



Human Rights Now

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4F Suzuki Bldg., 335 Yamabukicho,
Shinjuku-ku, Tokyo 162-0801 JAPAN

Tel : +81-3-6228-1528

Email: info@hrn.or.jp

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Human Rights Now Condemns the Use of the Emergency Law by the Hong Kong Government and Calls for Stringent Compliance with Hong Kong's Bill of Rights and International Human Rights Law

On 4 October 2019, Hong Kong's chief executive, Carrie Lam, invoked the Emergency Regulations Ordinance to announce a ban on face masks by demonstrators that would take effect at midnight that day. While refraining from qualifying the current situation as a state of emergency as such, she hinted that further regulations may follow if anti-government demonstrations become violent. The Ordinance provides that “[o]n any occasion which the Chief Executive in Council may consider to be an occasion of *emergency or public danger* he may make *any regulation whatsoever* which he may consider desirable in the public interest” (emphasis added), giving sweeping powers to the chief executive to issue regulations which may provide for censorship, arrest, detention, control of the transport of persons and things, forfeiture and disposition of property, and so on.¹ Contraventions are liable to summary convictions, a fine of \$5,000 and imprisonment for 2 years, and penalties may be even heavier if so provided.²

However, **there are serious doubts about whether invoking this Ordinance**, a colonial-era law enacted by the British authorities in 1922 which has not been used for more than half a century and never since the handover of the territory to China in 1997, **to introduce sweeping regulatory measures under the loosely defined conditions set out above is in accordance with Hong Kong's Bill of Rights Ordinance or international human rights law.**

Although China is not a State party to the International Covenant on Civil and Political Rights (ICCPR), human rights obligations accepted by Britain including under the ICCPR continue to apply in Hong Kong.³ **The application**

¹ Cap. 241 Emergency Regulations Ordinance, <https://www.elegislation.gov.hk/hk/cap241>.

² “Penalties (1) ... regulations made hereunder may provide for the punishment of any offence... with such penalties and sanctions (including a maximum penalty of mandatory life imprisonment but excluding the penalty of death), and may contain such provisions in relation to forfeiture, disposal and retention of any article connected in any way with such offence and as to revocation or cancellation of any licence, permit, pass or authority issued under the regulations ... (2) Any person who contravenes any regulation made under this Ordinance shall, where no other penalty or punishment is provided by such regulations, be liable on summary conviction to a fine of \$5,000 and to imprisonment for 2 years” (*ibid.*).

³ The Government of the People's Republic of China informed the UN Secretary-General that the

of the ICCPR is expressly provided for in Article 39 of the Basic Law, the constitution of Hong Kong, that came into effect on 1 July 1997:

The provisions of the International Covenant on Civil and Political Rights ... as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.⁴

In 1991, the Bill of Rights Ordinance was enacted as a comprehensive, single piece of legislation implementing the ICCPR.⁵ It contains provisions dealing with public emergencies in Section 5 in line with Article 4 of the ICCPR. Given such a legal framework protecting fundamental human rights in Hong Kong, it is clear that resorting to the old Emergency Regulations Ordinance to apply broad regulatory measures does not meet the international standards replicated in the Bill of Rights Ordinance.⁶

The extradition bill that ignited a massive protest movement of citizens was withdrawn by the chief executive, but protesters continue to call for 1) withdrawal of the use of the word “riot” in relation to protests, 2) the unconditional release of arrested protesters and the dropping of charges against them, 3) an independent inquiry into police behavior, and 4) implementation of genuine universal suffrage.

The lack of due process and an independent judiciary in mainland China was a source of genuine fear for the citizens of Hong Kong who may be extradited there to face criminal charges, and the key demands related to the exercise of the rights and freedoms of expression and assembly to protest to the bill are all legitimate concerns. The fourth demand, implementation of universal and equal suffrage, is also essential for democracy and human rights in Hong Kong. It is to be noted that the Human Rights Committee under the ICCPR raised the point as a matter of priority among the “principal subjects of concern and recommendations” in its concluding observations and recommendations to Hong Kong, China, in 2013.⁷

provisions of the ICCPR as applied to Hong Kong shall remain in force after 1 July 1997.

⁴ The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, Art. 39, https://www.basiclaw.gov.hk/en/basiclawtext/images/basiclaw_full_text_en.pdf.

⁵ “An Introduction to Hong Kong Bill of Rights Ordinance”, https://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/human/BORO-IndductoryChapterandBooklet-Eng.pdf.

⁶ Erik Shum, “If Carrie Law declares an emergency in Hong Kong, she will be defying the rule of law”, <https://www.scmp.com/comment/opinion/article/3025261/if-carrie-lam-declares-emergency-hong-kong-she-will-be-defying-rule>.

⁷ Human Rights Committee, Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107th session, UN Doc. CCPR/C/CHN-HNG/CO/3, 29 April 2013, para. 6.

Human Rights Now, a Tokyo-based international human rights NGO, calls on the Hong Kong government to review its policies and to take all necessary measures to address the demands of the citizens through dialogue while abiding by national and international human rights law. **We also reiterate our serious concern with the excessive force used by the police against demonstrators⁸ which has been escalating during recent weeks.** We are particularly alarmed by the news of an 18-year-old student shot in the chest, and we are not convinced that such an action was “reasonable and lawful” as explained by the police.⁹ We urge the authorities to comply with international standards including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which hold that officials should act in proportion to the seriousness of the offence and minimize damage and injury.¹⁰

⁸ “HRN Releases Statement Protesting the Police Use of Excessive Force in Hong Kong”, 14 June 2019, <http://hrn.or.jp/eng/news/2019/06/14/hong-kong-excessive-force-statement/>.

⁹ “Hong Kong Police say shooting an 18-year-old student protester in the chest was ‘reasonable and lawful’ as he recovers in hospital”, <https://www.businessinsider.com/hong-kong-police-shooting-student-reasonable-lawful-2019-10>.

¹⁰ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, <http://www.ohchr.org/Documents/ProfessionalInterest/firearms.pdf>.