

2010/256-524

Short Term Policy Brief 32

Constitutional Change in Hong Kong: 2012 and Beyond

March 2012

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This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of ECRAN and can in no way be taken to reflect the views of the European Union.



This project is funded by the European Union



This project is implemented by a Consortium led by Steinbeis GmbH & Co. KG für Technologietransfer

Background Briefing: Constitutional Change in Hong Kong: 2012 and Beyond

Executive Summary

The year 2012 sees Hong Kong implementing limited electoral changes that aim to take it closer to eventual full direct elections. Thanks to modest reform measures approved in 2010 by both Beijing and Hong Kong lawmakers, elections this year to pick the former British colony's next leader and legislature will be broader-based than they have ever been. However, many uncertainties remain about how Beijing will manage the territory's progress toward the goal of full universal suffrage.

This paper will examine constitutional change in Hong Kong and consider how China's central leadership views such changes. It will outline Hong Kong's plans in the next five years - including directly electing the Chief Executive in 2017 by "one person, one vote" - and will consider whether this is likely to occur smoothly or whether there is the possibility of a turn-around. It will examine the views of key players in Beijing and will discuss China's expected policy towards Hong Kong over the next five years. Finally, it will also consider what the EU's role might be in this.

Main points:

- The 2012 Chief Executive and Legislative Council elections will see limited progress toward a more democratic system. However, the dice is still heavily loaded toward pro-establishment leadership candidates. Beijing's priority for Hong Kong is that its election results return a leader it regards as acceptable; this priority is not expected to change going forward.
- Hong Kong is hoping to implement direct elections of its leader and all lawmakers from 2017, but many crucial details have yet to be worked out. The successful implementation of constitutional reform will depend on the city's social and economic stability over the next 5 years, as well as whether compromises can be made between the city's pro-democrats and Chinese officials
- Universal suffrage is seen as possible in 2017, but it will be subject to Beijing's terms
- The EU should closely monitor the 2012 elections and continue to assess whether adequate actions are taken by Hong Kong and Beijing in the next five years to move the city toward genuine constitutional change
- It should report such observations to the Hong Kong government and consider closer links with the Legislative Council to raise the EU's profile as a supporter of democratic progress in the territory. It should avoid directly pressuring the central government for political reforms.

Introduction

Although constitutional reform has been a constant topic of intense debate in Hong Kong since the former British colony's return to Chinese rule in 1997, in practical terms only limited progress has been made toward democratisation. Until this year, the city's leader, or the Chief Executive, has been picked by an 800-member electoral committee. Members of this committee are largely appointed and composed of many conservative businessmen and professional representatives, themselves drawn from designated sectors. In the 60-seat Legislative Council, half the members are directly elected through geographical constituencies, while the other half is picked by so-called "functional constituencies", representing various professional groups.

Opinion polls have shown that many Hong Kongers want a more democratic system, but pro-democrats in the city pushing for changes face several significant challenges. First, although Hong Kong (called a "Special Administrative Region") was promised a high degree of autonomy under a "one country, two systems" rule agreed with the British prior to its reversion to Chinese rule, the central government in Beijing has sovereignty over the territory. The Chief Executive has to defer to Beijing on topics such as defence, foreign affairs, and political reform.

The city's de facto constitution, the Basic Law, states that universal suffrage is the eventual goal, but it never spelt out a formal "road map" for when and how this may be achieved. Despite keen discussion about the topic over the years, Hong Kongers have very limited power to determine the way forward. The Basic Law stipulates that changes to the electoral methods must be approved by the Standing Committee of the National People's Congress (NPCSC); Hong Kong can propose amendments to it if most political stakeholders agree, but has no power to decide on such changes.

Crippling divisions within the pro-democratic camp itself have been an additional stumbling block to progress. Caught in endless debates about how best to achieve universal suffrage, the Democratic Party has been criticised for missing opportunities for practical change and alienating voters. Finally, Hong Kong's strong economic ties with mainland China also mean that the city's leadership and powerful body of businessmen tend to be cautious in supporting any political initiatives disapproved by Beijing for fear of endangering the favourable trade links they currently enjoy. Many in the financial sector also oppose political reform, arguing it may bring turmoil to the financial market.

Elections in 2012 and beyond

In December 2007, the NPCSC issued a crucial interpretation of the Basic Law that gave the green light for the possibility of direct elections of the Chief Executive in 2017 and the possibility of full direct election of all members of the Legislative Council thereafter (the

earliest such election would be in 2020), provided certain conditions are met. The decision also ruled out universal suffrage in the 2012 elections, but it did indicate that some changes to that year's electoral rules will be allowed. The decision effectively pushed back full democracy for at least another decade, pending further rounds of constitutional reform. Nonetheless, it was the first clear timetable for democratic reform the city has seen since the handover: if all goes well, Hong Kong people could directly elect their leader in 2017.

After a last-minute compromise between Hong Kong's pro-democrats and Beijing's decision makers in 2010, a modest reform package for 2012 was approved. It set forth two important changes. First, the next Chief Executive will be picked by an expanded 1,200-strong election committee; and second, that 10 new seats will be added to the 60-member legislature – five to be directly elected from geographical constituencies, and five others to represent district councils, which are community-based bodies elected by the populace. The latter reform measure means that in theory, Hong Kong voters will be returning 40 of the 70 seats in September's Legislative Council elections. That is a significant outcome, because Chinese officials had previously opposed upsetting the equal divide of Council seats between the popularly elected geographical constituencies and the pro-establishment functional constituencies.

Three candidates are running for the Chief Executive election on March 25, 2012. All candidates must first secure the backing of one-eighths of the 1,200-member electoral committee. Of the three, two of the leading contenders are pro-establishment; both have avoided the topic of constitutional reform. Henry Tang, the city's former No.2 official with 10 years' experience in government, has strong ties with the business and finance sectors. Though not very popular with the public, Tang was widely seen as Beijing's preferred candidate and was tipped to win - until his admissions about an extramarital affair and an illegally built luxury basement rocked his campaign and introduced unprecedented uncertainty in the territory's usually predictable elections. Tang's rival is Leung Chun-ying, a leading member of the cabinet advising Chief Executive Tsang and a long-time member of China's political advisory body. Though a China loyalist, observers note that Leung was less of a "safe" choice in the eyes of Beijing leaders, who prefer a single pro-establishment candidate and were upset by his decision to run against Tang in the leadership race. A third candidate, Albert Ho, is the chairman of Hong Kong's Democratic Party.

Likely outcomes

It is clear that Beijing will not accept Ho, or any other pro-democrat, as a possible leader, and he is not expected to get enough votes in the enlarged electoral committee to be a serious contender. The race, then, is between the pro-establishment Tang and Leung. Although Li Jianguo, the vice-chairman of the NPCSC, have called both "acceptable candidates" to Beijing – meaning either way, the result will be in Beijing's favour - the scandals and mudslinging between the men have tarnished their reputations, further alienated the populace from an election they cannot participate in, and caused a

considerable headache for Chinese leaders. Chief among the problems is the public's hostility toward Tang; should he win, his legitimacy would be in question from the get-go – an unpromising start to a crucial period for constitutional change.

Looking ahead to the 2017 leadership elections, it is worth noting again that the NPCSC's interpretation only went as far as saying that direct elections *may* be held in 2017, not that it would. There is no guarantee that constitutional reform will successfully take place in the next five years. The 2012 reform package does not specify how the current system may transition to a full public plebiscite, and there will thus have to be another round of constitutional reform before any direct elections take place. It is difficult to tell whether lawmakers in Hong Kong, the new Chief Executive and Beijing can agree to a viable solution before 2017. However, the reticence of both Tang and Leung on the topic in the run-up to the 2012 vote strongly suggests that whoever wins is not likely to stray far from Beijing's cautious approach to change in his first term.

If Hong Kong's overall social-economic situation remains stable, and provided that Hong Kong's democrats are willing to negotiate with Beijing's representatives on the methods of achieving direct elections, there is no reason to assume that Hong Kongers will not get to directly vote for their leader in 2017. However, such an election will very likely be on Beijing's terms, resulting in a heavily qualified form of democracy that the opposition camp has termed "birdcage democracy". The key issue, in this regard, is who and how many people can nominate Chief Executive candidates for a public vote in 2017 or beyond. Given Beijing's testy relationship with the democrats, it is unlikely that it will approve a system that would make it easy to return a democratic Chief Executive. Beijing is instead widely expected to impose filter mechanisms that limit who can be nominated as candidates before the public can vote for them. With regard to the possibility of directly electing the entire Legislative Council, the key sticking point is the fate of the functional constituencies. While Beijing has indicated a strong desire to retain these seats, their existence has long irked reformers who see them as outdated and incompatible with a democratic system. As Hong Kong moves toward universal suffrage they will either have to be scrapped or fundamentally changed. On this point, prolonged and probably painful negotiations between the democrats, the new Chief Executive and Beijing will need to take place before a solution can be reached.

Hong Kong's path to a smooth transition to direct elections also depends very much on whether it can show to Beijing that universal suffrage is good for its continued prosperity and stability. If the population becomes exceptionally restive as a result of their discontent with the government and continued political uncertainties, Beijing could very well defer universal suffrage on grounds that the city is not yet ready for it. It is also possible that Beijing will impose such harsh constraints on the election mechanism, and the populace become so angered by the tortuous process, that mass street protests occur to threaten the stability of the city and the legitimacy of the Chief Executive. In 2003, the then-Chief Executive Tung Chee-hwa suffered a governance crisis when half a million protesters demanded that he step down after his government tried to push through a wildly unpopular security law. But Tung's term was also characterised by an unusual convergence

of serious problems including a poor economy and the SARS epidemic. Unless the economic situation drastically worsens, such a scenario is not likely to repeat itself. Beijing's leaders have also shown themselves to be alert to serious grievances in Hong Kong, suggesting they will likely avoid taking any drastic moves that will trigger popular outrage.

Implications for China

Top Chinese leaders rarely directly address the issue of constitutional reform in Hong Kong. In fact, public statements about the city's prospects often discuss ways to secure its economic prosperity and social stability, and sidestep concerns about its political future. In November 2011, President Hu Jintao declared that Hong Kong now enjoys "a fairly good situation" and said that Beijing is "unwavering and consistent in supporting (its) economic prosperity and stability." During a visit to Hong Kong in 2011, Vice-Premier Li Keqiang, who is expected to succeed Premier Wen Jiabao, said the recent inclusion of Hong Kong in China's national five-year plan for the first time showed Beijing's commitment in enhancing Hong Kong's position as a major financial center. It is clear that Beijing places high importance on ensuring Hong Kong's economic future is not jeopardised by any social or political upheavals.

Central leadership changes in 2012 bring some looming uncertainties to the picture, but China's priorities regarding political changes in Hong Kong - stability and a considerable degree of predictability - will no doubt remain constant. Any constitutional reform must be gradual and proceed in an "orderly" manner. It should ensure that future elections return a Hong Kong leader whom it regards as trustworthy, reliable, and with whom it can establish a good working relationship. He should also have the support of the populace, as well as be "patriotic" - in other words, loyal to the central leadership, and refrain from confronting Beijing on sensitive issues, such as the 1989 Tiananmen Square massacre. For Beijing, it is also important to ensure that risks and hard-to-manage results in Hong Kong's leadership elections are minimised. Most importantly, constitutional change in Hong Kong must not become a potential trigger for unrest in other parts of the country.

That is not to say that Beijing intends to block out electoral changes in Hong Kong entirely. Chinese leaders acknowledge the strong desires for a more democratic system in the territory, and have shown that they are prepared to address such aspirations. During the behind-the-scenes negotiations on the reform package between Chinese officials and Hong Kong's pro-democratic lawmakers in 2010 - an unprecedented dialogue since 1989 - China conceded to changing the equal split between geographical seats and functional constituencies, showing that it can move from a strongly held stance if pressed. Beijing knew the stakes are high if it did not compromise: Hong Kong's government would again fail to implement the modest constitutional changes it proposed, and suffer a big blow to its credibility. Despite its misgivings about reform, China also sees maintaining the Hong Kong administration's legitimacy as a high priority.

Implications for the EU

Since 1997, the European Commission has made a commitment to produce annual reports on relations between the EU and Hong Kong, monitoring economic and political developments in the territory and assessing the implementation of the “one country, two systems” principle and the Basic Law. The EU also maintains strong trade and economic ties with Hong Kong, which is a key trade partner and a major regional hub for European companies.

In its most recent report, the EU’s Office to Hong Kong remarked that it continues to strongly support early and substantial progress towards the goal of genuine universal suffrage in the territory. To this end, the EU should devote resources to closely monitor both sets of elections in 2012, and consider reporting its observations to the Hong Kong government as well as to Brussels. The EU should also continue to monitor and periodically evaluate actions taken by local lawmakers, the new Chief Executive, and Chinese officials in the next five years to gauge progress on constitutional reform. Particular attention should be directed to any steps taken to determine the size and constituency of the Chief Executive nomination committee, as well as to the future status of the Legislative Council’s functional constituencies. Finally, the EU may also consider enhancing its links to the Legislative Council or select lawmakers to raise awareness of its position and ensure it is kept up to date with the latest developments. It should be mindful of the central Chinese government’s sensitivity to “foreign meddling” and avoid directly pressuring Chinese officials for political reform.

Conclusion

Despite the expansion of the Chief Executive electoral committee and the addition of 10 seats to the Legislative Council, there is no indication that the election procedure in 2012 can move Hong Kong smoothly to universal suffrage in 2017. The scandals that hit the 2012 leadership race do not portend a smooth governance path for the new Chief Executive in the next five years, and there are still many points of contention as outlined above. But one thing is certain: Beijing will steer the direction of constitutional change with an extremely cautious hand.

- Beijing’s conservatism and priorities for Hong Kong’s political future still differ significantly from those of many Hong Kongers. The city’s lawmakers and Chief Executive will have a difficult time negotiating with Beijing for solutions that are representative enough for the pro-democrats, and safe enough for China
- China is unlikely to introduce drastic changes to renege on its 2007 statement. As such, direct elections of the Chief Executive are seen to be possible in 2017 - although such a vote will be on Beijing’s terms
- The EU should closely monitor the 2012 elections and continue to assess actions taken to progress on constitutional change. If desired, the EU should report such findings to the Hong Kong government or Legislative Council to raise awareness of the EU’s views