

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

REFERENCE:
AL CHN 9/2017

24 October 2017

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 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the sentencing of Mr. **Joshua Wong**, Mr. **Nathan Law** and Mr. **Alex Chow** to imprisonment for their role in the pro-democracy demonstrations that took place in 2014. Additionally, a large number of protesters who have been arrested in the largely peaceful protests continue to face legal uncertainty.

Mr. Joshua Wong, Mr. Nathan Law and Mr. Alex Chow are student leaders and pro-democracy activists, who had a leading role in the so-called 'Umbrella Movement'.

The Umbrella Movement is a political movement that emerged in 2014 from the Hong Kong pro-democracy protests, in response to the decision by the Government of the People's Republic of China to rule out full universal suffrage for Hong Kong.

According to the information received:

In July 2014, the public space around Government headquarters on the 'Civic Square' was cordoned off and declared off limits following major sit-ins and a demonstration against the proposed national education curriculum. The three student leaders, Mr Wong, Mr. Law and Mr. Chow wanted to 'reclaim' this space which is generally used for demonstrations, and climbed over the fence. Their actions sparked the pro-democracy demonstrations two days later, which lasted for 79 days.

Mr. Wong, Mr. Law and Mr. Chow were charged with unlawful assembly offences under the Public Order Ordinance (Cap. 245), were convicted on 15 August 2016, and sentenced to suspended sentences and community service. These sentences were completed before their review by the Court of Appeal in August 2017. Throughout the process before the lower trial court, the three accused emphasised 'peace, rationality and non-violence' with regard to their planning preparations and actions. All three student activists filed appeals against

their convictions with the Court of Appeal but withdrew their appeals in April 2017.

However, on 15 September 2016, the Secretary of Justice applied for review of the sentences with the magistrate, arguing that due to the extremely serious nature of the crime, aggravating factors and that the perpetrators did not really feel 'remorse', the original sentences of community service were not adequate. After the magistrate upheld her sentencing decisions on 21 September 2016, the Secretary for Justice applied to the Court of Appeal for a review of the sentences.

On 17 August 2017, the Court of Appeal in its sentencing review decision handed out prison sentences to the three student leaders as follows: Mr. Joshua Wong (6 months), Mr. Nathan Law (8 months), and Mr. Alex Chow (7 months). All three of them are allegedly currently held in maximum security facilities.

Apart from the three student activists, 955 persons were reportedly arrested during the 'Umbrella Movement', and a further 48 were arrested after the end of the protests, mostly key individuals involved in the pro-democracy demonstrations. They were arrested for a range of offences, including 'unlawful assembly' and 'unauthorized assembly'. While many of them were released after their arrest, police notified them that criminal investigations were still ongoing and that they would be re-arrested and charged, should there be enough evidence to prosecute them.

Concerns are expressed at the criminalization of peaceful assembly and freedom of expression through the arrest, detention and conviction of Mr. Wong, Mr. Law and Mr. Chow. Concerns are expressed regarding the unusually harsh sentences meted out by the Court of Appeals, which appear to be unusual in the jurisprudence of courts in similar cases, where imprisonment ranges to a few weeks usually, along with fines or community service orders in most cases, with the prosecution usually deciding not to appeal these sentences. Further concerns are expressed regarding the role of the Secretary for Justice, who appears to have used his discretionary power in a discriminatory manner in this case.

Further concerns are expressed over the fact that the prosecutions and threat of prosecutions against participants of the 'Umbrella Movement' have a chilling effect on the activities of civil society organisations and human rights defenders in China and are further deterring people from participating in peaceful protests.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As 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 comment(s) you may have on the above-mentioned allegations.
2. Please outline the legal basis for the charges against, and sentencing by, the Court of Appeals, of Mr. Joshua Wong, Mr. Nathan Law and Mr. Alex Chow, and how these sentences are compatible with the obligations of the People's Republic of China under international human rights law, in particular with the right to freedom of expression, and freedom of peaceful assembly and of association.
3. Please provide information about the investigations against, and prosecutions of, participants of the 'Umbrella Movement' and the reasons why the potential threat of prosecutions has been kept open for the past three years.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Annalisa Ciampi
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

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

- Articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), which the People's Republic of China signed on 5 October 1998;
- The Vienna Convention on the Law of Treaties, which your Excellency's Government ratified on 3 September 1997, in its Article 18 states that "A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when (a) it has signed the treaty (...). Furthermore, the ICCPR is applicable to Hong Kong, China, by virtue of the 1984 Sino-British Joint Declaration and by virtue of the Basic Law and the Bill of Rights Ordinance.
- Article 20 of the UDHR, which stipulates that "[e]veryone has the right to freedom of peaceful assembly and association."

We would also like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that "[r]eminds 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 persons espousing minority or dissenting views or beliefs, 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."

We would also like to bring to the attention of your Excellency's Government the UN 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 articles 1, 2, 5, 6 and 12 of the Declaration.

We would also like to refer to the Concluding Observations of the Human Rights Committee on the Third Periodic Report of Hong Kong, China (CCPR/C/CHN-HKG/CO/3, adopted on 29 April 2013), which in paragraphs 10 and 11 raises "concerns about (a) the application in practice of certain terms contained in the Public Order Ordinance, inter alia 'disorder in public places', or 'unlawful assembly', which may facilitate excessive restriction to the Covenant rights, (b) the increasing number of arrests of, and prosecutions against, demonstrators, and (c) the use of camera and video recording by police during demonstrations". The Committee recommended that "Hong Kong, China should ensure that the implementation of the Public Order Ordinance is in conformity with the Covenant (...)". The Committee expressed concern about the excessive use of force by members of the police and by the inappropriate use of pepper spray to break up demonstrations to restore order. The HRC recommended that Hong Kong, China "should increase its efforts to provide training to police with regard to the

principle of proportionality when using force, taking due account of the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials”.