

**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; the Special Rapporteur on the situation of human rights defenders; and the Independent Expert on the promotion of a democratic and equitable international order**

REFERENCE:  
AL CHN 4/2019

2 May 2019

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; Special Rapporteur on the situation of human rights defenders; and Independent Expert on the promotion of a democratic and equitable international order, pursuant to Human Rights Council resolutions 34/18, 32/32, 34/5 and 36/4.

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. **Benny Tai Yiu-Ting**, Mr. **Chan Kin-Man** and Mr. **Chu Yiu-Ming**, along with six other human rights defenders in connection with their participation in the Umbrella Movement protests in 2014.

Mr. Benny Tai Yiu-Ting, Mr. Chan Kin-Man and Mr. Chu Yiu-Ming are pro-democracy human rights defenders and co-founders of the non-violent Occupy Central protest movement, better known as the 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. Special Procedures mandate holders have previously expressed their concerns over the prosecution of human rights defenders involved in the Umbrella movement in a joint communication issued on 24 October 2017, case no. CHN 9/2017. We acknowledge the response provided by your Excellency's Government dated 8 December 2017, but remain concerned in light of the recent sentencing of Mr. Benny Tai Yiu-Ting, Mr. Chan Kin-Man and Mr. Chu Yiu-Ming, as well as of six other individuals.

According to new information received:

On 19 November 2018, the trial of Mr. Benny Tai Yiu-Ting, Mr. Chan Kin-Man, Mr. Chu Yiu-Ming and six other student leaders, legislative councillors and political party leaders involved in the Umbrella movement protests began. The charges against them, which were varying combinations of "conspiracy to commit public nuisance", "incitement to commit public nuisance" and "incitement to

incite public nuisance”, related to their participation in, and organisation of, peaceful protests which began in late September 2014 and which resulted in the blocking off of a number of roads in Hong Kong. These charges are common law offenses, which carry penalties of up to seven years’ imprisonment and a fine.

On 9 April 2019, Mr. Benny Tai Yiu-Ting and Mr. Chan Kin-Man were found guilty of “conspiracy to commit public nuisance” and “incitement to commit public nuisance”, while Mr. Chu Yiu-Ming was found guilty of “conspiracy to commit public nuisance”. The six other defendants were all found guilty on similar charges.

On 24 April 2019, the West Kowloon Magistrates Court sentenced both Mr. Benny Tai Yiu-Ting and Mr. Chan Kin-Man to 16 months in prison, while Mr. Chu Yiu-ming received a 16 month prison sentence which was suspended for two years. Of the six other defendants convicted on 9 April 2019, four received eight month prison terms, two of which were suspended, one received 200 hours of community service and one had their sentencing postponed until 10 June 2019 for medical reasons.

We wish to express our serious concern over the conviction and sentencing of Messrs. Benny Tai Yiu-Ting, Chan Kin-Man, and Chu Yiu-Ming, as well as six others for their roles in organising and participating in the Umbrella movement protests in 2014. We wish to bring to your Excellency’s Government’s attention articles 10, 11, 19 and 20 of the Universal Declaration of Human Rights (UDHR), and articles 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights, signed by China on 5 October 1998, which provide for due process rights, freedom of expression and freedom of peaceful assembly and association and urge your Excellency’s Government to quash the convictions against the nine human rights defenders and to release them immediately.

The use of incitement charges in order to criminalise the dissemination of information and calls for peaceful protest is particularly worrying. Human rights defenders and others alike have the right to disseminate information on all human rights and fundamental freedoms. Indeed, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. (CCPR/C/GC/34 para. 20)

While we express concern at the use of overbroad language to criminalise the legitimate exercise of freedom of expression and freedom of assembly in general, we express additional concern at the decision of the prosecution to try the nine human rights defenders under common law offences, which carry far harsher penalties than their counterparts in statutory law. We are concerned that the use of common law charges in this case seeks to dissuade others from participating in peaceful protests for fear of excessive punishment and may have a chilling effect on civic space in Hong Kong. Furthermore, we regret that the jurisprudence which is formed by this judgement may

further be used to prosecute other similar cases in the future and sets a worrying precedent for the criminalisation of human rights defenders.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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 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 provide detailed information on the legal and factual bases for the charges and convictions against the nine mentioned human rights defenders, and explain how these charges and convictions are compatible with China's obligations under international human rights standards, especially with regards to articles 19 and 20 UDHR.
3. Please provide information on the determining factors under which the decision was taken to charge the nine human rights defenders under common law provisions, which allegedly carry excessive penalties, rather than statutory law provisions.
4. Please provide information as to what steps have been taken to ensure that human rights defenders in China are able to carry out their peaceful and legitimate work in a safe and enabling environment, free from any physical, judicial or other harassment

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

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

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Livingstone Sewanyana  
Independent Expert on the promotion of a democratic and equitable international order

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to articles 10, 11, 19, 20 and 21(3) of the Universal Declaration of Human Rights (UDHR), and articles 14, 19, 21, 22 and 25(b) of the International Covenant on Civil and Political Rights (ICCPR), signed by China on 5 October 1998, which provide for due process rights, the rights to freedom of expression, freedom of peaceful assembly and association, and universal and equal suffrage. As established by the Vienna Convention on the Law of Treaties (VCLT), where the signature to a treaty is not subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory State to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty (VCLT, articles 10 and 18).

We note that article 21 of the ICCPR recognises that the right to freedom of peaceful assembly should be enjoyed by everyone, as provided for by article 2 of the Covenant and resolutions 15/21, 21/16 and 24/5 of the Human Rights Council. In its resolution 24/5, the Council reminded 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 and human rights defenders (A/HRC/26/29, para 22.).

We would like to draw the attention of your Excellency's Government to Human Rights Council resolution 12/16, calling on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 29 of the UDHR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We would also like to highlight that assemblies are an equally legitimate use of public space as commercial activity or the movement of vehicles and pedestrian traffic. Any use of public space requires some measure of coordination to protect different interests, but there are many legitimate ways in which individuals may use public spaces. A certain level of disruption to ordinary life caused by assemblies, including disruption of traffic, annoyance and even harm to commercial activities, must be tolerated if the right is not to be deprived of substance (A/HRC/31/66 para. 32).

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 bring to the attention of your Excellency's Government the following provisions of the Declaration:

- Article 5 (a) and (b), which underscores the rights to meet or assemble peacefully and to form, join and participate in non-governmental organisations, associations or groups;
- Article 6 (b) and (c), which reiterates the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- Article 12 (2) and (3), which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.