

South China Morning Post

October 20, 2017

Jailing of Hong Kong Democracy Activists Failure to Uphold International Law

By Jared Genser

By now, the story of Hong Kong democracy activists Alex Chow Yong-kang, Nathan Law Kwun-chung and Joshua Wong Chi-fung, leaders of the September 2014 “umbrella” democracy movement in Hong Kong, is well known. These courageous young men stood up and spoke out in favour of democracy, human rights and rule of law in Hong Kong. For their role in leading other peaceful protesters in gaining access to a fenced-off square, previously a popular spot for peaceful protests, they were charged with “unlawful assembly” under Hong Kong’s draconian Public Order Ordinance. Last year, they were found guilty; Law and Wong were sentenced to community service, and Chow to a three-week suspended jail term.

Had this been the end of the story, arguably, justice might have been fairly served. But, in August, Secretary for Justice Rimsky Yuen Kwok-keung appealed – even though the government had already prevailed – citing the “rather dangerous” leniency of the sentences. On appeal, the activists were sentenced to prison terms from six to eight months, making Chow, Law and Wong political prisoners.

In response, I joined a group of human rights and democracy activists in writing an open letter condemning this decision as a “serious threat to the rule of law” in Hong Kong, released on October 16.

The government was quick to respond, claiming that we misunderstood the situation. A spokesperson for the Department of Justice said our letter was “unjustified”, alleging that the “judiciary remains truly independent and has displayed very high quality in their discharge of professional duties”. Their statement was swiftly parroted by Chief Executive Carrie Lam Cheng Yuet-ngor.

With all due respect, I strongly disagree. In the spirit of peaceful protest and debate, these are the primary objections voiced by the international community.

First, the law under which the democracy activists were charged – the Public Order Ordinance – is overly vague, enabling the sweeping use of politically motivated charges. For example, there

is no definition provided for what is meant by the prohibition on behaving in a “noisy or disorderly manner” or on using “threatening, abusive, or insulting words”. The UN Human Rights Committee has openly criticised the law for “facilitat[ing] excessive restriction” to basic rights, including the right to freedom of assembly guaranteed by the International Covenant on Civil and Political Rights.

Second, that the prosecutors chose to appeal against the prior sentences was a blatant abuse of their discretion. The activists had already served their punishments. That prosecutors were given a second chance to obtain additional and stronger punishments flies in the face of basic principles of due process of law.

Third, the appeal was a brazen attempt by the government to intimidate other peaceful would-be protesters. Substituting himself for a domestic fact-finder, Court of Appeals vice-president Wally Yeung Chun-kuen claimed that the increased sentences were a necessary deterrent because, “[If one] uses the guise of exercising freedom of assembly, but is in actual fact destroying public order and peace, [this] will plunge society into chaos.” Yet there wasn’t even a scintilla of evidence to support this claim. Not only were the 2014 protests overwhelmingly peaceful, but there have been no serious incidents of violence since.

Thus, the purpose of these increased sentences in 2017 was to send an unmistakable message: if you refuse to stay silent, we will punish you severely. As noted by Human Rights Watch and Amnesty International, this has a “chilling effect” on democracy and human rights, and is directly contrary to internationally guaranteed rights of freedom of opinion, expression and peaceful assembly.

Finally, the recent decision to bar the entry of fellow human rights and democracy activist Benedict Rogers, who had travelled to Hong Kong for a private visit, is another unmistakable red flag. Though Rogers has connections to the democracy activists, he was not going to meet them. Despite this, he had been warned by Chinese officials in London that his trip posed a “grave threat to Sino-British relations”. Hong Kong deemed him enough of a threat to keep him out, only reaffirming both domestic and international fears that democracy, human rights and free exchange of ideas will not be tolerated in Hong Kong.

I do appreciate the responses of the government of Hong Kong to our letter. While the punishment of democracy activists is unjust and indefensible, I welcome the opportunity to engage in a meaningful exchange of views. But what would be more welcome is a Hong Kong that respects its obligations under international law, releases all political prisoners and respects fundamental rights. If they commit to not barring me from entry too, I’d welcome the opportunity to come and meet Hong Kong authorities personally to discuss my concerns.

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