



Eight Questions about “Occupy Hong Kong” ^[1]

October 16, 2014

1. What is Hong Kong’s Occupy Movement?

Hong Kong’s Occupy Movement refers to a citizens’ blockade of major roads in Hong Kong’s Admiralty, Mongkok, and Causeway Bay districts since September 29, 2014. At the height of the protests, hundreds of thousands of students, activists, ordinary citizens, and politicians took to the streets to press the Hong Kong government to respond to their demands for full democracy in the territory.

The original idea for the movement came from academic Benny Tai, who proposed a blockade of roads in Central, Hong Kong’s financial district, on January 16, 2013. The original movement was called “Occupy Central with Love and Peace.” Professor Tai said the blockade would be used as a last resort if the Hong Kong government rules out genuine democracy during the 2014 electoral reform process which decides the methods for selecting Hong Kong’s top leader, the chief executive, in 2017. Occupy Central with Love and Peace organized a series of public discussions on political reform through 2013 and an online poll or “civic referendum” on political reform in June 2014. The movement received broad support from Hong Kong’s democratic politicians and political parties as well as student and civic groups including Scholarism and the Hong Kong Federation of Students.

2. What are Beijing’s legal obligations with respect to Hong Kong?

The 1984 [Sino-British Joint Declaration](#) ^[2] 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.

Hong Kong’s Basic Law states that after 2007, 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. Last, the amendments have to be reported to China’s Standing Committee for the National Peoples’ Congress (NPCSC) for approval.

3. What led to the demonstrations?

The central government, in a series of decisions made since 1997, has backtracked and foreclosed 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 means that electoral reforms can only be initiated by Beijing’s hand-picked chief executive, and that the NPCSC must then approve any reform proposals initiated by the chief executive before the Legislative Council can weigh in. This thus bars Hong Kong’s semi-democratic legislature from taking any action without Beijing’s approval. In 2004, NPCSC 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. But 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.

Ahead of the promised reforms for 2017, Hong Kong’s Chief Executive Leung Chun-ying established a task force on the issue on October 17, 2013. The task force started the first round of public consultation on December 4, 2013, which lasted for five months. Leung’s report on the consultation to the NPCSC, which he submitted on July 15, 2014, said it is “mainstream opinion” in Hong Kong that chief executives must “love China and love Hong Kong”; that the power to nominate chief executive candidates should be vested in a committee like the current structure controlled by Beijing, and that the legislature should not be democratized before the next elections.

Although the public consultation was ostensibly open to public input, the results as presented to the central Chinese government as “mainstream opinion” were clearly manipulated and failed to reflect different views articulated by large segments of the population, who have consistently expressed strong desires for genuine democracy both in public opinion polls and in demonstrations.^[3]

Following the report’s submission, on August 31, 2014, the NPCSC made a decision on the 2017 chief executive elections that catalyzed the Occupy demonstrations.

4. What did the NPCSC decision on Hong Kong on August 31 say, and is it compatible with international law?

On August 31, the NPCSC handed down its decision: while it will allow all eligible voters in Hong Kong to cast ballots for the territory’s chief executive, it will impose a stringent screening mechanism that effectively bars candidates the central government in Beijing dislikes from nomination for chief executive.

Limitations on who may run for office that are based on political opinion, expressions, membership or allegiance are incompatible with the ICCPR. That the Chinese government has labelled pro-democracy legislators and political figures who criticize the Chinese Communist Party’s policies on Hong Kong and human rights as “anti-China,” suggests an intent to discriminate against potential candidates for chief executive on the basis of their political opinions. Political screening of candidates for office in Hong Kong is also incompatible with the Sino-British Joint Declaration, which states that Hong Kong “enjoy [s] a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.” Any chief executive will be bound under the terms of the Joint Declaration and the Basic Law, and the Hong Kong government has been promised it can otherwise enjoy great autonomy and reflect the preferences of Hong Kong people on most policy matters. Many successful governments around the world have local officials and administrations with views divergent from those at the national level.

5. What are the human rights concerns regarding the Hong Kong government’s response to the protests between September 26 and October 15?

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 they have entered an “era of civil disobedience” and intimated that protests would start on October 1. On September 22, Hong Kong university students, and later secondary school students, started boycotting classes for a week. As the boycott was ending on the evening of September 26, a group of students entered Civic Square, in front of the government headquarters, without permission. The square had recently been closed to the public except by permit. Police surrounded the students and arrested them, using pepper spray on protesters who blocked police from entering the square. The student protesters were released, some on bail, within 48 hours.

In response to police treatment of the students, far larger numbers of people—about 50,000—went to the area around Civic Square on September 27. Organizers of the pro-democracy movement “Occupy Central” then announced that they were officially launching

their planned demonstrations and joined the protests. On September 28, Hong Kong police declared the protest illegal. They also cordoned off the government headquarters grounds, barred protesters from entering the area, and declared that anyone found inside would be arrested.

This decision appeared to prompt thousands more protesters to gather in the Admiralty and Wanchai areas near government headquarters, demanding that police re-open the area. The protesters broke through police barricades and walked out onto the major thoroughfares between those protesters corralled in the government headquarters, and their supporters on the other side of the road, who had been prevented by the police from joining them. Protests then spread to multiple locations, blocking roads in the Admiralty, Wanchai, Central, and Mongkok areas.

In the afternoon and evening of September 28 and early hours of September 29, police again used pepper spray against some of the protesters, beat others with police batons in Admiralty, and fired 87 rounds of tear gas in nine locations. The use of police force in a city which has a tradition of tolerating peaceful protests further galvanized many in the public to join and support the protests, and to condemn government actions. In the morning of September 29, riot police were removed from the protest sites.

In a news conference on September 29, Hong Kong’s police chief said the tear gas and pepper spray were used to “maintain safe distance” between protesters and police and that protesters had “charged the police cordon lines in a violent manner.” He said that if protesters had not dispersed there would have been injuries to both police officers and demonstrators. Human Rights Watch wrote to CE Leung on October 6, 2014, asking that authorities further explain the basis of the use of force; ^[4] as of this writing a reply has not yet been forthcoming.

It is unclear whether police took all the steps necessary before using force. While police said they raised warning flags before they fired tear gas and pepper spray, it is unclear whether they gave protesters adequate warning or time to disperse before releasing pepper spray or tear gas. Some protesters told Human Rights Watch that they did not see or hear any warning before being hit with tear gas or pepper spray. A few protesters told Human Rights Watch they saw the warning flags, but that the flags appeared only seconds before the police took action. In these instances, protesters panicked and moved backward. Some protesters said they feared a stampede in the crowded area in Admiralty. About three dozen protesters and police officers suffered minor injuries.

Between September 29 and October 3, hundreds to thousands of protesters remained on the roads in Admiralty, Mongkok and Causeway Bay while about a hundred police officers

kept guard without further attempt to remove them. On October 3, unidentified men kicked, punched, and knocked to the ground some peaceful protesters, journalists, and onlookers at two of the protest sites in Mongkok. These attackers also assaulted some female protesters, groping their breasts and legs. Around the same time, another group of men in masks also attacked peaceful protesters in Causeway Bay. In Mongkok, police officers failed or refused to assist when pro-democracy protesters were beaten or harassed, and let suspected assailants leave without having taken down their details or arresting them, according to protester reports and video footages. These attacks took place over several hours, and throughout that time police were few in number and appeared unwilling to protect the protesters. Within 24 hours, police announced that they had arrested 19 people suspected of perpetrating the violence.

Questions have been raised as to whether the police tolerated violent attacks by counter-demonstrators, and whether those who attacked were in any way related to either the Chinese or Hong Kong governments. Human Rights Watch notes that while the tactic of using plainclothes thugs to attack activists is used by China from time to time, it has no specific information as to the identity or organization of the violent counter-attackers to the Occupy protests. It has urged that investigation as to police response proceed quickly.^[4]

Human Rights Watch has also expressed alarm about excessive use of force in the early hours of October 15, when hundreds of police officers told 50-100 protesters to leave Lung Wo Road in Admiralty, where they had been since the previous evening. Police then started to remove barricades set up by the protesters; protesters responded by holding up hands and opened umbrellas in anticipation of being pepper sprayed. The scene turned chaotic minutes later as police pushed forward to force the protesters who refused to leave the road, and used pepper spray and police batons against them.

In one video^[5] clip, six police officers arrest a protester, carry him away to a darkened corner, and beat and kick him for four minutes while he lies on the ground offering no resistance. In another clip,^[6] police pepper spray a protester in the face at close range even though he has his hands up and offers no resistance; the same clip shows police yelling at journalists to leave while they were filming.

Within hours after the video of the beating was first aired by a local television station, Hong Kong police responded by expressing concern, “reassigning” the offending officers to other positions, and vowing to undertake an “impartial investigation” into the case. While the speedy response to the October 15 incidents is a positive step, it comes closely on the heels of the September 28-29 and October 3 instances of questionable police conduct.

6. Are the protests only spurred by concerns over electoral arrangements?

The Chinese government has repeatedly laid blame for the demonstrations on “anti-China” forces. But the ongoing protests in Hong Kong are to a large extent motivated by local Hong Kong concerns over government’s unwillingness to accommodate consistent popular demands for genuine democracy in the territory as well as other local issues.

People in Hong Kong are increasingly concerned about whether they still have the power to shape the public policies that directly affect their lives. Most people here say their quality of life has stagnated—if not deteriorated—since Hong Kong returned to China’s sovereignty, according to a recent opinion poll. In 2001, the median monthly income of young people was HK\$8,000 (US\$1,000); 10 years later, it is the same ^[7] even though the consumer price index rose 12 percent. Income inequality has risen, and few can afford housing.

Some also feel that Hong Kong’s leadership is adopting policies that reflect the central government’s interests while ignoring the opinions, needs, and rights of ordinary Hong Kong people. Many people are also apprehensive about the Hong Kong leadership’s pursuit of greater integration with the mainland. It is facilitating the permanent migration of at least 54,000 mainland Chinese a year, with eligibility vetted by mainland, not Hong Kong, authorities. The proposed introduction of school-based “national education” similar to mainland educational propaganda, or the construction of a new town, whose critics feared a grand plan to merge Hong Kong with Shenzhen, across the border, were similarly deeply unpopular; the education campaign did not go ahead. The central government’s June 2014 “white paper” on Hong Kong included an alarming statement that Hong Kong judges should be “patriotic administrators,” a phrase understood to mean that they make their decisions according to the demands of the Chinese Communist Party rather than according to the law. Ultimately the concern is that Hong Kong people have progressively less influence over domestic policies that are rapidly changing their home.

The tensions in Hong Kong are also local reactions of people who have enjoyed civil liberties, an independent judiciary, a free press, and a reasonably responsive government, but who see those freedoms increasingly threatened, and who have some sense of how these rights are denied just across the border.

7. Is “Occupy” Hong Kong illegal?

Under international human rights law, people have the right to peacefully assemble to express their concerns. Government may restrict assemblies to accommodate public interests such as public safety, but only where it is necessary and where the restriction is the least intrusive means of protecting public interests under the circumstances. Hong Kong people enjoy this right under both the ICCPR article 21, and the Basic Law, article 27.

Hong Kong’s Public Order Ordinance requires organizers to notify police of demonstrations involving more than 30 people seven days in advance, and requires organizers to get a “notice of no objection” from the government before proceeding. This standard 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 United Nations Human Rights Committee, an international treaty body that monitors compliance with the ICCPR, has repeatedly expressed concerns that the ordinance “may facilitate excessive restriction”^[8] to human rights.

The Occupy protests did not give notice to the police, or obtain a notice of no objection. So far the Hong Kong government has not justified its decision to remove peaceful protesters from particular areas, or offered any explanation of why less restrictive measures would not have sufficed to protect public order. There were many accounts of excessive use of force, including through spraying chemical agents, and the Hong Kong government has not explained why these measures were necessary or proportionate to protecting public safety. Protesters had asked the government to open up “Civic Square,” a space in government headquarters, in exchange for protesters’ allowing a main road in Admiralty to reopen to traffic on October 12. The government rejected this proposal but proposed alternative venues for protest that are still central and accessible, including Victoria Park and Tamar Park. On October 13 and 14, police removed barricades unmanned by protesters, and opened up two roads that were occupied in Causeway Bay and Admiralty without resistance from protesters.

8. What does Human Rights Watch think the central and Hong Kong governments should do to de-escalate the situation, and what is likely to happen next?

The Chinese government should realize Hong Kong’s political system is unsustainable and must be fixed to make it more responsive to the people. Each of the chief executives handpicked by Beijing has proven deeply unpopular with significant numbers of people in Hong Kong, and the prolonged uncertainty over the 2017 and 2020 election process is likely to trigger ongoing protests.

To de-escalate, the Hong Kong government should start by meeting with the protest leaders, commit to an investigation into the use of excessive force to clear protesters, and exercise restraint with respect to further uses of force. It should announce steps to make the nomination committee for the chief executive genuinely “broadly representative,” as articulated in the Basic Law, and to further democratize the semi-democratic Legislative

Council. Authorities in Beijing and Hong Kong must revisit undemocratic electoral arrangements and ensure that appropriate ones are fashioned “in light of the actual situation in the Hong Kong SAR,” where the majority favors genuine democracy, as required by article 45 of the Basic Law.

As of October 2, the Hong Kong government and protest leaders had agreed to meet to discuss political reform. But on October 3, student protest leaders called off talks after they accused police of failing to swiftly prevent the anti-Occupy violence in Mongkok. On October 6, the two sides again agreed to meet, setting an October 10 date. But on October 9, citing protest leaders’ announcement of new civil disobedience actions and insistence that talks produce results, Hong Kong authorities called off the talks, stating that the “basis of the dialogue has been shaken,” and that “constructive” discussions were not possible. On October 16, Chief Executive Leung told the press that the Hong Kong government “hoped” to meet student protesters the week after; students have not yet responded. In the meantime, protest leaders have asked protesters to stay in the occupied areas in Admiralty, Causeway Bay, and Mongkok.

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[2] http://www.legislation.gov.hk/blis_ind.nsf/CurAllEngDoc/034B10AF5D3058DB482575EE000EDB9F?OpenDocument

[3] <http://www.scmp.com/news/hong-kong/article/1555060/ambiguous-and-unscientific-critics-scornful-reports-electoral-reform>

[4] <http://www.hrw.org/news/2014/10/05/human-rights-watch-letter-chief-executive-leung-hong-kong-protests>

[5] <http://www.scmp.com/video/hong-kong/1616887/hong-kongs-tvb-television-station-airs-video-alleged-police-beating-occupy>

[6] <http://www.scmp.com/video/hong-kong/1616741/hong-kong-police-use-pepper-spray-lung-wo-road-clear-out-operation>

[7] http://www.cpr.cuhk.edu.hk/tc/press_detail.php?id=1056

[8] http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-CHN-HKG-CO-3_en.doc

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