



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

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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 joint communication [AL CHN 9/2020] dated 4 May 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.



Office of the High Commissioner for Human Rights  
**GENEVA**

联合国人权理事会和平集会与结社自由问题特别报告员、任意拘留工作组、言论自由问题特别报告员和“人权卫士”问题特别报告员 2020 年 5 月 4 日联合来函【AL CHN 9/2020】收悉。中国政府对来函答复如下：

### 一般原則

1. 在香港特別行政區(“香港特區”), 基本權利和自由受《中華人民共和國香港特別行政區基本法》(“《基本法》”)充分保障。在憲制層面, 發表自由與和平集會的權利受《基本法》第二十七條保障。《基本法》第三十九條更訂明, 《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, 通過香港特區的法律予以實施。

2. 在本地法例層面, 適用於香港的《公約》條文已透過《香港人權法案條例》(第 383 章) 中的《香港人權法案》實施, 《香港人權法案條例》對政府具有約束力。《香港人權法案條例》第 8 條載列《香港人權法案》全文。發表自由與和平集會的權利分別受《香港人權法案》第十六及十七條保障, 而這兩項條文以《公約》第十九及二十一條為藍本。這些權利和自由並非絕對, 並受制於依法規定<sup>1</sup>且為維護公共秩序所必要的限制。

### 規管公眾集會及公眾遊行的法定機制

3. 受《公安條例》(第 245 章) 規管的多於五十人的公眾集會及多於三十人的公眾遊行, 只可在已通知警務處處長(“處

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<sup>1</sup> 《基本法》第 39(2)條列明“依法規定”的要求。它要求法律必須是市民所能夠充分理解的, 其內容亦必須以充分地明確的方式表述, 使市民能夠約束自己的行為。

長”），並且在處長沒有禁止或反對的情況下，方可進行。處長（或其受委任人員）須根據所有相關事實和情況仔細審視每宗個案。根據法律，處長只可在有需要維護國家安全、公共安全、公共秩序或保護他人的權利和自由，而這些利益又未能透過施加條件而達到的情況下，方可禁止或反對該公眾集會或公眾遊行。作為一般慣例，當收到有關公眾集會或公眾遊行的通知，香港警務處（“警方”）會儘早與活動組織者建立聯繫並保持積極密切的溝通，以提供建議和協助。

4. 法例亦設有恰當的上訴機制。如任何人因處長禁止公眾集會的決定、反對公眾遊行的決定或就舉行公眾集會或公眾遊行施加條件的決定而感到受屈，可向獨立法定的公眾集會及遊行上訴委員會提出上訴。上訴委員會的主席是一名退休法官。上訴委員會可維持、推翻或更改處長作出的禁止或反對決定，或其施加的條件。上訴委員會的決定亦可被司法覆核挑戰。

5. 根據《公安條例》第 17A(2)條，凡任何公眾集會或公眾遊行在處長禁止或反對的情況下進行，或公眾聚集中有三名或多於三名的參與者拒絕服從或故意忽略警務人員根據條例作出的命令，該公眾集會即屬法律上的“未經批准集結”。

6. 警方的政策是便利所有和平的公眾活動。同時，警方有法定責任採取合法措施，維持公共秩序和公共安全。如任何人進行非法或暴力行為，警務人員必須採取適當行動，維持公共秩序和公共安全。香港特區政府一直呼籲市民以和平有序的方式表達意見，不應訴諸暴力。

## 法院就《公安條例》的有關裁定

7. 終審法院在梁國雄訴警務處處長<sup>2</sup>一案中，裁定《公安條例》中有關通知的法定要求是合憲的。通知的規定使警方能夠履行政府須承擔的積極責任，採取合理和適當措施，使合法的示威能夠和平地進行。全球多個司法管轄區的法律都載有關於通知的規定。法庭也裁定，處長根據《公安條例》為著公共秩序（治安意義上的公共秩序，即維持公共秩序和防止公共秩序被擾亂）而限制和平集會權利的酌情權，符合“依法規定”和“必要性”這兩項規定，所以處長的酌情權是合憲的。運用相稱性驗證標準，處長為著治安意義上的公共秩序而限制和平集會權利的法定權力，與“公共秩序”這合憲合法目的之間存有合理關連，亦沒有超越為達到此目的之所需。因此，處長在《公安條例》下基於公共秩序反對公眾遊行的權力與香港人權法案第17條（相對應《公約》第21條）保障的和平集會權利並無抵觸。

8. 原訟法庭近期亦駁回一宗就《公安條例》用以規管公眾集會和公眾遊行的法定機制作出的具體挑戰。<sup>3</sup>原訟法庭確定，有關法定機制及根據公共秩序理由對和平集會權利的限制是合法和合憲的。

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<sup>2</sup> 梁國雄訴警務處處長 [2005] 3 HKLRD 164

<sup>3</sup> 郭卓堅訴警務處處長，HCAL 2337/2019，2019年10月23日

9. 任何人在行使其和平集會的權利時，必須遵守適用的法律。上訴法庭的一名法官在一判刑決定明言<sup>4</sup>：“賦予香港居民的基本自由是全面的，毫不遜色於其他先進及自由社會居民所享有的自由。但[集會、言論、遊行、示威和表達意見的自由]並非是絕對及無限制的，而是要受法律的監管。香港居民有遵守香港實行的法律的義務，而行使法律所賦的權利絕非作出違法行為的理由或藉口。任何未獲警方發出不反對通知書或以暴力或威脅使用暴力來表達意見的示威行為，便是超越了受法律保障的和平行使法律賦予權利的界線，而進入了非法活動的領域，構成干擾他人權利和自由的非法行為”。

#### 香港自 2019 年 6 月出現的社會動盪

10. 特別報告員來函第 1 頁提到“2019 年 6 月至 12 月，成千上萬的示威者聚集，絕大部分以和平的方式，抗議《逃犯及刑事事宜相互法律協助法例 [(修訂)] 條例草案》，以及提出其他政治訴求”。上述指稱嚴重偏離事實。為正視聽，我們在下文詳列關於香港自 2019 年 6 月以來持續的社會動亂的一些事實。

11. 自 2019 年 6 月以來，香港有超過 1 400 場公眾活動，當中大多以示威者使用暴力告終。非法公眾活動的暴力程度日漸升級，對香港的公共安全及公共秩序造成史無前例的破壞。暴徒參與不同的暴力活動，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，他們亦使用更加危險的武器，包括磚頭、鐵枝、鐵珠、自製彈弓、弓箭、經改裝的氣槍、汽油彈、高

<sup>4</sup> 引用上訴法庭副庭長楊振權，律政司司長訴黃之鋒 [2017] 5 HKC 116 一案第 2 至 3 段。上訴法庭就此部分的裁決，未有受終審法院質疑。在其裁決 (2018) 21 HKCFAR 35 中第 69 段，終審法院確認：“若涉案行為被裁定為罪行，這也必然代表著涉事者已逾越了合法行使憲制權利與進行須受制裁及限制的違法活動之間的分界線。因此，罪犯以行使憲制權利為請求輕判的理由不甚可取，因為他在犯事時，根本不是在行使其憲制權利。”

功率鐳射筆、腐蝕性物質，甚至土製炸彈裝置，襲擊警務人員和其他不同意其意見或暴力行為的人士。其暴力不止針對警務人員、警署及警車，亦針對手無寸鐵的無辜市民，特別是政見不同的人士。當中有兩宗案件情節尤為嚴重。第一宗於 2019 年 11 月 11 日發生，一名無辜的市民被潑易燃液體並放火燃燒，造成身體四成燒傷。第二宗於 2019 年 11 月 13 日發生，一名 70 歲的清潔工人遭激進人士用磚擲中頭部，其後死亡。以往亦曾有暴徒駭人地圍毆持不同意見的人士。此外，暴徒肆意破壞不少店舖、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。

12. 警方搜獲與暴亂行為有關的武器和危險品種類相當廣泛；搜出的非法物品的破壞力和數量均甚為驚人。根據警方估計，暴徒在暴力事件中投擲至少 5 000 枚汽油彈，而警方亦搜獲至少 10 000 枚汽油彈(包括在兩所大學分別搜獲超過 3 900 枚汽油彈)。警方在行動中搜獲的爆炸品，包括三過氧化三丙酮<sup>5</sup>、六亞甲基三過氧化二胺<sup>6</sup>及遙控土製炸彈<sup>7</sup>，都是世界各地不同致命恐怖襲擊常用的武器。警方亦檢獲了五枝真槍和大量子彈，其中一支是 AR-15 步槍。

13. 對社區設施造成的破壞及堵塞同樣驚人。全港合共 740 組交通燈遭受破壞。除了交通燈，同期有 1 463 個安全島標柱及 87 個交通標誌被摧毀。此外，約 55 公里欄杆及約 22 000 平方米的行人路路磚被非法移走。

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<sup>5</sup> 三過氧化三丙酮破壞力強，加上原料在零售市場可以輕易買到，因此一直被聖戰戰士視為首選炸藥。涉及使用三過氧化三丙酮的矚目恐襲包括 2015 年巴黎襲擊，以及 2016 年導致逾 170 人死亡的布魯塞爾機場襲擊。

<sup>6</sup> 六亞甲基三過氧化二胺和硝化纖維素雖然不及三過氧化三丙酮常用，但過去多次被恐怖分子使用。一名伊斯蘭極端分子曾於 2016 年 9 月在紐約和新澤西州使用六亞甲基三過氧化二胺進行炸彈襲擊，造成 34 人受傷。硝化纖維素則曾於 2005 年倫敦自殺式炸彈襲擊中使用，造成 52 人死亡。

<sup>7</sup> 遙控土製炸彈數十年來廣為恐怖分子使用。分離武裝組織愛爾蘭共和軍是其中一個以使用遙控土製炸彈造成傷亡和破壞聞名的恐怖組織。

14. 在 93 個重鐵車站及 68 個輕鐵車站中，累計共有 85 個重鐵車站及 62 個輕路鐵車站先後被破壞，大量設施多次受損，包括出入閘機 1 974 次、售票機和八達通增值機 / 查閱機及客務中心設備 1 153 次、輕鐵月台八達通收費器 1 592 次、閉路電視鏡頭 1 289 次、扶手電梯 117 次、升降機 81 次、車站出入口玻璃幕牆 1 129 次及車站出入口捲閘 221 次。自 2019 年 10 月以來，警方接獲 1 200 宗案件，涉及超過 1 000 個場地遭受破壞，部分更屢遭破壞。

15. 與公眾集會的事件有關的傷者超過 2 800 人(包括市民及警務人員)；超過 600 名警務人員在行動中受傷。

16. 獨立監察警方處理投訴委員會 2020 年 5 月 15 日公布的專題審視報告就 2019 年 6 月至 2020 年 3 月的大型公眾活動作出宏觀的檢視，並載錄相關事實的全面紀錄。有關報告可於 [https://www.ipcc.gov.hk/tc/public\\_communications/ipcc\\_thematic\\_study\\_report.html](https://www.ipcc.gov.hk/tc/public_communications/ipcc_thematic_study_report.html) 下載。

#### 逮捕和拘留

17. 就來函提及有 15 名人員被捕，他們是因涉及在 2019 年 8 月 18 日、2019 年 8 月 31 日、2019 年 10 月 1 日及 2019 年 10 月 20 日的非法集結而被警方拘捕。有關的拘捕行動是根據警方調查所得的證據而進行，嚴格按照相關法例行事。為了進行所需的調查和落案起訴，該 15 名人員曾在警署被短暫羈留（少於 12 小時）。在短暫羈留期間，他們有按需要會見代表律師。該 15 名人員其後全部被檢控，並獲保釋以待 2020 年 5 月 18 日出庭。現時他們全部獲法庭准許保釋以待下次出庭。由於司法訴訟正在進行中，我們不會就這些個案作進一步評論。

18. 來函第 3 頁要求取得“拘捕和羈留[這 15 名人士]的法律依據”的資料。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以或合理地懷疑犯了（就該罪行首次定罪時）可被判處監禁的罪行的人。

19. 當任何人被警方拘捕時，警務人員會盡快告知該人已被捕、拘捕的事實理由及拘捕原因，以及將其帶到警署的值日官前，以確定其被拘捕及羈押的合法性。

20. 其後，被捕人會交由調查隊伍按需要進行調查。在完成初步調查後，警方會決定是否需要羈押有關被捕人士。警方會因應個別案件的情況，考慮落案起訴被捕人、准予被捕人士自簽擔保外出、保釋外出或無條件釋放。

21. 警方致力保障被捕人士的私隱和權利。一般而言，被捕人士不會被羈留超過 48 小時，並有權尋求法律援助、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。警方向每名被警方看管或調查的人士發出的通知書列明被羈留人士的權利。

22. 《基本法》第二十五條訂明香港居民在法律面前一律平等。無人可以凌駕法律或犯了法而不需面對後果。如果有證據顯示任何人犯法，不論該人有何身分或背景，都要面對法律制裁，無人可享有特權。警方必定會公平公正、不偏不倚地依法處理。香港警務處是政治中立和專業的執法機關，根據證據作出拘捕，而不會理會涉案人士的背景、聯繫、政治立場和職業。

## 檢控

23. 由於特別報告員來函提及的案件已進入司法程序，律政司不適宜就該案作出任何具體評論，否則會引起公眾討論，與公審無異。不過，我們希望重申一些一般性原則。

24. 《基本法》第六十三條訂明，“香港特別行政區律政司主管刑事檢察工作，不受任何干涉”。檢控人員一直獨立並專業地履行這個憲制責任，無畏無懼。檢控決定基於所有可接納和可靠的證據和適用法律進行客觀分析，並嚴格按照公開的《檢控守則》而作出，任何人均不應干涉或企圖干涉獨立的檢控決定。

25. 《檢控守則》為檢控工作提供清晰並貫徹的指引和原則。檢控人員的責任是以最高的專業水平處理所有刑事案件。檢控人員不得受任何涉及調查、政治、傳媒、社群或個人的利益或陳述的因素影響。所有檢控決定是按可接納證據、適用法律和《檢控守則》而作出，不會有任何政治考慮。案件不會因涉案人士的政治理念、訴求或背景而在處理上有所不同，律政司只在有充分可被法院接納的證據，令案件有合理機會達致定罪，並在符合公眾利益的情況下，才會提出起訴。

26. 再者，《檢控守則》第十九章明文指出，如有聲稱指干犯的罪行同時涉及行使言論自由、和平集會和結社自由的權利，或需作出特別考慮，並特地提出政府有明確責任採取合理而適當的措施，讓合法的集會和平進行。只有當有關行為超出理智範圍或合理界線的限度，才應提出刑事檢控。檢控人員必須求取平衡，既要符合社會利益維持公眾秩序，亦要讓公眾合法及和平地行使自身權利。

27. 《基本法》第八十七條規定，任何人在被合法拘捕後，享有盡早接受司法機關公正審判的權利，未經司法機關判罪之前均假定無罪。在刑事司法方面，任何受刑事控告的人應受獨立無私之法定管轄法庭公正公開審問，並受香港人權法案第十條和十一條（相對應《公約》第十四條）的保障。這些保障包括：在未經依法確定有罪以前被假定無罪的權利、立即受審並不受無故稽延的權利、親自答辯或由其選任辯護人答辯的權利；盤問對他不利的證人的權利、和不被強迫自供或認罪的權利。

### 獨立的司法權

28. 司法獨立是香港法治的重要基礎。根據《基本法》第二條，香港特區依照本法的規定享有獨立的司法權，包括終審權，這是規管香港高度自治的一般原則。而且，《基本法》第八十五條規定香港特區法院獨立進行審判，不受任何干涉，司法人員履行審判職責的行為不受法律追究。

29. 正如終審法院首席法官在 2020 年法律年度開啟典禮中指出，法院的工作是依法解決法律爭議。所有人都必須服從法律，無人可凌駕於法律之上。關於人人平等的保證和規定，在《基本法》和《香港人權法案》中亦已清楚說明；此等保證和規定確保每一個人，不論其身分地位高低，不管是公共機構抑或一般市民，均受法律約束，並須承擔法律責任，絕無例外。

30. 至於有關人士為何因六至八個月前發生的事件而被檢控，一般來說，執法機關進行調查和控方提起訴訟的所需時間取決於多項因素，包括案件的性質和複雜程度，需審閱的證據多寡，諮詢法律意見的時間，以及是否需要需要就法律意見作出進一步跟進等。

31. 最後，我們必須強調，任何人都不應作出毫無根據的指控，這類指控或會被視為企圖影響我們妥善地執行公職。司法獨立是法治的重要元素。對具體案件作出過早和毫無根據的指控不僅損害被告的公平審判權，而且還會損害公眾對司法制度的信心。

The Chinese Government has received the joint communication [AL CHN 9/2020] dated 4 May 2020 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders. The reply to the joint communication is as follows,

### General Principles

1. Fundamental rights and freedoms are well protected in the Hong Kong Special Administrative Region (“HKSAR”) by the Basic Law of the HKSAR of the People’s Republic of China (“Basic Law”). At the constitutional level, the right to freedom of expression and the right of peaceful assembly are protected under Article 27 of the Basic Law. Article 39 of the Basic Law further provides, amongst others, that the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong (“ICCPR”) shall remain in force and shall be implemented through the laws of the HKSAR.

2. At the domestic legislation level, the provisions of the ICCPR as applied to Hong Kong have been implemented by way of the Hong Kong Bill of Rights under the Hong Kong Bill of Rights Ordinance (Cap. 383), which binds the Government. The full text of the Hong Kong Bill of Rights is set out in section 8 of the Hong Kong Bill of Rights Ordinance. The right to freedom of expression and the right of peaceful assembly are protected under Articles 16 and 17 of the Hong Kong Bill of Rights respectively, which are modelled on Articles 19 and 21 of the ICCPR. These rights and freedoms are not absolute and are subject to restrictions as prescribed by law<sup>1</sup> and necessary in the interests of, for example, public order.

### The statutory scheme for the regulation of public meetings and processions

3. Public meetings with participants of more than 50 persons or public processions with participants of more than 30 persons that are regulated under the Public Order Ordinance (Cap. 245) may be conducted

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<sup>1</sup> The “prescribed by law” requirement is set out in Article 39(2) of the Basic Law. It requires that a law be adequately accessible to the citizen and formulated with sufficient precision to enable the citizen to regulate his conduct.

only if notice has been given to the Commissioner of Police (“the Commissioner”) who has not prohibited or objected it. The Commissioner (or delegated officers) has to carefully examine each case based on all the relevant facts and circumstances. By law, the Commissioner may only prohibit or object a public meeting or public procession if it is necessary in the interests of national security, public safety, public order or the protection of the rights and freedoms of others, and when those interests could not be met by the imposition of conditions. As a matter of general practice, upon receipt of a notification about a public meeting or public procession, the Hong Kong Police Force (“Police”) will establish early contact and maintain active and close communication with the event organiser to provide advice and assistance.

4. There is also a proper appeal system in place. If a person is aggrieved by the decision of the Commissioner to prohibit a public meeting, to object a public procession or to impose conditions on the holding of a public meeting or procession, he may lodge an appeal to the independent statutory Appeal Board on Public Meetings and Processions. The Appeal Board is chaired by a retired judge. It may confirm, reverse or vary the prohibition, objection or condition imposed by the Commissioner. The decision of the Appeal Board is also amenable to the challenge of judicial review.

5. Under section 17A(2) of the Public Order Ordinance, where any public meeting or public procession takes place in contravention of the Commissioner’s prohibition or objection, or where three or more persons taking part in a public gathering refuse or wilfully neglect to obey an order given by a police officer under the Ordinance, the public gathering shall be an “unauthorized assembly” in law.

6. It is the policy of Police to facilitate all peaceful public order events. At the same time, Police have the statutory duty to take lawful measures to maintain public order and public safety. If anyone engages in illegal or violent acts, police officers must take appropriate actions to maintain public order and public safety. The HKSAR Government has always urged members of the public to express their views in a peaceful and orderly manner, and should not resort to violence.

## Court rulings on the Public Order Ordinance

7. The Court of Final Appeal has held in *Leung Kwok Hung and Others v Commissioner of Police*<sup>2</sup> that the statutory requirement for notification under the Public Order Ordinance is constitutional. It is required to enable the Police to fulfil the positive duty resting on Government to take reasonable and appropriate measures to enable lawful demonstrations to take place peacefully. A legal requirement for notification is in fact widespread in jurisdictions around the world. The Court further held that the Commissioner's discretion under the Ordinance to restrict the right of peaceful assembly for the purpose of public order (in the law and order sense, that is, the maintenance of public order and prevention of public disorder) satisfied both the "prescribed by law" requirement and the necessity requirement and would be constitutionally valid. Applying the proportionality test, the Commissioner's statutory power to restrict the right of peaceful assembly for the purpose of public order (in the law and order sense) is rationally connected to and no more than necessary to accomplish the constitutional legitimate purpose of "public order (*ordre public*)". Hence, the Commissioner's power under the Public Order Ordinance to object to public processions on the ground of public order is consistent with the right of peaceful assembly protected under Article 17 of the Hong Kong Bill of Rights which corresponds to Article 21 of the ICCPR.

8. The Court of First Instance dismissed recently a specific challenge against the statutory scheme established under the Public Order Ordinance for the regulation of public meetings and public processions.<sup>3</sup> It affirmed that the statutory scheme and the restriction of the right of peaceful assembly based on the public order ground is lawful and constitutional.

9. One must observe the law in force in exercising his or her right of peaceful assembly. This is what one of the judges at the Court of Appeal pronounced in the judgment of a sentencing case<sup>4</sup>: "*The basic freedoms*

<sup>2</sup> *Leung Kwok Hung and Others v HKSAR* [2005] 3 HKLRD 164

<sup>3</sup> *Kwok Cheuk Kin v Commissioner of Police*, HCAL 2337/2019, 23 October 2019

<sup>4</sup> per Hon Yeung VP, in *Secretary for Justice v Wong Chi Fung* [2017] 5 HKC 116, at paragraphs 2-3 and this part of the judgment of the Court of Appeal was not questioned by the Court of Final Appeal (2018) 21 HKCFAR 35 which confirmed, at para. 69 of its judgment that "[t]he fact of a conviction of the offence will necessarily mean that the offender has crossed the line separating the lawful exercise of his constitutional rights from unlawful activity subject to sanctions and constraints. In such a case, there is little merit in a plea for leniency on the basis that the offender was merely exercising constitutional rights since, by definition, he was not doing so at the time when the offence

*conferred on Hong Kong residents are comprehensive and in no way lesser than the freedoms enjoyed by people of other advanced and free societies. However, [the freedoms of assembly, speech, procession, demonstration and expression of opinions] are not absolute or unrestricted; they are subject to the supervision of the law. Hong Kong residents are obliged to observe the laws that are in force in Hong Kong, and the exercise of the rights conferred by law is by no means a reason or excuse for doing illegal acts. **Any act of protest or demonstration for which the police have not issued a Notice of No Objection, or in which violence or the threat of violence is used to express one's opinions, crosses the boundary of the peaceful exercise of the rights and enters the territory of unlawful activities; it becomes an unlawful act which interferes with the rights and freedoms of others.***"

#### Social unrest in Hong Kong since June 2019

10. Page 1 of the letter of the Special Rapporteurs mentions that "[b]etween June and December 2019, hundreds of thousands of demonstrators gathered, the vast majority of them peacefully, to protest against the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation Bill and make further political demands". Nothing could be further from the truth. For proper record, we set out below some facts about the prolonged social unrest in Hong Kong since June 2019.

11. 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

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*was committed."*

and defenceless members of the public, especially people with opposing political views. Among which there were two particularly serious cases. In the first case which occurred on 11 November 2019, an innocent member of the public suffered 40% burns to his body after he was poured with inflammable liquid and set ablaze. 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 surrounded and wounded horrendously people of opposite views. 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.

12. Weapons and dangerous goods seized by Police in connection with the riotous acts were of a great variety; and the situation was extremely alarming in terms of both the destructive power and quantity of the illicit items seized. According to Police's estimate, rioters hurled at least 5 000 petrol bombs during the violent incidents, with at least 10 000 petrol bombs seized (including over 3 900 petrol bombs respectively seized in two universities). Explosives were seized in Police's operations, including Triacetone Triperoxide (TATP)<sup>5</sup>, Hexamethylene Triperoxide Diamine (HMTD)<sup>6</sup> and Radio-controlled Improvised Explosive Devices (RCIEDs)<sup>7</sup> which are commonly used in deadly terrorist attacks around the world. Five genuine firearms including one AR15 rifle with very large quantities of ammunitions were found.

13. The damage and obstruction caused to a large number of essential community facilities were alarming. A total of 740 sets of traffic lights were vandalised across the territory. Apart from traffic lights, a total of 1 463 traffic bollards and 87 traffic signs were damaged during the same period. Also, some 55 kilometres of railings and some 22 000 square metres of paving blocks of footpaths were illegally removed.

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<sup>5</sup> TATP has long been considered the bomb of choice for jihadists due to its destructive power and the existence of readily available retail ingredients. Prominent attacks involving the use of TATP include the 2015 Paris Attacks and the 2016 Brussels Airport Attacks which killed over 170 people.

<sup>6</sup> HMTD and Nitrocellulose, although less commonly used than TATP, have a history of being deployed by terrorists in the past. HMTD was used in the New York and New Jersey Bombings carried out by an Islamist extremist in September 2016 resulting in 34 injured, whereas the Nitrocellulose was used in the 2005 London Suicide Bombing resulting in 52 deaths.

<sup>7</sup> RCIEDs have been widely utilised by terrorists for decades. The Irish Republican Army, a separatist militant group, is one of the terrorist groups that is notorious for using RCIEDs to cause casualties and damage.

14. Among the 93 heavy rail and 68 light rail stations, a cumulative total of 85 heavy rail and 62 light rail stations were vandalised respectively, involving numerous facilities including entry/ exit gates (1 974 times), ticket machines, Octopus add-value machines/ enquiry processors and Customer Service Centre facilities (1 153 times), Octopus fare processors on light rail platforms (1 592 times), CCTV cameras (1 289 times), escalators (117 times), elevators (81 times), glass panels at station entrances/ exits (1 129 times) and roller shutters of station entrances/ exits (221 times). Since October 2019, 1 200 cases had been reported to Police, involving vandalism of more than 1 000 venues, some of which were repeatedly damaged.

15. Over 2 800 casualties (including both citizens and police officers) relating to mass gathering incidents were reported. Over 600 police officers were injured during the operation.

16. A comprehensive record of the facts for gaining a broad picture of those public order events from June 2019 to March 2020 could be found in the Thematic Study conducted by the Independent Police Complaints Council published on 15 May 2020 which could be accessed from - [https://www.ipcc.gov.hk/en/public\\_communications/ipcc\\_thematic\\_study\\_report.html](https://www.ipcc.gov.hk/en/public_communications/ipcc_thematic_study_report.html)

#### Arrest and detention

17. With regard to the arrest of 15 individuals mentioned in the incoming letter, Police arrested the individuals in connection with the unauthorised assemblies that occurred on 18 August 2019, 31 August 2019, 1 October 2019 and 20 October 2019. All the arrests were made based on evidence from investigations and strictly in accordance with the laws in force. For the purposes of conducting the necessary investigation and laying of charge(s), the 15 individuals were temporarily detained (for less than 12 hours) at the police station(s). While being temporarily detained by Police, they had met with their legal representatives as necessary. All the 15 individuals concerned were subsequently charged and released on bail to appear at court on 18 May 2020. All of them are currently on court bail pending their next court appearance. As the legal proceedings are

still on-going, we will not comment further on the cases.

18. Page 3 of the incoming letter asks for information “on the legal grounds for the arrest and detention of [the 15 individuals]”. Under section 10(d) of the Police Force Ordinance (Cap. 232), Police have a statutory duty 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.

19. 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. The arrested person will be brought before the Duty Officer of a police station as soon as possible to confirm the legality of his or her custody and arrest.

20. The arrested person will subsequently be handed over to an investigation team for necessary processing. After completing preliminary investigation, Police will decide whether it is necessary to detain the arrested person. Police will, depending on the circumstances of individual cases, consider charging the arrested person, releasing the arrested person on own-recognition, bail or unconditionally.

21. Police strive to protect the privacy and rights of detained persons. An arrested person generally will not be detained for over 48 hours and would have the rights to seek legal assistance, communicate with a relative or friend, receive copies of written record under caution, be provided with food and drink, seek medical attention, etc. The rights of a detained person are clearly stated in the notice issued by Police to every detained person in police custody or involve in police enquiries.

22. Article 25 of the Basic Law provides that all Hong Kong residents shall be equal before the law. No one is above it nor can anyone break it without facing consequences. If there is evidence that anyone violates the law, regardless of his/her status or background, he/she must face justice. No one has any special privileges. Police will handle the case in a fair, just

and impartial manner in accordance with the law. The Hong Kong Police Force is a politically neutral and professional law enforcement agency. Arrests are made based on evidence, irrespective of the background, affiliation, political stance or occupation of the persons involved.

### Prosecution

23. As the legal proceedings referred to in the Special Rapporteurs' letter are on-going, it would be inappropriate for the Department of Justice (DoJ) to offer any specific comments on the cases as it would create a public discussion which may amount to a trial by the public. We would nevertheless wish to reiterate some of the general principles.

24. Article 63 of the Basic Law provides that "the Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference." The prosecutors have always been discharging this constitutional duty independently and professionally, without fear or favour. No one should interfere or attempt to interfere with independent prosecutorial decisions which are based on an objective assessment of admissible and reliable evidence and applicable laws, made strictly in accordance with the Prosecution Code which is accessible to the public.

25. The Prosecution Code of the DoJ provides clear, consistent guidelines and principles for carrying out prosecution work. It is the responsibility of the prosecutors to apply the highest of professional standards in handling all criminal cases. A prosecutor must not be influenced by any investigatory, political, media, community or individual interest or representation. All prosecutorial decisions are based on admissible evidence, applicable laws and the Prosecution Code, without political consideration. Cases will not be handled any differently owing to the political beliefs, demands or backgrounds of the persons involved. Prosecutions would only be commenced if there is sufficient admissible evidence to support a reasonable prospect of conviction and if it is in the public interest to do so.

26. Further, the Prosecution Code expressly points out, at Chapter 19, that offences alleged to have been committed in conjunction with the

exercise of the right to freedom of expression, the right of peaceful assembly, and the right to freedom of association may give rise to special considerations, and specifically refers to the Government's positive duty to take reasonable and appropriate measures to enable lawful assemblies to take place peacefully. Criminal prosecution should only be pursued when the relevant conduct exceeds sensible proportions or the bounds of reasonableness. Prosecutors must strike a balance between the interest of society in maintaining public order and the right of a person lawfully and peacefully to exercise his or her rights.

27. Article 87 of the Basic Law provides that anyone who is lawfully arrested shall have the right to a fair trial by the judicial organs without delay and shall be presumed innocent until convicted by the judicial organs. In the area of criminal justice, anyone subject to criminal prosecution receives a public and fair trial by a competent, independent and impartial tribunal established by law, and subject to the safeguards provided under Articles 10 and 11 of the Hong Kong Bill of Rights which correspond to Article 14 of the ICCPR. These include, amongst others, the right to be presumed innocent until proven guilty according to law, the right to be tried without delay, the right to defend himself in person or through legal assistance of his own choosing, the right to examine the witnesses against him, and the right not to be compelled to testify against himself or to confess guilt.

#### Independent Judicial Power

28. Judicial independence is the key building block to Hong Kong's rule of law. Pursuant to Article 2 of the Basic Law, it is a general principle governing Hong Kong's high degree of autonomy that the HKSAR enjoys independent judicial power, including that of final adjudication, in accordance with the provisions of the Basic Law. Further, Article 85 of the Basic Law states that the courts of the HKSAR shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions.

29. As pointed out by the Chief Justice of the Court of Final Appeal at the Ceremonial Opening of the Legal Year 2020, the task of the courts is to resolve legal disputes in accordance with the law. Everyone is subject to the law, no one is above it. The guarantee and requirement of equality, which is also clearly spelt out in the Basic Law and the Hong Kong Bill of Rights, ensures that everyone, high or low, public body or citizen, are subject to the law and answerable to it. There are no exceptions.

30. In response to the question as to why the individuals have been charged with offences relating to incidents that took place six to eight months ago, generally speaking, the time required for the law enforcement agency to conduct investigation and for the prosecution to initiate proceedings depend on a number of factors, including the nature and complexity of the case, the amount of evidence to be reviewed, the time for rendering legal advice, and whether further legal advice and follow-up investigation are required.

31. Lastly, it should be stressed that no one should embark upon baseless accusations. These types of accusations may be perceived as purporting to influence the proper discharge of public duties. Judicial independence is an essential element of the rule of law, and making premature and baseless accusations on specific cases might not only prejudice the defendant's right to fair trial, but also undermine public confidence in the judicial system.