

(Translated from Chinese)

Receipt is hereby acknowledged of the letter dated 2 May 2019 addressed jointly by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Independent Expert on the promotion of a democratic and equitable international order, of the United Nations Human Rights Council (ref. AL CHN 4/2019). The Chinese Government wishes to make the following reply:

A. Overall position

The government of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China is committed to upholding the rule of law and guaranteeing, in accordance with the Basic Law of the Hong Kong Special Administrative Region (the constitutional document of the HKSAR) of the People's Republic of China, the fundamental rights and freedoms of all persons in Hong Kong (in particular chapter III of the Basic Law).

Eight of the nine defendants in the case referred to in the special procedures mandate holders' letter (hereafter "the mandate holders' letter") have applied for permission to appeal against their convictions (or convictions and sentences). The right of appeal is a highlight of the right of due process of law and is guaranteed by the Basic Law, the Hong Kong Bill of Rights and the relevant laws of the HKSAR. These guarantees are fully enjoyed by all defendants throughout the judicial process.

All defendants in the present case were prosecuted, convicted and sentenced in accordance with the laws of the HKSAR following regular and sound legal procedures, and the laws concerned fully conform to the international human rights guarantees referred to in the mandate holders' letter. Each of the defendants was prosecuted, convicted and sentenced for illegal acts which overstepped the limits prescribed by law. The relevant laws, in accordance with the criteria of necessity and proportionality, strike a reasonable balance between the right to freedom of expression, peaceful assembly and association, and the protection of the rights and freedoms of others.

B. Responses to specific issues raised in the mandate holders' letter

1. *The Decision of the Government of the People's Republic of China allegedly "rules out full universal suffrage for Hong Kong" (fourth paragraph of the mandate holders' letter)*

Articles 45 and 68 of the Basic Law set out the goal of election by universal suffrage for the Chief Executive and all members of the Legislative Council of the HKSAR.

The Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council in 2016 (hereafter "the Decision"), adopted on 31 August 2014, did not "exclude" election by universal suffrage. On the contrary, the Decision provides a clear and explicit framework for the election of the Chief Executive by universal suffrage. The HKSAR government will strive to create a favourable atmosphere for promoting political development within the framework of the Basic Law and the Decision.

2. *The use of common law charges in this case allegedly "seeks to dissuade others from participating in peaceful protests for fear of excessive punishment and may have a chilling effect on civic space" (eighth paragraph of the mandate holders' letter)*

The HKSAR is a common law jurisdiction. Like other common law jurisdictions, Hong Kong's criminal law derives from statutes and common law (i.e., case law).



The offences for which the accused were charged involve “public nuisance” under common law. Public nuisance crimes have long been established under common law. They feature sufficient legal certainty and their elements of crime are clearly defined. According to case examples, in order to constitute a crime of public nuisance, it must be proved that the defendant has committed acts that are not permitted by law, or has not fulfilled his/her legal responsibilities, and that the consequences of those acts or omissions must endanger the life, health, property or comfort of the public, or hinder the public from exercising any right that all enjoy. The act or omission concerned must cause widespread damage to the public; the defendant knows or ought to know the consequences of his/her actions or omissions. Under common law, public nuisance crimes possessing these elements are not “overly broad”.

The Department of Justice of the HKSAR government has consistently upheld its constitutional responsibility to handle its prosecution of this case in an impartial, professional and politically neutral manner and in strict accordance with the law. After careful and comprehensive consideration of applicable laws and relevant evidence (including what evidence is accepted by the court), the Department of Justice made all prosecution decisions fairly and impartially (including the choice of charges) in accordance with the publicly available Code of Prosecution.

Senior barristers representing the accused stated their views on their clients’ being charged with common law “public nuisance” rather than statutory offences. The court ruled that it was the privilege of the prosecution to choose charges, which was a long-established legal principle. If the prosecution considered that there was no appropriate statutory offence to provide appropriate punishment to reflect criminal responsibility in the case, the prosecution had the right to use the common law offence of public nuisance. The court also pointed out that it was incorrect to say that the accused (if convicted) would be subject to heavier punishment as a result of the use of public nuisance, since the final sentence imposed by the court would inevitably depend on the court’s assessment of the criminal responsibility of the convicted defendant. The concern in the eighth paragraph of the mandate holders’ letter that the accused had been charged with common law crimes in order to “dissuade others from participating in peaceful protests for fear of excessive punishment” is unfounded.

Hong Kong’s laws are in line with international human rights standards, rationally balancing the rights of freedom of speech and assembly with the protection of the rights and freedoms of others. Therefore, the HKSAR government believes that the charges and convictions in this case are consistent with the rights to freedom of expression, peaceful assembly and association, and will not and cannot have a chilling effect on all those who exercise these fundamental rights, nor will they in fact affect their exercise of these fundamental rights.

3. *The charges of incitement against the accused allegedly “criminalize the dissemination of information and calls for peaceful protest” (seventh paragraph of the mandate holders’ letter)*

A long-established principle of international human rights law is that in balancing the rights of demonstrators to peacefully demonstrate with those of other members of the public, a comparative verification criterion should be adopted, such as the International Covenant on Civil and Political Rights and the European Guidelines on Freedom of Peaceful Assembly.

This is also consistent with the practice of other jurisdictions. For example, in *DPP v. Jones (Margaret) and Another* [1999] 2 AC 240, tried before the British House of Lords, the appellants had been accused of participating in a trespassory assembly on a public road in the knowledge that their actions were prohibited by law. The House of Lords considered that such roads are public places and can be enjoyed by the public for any reasonable purpose; as long as the activities at issue did not constitute a public or private nuisance, and would not unreasonably hinder the public’s primary right to enter and leave the public road, demonstrators could enjoy the right to peaceful assembly there under those restrictions. The key question is whether the use of the public road in that case was reasonable in the above sense and did not conflict with the public’s primary right of access to and from the roadway.

In the present case, with regard to the public nuisance offence involving obstruction of roadways, the Court adopted reasonableness as a criterion of verification, which includes the principle of proportionality to ensure that the right of the demonstrators to peacefully demonstrate is properly balanced with the rights of other members of the public, without infringing on the constitutional rights of the demonstrators.

Therefore, contrary to what is alleged in the seventh paragraph of the mandate holders' letter, it is clear from the foregoing and other parts of the reasons for the verdict (e.g., paragraphs 578 and 689 of the reasons for the verdict) and the reasons for the sentence (e.g., excessive damage or inconvenience referred to in paragraphs 62 and 63 of the reasons for the sentence) that the charges of incitement levied against the accused were not intended to "criminalize the dissemination of information and calls for peaceful protest". On the contrary, they were accused of causing partial nuisance to the public by these incitements, which exceeded a reasonable scope as well as the rights to freedom of speech and peaceful assembly guaranteed by the constitution.

4. *The alleged attempt to "criminalize the legitimate exercise of freedom of expression and freedom of assembly" (eighth paragraph of the mandate holders' letter)*

Although article 21 of the International Covenant on Civil and Political Rights recognizes the right to peaceful assembly, it does not define the term "assembly". The *Guidelines on Freedom of Peaceful Assembly*, jointly prepared by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe and the European Commission for Democracy through Law of the Council of Europe, define assembly as "the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose". The *Guidelines* emphasize that only "peaceful assemblies" are protected under the right to peaceful assembly, and the term "peaceful" should be defined as including conduct that "temporarily hinders, impedes or obstructs the activities of third parties".

The occupation action lasted 79 days, starting in September 2014 and ending in December 2014, with the participation of tens of thousands of people and the involvement of important commercial areas such as Admiralty and Central, whose streets are main traffic arteries. In addition, the occupation had been expected to continue indefinitely, with the participation of thousands to tens of thousands of people.

The occupation action cannot be regarded as "temporary" in scope. Improper injunctions against the road occupiers applied for by individual private organizations were also approved and enforced by the courts. Unlike the mandate holders, Hong Kong does not believe that such a large-scale and indefinite occupation of major traffic arteries in Hong Kong's busiest commercial areas can be regarded as a "legitimate" exercise of freedom of expression and assembly.

C. The charges and convictions are in full conformity with constitutional guarantees and international human rights guarantees

1. *The international human rights at issue are constitutionally and legally guaranteed in the HKSAR*

As is well known, many of the rights guaranteed by international human rights instruments (such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the relevant provisions of the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, listed in the annex to the mandate holders' letter) are not absolute, and may be restricted in accordance with the law in order to achieve a rightful purpose. In addition, it is generally acknowledged that the State has the responsibility to maintain security and public order (including during peaceful demonstrations). The exercise of these rights should not overstep the boundaries reasonably established by law, as for example illegally interfering with the rights and freedoms of others.

The Hong Kong Bill of Rights Ordinance (Cap. 383) incorporates the provisions of the International Covenant on Civil and Political Rights applicable to Hong Kong into

Hong Kong's law. Articles 16, 17 and 18 of the Hong Kong Bill of Rights respectively guarantee the right of freedom of expression, the right of peaceful assembly and the right of freedom of association. Their provisions are the same as those of articles 19, 21 and 22 of the Covenant.

These rights and freedoms are recognized at the constitutional level by article 27 of the Basic Law, which stipulates that Hong Kong residents enjoy freedom of speech, press and publication, and freedom of association, assembly, procession and demonstration. According to article 39 of the Basic Law, any restrictions on these rights and freedoms must be stipulated in accordance with the law and may not contravene the Hong Kong Bill of Rights Ordinance.

Like articles 19, 21 and 22 of the International Covenant on Civil and Political Rights, articles 16, 17 and 18 of the Hong Kong Bill of Human Rights contain criteria for verification of necessity and proportionality, and require a reasonable balance between relevant rights and other rights (such as national security, public safety, public order and the protection of the rights and freedoms of others).

2. *The charges did not unreasonably restrict the rights of the accused*

The Hong Kong Court of Final Appeal ruled in *Secretary for Justice v. Wong Chi Fung and others* (2018) 21 HKCFAR 35 that although the concept of "civil disobedience" was recognized by Hong Kong law, it did not constitute an effective defence in criminal cases. The principle of proportionality embodied in civil disobedience also requires that demonstrators' behaviour conform to proportionality and avoid excessive damage and inconvenience. As to the present case, the District Court, having taken into account the facts in the case, ruled that the defendants' freedom of assembly and expression were not in any way unreasonably or disproportionately restricted. In consideration of article 27 of the Basic Law, the District Court ruled that the definition of the crime of public nuisance is clear and precise, thus meeting the requirement that restrictions must be "prescribed by law"; the restrictions on the fundamental rights of freedom of expression and freedom of peaceful assembly entailed in the crimes of "conspiracy to commit public nuisance", "incitement to commit public nuisance" and "incitement to incite public disturbance" also conform to the principle of proportionality.

The accused were prosecuted and convicted, not for their promotion or defence of human rights, but on the basis of their illegal acts, because the occupation action caused excessive damage and inconvenience to the public, and resulted in "common harm to the public".

3. *The defendants enjoyed a fair and public trial*

The defendants in this case were convicted after a fair and public trial. They had the right to apply for legal aid. Each person was represented by a team of lawyers appointed by that person and led by a senior barrister during the trial. They also had ample opportunity to make statements and present evidence that they thought appropriate in a fair and public trial. In addition, they had the right to appeal against their convictions and penalties to the Court of Appeal and then to the Court of Final Appeal, which, under article 82 of the Basic Law, may invite judges from other common law jurisdictions to participate in the trial.

Therefore, the constitutional guarantees in the Basic Law and the Hong Kong Bill of Rights are in conformity with the international principles of human rights embodied in the relevant provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms listed in the annex to the mandate holders' letter. In addition, the accusations and convictions of the defendants in this case do not conflict with the defendants' rights to a fair trial, freedom of expression and freedom of association, and peaceful assembly. Any person, whether or not a "human rights defender" or a self-proclaimed "human rights defender", has the right to disseminate information on human rights and fundamental freedoms, but that right must be exercised within the confines of legality.

D. Conclusions

As criminal litigation proceedings connected with the occupation action are still ongoing, it is not appropriate for the HKSAR government to make more specific comments at this stage. The Department of Justice of the HKSAR government will continue to conduct prosecutions in accordance with the Prosecution Code, applicable laws and relevant evidence. The HKSAR government is confident that the courts of the HKSAR will continue to try cases in accordance with judicial independence. As noted above, Hong Kong's laws embody international human rights standards.

In addition, with regard to item 4 of the eleventh paragraph of the mandate holders' letter, the HKSAR government reiterates that the HKSAR is committed to upholding the rule of law and will continue to safeguard the rights and freedoms of all persons in Hong Kong in accordance with the constitutional guarantees of the Basic Law (especially articles 27, 39 and 41) and related international human rights standards.

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中华人民共和国常驻联合国日内瓦办事处和瑞士其他国际组织代表团

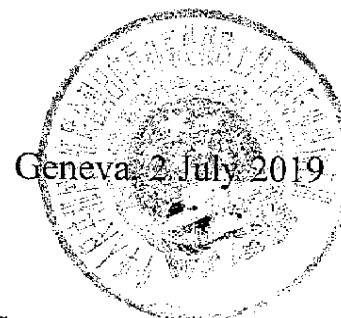
**THE PERMANENT MISSION OF THE PEOPLE'S REPUBLIC OF CHINA
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The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the latter's letter [AL CHN 4 /2019] dated 2 May 2019, has the honor to transmit herewith the 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 the assurances of its highest consideration.



Office of the High Commissioner for Human Rights
GENEVA

联合国人权理事会言论自由问题特别报告员、和平集会与结社自由问题特别报告员、“人权卫士”问题特别报告员、促进民主与平等国际秩序问题独立专家 2019 年 5 月 2 日联合来函[ALCHN4/2019]收悉。中国政府对来函答复如下：

一、总体立场

中华人民共和国香港特别行政区（“香港特区”）政府致力维护法治，并按照香港特区的宪制性文件《中华人民共和国香港特别行政区基本法》（“《基本法》”）（尤其是《基本法》第三章）保障所有在香港人士的基本权利和自由。

有关特别机制来函所提及案件中九名被告人的其中八人已就定罪（或定罪及刑期）申请上诉许可。上诉权彰显正当法律程序权，并受《基本法》、《香港人权法案》和香港特区有关法律保障。各被告人在整个司法程序中充分享有这些保障。

案中所有被告人均是经过正常稳妥的法律程序后，依据香港特区法律被起诉、定罪及判刑，而有关法律完全符合有关特别机制来函中提及的国际人权保障。各被告人是因为其违法行为僭越法律定下的界限而被起诉、定罪及判刑，而有关法律是按照必要性及相称性的验证准则，在表达自由、和平集会和结社自由的权利与保障他人权利和自由之间作出了合理平衡。

二、对有关特别机制来函所提具体问题的回应

（一）所谓中华人民共和国政府的决定“排除在香港全面落实普选”（有关特别机制来函第四段）

《基本法》第四十五条及六十八条订明香港特区的行政长官及立法会全部议员由普选产生的目标。

全国人大常委会在 2014 年 8 月 31 日通过的《关于香港特别行政区行政长官普选问题和 2016 年立法会产生办法的决定》（《决定》）并没有“排除”普选。相反，该《决定》为普选产生行政长官的办法定下清晰而明确的框架。香港特区政府会努力营造有利的氛围从而在《基本法》及该《决定》的框架下推动政制发展。

（二）所谓“在本案引用普通法的罪名是为了使其他人担心被重罚而避免参加和平抗议活动。这可能会对公民空间造成寒蝉效应”（有关特别机制来函第八段）

香港特区是一个普通法司法管辖区。正如其他普通法司法管辖区，香港的刑事法源于法规及普通法（即案例法）。

被告人被检控的罪行涉及普通法下的“公众妨碍”。公众妨碍罪是确立已久的普通法罪行，具足够的确定性，其罪行元素也有明确的界定。根据案例，要构成公众妨碍罪，必须证明被告人作出法律不容许的行为，或没有履行法律上的责任；而有关的作为或不作为的后果，必须是危害公众的生命、健康、财产或舒适，或妨碍公众行使各人均可享有的任何权利。有关作为或不作为须对公众人士造成普遍的损害。而被告人知悉或应该知悉其作为或不作为的后果。拥有这些元素的普通法公众妨碍罪并非“过于广阔”。

香港特区政府律政司一直秉持其宪制责任，严格依照法律，以不偏不倚、专业及政治中立的态度处理本案的检控工作。在仔细和全面考虑过适用法律和相关证据（包括有关证据是否被法庭采纳）之后，律政司会根据公开发表的《检控守则》，公平公正地做出所有起诉决定（包括选择控罪）。

代表被告人的资深大律师已就被告人被控普通法的“公众妨碍”罪而不是法定罪行一事作出陈词。法庭裁定，选择控罪是控方的特权，这是早经确立的法律原则。如控方认为没有任何适当的法定罪行能提供相应的惩罚以反映案件中的刑事罪责，控方有权使用普通法的公众妨碍罪。法庭亦指出，因使用了公众妨碍罪而令被告人（如被定罪）蒙受更重惩罚的说法是不正确的，因为法庭最终判处的刑罚必然取决于法庭对被定罪的被告人的刑事罪责的评估。有关特别机制来函第八段有关被告人被控普通法罪行是为了“使其他人担心被重罚而避免参加和平抗议活动”的关注是没有根据的。

香港的法律符合国际人权标准，合理地平衡了言论、集会自由的权利与保障他人的权利和自由。因此，香港特区政府认为，本案的控罪和定罪与表达自由、和平集会及结社自由的权利相符，不会亦不可能对行使这些基本权利的所有人造成寒蝉效应，实际上亦不会影响他们行使这些基本权利。

（三）所谓对被告人做出煽惑罪的指控是为了“将传播信息及呼吁和平抗议变为刑事罪行”（有关特别机制来函第七段）

国际人权法一个确立已久的原则，是在平衡示威者和和平示威的权利与其他公众人士的权利时，应采用相当性的验证准则，例如《公民权利和政治权利国际公约》及欧洲的《和平集会自由指引》均要求应用此验证准则。

这也与其他司法管辖区的做法一致。例如，在英国上议院审理的 DPP V Jones (Margaret)&Anor 【1999】 2AC240 一案，上诉人被控在知悉其行为被法律禁止的情况下参与涉及非法侵入的集会。上议院认为公路是公共地方，公众可以为了任何合理目的享用，只要有关活动不构成公众和私人妨碍，亦不会不合理地妨碍公众进出公路的首要权利。在这些限制下，示威者可以在公路上享有和平集会的权利。关键的问题是案中公路的使用是否在上述意义上属合理和没有抵触公众进出公路的首要权利。

本案中，就涉及妨碍公路的公众妨碍罪而言，法院采用了合理性的验证准则，其中包含相称性的原则，以确保示威者和和平示威的权利与其他公众人士的权利之间取得适当的平衡，而不会侵害示威者的宪法权利。

因此，与有关特别机制来函第七段中所提述的内容相反，从上文及裁决理由的其他部分（如裁决理由第 578 段及 689 段）以及判刑理由（如判刑理由第 62 及 63 段提及的“过度损害或不便”）可明显看出对被告人作出煽惑罪的指控并非是为了“将传播信息及呼吁和平抗议变为刑事罪行”。相反，他们被控是因这些煽惑对公众造成部分妨碍，超出了合理的范围以及言论、和平集会自

由的宪制权利所获得的保障。

（四）所谓“将正当地行使言论及集会自由定为刑事罪行”（有关特别机制来函第八段）

虽然《公民权利和政治权利国际公约》第二十一条确认和平集会的权利，但并没有界定“集会”一词。由欧洲安全与合作组织的民主机制和人权办公室与欧洲法治民主委员会联合编写的《和平集会自由指引》把集会界定为“群众为共同表达的目的而蓄意暂时于公共地方出现”。该指引强调只有“和平集会”才会受到和平集会的权利保障，而“和平”一词应界定为包括“暂时阻挠、阻碍或妨碍第三者的活动”。

占领行动历时 79 天，自 2014 年 9 月起至 2014 年 12 月结束，有数以万计的人参与，牵涉位于金钟和中環这些重要的商业地区，而该区的道路均是交通要道。此外，该占领行动预计无限期地进行，并预期有几千至一万人参与。

占领行动的规模不能被视为“暂时”。由个别私人组织申请的针对占领道路者的非正常禁制令亦获法庭批准及予以执行。有别于有关特别机制来函第八段所指，香港认为如此大规模及无限期地占领本港最繁忙的商业地区的交通要道，不能被视为“正当”地行使言论自由和集会自由。

三、控罪和定罪完全符合宪制上的保障和国际人权保障

（一）在香港特区相关人权在宪制和法律上受保障

众所周知，受国际人权文书（如有关特别机制来函附件中列

出的《世界人权宣言》、《公民权利和政治权利国际公约》和联合国《关于个人、群体和社会机构在促进和保护普遍承认的人权和基本自由方面的权利和责任宣言》的有关条文)所保障的许多权利并非绝对,并可为了达到某正当目的而依法受到限制。此外,普遍意见认同国家有责任维护安全和公共秩序(包括和平示威进行期间亦然)。行使这些权利时不应僭越法律合理地定下的界限,例如,不合法地干扰他人的权利和自由。

《香港人权法案条例》(第 383 章)将《公民权利和政治权利国际公约》中适用于香港的有关规定收纳入香港的法律。《香港人权法案》第十六、十七和十八条分别保障表达自由的权利、和平集会的权利和自由结社的权利,其条文与《公约》第十九、二十一和二十二条相同。

该等权利和自由在宪制层面获《基本法》第二十七条确认。第二十七条规定香港居民享有言论、新闻、出版的自由,结社、集会、游行、示威的自由。根据《基本法》第三十九条,对这些权利和自由的任何限制必须依法规定,不得与《香港人权法案条例》相抵触。

与《公民权利和政治权利国际公约》第十九、二十一和二十二条一样,《香港人权法案》第十六、十七和十八条包含必要性和相称性的验证准则,并要求在相关权利与其他不同权益(例如国家安全、公共安宁、公共秩序以及保障他人权利和自由)之间作出合理平衡。

（二）控罪没有不合理限制被告人的权利

香港终审法院在律政司司长诉黄之锋及其他人（2018）21HKCFAR35 一案裁定“公民抗命”的概念虽获香港法律承认，却不构成刑事案中的有效抗辩理由。公民抗命所包含的相称性原则也要求示威者的行为合乎比例，避免造成过度的损害和不便。就本案而言，区域法院在顾及案中事实之后裁定被告人的集会自由和表达自由并没有在任何方面受到不合理或不相称的限制。考虑《基本法》第二十七条之后，区域法院裁定公众妨碍罪的定义清晰和明确，符合限制必须“依法规定”的要求；“串谋犯公众妨碍”、“煽惑他人犯公众妨碍”和“煽惑他人煽惑公众妨碍”等罪行对言论自由及和平集会自由这些基本权利的限制亦符合相称性原则。

被告人被检控和被判有罪是基于他们的行为违法，由于占领行为对公共造成过度的损害和不便，导致“对公众造成共同伤害”，而非因他们推广或捍卫人权。

（三）被告人享有公正和公开的审讯

本案各被告人是经过公正和公开的审讯后被定罪。他们有权申请法律援助。各人在审讯中均由其选任的、有资深大律师带领的律师团队代表，也有充分机会在公正和公开的审讯中作出陈词和提出他们认为合适的证据。此外，他们有权就其有罪判决及刑罚向上诉法院提出上诉，直至终审法院，而根据《基本法》第八十二条，终审法院可以邀请其他普通法适用地区的法官参加审判。

因此《基本法》和《香港人权法案》中的宪制保障符合有关特别机制来函附件所列出的《世界人权宣言》、《公民权利和政治权利国际公约》和联合国《关于个人、群体和社会机构在促进和保护普遍承认的人权和基本自由方面的权利和责任宣言》的有关条款所包含的国际人权准则。此外，本案各被告人的控罪和定罪与被告人的权利、表达自由和自由结社的权利及和平集会的权利没有抵触。任何人，不论是否“人权卫士”或自称“人权卫士”，均有权传播有关人权和基本自由的信息，但他们必须在合法的范围内行使这项权利。

四、结语

由于该占领行动的刑事诉讼程序仍在进行，香港特区政府现阶段不宜发表更具体的评论。香港特区政府律政司将继续按照《检控守则》、适用法律和相关证据进行检控工作。香港特区政府有信心特区的法院将继续按照法律独立地审判案件。正如上文指出，香港的法律内含国际人权标准。

此外，关于有关特别机制来函第十一段第4项，香港特区政府重申，香港特区致力维护法治，并会按照《基本法》的宪制保障（尤其是第二十七、三十九和四十一条）及相关国际人权标准，继续保障在香港的所有人士的权利和自由。