

SPECIAL ISSUE ON STREET PROTESTS AND HUMAN RIGHTS

Introduction

As 2019 came to an end, many labelled it ‘the year of street protest’.¹ One estimate counted 71,790 protest events around the world in 2019, compared to 35,707 in 2018 and 23,990 in 2017.² Rachman could see no ‘convincing global explanation’ for the 2019 protests, but they were obviously ‘connected’ in terms of ‘inspiring emulation’ and ‘shared tactics’.³ The BBC identified several common themes: inequality, corruption, political freedom, and climate change.⁴ Wright noted that ‘virtually all protests worldwide quickly escalated, and began issuing ultimatums for their governments to embrace sweeping changes – or to move aside’.⁵ Social media has been a ‘powerful organising tool everywhere’.⁶ It was assumed protests would continue unabated into 2020, but then the coronavirus pandemic struck. With global lockdowns and other social distancing measures, the first four months of 2020 have seen a substantial decrease in street protests worldwide.⁷ Governmental responses to prevent the spread of Covid-19 have severely restricted public gatherings and assemblies, not to mention other rights and freedoms. For example, in Hong Kong, gatherings of more than four persons in a public place were criminalised on 29 March 2020, punishable by up to 6 months imprisonment or a fine of HK\$25,000.⁸ While these extraordinary measures are aimed at flattening the curve of new infections, there are growing concerns some governments are using these emergency powers for repressive ends, a situation that may possibly continue even after the pandemic has been contained.⁹

Coronavirus may have temporarily paused street protests, but they are bound to spring up again, even before restrictions on gatherings have been lifted. Inevitably there will be clashes with law enforcement officers, aggravated now by new concerns for health. The 2019 protests were particularly striking for their size, intensity, and suffering.¹⁰ Though protests may have ignited for different reasons, the treatment of protesters by police and accountability for such treatment often joined the other grievances and became reasons for continued protests.

¹ Gideon Rachman, ‘2019: the year of street protest’, *Financial Times*, 23 December 2019; Keith Johnson, ‘2019: A Year of Global Protest’, *Foreign Policy*, 23 December 2019; Joy Sharon Yi and Christian Caryl, ‘The year of the street protest’, *The Washington Post*, 10 December 2019; Rachael D’Amore, ‘From Hong Kong to Chile – was 2019 the year of protests?’, *Global News*, 26 December 2019; Roland Hughes, ‘The year in protests: From Chile to Lebanon, what happened next?’, *BBC*, 22 December 2019; Alan Crawford, ‘A Year of Protests Sparked Change Around the Globe’, *Bloomberg*, 6 December 2019.

² Full Dashboard, *Armed Conflict Location & Event Data Project* website, at <https://acleddata.com/dashboard/#/dashboard> (accessed 13 April 2020).

³ Rachman (n 1). See also William Yang, ‘How Hong Kong protests are inspiring movements worldwide’, *Deutsche Welle*, 22 October 2019.

⁴ ‘Do today’s global protests have anything in common?’, *BBC*, 11 November 2019.

⁵ Robin Wright, ‘The Story of 2019: Protests in Every Corner of the Globe’, *The New Yorker*, 30 December 2019.

⁶ Rachman (n1).

⁷ Max de Haldevang, ‘Coronavirus has crippled global protest movements’, *Quartz*, 2 April 2020, noting however that online and balcony protests, albeit less impactful, have taken the place of street protests.

⁸ Prevention and Control of Disease (Prohibition on Group Gathering) Regulation, L.N. 32 of 2020, s 6(2), coming into operation on 29 March 2020 (s 1), expiring on 28 June 2020 (s 16), unless extended.

⁹ Press Release, ‘COVID-19: States should not abuse emergency measures to suppress human rights – UN experts’, Office of the High Commissioner for Human Rights, Geneva, 16 March 2020. See also Mary Hui, ‘Hong Kong police are using coronavirus restrictions to clamp down on protesters’, *Quartz*, 1 April 2020.

¹⁰ Maria Piñero and Mariana Atencio, ‘In 2019, protesters took to the streets around the world to demand change’, *NBC*, 25 December 2019.

In Hong Kong, the protests were unprecedented, involving numerous violent clashes mostly between young people and the police over the course of more than eight months. The situation became particularly alarming in November when the protests moved onto several university campuses resulting in prolonged standoffs with the police, many traumatised young people, and substantial property damage. As the protests developed, it became evident to us that more attention needed to be paid to the human rights dimension of street protests. Hence, we put out a call for papers and managed in short time to attract five interesting articles that contribute in their distinct ways to the body of literature on street protests and human rights.

This special issue of the *Asia-Pacific Journal on Human Rights and the Law* explores different human rights perspectives of street protests. As the first article highlights, there are indeed different perspectives one can take of street protests, and the choice of words in a human rights document may unwittingly convey a perspective other than a human rights one. Michael Hamilton is critical of the logic of ‘managing’ and ‘controlling’ public protests, a mindset typically espoused by police and governments. As his research details, a human rights perspective recognises states’ positive and negative obligations to ‘facilitate’ and ‘protect’ the right of peaceful assembly. He writes with much hope that a long-awaited United Nations (UN) General Comment on the right of peaceful assembly protected in Article 21 of the International Covenant on Civil and Political Rights can serve to implement the right more effectively, including in the Asia-Pacific region. But he notes three instances where the ‘pernicious’ language of managing protests has ‘crept’ into the draft text of General Comment No 37 and explains how such language can in practice undermine an effective right of peaceful assembly. Once finalised, General Comment No 37 will provide valuable guidance to ensure multiple facets of human rights are protected during street protests. In the Hong Kong context, given the importance of such general comments to the interpretation of the Hong Kong Bill of Rights, it is hoped General Comment No 37 will prompt a comprehensive review of public order laws and practices to assess compliance with Article 21 and possible reforms. Such a review could serve as a catalyst towards reconciliation in this community.

The next two articles examine the Hong Kong protests and question the moral legitimacy of governmental action leading to and during the course of the protests. Both argue the protests were a justified means of engaging in dialogue with the government. For James Greenwood-Reeves, the protests were legitimacy counterclaims, countering the flawed legitimacy claims put forward by the Administration in defence of the extradition reform bill, which was later withdrawn. He argues the bill was ‘inconsistent with the political morality of Hong Kong’s liberal regime’ as it provided ‘insufficient judicial oversight’ and enabled ‘safeguards of due process and human rights protections to be circumvented by executive action’. For Jane Richards, the Chief Executive’s repeated refusals to engage with the public and the ‘oppressive broken windows policing’ were reasons to ground both a right and duty to ‘engage in civil disobedience to resist injustice’. She argues the circumstances were such as to justify some forms of ‘principled uncivil disobedience’ including the widespread proliferation of graffiti, which can be seen as a ‘meaningful act of resistance’ and ‘an assertion of the dignity that is otherwise stripped’.¹¹ She believes Hong Kong has been forever altered, both physically and ‘in terms of how citizens exist in the space of interactions with the authorities. Greenwood-Reeves believes future protests are inevitable because of a ‘fundamental normative conflict between the liberal democratic constitutional morality aspired to within the Basic Law, and the superordinate normative regime’ of the People’s Republic of China.

The final two articles examine broader human rights issues related to street protests. Joanna Siekiera writes about the less well-known plight of the indigenous people of Rapa Nui,

¹¹ Street art was common to many of the other 2019 protests, see Hannah Brown, ‘A year of protest, as seen through street art’, *Vox*, 31 December 2019.

also known as Easter Island. Protests in 2009 and 2010, though ostensibly against increased tourism and foreign investment projects supported by the Chilean government, were also manifestations of a claim to self-determination. Siekiera remains hopeful that individual complaints brought before a UN human rights treaty body or the Inter-American Court of Human Rights may help the Rapa Nui people to achieve better protection of their rights to land, a clean environment, and respect for their cultural heritage. Kuibin Zhu and David M Siegel demonstrate how highly restrictive detention powers can serve to deter public protests in Mainland China. Discretionary powers conferred on police and prosecutors can result in pre-trial detentions of six months or more without independent scrutiny. Recent reforms have created greater room for defence lawyer intervention, but not enough to remove the chilling effect on public protests. These powers stand in sharp contrast to the standards across the border in Hong Kong where arrestees enjoy a presumption of bail under the law and must be either charged with an offence or released without charge within 48 hours of arrest. This would be yet another example of what Greenwood-Reeves refers to as the dichotomous constitutional morality of Hong Kong, China.

Editors-in-Chief

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