

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the right to privacy

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 42/16, 42/22, 41/12 and 37/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the harassment, intimidation and arrest of healthcare workers including first-aiders; restrictions imposed on impartial healthcare, as well as the misuse of healthcare transport, facilities, and confidential information. These incidents allegedly occurred in the context of the large-scale civil rights protests that broke out in Hong Kong in June 2019.

According to the information received:

Harassment, intimidation and arrest of healthcare workers, including first-aiders

Since June 2019 when protests began in Hong Kong, a qualified group of volunteer healthcare workers (doctors, nurses, allied health professionals) have organised themselves to provide emergency and impartial medical aid in situations where access to treatment and/or transport are restricted. These groups have provided impartial healthcare to anyone in need, be they police, firefighters, protesters, the press or the public.

These national healthcare workers, either doctors, nurses or volunteer first-aiders,¹ have allegedly been harassed, intimidated or arrested for providing impartial

¹ According to the information received, first-aiders are largely comprised of civic-minded members of the public who are self-driven to provide initial care and basic-life support to injured persons. In common with other countries, these citizens are motivated by altruism; most have been trained to a basic level with attainment of a first aid certificate through a recognized training organization or even school/university, but some may have a swimming life-savers certificate and others have acquired pastoral knowledge through peers. Nevertheless, they are capable of providing the immediate basic level of care required for those injured at the point of violence, including life-saving assistance with breathing and bleeding; and the important role of escorting the victim clear of the conflict zone to a site where more experienced providers and ambulance transport can be accessed. They do this necessarily exposing themselves to the same risks of

healthcare in the context of the protests. For example, according to our sources, in August 2019, a female paramedic was hit in the right eye by a pellet round allegedly shot by a police officer during a demonstration in the Tsim Sha Tsui area of the city. In August 2019, a first-aider was arrested in Kwun Tong station solely for being in the possession of three pairs of scissors and saline water for his health duties. In early October 2019, a first-aider who had identified himself as such was allegedly subdued by a riot policeman during a violent protest.

Large numbers of healthcare workers have been arrested and hand-cuffed with zip-cords either in the vicinity of violent confrontations or in the course of performing their legitimate healthcare duties. While medical professionals have been able to provide identification and prove their qualifications, they have still reportedly been arrested by the police for “taking part in a riot,” detained for 24 hours and then released on police bail pending possible charges.

In November 2019, at least 16 healthcare workers who were providing medical aid during protests at the Hong Kong Polytechnic University were detained by the police and handcuffed with zip-cords from behind. They all were wearing high-visibility vests with descriptions of Doctor, Nurse, or Emergency Medical Technician (EMT) and all doctors were also in possession of their Medical Council of Hong Kong registration and identity cards. Another doctor was reportedly arrested the next day during a police assault on the campus while he was actively providing medical care to a casualty. These healthcare workers were detained for at least 24 hours and some for up to 30 hours reportedly with no access to a lawyer. They were all subsequently released on police bail, required to report weekly to police and informed that the investigation is continuing. Some declined police bail conditions and were told they will be notified if charges are to be preferred.

The following evening, when asked about the above mentioned arrests during a press conference, an officer reportedly asserted that the police had intelligence that rioters were masquerading as medical professionals and first-aiders, and therefore had to be arrested so as to confirm their identity. However, it is not clear why arrests are necessary for identification purposes, if the police could simply verify their names and release healthcare workers for them to continue providing aid to those in need.

According to the information received, the police have systematically undermined first-aiders by questioning their “professional qualifications” and by restricting access to the injured. The police has allegedly argued that first-aiders may exacerbate a clinical problem, which could then impact police accountability and have accused first-aiders of aiding and abetting protesters. Police have often arrested first-aiders, notwithstanding evidence about them performing their health

injury faced by protesters such as police batons, tear gas, rubber bullets and water canon noxious fluid, among others.

duties in line with relevant standards. For example, in July in Yuen Long Mass Transit Railway station, first-aiders reportedly resuscitated a man who had a cardiac arrest whilst in the act of assaulting protesters who had been demonstrating in Sheung Wan.

In November 2019, healthcare workers (medical, nursing, allied-health professionals) employed by the Public Hospital Authority² allegedly received a written communication subtly threatening disciplinary action against healthcare workers arrested in the context of the protests or suspected to participate in them. In addition, based on reports received, police have hindered healthcare staff at public hospitals when they perform their legitimate health duties, insisting on being present when doctors privately consult with patients, including in delivery rooms, and attempting to enter operating rooms when persons suspected to have participated in protests are due for surgery. Furthermore, hospitals are allegedly often patrolled by police units in full riot gear, bearing shields, batons, and firearms loaded with beanbag rounds and rubber bullets.

Restrictions imposed on impartial healthcare

According to the information received, the police have restricted the access of healthcare workers, either doctors, nurses or first-aiders, to the injured even when no other source of medical help was available. For example, in August 2019, a first-aider (paramedic) was obstructed by the police when he was trying to provide medical assistance to people who were injured as a result of the police's forced entry into, and blockage of, the Prince Edward metro station.

In November 2019, an ambulance was allegedly blocked by police officers from approaching an injured student who had fallen from a parking garage in the Tseung Kwan O area. Based on reports received, the said officers also tried to make rescuers leave as they were treating the injured student. Another ambulance eventually took the student to a hospital where he died a few days later.

Documented cases show that police officers have often denied prompt access to medical care (despite the serious injuries some arrested persons have suffered) and have delayed securing an ambulance until five to 10 hours. Overall, police officers allegedly tell arrested persons they need to go through processing, including fingerprinting, being photographed and having a statement taken, before going to the hospital. Police reportedly use people's need for medical care to pressure them into giving a statement without a lawyer present.

As per our sources, in August police officers arrested a man and zip-tied his hands behind his back for several hours disregarding his complaints of intense pain. He

² The Hospital Authority is a statutory body that provides hospital services to the people of Hong Kong. The public healthcare system comprises 43 public hospitals and institutions, 49 Specialist Out-patient Clinics and 73 General Out-patient Clinics.

was taken to hospital more than five hours later, having been transported for more than an hour to a detention facility and processed. He suffered multiple fractures and doctors indicated that the nature of the injuries was extremely serious and clearly the result of severe and intense beating.

Misuse of healthcare transport, facilities and confidential information

According to information received, law enforcement officers have used ambulances to transport personnel and equipment including weapons and ammunitions. They have abused these vehicles by exploiting the good-will of protesters who allow unimpeded access through their crowds, only to find the occupants of the ambulance emerge and conduct law enforcement, crowd control and suppressive activities. For example, in November 2019, in Tsim Sha Tsui, police officers who had hidden in an ambulance allegedly arrested a 20-year-old female and attempted to escort her to the ambulance. After clashes with protestors who became aware of the arrest and helped the woman leave, police officers fired three warning shots to disperse people.

In addition, undercover police officers have allegedly impersonated first-aiders to arrest injured protesters, further leading to growing mistrust from the public towards healthcare workers and first-aiders.

We have received reports about patients arriving at Accident and Emergency (urgent care) in public hospitals with injuries suspected to have been sustained from protest activity who are given a special hospital code for tracking and identification. This confidential medical information and data is allegedly accessed by the police (who have entered and patrolled hospitals and subsequently arrested the patients) through magistrate-issued search warrants.

Police patrols around hospitals and their undue tracking of medical confidential information have reportedly caused widespread fear amongst the public and undermined confidence in patient confidentiality. In selected instances, legal challenges have been allegedly mounted and medical records, while having been seen by the police already, are sealed pending the outcome of appeals. This seems to have increased widespread public mistrust in the public healthcare and may further lead to rejection of healthcare to the detriment of public health.

Furthermore, as per the information received official channels of communication have been used on social media to release confidential medical information such as X-ray images and unauthorized clinical updates, breaching patient confidentiality.

Consequently, doctors within the Hospital Authority, in line with the basic ethical principle of “first, do no harm,” reportedly struggle to acknowledge injuries as having been caused by, or attributable to the police, and sometimes prepare hospital discharge summaries that can be misleadingly vague. For example, in a

case where a rubber-bullet shooting caused blindness, the diagnostic code was “blunt injury, mechanism not specified.” This not only compromises future accountability making injuries seem less attributable to police action, but also compromises optimal clinical management at later stages of care.

Reportedly, there has been open discussions about the possible introduction of an Oath of Allegiance to the Hong Kong Special Administrative Region to be taken by civil servants which is feared to be extended to medical sector workers since some Government Health Clinic doctors are essentially considered civil servants, whilst doctors employed by the Hospital Authority are remunerated according to an equivalent civil-service stratum pay scale. This would put healthcare workers before a conflict-of-loyalties situation whereby allegiance to the authorities can easily compromise healthcare workers’ primary obligation to their patients, including “do not harm”, individuals’ rights to informed consent, to privacy and access to quality healthcare, among others. It may prove relevant as well for the current coronavirus epidemic. It is important that independent expert opinions from health professionals are listened to and respected even if they may not necessarily align with State priorities. They need however to be enabled in order to provide necessary healthcare.

Without prejudging the accuracy of the information made available to us, we express our most serious concern at the harassment, intimidation and arrest of healthcare workers including first-aiders, at the restrictions imposed on impartial healthcare and at the misuse of healthcare transport and confidential information in the context of the large-scale civil rights protests that broke out in Hong Kong in June 2019.

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 information about the measures taken by your Government to protect healthcare workers, including first-aiders, providing impartial healthcare in the context of the protests, either in situ or in health facilities.
3. Please provide information on what measures have been put in place to ensure that healthcare workers can quickly and efficiently reach injured individuals during protests and how the Government ensures that all participants of protests have access to first-aid where and when necessary.

4. Please provide the details of the legal basis of arrests and detentions of healthcare workers, especially their consistency with your obligations under international human rights law. Please indicate whether healthcare workers and others who have been arrested and detained have the right to access a lawyer. In cases when a lawyer has not been present, what practical measures are being taken to ensure access to legal counsel?
5. Please provide information about any use of medical information by the police or intelligence agencies in the circumstances described above and especially the legal basis for accessing or requiring special markers for such information, even in those cases where judicial authorisation was required. Have the views of Hong Kong's Privacy Commissioner for Personal Data about such practices been solicited and/or followed? Given that medical data is internationally recognised as sensitive data which requires special safeguards in order to be processed in the first place, would you kindly give full details of the special safeguards provided for by law and operational procedures in order to protect medical data in an adequate manner.
6. Please indicate whether the Government has received information about the misuse of healthcare facilities, transport and confidential information and kindly provide details about the measures taken to ensure the impartiality of healthcare facilities, transport and confidential information, including by ensuring that these are not misused by officers for law enforcement aims.

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 would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to the regular procedure.

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.

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

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

Joseph Cannataci
Special Rapporteur on the right to privacy

Annex

Reference to international human rights law

While we do not wish to prejudge the information made available to us, the acts described above appear to contravene article 3 of the Universal Declaration of Human Rights (UDHR) which guarantee the right of every individual to life, liberty and security. The right to life is also enshrined in article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), signed by China on 5 October 1998. While China is yet to ratify the ICCPR, as a signatory, it has the obligation to act in good faith and not defeat the purpose of the Covenant. We note in addition China's notification to the Secretary-General regarding the application of the ICCPR to Hong Kong indicating that the Covenant will also apply to the Hong Kong Special Administrative Region

The duty to protect life and to ensure access to essential and emergency healthcare

In its General comment No. 36 (CCPR/C/GC/36), the Human Rights Committee has stressed that the right to life is the supreme right from which no derogation is permitted, even in situations of public emergencies that threaten the life of the nation (para 1). The deprivation of life of individuals through acts or omissions that violate provisions of the Covenant other than article 6 is, as a rule, arbitrary in nature. This includes, for example, the use of force resulting in the death of demonstrators exercising their right to freedom of assembly (para 17).

The Committee highlights that the right to life should not be interpreted narrowly; it concerns the entitlement to be free from acts and omissions that are intended or may be expected to cause individuals' unnatural or premature death (para 2). The obligation to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life and there may be a violation of article 6 even if such threats and situations do not result in loss of life (para 7). Therefore, the duty to protect life includes the implementation of positive measures such as ensuring access without delay by individuals to essential healthcare, to effective emergency health services and to emergency response operations including firefighters and ambulance services (para 26). The duty to protect the right to life also requires special measures of protection towards persons whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence, including humanitarian workers (para 23).

In this connection, we would like to refer to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by China on 27 March 2001. The article recognizes the right to the highest attainable standard of physical and mental health and establishes obligations of States parties to protect, respect and fulfill this right. In its General comment No. 14 (E/C.12/2000/4), the Committee on Economic, Social and Cultural Rights establishes that the obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health (para 33), including, inter alia, the denial of access to health facilities, goods and

services to particular individuals or groups as a result of de jure or de facto discrimination (para 50). The right to non-discrimination of any kind, including on grounds of political or other opinion, is a critical component of the right to health under article 2.2 of the ICESCR.

The duty of healthcare workers to provide impartial healthcare and the duty of States to protect

The right to health contains the essential interrelated elements of availability, accessibility, acceptability and quality. In particular, the element of acceptability requires health services to be in line with medical ethics (E/C.12/2000/4, para 12.c), which in situations of conflict or violence dictates that the primary task of the medical profession is to preserve health and save life. If, in performing their duty, physicians have conflicting loyalties their primary obligation is to their patients (World Medical Association, Regulations in Times of Armed Conflict and Other Situations of Violence).

The previous Special Rapporteur on the right to health in his report regarding conflict situations, internal disturbances, protests, riots and others (A/68/297) highlighted that refusal to treat persons wounded in these situations constitutes a direct violation of the right to health. Healthcare workers are essential for ensuring availability of healthcare services and States have an immediate and continuous obligation to provide healthcare workers and humanitarian organizations with adequate protection. Intimidation, harassment, threats, arrests and other forms of attacks against healthcare workers not only violate the right to health of people affected by situations of conflict, including protests and riots, but may also cripple the healthcare system as a whole. It may result in healthcare workers fleeing and resulting in a dearth of trained medical professionals which, in turn may increase preventable health problems, including morbidity caused by the conflict (paras 18, 21, 27 and 29).

The misuse of health services and health confidential information

The former Special Rapporteur also stressed that the misuse of health services by law enforcement forces to pursue their own aims poses a serious risk to the life and health of patients and of healthcare workers. It further erodes the perception of healthcare workers, and creates mistrust of them, which may lead to killings of healthcare workers and rejection of healthcare to the detriment of public health. The presence of law enforcement forces in healthcare facilities compromises the impartiality of healthcare and intimidates both users and healthcare workers. Fear of persecution leads civilians to avoid seeking treatment at health facilities and to resort to treatment elsewhere, sometimes in unsafe conditions. The persecution in health facilities of protestors injured during clashes violates the right to health of persons by impeding their access to quality health services. (A/68/297 paras 30 and 31)

In terms of confidentiality, this is a duty of healthcare workers and an essential aspect of right to health. The Committee on Economic, Social and Cultural Rights has stressed that health services must be respectful of medical ethics and that they also must

be designed to respect confidentiality (E/C.12/2000/4, para 12 (c)). The Committee further warns that accessibility of health-related information should not impair the right to have personal health data treated with confidentiality (para.12 (b)). Disclosing individual's medical information against the will of the patient violates the right to informed consent. Guaranteeing informed consent is a fundamental feature of respecting an individual's autonomy, self-determination and human dignity in an appropriate continuum of voluntary health-care services (A/64/272).

Further, we are concerned about the infringement on the confidentiality of personal health data that ought to be adequately protected in an institutional health care setting, in violation of the right to privacy enshrined in article 12 of the Universal Declaration of Human Rights and article 17 of the ICCPR.

Freedom of peaceful assembly and of association and the right to health

The right to health is an inclusive right extending not only to timely and appropriate healthcare but also to other important aspects: it is closely related and dependent upon the realization of other human rights, including non-discrimination, equality, and the freedoms of association, peaceful assembly and movement, which address integral components of the right to health (E/C.12/2000/4, para 3). As part of their obligations under ICESCR article 12, States should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting groups in vulnerable or marginalized situations in the realization of their right to health. (E/C.12/2000/4, para 62).

In this connection, we would like to refer to article 20 of the UDHR, as well as articles 21 and 22 of the ICCPR which provide that “[e]veryone has the right to freedom of peaceful assembly and association.” Furthermore, Human Rights Council resolution 24/5, and in particular operative paragraph 2 “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.”