

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 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL CHN 12/2019

28 June 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 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/18, 32/32, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged excessive use of force against peaceful demonstrators and human rights defenders, as well as alleged arbitrary arrest of individuals participating in peaceful demonstrations in Hong Kong.

According to the information received:

On 12 June 2019, tens of thousands of demonstrators gathered in the areas around Hong Kong's Central Government Complex and the Legislative Council to protest against the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation Bill. Reportedly, the demonstration area surrounding the Hong Kong Legislative Council had been shut off to the public ahead of the demonstration, in an attempt to prevent demonstrators from reaching it. In the afternoon of 12 June, the Hong Kong Police Force (HKPF), wearing riot gear, used excessive force to violently disperse protesters. Some unarmed demonstrators were targeted and hit at their heads with rubber bullets. The HKPF also used pepper spray against other peaceful demonstrators, who posed no threat, on multiple times at a very close range. Police also fired tear gas, pepper spray, tear spray and rubber bullets at protesters repeatedly without any prior warning. It is estimated that at least 72 protesters were injured during the operation, according to Hong Kong Hospital Authority.

On the following day, the Chief Executive of Hong Kong condemned the protests, calling it "a riot." Reportedly, at least 11 individuals were arrested. A number of arrests were allegedly conducted in hospitals. Charges for riot-related offences carry penalties of up to 10 years' imprisonment.

While we do not wish to prejudge the accuracy of these allegations, we are concerned at the alleged excessive use of force against peaceful protesters and human rights defenders, as well as allegations of arbitrary arrest of individuals exercising their right to freedom of peaceful assembly, association and of expression. While it cannot be excluded that a few individuals may have resorted to violence, demonstrators were overwhelmingly peaceful, thus, we are concerned that international standards related to the policing of assemblies, and particularly the fundamental principles of legality, precaution, necessity, non-discrimination, proportionality and accountability, may have been violated. We are especially concerned about the repeated use of pepper spray and rubber bullets at close range which carries a significant risk of injury.

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 provide information on the legality, precaution, necessity, non-discrimination and proportionality of the use of force in the context of the 12 June demonstrations. Please provide information about regulations applicable to the use of tear-gas, pepper spray, tear spray and rubber bullets during the demonstrations, and please indicate how these are compatible with international human rights norms and standards. Please also provide detailed information on the instructions the police forces received to disperse the protesters and on investigations and judicial proceedings carried out in relation to the allegations of excessive use of force by the police.
3. Please provide detailed information on the arrests, judicial prosecutions and possible convictions of individuals in relation to their participation in the aforementioned demonstrations.

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 6 (1), 19, 21 and 22 of the International Covenant on Civil and Political Rights (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." We take note that with regard to the application of the ICCPR to Hong Kong, China notified the Secretary-General that the Covenant will also apply to the Hong Kong Special Administrative Region.

We would also 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", and the Code of Conduct for Law Enforcement Officials, ensuring protesters right to peaceful assembly and without resorting to excessive use of force.

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 refer to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association A/HRC/20/27, which clearly 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" (para. 89). In his report A/HRC/23/39, he stated "Acts of sporadic violence or other punishable acts committed by others do not deprive peaceful individuals of their right to freedom of peaceful assembly." (para. 49)

We would also like to refer to the Joint compilation of practical recommendations for the proper management of assemblies of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/31/66, in which was stated that: "The use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality. The necessity requirement restricts the kind and degree of force used to the minimum necessary in the circumstances (the least

harmful means available), which is a factual cause and effect assessment. Any force used should be targeted at individuals using violence or to avert an imminent threat. The proportionality requirement sets a ceiling on the use of force based on the threat posed by the person targeted. This is a value judgement that balances harm and benefit, demanding that the harm that might result from the use of force is proportionate and justifiable in relation to the expected benefit” (paras. 57 and 58). Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary) (para. 59). Firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (para 60). We would also like to appeal to your Excellency’s Government to ensure that prompt, effective and thorough investigations are conducted into the alleged attacks on protestors following excessive use of force by police and that there is accountability for any violations including through the prosecution of perpetrators. Effective remedy (including compensation) should be guaranteed to the injured individuals.

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 3, article 5, paragraph (a), article 6, paragraphs (a), (b) and (c) and article 12, paragraphs 2 and 3 of the Declaration.

Finally, we wish to draw the attention of your Excellency's Government to the report of the Special Rapporteur on Torture presented to the General Assembly (A/72/178), which explains that "(a)ny extra-custodial use of force that does not pursue a lawful purpose (legality), or that is unnecessary for the achievement of a lawful purpose (necessity), or that inflicts excessive harm compared to the purpose pursued (proportionality) contradicts established international legal principles governing the use of force by law enforcement officials and amounts to cruel, inhuman or degrading treatment or punishment”.