



Human Rights Watch Letter to Chief Executive Leung on Hong Kong Protests ^[1]

October 5, 2014

C.Y. Leung

Chief Executive

Hong Kong Special Administrative Region

Tamar, Hong Kong

Dear Chief Executive Leung:

Human Rights Watch is an independent non-governmental organization that monitors and reports on compliance with international human rights standards in more than 90 countries around the world. We have been reporting on and advocating solutions to human rights abuses in Hong Kong and mainland China for more than 20 years.

The ongoing protests in Hong Kong are to a large extent the result of the government's unwillingness to accommodate consistent popular demands for greater democracy in the territory. The public consultation process was ostensibly open to public input, yet 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.

The International Covenant on Civil and Political Rights applies to Hong Kong and 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. We believe the current demonstrations to be the physical manifestation of a failed political process, one that is likely to continue until people in Hong Kong have the ability to vote and run for office regardless of their political views.

We are encouraged by your condemnation of violent attacks, and the arrest of 19 people suspected of perpetrating unprecedented violence against peaceful protesters in Mong Kok and Causeway Bay on October 4.

Yet we are concerned with your insistence today that protesters must leave the streets by October 6, and that you will use "all actions necessary" to achieve that aim. These remarks

raise serious concerns about whether the government will adhere to international obligations to use force only where necessary and only to the minimum extent needed. The poor performance of some police officers in protecting some protesters from violent counter-demonstrators, as well as the government and the police's initial failure to condemn that violence, raises questions about whether protesters' rights and safety will be respected and protected. We believe that such words and actions can only exacerbate tensions, particularly about whether ongoing peaceful protests will be dispersed with force.

In order to comply with Hong Kong's international legal obligations and to uphold its reputation as a territory committed to the rule of law, we urge that you:

1. Ensure that security forces abide by the United Nations (UN) Basic Principles on the Use of Force and Firearms.

We urge that security forces strictly adhere to these principles. Under the Basic Principles, law enforcement officials shall, as far as possible, "apply non-violent means before resorting to the use of force." When the lawful use of force is unavoidable, law enforcement officials must "[e]xercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved." Police restraint is particularly called for given that the demonstrations in Hong Kong have been overwhelmingly peaceful.

2. Ensure maximum respect for ongoing peaceful demonstrations.

The International Covenant on Civil and Political Rights guarantees the rights to peaceful assembly, association, and expression, and tolerates no restrictions except those necessary for national security, public order, and public safety. The government has failed to offer a justification for the use of tear gas and pepper spray against peaceful protesters on September 28 and 29.

If the government believes that the provision of public order necessitates removing peaceful protesters from particular areas, it must justify its decision in terms of why less restrictive measures would not suffice to protect public order, offer alternative venues for protest that are still central and accessible, and refrain from using excessive force in clearing those areas where the burden to public safety and health require clearance. Moreover, the government cannot prohibit peaceful assembly and expression city-wide.

3. Swiftly investigate and prosecute all those suspected of violence against peaceful protesters.

There can be no impunity for those who have attacked peaceful protesters. Hong Kong's reputation as a city tolerant of peaceful protest and as the home of a professional police force is deeply tarnished as a result of the October 4 incidents in Mong Kok and Causeway Bay. Peaceful protesters, journalists, and onlookers were kicked, punched, and knocked to

the ground by unidentified men. We have received multiple credible reports of female protesters being sexually assaulted. Protesters have also told Human Rights Watch that police officers failed or refused to assist when pro-democracy protesters were beaten or harassed by those who oppose them or that police officers let suspected assailants leave without having taken down their details or arresting them. These attacks took place over several hours, and throughout that time police were few in number and appeared unwilling to protect the protesters, raising concerns about collusion and biased law enforcement.

We welcome the arrests in the past day of 19 individuals allegedly responsible for the violence, in keeping with Hong Kong's adherence to the law. But we believe that credible investigations into this violence will have to involve independent experts with substantive expertise and who enjoy public confidence. Such an investigation should examine and report publicly on allegations that the violence was organized, and whether police allowed it to proceed. In addition, we urge that you as a matter of priority establish an independent task force to investigate the allegations of sexual violence, one with the ability to encourage reporting by those who feel the police will not take their accounts seriously, and one that respects the privacy, dignity, and security of the complainants. We also urge that you publicly respond to the concerns raised by the Foreign Correspondents Club regarding attacks on journalists.

Human Rights Watch believes that a failure to fully address these issues will likely ensure ongoing protest and erode confidence in Hong Kong's commitments to respect fundamental human rights.

Sincerely,

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