



Universal suffrage to elect the next Chief Executive of Hong Kong in 2017: a legal primer

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Author: Jon Lunn and Rob Page

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On 31 August 2014 the Standing Committee of the Chinese National People's Congress (NPC) decided that the next Chief Executive of the Hong Kong Special Administrative Region should be directly elected in 2017 by universal suffrage. However, the candidates (expected to be two or three in total) will still have to be approved in advance by a nominating committee, whose composition and method of formation will remain unchanged from that of the 1200-person strong 'Election Committee' which elected the current Chief Executive in 2012. Critics argue that this nominating committee will have an in-built 'pro-Beijing' bias.

This decision has triggered a wave of protest in Hong Kong, led by a movement called [Occupy Central](#), in which students are playing a major part. This short briefing summarises the legal context of recent events in Hong Kong, including the UK's own obligations.

Below is the key extract from the [decision](#) of the Standing Committee of the NPC on 31 August 2014:

- 1) A broadly representing 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.
- 2) The nominating shall nominate two or three candidates for the office of Chief Executive in accordance with democratic procedures. Each candidate must have the endorsement of more than half of all the members of the nominating committee.
- 3) All eligible electors of 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 the Chief Executive in accordance with the law.
- 4) The Chief Executive-elect, after being selected through universal suffrage, will have to be appointed by the Central People's Government.

The 1984 [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](#) states that:

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.

[...] (5) The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of

correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region.

Annex 1 to the Joint Declaration says that the Chief Executive shall be “selected by election” by a “broadly representative” Election Committee and appointed by the Chinese Central Government.

There is no mention in the Joint Declaration of universal suffrage or direct election. The 1990 [Basic Law](#) does talk about these issues – but in a way that allows for interpretation:

Article 26: Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law.

Article 45: 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 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 [our highlighting].**

The UK and China both have an obligation to uphold the provisions of the Joint Declaration, which has the force of an international treaty. However, the treaty contains no enforcement or dispute provisions. The [Vienna Convention on the Law of Treaties](#), to which both the UK and China are States Parties, provides only for the suspension of the operation of a treaty in the event that it is breached. On UK obligations with regard to the Basic Law, the [Foreign Affairs Committee](#) said in 2000:

While we were in Hong Kong, the point was made to us by a member of the Hong Kong Legislative Council (LegCo) that as the Basic Law reflects the provisions of the Joint Declaration, the United Kingdom Government obligation to Hong Kong also extends to the Basic Law [...] Both because of these important differences between the Joint Declaration and the Basic Law, and because the Basic Law was a document which was not signed by the United Kingdom Government or ratified by the British Parliament, it is appropriate to define the United Kingdom's obligation to Hong Kong in terms of the Joint Declaration, and in terms of the Basic Law only in as far as it respects the Joint Declaration. The FCO's objectives for Hong Kong reflect this distinction, referring only to the Joint Declaration.

China has signed but not ratified the 1966 UN [International Covenant on Civil and Political Rights](#) (ICCPR). However, the UK did so in 1976, extending its application to Hong Kong. Article 39 of the Basic Law provides that provisions of the ICCPR as applied to Hong Kong “shall remain in force and shall be implemented through the laws of the Special Administrative Region.” However, in ratifying the ICCPR, the [UK entered a reservation](#) under which it said it might not apply the right to vote [Article 25(b)] in Hong Kong. There has been considerable legal debate about whether this reservation was valid when it was made – and, if so, whether it remains valid today. Yesterday the [UK Government expressed concern](#) about the situation in Hong Kong and called for constructive dialogue leading to a “meaningful advance for democracy”.

Further reading: [“Foreign Office monitoring events in Hong Kong”](#), FCO press release, 29 September 2014; [“Q&A: Hong Kong's democracy debate”](#), *BBC News Online*, 23 September 2014; S. Tang, [“Status of the Reservation to the Right to Vote in Hong Kong”](#) (University of Hong Kong, March 2008).