

Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 36/15 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the allegedly inappropriate use of chemical agents during demonstrations from June to December of 2019 in Hong Kong. These agents include hazardous substances such as tear gas, pepper spray, pepper balls and irritating chemical constituents dispersed from water cannons and other mobile sprayers against protestors, journalists, human rights defenders, social workers, volunteer medics and other humanitarian workers. The Hong Kong Police Force (hereinafter HKPF) officers ensuring public order at the frontline of events have also been exposed. The allegations include the use of these chemical agents in the densely populated city of Hong Kong, in closed spaces, in close vicinity of schools, kindergartens and institutions housing sensitive segments of the population.

According to the information received:

From 12 June 2019 to 5 December 2019, the HKPF has used almost 16,000 canisters of tear gas in different parts of the densely populated city of Hong Kong, averaging 90 canisters a day. The single-day records are 2,330 canisters on 12 November 2019, 1,667 canisters on 1 October 2019, and 1,458 canisters on 18 November 2019. The HKPF has refused to release detailed information regarding the types and composition of chemical agents that they have been deploying. In addition to the tear gas, other chemical agents were also used.

According to some estimates, 88% of Hong Kong's population may have been affected by the use of tear gas. Hong Kong is among the world's most densely populated urban areas. Its topography and dense, high-rise architecture make it more difficult for the tear gas and other chemical agents to quickly disperse, which may lead to longer and higher exposures by the population.

Numerous reports by civil society and the media suggest that the indiscriminate use of tear gas and possibly other chemical agents in densely populated urban

areas has significantly affected the health and wellbeing of the population and especially vulnerable groups, including children, infants, the elderly in care homes and hospitalised persons.

More than ten schools and at least two kindergartens have allegedly been affected because of the use of tear gas by the HKPF. On 11 November 2019, HKPF fired rounds of tear gas to disperse the protesters near Tong Chun Street in Tseung Kwan O, while children in several schools nearby were attending classes. A canister exploded outside a Primary School, engulfing it in tear gas while students were still inside. On the same day a canister was reportedly fired into the school playground of another nearby public school. On 11 November 2019, teacher unions and parents called for the Education Bureau to announce the suspension of classes in schools. A suspension of classes was eventually announced on 14 November 2019.

Tear gas has also been deployed in closed spaces such as metro stations, multi-store car parks and in vicinity of shopping centres.

There exist a number of accounts by the medical community, journalists, individuals and civil society organisations pointing at tear gas related health symptoms experienced by journalists and segments of the general population (not only demonstrators) exposed to tear gas and other chemical agents. Journalists have self-reported experiencing symptoms such as shortness of breath, persistent cough, coughing up blood; skin reactions, itchiness and rashes; problems with eyes, including reddening and persistent watering; and gastrointestinal symptoms such as diarrhoea or vomiting.

The lack of publicly available information about the composition of the chemicals has increased the anxiety, fear and health issues suffered by the population. It has also presented a challenge to the provision of proper medical care.

Medics and first aid workers have so far been treating people affected by tear gas and other chemical agents without possessing full reliable information about the composition of these chemical agents, making it difficult for them to provide adequate medical treatment in the short and long-term, and provide proper monitoring.

In November 2019, Hong Kong authorities issued some guidelines on how to deal with tear gas exposure, highlighting first-aid measures for those exposed, breastfeeding advice, steps to reduce indoor contamination and other home cleaning tips. The guidelines have reportedly acknowledged that there is a lack of scientific data on the longer-term effects of tear gas exposure, and that the Hong Kong Government has limited knowledge of components in tear gas used by the HKPF.

The Government has also reportedly refused to disclose information about the composition of the irritating blue fluid fired from the water cannons, with the HKPF stating that the dye is edible and harmless. The fluid may however contain irritants not disclosed to the public and private hospitals and medical professionals. Victims who have been sprayed with the blue fluid suffered painful eye irritation, were unable to open their eyes for approximately 20 minutes, experienced severe pains throughout their body and a burning sensations on their skin. Some were hospitalised for treatment and prescribed painkillers to alleviate the pain.

While we do not wish to prejudge the accuracy of these allegations, we have reasons to believe that tear gas, pepper spray and other chemical agents have been used indiscriminately, unnecessarily and disproportionately, in violation of international and Hong Kong principles on the use of force. We also have reasons to believe that many canisters of tear gas have been used in an uncontrolled and allegedly malicious manner. Persons have allegedly been indiscriminately affected by travelling airborne particles or deposits/residues of the chemicals deployed, including residents and people working in the affected areas especially cleaners and repair workers. We remind your Excellency's Government of previously expressed concerns in a former communication addressed to China and co-signed by several UN independent experts (AL 12(2019)) regarding alleged excessive use of force against peaceful protesters during the demonstrations. Of particularly grave concern is the fact that chemical agents have reportedly been deployed in or near schools, institutions hosting vulnerable populations, enclosed or semi-enclosed areas such as metro stations, as well as the physical conditions imposed by the natural and built environment of Hong Kong that may prolong exposure. Concern is also raised regarding the lack of information for the affected population and medical personnel regarding the exposure.

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 regarding the chemical agents (such as tear gas, pepper spray, pepper balls and irritating chemical constituents dispersed from water cannons and other mobile sprayers) used during peaceful demonstrations in Hong Kong, including their chemical constituents, information about corresponding antidotes and medical treatments as provided by the manufacturers of those substances; as well

as information on guidelines and training manuals on the use of chemicals as weapons for law enforcement by police forces;

3. Please provide information of steps undertaken to provide urgent relief to affected individuals, households and other private or public entities immediately after each episode of widespread use of tear gas, pepper sprays and other substances, including assistance in decontamination, medical assistance, and temporary housing if necessary;
4. Please provide information about policies and procedures about spraying in an around high risk areas, such as schools, enclosed or semi-enclosed areas, and how the physical reality of Hong Kong's natural and build environment is taken into consideration in decisions to use chemical agents;
5. Please provide information on how and when the HKPF decides to use tear gas. Furthermore, please explain what mechanisms are in place to ensure that the use of tear gas is in line with the principles of proportionality and necessity. Please elaborate what measures have been taken by the Government to ensure the physical integrity of the participants and the bystanders of the protests.
6. We would also find it most useful to learn about any initiatives that authorities of Hong Kong are undertaking for increasing access to information about the chemical agents used, ensuring the systematic monitoring of exposed individuals, with the aim ensuring access to appropriate treatment.
7. Please also explain if any steps have been undertaken in order to remove the chemicals concerned from all public spaces according to verified decontamination guidelines and health advice.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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.

We may 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.

Baskut Tuncak

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Clement Nyaletsossi Voule

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we wish to draw your Excellency's Government's attention to obligations under international human rights instruments, recalling article 3 of the Universal Declaration of Human Rights (UDHR) and article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) which guarantee the right of every individual to life, liberty and security. In addition, article 6 of the Convention on the Rights of the Child (CRC) recognises that every child has the inherent right to life and requires States parties ensure to the maximum extent possible, the survival and development of the child. It further requires State parties to take all effective and appropriate measures to diminish infant and child mortality.

We would like to refer your Excellency's Government to article 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 provide 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 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."

We would also like to draw your attention to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The right to health is also guaranteed as a part of the Universal Declaration of Human Rights (UDHR) Article 25, which is read in terms of the individual's potential, the social and environmental conditions affecting health of the individual, and in terms of health services. General Comment No. 14 describes the normative content of article 12 and the legal obligations undertaken by the States parties to the ICESCR to respect, protect and fulfil the right to health. In paragraph 11 of General Comment No. 14, the Committee on Economic, Social and Cultural Rights (CESCR) interprets the right to health as "an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as ... healthy occupational and environmental conditions, and access to health-related education and information"

We consider also pertinent to cite article 7 of the ICCPR stipulates: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Article 19 of the ICCPR stipulates that everyone shall have the 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 choice.

We believe it is pertinent to refer to the thematic report presented by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the thirtieth session of the Human Rights Council in September 2015 (A/HRC/30/40), which stated, that the right to information on hazardous substances and wastes is central to the enjoyment of human rights and fundamental freedoms. Such information should be available, accessible and functional for everyone, consistent with the principle of non-discrimination. The Special Rapporteur affirmed that in order to protect human rights affected by hazardous substances, States are duty-bound to generate, collect, assess and update information; effectively communicate such information, particularly to those disproportionately at risk of adverse impacts (...). States should also ensure that individuals and communities, especially those at risk of disproportionate impacts, have information about hazardous substances in their environment, bodies, food and consumer products, including the adverse effects that may result from exposure. Where information is unavailable, States should make the public aware of missing information and exercise caution to prevent possible adverse impacts while information is generated, collected and assessed. He also stated in the same report that information relevant to the protection of and respect for human rights, health and safety information about hazardous substances and wastes should not be confidential, including emissions into the environment, toxicity studies and chemical identity.

The standards laid down in the 1979 United Nations Code of Conduct for Law Enforcement Officials (1979 Code of Conduct) and the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990 Basic Principles) should also be cited. We would like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles, 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". The 1979 Code of Conduct requires that in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons. The 1990 Basic Principles call on States and law enforcement agencies to develop 'non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons'. The Basic Principles further call for the development and deployment of such weapons to be 'carefully evaluated in order to minimize the risk of endangering uninvolved persons', and affirm that 'the use of such weapons should be carefully controlled'. In 2014, Resolution 25/38 of the UN Human Rights Council encouraged States to make 'non-lethal weapons available to their officials exercising law enforcement duties, while pursuing international efforts to regulate and establish protocols for the training and use of non-lethal weapons'. In 2018, the UN Human Rights Council further encouraged the

establishment of protocols ‘for the training and use of non-lethal weapons, bearing in mind that even less-lethal weapons can result in risk to life’.

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 5 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 judgment 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).

The United Nations Human Rights Guidance on Less Lethal Weapons in Law Enforcement states “[u]sing chemical irritants in closed spaces has multiple risks, including high levels of exposure, leading to injury and death. Pyrotechnic irritants may result in death as a result of fire generated by the round burning near combustible material.” The Guidelines also state that “States and law enforcement agencies shall monitor the use and effects of all less-lethal weapons and related equipment they procure, deploy, and use for law enforcement purposes. (...) Monitoring should include contextual information about the circumstances of use. Relevant data on those on whom force is used should be disaggregated, to the extent possible, for example by age, sex/gender, disability (where that exists), and ethnic group. The results of monitoring should be made public in accordance with the transparency requirements set out below.”

According to these Guidelines, States and law enforcement agencies should be transparent about their regulation of the use of less-lethal weapons and related equipment and the policies on, and criteria for, their lawful use. This should include information on the risks resulting from the use of such weapons or equipment. Where manufacturers provide guidance on risks during use or on the operational use of their less-lethal weapons, this should also be subject to such transparency requirements. Wherever it is possible to do so, States should consider consulting the public prior to the procurement of new types of less-lethal weapons and law enforcement agencies should be transparent about the types of weapons at their disposal.