

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as 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; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged arrest, detention and prosecution of individuals for participating in peaceful demonstrations in Hong Kong or for expressing support to the demonstrations; alleged excessive use of force by the police during peaceful protests against demonstrators, journalists and human rights defenders; alleged acquiescence by the police of violence perpetrated against demonstrators by anti-protest groups; restrictions to the dissemination and access to information on the protests, including on the Internet.**

According to the information received:

Students and protesters, joined by supporters of the Occupy Central pro-democracy movement, started demonstrating on 22 September 2014, expressing discontent at Chinese authorities' alleged intentions to vet candidates for Hong Kong's 2017 leadership elections. Since then, demonstrations have reportedly taken place in central areas in Hong Kong, calling for greater democracy in Hong Kong, and in some occasions reaching peaks of massive gatherings of thousands of persons. It is reported that, except isolated incidents of throwing of objects from height, throwing of traffic cones or rubbish bins, or snatching police barriers, demonstrations remained peaceful and demonstrated high levels of civic behaviour.

All demonstrations in Hong Kong were considered unlawful by the authorities, allegedly for not complying with the Public Order Ordinance (chapter 245 of 1997) that requires, in order to hold public assemblies of more than 30 persons, to obtain a “notice of no objection” from the government before the assembly could take place. Allegedly, this regulation amounts to imposing an authorisation procedure to hold peaceful assemblies, while international standards establish that the exercise of fundamental freedoms should not be subject to prior authorisation by the authorities.

Allegations on use of force against peaceful demonstrators by the police and attacks against protestors by anti-protest groups, with alleged acquiescence of the police:

On 28 September 2014, following a week-long peaceful protest and sit-in by thousands of students and protesters, the police reportedly fired 87 rounds of tear gas to disperse thousands of peaceful protesters gathered at Harcourt Road. It is alleged that demonstrators did not pose any form of threat to the public or the police and that they were not given any warning prior the massive firing of tear gas. It is also reported that pepper spray were used against unarmed protesters, including at close distance aiming at the eyes, allegedly to prevent them from accessing areas cordoned off by the Police.

On 3 October 2014, groups of individuals opposed to the protests reportedly harassed, intimidated and attacked protesters and pulled down their tents and barricades. It is also reported that a number of women protesters were also subject to various acts of harassment and intimidation and that some were physically assaulted, including sexually, by anti-protest groups. Police officers were reportedly present during these attacks, but did not intervene to protect the protestors from the assaults.

On 15 October 2014, the police allegedly used excessive force, including against one protester who was severely beaten by a group of police officers while he had his hands bound. It is alleged that while demonstrators were acting peacefully, the Police further used pepper spray at close distance to disperse demonstrators located on the main road next to the city’s government headquarter. It is reported that the police arrested several demonstrators, and some were allegedly charged for illegal gathering and obstructing a police officer on duty. On 26 November, seven police officers who were allegedly involved in this incident were arrested, reportedly for “assault occasioning actual bodily harm”. Criminal investigations are reportedly on-going.

On 17 October 2014, the police again attempted to clear the roads and reportedly coerced bus drivers to drive into the crowd in order to force protesters to leave the

protest sites. Reportedly, the police used excessive force, including through indiscriminate beating and use of pepper spray, on that day. Several demonstrators were seriously injured, and most of them sustained head injuries.

On 25 November early morning, Court bailiffs, backed by police, started removing barricades in Argyle Street in Mong Kok. The clearance began peacefully but allegedly escalated during the night following the police sprayed “tear water” to drive the crowd back. It is reported that Police operation continued on to Nathan Road on 26 November morning, and the road was opened to traffic by noon. It is alleged that at least 148 people, including some 14 years old children, have been arrested, and some charged, for 'criminal contempt of court' and 'obstructing a public officer in execution of duty'. It is alleged that some of the protesters and journalists were beaten by the police during their arrest. Incidents of police beating bystanders, during the night of 26 November and early morning of 27 November, were also reported, as well as alleged attempts by the police to obstruct media from reporting these incidents.

From 28 to 30 November, protesters gathered again and reports indicate that some started throwing objects at police officers, when some reportedly tried to enter in the Admiralty compound and break through to Chief Executive Leung’s office. Police officers allegedly used pepper spray, batons and riot shields to disperse the crowd. Reportedly, 40 persons were injured as a result of the altercations. Further arrests of protesters were reported. It is also alleged that two reporters were arrested while covering the events at the Mong Kok protest site. At the moment of writing this communication, tension reportedly remains high and police continue removing barricades and dispersing protesters.

Allegations on arrest and detention of peaceful protesters in Hong Kong and allegations of arrest, detention and judicial prosecution of individuals in Chinese mainland for demonstrating or expressing support to the protests taking place in Hong Kong:

Between the 27 September and 25 October 2014, 246 persons, including 35 women, were reportedly arrested or detained during the demonstrations taking place in **Hong Kong**. Most of these arrests were made at sites of massive demonstrations, mostly Mong Kok, Central and Lung Wo. Demonstrators were reportedly charged for unlawful assembly, disorderly conduct in public place, possession of offensive weapons and assaulting police officers. Authorities have reportedly informed that all these persons had been released within 48 hours, but still fail to report the exact number of protestors charged for offences related to the demonstrations.

On 12 October 2014, a House Committee meeting of the Hong Kong legislative council passed a motion aiming to investigate the planning and the funding of the “Occupy Central” movement. The motion is reportedly due to go through final approval in the coming weeks. If adopted, such legislation, which do not seem to comply with international standards related to the ability for associations to access funding without State interference, may have adverse impact on civil society as a whole.

Furthermore, a number individuals, including civic activists and artists, based on **the Chinese mainland**, have allegedly faced reprisals, including arrest and detention, for demonstrating in public, disseminating information or expressing opinions, namely on the Internet, in support to the protests for democracy and universal suffrage taking place in Hong Kong. In particular, it is reported that, since the beginning of the demonstrations in Hong Kong, more than a hundred individuals had been arrested or detained in mainland China, primarily in Beijing and Guangdong, in relation to demonstrations or expression of support to the protests in Hong Kong. Reportedly, at least 55 persons are still held in some form of custody. It is alleged that most of the persons arrested or detained have been charged for creating disturbance. Reportedly, most of the families of those detained have not been informed or notified by the police of their detention and some have been allegedly threatened by the police after they inquired about the whereabouts of their relatives. It is also alleged that the lawyers of those detained have faced obstacles to visit their clients.

Allegations relative to other restrictions to the right to freedom of opinion and expression, including restrictions of access to information on the Internet and attacks against journalists and human rights defenders:

Reports also indicate restrictions to the exercise to the right to freedom of expression, including allegations of persons arrested and charged, under Section 161, for “access to computer with criminal or dishonest intent”, following the publication of information and messages on Internet forums calling for participation in the demonstrations. Reports also mention cases of persons allegedly arrested for posting pictures of police officers during the demonstrations, accused of “criminal intimidation”.

It is alleged that national and international journalists covering the development of the demonstrations, with their identification clearly displayed, suffered assaults and acts of intimidation, including short-term arrests and acts of violence by the police, as well as harassment and attacks from anti-protest groups, in presence of the police who failed to protect them.

Members of human rights organisations deployed to monitor the demonstrations were allegedly attacked and chased by the police in Long Wo Rowad and some of

their members were threatened by the police with batons to stop monitoring and reporting on the demonstrations in Mong Kok.

Allegations indicate that the news outlet Apple Daily, which had been covering the development of the demonstrations, was unable to operate due to possible hacking of their webpage during two days in October and the blockage of the entrance of its premises by anti-protest groups during several days after 11 October 2014. It is reported that following police intervention with an injunction from the Hong Kong High Court, the entrance was cleared temporarily, but a blockage was re-established on 25 October 2014.

Allegations also indicate restrictions in the access to information through the Internet, including restrictions allegedly imposed on some search engines and microblogging website Weibo, in mainland China, like in Baidu and Sogou. Moreover, the photo-sharing service Instagram was also reportedly blocked in the Chinese mainland, allegedly by the authorities aiming at preventing people from receiving and imparting information and ideas on the demonstrations taking place in Hong Kong. It is alleged that pictures of the demonstrations shared through WeChat messaging application were not accessible from mainland China. Allegations also indicate that British Broadcasting Corporation (BBC) English website was blocked in China on 15 October 2014, allegedly following the posting of a video showing acts of police brutality against demonstrators.

Finally, an official notice was reportedly issued, and instructions were sent via telephone, to several bookstores, to ban the distribution of the books of several Chinese writers, allegedly as a result of these writers' public support to the demonstrations in Hong Kong.

While acknowledging that most of the time during the month-long demonstrations in Hong Kong, the authorities - including the police - have shown a large degree of professionalism and restraint, serious concern is expressed about the alleged excessive use of force against a number of individuals participating in peaceful protests, as well as allegations of attacks by anti-protest groups, in presence of the police. We acknowledge, and encourage further, the investigations carried-out in relation to the alleged excessive use of force by the police reported on 15 November and arrests of police officers who were allegedly involved in these incidents. Serious concern is expressed about the arrest, detention and judicial prosecution of individuals in Hong Kong in relation to their exercise to their right to freedom of peaceful assembly, as well as arrest, detention and judicial prosecution of individuals in Chinese mainland for expressing public support to the demonstrations in Hong Kong. Serious concern is also expressed in relation to other alleged restrictions to the right to freedom of opinion and expression, including restrictions of access to information through publications and on the Internet, as well as attacks against journalists and human rights defenders during the demonstrations.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations. We take note in that with regard to the application of the International Covenant on Civil and Political Rights to Hong Kong, the Secretary-General received communications concerning the status of Hong Kong from the United Kingdom and China and, upon resuming the exercise of sovereignty over Hong Kong, China notified the Secretary-General that the Covenant will also apply to the Hong Kong Special Administrative Region.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comments you may have on the above-mentioned allegations.
2. Please provide detailed information on the arrest, detention, judicial prosecution and possible conviction of individuals in relation to their participation in the demonstrations in Hong Kong, or for expressing their support to the demonstrations. Please indicate how these are in conformity with international human rights norms and standards, namely the ICCPR and the UDHR, as applicable in Hong Kong and Chinese mainland respectively.
3. Please provide information on the national legislation and regulations applicable in relation to the use of force in the context of mass protests in Hong Kong, including in relation to the use of tear-gas and pepper spray, and please indicate how these are compatible with international human rights norms and standards. Please provide detailed information on investigations and judicial proceedings carried out in relation to the allegations of excessive use of force by the police during the demonstrations in Hong Kong.
4. Please provide information on investigations and judicial proceedings carried out in relation to the allegations of acts of harassment, intimidation and violence against demonstrators, including cases of sexual violence, perpetrated by anti-protest groups.
5. Please provide detailed information on the alleged restrictions to the right to freedom of opinion and expression in Hong Kong, especially in relation to the alleged measures taken to limit the access to certain Internet websites and media webpages, restrictions in distributions of certain

publications, attacks and attests of journalists and human rights defenders monitoring the demonstrations.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

We take note that with regard to the application of the International Covenant on Civil and Political Rights (ICCPR) to Hong Kong, the Secretary-General received communications concerning the status of Hong Kong from the United Kingdom and China and, upon resuming the exercise of sovereignty over Hong Kong, China notified the Secretary-General that the Covenant will also apply to the Hong Kong Special Administrative Region.

In connection with above alleged facts and concerns, we would like to call on your Excellency's Government to article 21 and 22 of the ICCPR, and article 20 of the Universal Declaration of Human Rights (UDHR) which provides that "[e]veryone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association."

We also would like to recall article 19 of the UDHR and article 19 of the ICCPR which establish the right to freedom of opinion and expression, which include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his or her choice.

In this connection, we would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

In addition, we would like to refer to the thematic reports of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, in which he stated that:

- "States should facilitate and protect peaceful assemblies, including through negotiation and mediation. Wherever possible, law enforcement authorities should not resort to force during peaceful assemblies and ensure that, "where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force" (A/HRC/20/27, para. 89);

- "The Special Rapporteur calls upon States: ... [t]o ensure access to public space, including public streets, roads and squares, for the holding of peaceful assemblies,

with the consequence of rerouting pedestrian and vehicular traffic when necessary” (A/HRC/23/39, para. 83(d)); and

- “The Special Rapporteur considers pre-event planning, including risk assessment, by law enforcement officials, together with organizers of peaceful assemblies and, if possible, local authorities, as a good practice which may contribute to the success of the assembly” (A/HRC/23/39, para. 68).

We would like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.”

Concerning the demand of protesters, we would like to refer to the Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107th session (11 – 28 March 2013), in which the Human Rights Committee calls upon the relevant authorities to “implement universal and equal suffrage in conformity with the Covenant as a matter of priority for all future elections. It should outline clear and detailed plans on how universal and equal suffrage might be instituted and ensure enjoyment by all its citizens, under the new electoral system, of the right to vote and to stand for election in compliance with article 25 of the Covenant, taking due account of the Committee's general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service. It is recommended to consider steps leading to withdrawing the reservation to article 25(b) of the Covenant.”

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to draw specific attention of your Excellency's Government to article 5, paragraph (a), article 6, paragraphs (a), (b) and (c) and article 12, paragraphs 2 and 3 of the Declaration.

Furthermore, we would like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2006 (A/61/312), where the Special Representative urges States to

ensure that law enforcement officials are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies and to investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials.

We would also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2007 (A/62/225, paras. 91 and 93), which underlines the importance of human rights monitors during demonstrations in providing an impartial and objective account of what takes place and in deterring human rights violations.