

Lawyers' Rights Watch Canada

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Release and reversal of convictions for pro-democracy advocates in Hong Kong

Immediate release

27 April 2019 - Lawyers' Rights Watch Canada (LRWC)¹ is a committee of lawyers and others who promote international human rights through advocacy, education and research. LRWC has consultative status with the United Nations (UN) Economic and Social Council. On April 24, LRWC via a letter from its executive director denounces the wrongful prosecution, conviction and sentencing of the nine Occupy Central Movement leaders and human rights defenders named below for peacefully exercising their internationally protected rights to advocate for true universal suffrage, the right to vote and democratic reform in Hong Kong and requests release of those sentenced and reversal of the convictions of: **Benny Tai, Chan Kin-man, Chu Yiu-ming, Shiu Ka-chun, Tommy Cheung, Eason Chung, Raphael Wong, Lee Wing-tat, and Tanya Chan.**

The prosecution and conviction of the pro-democracy advocates violates Hong Kong's international law obligations² to respect the fundamental rights and freedoms guaranteed by the *Universal Declaration on Human Rights* ("UDHR") and the *International Covenant on Civil and Political Rights* ("ICCPR"), both of which are binding on Hong Kong. States that have ratified the ICCPR have an obligation to ensure all persons enjoy these fundamental rights equally and without discrimination of any kind.

The nine pro-democracy advocates were peacefully and lawfully requesting the Government of Hong Kong to ensure the right to vote and other internationally protected rights for all people in Hong Kong, but have been convicted by the Hong Kong Special Administration's District Court of "conspiracy to commit public nuisance", "incitement to commit public nuisance" and "incitement to incite public nuisance" and been handed 8 to 16 months prison sentence. Based on the ICCPR, those charges are too vague and ambiguous and violate the rights to freedom from arbitrary arrest and detention. Such arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR, is by definition arbitrary. Moreover, ICCPR articles 9(1) and 15(1) prohibit arrest, detention and punishment on grounds that are not clearly established in pre-existing law. According to ICCPR above, to be characterized as a "law", that law must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.

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² In 1976, the Government of the United Kingdom ratified the *International Covenant on Civil and Political Rights* with certain reservations and declarations, and extended the Covenant to 10 British dependent territories including Hong Kong. Under the Joint Declaration of the Government of the United Kingdom of Great Britain and North Ireland and the Government of the People's Republic of China on the Question of Hong Kong ("Joint Declaration") signed on 19 December 1984, it is provided both in Section XI of Annex I to the Joint Declaration and Article 153 of the Basic Law that international agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong Special Administrative Region from 1 July 1997. The application of the Covenant is also provided for in Article 39 of the Basic Law.

The prosecutions, convictions, and the sentencing on the 24th of the pro-democracy advocates violated their internationally protected rights to: peacefully protest and express opposition, freedom of expression, opinion and belief; freedom of association and peaceful assembly; participate in public affairs; freedom from arbitrary arrest and detention; promote and protect internationally protected rights and freedom from conviction for acts that are not criminal. The individual rights to protest and freedom of expression are also critical to the effective exercise of the right of everyone, individually and in groups, to promote and protect internationally-protected human rights. So according to international laws, governments must not arbitrarily or unreasonably restrict right to protest. They also should not restrict protests as a means of political censorship, or to use sentencing to silence citizen's criticism of public officials or public policies. If there are laws imposing restrictions on such protected rights, they must be accessible, concrete, clear, unambiguous, and applicable on everyone, such that they can be understood by everyone and applied to everyone. In particular, under ICCPR article 5, restrictions on the right to peaceful protest may not put in jeopardy the right itself.

LRWC asks the Government of Hong Kong to immediately initiate proceeding to have all of the convictions and sentences lacking support of international law and legal basis overturned and in the interim, to release those imprisoned and cancel the adjourned sentencing of Tanya Chan.

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