

13 September 2019

BHRC Statement on Police Brutality in Hong Kong

The Bar Human Rights Committee of England and Wales (“BHRC”) welcomes news that Hong Kong’s Chief Executive, Ms Carrie Lam, has formally and finally withdrawn the Extradition Bill. [BHRC, along with many other international legal organisations considered the Bill "fundamentally flawed".](#)

The belated withdrawal of the Extradition Bill suggests that the Hong Kong authorities now accept that the demonstrations, which began in protest at the grave consequences of that Bill if it became law, voiced legitimate concerns. Those concerns grew to form part of what has become a wider protest for their right to live in a free and democratic society in which human rights are respected and which have been escalated by the response of the authorities, which has included the rising and dramatic use of excessive force.

As the protests continue in Hong Kong, with further protests planned this weekend, BHRC expresses serious concern about: (i) credible and multiple reports of police brutality and violence against the protestors; and (ii) the Hong Kong Government’s failure to order a full and transparent inquiry into police abuse; and (iii) mass arrests of protestors.

BHRC urges the Hong Kong authorities to take urgent steps to protect the fundamental rights of peaceful protest and freedom of assembly, which are

cornerstones of a democratic society, and to ensure that attempts to ensure public order comply fully with international law.

Dangerous use by police of tear gas, water cannons, pepper spray and rubber bullets against protestors

As part of the 'One Country, Two Systems' policy, the Hong Kong Basic Law guarantees freedoms that are not available to those in mainland China until 2047. Hong Kong residents are guaranteed the rights to 'freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration'.

Article 20 of the Universal Declaration of Human Rights guarantees "[e]veryone ... the right to peaceful assembly and association". Article 21 of the International Covenant on Civil and Political Rights ("ICCPR") provides that "[t]he right of peaceful assembly shall be recognised." The Basic Law expressly preserves the ICCPR as applicable to the Hong Kong Special Administrative Region. The State has a duty to protect and facilitate such protest.

There has been widespread concern about the nature of the police response and escalating government hostility towards ordinary Hong Kong citizens, which has been credibly documented in the media and on social media. This includes the dangerous use of tear gas, water cannons, firing of rubber pellets, pepper spray and baton charges by the police to disperse pro-democracy demonstrations. Whilst BHRC acknowledges reports that a minority of protestors have been violent, and condemns violence on all sides, the vast majority of protestors have adopted peaceful and good-humoured protest and should not be tainted by the actions of a few. BHRC is gravely concerned about the use of excessive and unlawful police force to disperse largely peaceful protestors.

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Prevention of Crime and Treatment of Offenders ('the Basic Principles')

require that law enforcement officials, in carrying out their duty to maintain public order and safety, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They must exercise restraint in the use of force and firearms, and where such use is unavoidable to maintain peace, they must use only “the minimum extent necessary“, acting in proportion to the seriousness of the offence. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Whilst the use of so-called non-lethal weapons to control and disperse unlawful assemblies may be permitted, it must be used in accordance with international norms and standards. Instead, there have been multiple and credible reports that such weapons have been used in a way that directly endangers the lives and safety of protestors. It appears that tear gas has been fired directly at protestors or into closed areas, which is in violation of international standards and norms, in raising the risk of death or serious injury. Firing rubber pellets at a person likewise raises the risk of death or serious injury. In circumstances where the overwhelming majority of the protests have sought to remain peaceful, such force suggests that the authorities are failing to adhere to the principles of maximum restraint and strict proportionality.

BHRC understands that the Hong Kong authorities have acknowledged that some 240 canisters of tear gas have been fired and 19 rounds of rubber bullets have been fired.¹ The level of reported injuries sustained by protestors, combined with the failure to condemn and investigate police action, suggests an official sanctioning of excessive policing tactics, designed to suppress and punish protestors in violation of their fundamental rights of freedom of expression and participation in peaceful protest, as protected in international law and by the Basic Law.

¹ Margaret Ng, Member of Legislative Council 1995-1997 and 1998-2012.

Failure to properly investigate police brutality

No proper investigation into excessive force has taken place and indeed calls from the international community, including the UN High Commissioner of Human Rights, have been rejected. BHRC joins the local and international calls for the Hong Kong authorities to launch immediately an independent, effective and transparent inquiry into police misconduct, and in line with international standards. Moreover, the *Basic Principles* require governments to ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law. The urgency of such an inquiry is underlined by the continued demands for democracy which see the protests gathering pace instead of dispersing.

Mass arrests

Reports that hundreds of protestors have been arrested in recent months demonstrate the extent to which the Hong Kong authorities are failing to engage in dialogue, instead escalating the situation and justifying the oppressive measures apparently taken to deflate the protests. BHRC raises serious concern that the pursuit of disproportionate criminal proceedings against protestors appears to be political in nature, following the labelling of protestors as ‘terrorists’ by the Chinese authorities. Such mass prosecutions appear designed to stigmatise and deter future lawful demonstrations or the right to dissent, in violation of the rights of Hong Kong citizens.

BHRC calls on the authorities to discontinue such politicised and targeted prosecutions immediately and urges the Hong Kong government instead to engage in constructive dialogue with the leaders of the protest movement to foster a climate in which their legitimate concerns over democracy and human rights can be met.

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NOTES FOR EDITORS

1. For an interview with our spokesperson, please contact Amanda June Chadwick, Executive Officer, on coordination@barhumanrights.org.uk or +44 (0)7854 197862
2. For more information on the Bar Human Rights Committee (BHRC), visit our website at <http://www.barhumanrights.org.uk>
3. The Bar Human Rights Committee of England and Wales (BHRC) is the international human rights arm of the Bar of England and Wales, working to protect the rights of advocates, judges and human rights defenders around the world. BHRC is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. It is independent of the Bar Council.