

United States House of Representatives Committee on Foreign Affairs

Subcommittee on Asia and the Pacific

“Hong Kong: A Broken Promise?”

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Mr. Chairman, Ranking Member Faleomavaega, and distinguished Members of the subcommittee, thank you for inviting me to testify today. As protestors remain on the streets of Hong Kong, this discussion is timely, and we hope to clarify the critical human rights issues at stake.

It is appropriate to recall that in 1997 the hope was that not only would Hong Kong’s autonomy be respected, and the rights to the freedom of assembly, expression, and political participation there would remain intact, but also that these realities might have a positive effect on the mainland. People in Hong Kong have continued to make clear how much they value an independent judiciary, a free press, a meritocratic civil service, and a professional police force. Yet developments of the past year have shown that in fact, the mainland’s politics and disdain for rights are having alarming consequences for those realities, a territory of critical importance to the United States and within the region.

Since 1997, Human Rights Watch has expressed concern over erosions of Hong Kong’s autonomy, particularly with respect to the independence of the press, increased interference into Hong Kong politics, and a growing role for Beijing’s Central Liaison Office in Hong Kong. Consistent with its attitude towards other regions on its periphery from Tibet to Taiwan, President Xi Jinping’s government appears to perceive Hong Kong people’s greater demands for a fully elected government—one that responds to their concerns and one in which they are entitled to according to law—as an existential threat. Beijing has insisted that the Chief Executive must be someone who passes a political litmus test set by the Chinese Communist Party, has made clear that efforts by people in Hong Kong to press their demands through every possible peaceful avenue will be rejected, and has moved swiftly to crush any expressions of sympathy in the mainland for pro-democracy efforts in Hong Kong.

The extraordinary demonstrations by a cross-section of people in Hong Kong are in turn not simply about the composition of Hong Kong's nomination committee. After waiting patiently for years for China to fulfill its promise to give democracy, many are angry at the central government's overreach, particularly with respect to its decision to retain control over the selection of Hong Kong's leader. Many expressed growing frustration and a sense of marginalization by the Hong Kong government, arguing that it increasingly failed to respond to the interests of the majority on issues ranging from education policy to urban planning. They are also a reaction to threats to key independent institutions in the territory that have helped protect human rights, and to growing unease over whether the Hong Kong government is serving the interests of the Hong Kong people or the central government when it comes to key decisions. In the broadest sense, the current tensions are local and logical reactions of people who have enjoyed civil liberties, an independent judiciary, a free press, and a reasonably responsive government, but who see these freedoms increasingly threatened, and who have some sense of how these rights are denied just across the border.

### Beijing's legal obligations with respect to Hong Kong

The 1984 Sino-British Joint Declaration spells out the terms for transfer of Hong Kong from British to Chinese control. That document stipulates that Hong Kong shall have "a high degree of autonomy" in matters other than national defense and foreign policy, while the Basic Law, Hong Kong's functional constitution, states that universal suffrage is the "ultimate aim" for the selection of the chief executive, the top leader, as well as members of the Legislative Council. The Basic Law also provides that the International Covenant on Civil and Political Rights (ICCPR) applies to Hong Kong, and the Covenant's guarantee of universal and equal suffrage means that people not only have the right to vote in elections, but also that they should have the right to stand for elections regardless of their political views. The committee responsible for monitoring the implementation of the ICCPR has also stated that when the law requires a certain threshold of supporters for nomination, "this requirement should be reasonable and not act as a barrier to candidacy."

Hong Kong's Basic Law states that Hong Kong can move towards the goal of universal suffrage by amending the electoral methods in three steps. First, two-thirds of all Legislative Council members have to endorse the amendments. Second, the current chief executive has to agree to it. Lastly, the amendments have to be reported to China's Standing Committee for the National Peoples' Congress (NPCSC) for approval.

The central government, in a series of decisions made since 1997, has backtracked on this obligation to institute universal and equal suffrage. The commitment to allowing electoral reform to be decided by Hong Kong people was first broken on April 6, 2004, when the NPCSC made an "interpretation" of the Basic Law adding a requirement that the chief executive submit a

report to Beijing justifying the need for any further democratization. The decision shifted the initiative in proposing electoral reforms to Beijing's hand-picked chief executive, and away from the Legislative Council. In April 2004, directly after this NPCSC decision, the Chief Executive submitted a report that downplayed the need for substantial reform, and the NPCSC quickly followed this with a decision that ruled out universal suffrage for the 2007 selection of the chief executive and the selection of the 2008 Legislative Council.

In 2007, it ruled again that there would not be universal suffrage for the next elections of the chief executive and the Legislative Council in 2012. However, the 2007 decision also said that universal suffrage was “maybe” in store for the next chief executive election and Legislative Council elections in 2017 and 2020, respectively.

### Recent developments

As Hong Kong authorities began in late 2013 to prepare for a public consultation on how the 2017 elections should be carried out, Li Fei, a top mainland official and chairman of Beijing's Basic Law Committee, gave a speech stating that Hong Kong's chief executive must be an individual who “loves the country and loves Hong Kong,” and that people who “confront the central government” do not meet this criterion. This followed similar pronouncements by Li's predecessor, Qiao Xiaoyang, as well as the director of the Liaison Office of the Chinese Government in Hong Kong, Zhang Xiaoming. Li added that the nomination committee for the chief executive would be restricted to a small selected group of Hong Kong people who will make a “collective” decision on candidates allowed to run in the election. The position countered earlier proposals by prodemocracy groups advocating a process in which all Hong Kong voters would be considered “members” of the nominating committee and candidates securing a specified number of public nominations would get on the ballot.

Over the subsequent months, the Hong Kong government and large parts of the public made their views clear about democracy and about Hong Kong's future. In early June 2014—shortly after the 25<sup>th</sup> anniversary of the Tiananmen Massacre—the Chinese government issued a “white paper” asserting “overall jurisdiction” over Hong Kong, and that Hong Kong “is limited to the level of autonomy granted by the central leadership.” This was widely seen as a violation of the commitment to “one country, two systems” in which Hong Kong would be granted “a high degree of autonomy,” except in foreign affairs and defense. While the substance of the “white paper” was not new, and carries no legal weight, its timing and language were seen as abrasive and unnecessary by many in Hong Kong.

In late June 2014, more than 700,000 Hong Kong people—one in five registered voters—participated in an unofficial, non-binding referendum to choose among three proposals for political reform that ensure universal suffrage via the pro-democracy “Occupy Central with Love

and Peace” movement. The central government dismissed this effort as illegal and the product of “anti-China forces.” In mid-July, Hong Kong Chief Executive (CE) Leung Chun-ying submitted the results of the government’s public consultation to the central government, claiming it was “mainstream opinion” that a subsequent CE “love China and love Hong Kong,” that the power to nominate CE candidates should remain vested in a committee controlled by Beijing, and that the legislature should not be democratized before the 2017 elections. The results of the public consultation as presented to the central Chinese government were clearly manipulated, and failed to reflect different views articulated by large segments of the population.

Following the report’s submission, on August 31, 2014, the NPCSC handed down its decision, which catalyzed the Occupy demonstrations: while it would allow all eligible voters in Hong Kong to cast ballots for the territory’s chief executive, it would impose a stringent screening mechanism that effectively bars candidates the central government in Beijing dislikes from nomination for chief executive.

In reaction to the Chinese government’s August 31 rejection of open nominations for Hong Kong’s chief executive, Occupy Central protest leaders, pan-democrats, and student protest leaders vowed to launch an “era of civil disobedience.” Students boycotted classes between September 22 and 26; as that boycott came to a close, a group of students entered Civic Square, in front of the government headquarters in Admiralty, without permission. Police surrounded the students, and arrested and pepper sprayed some of them. The police treatment of the students provoked a large number of people—about 50,000—to congregate around Civic Square on September 27. “Occupy Central” organizers then announced that they were officially launching their planned demonstrations.

On September 28, Hong Kong police declared the protest illegal, and cordoned off the government headquarters grounds. The announcement drew even more protesters, who demanded access to the government headquarters. After an hours long standoff with police, protesters walked out onto a major thoroughfare that separated them from government headquarters. Police responded with pepper spray, batons, and 87 cans of tear gas. Protesters refused to disperse, and by the next morning they had occupied three sites in Hong Kong. For weeks, two of these sites remained occupied by hundreds of protesters, despite repeated police clearances, and assaults by persons opposing the Occupy movement. After police cleared one site in Mongkok on November 26, protesters responded with “fluid occupation” which involves repeatedly “crossing roads” slowly along the stretch of the former occupy sites to temporarily block traffic, as well as a failed escalation on November 30 to block all access to government headquarters in Admiralty.

### Human rights concerns

Human Rights Watch has a host of concerns about human rights violations in Hong Kong, both specific to the protests and to larger issues.

On the core issue of electoral arrangements, the Basic Law guarantees the continued application of the International Covenant on Civil and Political Rights to Hong Kong, which in turn guarantees that people shall not only have the right to vote in elections, but also that they should have the right to stand for elections regardless of their political views. While the August 31 NPCSC decision will expand the vote to choose the Chief Executive to all eligible voters, it retains central government control over the nominating committee that will determine who may run as a candidate for chief executive. As recently as October 23, 2014, the UN's Human Rights Committee expressed concern that the proposed nomination process poses "unreasonable restrictions" on the right to run.

The protests themselves have involved a number of human rights violations.

- Mainland and Hong Kong authorities deemed the protests illegal because organizers had not obtained permission under the Public Order Ordinance. Yet this Ordinance is in tension with international law because it imposes significant restrictions on the freedom of assembly without considering the importance of the right to gather to express grievances, and is susceptible to political abuse.
- The Hong Kong police's use of force, including tear gas and pepper spray, against unarmed protestors is of deep concern. While we note as positive Chief Executive Leung's condemnation of violence against protestors on October 4, and the arrest of seven police in late November for their brutal beating on October 16 of a peaceful demonstrator, the October 6 statement by the Chief Executive that authorities would use "all actions necessary" and evidence of further incidents involving excessive use of force by the police have undermined public confidence in the strict adherence of the police to the UN Basic Principles on the Use of Force and Firearms. Human Rights Watch calls on the Hong Kong government to conduct an independent investigation into police conduct during the protests.
- We are similarly deeply concerned about arrests of peaceful protestors at the beginning of the demonstrations in late September, but also during the late November efforts to clear protestors from particular locations, including the arrests of student demonstration leaders Joshua Wong and Lester Shum.
- We are also concerned that protestors appear to be subject to various types of intrusive surveillance by both the Hong Kong and Chinese governments, which apparently have based decisions to arrest protest leaders and bar others from entering China on their online postings and participation in the protests. The sense of pervasive collection and monitoring of participation in public debates and protests have thrown a pall over Hong Kong's robust civil liberties.

## Larger implications

The central and Hong Kong government's failures to engage meaningfully with popular demands for greater democracy in the territory—through a formal consultation process, through a civic referendum, through months of peaceful demonstrations—leaves a longtime bastion of respect for rule of law on edge.

Beijing has made its disdain for the views of people in Hong Kong clear through its extraordinary overreach regarding autonomy, electoral arrangements, and a host of other policy issues. And because the Chinese Communist Party cannot countenance the idea that people in China might actually want participatory governance, it has repeatedly dismissed the demonstrations as a product of external, “anti-China forces.”

It has also made clear that it will not tolerate any expressions of support in the mainland for the demonstrators in Hong Kong. More than 100 individuals have been detained in the mainland in recent months for doing as little as posting pictures of themselves holding a sign expressing support for Hong Kong people's demand for genuine universal suffrage. Beijing's unwillingness to allow student leaders or those sympathetic to the demonstrations from Hong Kong into the mainland is an utterly anachronistic and counterproductive strategy for dealing with the concerns there.

None of this bodes well for expectations that China will comply with key international legal obligations, come to grips with peaceful dissent, or accept—for Hong Kong, for Tibet, or for Xinjiang—the idea that many successful governments around the world have officials and administrations from regions benefiting from autonomy arrangements with views divergent from those at the national level. It is also an ominous sign for Hong Kong as a critical space for activists and organizations that work on or monitor developments in China. The efforts of nonviolent protestors in Hong Kong has also triggered expressions of concern across the region, prompting reactions from Tokyo, which rarely speaks publicly about human rights concerns in China, and from Taiwan, where voters appear to have been particularly motivated to reject a government arguing for closer ties to Beijing.

## US response

The United States has expressed concern about violence against and by demonstrators, about the right to peaceful assembly, and the rights to vote and to run, and officials have said they have expressed these concerns directly to the highest levels of the Chinese government. Some US commentary, such as the initial statement regarding the August 31 NPCSC interpretation, did not accurately characterize the problem, while other remarks are superficially sensible—calling, for

example, that differences be addressed through peaceful dialogue—but seem to deny the reality that Hong Kong peoples’ efforts to do just that have been ignored. President Obama’s comments on Hong Kong while in Beijing were so calibrated as to be convoluted, and he and other US officials have repeated so frequently that the US has had no role in fomenting or sustaining the demonstrations that it seems more concerned in assuaging Beijing’s irrational fears than in standing up robustly for democratic rights.

We believe the US’ response to be factually accurate but functionally and diplomatically ineffective. It makes the mistake of focusing disproportionately on the reactions of the Chinese government while forgetting to demonstrate solidarity with those on the front lines of a struggle for democracy. It is appropriate to ask why President Obama could be so publicly restrained on the topics of elections and democracy in Beijing yet a few days later offer up extensive commentary and support on the same subject in Burma, and shortly after in Australia. One thinks about visible gestures of solidarity for democracy elsewhere—for example, US Assistant Secretary of State Victoria Nuland handing out bread to demonstrators in Maidan Square, American ambassadors observing elections (or expressing concerns about those elections’ shortcomings) in other parts of Asia, or the US vociferously decrying the rollbacks of democratic rights in other parts of the world. Why not Hong Kong?

To be so reticent has three problematic consequences. It undermines the very purpose of the US-Hong Kong Policy Act, and it enables other governments, which for better or for worse take their cues on these issues from the US, to remain virtually silent. Arguably most problematic, it telegraphs to pro-democracy activists in Hong Kong and the mainland that they can likely only count on perfunctory support or recognition from the United States.

### Recommendations

Physically removing demonstrators from the streets of Hong Kong will do little to answer their underlying grievances, and arguably will serve to exacerbate them. Already tensions between protesters and police have risen to a breaking point. The most critical and urgent step the central and Hong Kong governments can take is to revisit the territory’s undemocratic electoral arrangements and ensure that appropriate ones are fashioned—as required by article 45 of the Basic Law—“in light of the actual situation,” where the majority favors genuine democracy. We urge that both take immediate action, including by developing a time-bound and detailed plan, to put into practice universal and equal suffrage. Both should ensure that any proposals for nominations for the 2017 chief executive elections conform to international human rights standards, including those set out in the ICCPR. Any committee established for nominating candidates for the elections should conform to such requirements.

While it is reassuring to a point to see Hong Kong authorities investigate several police officers who were caught on camera viciously beating a protestor, that confidence is undermined by repeated incidents of excessive use of force. In just the past few days police have appeared to use excessive force in arresting student protest leaders Joshua Wong and Lester Shum on November 26 in Mong Kok as they stood by observing police; no warning or peaceful request to surrender to authorities were issued before police tackled them to the ground. In Admiralty and Mong Kok in the past 48 hours police have used pepper spray at close range after tearing off demonstrators' protective goggles, and used batons to hit people who were clearly trying to leave these areas. The authorities should meet with protest leaders, given that the single discussion held in October yielded no results. Hong Kong authorities should submit a new report to the central government acknowledging broad support for genuine democracy and ask the NPCSC to clarify or retract its August 31 decision to make the nomination committee for the chief executive genuinely "broadly representative," as articulated in the Basic Law. The Hong Kong authorities should also take steps to further democratize the semi-democratic Legislative Council.

The central government in Beijing should realize Hong Kong's political system is unsustainable and must be fixed to make it more responsive to people in the territory. Each of the chief executives handpicked by Beijing has proven deeply unpopular with significant numbers of people in Hong Kong. At the political level, it would be encouraging if the senior leadership in Beijing could accept the idea that people in the mainland and Hong Kong want democracy, and not construe Hong Kong peoples' demands for democracy as a threat to national security. At a minimum, Beijing should stop arresting people in the mainland for peaceful expressions of support to the demonstrators, and lift whatever restrictions have been put in place so that demonstrators can enter the mainland.

It is encouraging to see the reestablishment of a Hong Kong caucus here in the Congress, and the introduction of an updated Hong Kong Policy Act. We believe that increased US government scrutiny and regular reporting are and should be seen as a positive obligation—an opportunity to identify critical developments and points of leverage in a territory of considerable diplomatic, economic, and strategic interest to the United States. Equally important, we urge the US to be consistent in its support to democratic movements around the world. The people of Hong Kong deserve no less than their counterparts in other countries.