

China (Hong Kong): Authorities must protect right of peaceful assembly and end legal harassment of activists and journalists

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Following the arrest on 28 February of at least three persons, the ICJ has called on the Hong Kong authorities to drop criminal charges of taking part in an "unauthorized assembly" against them and to reform the Public Order Ordinance in compliance with international human rights obligations.

On 28 February, Hong Kong police arrested publisher Jimmy Lai, the founder of Next Media, which publishes the Apple Daily newspaper, and two pro-democracy activists, Lee Cheuk-yan, the vice-chairman of the Labour Party, and Yeung Sum, a former chairman of the Democracy Party, for taking part in a march banned by police on 31 August 2019. The Police prohibited the march on the stated grounds that the Civil Human Rights Front could not guarantee the march would be peaceful and orderly, shifting responsibility of maintaining order to the organizer.

"We are extremely concerned about the way in which the unauthorized assembly provisions of the Public Order Ordinance has been used to silence lawful expressions of political opinion since the Umbrella Movement of 2014," said Frederick Rawski, ICJ's Asia Pacific Director. "These most recent arrests, made for allegedly participating in a largely peaceful protest more than six months ago, are part of a troubling pattern of bringing legal action to harass activists involved in peaceful acts of protest."

The arrests were made pursuant to the Hong Kong SAR Public Order Ordinance (Cap. 245) Section 17A(3)(a). Under the 'unauthorized assembly' provisions of the law, every person who, without lawful authority or reasonable excuse, knowingly takes or continues to take part in or forms or continues to form part of any such unauthorized assembly is guilty of an offence and can be sentenced up to five years imprisonment.

The authorities have wide discretion to prohibit public meetings, and prosecute those who are alleged take part in them. These overbroad provisions have been used to restrict the proper exercise of free assembly and association rights – including onerous requirements to obtain a "notice of no objection" from the government for even small gathering under a threat of a maximum five years imprisonment for violations.

"The ICJ calls upon the Hong Kong SAR government to take measures to protect the right to peaceful assembly and create an environment in which people can safely express diverse ideas and dissenting voices – consistent with international legal obligations," said Rawski. "This includes ensuring that the law is not used to harass pro-democracy activists and human rights defenders."

The ICJ underscores that any restrictions to the right of peaceful assembly must be narrowly drawn to be permissible under international law. Restrictions are not permissible unless they have been provided by law, and are necessary and proportionate to a legitimate purpose enumerated in article 21 of the ICCPR, such as

public order. However, imposing criminal charge on people exercising their right of peaceful assembly who fail to comply with a procedural requirement, such as notification, unduly restricts freedom of peaceful assembly by adding unnecessary barriers to public gatherings. Furthermore, the sentencing guidelines of the Ordinance, which include the possibility of a peaceful participant of a public assembly being sentenced to five years in prison if the organizers fail to comply with the notification requirement, are extreme, disproportionate and open to abuse.

Hong Kong SAR, though not the rest of the PRC, is legally bound by the ICCPR. Article 21 of the ICCPR and Article 27 of the Basic Law in Hong Kong both recognize and protect the right of peaceful assembly. The UN Human Rights Committee, the supervisory body responsible for the ICCPR and other UN independent authorities, have repeatedly urged the authorities to ensure that the Public Order Ordinance is implemented in conformity with Hong Kong's obligations under the ICCPR.

Additional Information

On 31 August 2019, hundreds of thousands of protesters defied a police ban on a march organized by Civil Human Rights Front, a group which has organized mass during the political crisis prompted by a controversial extradition law which started in June last year. The protesters began gathering, peacefully at first, in central areas of the city despite the government's decision to prohibit a demonstration. They marched toward government offices and the home of Carrie Lam, the territory's chief executive.

According to media reports, some protesters began spraying graffiti on the barriers that the police had erected outside the buildings, and launched firebombs. The police responded with tear gas and the blue-dyed water, and officers then began clearing crowds across downtown, making arrests and in some cases with live warning shots.

On 28 February 2020, Lai was picked up by police at his house. Lee Cheuk-yan and Yeung Sum were also taken away by police from their residences on the same morning. A Hong Kong police spokesman confirmed the arrests of three men. Without giving their names, the spokesman said three people had been charged for participating in the 31 August protest and would be required to appear in court in May.

The arrests were made pursuant to the Public Order Ordinance (Cap. 245). Section 9 and 14 of the Ordinance lays out the rights of the Commissioner of Police to object to public processions and prohibit the holding of any public meeting where he considers "such prohibition to be necessary in the interests of national security or public safety, public order or the protection of the rights and freedoms of others". Section 17 lays out wide-ranging powers for the police to stop public processions which have not received the "notice of no objection" and includes potentially lengthy sentences for those protesting without permission. Arrest and prosecution under the Ordinance have been used to target human rights activists and protesters.

See also

Hong Kong: ensure police do not use excessive force against protesters
<https://www.icj.org/hong-kong-ensure-police-do-not-use-excessive-force-against-protesters/>

Contact

Frederick Rawski, ICJ's Asia Pacific Regional Director, t: +66 2 619 84 77; e: frederick.rawski(a)icj.org