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REPORT: SEPTEMBER 2019

Hong Kong's Fight for the Rule of Law

Introduction

Human rights lawyers and other civil society leaders in Hong Kong are urging members of Congress to pass the Hong Kong Human Rights and Democracy Act of 2019 and the PROTECT Hong Kong Act, and are calling on the U.S. legal community to help in the fight to protect Hong Kong's rule of law.¹ These findings and other conclusions contained within this report are based on interviews with lawyers, law students, academics, and other civil society figures undertaken by Human Rights First in Hong Kong in September 2019.²

Large-scale protests have swept Hong Kong for more than three months, initially triggered by opposition to legislation that would allow extradition of suspects to mainland China. Residents feared the legislation would have allowed their government to send those alleged by China to have committed crimes to the mainland to face trial at the Chinese government's request. Given China's well-documented absence of rule of law, to many the law threatened to impose a legalized form of rendition.

In early September, Hong Kong authorities announced that they would withdraw the extradition bill following intense public pressure. But the legislation was only one of **five demands** made of the authorities.³ The four remaining are: an independent inquiry into the use of force by police; amnesty for arrested protesters; an end to describing the protests as riots; and the implementation of universal suffrage.

While the vast majority of ongoing demonstrations are peaceful, fringe elements willing to use violence are active within the relatively leaderless mass protest movement. Hong Kong police are accused of using excessive force against the protestors, including the indiscriminate use of **U.S.-made tear gas**.⁴ Public trust in the police is largely broken, and Hong Kong society is shaken and polarized by the ongoing unrest. As one lawyer in her 20s put it, "Dehumanizing language is common now. Protestors call the police dogs, and the police call protestors cockroaches because they can't seem to squash them."⁵

Protestors and lawyers are appealing to the U.S. government to help end the unrest by pressuring the government of Hong Kong to respect the rule of law and defuse tension. The city is bracing for large-scale demonstrations on October 1, the 70th anniversary of the founding of the People's Republic of China, traditionally a day of anti-China protests in Hong Kong. Chinese security forces continue to mass in mainland areas just miles from the city.

1 <https://www.congress.gov/bill/116th-congress/house-bill/3289/text>

2 For security reasons, some interviewees agreed to speak only on the condition that they not be quoted, while others asked to use assumed names in order to protect their identities. Previous Human Rights First work on Hong Kong, when the organization was The Lawyers Committee for Human Rights, includes a 1997 report: *Tightening the Leash - Threats to Freedom of Association and Independent Human Rights Advocacy in the New Hong Kong*.

3 <https://www.scmp.com/news/hong-kong/politics/article/3025750/five-key-demands-not-one-less-hong-kong-protesters-make>

4 <https://www.buzzfeednews.com/article/rosalindadams/tear-gas-hong-kong-made-in-usa>

5 Human Rights First interview September 2019 (name of lawyer omitted at her request).

Requests from the democracy movement in Hong Kong are a key test for the United States. President Trump issued [a series of tweets](#) about the crisis, including suggesting Chinese Premier Xi Jinping should meet protesters, and should meet with Trump to discuss the crisis.⁶

There are an estimated 80,000-90,000 U.S. citizens living in Hong Kong, and some worry that Beijing will end the “one country, two systems” arrangement with the city through repressive action by mainland security forces.⁷ Yet China faces significant constraints of its own. Veteran China analyst Jerry Cohen, director of the U.S.-Asia Law Institute at New York University’s School of Law [explains](#) Xi Jinpin’s dilemma: “He knows the dangers, of course, of repeating a June 4, 1989, Tiananmen-type massacre. He doesn’t want to do that. It would be a disaster for him personally, perhaps, and his leadership, his people, and certainly for Hong Kong and international security. But if push comes to shove, he’ll use force.”⁸

In an environment marked by a contest of wills and localized escalation, residents are looking for help from the United States to deter Chinese aggression and to assist in resolving the crisis. As Hong Kong’s legal community constitutes a key part of civil society, Human Rights First (formerly the Lawyers Committee for Human Rights) centered its ongoing research on the views and analysis of Hong Kong’s legal community. Their recommendations for the U.S. government, offered in the context of a rapidly polarizing politics, are presented herein.

Lawyers and the Protests

The protests continuing to roil Hong Kong began over a legal issue, a [proposed change in the law](#) earlier this year to permit authorities to transfer fugitives to China, which alarmed human rights advocates and much of the general public. Under the bill, suspects living in Hong Kong—including U.S. citizens—would have been liable to be sent to mainland China and tried in the country’s notorious criminal justice system.⁹

Thousands of Hong Kong legal professionals [staged a silent march](#) in opposition to the bill in August. Solicitor Davyd Wong [said](#), “The law is a dignified and respected profession, so this is why when lawyers in Hong Kong have marched in protest, such as on Wednesday 7th August, we marched in silence. No banners, no flags, no black or white shirts emblazoned with witty slogans. Just a silent procession in a manner in keeping with the dignity of the profession we form.”¹⁰

In August 2019, Wong helped set up the [Neutral Legal Observers Group](#), “to promote, protect and strengthen the rule of law in Hong Kong.” Wong stresses that the group strives to be “independent, apolitical, dispassionate and impartial.” Around 50 lawyers are involved in the initiative, covering a range of issues including monitoring protests and providing advice and information to the public on their rights.¹¹

6 <https://www.bbc.com/news/world-asia-china-49353727>

7 In 1997 the United Kingdom returned Hong Kong to China after 150 years of British rule. Part of the agreement was that China would continue to honor Hong Kong’s Basic Law until at least 2047 under the One Country Two Systems arrangement, where Hong Kong retains its own currency and legal system. [https://www.nationalgeographic.com/culture/topics/reference/hong-\[p\]kong-history-explain-relationship-china/](https://www.nationalgeographic.com/culture/topics/reference/hong-[p]kong-history-explain-relationship-china/)

8 <https://www.cfr.org/conference-calls/hong-kong-protests>

9 <https://www.scmp.com/news/hong-kong/politics/article/3010273/hong-kong-extradition-bill-chaos-and-confusion-reigns-how>

10 <https://medium.com/@davydwong/the-law-is-our-business-48921006a5e9>

11 <https://www.facebook.com/legalobservers/>

Human Rights First observed one of the group's public seminars in early September. It covered not just rights, but also citizens' obligations to cooperate with the police when they are lawfully acting in the course of their duties, and other issues including liability for criminal damage, and unlawful assembly.

At the event, which was held a church, roughly 150 people, most of whom were middle-aged, asked questions about what to do if arrested or searched. They also inquired into legal definitions of violent and non-violent acts related to the protest movement. "They're here to ask questions for their children," said one of the lawyers, explaining that many younger people wouldn't want to be seen to ask such sensitive questions in public.¹²

Maintaining impartiality is growing increasingly difficult, with anger intensifying on all sides. Hong Kong is polarizing rapidly, with many citing a complete loss of trust between the police and the public. "A few years ago people would have been happy to let the police into their buildings to pursue people running away, but now that's changed. Many more people are suspicious of the police and don't trust them to act fairly," said one of the group's young lawyers. "People on all sides should respect the law, that's why I'm here," she added. "I'm not even a criminal lawyer, and no, my employers don't know I do this in my spare time."¹³

There's been both overt and concealed pressure on lawyers and other professionals not to be seen as involving themselves in the protests. Large firms offer free, in-house lunches on days when protests are scheduled as an inducement to maintain distance.

Yet Hong Kong's law firms—many of which rely heavily on business with mainland China—and the city's legal organizations are under pressure from both sides to take a stand on the current unrest.

On September 2, the Hong Kong Bar Association criticized protestors' obstruction of Hong Kong airport, and the following day issued another statement objecting to

excessive use of force by the police. A week later, the body issued another statement criticizing demonstrations outside the Court of Appeal that alleged judges have been too lenient in granting bail to those charged over the protests.¹⁴ The city's Law Society, traditionally more circumspect on human rights issues, has been reticent to comment publicly.

Mark Daly is a leading solicitor in Hong Kong, re-elected this year to the Law Society's Council. He is one of a handful of those on the council speaking publicly. "Sometimes I think the Law Society needs to speak with a little more backbone on rule of law issues," he told Human Rights First. "Hong Kong clearly has a human rights problem, and we at the Law Society shouldn't be shy in addressing it, and international legal bodies across the world should be encouraging us to do so."¹⁵

Lawyers and other civil society leaders suggest that members of Congress can play a leading role in pushing for reform. Many suggested that members of Congress visit Hong Kong and meet protestors and the government. There was broad consensus among the lawyers interviewed by Human Rights First that the Hong Kong Human Rights and Democracy Act should be passed as quickly as possible, before the situation further deteriorates.

12 Human Rights First interview September 2019 (name of lawyer omitted at her request).

13 Human Rights First interview September 2019 (name of lawyer omitted at her request).

14 See press releases September 3, 10 and 13 <https://www.hkba.org>

15 Human Rights First interview with Mark Daly September 2019.

Introduced on a bipartisan basis in both houses of Congress, the Hong Kong Human Rights and Democracy Act includes provisions that would require the U.S. government to annually assess Hong Kong's level of political autonomy to determine whether it should continue to enjoy special trade status. It would also require an annual assessment of whether the government of Hong Kong has adequately enforced export controls on mass surveillance and other dual-use equipment, and enable the sanctioning of those determined to have been involved in the rendition to mainland China of those exercising internationally recognized human rights in Hong Kong. Finally, it would direct the State Department to not deny visas to Hong Kong residents on the basis of the visa applicant's arrest or detention stemming from participation in nonviolent protest.¹⁶

On September 8, thousands of protestors marched to the U.S. consulate, urging that the Hong Kong Human Rights and Democracy Act be passed.¹⁷ Dressed in the signature black of the protest movement, many carried U.S. flags or posters of prominent American politicians, including Vice President Mike Pence and Speaker of the House of Representatives Nancy Pelosi, imploring them to support the act. The Hong Kong government responded to the pleas by warning President Trump not to intervene in Hong Kong's affairs.¹⁸

Although the march was overwhelmingly peaceful and well organized, at the end of the demonstration a small number of protestors built barricades to block traffic, lit fires in the street, and damaged the Central Metro station. Police fired tear gas in a conflict with protestors that lasted several hours.

Protestors have also attacked six "smart lamp posts," which are believed to pilot facial recognition technology. According to local activists, when the posts were broken apart, component parts included some from U.S. company Cisco.

More broadly, although large numbers of people have joined recurring demonstrations over several months, violence remains limited and sporadic. Local lawyers estimate at least 1,400 people have been arrested in connection with the protests to date, with over 150 charged. Charges most often include unlawful assembly or rioting.

Particular anger has been directed at Mass Transit Railway (MTR), Hong Kong's metro system, after protestors were attacked in the city's stations in two major incidents. On July 21, a large mob of men dressed in white attacked protestors at Yuen Long station. Dozens of people were injured.¹⁹ When police eventually arrived they didn't arrest anyone, with local assistant police commander Yau Nai-keung of Yuen Long District explaining, "We have not made any arrests because we can't be sure of those involved."²⁰

The inaction stands in sharp contrast to the speed and enthusiasm with which the police deal with suspects supporting the protests. "We have clients arrested and within 48 hours they're charged with rioting," a leading lawyer told Human Rights First. "That's not normal—rioting is a serious charge, and carries a sentence of three to

¹⁶ <https://www.congress.gov/bill/116th-congress/house-bill/3289/text>

¹⁷ <https://www.hongkongfp.com/2019/09/08/thousands-hongkongers-urge-us-pass-bill-defending-human-rights-amid-mtr-vandalism-tear-gas/>

¹⁸ <https://thehill.com/policy/international/460474-hong-kong-warns-us-not-to-interfere-after-protesters-call-for-trump-to>

¹⁹ <https://www.scmp.com/news/hong-kong/law-and-crime/article/3019524/least-10-injured-baton-wielding-mob-suspected-triad>

²⁰ <https://www.scmp.com/news/hong-kong/law-and-crime/article/3019524/least-10-injured-baton-wielding-mob-suspected-triad>

five years in jail. Normally there's some sort of considered investigation before formal charges are brought for such a serious crime.”²¹

A second metro-related incident, this time at the Prince Edward MTR station, occurred on August 31. That night, special police forces are said to have entered the station and boarded a train in response to reports of a fight. Allegedly using batons and pepper spray, the police are reported to have injured an unknown number of protestors and other members of the public before ejecting members of the media. Rumors have persisted that three protestors were killed, accusations denied by authorities. MTR's refusal to make public the full close-circuit television footage of what occurred has made metro stations targets of vandalism and violence by protestors in recent weeks.²²

The two MTR incidents are repeatedly cited by protestors as evidence of police collaboration with, or direct participation in, violence against protestors, and both the dates—721 and 831—have become popular chants at protests.

Yet violence by protestors remains rare, and has largely been directed at property. There has been no widespread looting. While there are fears that the protests could swiftly escalate into large-scale bloodshed, thus far they have been characterized by high levels of public support and impressive organization. They often include American iconography.

In many instances, the protestors' tactics are explicitly founded on the “Be Water” philosophy of the late martial arts star Bruce Lee.²³ The mantra is found on posters and graffiti all over the city. Mass demonstrations surge and ebb quickly, with activist crowds flowing through the streets and, depending on police response, aiming to be suddenly as hard as ice or as elusive as mist.

It’s an amorphous, leaderless movement, explained one prominent lawyer. “Every weekend there are various schedules of protests published online, without much co-ordination. It’s a bit of a free-for-all,” he said. “There’s often overlap, some confusion and no overall planning.”²⁴

This leaderless model (or leaderful, as others describe it to stress the flat or non-existent hierarchy) has tactical advantages, not least in the police being unable to identify or target “the ringleaders.” Another lawyer suggested it was also a flaw, as the movement has no obvious mechanism for negotiation with the authorities.

For now, younger activists who dress in black, wear gas masks and yellow hard hats, and aim laser pens at police stations or otherwise annoy the authorities, generally enjoy deep support from the public, including from older generations. Many middle aged and elderly supporters of the demonstrations provide the younger protestors with metro tickets, food and drink, and transport in cars between protest sites.

Protest organizers are eager not to repeat the mistakes of the Umbrella Movement of 2014, regarded by some as weakened by internal friction and egos. Despite the movement being leaderless, larger protests are nevertheless highly organized, with activists handing out facial masks to passersby. Others collect recycling while their

21 Human Rights First interview September 2019 (name of lawyer omitted at his request.)

22 <https://www.scmp.com/news/hong-kong/politics/article/3026439/hong-kong-protests-officials-attempt-sixth-time-debunk>

23 <https://www.inkstonenews.com/politics/hong-kong-protesters-get-inspirations-bruce-lee-kung-fu-strategy/article/3021622>

24 Human Rights First interview September 2019 (name of lawyer omitted at his request.)

colleagues build barricades. Messages for umbrellas to open to shield protestors, or to allow medics through, or to call for plastic ties to strengthen barricades, are passed quickly and efficiently through the crowds via hand signals, not by phones.

An impressive use of technology includes real-time mapping of the protests, such as [HKMap.live](#), an app founded by a finance professional in his 20s. The app relies on volunteers and crowd-sourced inputs.²⁵ Its map-based emojis include a dog for police, yellow hardhats for protesters, speech-bubbles for tear gas, and exclamation marks for danger.

Hong Kong's September 10 soccer World Cup qualifier provided another forum for creative, mass, peaceful demonstration. Thousands of fans surged into the stadium minutes before the match began, eager not to miss an opportunity to publicly boo the Chinese national anthem. Iran's 2-0 win was virtually a sideshow to the hours of protest. Banners proclaiming, "Fight For Hong Kong" and "Five Demands, Not One Less" were cheered, and the overwhelming majority of the 21,000 people in the stadium spent time singing political songs, chanting slogans, and making the openhanded, fingers-spread "Five Demands" salute.

Most acts of dissent are similarly peaceful expressions. At 10:00 every night across Hong Kong, residents conduct the "Million Scream," whereby participants shout protest slogans from their apartment windows in a morale-boosting show of solidarity.²⁶ In mid-September, locals began to take over parts of large shopping malls to sing the latest protest anthem, entitled "Glory to Hong Kong."²⁷

Other techniques are more controversial. Apart from occasional violent attacks against police personnel, recent months have witnessed a widespread doxxing campaign, where personal details about hundreds of police officers, their families and their partners have been shared online, sometimes accompanied by threats. Pro-Beijing elements have also doxxed protesters, including by reporting them to their employers.²⁸

Hong Kong's 30,000-strong police force is also facing sustained national and international criticism for its handling of the protests. Leading solicitor Albert Ho, a former legislator and former chair of the Democratic Party in Hong Kong, told Human Rights First that:

The pattern of police abuses and brutality can be described as follows: unreasonably excessive force were used by the police leading to serious bodily injuries to many protestors, including bone fractures and head injuries with bleeding, interruption with medical first aid for the protestors on the street and in the hospitals, failing to act to protect protestors who were attacked by gangsters, excessive and discriminate use of tear gas and force against civilians and reporters, refusal to display number on the uniforms of the anti-riot squad whose members frequently appeared to act with excessive violence.

Media images of police attacks on peaceful protestors and accounts of arbitrary arrests have damaged its image. "What's happening in Hong Kong bears more and more similarities to Chinese techniques of repression—the arbitrary arrests, the fabrication of charges, the abuse in detention centers," said Francine Chan, Executive

25 <https://hkmap.live/>; [https://qz.com/1700205/real-time-maps-warn-hong-kong-protesters-of-police/amp/?__twitter_impression=true](https://qz.com/1700205/real-time-maps-warn-hong-kong-protesters-of-police/)

26 <https://www.hongkongfp.com/2019/09/06/million-scream-every-night-10pm-hong-kong-protesters-belt-frustrations/>

27 <https://www.scmp.com/news/hong-kong/law-and-crime/article/3026786/anti-government-movement-takes-singing-protest-hong>

28 <https://www.scmp.com/news/hong-kong/law-and-crime/article/3024762/hong-kong-privacy-watchdog-refers-600-cases-doxxing>

Director of the Hong Kong-based China Human Rights Lawyers Concern Group.²⁹ One lawyer who represents those charged with unlawful assembly told Human Rights First, “It’s often the bystanders who are slow at running away who get arrested, not those at the front. A mother and daughter out shopping were arrested, so was a guy delivering a pizza.” Some are beaten in custody, he alleged.³⁰

Requests of U.S. Actors and Congressional Action to Date

The lawyers and activists Human Rights First spoke with expressed enthusiastic support for the Hong Kong Human Rights and Democracy Act of 2019. There was also support for a bill introduced on September 10 that would prohibit the sale of tear gas and other munitions to Hong Kong’s police force.³¹ Called the PROTECT Hong Kong Act, the legislation would require the Secretary of State to provide Congress with details of all the defense articles and munition items exported to the city over the previous five years.

“That would be a strong symbol, to stop arming the police here,” said a young lawyer who asked to be identified only as Charlie. “It’s a practical move, saying the U.S. doesn’t want to be complicit in human rights abuses,” she said.³²

Barrister Wilson Leung of Hong Kong’s Progressive Lawyers Group, an initiative of mostly younger law professionals, urged U.S. lawmakers and America’s legal community to recognize and support the work of Hong Kong’s human rights lawyers. “Public commendations of Hong Kong’s lawyers, who persist in defending rights and promoting the rule of law, are important signals,” he said. “Young lawyers here in particular need to know they are not alone, that the international legal community is on their side.”³³

Others suggest that American legal academics should publicly and privately call on Hong Kong’s academic community to publicly support the freedoms of assembly and expression. “The government is trying to write off the protests as just a bunch of students going wild,” said the young lawyer Charlie. “Having serious legal voices in Hong Kong give legitimacy to the right to protest would make a big difference.”

While lawyers and other civil society figures were generally positive about the engagement of the U.S. consulate in Hong Kong with local human rights defenders, they urged that the consulate better coordinate its messaging with other like-minded countries, and that the Trump Administration not wait for legislation to enact key policies.

As one activist close to the core group of protest organizers suggested, in reference to a provision in the Hong Kong Human Rights and Democracy Act, “The U.S. government needs to be vigilant about what technology is being imported into Hong Kong and then just easily transferred to China, stuff like the more sophisticated supercomputer chips.”³⁴ Multiple interviewees likewise noted that they hoped the United States would introduce a policy of looking favorably upon the visa applications of dissidents.

29 Human Rights First interview with Francine Chan, September 2019.

30 Human Rights First interview September 2019 (name of lawyer omitted at his request.)

31 <https://www.scmp.com/news/china/diplomacy/article/3026631/us-lawmakers-introduce-bill-stop-tear-gas-sales-hong-kong>

32 Human Rights First interview September 2019 (name of lawyer changed at her request.)

33 Human Rights First interview with Wilson Leung, September 2019.

34 Human Rights First interview September 2019 (name of activist omitted at his request).

Finally, activists indicated that they welcomed assistance from U.S.-based civil society. As the activist close to the core protest organizers noted, “Public training sessions on rights or on cybersecurity are useful. People are keen to learn, and U.S. NGOs with tech security expertise could help with this.”³⁵

In keeping with the requests of many of Hong Kong’s activists, members of Congress are taking action separate from legislation. On September 10, a bipartisan group of ten senators wrote to Secretary of Commerce Wilbur Ross and Secretary of State Mike Pompeo urging a review of export controls, saying the United States should “take appropriate measures to ensure China does not abuse Hong Kong’s special status under U.S. law to steal or otherwise acquire critical or sensitive U.S. equipment and technologies...to infringe on the rights of people in Mainland China, Hong Kong, and elsewhere.”³⁶ On September 17, the Congressional-Executive Commission on China held hearings on Hong Kong’s Summer of Discontent and U.S. Policy Responses.³⁷

The following section provides additional recommendations that members of Congress, administration officials, and U.S. civil society can take to support human rights and rule of law in Hong Kong.

Recommendations

U.S. Congress Should

- Pass the Hong Kong Human Rights and Democracy Act, and ensure that the U.S. consulate in Hong Kong is properly resourced to carry out its expanded remit of monitoring and reporting.
- Pass the PROTECT Hong Kong Act to prohibit the sale of tear gas and other munitions to Hong Kong’s police.
- Have members travel to Hong Kong to meet with government officials, protestors, and civil society groups to get a more detailed understanding of the situation.
- Investigate the use of U.S.-made technology in surveillance equipment used by the Hong Kong police.
- Publicly identify and, where appropriate, sanction Hong Kong officials responsible for human rights violations.

The Trump Administration should

- Issue consistent public messaging on the rights of people in Hong Kong to peaceful protest.
- Better coordinate public statements and initiatives with other like-minded countries.
- Look sympathetically on visa applications from those convicted in connection with peaceful protests.
- Publicly identify and, where appropriate, sanction Hong Kong officials responsible for human rights violations under the Global Magnitsky Act.

³⁵ Human Rights First interview September 2019 (name of lawyer omitted at his request).

³⁶ <https://www.foreign.senate.gov/imo/media/doc/Hong%20Kong%20Dual%20Use%20Tech%20Export%20Letter%20FINAL.pdf>

³⁷ <https://www.youtube.com/watch?v=zQJZTi-XRIs>

The U.S. Legal Community should:

- Urge Hong Kong's legal associations, including the Hong Kong Law Society, to publicly address the crisis in the context of the rule of law.
- Support the work of human rights lawyers in Hong Kong and China by recognizing them with academic and other awards.
- Send delegations to Hong Kong to engage with the government and the legal community on rule of law issues.
- Encourage legal academics in Hong Kong to public support the rights to peaceful assembly and expression.

The U.S. Human Rights NGO Community should:

- Consult with members of Hong Kong's protest movement on useful training, particularly concerning online and offline security.