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The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the latter's communication [AL CHN 11/2014] dated 5 December 2014, has the honour to transmit herewith the attached reply by the Chinese Government.

The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights assurances of its highest consideration.



Office of the High Commissioner for Human Rights
GENEVA

OHCHR REGISTRY

18 MARS 2015

Recipients : *SPD*

Enclosure

(Translated from Chinese)

Receipt is hereby acknowledged of communication AL CHN 11/2014 of 5 December 2014 from the United Nations Human Rights Council's Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders. The Chinese Government has made inquiries into the matter referred to in the communication and wishes to make the following reply:

1. The "Occupy Central" movement that took place in Hong Kong was illegal from head to toe. A group of people illegally assembled, occupied a major thoroughfare by force, surrounded and attacked government offices, resisted police officers in the exercise of their law enforcement duties, disrupted public order, endangered public safety and undermined the rule of law in Hong Kong.

No society can tolerate illegal behaviour. The central Government of China firmly supports the government of the Special Administrative Region in the actions it has taken, in accordance with the law, to safeguard public order in Hong Kong and to protect property and the personal safety of residents in Hong Kong.

2. In accordance with the Basic Law of the Hong Kong Special Administrative Region (hereafter the "Basic Law") and the Hong Kong Bill of Rights (hereafter "the HKBOR"), the people of the Hong Kong Special Administrative Region (HKSAR) enjoy fundamental rights that include the right to freedom of expression and the right to assemble peacefully and hold marches and demonstrations. When exercising these rights, they must take into account the protection of public order, public safety and the rights and freedoms of others.

HKSAR is governed by the rule of law, which is the basis for guaranteeing the rights and freedoms of Hong Kong residents. The HKSAR courts hear cases in full independence and are not subject to any interference. When administering justice, the courts may refer to the precedents of other common law jurisdictions or to cases brought before international human rights bodies, including the United Nations Human Rights Committee, the United Nations Committee against Torture and the European Court of Human Rights. The HKSAR courts ensure that all police action taken against accused persons (including their arrest and placement in custody) is lawful and is consistent with the HKBOR and the Basic Law, including the right to freedom of expression (set out in article 16 of the HKBOR and article 19 of the International Covenant on Civil and Political Rights (hereafter "the Covenant"), the freedom of peaceful assembly (set out in article 17 of the HKBOR and article 21 of the Covenant), the right to be free from torture and ill-treatment (set out in article 3 of the HKBOR and article 7 of the Covenant) and the right to liberty and security of person (set out in article 5 of the HKBOR and article 9 of the Covenant). Accused persons who are convicted of an offence have the right to appeal to a higher court to overturn their convictions and sentences in accordance with the law. Any person who is illegally arrested or detained has the right to demand compensation for the damages suffered.

Public assemblies

The Government of HKSAR acknowledges that it has a responsibility to proactively take reasonable measures to facilitate the peaceful holding of lawful assemblies. At the same time, demonstrators should not deliberately disrupt public order or flout law and discipline. Persons participating in gatherings or demonstrations must abide by the law and

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show respect for the rights and freedoms of others when expressing their views, so that the event may take place in a peaceful and orderly fashion. The Hong Kong Court of Final Appeal (hereafter “the Court of Final Appeal”) ruled that any obstructions erected on a public road in the exercise of the right of peaceful protest must not exceed reasonable limits as determined by the prevailing particular circumstances of the case; the interests of persons exercising their right to use public roads hold equal importance.

The handling of public events

The Hong Kong Police Force (hereafter “the Police Force”) strives to handle all public events in a fair, just and impartial manner, in accordance with the law of Hong Kong. Pursuant to the HKBOR, the Police Force attempts to strike a balance between facilitating the holding of legal and peaceful public assemblies and demonstrations as far as possible and striving to minimize the impact of these events on the general public and to guarantee public order and public safety.

The statutory notification scheme for public events

Pursuant to article 245 of the Public Order Ordinance, the organizer of any public assembly or demonstration that exceeds a specified number of participants, specifically public assemblies of 50 or more people and public processions of 30 or more people, must notify the police chief at least seven days prior to the event, which shall take place provided the police chief does not forbid or oppose it.

In a ruling on the constitutionality of the statutory mechanism regulating public demonstrations, the Court of Final Appeal stated that it is quite common for judicial systems around the world to establish a provision requiring prior notice of such demonstrations. The Court also affirmed that the provision complies with the HKBOR and the Basic Law and that it allows police officers to carry out their duties and to take reasonable and appropriate measures to enable lawful assemblies and demonstrations to take place peacefully.

The principle of the use of force by the police

Pursuant to chapter 232, section 10, of the Police Force Ordinance, the duties of the Police Force include taking lawful measures to preserve the public peace, prevent crimes, preserve order in public places, prevent injury to life and property, regulate processions and assemblies and remove obstructions from public thoroughfares.

The police are subject to strict regulations on the use of force. These include the following: before resorting to the use of force, circumstances permitting, police officers must first issue a warning to the person in question and indicate that they are about to use force; before using force, if practically feasible police officers must give the person concerned ample opportunity to obey their orders; when using force, police officers must constantly exercise maximum restraint; any use of force must be to achieve the legitimate aim of the moment and only to the minimum degree necessary; and, once the legitimate aim has been achieved, force must no longer be used.

When faced with acts of violence, depending on the behaviour of the person concerned, the police respond with necessary and proportional measures, which includes the use of the lowest possible degree of force. The regulations on the use of force by the police are in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Accessing a computer with criminal or dishonest intent

Chapter 200, section 161, of the Crimes Ordinance stipulates that anyone who obtains access to a computer with criminal or dishonest intent is in violation of the law. Acts covered by this provision include participating in cyberattacks, computer fraud and the

hacking of computer systems, using social networks to encourage participation in illegal activities, and other offences committed by means of a computer.

The illegal assembly held from 28 September to 15 December 2014

The series of illegal activities that took place from 28 September to 15 December 2014 (over a total period of 79 days) began as a students' strike and evolved into a large-scale illegal assembly of thousands of people from different walks of life, resulting in the illegal blockage of a major thoroughfare. On most days during that period, a roughly three-kilometre section of a major road in the city centre was blocked. Emergency vehicles were thus unable to reach the areas that were illegally occupied, which constituted a long-term, unnecessary threat to the safety of local residents. In addition, major thoroughfares in several districts were illegally occupied for more than two months, which had a profound negative impact on residents' lives and normal economic activities. During the illegal occupation of the roads, nearly 250 bus routes were temporarily suspended or rerouted, and tram services on Hong Kong Island were severely disrupted. More than 100 schools in the affected areas were forced to close for between three and six days, and school bus services suffered severe delays. The blockage also severely hindered the access of older persons and persons with disabilities to a number of services. Due to the blockage of major roads, taxis, minibuses, private cars and goods vehicles all had to be diverted.

The police handled this difficult situation in accordance with the law and the relevant principles referred to above, taking into account the importance of the right to freedom of expression and peaceful assembly, and thus consistently using a tolerant, restrained approach to deal with the above-mentioned illegal assembly. However, when faced with acts of violence committed by demonstrators, the police still found it necessary to use a minimum degree of force to respond to the situation, as described below.

As the assembly continued for days on end, some demonstrators made repeated attempts to break into government buildings in the Tamar site (which contains the Office of the Chief Executive, the offices of the respective policy bureaux and the Legislative Council building), forcefully attacked the police line of defence, grabbed barricades, attacked police officers, forcibly occupied major thoroughfares in several districts on Hong Kong Island and the Kowloon Peninsula and brought traffic to a standstill. After issuing repeated warnings and alerts to no avail, the police officers eventually used the minimum degree of force necessary to achieve their lawful aims, including the use of pepper spray, CS sprays or truncheons and, in one case, tear gas to stop the violence on the scene and restore order.

Clashes also broke out among different groups of demonstrators. When dealing with clashes between two groups, police officers separated the parties involved, cleared a passage and escorted away from the scene persons requesting help, persons who were injured or persons who wished to leave the scene.

The police constantly showed maximum restraint throughout the duration of the illegal assembly, while maintaining law and order. During this period, persons adversely affected by the illegal occupation of major thoroughfares applied to the courts for an injunction. In a decision issued on 20 October 2014, the Court of First Instance granted the plaintiffs' request for a temporary injunction and stated that the demonstrators' behaviour exceeded the bounds of what was reasonable and that an appeal based on the fundamental right to assemble and demonstrate would not be upheld. The Court of Appeal ruled that, even though the protesters strongly believed that their demands were legitimate, from a legal point of view that did not allow them to trample on the rights of other persons who may or may not agree with their demands.

Once the plaintiffs and bailiffs had taken a series of measures to enforce the court injunction, and the police had removed the barricades blocking public roads, all illegal

occupation activities ended on 15 December 2014. As of that date, the police had arrested a total of 955 persons (some of whom had in the past had ties to the mafia) for offences such as unlawful assembly, disorderly conduct in a public place, common assault, criminal damage, accessing a computer with criminal or dishonest intent and indecent assault.

With regard to the case involving a man who was allegedly beaten by seven police officers on 15 October 2014, those officers were subsequently arrested on 26 November 2014 for the offence of “assault occasioning actual bodily harm”.

The police will investigate all related cases and will refer them to the criminal prosecution division of the Department of Justice to be dealt with in accordance with the Prosecution Code. When deciding whether or not to initiate prosecution or continue prosecution of such cases, prosecutors will take into account the rights of the defendants and the parties to the case, such as the right to freedom of expression and freedom of peaceful assembly. Arrested persons will be prosecuted only if the admissible evidence fully supports the initiation or continuation of legal proceedings and if prosecution is necessary for reasons of general public interest. Prosecutors will also give particular consideration to all the defendants’ relevant procedural rights, including the right to obtain confidential legal advice, the right to be presumed innocent and the right to be given a fair trial as soon as possible, as guaranteed under the Basic Law and the HKBOR.

Freedom of expression

The HKSAR Government staunchly defends freedom of expression and freedom of the press, as set out in article 27 of the Basic Law and article 16 of the HKBOR. The media freely report the news in Hong Kong and play an active monitoring role. Local and international journalists also freely report on events in Hong Kong, including the events that took place from 28 September to 15 December 2014. The police sent media liaison officers to the scene of the events, in order to provide the necessary assistance to the media and facilitate their interviews.

3. In the light of the need to establish the rule of law in China, the Chinese public security authorities continue to promote the standardization of law enforcement. The public security authorities combat all illegal and criminal activities in accordance with the law and on the basis of firm evidence of suspects’ illegal and criminal activities and, acting in strict accordance with laws and regulations such as the Criminal Law, the Criminal Procedure Law and the Law on Public Security Administration Punishments, issue the relevant legal documents, inform the suspects’ family members, and ensure the suspects’ fundamental rights, such as the right to choose a lawyer and to meet with that lawyer.

The Government of China is committed to promoting and protecting the Chinese people’s freedom of expression. China has more Internet users than any other country in the world, and the Internet has become an important means for Chinese citizens to express their views and opinions. Chinese Internet users have expressed their views, engaged in discussions, enjoyed full access to information and shared their opinions regarding the “Occupy Central” movement. There are millions of search results on the topic, including news reports and forum discussions. In its efforts to promote the development of the Internet, China has made it a point to ensure supervision of the Internet, use in accordance with the law. All Internet news services in China must operate in accordance with the law and are prohibited from disseminating illegal information on the Internet. This is for reasons of national security and public interest, and is absolutely necessary.

China promotes communication in cyberspace and encourages the provision of quality information services to Chinese Internet users; nevertheless, the sovereignty of each country should be respected in matters relating to the Internet. Each country has the right to take action in accordance with its national laws and regulations to deal with attempts to use the Internet to interfere in its internal affairs or with behaviour that could severely impact

security and social stability. The Universal Declaration of Human Rights provides that, “in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law”. The International Covenant on Civil and Political Rights also stipulates that the exercise of the right to freedom of expression must comply with the provisions of law that are necessary for respect of the rights or reputations of others or for the protection of national security or public order.

Certain websites outside of China have acted as a channel and platform for members of the “Occupy Central” movement to upload and share illegal information, incite people in mainland China to follow their example by holding illegal assemblies, and threaten social stability in mainland China, which constitutes a serious violation of Chinese law. Internet service providers in mainland China have, in accordance with the law, taken measures to prevent the spread of illegal information; this exemplifies lawful practice among Internet businesses.

联合国人权理事会言论自由问题特别报告员、和平集会和结社自由问题特别报告员、“人权卫士”问题特别报告员2014年12月5日函[AL CHN 11/2014]收悉。中国政府对来函所涉情况作了调查，现答复如下：

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在香港发生的“占领中环”（“占中”）是彻头彻尾的违法活动。一些人非法聚集，霸占交通要道，包围、冲击政府部门，对抗警方执法，扰乱社会秩序，危害公共安全，破坏香港法治。

任何社会都不会容忍违法行为。中国中央政府坚定支持特区政府依法处置，维护香港社会秩序，保护香港市民人身和财产安全。

二

香港特别行政区（香港特区）居民根据《中华人民共和国香港特别行政区基本法》（《基本法》）和《香港人权法案》（《人权法案》）享有的基本权利，包括发表自由，以及和平集会、游行和示威的权利。行使上述权利时，必须同时顾及保障公共秩序、公共安全及他人权利和自由的需要。

香港特区是法治社会，而法治是保障香港居民的权利和自由的基础。香港特区法院独立进行审判，不受任何干涉。法院审判案件时可参考其他普通法适用地区的司法判例及

关于人权的国际案例，包括联合国人权事务委员会、联合国禁止酷刑委员会及欧洲人权法庭的案例。香港特区法院会确保警方对被告人所采取的行动（包括逮捕及拘禁等行动）是合法，并与《人权法案》及《基本法》的条文相符，包括发表自由之权利（《人权法案》第16条及《公民权利和政治权利国际公约》（《公约》）第19条）、和平集会之权利（《人权法案》第17条及《公约》第21条）、免受酷刑及虐待之权利（《人权法案》第3条及《公约》第7条），以及享有身体自由及人身安全之权利（《人权法案》第5条及《公约》第9条）。经判定犯罪的被控人，有权声请上级法院依法覆判其有罪判决及所科刑罚。任何人受非法逮捕或拘禁者，有权要求执行损害赔偿。

公众集会

香港特区政府确认其有积极责任采取合理的措施，便利合法的集会和平进行。同时，示威人士不应蓄意扰乱公共秩序，或漠视法纪。集会或游行人士在表达意见时，必须守法并尊重他人的权利和自由，让活动和平有序地进行。香港特区终审法院（终审法院）裁定，在行使和平示威的权利时对公路所造成的阻碍，不得超越在当时情况下的合理界线；在公路上行使通行权利人士的利益，同属重要。

处理公众活动

香港警务处（警方）致力根据香港法律，以公平、公正和不偏不倚的态度处理所有公众活动。为落实《人权法案》的要求，警方的方针是致力取得平衡，一方面尽量便利合法

及和平的公众集会及游行，另一方面亦须致力减低这些活动对公众的影响，并确保公共秩序和公共安全。

公众活动的法定通知机制

根据《公安条例》(第 245 章)，任何公众集会或游行的人数若超出订明规限，即 50 人以上的公众集会及 30 人以上的公众游行，主办者必须在活动举行前最少七天向警务处处长(处长)提出通知，并在处长没有禁止或反对的情况下方可举行。

终审法院在一宗关于规管公众游行的法定机制是否合宪的案件中指出，事前通知的规定在世界各地的司法管辖区极为普遍，并确认此规定符合《人权法案》及《基本法》，能让警队履行职责，采取合理和适当措施，让合法集会和示威得以和平进行。

警方使用武力的原则

根据《警队条例》(第 232 章)第 10 条，警方的职责包括采取合法措施以维持公安、防止罪案发生、在公众地方维持治安、防止损害生命及损毁财产、规管游行及集会，以及移去公共大道上的障碍。

警方有严谨的武力使用守则，包括：警务人员在使用武力前，必须在情况许可下向对方发出警告，示意将使用武力；使用武力前必须在实际可行的情况下，让有关人士有充足的机会遵守警方的指令；在使用武力时，警务人员必须时刻保持高度克制；所使用的武力是为完成当时的合法目的而须使用的最低程度武力；及当使用武力的合法目的经已达到，便

须停止使用武力。

当面对暴力行为，警方会视乎有关人士的行为，采取必要和相称的回应措施，包括使用最低程度的武力。警方使用武力的守则，符合《执法人员使用武力和火器的基本原则》。

有犯罪或不诚实意图而取用电脑

《刑事罪行条例》（第 200 章）第 161 条订明，任何人有犯罪或不诚实意图而取用电脑，即属违法。此条文涵盖的案件包括参与网络攻击、网上诈骗及非法入侵他人的电脑系统，透过社交平台教唆他人参与非法活动，以及透过电脑平台干犯其他罪行。

2014 年 9 月 28 日至 12 月 15 日期间的非法集结

一连串非法活动由 2014 年 9 月 28 日至 12 月 15 日发生（持续共 79 日），是由罢课演变成涉及数以千计不同背景人士的大型非法集结，导致主要干道被非法堵塞。在该段期间的大部分日子，市中心总共有长达约 3 公里的主要干道被堵塞。紧急救援车辆因此不能直达或通过被非法占领的地区，令临近地区的市民长期承受不必要的安全威胁。此外，数个地区的主要干道被非法占领两个多月，对市民大众的生活及正常经济活动做成极大的负面影响。在干道被非法占领期间，有近 250 条巴士路线要暂停或改道，香港岛的电车服务严重受阻。在受影响地区的百多间学校需停课 3 至 6 日，学校巴士服务受到严重延误。堵路亦严重阻碍长者及残疾人士获得各种服务。碍于主要道路被堵塞，计程车、小型巴士、私家车和货车均须改道行驶。

警方根据法律和前文提及的有关原则处理以上的艰难局面，当中考虑到发表自由及和平集会权利的重要性，因此一直以容忍、克制的方式来处理上述的非法集结。但是，面对示威人士的暴力行为时，警方仍要使用最低程度武力应对，以下举例说明之。

在连日的集结中，部分示威人士曾屡次企图闯入位于添马的政府建筑物（内有行政长官办公室、各决策局办公室及立法会大楼），暴力冲击警方防线、抢夺铁马、袭警、在香港岛和九龙半岛数个地区霸占主要干道、瘫痪交通。在作出多次劝喻及警告无效后，警方最终使用了为完成当时合法目的而须使用的最低程度武力，包括胡椒喷剂、催泪溶剂或警棍，并在一次事件中使用了催泪烟，以停止现场的暴力行为及回复社会秩序。

不同示威人士之间亦有发生冲突。在处理两批示威人士之间的冲突时，警务人员会将双方分隔开，并腾出通道护送求助人士，以及想离开现场或受伤的人士离开。

在非法集结进行期间，警方一直保持极大克制维持治安。期间，有受示威影响的人士就干道被非法占领向法院申请禁制令。在2014年10月20日判决的一宗案件中，原讼法庭批出原告人申请的临时禁制令，并裁定示威者的行为不相称，指援引集会及示威自由的基本权利作为抗辩将相当不可能成功。上诉法庭处理上诉时裁定，即使示威者强烈认为他们的诉求高尚，但从法律观点着眼，这并不容许他们践踏其他人的权利；其他人可能同意，但亦可能不同意他们的

诉求。

经原告人及执达主任采取一连串行动执行法庭禁制令，以及警方移去公共大道的障碍后，所有非法占领行动于2014年12月15日完结。截至当日，警方合共逮捕了955人（部分人士有黑社会背景），涉嫌干犯的罪行包括非法集结、在公众地方扰乱秩序、普通袭击、刑事毁坏、有犯罪或不诚实意图而取用电脑、非礼等。

关于一名男子于2014年10月15日怀疑被7名警务人员殴打的案件，该7名警务人员其后在2014年11月26日因涉嫌触犯“袭击致造成身体伤害”罪而被拘捕。

警方将会调查所有相关个案，并会转介给律政司的刑事检控科根据《检控守则》处理。检控人员在决定应否提出检控或继续检控案件时，会顾及被告和诉讼各方的权利，例如言论自由及和平集会的权利。被捕者只会在所得的可接纳证据充分支持提出或继续进行法律程序和基于一般公众利益必须进行检控的情况下才会被检控。检控人员亦会格外注意被告人在检控过程中所享有的相关权利，包括《基本法》及《人权法案》所保证的得到秘密法律咨询的权利、假定无罪的权利，以及尽早接受公正审判的权利。

发表自由

香港特区政府坚决保障发表自由和新闻自由（载于《基本法》第27条及《人权法案》第16条）。传媒在香港自由地报道新闻，并积极担当监察的角色。本地及国际的新闻工作者亦自由地报道香港的事件，包括2014年9月28日至12

月15日期间的事件。警方有调派传媒联络员到事件现场，为传媒提供所需的协助以便利其采访工作。

三

中国公安机关按照建设法治中国要求，持续推动执法规范化建设。公安机关依法打击各类违法犯罪活动，并在收集固定犯罪嫌疑人相关违法犯罪活动证据的基础上，严格按照《刑法》、《刑事诉讼法》、《治安管理处罚法》等法律规定，依法出具相关法律文书，依法通知犯罪嫌疑人的家属，依法保障犯罪嫌疑人委托代理律师和会见代理律师等基本权利。

中国政府致力于促进和保护本国人民的言论自由。中国是世界上互联网用户最多的国家，互联网已成为中国公民表达意见和发表言论的重要渠道。中国网民就“占中”话题发表言论，进行讨论，充分获取信息和表达观点，相关新闻报道及网民讨论在网上检索有数百万条结果。在促进互联网发展的过程中，中国坚持依法管理互联网。所有在中国境内的互联网信息服务商都要依法办网，阻止违法信息在互联网上传播。这是为了国家安全和公众利益，是完全必要的。

中方主张促进网络空间互联互通，鼓励为中国网民提供良好的信息服务，但各国网络主权应当得到尊重。对于利用互联网干涉别国内政及可能对各国国家安全和社定产生重大影响的行为，各国有权依据本国法律法规予以处置。

《世界人权宣言》规定“人人在行使他的权利和自由时，受到法律所确定的限制”。《公民权利和政治权利国际公约》也规定，行使言论自由权利必须遵守法律规定，尊重他人的权

利或名誉，保障国家安全或公共秩序。

中国境外一些网站为“占中”者提供上传、分享非法信息的渠道和平台，企图煽动中国内地仿效非法集会，危害中国内地的社会稳定，这是严重违反中国法律的行为。中国内地网络服务提供商依法采取措施防止违法信息的传播，这是依法办网的体现。