege," *Hong Kong Standard*, November 18, 2009.

[15] Nickkita Lau, "Unimpressed Democrats Vent their Frustration," *Hong Kong Standard*, November 19, 2009.

[16] Scarlett Chiang, "Laying Siege," *Hong Kong Standard*, November 18, 2009.

[17] Scarlett Chiang, "'Don't Miss This Crucial Step,'" *Hong Kong Standard*, November 19, 2009; and direct correspondence with representatives of the Liberal Party.

[18] Nickkita Lau, "Unimpressed Democrats Vent their Frustration," *Hong Kong Standard*, November 19, 2009.

[19] Diana Lee, "DAB is Ready to Rumble in Suffrage Polls," *Hong Kong Standard*, December 17, 2009.

[20] Albert Wong and Gary Cheung, "Democratic Party Majority Rejects Resignation Plan," *South China Morning Post*, December 14, 2009.

[21] Diana Lee, "DAB is Ready to Rumble in Suffrage Polls," *Hong Kong Standard*, December 17, 2009.

Implications of the Consultation Document

The consultation document provides strong indications of what may be included in Chief Executive Tsang's proposed election reforms. It is likely that the proposal will call for the expansion of the Election Committee to 1,200 people, and the enlargement of Legco to 70 members, with the five new functional constituency seats being selected by the elected District Council members. Beyond these changes, the 2012 elections are to be conducted much like the elections of 2007 and 2008.

The key issue that will likely be left unaddressed by Tsang's proposal to Legco is how the transition to universal suffrage will occur—if at all—in the elections of 2017 and 2020. Given that Hong Kong is an executive-led government, the 2017 Chief Executive election may be more crucial, especially given that the transition to universal suffrage for Legco elections is conditional upon the achievement of universal suffrage in the Chief Executive election. However, since Legco has the ability to block proposed policy changes by the Chief Executive, reforms of Legco elections in 2012 are also important.

The path from nomination and selection of the Chief Executive by the Election Committee to the election of the Chief Executive by a popular plebiscite appears to be less problematic. The current speculation is that the Election Committee will be transformed into a purely nominating body, which will fulfill a condition specified in Article 45 of the Basic Law.[22] Once the nominees have been selected, the public will then elect the Chief Executive, subject to the approval of the NPCSC. It is generally thought that the transformation of the Election Committee into a nominating committee will provide the Chinese government with enough insurance that the elected Chief Executive will be approved by the NPCSC, thereby avoiding an embarrassing and unpleasant situation.

The main potential source of political struggle over the election of the Chief Executive by universal suffrage will be the size and constituency of the members of the nominating committee. In general, the pan-democrats would prefer a larger committee consisting of more elected members with a lower nomination requirement. By contrast, the Chinese government and its sympathizers in Hong Kong support a smaller nominating committee that is largely based on the Election Committee and a higher nomination requirement. Where the balance of these two forces lies is difficult to determine at this time.

The path for the transformation of Legco into a body in which all members are elected by universal suffrage is more difficult to see, especially if the anticipated Tsang reforms are enacted. One of the fundamental dilemmas of Hong Kong's democratization process is the condition that any changes must be approved by two-thirds of the Legco members. At present, that means at least 10 of the functional constituency members must vote in favor of the proposed reforms. However, both of the most commonly discussed scenarios for a fully democratic Legco imply a loss of power for the existing functional constituency members of Legco or voters in their electoral base.

[22] Article 45 states "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."

There are two leading scenarios by which Legco can be transformed into a body elected by universal suffrage. The first scenario involves the elimination of the functional constituencies, transforming Legco into a body with members elected only by geographical districts. The second scenario retains functional constituency seats, but either redefines their electoral base or increases the number of functional constituencies so that every voter in Hong Kong can vote in at least one functional constituency. There is skepticism that enough functional constituency members of the current Legco, or the members to be elected in 2012 and 2016, will be willing to eliminate their seats as of 2020. Similarly, it is unclear if enough members of Legco will support the second scenario, given the implicit dilution of their power.

Issues for Congress

The release of the Consultation Document has reactivated consideration of democratic reforms in Hong Kong. Although the contents of the document and the Hong Kong government's recommendations may not please everyone, it does provide a period of three months for public commentary on what should or should not be in the final amendments to Hong Kong's election laws submitted to Legco to consider.

If Congress should determine it wishes to take action on Hong Kong's election reforms, one option is to indicate directly to the Hong Kong government its concerns and preferences. This could be done by various means, ranging from the passage of resolutions, to the convening of hearings, to submitting comments to the Constitutional and Mainland Affairs Bureau of the Hong Kong government.[23]

Alternatively, Congress could inquire of the Obama Administration what actions it was taking with regarding to Hong Kong's 2012 elections, particularly if and how any of the $17 million appropriated for "the promotion of democracy in the People's Republic of China, Hong Kong, and Taiwan" are being used on activities related to the 2012 elections.

Finally, in light of the NPCSC's December 2007 decision and subsequent developments in Hong Kong, Congress could request a report from the White House or an appropriate government agency on the status of Hong Kong's autonomy and its progress towards democracy.

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[23] Comments are to be sent via mail, facsimile or e-mail on or before February 19, 2010, to: Constitutional and Mainland Affairs Bureau, Room 319, Main Wing, Central Government Offices, Lower Albert Road, Hong Kong.