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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 3/2020] dated 19 February 2020, has the honour 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.

OHCHR REGISTRY

2 8 MAY 2020

Recipients : SPB



Office of the High Commissioner for Human Rights
GENEVA

联合国人权理事会健康权问题特别报告员、任意拘留工作组、和平集会与结社自由问题特别报告员和隐私权问题特别报告员 2020 年 2 月 19 日联合来函【AL CHN 3/2020】收悉。中国政府对来函答复如下：

中華人民共和國香港特別行政區（“香港特區”）政府一向尊重市民和平集會及遊行的權利。

《中華人民共和國香港特別行政區基本法》（“《基本法》”）是香港特區的憲制性文件，對基本權利及自由提供憲制上的保證。

《基本法》第二十七條更特別保證香港居民享有言論、集會、遊行及示威等自由。《基本法》第三十九條進一步訂明，包括《公民權利和政治權利國際公約》（“《公約》”）等適用於香港的有關規定繼續有效並通過香港特區的法律予以實施。

透過本地立法，《香港人權法案條例》（第 383 章）將《公約》中適用於香港特區的有關規定納入本地法律。該條例第 8 條載有《香港人權法案》全文。《香港人權法案》第十六及十七條分別參照《公約》第十九及二十一條，並保證發表自由之權利及和平集會的權利。根據《香港人權法案》第十六及十七條，該些條文所載的自由並非絕對，得受限制，而這些限制由法律規定，並為保障公共秩序及他人的權利和自由所必須。

香港警務處（“警方”）是政治中立和專業的執法機關，負責維持香港的治安。根據《警隊條例》（第 232 章）第 10(d) 條，警方有職責採取合法措施，以拘捕一切可合法拘捕而又有足夠理由予以拘捕的人。警方公平公正地處理所有案件，不論涉案人士的背景、聯繫、政治立場和職業。在處理被捕人士時，警方致力保障他們的私隱、尊嚴和權利，包括他們獲得適當診治的權利。

聯合國特別報告員根據聯合國人權理事會的相關決議在 2020 年 2 月 19 日的信件(“特別報告員的信件”)中提出若干關注事項，香港特區政府現提供以下意見及額外資料，以作回應。

一般原則

自 2019 年 6 月以來，香港有超過 1 400 場公眾活動，當中很多以示威者使用暴力告終。這些非法公眾活動的暴力程度日增，對香港的公共安全及公共秩序造成史無前例的破壞。暴徒參與暴力活動，並配戴頭盔、防毒面具、眼罩及盔甲等保護裝備。除了暴力衝擊警方防線外，他們使用的武器越見危險，包括磚頭、鐵枝、鐵珠、自製彈弓、弓箭、經改裝的氣槍、汽油彈、高功率鐳射筆、腐蝕性物質，甚至土製炸彈，襲擊警務人員和其他持不同意見的人士。暴力行為不止針對警務人員、警署及警車，亦針對無辜和無防備的市民，特別是政見不同的人士。當中包括兩宗駭人事件：第一宗是發生在 2019 年 11 月 11 日，一名男子被潑易燃液體並放火燒着，造成身體四成燒傷；第二宗發生在 2019 年 11 月 13 日，一名 70 歲的清潔工人遭激進人士用磚擲中頭部，其後死亡。亦有暴徒公開羞辱無助受害者的情況¹。此外，暴徒肆意破壞不同的店舖、食肆、公共設施、銀行和鐵路站。這些極其暴力的違法行為對現場的其他人士(包括市民、記者和警務人員)構成嚴重危險。

警方十分重視所有在場人士(包括示威者和被捕人士)的安全和福祉，不會阻礙任何真正的救援工作。警方會盡力協助救護車和醫療服務，同時亦須考慮現場環境，以及安全和保安情況。警方的一般做法是第一時間安排香港消防處的救護員在安全情況下治理有需要的人。如

¹ 例如，在 2019 年 11 月 2 日，一群暴徒試圖脫掉一名在被襲擊後失去知覺並躺在地上的男性受害者的褲子。

有被捕人士當場受傷或在拘捕過程中受傷，會獲安排直接送往醫院治理。此外，大部分警務人員都受過專業訓練，具備急救知識和技巧。有需要時，警務人員會即時照顧傷者並為他們安排進一步治理²。

過去八個月，警方在很多非法公眾活動中遇到自稱急救員的人的真實案例（例如一些並無任何專業訓練或資格的15歲學生）。亦有情報顯示暴徒會穿著反光背心冒充急救員，以逃避法律責任。為傷者的利益着想，由這些自稱的急救員（而非消防處的專業輔助醫療人員）治理有需要的人，顯然並不理想。儘管在現場有實際困難（例如大規模衝突、情況瞬間驟變、地理範圍廣等等），警方必須謹慎核實這些自稱為急救員的資格。警方經常呼籲在場人士（包括自稱的急救員）注意自身安全，並遵從現場警務人員的指示，避免在警方進行恢復治安的行動時有受傷的風險。

警方的拘捕行動

特別報告員的信件第6頁第4條問題，要求取得“拘捕和羈留醫護人員的法律依據，特別是有關行為是否與你們在國際人權法下的義務一致”的詳情。

《香港人權法案》第五條的條文（以《公約》第九條作為藍本）保障人身自由和安全的權利。有關係文訂明包括：

“（一）人人有權享有身體自由及人身安全。任何人不得無理予以逮捕或拘禁。非依法定理由及程序，不得剝奪任何人之自由。

² 根據行動需要，警察亦會派遣醫療隊伍到前線，為有需要的人士提供即時的醫療協助，尤其是當救護員可能無法迅速到達現場的時候。醫療隊伍的所有成員都接受了以警察為導向的戰術緊急醫學課程的培訓（Police Oriented Tactical Emergency Medicine Course）（該課程由在緊急和戰術醫學領域方面的專業醫學專家設計和教授），可以在緊急事件中提供醫療協助。

(二) 執行逮捕時，應當場向被捕人宣告逮捕原因，並應隨即告知被控案由。

(三) 因刑事罪名而被逮捕或拘禁之人，應迅即解送法官或依法執行司法權力之其他官員，並應於合理期間內審訊或釋放...”

從以下提供的資料可印證，在逮捕和拘留方面，不論有關人士的工作或背景如何，均與《香港人權法》第五條所保障的一致。

根據《警隊條例》(第 232 章)第 10(d)條，警方有法定職責採取合法措施，以拘捕一切可合法拘捕而又有足夠理由予以拘捕的人。該條例第 50(1)條授權警務人員拘捕任何他合理地相信會被控可判處監禁(就該罪行首次定罪時)的罪行的人，或拘捕任何他合理地懷疑犯了該等罪行的人。

當任何人被警方拘捕時，警務人員會盡快告知他已被捕、拘捕的事實理由及拘捕原因，並警誡他有保持緘默的權利。被捕人會盡快被帶到警署的值日官前，以確定其被拘捕及羈押的合法性。

其後，被捕人會交由調查隊伍進行調查。在完成初步調查後，警方會因應個別案件的實際情況，考慮落案起訴被捕人、讓被捕人保釋外出或無條件釋放。一般而言，被捕人士不會被羈留超過 48 小時。

警方保釋的法律依據和法定權力載於《警隊條例》(第 232 章)第 52 條。第 52(3)條訂明如警方覺得不能立即完成查究某宗案件，可於被捕人作出擔保後將該人釋放，惟該人須在擔保書上指定的時間向指定的警署報到。這種保釋安排是必要和合理的，因為警方一方面可在案件仍在調查時與被捕人保持聯絡，另一方面可視乎不同案件的性質、嚴重及複雜程度作進一步調查，例如搜集和

處理證據和尋求法律意見，從而確保警方對任何人提出控罪的決定都是審慎作出的。

在作出拘捕後，警方只會搜集足夠證據才會落案起訴有關人士³。《基本法》第六十三條訂明，香港特區律政司主管刑事檢察工作，不受任何干涉。律政司根據證據和適用法律，並按《檢控守則》作出每個檢控決定。除非有充分可被法庭接納的證據，令案件有合理機會達致定罪，否則不應提出或繼續進行檢控。如果有足夠證據作出檢控，律政司會考慮此舉是否符合公眾利益。考慮因素包括有關罪行的性質、案情和嚴重程度，以及疑犯的態度、年齡、本質和犯罪紀錄。

特別報告員的信件討論了幾宗事例，指稱醫護人員“因在示威中一視同仁地治理傷者而被騷擾、恐嚇或拘捕”。香港特區政府重申，警方是專業和政治中立的執法機關，嚴格根據所得證據和按照香港法律作出拘捕行動，不論涉案人士的背景、聯繫、政治立場和職業。對於每一宗案件，包括與公眾活動有關者，警方都會不偏不倚地調查和搜集證據。應該強調的是，違反法律的人不會因其背景、聯繫、政治立場或職業而享有豁免權。

特別報告員的信件第2頁提到，2019年8月“一名女輔助醫療人員在尖沙咀一宗示威中，據稱遭一名警務人員發射布袋彈射中右眼”。事實上，並無資料顯示該名女子是輔助醫療人員，她當時亦無穿著任何顯示她是輔助醫療人員的背心或衣物。警方曾聯絡該名女子查詢和跟進，但得不到任何回應。與此同時，我們留意到特別報告員的信件第4頁指出“……已提出法律挑戰，但警方已看過的醫療記錄現時封存以待上訴結果”。請特別報告員注意，警方向法庭申請搜查令以便從醫院管理局（“醫管局”）取得該名女子的資料和醫療報告，有關申請於2019

³ 根據《裁判官條例》（第227章）第12條，「警隊的任何成員……均可就任何罪行向裁判官或根據第8(1)條獲授權的裁判法院人員提出告發，而任何此等告發須當作代表律政司司長提出」。

年8月29日獲得批准。該名女子其後介入並就警方拒絕披露搜查令的內容申請司法覆核。但其申請於2019年12月17日遭香港高等法院駁回，香港法庭裁定該名女子未能證明其根據《基本法》第三十五條訴諸法院的實質的權利已受到損害。該名女子已提出上訴，而政府會繼續在法律程序中以正視聽。

特別報告員的信件第2頁討論2019年8月一宗事例，當中“一名急救員只因管有三把剪刀和生理鹽水用以執行急救職務，而在觀塘港鐵站被捕”。為正視聽，在2019年8月31日傍晚，有暴徒在觀塘港鐵站聚集並毀壞站內設施。警方其後在站內截停暴徒，包括上述該名男子。他報稱是技術員，而且被截停時並無穿著任何顯示自己是急救員或醫療人員的衣物。經搜查後，警方在該名男子的背包中發現一件標示“紅十字會”的反光背心、一個標示“紅十字會”的臂章、三把剪刀(13-16厘米)、一個呼吸器、一副眼罩、一個頭盔、一對外科手套、兩個黑色口罩、一瓶生理鹽水、一瓶酒精。該名男子在非正式查問時才表示自己取得紅十字會的急救證書。

特別報告員的信件第2頁也論及2019年11月初“至少16名醫護人員在香港理工大學的示威中提供醫療協助時，遭警方羈留並用膠索帶從後綑綁雙手”。首先，我們需要了解事情的前因後果。在發生該事件時，數以百計的暴徒佔據香港理工大學校園和附近範圍，包括位於香港最繁忙的行車隧道上的一條主要行人天橋。暴徒在該行人天橋和收費亭縱火。他們向警方投擲汽油彈，用高壓彈又發射石頭及金屬物件，危害生命。他們發射弓箭，導致一名警員小腿中箭受傷。校園受到大規模破壞，校內的實驗室有危險化學品被偷去。事實上，警方其後在校園檢獲4296枚氣油彈、671瓶化學品、622件攻擊性武器(例如氣槍、丫叉、弓箭等)。當時情況極之危險和隨時變化，嚴重危害公共安全。根據香港法律，該集會是非法的。由於集會中有人使用暴力，集會人士亦可能干

犯暴動罪。

事件中，暴徒及其他逗留在校園的人士，包括傳媒及提供急救服務的人員，多次被要求並給予機會和平離開校園。雖然一些人選擇離開，但仍有不少人留守。所有 18 歲以下的人士獲准在提供個人資料後離開，不會當場被捕；但警方保留權利在有必要時採取跟進法律行動。2019 年 11 月 17 日傍晚，拘捕行動展開。暴徒的慣常手法，是以冒充急救員或其他身分來避過羈留和拘捕。由於離開校園的人數眾多而混亂情況持續，警方確曾羈留一些自稱是急救員或傳媒代表的人，以確定他們的身分和資格。能夠提供有效身分證明的人士可離開，而未能提供證明的人士則被拘捕。事件中，共有 810 人被捕，310 名 18 歲以下人士的資料被記錄。被捕者當中，包括 12 名自稱是急救員的人士，他們均沒有急救資格，也並非為任何醫療機構工作。我們必須強調，由對峙事件之初，政府一直把傷者的福祉和安全放在首位。警方曾安排消防處、香港紅十字會及無國界醫生等機構的義工在校園及附近地方提供醫療或急救服務。同時，醫管局和公立醫院的急症室亦準備就緒，在有需要時立即提供醫療服務。

特別報告員的信件第 3 頁提到，“於七月有急救員在元朗港鐵站為一名男子施行復甦救治，該男子是在襲擊曾參與上環示威的示威者時心臟病發”。這說法與事實完全不符。根據記錄了整件事件的網上片段，兩組持不同意見的市民深夜時在元朗港鐵站附近發生打鬥，一名男子心臟病發暈倒。當時正在元朗港鐵站處理其他傷者的一名消防處救護主任發現該名男子，並即時為他急救。該名男子其後由救護車送往醫院，並無警務人員陪同。消防處亦證實，並無其他人士(例如急救員)曾經協助或治理該名男子。

特別報告員的信件第3頁也指稱，“據稱醫院經常有警方小隊巡邏，他們穿著全副防暴裝備，並有盾牌、警棍、裝上布袋彈及橡膠子彈的槍械”。雖然某些醫院設有由軍裝警務人員駐守的“急症室警崗”以協助醫院處理傷者和被捕人士，然而警務人員從來不會在醫院範圍作例行巡邏。警務人員只會在接報處理事件或執行《警隊條例》(第232章)所訂的法定職責和職能時，才會進入這些範圍。有關的法定職責和職能包括維持公安和拘捕罪犯。

被捕人士的權利

在香港，被捕人士的權利受《基本法》在憲制層面的保障。

(a)《基本法》第二十八條訂明，香港居民不受任意或非法逮捕、拘留、監禁。

(b)此外，《基本法》第三十五條訂明香港居民有權得到秘密法律諮詢、向法院提起訴訟、選擇律師及時保護自己的合法權益或在法庭上為其代理和獲得司法補救。

此外，《香港人權法案》在本地法例的層面亦為被捕人士提供保障。

(a)《香港人權法案》第五條(以《公約》第九條作為藍本)訂明，任何人不得無理予以逮捕或拘禁。《香港人權法案》第五(四)條進一步訂明，任何人因逮捕或拘禁而被奪自由時，有權聲請法院提審，以迅速決定其拘禁是否合法，如屬非法，應即令釋放。

(b)《香港人權法案》第十條(以《公約》第十四(一)條作為藍本)規定，任何人受刑事控告須予判定時，應有權受獨立無私之法定管轄法庭公正公開審問。

(c)《香港人權法案》第十一(二)(乙)條(以《公約》第十四(三)(乙)條作為藍本)訂明，審判被控刑事罪時，被告有權獲給予充分之時間及便利，準備答辯並與其選任之辯護人聯絡。

27. 在香港，上述人權保障由法律援助和當值律

師服務所鞏固。合資格的申請人可在訴訟中獲提供律師或大律師(如有需要)的專業法律協助,以確保任何有合理理據提出訴訟或在訴訟中抗辯的人,不會因為缺乏經濟能力而無法採取法律行動。這類公帑資助的法律援助,由法律援助署(“法援署”)和當值律師服務提供。

(a)法援署為終審法院、上訴法庭、原訟法庭、區域法院、裁判法院(交付審判程序)審理的民事或刑事案件中的合資格人士,提供代表律師。申請人必須符合法律援助署署長(“署長”)所定的資產限額(資產審查),以及法律行動的理據(案情審查)。對於刑事案件,署長如認為豁免資產審查的限制有利於司法公正,可酌情作出豁免。被控謀殺、叛國或使用暴力的海盜行為的申請人只要通過資產審查(除非獲法官豁免),當局規定要向他們提供法律援助。就刑事罪行而言,即使署長已因案情理由拒絕提供法律援助,只要申請人通過資產審查,法官亦可給予法律援助。

(b) 當值律師服務補足法援署提供的法律援助服務,其當值律師計劃為裁判法院案件中無能力負擔私人律師費用的被告人(少年及成年)提供代表律師⁴。根據《香港人權法案》第十一(二)(丁)條(以《公約》第十四(三)(丁)條為藍本),申請人須按“司法公正”的原則,接受資產審查和案情審查。

警方一向致力保障被捕人士的私隱和權利,包括尋求法律援助(上文已討論)、與一名親友聯絡、獲提供在警誡下所作的書面記錄副本、獲供應食物與飲品、尋求診治等的權利。警方會向每名被羈留或接受警方調查的人士提供一份《發給被羈留人士或接受警方調查人士的通告知書》,當中詳細解釋被捕人士的權利,包括尋求法律援助、獲供應食物與飲品、尋求診治。

特別報告員的信件第3頁指稱“即使沒有其他方面的醫療協助,警方也不准醫生、護士或急救員等醫護人

⁴ 不包括小販傳票、交通傳票案件和由消防處、環保署和稅務署所發出之部門傳票控告觸犯「規例控罪」之案件。

員接觸傷者”。我們重申，警方一向尊重被捕人士的合法權利，並會確保傷者盡快獲得診治。如有被捕人士當場受傷或在拘捕過程中受傷，會獲安排直接送往醫院治理。在任何情況下，警方都會致力協助救護車及醫療服務並緊密合作，以確保傷者在安全情況下第一時間得到治理。

特別報告員的信件第3頁提到，在2019年8月的一宗事件中“警方強行進入及封鎖太子港鐵站導致有人受傷，一名輔助急救員試圖為這些傷者提供醫療協助時受到阻撓”。我們應該了解事件的前因後果。在2019年8月31日，大羣暴徒在太子站車廂內與其他乘客口角。這些暴徒侮辱、毆打及襲擊乘客，其後更以滅火器噴灑列車，導致車廂內出現混亂。在香港經營地鐵服務的港鐵公司報警。基於安全考慮，港鐵公司啟動緊急疏散程序，包括透過廣播呼籲及派員協助乘客離開，並關閉太子站。除了港鐵公司報警求助，警方亦接獲市民的緊急求助電話。警方因此派員到有關港鐵站制止打鬥及於適當時採取拘捕行動。由於港鐵公司已關閉太子站，且警方在現場需要處理大量被捕人士（共52人）又搜出危險武器（包括氣油彈、鐳射筆、打火機、噴漆、螺絲批、棍棒等），警方呼籲現場所有人士（包括自稱為急救員的人）盡快離開太子站。至於現場的傷者，警務人員已為他們急救。其後消防處救護員抵達港鐵站為傷者提供醫療協助並把有需要者送往醫院治療。

特別報告員的信件第3頁又提到在2019年11月的一宗事件中“據稱有警務人員阻礙一部救護車接近一名從停車場墮下受傷的學生”。該項指控是失實及惡意的。該項指控是以一張僅顯示一部救護車停在防暴警察面前的快拍照片作為根據。簡單的真相是：該部奉命救助該名受傷學生的救護車，其實是被暴徒設置的路障所阻礙。

特別報告員的信件第4頁指稱“警務人員經常拒絕提供迅速的治療……而且拖延五至十小時才召喚救護

車”。信中又提到“據稱有警務人員告訴被捕人士他們需辦理手續……然後才可去醫院……利用其治療需要迫使他們於沒有律師在場的情況下作供”。我們相信，特別報告員的信件所指的可能是2019年8月警方使用新屋嶺拘留中心時的情況。

新屋嶺拘留中心自1970年代起運作，當時主要用作遣返非法入境者。目前，該中心由警方及香港入境事務處共同使用。該中心在設施、整體保安以及對被羈留人士的安全、權利、尊嚴和私隱的關顧方面，與一般羈留中心相若，符合保障人權的基本要求。該中心設有四個羈留倉，其內共有16個羈留室，總共可容納約200名羈留人士。每間羈留室內設有石床及廁所設施，有冷氣供應，與一般羈留室的設計相若。羈留倉內有照明裝置，窗戶設有透光磨砂玻璃。中心亦設有房間可作會面用途。

2019年8月11日，全港各處發生暴力事件，共有13間警署及處所受到襲擊，故此新屋嶺拘留中心設立了一個臨時拘留間。共有53名被捕人士被送往該中心。被捕人士抵達中心後，由警務人員分別面見，以確認其身分及了解他們的需要(例如接受治療、作出投訴或尋求法律援助等)。按照既定程序，每名被捕人士均獲發一份《發給被羈留人士或接受警方調查人士的通知書》。

中心的警務人員在接獲被捕人士提出需要治療的要求時，為確保被捕人士的安全及基於保安考慮，已即時安排救護車服務及增派人手進行護送，並優先處理傷勢較重者⁵。不過，在有些情況下，當救護車抵達時，有些被捕人士改變主意，以致最後送院的時間有所差距⁶。在53名被捕人士之中，最終有30人被送往醫院接受治療。根據警方記錄，並無被捕人士投訴被警方毆打。

⁵ 根據觀察，大部分被捕人士只受輕傷(例如紅腫或擦傷)。六名被捕人士傷勢較重(包括骨折)。

⁶ 舉例而言，雖然救護車已於凌晨抵達，但被捕人士寧願在早上較後時間才接受治療。

中心的警務人員亦作出了適當的法律援助安排。在 2019 年 8 月 11 日，有自稱義務律師的人士致電要求與被捕人士會面，警方遂向其解釋有關的手續和安排。最終有三間律師事務所的律師來到新屋嶺拘留中心，要求與被捕人士會面，而共有 39 名被捕人士表示希望與律師會面。按照一般的做法，被捕人士應與其律師單獨會面。然而，基於被捕人士眾多，以及單獨會面涉及的時間限制，其後律師建議而被捕人士亦同意以每組兩至三人進行會面以節省時間。截至 2020 年 2 月 20 日，投訴警察課接獲兩宗有關新屋嶺拘留中心的投訴。該等投訴個案會按照既定程序以公平公正的原則處理。

特別報告員的信件第 4 頁又提到在 8 月份一宗事件中“有警務人員拘捕了一名男子並把其雙手從後綑綁，而儘管該名男子投訴感到劇痛，警方仍任由他被綑綁達數小時”。至今警方並未收到任何有關該項指控的投訴。

我們亦再重申，香港設有兩層的投訴警察制度。制度的第一層是負責接收及調查投訴的警隊投訴警察課；制度的第二層是根據《獨立監察警方處理投訴委員會條例》(第 604 章)成立的法定獨立監察警方處理投訴委員會(“監警會”)。監警會的職能包括觀察、監察和覆檢投訴警察課處理和調查須匯報投訴的工作。在這兩層的處理投訴制度下，對警方的任何投訴都會得到公平公正的處理。

被指濫用救護車

特別報告員的信件第 4 頁指稱“執法機關利用救護車運載人員及器材，包括武器及彈藥”。這項指控既非事實亦無根據。警務人員在不同情況下會乘坐救護車，例如護送嚴重受傷人士、受傷的被捕人士及有精神困擾的人士。然而，我們不應因為快拍照片顯示警務人員坐上救護車便忽略事件的前因後果。正如消防處在 2019 年 10

月 24 日的記者會上所澄清，消防處從未把救護車借予警方，而只是向警方借出了 24 部無標記的多用途車輛予警方。

特別報告員的信件第 4 頁又引述 2019 年 11 月一宗事件，指稱“據稱一名藏身在救護車內的警務人員拘捕了一名 20 歲女子，並試圖將她押上救護車”。這並非事實。真相是：在 2019 年 11 月 18 日，警方拘捕了一名參與非法集會的 20 歲女子。她聲稱頭部受傷，警方遂安排救護車把她送往醫院治療，並指派了兩名警務人員同行護送。其後，暴徒襲擊有關警務人員，協助該名被捕人士成功逃去。暴徒向被困救護車內的警務人員投擲石塊及磚頭，又潑灑不明液體。面對重大危險及生命威脅，其中一名警務人員需要使用其佩槍，但並無擊中任何人。

使用病人資料

特別報告員的信件第 6 頁第 5 條問題涉及警方或情報機關使用醫療資料。《香港人權法案》第十四條(以《公約》第十七條為藍本)訂明，任何人的私生活，不得無理或非法侵擾，而對於此種侵擾，人人有受法律保護的權利。

《個人資料(私隱)條例》(第 486 章)(“《私隱條例》”)對收集、持有、處理或使用個人資料作出規管。當中的條文以國際接納的保障資料原則為基礎，適用於實際上可以任何形式取得或處理的個人資料。個人資料私隱專員公署乃根據《私隱條例》設立的獨立法定機構，負責推廣、監察及監管，促使各界人士遵從該條例。

醫療資料屬於受《私隱條例》保障的資料。保障資料原則 3 訂明，除非得到資料當事人指定同意，或《私隱條例》第 8 部的有關豁免情況適用，否則個人資料不得用於收集時擬使用或直接相關的目的以外的目的。如

果需要使用醫療報告內的資料以便在香港調查罪案或逮捕罪犯，向警方披露有關資料可根據《私隱條例》獲豁免。警方可根據《警隊條例》(第232章)向裁判官申請手令，以搜查和取得有關的醫療報告。如有合理原因懷疑有關的醫療報告可能會有利於調查已發生的罪案，裁判官可簽發有關手令。警方處理取得的醫療報告時，也須遵從《私隱條例》中關於保留、使用、取得個人資料及該些資料的保安的規定。

醫管局已重申該局十分重視病人私隱，並會繼續檢討其保護個人資料私隱的措施。公立醫院設有既定機制處理執法人員索取病人資料的要求。所有醫管局及公立醫院員工必須嚴格遵守有關個人資料私隱及公開資料的指引。對於在處理病人資料時任何違反或不遵守保護病人私隱指引的情況，醫管局會採取適當的人事程序。的確，警方如有需要向醫院索取個人資料以助調查或法庭審訊，會在取得資料當事人同意或根據《個人資料(私隱)條例》(第486章)獲得豁免後，向有關醫院提出書面要求。如有需要，亦會向法庭申請搜查令。

特別報告員在信件第4頁提到“抵達公立醫院急症室(緊急護理)的病人如被懷疑是在示威活動中受傷，會被編配一個特別的醫院編號以便追查及辨別身分”。為正視聽，我們要指出醫管局的“急症室資訊系統”為醫管局**內部系統**，一貫設有“災難”單元，用以協助醫管局重大事故控制中心處理社區上的重大事故。系統包括各類大型及需要協調統籌服務的事件分類，例如大型交通意外、火災、地震、山泥傾瀉、大型群眾活動及大型體育活動等。該系統為**封閉系統**，並無聯繫或連接任何醫管局以外機構的電腦系統。只有擁有相關權限的醫管局職員才能進入系統，非醫管局人士並無獲得相關權限。

為回應公眾對“急症室資訊系統”內病人資料保安的關注，醫管局於2019年6月底已成立專責小組，審視臨床資訊系統在保障病人私隱及前線運作方面的保安風險，並提出改善建議。醫管局已接納專責小組呈交的報告，並正作出下列改善及安排：

(a) 加強管制系統的登入，包括強制使用個人帳戶登入，及按使用者的運作需要授權登入及進行審核；

(b) 加強“急症室資訊系統”帳戶使用情況的可追蹤性和問責性；

(c) 引入電子系統記錄急症室的工序流程，減低文本披露病人資料的風險；

(d) 在急症室範圍設定“公眾使用”、“臨床治理”及“職員專用”區域；並加強電腦及顯示屏幕的私隱保障措施；

(e) 檢討及改善“急症室資訊系統”內“災難”單元的報告內容，只披露所需病人資料；

(f) 加強員工對保障病人資料及正確處理其他機構索取病人資料的認識和培訓；

(g) 繼續與個人資料私隱專員合作，加強處理病人資料的政策及實務守則；及

(h) 探討可以協助快速登入“急症室資訊系統”的科技，令繁忙的急症室保持運作效率，並能有效管制系統的登入。

至於對醫管局及警方在醫院體制內建立運作介面的關注，雙方已設立一個兩層的溝通平台——在機構層面(自2019年6月開始)及醫院層面(自2019年8月開始)加強溝通。醫管局亦已提醒前線員工，如對執法活動影響臨床職務有任何疑慮，應諮詢其上司或醫院管方。

宣誓效忠

特別報告員的信件第5頁提到“引入公務員須宣誓效忠於香港特區的做法可能會延伸至醫護界工作者”。公務員隊伍是香港特區政府的骨幹，向行政長官負責，協

助在任的行政長官及政府制訂、解釋和執行政策、執行各項行政事務、向市民提供服務，以及履行執法和規管的職能。公務員隊伍有逾 18 萬人，由近 400 個不同職系組成，當中人員擁有不同的專業背景。《基本法》第九十九條訂明，公務人員必須盡忠職守，對香港特區政府負責。公務員作為公職人員體系中的主要組成部分，具有政府制上的角色，須竭盡所能，輔助在任的行政長官及政府。

根據《公務員守則》，公務員必須奉公守法、盡忠職守、不偏不倚、政治中立。政治中立是指不論本身的政治信念為何，公務員必須對在任的行政長官及政府完全忠誠，並須竭盡所能地履行職務，不受本身的政治信念所支配或影響。公務員表達意見時，應確保意見不會引致與其本身職務有利益衝突，或可能令人認為有損其在執行職務時不偏不倚和政治中立的重要原則。所有公務員，不論職級，均必須遵守《公務員守則》。

由此所見，在《基本法》及《公務員守則》的框架下，公務員的一貫職責就是擁護《基本法》及效忠香港特區。

另外，根據《宣誓及聲明條例》(第 11 章)，指定的人員，包括行政長官、主要官員、司法人員及立法會議員等，須於獲委任時作出誓言。根據誓言，他們宣誓擁護《基本法》，效忠中華人民共和國香港特區，盡忠職守，遵守法律，廉潔奉公，為香港特區服務。

香港特區政府已著手研究是否要求所有公務員像其他官員一般根據《宣誓及聲明條例》作出類似誓言。

至於其他公共機構會否跟隨這做法，相信他們會根據本身的情況及需要加以考慮。就醫護人員而言，香港特區政府及醫管局的首要考慮是病人的福祉及安全。作

為公共醫護服務的提供者，醫管局為公眾提供專業及一視同仁的醫護服務，並避免令病人誤以為公立醫院會基於不同立場和背景而未能遵守醫護專業人員的行為守則。我們的醫護人員一向保持專業，致力照顧傷者及為病人提供適切的治療。醫管局非常重視員工的專業操守，並且要求員工守法。

總結

我們相信上述內容有助特別報告員評估其 2020 年 2 月 19 日的信件所提出的關注和指控。我們向特別報告員保證，香港特區政府會堅定不移地保障市民的合法權利和自由，以及確保為有需要的人提供醫治。我們已在此詳盡解釋，以上提出的指控屬斷章取義，完全失實、毫無根據。

The Chinese Government has received the joint communication [AL/CHN 3/2020] dated 19 February 2020 of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Working Group on Arbitrary Detention, Special Rapporteur on the rights to freedom of peaceful assembly and of association, and Special Rapporteur on the right to privacy. The reply to the joint communication is as follows,

The Government of the Hong Kong Special Administrative Region (“HKSAR”) of the People’s Republic of China has all along respected citizens’ rights to peaceful assembly and procession.

The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (“Basic Law”) is the constitutional document of the HKSAR, and provides constitutional guarantee for fundamental rights and freedoms.

Article 27 of the Basic Law, in particular, guarantees that Hong Kong residents shall have, amongst others, freedom of speech, assembly, procession and demonstration. Article 39 of the Basic Law further provides, amongst others, that the provisions of the International Covenant on Civil and Political Rights (“ICCPR”) as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

By way of a piece of local legislation, namely the Hong Kong Bill of Rights Ordinance (Cap. 383), provisions of the ICCPR as applied to the HKSAR have been incorporated into local law. The full text of the Hong Kong Bill of Rights (“HKBOR”) is set out in section 8 of Cap. 383. Articles 16 and 17 of the HKBOR, modelled on Articles 19 and 21 of the ICCPR respectively, guarantee the right to freedom of expression and the right of peaceful assembly. According to Articles 16 and 17 of the HKBOR, the freedoms enshrined therein are not absolute and are subject to restrictions as prescribed by law and necessary for the protection of public order and the rights and freedoms of others.

The Hong Kong Police Force (“Police”) are a politically neutral and

professional law enforcement agency for maintaining the law and order in Hong Kong. Under section 10(d) of the Police Force Ordinance (Cap. 232), Police are duty bound to take lawful measures for apprehending all persons whom it is lawful to apprehend and for whose apprehension sufficient grounds exist. Police handle all cases in a fair and impartial manner irrespective of the background, affiliation, political stance or occupation of the persons involved. In handling the arrested persons, Police strive to protect their privacy, dignity and lawful rights, including their right of receiving appropriate medical attention.

To address the issues of concern raised by the Special Rapporteurs pursuant to the relevant resolutions of the UN Human Rights Council in the letter dated 19 February 2020 (the "Special Rapporteurs' Letter"), the HKSAR Government provides the following comments and additional information.

General principles

There have been more than 1 400 public order events since June 2019, with many of them ended up in the use of violence by protestors. The unlawful public order events have become increasingly violent and destructive to public safety and public order of Hong Kong in an unprecedented scale. Rioters took part in violent activities with protective gears including helmets, respirators, goggles and body armours. In addition to violently charging Police cordon lines, they used increasingly precarious weapons including bricks, metal rods, metal pellets, makeshift slingshots, arrows and bows, modified air guns, petrol bombs, high-powered laser pointers, corrosive substances and even improvised explosive devices to launch attacks against police officers and other people who disagree with their views or their violent acts. The violence aimed not only at police officers, police stations and vehicles, but also innocent and defenceless members of the public, especially people with opposing political views. Among which there were two particularly heinous cases. In the first case which occurred on 11 November 2019, a man suffered 40% burns to his body after he was poured with inflammable liquid and set into fire. The second case took place on 13 November 2019 in which a 70-year-old cleaner was hit in his head by a brick hurled by radicals and subsequently died. There have also been

instances where rioters resorted to publicly humiliating such defenceless victims¹. In addition, rioters vandalised numerous shops, restaurants, public facilities, banks and metro stations. These serious violent and illegal acts have posed severe danger to other people at the scene, including members of the public, reporters and police officers.

Police attach great importance to the safety and well-being of all persons (including protestors and arrested persons) at scene and will not obstruct any bona fide rescue work. Police will endeavour to facilitate ambulance and medical services for those in need. At the same time, Police must take into account the circumstances, safety and security situations at scene. It is the general practice for Police to arrange for ambulancemen of the Fire Services Department ("FSD") of Hong Kong to provide medical treatment to persons in need in the first instance when it is safe to do so. If an arrested person is injured on the spot or during an arrest, arrangement will be made to send him/her to the hospital directly for medical treatment. Further, most police officers are professionally trained with first aid knowledge and skills. Where necessary, police officers will provide immediate care to those who are injured and arrange for further medical treatments².

Over the past eight months, there were a number of real cases that Police encountered persons claiming to be first-aiders at the unlawful public order events, including for instance 15-year-old students whom have not undergone any professional training or acquired any relevant qualification. There was also intelligence indicating that rioters impersonated as first-aiders by putting on a reflective vest with a view to evading legal liabilities. In the interest of the injured persons, it is clearly undesirable to allow these self-claimed first-aiders, as opposed to the professional paramedics from the FSD, to provide medical treatment to those in need. Police have to be prudent in verifying the qualifications of these self-claimed first-aiders amidst the

¹ For example, on 2 November 2019, a group of rioters tried to remove the pants of a male victim who had lost consciousness and was lying on the ground after being attacked.

² Based on operational needs, Police will also send medical teams to the frontline to provide prompt medical assistance to those in need, especially when the ambulancemen might not be able to arrive at the scene promptly. All members of the medical teams are trained in Police Oriented Tactical Emergency Medicine Course (a programme designed and run by professional medical experts in the fields of emergency and tactical medicine) and can provide medical support in emergency incidents.

practical difficulties on the ground (e.g. mass confrontation, fast-evolving situation, wide geographical spread, etc.). Police have always appealed to those at the scene (including self-claimed first-aiders) to put their own personal safety first and comply with the instructions of police officers at scene so as to avoid the risk of injury during Police's course of action in restoring law and order.

Police's arrest actions

We refer to question 4 on page 6 of the Special Rapporteurs' Letter seeking details of "the legal basis of arrests and detentions of healthcare workers, especially their consistency with your obligations under international human rights law".

Article 5 of the HKBOR (which is modelled on Article 9 of the ICCPR) guarantees the right to liberty and security of person. It stipulates, among other things, that:

- "(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
- (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. ..."

As evident from the information given below, the arrest and detention of persons, irrespective of their jobs or backgrounds, are consistent with the guarantees under Article 5 of the HKBOR.

Police have a statutory duty under section 10(d) of the Police Force

Ordinance (Cap. 232) to take lawful measures for apprehending all persons whom it is lawful to apprehend and for whose apprehension sufficient grounds exist. Section 50(1) further empowers a police officer to apprehend any person whom the officer reasonably believes will be charged with, or whom the officer reasonably suspects of being guilty of an offence for which a person may (on a first conviction for that offence) be sentenced to imprisonment.

When a person is arrested by Police, the police officer will, as soon as possible, inform the person of the fact that he or she is under arrest, as well as the factual grounds and the reasons for the arrest; and caution him/her of his/her right to silence. The arrestee will be brought before the Duty Officer of a police station as soon as possible to confirm the legality of his custody and arrest.

The arrested person will subsequently be handed over to an investigation team for necessary processing. After completing preliminary investigation, Police will, depending on the circumstances of individual cases, consider charging the arrestee, releasing the arrestee on bail or unconditionally. An arrested person generally will not be detained for over 48 hours.

The legal basis and statutory authority for police bail are set out in section 52 of the Police Force Ordinance (Cap. 232). Section 52(3) states that if Police consider that the investigation into a case cannot be completed forthwith, the arrested person may be released on bail and shall subsequently appear at the police station at such time as is named in the recognizance. Such bail arrangement is necessary and reasonable because Police may, on the one hand, maintain contact with arrested persons while cases are still under investigation, and on the other hand carry out further investigations in view of the nature, seriousness and complexity of different cases, such as collecting and handling evidence as well as seeking legal advice, so as to ensure that any decision by Police to lay charge against any person is made with prudence.

After an arrest, Police will not lay charge against any person until

sufficient evidence, permitting them to do so, has been gathered³. According to Article 63 of the Basic Law, the Department of Justice (“DoJ”) of Hong Kong shall control criminal prosecutions, free from any interference. DoJ makes each prosecutorial decision based on evidence, the applicable laws and its Prosecution Code. Unless there is sufficient admissible evidence to support a reasonable prospect of conviction, no prosecution should be instigated or allowed to continue. If there is sufficient evidence to support a prosecution, DoJ will then consider whether it is in the public interest to do so. Factors to be considered include, amongst others, the nature, circumstances and seriousness of the offence, and the attitude, age, nature and criminal history of the suspect.

The Special Rapporteurs’ Letter discusses several incidents alleging that healthcare workers have been “harassed, intimidated or arrested for providing impartial healthcare in the context of the protests”. The HKSAR Government reiterates that as a professional and politically neutral law enforcement agency, all arrest actions taken by Police are strictly based on the evidence collected and in accordance with the laws of Hong Kong, regardless of the background, affiliation, political stance or occupation of the person involved. In each and every case, including those related to public order events, Police will investigate and collect evidence fairly and impartially. It should be emphasised that a person who has broken the law does not enjoy immunity by virtue of his or her background, affiliation, political stance or occupation.

Page 2 of the Special Rapporteurs’ Letter mentions that in August 2019, “a female paramedic was hit in the right eye by a pellet round allegedly shot by a police officer during a demonstration in the Tsim Sha Tsui area of the city”. As a matter of fact, there was no information indicating that the female was a paramedic, nor was she wearing any vest or clothing at the material time indicating such. Police did attempt to contact the female for enquiries and follow up after the incident but did not receive any response.

³ Section 12 of the Magistrates Ordinance (Cap. 227) provides that “... it shall be lawful for any member of the police force... to lay before a magistrate or an officer of a magistrate’s court who is authorized under section 8(1) an information in respect of an offence and any such information shall be deemed to have been laid on behalf of the Secretary for Justice”.

On a related note, we refer to page 4 of the Special Rapporteurs' Letter which states that "legal challenges have been allegedly mounted and medical records, while having been seen by the police already, are sealed pending the outcome of appeals". The Special Rapporteurs may wish to note that Police applied to court and was granted search warrants on 29 August 2019 to acquire the female's personal details and medical reports from the Hospital Authority ("HA") so as to look into her case. The female intervened and applied for judicial review against Police's refusal to disclose the contents of the search warrants. Her application was dismissed by the High Court of Hong Kong on 17 December 2019, which held that the female has failed to establish that the essence of her right of access to the courts under Article 35 of the Basic Law has in any way been impaired. The female has lodged an appeal and the Government will continue to put the record straight in the legal proceedings.

Page 2 of the Special Rapporteurs' Letter discusses an incident in August 2019 where "a first-aider was arrested in Kwun Tong station solely for being in possession of three pairs of scissors and saline water for his health duties". To set the record straight, in the evening of 31 August 2019, rioters gathered at the Kwun Tong metro station and criminally damaged the facilities thereat. Police officers intercepted the rioters, including the subject male, inside the station. The male reported to be a technician and was not wearing any clothing showing that he was a first-aider or medical officer while being intercepted. Upon search, one rucksack containing one reflective vest with "Red-Cross", one armband with "Red-Cross", three pairs of scissors (13-16 cm), one respirator, one pair of goggles, one helmet, one pair of surgical gloves, two black masks, one bottle of saline, one bottle of alcohol were found on the male. The male only stated, during informal enquiry, that he had obtained first aid certificate from Red Cross.

The Special Rapporteurs' Letter discusses, also on page 2, that in early November 2019, "at least 16 healthcare workers who were providing medical aid during protests at the Hong Kong Polytechnic University were detained by the police and handcuffed with zip-cords from behind". First of all, context is needed. At the material time, hundreds of rioters had seized control of the campus of the Hong Kong Polytechnic University and the areas near it, including a major footbridge above the busiest arterial road tunnel in

Hong Kong. They set fire to the footbridge and the toll booths. They bombarded police officers with petrol bombs, rocks and metal objects fired from high-tension catapults capable of killing. They fired arrows, one of which pierced a police officer's calf. Extensive damage was done to the campus and dangerous chemicals were stolen from laboratories. Indeed, Police subsequently seized 4 296 petrol bombs, 671 bottles of chemicals and 622 pieces of offensive weapons (e.g. air guns, catapults, bows and arrows, etc.) from the campus. The situation was extremely dangerous and volatile, and did pose a serious threat to public safety. The assembly was unlawful under the laws of Hong Kong. People in this assembly might be liable to the offence of riot as violence was used.

Throughout the incident, rioters and others inside – including purported first-aiders – were repeatedly asked and given opportunities to leave the campus peacefully. Some took up this offer, but many did not. Those under the age of 18 were allowed to leave without being arrested at the scene after providing personal details. Police reserve the right to take follow-up legal action if necessary. On the evening of 17 November 2019, an arrest operation commenced. It has been a common tactic of rioters to disguise themselves as, among others, first-aiders, to escape detention and arrest. Owing to the large numbers leaving the campus and the ongoing chaotic situation, Police had to detain people claiming to be first-aid workers and media representatives to confirm their identities and credentials. Those who could provide their bona fides were released. Those who could not were arrested. In the incident, a total of 810 persons were arrested, while particulars of 310 persons under the age of 18 were recorded. Those arrested included 12 people self-claimed to be first-aid workers who did not have first-aid qualifications and did not work for any medical institution. It should be emphasised that the well-being and safety of the injured had been a top priority of the Government from the time the standoff started. Police arranged for groups including the FSD, Hong Kong Red Cross and Médecins Sans Frontières volunteers to provide medical or first aid services at or in the vicinity of the campus. In parallel, the HA and the Accident and Emergency Departments in public hospitals were ready to promptly provide medical services if and when needed.

Page 3 of the Special Rapporteurs' Letter mentions "in July in Yuen Long Mass Transit Railway station, first-aiders reported resuscitated a man who had a cardiac arrest whilst in the act of assaulting protestors who had been demonstrating in Sheung Wan". This statement is completely inconsistent with the facts. According to an online video which captures the whole course of the incident, during a mid-night fight between two groups of citizens holding different views near the Yuen Long metro station, a male suffered from cardiac arrest and collapsed. An ambulance officer of the FSD, who was handling another casualty at the metro station, spotted the male and immediately provided first aid to him. The male was then conveyed to a hospital by ambulance without presence of police officers. The FSD confirms that there were no other people (e.g. first-aiders) who had provided assistance or medical treatment to the male.

The Special Rapporteurs' Letter alleges, also on page 3, that "hospitals are allegedly often patrolled by police units in full riot gear, bearing shields, batons, and fire-arms loaded with beanbag rounds and rubber bullets". While there are "casualty posts" in certain hospitals where uniformed police officers are stationed to provide assistance to the hospital in handling injured persons and arrestees, police officers never conduct routine foot patrol in the precincts of hospitals. Police officers only enter such areas when responding to incident calls or carrying out the statutory duties and functions under the Police Force Ordinance (Cap. 232). Such statutory duties and functions include preservation of public peace and apprehension of offenders.

Rights of arrested persons

In Hong Kong, an arrested person's rights are protected under the Basic Law at the constitutional level.

- (a) Article 28 of the Basic Law provides that no Hong Kong resident shall be subjected to arbitrary or unlawful arrest, detention or imprisonment.
- (b) Further, Article 35 of the Basic Law provides that Hong Kong residents shall have the right to confidential legal advice, access

to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies.

Besides, at the local legislation level, the HKBOR also provides protection to an arrested person.

- (a) Article 5 of the HKBOR (which is modelled on Article 9 of the ICCPR) provides that no one shall be subjected to arbitrary arrest or detention. Article 5(4) of the HKBOR further provides that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
- (b) Article 10 of the HKBOR (which is modelled on Article 14(1) of the ICCPR) stipulates that in the determination of any criminal charge against him, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
- (c) Article 11(2)(b) of the HKBOR (which is modelled on Article 14(3)(b) of the ICCPR) provides that in the determination of any criminal charge against him, everyone shall be entitled to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

The above human rights guarantees are buttressed by the legal aid or duty lawyer services in Hong Kong. Eligible applicants receive legal assistance through the provision of the professional legal services of a solicitor and, if necessary, a barrister in court proceedings to ensure that any person who has reasonable grounds for pursuing or defending a legal action is not prevented from doing so by lack of means. Such publicly funded legal assistance is provided through the Legal Aid Department ("LAD") and the Duty Lawyer Service ("DLS").

- (a) The LAD provides legal representation to eligible persons in

both civil and criminal cases heard in the Court of Final Appeal, the Court of Appeal, the Court of First Instance, the District Court and the Magistrates' Courts (for committal proceedings). Applicants must satisfy the Director of Legal Aid ("Director") of their financial eligibility (the means test) and of the justification for legal action (the merits test). In criminal cases, the Director has discretion to waive the limit of the means test if he considers it in the interest of justice to do so. Subject to the means test (unless waived by a judge), it is mandatory to grant legal aid to an applicant charged with murder, treason or piracy with violence. For other criminal offences, provided the applicant passes the means test, a judge may grant legal aid notwithstanding that legal aid has been refused on merits by the Director.

- (b) The DLS complements the legal aid services provided by the LAD. Its Duty Lawyer Scheme offers legal representation to defendants (both juvenile and adult) charged in the Magistracies who cannot afford private representation⁴. Applicants are subject to a means test and merits test, based on the "interests of justice" principle in accordance with Article 11(2)(d) of the HKBOR (which is modelled on Article 14(3)(d) of the ICCPR).

Police have all along striven to protect the privacy and rights of arrested persons, including the rights to seek legal assistance (as discussed above), communicate with a relative or friend, receive copies of written record under caution, be provided with food and drink, seek medical attention, etc. Police will issue a "Notice to Persons in Police Custody or Involved in Police Enquiries" to every detainee in police custody or involved in police enquiries, which fully explains the rights of the arrested person, including seeking legal assistance, provision of food and seeking medical attention.

We refer to page 3 of the Special Rapporteurs' Letter which alleges that "the police have restricted the access of healthcare workers, either doctors,

⁴ Except for hawking offences, traffic summonses and other regulatory offences such as departmental summonses issued by the FSD, Environmental Protection Department and Inland Revenue Department.

nurses or first-aiders, to the injured even when no other source of medical help was available". We reiterate that Police always respect the lawful rights of arrested persons and will ensure that injured persons will promptly receive appropriate medical attention. If an arrested person is injured on the spot or during an arrest, arrangement will be made to send him/her to the hospital directly for medical treatment. Under all circumstances, Police will strive to facilitate and maintain close cooperation with ambulance and medical services to ensure that injured persons receive appropriate medical treatment in the first instance when it is safe to do so.

Page 3 of the Special Rapporteurs' Letter mentions an incident in August 2019 where "a first-aider (paramedic) was obstructed by the police when he was trying to provide medical assistance to people who were injured as a result of the police's forced entry into, and blockage of, the Prince Edward metro station". Things should be put in context. On 31 August 2019, a large group of rioters got into arguments with other passengers in the train compartments at the Prince Edward station. These passengers were abused, assaulted and attacked by these rioters, who later even sprayed the train with a fire extinguisher, resulting in chaos inside the compartments. The Mass Transit Railway Corporation ("MTRC") which runs the metro services in Hong Kong reported to the Police. Out of safety concerns, the MTRC activated the evacuation procedures, including making appeals through announcement and sending staff to assist passengers in leaving, as well as closing the Prince Edward station. Apart from the MTRC, Police also received emergency calls from members of the public. Police thus dispatched officers to the station in order to stop the fight and effect arrest as appropriate. As MTRC had closed the metro station, and Police had to handle a substantial number of arrested persons (a total of 52 persons) with dangerous weapons seized (including petrol bombs, high-powered laser pointers, lighters, spray paints, screwdriver, stick, etc.), Police appealed to all persons (including those purported to be first-aiders) to leave the scene of the incident. As for the injured persons at scene, police officers had provided first aid treatment. The ambulance officers of the FSD then arrived at the metro station to provide medical assistance to the injured persons and send those in need to the hospital for medical treatment.

Page 3 of the Special Rapporteurs' Letter also mentions an incident in November 2019 where "an ambulance was allegedly blocked by police officers from approaching an injured student who had fallen from a parking garage". The accusation is false and malicious. It was based on a snap shot, which merely shows an ambulance stopping in front of anti-riot police. The plain truth is: the ambulance tasked with rescuing the injured student was actually obstructed by the barricades set up by rioters.

Page 4 of the Special Rapporteurs' Letter alleges that "police officers have often denied prompt access to medical care...and have delayed securing an ambulance until five to 10 hours". It further mentions that "police officers allegedly tell arrested persons they need to go through processing...before going to the hospital...use people's need for medical care to pressure them into giving a statement without a lawyer present". We believe the Special Rapporteurs' Letter may be referring to Police's use of the San Uk Ling Holding Centre ("SULHC") in August 2019.

The SULHC has been in operation since the 1970s and was then mainly used for repatriation of illegal immigrants. Currently, the SULHC is jointly used by Police and the Immigration Department of Hong Kong. Similar to other detention centres in general, the SULHC meets the basic requirements for safeguarding human rights in terms of its facilities, overall security, as well as protection of the safety, rights, dignity and privacy of detained persons. The SULHC has four cellblocks with a total of 16 detention cells inside, which can accommodate around 200 detained persons in total. Each detention cell is equipped with stone beds and toilet facilities, with air-conditioning provided, the design of which is similar to other detention cells in general. Lighting devices are installed inside the cellblocks, with misted glass windows. The SULHC is also equipped with rooms for interviews.

On 11 August 2019, a temporary holding area was set up at the SULHC as there was widespread violence across the territory with a total of 13 police stations and premises being attacked. 53 arrested persons were sent to the SULHC. Upon arrival at the SULHC, the arrested persons were interviewed separately by police officers in order to confirm their identities and ascertain their needs (such as seeking medical treatment, making

complaints, or seeking legal assistance, etc.). Each arrested person was served with a "Notice of Persons in Police Custody or Involved in Police Enquiries" in accordance with the established procedures.

For arrested persons who had requested medical treatment, police officers at the SULHC had arranged for ambulance service as well as additional manpower for escort duties in order to ensure the safety and security of the arrested persons as soon as practicable, with priority accorded to those with more serious injuries⁵. There were also circumstances where, upon the arrival of the ambulance, some arrested persons had changed their mind which might lead to the lapse in time⁶. Eventually, 30 out of 53 arrested persons were sent to hospitals for medical treatment. According to Police's record, none of the arrested persons has made any complaint of assault by Police.

Police officers at the SULHC had also made suitable arrangement for legal assistance. On 11 August 2019, upon receiving telephone enquiries from self-claimed volunteer lawyers requesting to meet with the arrested persons, Police had explained to them the relevant procedures and arrangements. Eventually, lawyers from three solicitor firms arrived at the SULHC requesting to interview the arrested persons, amongst which 39 indicated their wishes to meet the lawyers. According to the standard procedures, arrested persons should be interviewed individually in private by their respective lawyers. However, due to the large number of arrested persons and the time constraints involved in individual interviews, it was later suggested by the lawyers and agreed by the arrested persons that the interviews were to be conducted in groups of two to three to save time. As at 20 February 2020, the Complaints Against Police Office ("CAPO") has received two complaints related to the SULHC. The complaint cases will be handled in accordance with established procedures under the principle of fairness and justice.

Page 4 of the Special Rapporteurs' Letter also mentions an incident

⁵ It was observed that most arrested persons had sustained minor injuries (such as redness, swollen or abrasion). Six were suffering from more serious injuries (including bone fractures).

⁶ For example, while an ambulance had arrived in the small hours, the arrested persons preferred to have medical treatment later in the morning instead.

in August where “police officers arrested a man and zip-tied his hands behind his back for several hours disregarding his complaints of intense pain”. To date, Police have not received any complaint regarding the allegations in question.

We should also emphasise that Hong Kong has put in place an established two-tier police complaints mechanism. The first tier of the mechanism is the CAPO which receives and investigates into complaints. The second tier is the Independent Police Complaints Council (“IPCC”) which is a statutory and independent body set up under the Independent Police Complaints Council Ordinance (Cap. 604). The functions of the IPCC include observing, monitoring and reviewing the handling and investigation of reportable complaints cases by CAPO. Under this two-tier complaints handling mechanism, any complaint against Police will be handled in a fair and impartial manner.

Alleged misuse of ambulances

We refer to page 4 of the Special Rapporteurs’ Letter which alleges that “law enforcement agencies used ambulances to transport personnel and equipment including weapons and ammunitions”. This accusation is false and groundless. There are different occasions when police officers are on board ambulances; for example, escort of seriously injured people, injured arrested people and mentally disturbed people. There were snap shots showing police officers on board ambulances. But they should not be taken out of context. As clarified by the FSD at its press conference on 24 October 2019, no ambulance had ever been on loan to Police by the FSD while unmarked 24 multi-purpose vehicles had been on loan to Police.

The Special Rapporteurs’ Letter further cites on page 4 an incident in November 2019 alleging that “police officers who had hidden in an ambulance allegedly arrested a 20-year-old female and attempted to escort her to the ambulance”. This is false. The truth is, on 18 November 2019, Police arrested a 20-year-old female for participating in an unlawful assembly. Claiming that she was suffering from head injuries, Police arranged an ambulance to convey her to the hospital for medical treatment and assigned

two police officers to be on escort. Later, a mob assaulted the police officers and assisted the arrested person to escape successfully. Rioters hurled rocks and bricks and splashed unknown liquid at the officers who were trapped in the ambulance. In face of grave danger and threat to his life, one police officer had to use his firearm. But nobody was hit.

Use of patient's information

We refer to question 5 on page 6 of the Special Rapporteurs' Letter regarding the use of medical information by the police or intelligence agencies. Article 14 of the HKBOR (which is modelled on Article 17 of the ICCPR) stipulates that no one shall be subjected to arbitrary or unlawful interference with his privacy and everyone has the right to the protection of the law against such interference.

The Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") regulates the collection, holding, processing and use of personal data. Its provisions are based on internationally accepted data protection principles, and apply to personal data in any form the access to or the processing of which is practicable. The Privacy Commissioner for Personal Data, an independent statutory body, was established by the PDPO to promote, monitor and supervise compliance with the provisions of the PDPO.

Medical information is personal data protected under the PDPO. Under Data Protection Principle 3, personal data should not be used for a purpose other than the purpose of collection or any directly related purpose unless the prescribed consent of the data subject is given or a relevant exemption in Part 8 of the PDPO applies. If the information in a medical report is to be used for the investigation of crime and apprehension of offenders in Hong Kong, disclosure of the information to Police would be covered by exemptions under the PDPO. Police may apply under the Police Force Ordinance (Cap.232) to a magistrate for a warrant to search for and take possession of the relevant medical reports. The magistrate may issue the warrant if there is reasonable cause to suspect that the relevant medical reports are likely to be of value to the investigation of any offence that has been committed. Police also need to comply with the provisions of the PDPO

regarding the retention, use and security of and access to personal data when handling the medical reports being obtained.

The HA reaffirms its strong commitment to patient privacy and continuously reviews its personal data privacy protection measures. There is a well-established mechanism in public hospitals for handling requests for patient information from law enforcement officers. All staff of the HA and public hospital must strictly observe the guidelines on personal data privacy and information access. For any violation of or non-compliance with patient privacy protection guidelines in handling patient information, the HA will take appropriate human resources procedures. Indeed, where it is necessary to obtain personal data from hospitals for investigation or court trials, Police will make a written request to the hospital concerned after obtaining the data subject's consent or under the exemptions provided for in the PDPO. Applications for search warrants in accordance with applicable legal procedures will be made to the court if necessary.

Page 4 of the Special Rapporteurs' Letter mentions that "patients arriving at Accident and Emergency (urgent care) in public hospitals with injuries suspected to have been sustained from protest activity...are given a special hospital code for tracking and identification". To set the record straight, the HA's Accident and Emergency Information System ("AEIS") is an **internal system**, and has all along had a "disaster module" to facilitate the management of major incidents in the community by the HA Major Incident Control Centre. It covers various types of major incidents which require service co-ordination, such as major traffic accidents, fire, earthquakes, landslides, mass gatherings and major sports events, etc. The AEIS is a **closed system** which is not linked or connected to any computer systems outside the HA. It is only accessible to HA staff with access rights, and no such rights have been given to non-HA personnel.

To address the public concerns about patient data security of the AEIS, the HA set up a special task group in late June 2019 to review the security risk of the clinical system with regard to patient privacy protection and frontline operation and make recommendations for improvement. The HA adopted the report submitted by the special task group and is implementing the

improvement measures and arrangements:

- (a) to strengthen system access control of the AEIS, including mandatory personal log-in and access rights based on operational needs of users and audit controls;
- (b) to enhance traceability and accountability of user activities in the AEIS;
- (c) to introduce electronic documentation into accident and emergency (A&E) process and workflow to minimise the risk of exposure of hardcopies of patient information;
- (d) to designate "public area", "clinical area" and "staff area" in the A&E departments; and to enhance privacy protection measures on computers and display monitors;
- (e) to review and enhance the content of AEIS "disaster module" reports and to provide only the necessary patient information;
- (f) to enhance staff awareness and training on patient information protection and proper handling of requests from other organisations for patient information;
- (g) to further collaborate with the Privacy Commissioner for Personal Data to enhance policy and practice on handling patient information; and
- (h) to explore technological solutions to facilitate fast log-in to the AEIS such that operational efficiency could be maintained in the heavily loaded A&E departments while ensuring effective access control.

In relation to concerns about the operational interface between the HA and Police within hospital setting, the two parties have established a two-tier communication platform – at corporate level since June 2019 and at hospital level since August 2019 – to enhance communication. The HA has also advised its frontline staff to consult their supervisors or hospital management if they have any concerns on law enforcement activities affecting clinical duties.

Oath of allegiance

We refer to page 5 of the Special Rapporteurs' Letter regarding "the possible introduction of an Oath of Allegiance to the Hong Kong Special Administrative Region to be taken by civil servants which is feared to be extended to medical sector workers". The civil service is the backbone of the Government of the HKSAR. The civil service is responsible to the Chief Executive ("CE") of the HKSAR. It supports the CE and the Government of the day in formulating, explaining and implementing policies; conducting administrative affairs; delivering public services; and undertaking law enforcement and regulatory functions. It is over 180 000-strong and comprises close to 400 different grades, including officers belonging to different professional backgrounds. Article 99 of the Basic Law states that public servants must be dedicated to their duties and be responsible to the Government of the HKSAR. Civil servants, being a key component of the public service, have a constitutional role to give their best in serving the CE and the Government of the day.

According to the Civil Service Code ("Code"), civil servants must be law-abiding, dedicated, impartial and politically neutral. Political neutrality means that civil servants shall serve the CE and the Government of the day with total loyalty and to the best of their ability, no matter what their own political beliefs are. They shall not allow their own personal political beliefs to determine or influence the discharge of their official duties and responsibilities. When civil servants express their views, they should ensure that their views would not give rise to any conflict of interest with their official duties or possibly be seen to compromise the important principle of maintaining impartiality and political neutrality when discharging their duties. All civil servants, regardless of grade and rank, must observe the Code.

As can be seen, under the framework of the Basic Law and the Code, it has consistently been the duty of civil servants to uphold the Basic Law and be loyal to the HKSAR.

Separately, under the Oaths and Declarations Ordinance of the Laws

of Hong Kong (Cap. 11), designated officers, including the CE, principal officials, judicial officers, as well as legislative councillors, etc., shall take the oath upon their appointment. Under the oath, they swear to uphold the Basic Law, bear allegiance to the HKSAR of the People's Republic of China and serve the HKSAR conscientiously, dutifully, in full accordance with the law, honestly and with integrity.

The HKSAR Government has started to look into the issue of whether to request all civil servants to take an oath requested similarly of other officials under the Oaths and Declarations Ordinance of the Laws of Hong Kong (Cap. 11).

As to whether other public organisations will follow suit, we believe they will consider the issue having regard to their own circumstances and needs. For medical staff, the well-being and safety of patients are the top priority of the Government of the HKSAR and the HA. As a public healthcare service provider, the HA provides professional and non-discriminatory healthcare services to the public, and avoids leading to misperception from patients that public hospitals would not adhere to the applicable code of conduct for healthcare professionals due to difference in stances or background. Our healthcare staff have all along been upholding professionalism, demonstrating full commitment to taking care of the injured and providing appropriate treatment for patients. The HA attaches great importance to the professional conduct of its staff and requires its staff to abide by the law.

Conclusion

We trust the above will assist the Special Rapporteurs in assessing the various concerns and allegations put forth in the letter of 19 February 2020. We wish to assure the Special Rapporteurs of the HKSAR Government's firm commitment to safeguarding citizens' lawful rights and freedoms, as well as to ensuring the provision of medical care to those in need. As we have explained at length in this reply, the allegations raised are either taken out of context, or plainly false or groundless.