

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

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October 7, 2014

The Honorable Leung Chun-ying
Chief Executive of Hong Kong
Government House
Upper Albert Road
Central
Hong Kong, S. A. R.
VIA Email

Dear Sir:

I am writing on behalf of the Association of the Bar of the City of New York (the “Association”) to express our grave concern regarding the treatment of pro-democracy protesters in Hong Kong. I also write to urge the government of the Hong Kong Special Administrative Region, People’s Republic of China (“Hong Kong”), to take all necessary measures to protect the right to freedom of expression and assembly, and to ensure that Chief Executive electoral reforms for 2017 provide for meaningful universal suffrage in a manner consistent with the Basic Law, the Joint Declaration, the aspirations of the Hong Kong people, and international legal principles.

The Association is an independent non-governmental organization with more than 24,000 members in over 50 countries. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world, and the Committee of Asian Affairs, which focuses on legal and policy issues and developments relating to Asia.

The Association has a lengthy history of concern with developments in Hong Kong. In 2000 the Committee on International Human Rights issued its report “Post-Handover Hong Kong: One Country, Two Legal Systems,” on the rule of law, democracy, and the protection of fundamental rights in Hong Kong after 1997. The Committee on International Human Rights issued an Interim Report in 2002 on developments between June 1999 and July 2002. We have also issued a Report on the Functional Constituency voting system of Hong Kong’s legislature.

On August 31, the National People's Congress Standing Committee issued its Decision regarding Chief Executive electoral reform for 2017,¹ which was immediately criticized by non-governmental organizations and others as a failure to implement truly democratic elections in Hong Kong.² Beginning September 22, university and secondary school students began a week of boycotts and demonstrations, and on September 26, a group of protesting students entered and occupied a section of the Hong Kong Government Headquarters. According to reports, on September 27, police forcibly removed the students, including through use of pepper spray, with over 60 arrests.³

The reported precipitous use of pepper spray and detentions of peaceful protesters raise serious concerns regarding the guarantee of free expression and association. The International Covenant on Civil and Political Rights (ICCPR), which protects those rights, binds Hong Kong. Article 27 of the Hong Kong Basic Law also guarantees "freedom of speech, of the press and of publication; freedom of expression, of assembly of procession and demonstration."

Peaceful civil disobedience continued on September 28, strengthened by anger over the police treatment of students. Because police blockades were erected, demonstrators were forced to congregate on Connaught Road, where police eventually fired a total of 87 canisters of tear gas in an attempt to disperse the crowd. Police also displayed a banner warning protesters to "disperse or we fire."⁴ It is not clear from reports whether police took all the steps necessary before using force on either day, or whether they gave protesters appropriate warnings or time to disperse before using the pepper spray on September 27, or tear gas on September 28. Authorities should ensure that police use of force abides by the United Nations Basic Principles on the Use of Force and Firearms.

In a September 29 statement, the Hong Kong Bar Association deplored and condemned the "excessive and disproportionate use of force" by police, particularly noting that the "overwhelming majority" of demonstrators were peaceful, that many demonstrators were young students, and that there were "widespread reports" that visual warnings had not been given before tear gas was used.⁵ Additionally, more than 370 solicitors and registered foreign lawyers issued a separate statement condemning the use of tear gas as an "affront [to] the rule of law."⁶

The Association is concerned about the use of force against protesters who according to reports have posed no clear threat to public security. Only minimal actions such as throwing empty plastic bottles and shaking police barriers have been documented, and there have been no verbal threats against the police. The Hong Kong Government agreed to talks with student leaders on

¹ The Decision is available at <http://www.2017.gov.hk/filemanager/template/en/doc/20140831a.pdf>.

² Chris Buckley and Michael Forsythe, "China Restricts Voting Reforms for Hong Kong," August 31, 2014, NY Times, <http://www.nytimes.com/2014/09/01/world/asia/hong-kong-elections.html>.

³ BBC News, "Hong Kong police clear pro-democracy protesters," September 27, 2014, <http://www.bbc.com/news/world-asia-china-29390770>.

⁴ David Tweed and Dominic Lau, Tear Gas Erodes Hong Kong Police Force's Hard-Won Reputation, October 3, 2014, <http://www.bloomberg.com/news/2014-10-02/tear-gas-erodes-hong-kong-police-force-s-hard-won-reputation.html>.

⁵ "Statement of the Hong Kong Bar Association on the Use of Force by the Hong Kong Police at Harcourt Road on 28 September, 2014," September 28, 2014, hkba.org/whatsnew/misc/20140929-Press_Statement_of_HKBA_29_September_2014.pdf.

⁶ Stuart Lau and Joyce Ng, "Lawyers considering legal action over the use of force on Occupy protesters," October 1, 2014, <http://www.scmp.com/news/hong-kong/article/1604960/lawyers-considering-legal-action-over-polices-use-force-occupy>.

the night of October 2, and the next day, pro-democracy protesters in Mongkok and Causeway Bay districts were attacked by thugs, who reportedly destroyed demonstrators' tents and punched, kicked, spat, and threw objects at students. Disturbingly, women and girls were subjected to sexual assault, harassment, and intimidation, and journalists were reportedly attacked. The scale and nature of the attack suggested organized violence; police later confirmed that some of the 19 people subsequently arrested had backgrounds in organized crime.⁷ Despite these problems, police presence nonetheless remained thin and police did little to intervene.⁸ Violence against pro-democracy protesters and journalists continued at protest sites on October 4, again with minimal police presence or intervention.

The Association remains concerned for the safety of all Hong Kong protesters, who are entitled to the rights and protections articulated in the Basic Law. These rights include the right to equality before the law under Article 25, freedom of speech, freedom of the press, and freedom of assembly and demonstration under Article 27, freedom of the person and freedom from arbitrary or unlawful arrest, detention, or imprisonment under Article 28. These rights are also articulated under international legal standards to which Hong Kong is bound, most particularly through the ICCPR, which protects freedom of expression in Article 19, and freedom of assembly in Article 21.

The Association urges the Hong Kong Government to exercise restraint in dealing with peaceful protesters, to protect peaceful protesters from violence and to allow them to fulfill their fundamental rights of freedom of expression and assembly. We also urge the Hong Kong Government to enter into meaningful dialogue with concerned citizens. The Association has called attention to the importance of Hong Kong's democratic development and the continued respect for fundamental rights within the territory in the past.

We note the professed commitment of the Hong Kong Government to democratic elections for Chief Executive under universal suffrage, as prescribed by the Basic Law and the Joint Declaration. Article 45 of the Basic Law states that the "ultimate aim" is for the Hong Kong public to elect its Chief Executive by universal suffrage. In addition, it is the long-standing view of the United Nations Human Rights Committee that Article 25(b) of the ICCPR applies to Hong Kong.⁹ That article states that "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions... (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors ..." The Association reiterates that the fundamental rights to freedom of expression, assembly, and self-determination are self-evident international norms protected in numerous international documents and endorsed by myriad international institutions.

We respectfully urge the Hong Kong Government to take all steps as may be necessary to protect the freedoms of speech and assembly, and to ensure that the ongoing discussions regarding Chief

⁷ Tania Branigan, "Hong Kong protesters beaten and bloodied as thugs attack sit-in," October 3, 2014, <http://www.theguardian.com/world/2014/oct/03/hong-kong-protesters-democracy-occupy>.

⁸ Amnesty International, "Hong Kong: Women and girls attacked as police fail to protect peaceful protesters," October 3, 2014, <http://www.amnesty.org/en/for-media/press-releases/hong-kong-women-and-girls-attacked-police-fail-protect-peaceful-protesters->.

⁹ See e.g. Concluding Observations of the Human Rights Comm (H.K.): U.K., U.N. Doc. CCPR/C/79/Add.57 (1995), ¶ 19 and Concluding Observations of the Human Rights Com (H.K.S.A.R.): U.N. Doc. CCPR/C/HKG/CO/2 (2006), ¶ 18.

Executive electoral reform result in a solution consistent with the Basic Law, the Joint Declaration, international law, and the democratic aspirations of the Hong Kong people. The Association believes that sincere recognition and implementation of all fundamental human rights is a necessary prerequisite for all members of the international community.

Respectfully,

A handwritten signature in black ink, appearing to read "Debra L. Raskin". The signature is fluid and cursive, with the first name "Debra" being the most prominent part.

Debra L. Raskin

cc:

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