

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL CHN 9/2020

4 May 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 41/12, 42/22, 34/18 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 **arrest of 15 pro-democracy activists in connection with their participation in peaceful protests** between August and October 2019 in Hong Kong Special Administrative Region (SAR).

In this regard, we would like to refer your Excellency's Government to previous communications that Special Procedures sent with regard to the protests in Hong Kong (CHN 12/2019, CHN 2/2020 and CHN 3/2020). We thank you for the response to CHN 12/2019 and the explanations given in the response. However our questions in the communication were not fully answered.

According to the information received:

Between June and December 2019, hundreds of thousands of demonstrators gathered, the vast majority of them peacefully, to protest against the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation Bill and make further political demands.

On 28 February 2020, Mr. **LEE Cheuk-yan**, General Secretary of the Hong Kong Confederation of Trade Unions, Mr. **Jimmy LAI Chee-ying**, founder of Apple Daily newspaper and Mr. **YEUNG Sum**, former chairman of the Democratic Party and former member of the Legislative Council (LegCo), were arrested and charged with participation in an "unauthorised" assembly on 31 August 2019 and were charged under Section 17A(3)a of the Public Order Ordinance of Hong Kong SAR. The police had not granted the NGO organising the march a permit for the holding of that assembly on the grounds that the organisers could not guarantee that the march would be peaceful and orderly. All three were released on bail the same day.

On 18 April 2020, Messrs. Lee, Lai and Yeung were arrested again and charged for their participation in an unauthorised assembly, held on 1 October 2019, in contravention of the Public Order Ordinance Section 13. Messrs. Lee and Lai were also charged for their participation in another assembly held on the 18 August 2019. Mr. Lee was further charged for contravention of Public Order Ordinance 17A(1) for announcing a public procession that was rejected by the Police, in relation to the demonstration held on 1 October 2019.

Twelve additional pro-democracy activists, **Mr. Martin LEE Chu-ming, Mr. Albert HO Chun-yan, Mr. Richard CHOI Yiu-cheong, Mr. SIN Chung-kai, Mr. AU Nok-hin, Ms. Cyd HO Sau-lan, Mr. Figo CHAN Ho-wun, Ms. Avery NG Man-yuen, Mr. LEUNG Kwok-hung, Mr. LEUNG Yiu-chung, Mr. Raphael WONG Ho-ming and Ms. Margaret NG Ngoi-yee**, were arrested on 18 April 2020. They have all been charged for participating in unauthorized assemblies. Furthermore, Messrs. Ho, Leung Kwok-hung, Chan and Ms. Ho have also been charged for announcing public processions that were rejected by the Police in October 2019. All persons charged were released on bail the same day. The court hearings were set for 18 May 2020.

While we do not wish to prejudge the accuracy of these allegations, we express our grave concern regarding the criminal prosecution of the activists mentioned above for the exercise of their right to freedom of peaceful assembly and of expression. We are concerned that the prosecution of the aforementioned individuals does not seem to meet international standards related to freedom of peaceful assembly, according to which the exercise of this right should not be subject to prior authorization, nor should be criminalized.

We are concerned that the apparent coordinated arrests target human rights defenders and all those who express dissenting opinions from that of the Government. We are particularly concerned that this may have a chilling effect on civil society in Hong Kong, hindering the exercise of human rights and depriving individuals of the protections offered by human rights legislation.

We are further concerned that rather than seeking meaningful dialogue with protesters, these arrests seem to suggest the further stifling of protest and dissent at a time where assemblies are already severely restricted on the grounds of COVID-19 measures.

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 detailing why these 15 individuals have been charged now with offenses relating to protests that took place six to eight months ago.
3. Please provide information on the legal grounds for the arrest and detention of abovementioned persons and explain how these measures are compatible with international standards related to the right to liberty and security of the person. Please provide further information about the reason why these particular individuals have been subject to criminal prosecution.
4. Please provide detailed information on the proportionality of the charges with regards to the accused exercising their rights to peaceful assembly, in light of your obligations under international human rights law.
5. Please provide information on how the standards of fair and impartial court proceedings will be safeguarded at the trial of the 15 accused individuals scheduled on 18 May 2020.

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.

We would like to inform your Excellency's Government that having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

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

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above mentioned allegations, 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.

Without expressing at this stage an opinion on the facts of the case and on whether the reported detentions were arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of abovementioned individuals in this case not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9, 10 and 11 of UDHR.

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."

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: Failure to notify authorities of an assembly does not render an assembly unlawful, and consequently should not be used as a basis for dispersing the assembly. Where there has been a failure to properly notify, organizers, community or political leaders should not be subject to criminal or administrative sanctions resulting in fines or imprisonment (para. 23). Furthermore, No person should be held criminally, civilly or administratively liable for the mere act of organizing or participating in a peaceful protest (para. 27).