

Notice and Comment Policymaking During Uncertain Times

The Case of Hong Kong

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Introduction

The notice and comment process—in which governments make public draft policies and solicit feedback on these proposals—is seen as a vehicle for promoting transparency, participation, and responsiveness in policymaking. According to the [World Bank](#), notice and comment policymaking has the potential to reduce corruption in government, increase citizen compliance with government decisions, and foster higher quality laws and regulations.

The Hong Kong government has engaged in notice and comment policymaking for decades. In recent years, however, two events have shaken the foundations of Hong Kong’s political system. First, [large-scale protests](#) erupted in 2019 in response to a government proposal to permit the extradition of criminal suspects to mainland China. Massive demonstrations disrupted politics and everyday life, including universities, subway stations and the airport, and the Legislative Council itself—all of which were the scenes of sit-ins and violent confrontations. Second, the government has pursued a zero-COVID approach during the global pandemic. The approach’s strict quarantines, lockdowns, and travel bans [threaten Hong Kong’s status](#) as an international hub of culture, commerce, and trade.

In this commentary, we explore stability and change in Hong Kong’s notice and comment process during the uncertain times of the past few years. We have collected from the Hong Kong government information about notice and comment policymaking from 2013 to the present.² We analyze this information as a means of exploring the following possibility. We posit that the

¹ We thank Susan Dudley and Zhoudan Xie for helpful comments on previous drafts and Andrew Wan for assistance with data collection.

² This information—much of which is available at <https://www.gov.hk/en/residents/government/publication/consultation/archives.htm>—covers the period during which Xi Jinping has been China’s paramount leader.

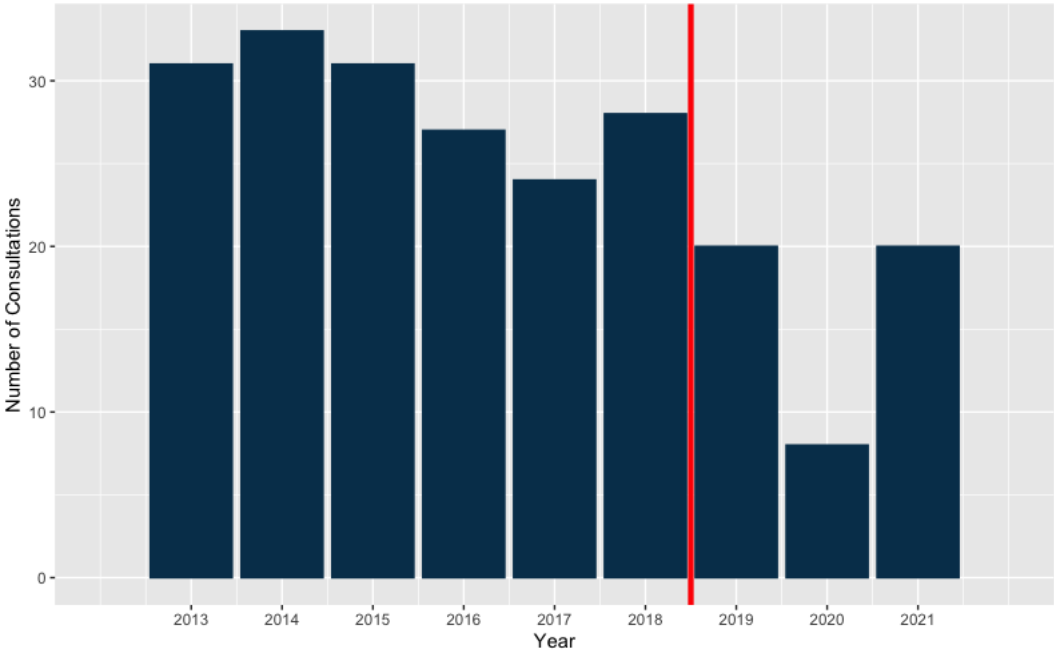
protests and the pandemic have provided the government with opportunities to make policy with less transparency, participation, and responsiveness than in the past. This expectation is consistent with Hong Kong’s ongoing [turn toward authoritarianism](#). For example, recent changes in the legislative and judicial systems have eroded the independence of judges and the Legislative Council, thereby ensuring that decisions hew to the dictates of the Chinese Communist Party in Beijing.

To assess this possibility, we compare notice and comment policymaking during the 2019-2021 period to previous years along a number of dimensions. Our aim is to appraise the extent to which the upheaval of recent years has been associated (if at all) with an erosion of the democratic nature of policymaking in Hong Kong, as manifested specifically in the notice and comment process. Our analysis focuses on the frequency of notice and comment policymaking, government disclosure of policy proposals, the duration of comment periods, and government responsiveness to comments.

Frequency of Notice and Comment Policymaking

From 2013 through 2021, the Hong Kong government sought public feedback on 222 policy proposals, an average of 25 consultations per year (Figure 1).

Figure 1: Frequency of Consultations by Year



As illustrated by the vertical red line, the frequency of notice and comment policymaking decreased in the 2019-2021 period. During this period, notice and comment policymaking occurred an average of 16 times per year, a 45 percent decline in comparison to the six preceding years. The fact that the drop began in 2019 suggests that the protest movement impacted the government's inclination to consult with the public. The 2020 acceleration in this decrease suggests that the onset of the global pandemic also exerted pressure on consultation in the policymaking process. Ongoing attention is needed to determine if the 2021 rebound in the frequency of notice and comment policymaking persists in the years ahead.

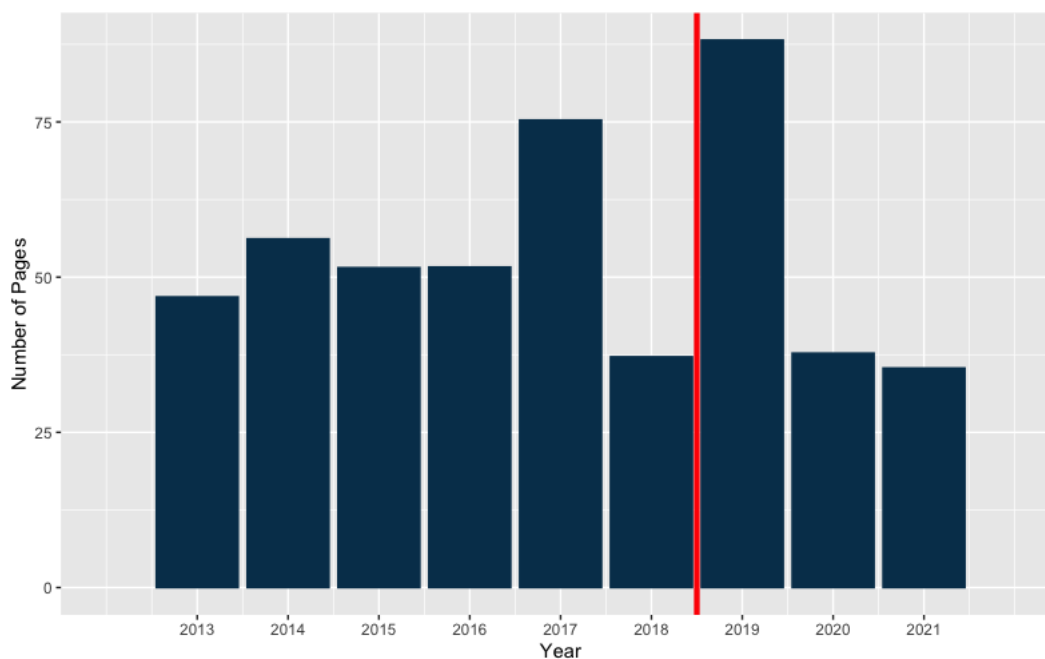
Government Disclosure of Policy Proposals

The Hong Kong government has historically made the vast majority of policy proposals publicly available via the Internet, a practice that was sustained in the 2019-2021 period. Consultation documents were on average 54 pages in length, demonstrating that it is typical for the government to disclose detailed information about policy proposals. There is, however, substantial variation in the length of consultation documents, with a minimum of four pages and a maximum of 459 pages.

The average length of consultation documents varies from year to year (Figure 2). Collectively, the average length of 2019-2021 consultation documents was 58 pages, slightly longer than the average of 52 pages for the six preceding years. Consultation documents in 2019 were unusually lengthy.³ In 2020 and 2021, by contrast, consultation documents were on average relatively short in length. Overall, the period of political demonstrations and the global pandemic was not associated with a decrease in the information about policy proposals disclosed in the notice and comment process.

³ Four 2019 consultation documents exceeded 100 pages in length.

Figure 2: Average Length of Consultation Documents by Year



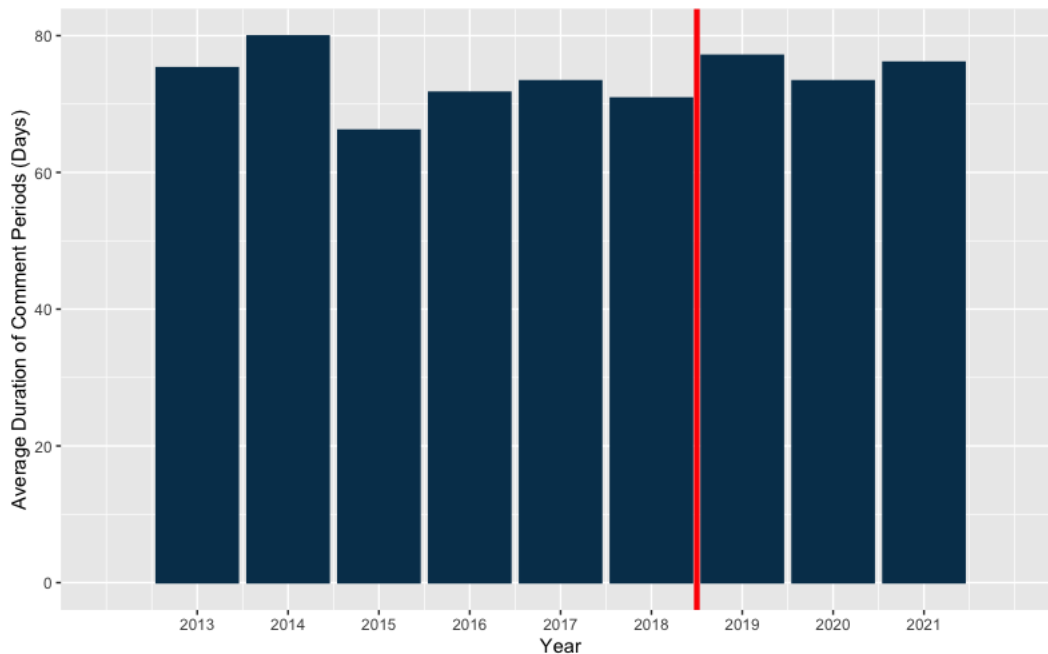
Duration of Comment Periods

The implementation of comment periods of sufficient duration is widely recognized as an important element of the notice and comment process. In the United States, for example, [Executive Order 12866](#) associates 60 days with the provision of a “meaningful opportunity” to comment on policy proposals. The Hong Kong government offers comment periods consistent with such notions.⁴ Across the period under analysis, the average duration of comment periods was 74 days. It was exceedingly unusual for comment periods to last fewer than 30 days.

Year-to-year variation in the duration of comment periods was minimal (Figure 3). For consultations that took place between 2019 and 2021, the average duration of comment periods was 76 days, nearly identical to the average for consultations occurring in the six preceding years (73 days). In sum, the public has not suffered a diminished opportunity to comment on policy proposals during the political and public health upheavals of the past few years.

⁴ In its [Guidelines on Public Consultation](#), the Hong Kong government states that “the public [should be given] a reasonable period of time to air their views during a consultation exercise” without specifying a recommended number of days.

Figure 3: Average Duration of Comment Periods by Year



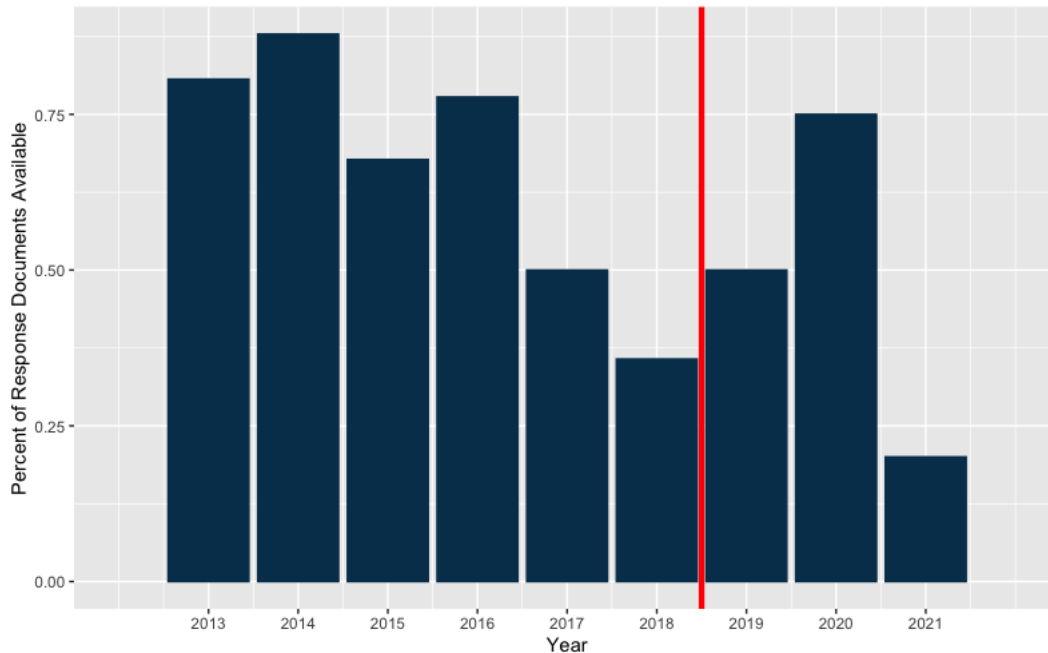
Government Responsiveness to Comments

It is well established that citizens and other stakeholders are fundamentally concerned with the processes through which government officials acknowledge and respond to public inputs when making decisions. Unmet expectations of procedural responsiveness run the risk of fostering discontent in the political system. The record of the Hong Kong government is mixed in providing readily available responses to feedback received during notice and comment policymaking. Response documents are available for 62 percent of the consultations under analysis. Government responses, in other words, are not accessible for more than one-third of notice and comment processes.

The availability of response documents varies from year to year (Figure 4). The government was particularly hesitant to openly engage with public sentiment in 2017 and 2018, the years directly prior to the period of turmoil in Hong Kong politics. In the 2019-2020 period, 57 percent of notice and comment processes provided readily accessible responses to feedback.⁵ Response documents were available for a nearly identical 54 percent of consultations during the preceding three years.

⁵ Not all response documents are at this writing available for 2021 notice and comment processes, as it often takes months after the conclusion of consultations for response documents to be published. We therefore exclude 2021 consultations from analysis of the accessibility of response documents.

Figure 4: Percent of Available Response Documents by Year



Conclusions and Implications

The past few years have been a time of upheaval in Hong Kong. Although the political protests and the public health crisis have undoubtedly shaped Hong Kong politics in general, it is not necessarily the case that all instruments of democratic governance have experienced an erosion. Our aim in this commentary has been to examine the operation of the notice and comment process, a common means through which transparency, participation, and responsiveness are incorporated into Hong Kong policymaking.

We find that the frequency of notice and comment policymaking decreased during the political protests and onset of the global pandemic. The Hong Kong government, however, continues to provide robust information about policy proposals and meaningful opportunities for public comment. In these respects, notice and comment policymaking has operated as an instrument of procedural stability in an era in which democratic governance is confronting existential threats.

Future research should examine these issues in specific policy areas, to determine the extent to which the findings hold (or do not hold) in domains such as public health and in matters considered politically sensitive in Hong Kong. In addition, a more in-depth assessment will require analysis of the content of public comments and the substance of government responses to this feedback.