

Standing Committee of the National People's Congress
Chairman Zhang Dejiang

**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
Alternative Report**

I. Preamble

On 15 July 2014, the Chief Executive of the Hong Kong Special Administrative Region submitted to you the "Report 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," summarizing the results of the Government's public consultation in the first half of this year.

2. The Report is biased, misleading, and unhelpful towards the forming of a consensus within the society on constitutional reform. As members of the pan-democratic camp, and having the mandate as elected members of the Legislative Council, we have the responsibility to co-author this Alternative Report, so as to present to you the true picture of the views of the Hong Kong people, including the current situation in Hong Kong, the people's strong demands for genuine universal suffrage without pre-screening, and the reasons why pan-democrats advocate for the "Three Tracks Nomination Proposal". In sum, we believe that in order for there to be effective governance and social harmony in Hong Kong, the methods for selecting the Chief Executive in 2017 and for forming the Legislative Council in 2016 must accord with the principle of "genuine universal suffrage without pre-screening."

3. Democracy is a universal value. The spirit of democracy is that “the people can be masters of themselves,” from which the principles of “Freedom” and “Equality” are derived. Among political systems, democracy is the most capable of embodying these values and principles.

4. Preeminent democratic theorist Robert Dahl¹ points out that a key characteristic of a democracy is the continuing responsiveness of the government to the preferences of its citizens, the indispensable conditions of which are inclusive civil participation and open competition among political leaders, with competition being the more important of the two. The Chinese Communist Party already had a deep understanding of democracy in the 1940s. Speaking on the rise and fall of political parties, Mao Zedong confidently declared to the people, “We have found a solution to this problem: ‘Democracy’, that is to say, supervision by the people. As long as the people have oversight of the government, the government will not slacken in its efforts. When everyone takes responsibility, there will be no danger that things will return to how they were when the leader is gone.” Applying this to the situation today, the premise behind numerous voices in Hong Kong calling for the inclusion of civil nomination in the Chief Executive election over the past year is also that there should be a fair and open competition, that the people can have oversight of the government by means of democratic elections.

5. We understand that the Central Government sees universal suffrage differently from the Hong Kong people, mainly on the issues of “Love China, Love Hong Kong” and “national security”.

6. On “Love China, Love Hong Kong,” although the pan-democratic camp has been strongly critical of local politics and policies, and has criticized the Central Government, the starting point is always that of tough love. As Mr. Deng Xiaoping said to a delegation of compatriots from Hong Kong and Macau on 3 October 1984, “As long as we take the standpoint of nationality and maintain the Great Harmony of the nation, regardless of political views, we, including those critical of the Chinese Communist Party, must all unite.”²

¹ Robert Dahl, *Polyarchy: Participation and Opposition*, New Haven: Yale University Press, 1971.

² *Selected Works of Deng Xiaoping*, p. 76.

Pan-democrats, whether moderate or radical, are all in agreement with the view above, which is also similar to what Deng said to a delegation of Hong Kong businessmen on 22-23 June of the same year, "Respect your own nationality, sincerely support the Motherland's resumption of the exercise of sovereignty over Hong Kong, and refrain from doing any harm to the prosperity and stability of Hong Kong."³

7. On 7 August 2014, speaking on the occasion of the inaugural meeting of the preparatory committee for the celebration of the 65th anniversary of the establishment of People's Republic of China, Director of the Liaison Office Zhang Xiaoming said that universal suffrage in Hong Kong should be viewed from the perspective of national security and quoted Deng's direction to members of the Hong Kong Basic Law Drafting Committee on 16 April 1987 that they have to stop some people from 'turning Hong Kong into a base for anti-Mainland operations under the guise of "democracy".' Hong Kong people understand that the Central Government's concern over national security stems from a century of national humiliation and the United States' current strategy of containment against the rise of China. In spite of that, the Central Government does not need to view national security and universal suffrage as being in opposition of one another. In fact, only when there is genuine universal suffrage can Hong Kong resolve the deep-rooted contradictions within its society, and can Hong Kong be prosperous and stable; this will in turn be in the advantage of national security.

8. Under globalization, increased interactions between countries, though in different ways and to varying degrees, are inescapable. Nonetheless, history has proven that the Korean War, the Great Famine, the Cultural Revolution, the June 4 Incident or even the disintegration of Eastern Europe has not endangered national security, and China is now on the rise. There is really no need to be overly worried.

9. We are convinced that as long as the Central Government allows Hong Kong to realize "One Country, Two Systems" and implement genuine universal suffrage with fair and open competition in line with international

³ Ibid, p. 66.

standards, not only will the image of the Central Government be greatly improved among the Hong Kong people, thereby engendering a stronger sense of belonging to Hong Kong and to the country, China will also win the respect and praise of critics all around the world and improve its standing among the international community as a genuine superpower that is responsible and keeps promises, rather than one that only elicits fear.

10. The current quagmire over constitutional reform originates from mutual distrust among the different parties. We are willing to communicate through open dialogue and to offer suggestions for the Central Government so as to see genuine universal suffrage implemented. We sincerely invite you or any Central Government officials responsible for Hong Kong constitutional affairs for a meeting.

II. Hong Kong's Path to Democracy

Opportunities for universal suffrage missed twice

11. Since the establishment of the HKSAR in 1997, the Hong Kong people have used various methods to voice out their strong demand for universal suffrage over the past 17 years. The NPCSC made an interpretation of the Basic Law a second time on Article 7 of Annex I and Article 3 of Annex II on 6 April 2004. On 26 April 2004, the "Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008" was adopted,⁴ formally rejecting the constitutional reform timetable for universal suffrage to be implemented for the 2007 Chief Executive election and in 2008 Legislative Council election.

⁴ "Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008." http://www.basiclaw.gov.hk/tc/basiclawtext/images/basiclawtext_doc19.pdf

12 The NPCSC issued another decision on 29 December 2007, once again denying universal suffrage for the Chief Executive and Legislative Council election in 2012. The explanation of the decision nevertheless made the promise for “universal suffrage to be implemented for the Chief Executive election no later than 2017, with universal suffrage for the Legislative Council election to follow later.” Hong Kong people’s hopes for universal suffrage were dashed again.

Social discourse and movements on the two election methods in 2016/17

13. Discussion on the next round of constitutional reform began immediately after the Chief Executive and principal officials in the current SAR Government were appointed on 1 July 2012. Associate Professor at the University of Hong Kong Mr. Benny Tai Yiu-Ting wrote a piece in the Hong Kong Economic Journal on 16 January 2013, titled “Civil disobedience’s deadliest weapon”,⁵ in which he advocated for Occupy Central as a last resort for the fight for genuine universal suffrage in 2017. On 27 March of the same year, Tai joined with Reverend Chu Yiu-ming and Professor Chan Kin-Man of the Chinese University of Hong Kong and published the manifesto for the “Occupy Central with Love and Peace” (OCLP) movement, with the following as its goals and convictions:

- The electoral system of Hong Kong must satisfy the international standards in relation to universal suffrage. They consist of the political rights to equal number of vote, equal weight for each vote and no unreasonable restrictions on the right to stand for election.
- The concrete proposal of the electoral system of Hong Kong should be decided by means of a democratic process, which should consist of deliberation and authorization by citizens.
- Any act of the civil disobedience, which aims to fight for realizing a democratic universal and equal suffrage in Hong Kong though illegal, has to be absolutely non-violent.⁶

⁵ “The Most Deadly Weapon of Civil Disobedience”, Benny Tai Yiu-ting, 16 Jan 2013, Hong Kong Economic Journal.

http://www.hkej.com/template/dailynews/jsp/detail.jsp?dnews_id=3609&cat_id=6&title_id=571297

⁶ “Occupy Central with Love and Peace” Manifesto.

http://oclp.hk/index.php?route=occupy/book_detail&book_id=10

14. At around the same time, 26 pan-democratic legislators, 12 political parties and organizations formed the “Alliance for True Democracy”, and in January 2014 recommended the “Three Tracks Nomination Proposal” for the 2017 Chief Executive election. In March of the same year, the Alliance announced its recommendation for the Legislative Council election method, including a one-off transitional arrangement in 2016, in preparation for the 2020 Legislative Council to consist completely of directly elected seats.

15. OCLP held a civil referendum on 22-29 June 2014, with 792,808 Hong Kong citizens going to voting booths in person or voting via electronic devices. They chose the Alliance for True Democracy’s “Three Tracks Nomination Proposal” (333,962 votes/42.1%) to be the proposal OCLP submits to the Government. What is also noteworthy is that 696,092 voters have made it very clear that if the Government’s proposal for constitutional reform does not comply with international standards, whereby voters do not have a real choice, the Legislative Council should veto the proposal.⁷

The SAR Government’s public consultation for the 2016/17 constitutional reform

16. On 4 December 2013, the HKSAR Government announced a five-month public consultation on “The Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016” lasting until 3 May 2014. At the same time, political parties, scholars and civil organizations actively voiced their demands for genuine universal suffrage by various means. Aside from the Civil Referendum, there were also:

- On 1 January 2014, the Civil Human Rights Front and the Alliance for True Democracy co-organized a protest, with “Immediate implementation of genuine universal suffrage; Civil nomination without pre-screening” as its theme and about 30,000 participants. On the same day, OCLP held a civil referendum in which 62,000 voted, with 90% voting for improving the representativeness of the Chief Executive Nominating Committee, no

⁷ “6.22 Civil Referendum” results, the HKU Public Opinion Programme.
<http://hkupop.hku.hk/chinese/release/release1164.html>

pre-screening mechanism during the nomination phase, and the inclusion of civil nomination elements;

- Pan-democratic political parties went on a hunger strike for universal suffrage in March, calling on citizens to sign the OCLP covenant and supporting the fight for the “Three Tracks Nomination Proposal”;
- Members of the Legislative Council were invited to visit Shanghai in April, and 10 pan-democratic legislators met with 3 Central Government officials to discuss constitutional reform;
- Over 510,000 people marched during the 1 July 2014 Protest, demanding implementation of genuine universal suffrage.

III. Current problems with governance in Hong Kong

17. Ever since the establishment of the SAR government, Hong Kong has undergone multiple governance crises, mainly stemming from the disjoint between the political system and social development. The political system is biased towards the pro-establishment camp: Pro-establishment individuals monopolize the Election Committee, playing the role of “kingmaker” in the medium- and long-term during the Chief Executive elections; also, half of the Legislative Council seats are elected by Functional Constituencies and through split voting, which allows for a small number of bodies with vested interests to exert a disproportionate amount of influence. Government policies are biased in their favour, and the unfair and unreasonable political system is hindering the public from expressing their views on policies. With grievances mounting day-by-day, the Government’s credibility and acceptability is going down the drain.

18. Under the current system, with the Chief Executive not being elected into office by the people, his popularity is always low. Since Leung Chun-ying assumed the office of the Chief Executive two years ago, his popularity has been exceptionally low as compared to the previous two Chief Executives, Tung Chee-Hwa and Donald Tsang. With the West Kowloon conflict of interests, gang-related activities, illegal structures, as well as contradictions in his governing practices, such as rejecting HKTV’s application for a free TV

license; all these have brought public trust to a new low, further worsening the already dysfunctional SAR Government.

19. According to HKUPOP opinion poll, Leung Chun-ying's score fell consistently ever since he assumed office. Support scores fell from 53.8 in late July 2012 to 46.1 in early July 2014, during which it was as low as 40.⁸ If a general election of the Chief Executive were to be held tomorrow, when asked whether they would support Leung Chun-ying, his popularity fell from the highest 56% when he first assumed office (early May 2012) to the most recent 26.2% (late July 2014).⁹ This is the lowest score ever among the three Chief Executives.

20. The political system defects and personal qualities of the Chief Executive directly affect the composition of the ruling coalition. The past two and current Chief Executives all appointed pro-establishment personnel to become members of the Executive Council, forming the "ruling coalition", but as neither the Chief Executive nor the ruling coalition have a mandate from the people and as Government operations have been lax, public policies and bills introduced often fail to answer the society's demands.

21. Before and after Leung Chun-ying assumed office, the pro-establishment members started to attack and dig up dirt on each other; the pro-establishment camp is unable to cooperate even among themselves in Legislative Council and District Councils; the Government have no sure-votes in the Legislative Council, and also lacks public support. All this has made policy-making extremely difficult. In the first year of Leung Chun-ying's office, the "legislative success rate" was only 45.83%, meaning that over half of the bills were unable to be passed on schedule in 2012/13, which is even lower than the average. Many of the Government's plans and bills were

⁸ The HKU Public Opinion Programme, the graph of the Rating of Chief Executive Leung Chun-ying. http://hkupop.hku.hk/english/popexpress/ce2012/cy/poll/cy_poll_chart.html

⁹ The HKU Public Opinion Programme, the table showing the votes for and against Leung Chun-ying in a hypothetical Chief Executive election. <http://hkupop.hku.hk/english/popexpress/ce2012/vote/poll/datatables.html>

withheld or delayed,¹⁰ demonstrating the adverse consequences of a poor Executive-Legislative relationship.

22. In 2002, the first Chief Executive Tung Chee Hwa established the principal officials accountability system, which originally intended to establish a governing team with a common conviction to improve the HKSAR's governance capabilities through politically appointed main officials. Principal officials ought to utilize their individual strengths to make suggestions, and to effectively promote their policies. Yet, all three Chief Executives have been nepotistic, failing to attract capable individuals into the governing team; Not only do principal officials lack a common political philosophy, they come from various sectors, many of which are irrelevant, and their abilities are uneven, thus becoming the stumbling block of the whole governing body. In the past two years, many principal officials and Executive Council members have resigned owing to trust issues, personal conflict of interest and other reasons respectively, setting a Hong Kong record.¹¹

23. Ineffective governance and long-standing contradictions between public policies and the wishes of the Hong Kong people have on numerous occasions driven them to go out on the streets to protest, including the 100,000 people surrounding the Government Headquarters to demand that the highly biased National Education curriculum be retracted, the 120,000 people protesting against the Government's unreasonable decision to reject

¹⁰ In the 16 years since the transfer of sovereignty over Hong Kong from the United Kingdom to China, the average legislative success rate is 55.60%, "Review of the Governance Performance of the HKSAR Government 2014", p. 13, SynergyNet. http://www.synergynet.org.hk/file/governance_report_2014.pdf

¹¹ Former Secretary for Development Mak Chai-kwong defrauded the housing allowance scheme, and stepped down 12 days after his appointment; Members of the Executive Council, Barry Cheung Chun-yuen and Franklin Lam Fan-Keung resigned in May and August 2013 respectively, due to the former's involvement in the HKMEx financial scandal and the latter's purchase of housing before the implementation of the stamp duty; the political assistant of the Secretary for Development, Henry Ho, resigned in August due to his failure to declare his interests in the North East New Territories Development Project; in April 2013, Information Co-ordinator June Teng Wai-kwen resigned due to health reasons; the political assistant of the Secretary for Labour and Welfare, Zandra Mok, as well as the political assistant to the Chief Secretary, Carmen Cheung, resigned to take care of her children and her mother in August and September 2013 respectively; in November of the same year, the Undersecretary to the Financial Services and Treasury Julia Leung Fung-Yee resigned owing to personal reasons.

HKTV's application for a free TV license, and most recently, the rushed passing of research funding for the NE New Territories development resulting in Hong Kong people needing to surround the Legislative Council building; the list goes on. These are all reflections of mounting grievances, which are now on the verge of eruption.

IV. Public Consultation for the Constitutional Development in 2016/17

24. If genuine universal suffrage can be achieved in 2017, it would be an opportunity to solve the political deadlock, placate social unrest, and make right what is wrong.

25. After the five-month constitutional development public consultation period ended on 3 May 2014, Chief Secretary for Administration and member of the Task Force on Constitutional Development Carrie Lam submitted the Consultation Report to the Legislative Council on 15 July; on the same day, Chief Executive Leung Chun-ying submitted another report to you for the NPCSC to decide whether there is a need to make amendments to the two electoral methods for the 2016 and 2017 elections, which is the first step of the "five-step procedure for constitutional reform".

26. Many believe that the government's public consultation work is not thorough enough, and that generally speaking, the Report is biased towards the pro-establishment camp, diminishing the viewpoints of the pan-democratic organizations and their supporters.

27. The Task Force on Constitutional Development was biased in the way it carried out the consultation. In the 45 meetings with the political parties and 182 meetings with the groups from different sectors during the consultation period, most of them were with pro-establishment political parties or groups with pro-establishment affiliations; the meeting arrangements with the Task Force were partial towards the Pro-Establishment camp. Further, the Government selectively quotes the results of opinion polls, having quoted from 5 institutions on 33 occasions, but with most of them

coming from 3 non-academic institutions which not only have close ties with the pro-establishment camp, but have also failed to disclose completely the details of this and past opinion polls, and with no means for the public to monitor the quality of their opinion polls. The Consultation Report also quotes out of context, such as when it selectively quotes the part where the Hong Kong Bar Association says civil nomination does not comply with the Basic Law, but ignores its recommendation that ‘the rationale and underlying objective of such a proposal—namely to ensure maximum participation of the general electorate in the nomination process—is perfectly capable of being accommodated within the concept of the “nomination committee” in the Basic Law.’

28. Additionally, the Report also diminished the opinions of pan-democratic Legislative Council members. Pan-democratic Legislative Council members represent several hundred thousand voters, and are important stakeholders and a crucial part of the Legislative Council. The Alliance for True Democracy, which is composed of these Legislative Council members, advocates that the possibility of direct election of all Legislative Council members in 2016 should not be eliminated. Functional constituency seats should be reduced to a minimum, and corporate votes and split voting should be abolished. However, the Report claims that “it is generally agreed that there is no need to amend Annex II to the Basic Law regarding the method of forming the Legislative Council in 2016,” which is completely contrary to the wishes of the people. In sum, the report the Chief Executive submitted to you hugely exaggerates the views of the pro-establishment camp and disparages all opposing views. [The Consultation Report does not fully reflect the wishes of the people; for details, please refer to Appendix I]

29. We believe that the Government deliberately used the so-called public consultation to fabricate public opinion, in an attempt to have the constitutional development framework tailor-made. The Consultation Report displays contempt for the wishes of the Hong Kong people to bring about civil nomination, which were expressed through the Civil Referendum and the July 1 march. It also attempts to give the final word on the issue and to give the nomination committee the power of political pre-screening, thereby

deciding the result of the Chief Executive election and treating every single vote of the voters as a mere rubber stamp. It would be misleading if the Chief Executive Leung Chun-ying leads the Central People's Government to believe that Hong Kong citizens are only seeking "one person, one vote" as a matter of formality, and not caring whether they can make a real choice; it may even result in the Central Government making erroneous judgments about the public opinion in Hong Kong and making mistakes in its decisions.

30. Starting from the fight for direct elections in the Colonial era, the pan-democratic camp, like the rest of the Hong Kong people, has been ardently expecting the implementation of universal suffrage. Nevertheless, the Hong Kong people also demand that universal suffrage complies with the international standards, that is to say, the principles of universality and equality, and disagree with the Nominating Committee pre-screening candidates.¹² We seek only genuine universal suffrage, so as to protect the votes of voters from manipulations by groups with vested interests and from becoming mere rubber stamps for what is in reality a small-circle election among the privileged.

31. The NPCSC promised that universal suffrage will be implemented in the 2020 Legislative Council election at the earliest, and the 2016 election will be the last one before then. The election methods cannot remain unchanged, for there would otherwise be no sincerity in the progress towards universal suffrage in accordance with the principle of gradual and orderly progress at all.

¹² The CUHK Hong Kong Institute of Asia-Pacific Studies carried out an opinion poll from 11-20 March 2014 about the citizens' views about the 2017 Constitutional Development proposal:

Q4 "Do you agree to let the nomination committee screen the 2017 Chief Executive candidates?"

Agree: 39.3%

Disagree: 53.5%

V. A Real Choice

32. The Hong Kong people generally agree that the implementation of genuine universal suffrage in accordance with the Basic Law and the relevant provisions is to the advantage of the long-term peace and stability of Hong Kong.

Genuine universal suffrage should accord with the following legal principles:

- All Hong Kong residents shall be equal before the law (Article 25 of the Basic Law);
- Every Hong Kong permanent resident shall have the right to vote and the right to stand for election in accordance with the law (Article 26 of the Basic Law);
- Every Hong Kong permanent resident shall have the right and opportunity, without unreasonable restrictions, to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage, guaranteeing the free expression of the will of the electors (Article 25(b) of the International Covenant for the Civil and Political Rights as applied to Hong Kong by Article 39 of the Basic Law and Article 21 of the Hong Kong Bill of Rights).¹³

33. Although the Government has pointed out that there was a reservation in respect of Article 25(b) of the International Covenant on Civil and Political Rights (“ICCPR”), the SAR Government has reaffirmed on numerous occasions that even though the basis for the implementation of universal suffrage in Hong Kong is the Basic Law rather than the ICCPR, the future universal suffrage models must comply with the principles of universality and equality.¹⁴

¹³ “Finding the Right Path to Universal Suffrage: What the Government is NOT telling you”, HK2020 – Civic Party, Para. 2.02. <http://www.2017.hk/consultation-paper-english.pdf>

¹⁴ With reference to the “Green Paper on Constitutional Development”, paragraph 2.29, <http://www.cmab.gov.hk/doc/issues/GPCD-e.pdf>; 2 December 2012, The speech of the Secretary of the Constitutional and Mainland Affairs Bureau about the motion on “Roadmap of universal suffrage” <http://www.info.gov.hk/gia/general/200912/02/P200912020316.htm>; and 14 July 2010, the reply by the Secretary for Constitutional and Mainland Affairs, Mr Stephen Lam, to the LCQ5 <http://www.info.gov.hk/gia/general/201007/14/P201007140208.htm>

34. The UN Human Rights Committee of the International Covenant on Civil and Political Rights has put forth at least three requirements:

- Every voter should have an equal number of votes;
- The value of each and every vote should be equal;
- Citizens' eligibility to stand for election should not be limited by unreasonable restrictions.¹⁵

35. As such, in accordance with the Basic Law and the relevant provisions, the right of permanent residents of the Hong Kong Special Administrative Region to be elected must be protected. In implementing universal suffrage, there must be genuine free choice on the part of the voters, to the exclusion of all electoral systems that have the practical effect of political pre-screening.

2017 Chief Executive Election

36. In order to accord with the principle of "universality and equality", the function of the Nominating Committee must not include pre-screening. That is to say, the rules governing Nominating Committee and its work, as well as the Nominating Committee itself, shall refrain from depriving any person's right to be elected. Voters shall have a "free choice of candidates."¹⁶

37. The Alliance for True Democracy's "Three Tracks Nomination Proposal", which has since become the constitutional reform proposal submitted by the Occupy Central movement to the Government, consists of the following:

Any person interested in running for the Chief Executive can be nominated as a candidate through any one of the following procedures:

¹⁵ As stated in the UN "International Covenant on Civil and Political Rights" Human Rights Committee "General Comment No. 25".

¹⁶ The Hong Kong Bar Association "Consultation Document on Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016" Paragraph 9 of the Executive Summary of the Submission.
[http://hkba.org/whatsnew/press-release/1a-HKBA-ConstDev%20ExeSum%20\(English\)%20final.pdf](http://hkba.org/whatsnew/press-release/1a-HKBA-ConstDev%20ExeSum%20(English)%20final.pdf)

- Civil Nomination: A nominee having received the signed endorsement of 1% of the registered voters shall be endorsed by the Nominating Committee;
- Political Party Nomination: Any political party or political group having received 5% or more of the total valid votes in the last Legislative Council direct election can independently or jointly nominate one person as nominee. The nominee shall be endorsed by the Nominating Committee;
- Nomination by the Nominating Committee: Members of the Nominating Committee shall conduct direct nominations.

38. In addition to the “Three Tracks Nomination Proposal”, the Alliance for True Democracy has made the following recommendations for reform of the method for selecting the Chief Executive:

- The Nominating Committee has the power to refuse to endorse any potential candidacies for reasons provided by express provisions of the law, but it shall not refuse to endorse any potential candidacies based on conditions that amount to political censorship such as “Love China, Love Hong Kong” and “confrontations with the Central Government.”
- The election shall employ the two-round, run-off system by universal suffrage. A candidate is elected as Chief Executive by winning more than 50% of the valid votes in the first round. If no candidate wins more than 50% of the valid votes in the first round, a second round shall be held between the two highest-placed candidates, in which the candidate with the greater number of valid votes shall be elected as Chief Executive.

39. The Alliance for True Democracy’s “Three Tracks Nomination Proposal” won in the civil referendum with over 790,000 participants, has public support and is broadly representative. It is an inclusive proposal to which the Government should pay more attention in that while the element of civil nomination guards against political pre-screening, the proposal also affirms the power and role of the Nominating Committee.

2016 Legislative Council Election

40. Universal suffrage for Legislative Council elections, that is, the complete abolition of Functional Constituencies, is a consensus within the society in Hong Kong. According to the Decision of the NPCSC on 29 December 2007, if the selection for the Chief Executive in 2017 is by universal suffrage, then there can be universal suffrage for the Legislative Council election in 2020.

41. In order to achieve the goal of implementing full universal suffrage for the 2020 Legislative Council election, amending the 2016 method for forming the Legislative Council is an important step. The current ratio of Geographical Constituencies seats and Functional Constituencies seats in the Legislative Council is 35:35. If Annex II of the Basic Law is not amended for 2016 such that there is no transitional reform such as by increasing the proportion of directly elected seats, then there would need to be a once-and-for-all change for 2020, greatly increasing the difficulties.

42. During the public consultation for constitutional reform, much of the focus of the society fell on the method for selecting the Chief Executive by universal suffrage. You would have been misled if the report of the Chief Executive C Y Leung leads you to conclude that the Hong Kong people have no demands and no opinions on the method for forming the Legislative Council.

VI. Conclusion

43. Since the establishment of the SAR Government, Hong Kong people's demands for universal suffrage have twice been in vain. Distortions in the political system have led to Hong Kong being on the verge of being torn apart. Hong Kong's path to democracy has long been stalled, and it contrasts sharply with Hong Kong people's strong demands for universal suffrage. The promise for the implementation of universal suffrage for the 2017 Chief Executive election originally brought hope to the Hong Kong people, but the

Central Government must not make the mistake of thinking that Hong Kong people have only been fighting for a ballot in hand; the universal suffrage Hong Kong people has always longed for is genuine universal suffrage whereby citizens have a real choice and are able to fairly participate to a high degree. Nevertheless, the SAR Government public consultation report has failed to reflect these wishes of the Hong Kong people.

44. Hong Kong people are generally supportive of One Country Two Systems, Hong Kong people ruling Hong Kong with a high degree of autonomy. The Central Government should have trust in Hong Kong voters, having accumulated more than twenty years of experience in democratic elections, to make a wise and informed choice and select a Chief Executive favourable to the long-term peace and stability of Hong Kong and the country. For the Central Government to let voters have a real choice and freely vote for a political leader by means of one person, one vote will strengthen Hong Kong people's sense of identity and belonging to the Hong Kong SAR and to the country, while also resolving deep-rooted contradictions within the society. Indeed, this is the best method for protecting national security and maintaining Hong Kong's long-term prosperity and stability.

45. To attain effective governance and social harmony, we recommend that Annex I of the Basic Law be amended so that the method for selecting the Chief Executive in 2017 would accord with the principle of genuine universal suffrage without pre-screening; and also, that Annex II of the Basic Law be amended so that in the method for forming the Legislative Council in 2016, the proportion of directly elected seats would be increased and split voting abolished

Pan-democratic Members of the Legislative Council

August 2014

**[Appendix I: The Voices which the Report on the Public Consultation on
the Methods for Selecting the Chief Executive in 2017 and
for Forming the Legislative Council in 2016 is Unable to Reflect]**

(1) The Task Force on Constitutional Development is biased towards the pro-establishment camp

As seen in the list of political parties/group consulted from the Report's appendix, the pro-establishment camp was consulted many more times than the pan-democratic camp.

Within the consultation period, the Task Force on Constitutional Development attended a total of 45 Legislative Council meetings and consultation events with different political parties/Legislative Council members. After deducting the 12 Legislative Council meetings and the group meetings with all the Legislative Council members, the members of the Task Force only met with the pan-democratic camp 12 times, while it met with the pro-establishment camp 21 times.¹⁷ The Task Force attended 182 consultation events hosted by different sectors and groups; excluding the 21 District Council meetings (including one meeting with the Chairmen of the 18 District Councils) and the 8 district promotion events, by roughly calculation, the members of the Task Force met for less than 5 times with the Pan-Democratic groups, but met with groups with obvious pan-establishment backgrounds or stance for nearly 100 times, treating them with partiality.¹⁸

There are also clear political biases in the Task Force's choices of political organizations to meet with. For example, apart from meeting with the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB),

¹⁷ "Report on the Public Consultation on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016" Appendix I.

¹⁸ "Report on the Public Consultation on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016" Appendix II.

two of its branches were also consulted; none of the other political parties received the same treatment.¹⁹

(2) Quoting opinion polls with partiality

The Report quoted the results of opinion polls from 5 institutions, of which only 2 are academic institutions. The Report quoted a total of 33 opinion poll questions, and those from the academic institutions were only quoted 14 times which is less than half of the total amount.²⁰

The rest of the quoted opinion polls originated from the Hong Kong Chinese People's Political Consultative Conference (Provincial) Members Association (HKCPPCC), the Hong Kong Public Opinion Research Centre (HKPORC) and the Hong Kong Research Association (HKRA).²¹ The HKCPPCC is strongly pro-establishment; The HKPORC belongs to a wholly-owned subsidiary institution of the One Country Two Systems Research Institute, whose Executive Director is Cheung Chi-kong, a member of the Executive Council. Among the reported past opinion polls, most of them were commissioned by the DAB. The past opinion polls undertaken by these two institutions cannot be found on the internet.

¹⁹ Also, "Dr Philemon CHOI Yuen-wan and other individuals of the community" had two opportunities to exchange views; this is in stark contrast with the experience of the organization Hong Kong 2020 led by former Chief Secretary Anson Chan, which designed a mild proposal which complies with the Basic Law and did not include civil nomination. Yet, when she wrote to the Chief Secretary of Administration in March this year to submit her recommendation and request to meet with the Task Force, and later to meet with the Deputy Minister of the Constitutional and Mainland Affairs Bureau, she did not receive any reply. Further, about 80 individuals from the financial sector who supported "Occupy Central with Love and Peace" hosted an event on 23 April 2014, publishing a 10-point statement which delineated the wants of Hong Kong citizens, and urged the government to implement genuine universal suffrage that complies with the international standard. However, the Task Force refused to send any representatives to the event. On the other hand, the Task Force sent representatives to pro-government organizations, including the Hong Kong SME Forum and the constitutional development promotion events hosted by the Chai Wan Kai Fong Welfare Association.

²⁰ The HKU Public Opinion Programme (its reports known as the HKUPOP) was quoted on 9 occasions, one of which was commissioned by MingPao; the remaining 8 times were commissioned by the Alliance for True Democracy. The Hong Kong Institute of Asia-Pacific Studies was quoted 5 times.

²¹ The HKCPPCC was quoted 6 times; the Public Opinion Survey Centre was quoted 8 times (all of which was commissioned by the DAB); the Hong Kong Research Association was quoted 5 times.

As for the HKRA, although it has a website to record all its past opinion polls, its website has not been updated for years. The results and statistical approaches of recent opinion polls were not uploaded to the internet, making it impossible for citizens to monitor the quality of its opinion polls. The credibility of the opinion polls done by these 3 institutions is lacking; yet, they were quoted multiple times by the Government in the Report, and were used to support conclusions that are in line with the Pro-establishment, bringing the fairness of the Report into question.

The Report also distorted the original meaning of the questions when it quoted them. For example, the Report mentions that ‘there are more people who consider that...the post of the CE should be held by a person who “loves the country and loves Hong Kong”.’²² This conclusion stems from the results of opinion polls carried out by the HKCPPCC, HKPORC and the HKRA. However, the results of the HKUPOP quoted by the Report show that the percentage of those who agree and those who do not agree is more or less equal, and the wording of the HKUPOP question is rather different from the conclusion the Report arrived at.²³ Also, the opinion poll question of the HKPORC is “Should a person who confronts the Central People’s Government (Beijing) be allowed to be a candidate of the CE election?” and “Do you support a person who confronts the Central People’s Government (Beijing) to hold the post of the CE?” This is totally irrelevant to the conclusion of “Love Country, Love Hong Kong.”

Apart from distorting opinion polls, the data in the Report submitted to you by the Chief Executive is hugely exaggerated, claiming that ‘the public generally agrees that the post of the CE should be held by a person who “loves the country and loves Hong Kong”’ and identifies it as the “mainstream opinion”, fabricating public opinion.

²² “Report on the Public Consultation on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016” Paragraph 3.11.

²³ The question of the HKUPOP is “Do you agree that the NC should sieve CE candidates according to political standards such as ‘love the country and ove Hong Kong’, ‘not confronting the Central Authorities’, etc.?” 38% of the respondents agree, around 36% disagree, at the 95% confidence interval, the proportion of positive and negative results is similar.

(3) Quoting out of context

Before the Government published its Report, the Hong Kong Bar Association (HKBA) already publicly warned the Government not to quote its submission out of context. Unfortunately, the Report selectively quoted the part where the HKBA says that civil nomination does not comply with the Basic Law, but ignores its view that ‘the rationale and underlying objective of such a proposal—namely to ensure maximum participation of the general electorate in the nomination process—is perfectly capable of being accommodated within the concept of the “nomination committee” in the Basic Law.’

Further, while the Report emphasized that the Nominating Committee would be formed with reference to the current provisions, it completely disregarded one point which the HKBA reiterates: “Since the nominating committee’s function is limited to nomination, it is neither its function nor its purpose to determine the result of the Chief Executive election.”²⁴

(4) Diminishing the opinions of the pan-democratic camp

The Government claims that it received over 100,000 submissions during the consultation period, however, instead of quantifying the data in the Report, there was only a large amount of descriptions such as “mainstream opinion”, “there are more people who consider”, and “quite a number of views”, which are all quantifiers without objective standards. For example, 790,000 citizens participated in the “Occupy Central with Love and Peace” Civil Referendum in June, and over 510,000 people took to the streets on July 1 to fight for genuine universal suffrage; yet the Government merely uses “some organizations and individuals” to describe them²⁵, unfairly disparaging the public opinion.

²⁴ Consultation Document on Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016, 11 July 2014.

²⁵ The Report by the Chief Executive to the NPCSC, Paragraph 11(vii), ‘some organizations and individuals on nomination thresholds and nominating procedures, including proposals introducing “civic nomination”, “party nomination”, etc. outside of the NC’.

The Legislative Council is now composed of 70 members, with the Geographical Constituencies and the Functional Constituencies each making up half of the seats. In the 2012 Legislative Council election, the pan-democratic members won 766,227 (Geographical Constituencies) and 892,011 votes (Functional Constituencies [807,480 votes came from the District Council (Second)]) respectively, which is more than the votes won by the pro-establishment members (Geographical Constituencies: 641,746 and Functional Constituencies: 535,377 [523,339 votes came from the District Council (Second)]). The pan-democrats represent several hundred thousands of Hong Kong citizens, and it is unacceptable for their opinions to be diminished as “individual organizations” or “some” opinions.

The Report claimed that “it is generally agreed that there is no need to amend Annex II to the Basic Law regarding the method of forming the Legislative Council in 2016”²⁶. The NPCSC promised to have full universal suffrage in 2020 at the earliest, and therefore the election method must be amended in the preceding Legislative Council election in 2016 to serve as a transitional arrangement, otherwise it would be difficult to smoothly achieve full universal suffrage in 2020 in accordance with the principle of gradual and orderly progress. The Alliance for True Democracy recommends that the number of seats in the Functional Constituency should be gradually reduced in 2016 and that corporate votes and the split voting system be abolished.²⁷

The pan-democrats comprise over one-third of the seats in the Legislative Council, representing nearly 800,000 voters; also, the pan-democrats occupy more directly elected seats than the pro-establishment camp. The pan-democrats and their supporters are very important stakeholders, and yet their opinions to improve the 2016 Legislative Council Election method are completely ignored in the Government Report, which is an attempt to sail under false colours.

²⁶ “Report on the Public Consultation on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016” Paragraph 4.34; the Report by the Chief Executive to NPCSC, Paragraph 11(x).

²⁷ “The Alliance for True Democracy” Proposal for Legislative Council Elections:
http://www.atd.hk/wp-content/Election_Plans/ATD_LegCo_Election_Plan_ENG_v2.pdf

(5) Exaggerating the pro-establishment views when quantifying opinions

In the Report, the Government repeatedly exaggerated the pro-establishment views, and diminished those of the pan-democrats. The Report the Chief Executive submitted to you is even more severely distorted.

With regards to the method for selecting the Chief Executive in 2017, the Report takes the pro-establishment view that “the NC has a substantive power which cannot be undermined or bypassed” as the mainstream opinion, but the proposal of the pan-democrats that ‘apart from the NC, “civic nomination”, “party nomination”, etc. should also be accepted as other pathways to nominate CE candidates’ is merely reduced to the view of some organizations and individuals. In sum, the report the Chief Executive Leung Chun-ying submitted to you severely exaggerates the views of the pro-establishment camp while diminishing those in opposition, is greatly distorted, and is entirely inconsistent with the facts.