

**Statement of Hong Kong Bar Association**  
**in respect of “Mass Defiance of Court Orders”**

1. The Hong Kong Bar Association (“HKBA”) views with dismay recent calls for open defiance of injunctions granted by the Court in relation to the occupation of certain areas in Mongkok and Admiralty.

2. If any party believes that an order made by the Court ought not to have been made at all, he can challenge the court order either by applying to set it aside (if made *ex parte*) or appealing against it. Judgment is now pending as to whether the injunctions should be further continued or discharged, and no doubt the court will make a ruling on the basis of the evidence and arguments placed before it. However, before or until an order is set aside it should be obeyed. Independence of the Judiciary and respect for the dignity and authority of the Court are fundamental tenets of the concept of the Rule of Law. When deliberate defiance of a court order is committed *en masse* as a combined effort, a direct affront to the Rule of Law will inevitably result. For the same reason, open calls to the public to disobey a court order applicable to them would undoubtedly constitute an erosion of the Rule of Law.

3. The HKBA rejects any suggestion by an academic that there is no challenge to the Rule of Law from merely disobeying a civil court order, or that the Rule of Law is only threatened when there is disobedience of an actual order of committal for contempt of court. Such suggestions tend to mislead the public. The eroding effect of an act of deliberate disobedience of a court order cannot depend upon whether or not anyone had followed up a breach of that court order by an application to commit for contempt.

4. The concept of Rule of Law does not recognize or countenance any “tit for tat” strategy. Many people would share the view, as we do, that the decision of the NPCSC dated 31<sup>st</sup> August 2014 imposed unreasonable restrictions on civil and political rights. However, it does not mean that civilians, whether acting individually or *en masse*, are therefore entitled to move to the other extreme by breaching a subsisting order made by an independent judiciary. This would be to take the law into one’s own hands, thereby going down a slippery slope towards a state of lawlessness. In particular, at this juncture we are concerned with violation of laws and court orders not just by ordinary civilians in the course of expressing their views, but by citizens *en masse* acting in wilful defiance of the law and court orders as a political bargaining tool.

5. Some prominent politicians – several of whom are legally qualified - have contemptuously dismissed criticisms of prolonged occupation in breach of court orders. By such dismissal, they implicitly encouraged continued flouting of court orders. Their views may well be strongly and genuinely held, but they do not sit well with a detached, impartial, well-based, balanced and objective analysis of the concept of the Rule of Law for the benefit of the public as a whole. The HKBA must strongly disagree with them with the greatest moral courage. While exclusive or over-emphasis on “compliance with the law” could, in some circumstances, be symptomatic of an oppressive “Rule By Law” regime (something which the HKBA unequivocally detests), on this occasion and on the facts before us, publicly advocating or endorsing mass disobedience of court orders unquestionably erodes the Rule of Law and sets a bad precedent.

6. In this connection it is worth quoting from the judgment of the Honourable Mr. Justice Hartmann, currently a Non-Permanent Judge of the Court of Final Appeal, in the case of *Secretary for Justice v Ocean Technology Ltd (t/a Citizens’ Radio)* [2010] 1 HKC 456 24 November 2009:

“7. In court this morning, each of the respondents has explained why he felt compelled to act in the way he did. Each has said that, in seeking the lawful operation of a community radio service and having that desire frustrated, his conflict was not with the court but with the Government. However as a result of the Government’s oppressive conduct (as each saw it) which resulted in the granting of the injunction, each felt that they had no choice other than to pursue a limited course of civil disobedience. Accordingly, insofar as their actions may have amounted to a breach of the injunction, the respondents have accepted that they have been in contempt but have stressed that they had no intention to directly disobey the court and were not motivated by any malice towards it.

.....

9. *Hong Kong adheres to the rule of law. In the present context, this means that every resident – from those filled with the most noble ideals to those seeking only the most menial advantage – are governed by and bound to the operation of the law. Whatever their motives, the respondents understood that, in accordance with the rule of law, they had an obligation to obey the injunction.* Their decision not to do so has constituted a contempt of court.

10. By way of a postscript it should be said that the injunction issued by Fung J did come back before the court for consideration a week after its issue. On this occasion, I heard the matter and refused to extend the injunction. However, at the end of the judgment, I said the following which must still hold good:

“... while I have declined to extend the injunction, the fact remains that on 10 January of this year Fung J saw fit for a limited period of time to grant that injunction. If it is shown that any of the defendants have acted in contempt of that injunction they will be held accountable. I say that because, *unless the integrity of our judicial system is honoured, this court will be unable to afford the very protection that the defendants themselves have sought from it.*”

...

23. The respondents are committed social activists. I have no doubt that at the time they were acting as their beliefs and consciences dictated. I can also understand their frustration at the turn of events. But, as Hoffmann LJ observed in *Department of Transport v Lush* (unreported: 29 July 1993 Court of Appeal, Civil Division):

**“... the law cannot allow obedience to its orders to be a matter of individual choice even on grounds of conscience.”** “ (emphasis added)

7. The HKBA had always been a strong advocate of the need for everyone involved in the law (the legislature, the executive and the judiciary) to protect and respect fundamental civil and political rights within their respective constitutional roles. This is well borne out by our successive statements on the meaning of the Rule of Law. Recognizing the scope for legitimate theoretical disagreement on the subject of civil disobedience and Lord Hoffmann’s remark in the case of *R v Jones* that “It is the mark of a civilized community that it can accommodate protests and demonstrations of this kind” (quoted in the HKBA’s Statement dated 8 October 2014), the HKBA had ***not*** sought to ***generally*** condemn the occupation movement merely on the ***simplistic*** basis that it might involve breach of some law or regulations. However, it is wrong to think that just because civil disobedience is a philosophical concept and people pursue it for a political cause, it is thereby wholly immunized from objective comments from a “Rule of Law” perspective under the excuse “political matters are to be resolved politically”. That would be to create a “Rule of Law no man’s land” entirely self-defined by the participants.

8. On the facts of this occasion, where:

- (a) there had been massive disobedience of court orders and open calls for such mass disobedience; and
- (b) the law underlying such orders – namely a law concerning the use of public space – is NOT a law which can be described as inherently “evil” (which distinguishes the present situation from examples concerning laws promoting genocide or racial discrimination);

the HKBA believes that such mass disobedience and calls for disobedience have overstepped the mark which can be reasonably tolerated even by relatively liberal understandings of the concepts of the Rule of Law and civil disobedience.

9. As Sir Isaiah Berlin, one of the greatest liberal thinkers of the 20<sup>th</sup> century, said in an address delivered in 1994, when commenting on the way some had sought to fight for their ideals:-

*“eggs are broken, but the omelette is not in sight, there is only an infinite number of eggs ... ready for the breaking. And in the end the passionate idealists forget the omelette, and just go on breaking eggs.”*

The target of his comment different, but the message equally applies here. Whatever other eggs there may be and whether those other eggs are worth breaking, the “Rule of Law” is definitely Hong Kong’s all-too-precious egg, now very much at risk of being broken by recent events.

**Dated the 28th day of October 2014.**

**HONG KONG BAR ASSOCIATION**