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香港人權監察
Hong Kong Human Rights Monitor



JOINT OPEN LETTER - ARREST OF HUMAN RIGHTS MONITORS IN BREACH OF THE HONG KONG GOVERNMENT'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

11 February 2020

Dear Chief Executive,

We, the undersigned human rights organizations, write to you in regard to the arrest of five human rights observers whilst conducting their work at assemblies in Hong Kong in November 2019 and January 2020. The arrests contravene the Hong Kong SAR government's international human rights obligations to respect, protect and facilitate the legitimate work of human rights observers in monitoring all aspects of assemblies within the territory. We believe that the arrest of the five was arbitrary, since they only exercised their legitimate human rights work and that, therefore, the Hong Kong Police Force should immediately cease criminal investigations into all five in relation to their arrests whilst deployed as monitors, drop all charges and return all their personal belongings and monitoring equipment, undamaged and with comprehensive information whether and if so how these items have been used for evidence-gathering purposes in the meantime.

On 1 January 2020, 16 human rights observers of Civil Rights Observer (CRO) were deployed to record and monitor a procession and assembly organized by the Civil Human Rights Front. Three observers were arrested in Causeway Bay during police's dispersal operation; together with a large crowd of citizens, they were detained outside the SOGO Department Store for around four hours until they were eventually informed they were to be arrested. They were arrested for "taking part in an unlawful assembly", even though they explained their role and work to the police, had done nothing violent or unlawful and were wearing uniforms and cards clearly identifying them as "Human Rights Observer". Police confiscated their clothes, observer uniforms, observer cards, protective gear, mobile phones and cameras which were used to document the Hong Kong Police Force's actions.

On 17 November 2019, two members of Rights Exposure's human rights observer team were

deployed in the vicinity of the Polytechnic University of Hong Kong to monitor the protests taking place there. When they tried to leave the area on the morning of 18 November, they were both arrested on “suspicion of participating in a riot”. This was despite the two explaining to the police their role, that the organization is legally registered in Hong Kong and that they had contacted the police in writing about their work back in August. The two were clearly identifiable as human rights observers, including by bi-lingual high visibility vests and work ID cards. The two observers had exclusively been engaged in monitoring the protest. When they were arrested the area was peaceful, with no protest, violent or otherwise, taking part nearby.

Under international law and standards, the Hong Kong SAR government and Hong Kong Police Force have an obligation to protect the rights of human rights observers. Such monitors play an important “watchdog” role, and it is in fact considered good practice for civil society to be able to carry out such work. This right is established under a number of international human rights standards, including the International Covenant on Civil and Political Rights (Articles 19 and 21) that is incorporated into Hong Kong law through the Bill of Rights. These standards clearly express that, irrespective of whether an assembly is declared unlawful, is no longer peaceful, or is dispersed, that does not terminate the right of civil society groups to monitor it (see Annex). Observers should not be harassed, arrested or penalized as a result of their attendance at demonstrations. Confiscation and/or damaging or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished.

At the time of their respective arrests, all five of the observers were wearing clothing and ID cards that clearly identified their role and the organizations they were working for. All of them were involved in conducting impartial and independent work, and at no time did they obstruct police operations. In addition, during the two separate incidents, each of the five observers were subjected to verbal abuse from police officers specifically in relation to their role as human rights observers. These events raise serious questions as to whether the Hong Kong SAR government and Hong Kong Police Force continue to honour their obligations on the right to freedom of peaceful assembly under international human rights law and standards, as well as Hong Kong law.

The signatories of this letter call on the Hong Kong government to:

1. Respect, protect and facilitate the right of human rights observers to monitor all aspects of assemblies, including to:
 - Publicly commit to upholding Hong Kong’s obligations under international law and standards in relation to the role of human rights observers;
 - Instruct all police officers deployed to assemblies that human rights observers have a right to conduct their work without being harassed or arrested, even when an assembly is declared “unlawful” or a “riot”;
 - Protect human rights observers and their property, from undue harm.
2. Immediately cease the criminal investigations into the five human rights observers, drop all related charges and return all their belongings and equipment forthwith;
3. Establish a fully independent, impartial, effective and prompt investigation into the use of force by law enforcement during the Extradition Bill protests. This includes excessive use of force by police in the largely peaceful protest on 12 June and other instances, allegations of torture and other ill-treatment in detention and the treatment of journalists and other observers such as here.

SIGNATORY ORGANIZATIONS

Athan - Freedom of Expression Activist Organization
Cambodian Center for Human Rights
Chinese Human Rights Defenders
CIVICUS: World Alliance for Citizen Participation
Forum Asia
Front Line Defenders
Hong Kong Watch
Human Rights in China
Human Rights Watch
INFORM Human Rights Documentation Centre
Judicial Reform Foundation
Justice and Peace Commission of the Hong Kong Catholic Diocese
Justice Centre
Lawyers' Rights Watch Canada
Maldivian Democracy Network
Odhikar
Open Data Hong Kong
The Leitner Center for International Law and Justice
The Rights Practice
WITNESS

ANNEX: BACKGROUND

Over the course of the Hong Kong protests against proposed amendments to the extradition law that greatly increased in June 2019, human rights monitors have reported being harassed, dispersed and physically hurt during their observation of the assemblies. Observers from Civil Rights Observer, Hong Kong Human Rights Monitor and Rights Exposure have experienced being targeted with tear gas, pepper bullets and water cannon in locations where no immediate violence was taking place and where clearly identified assembly monitors and journalists, as well as bystanders, were gathered.

Observers also reported that police ordered them to stop video recording police officers making arrests and the dispersal of protesters, even when the observers were already about 20 meters away. Some observers were threatened or even hurt by the police using batons and shields. On one occasion, police also forcibly removed an observer's respirator after tear gas was deployed. In another occasion, police officers pointed less-lethal rifles at assembly monitors and journalists to disperse them.

A human rights observer is generally defined as any non-participant third-party individual or group whose primary aim is to monitor and record the actions and activities taking place at public assemblies and collect, verify and use the information to address human rights problems.

Independent monitoring of assemblies, including through members of civil society groups, is essential to ensure full accountability of law enforcement agencies. Law enforcement officials should not interfere when human rights defenders or others are monitoring an assembly, since they play a crucial "watchdog" role. The public has a right to be informed about public assemblies taking place and how they unfold, and the monitoring of assemblies by members of civil society groups should be respected, facilitated and protected.

Monitors' observations can be a vital source of independent information about any human rights violations that take place, and their observations can also serve to inform public debate about how to improve their measures to promote and protect the right of peaceful assembly.

DETAILS OF ARRESTS:

Civil Rights Observer (1 January 2020)

On 1 January 2020, 16 human rights observers of Civil Rights Observer (CRO) were deployed to record and monitor the procession and assembly organized by the Civil Human Rights Front, which had obtained a letter of no objection from the Commission of Police for holding the demonstration. However, police ordered the organizers to dismiss the demonstration at around 5:30pm and only gave 30 minutes to disperse the crowd, while there was still a large number of participants and citizens along the route of the demonstration. Observers continued their work to monitor and record possible human rights violations in the course of police's dispersal operation.

Three observers were arrested in Causeway Bay during the arbitrary and indiscriminate mass arrest operation carried out by the police. Together with a large crowd of citizens, they were detained outside the SOGO Department Store for around four hours until they were eventually being informed they were to be arrested. Police cordoned off a large area and intercepted 464 people during the operation, around two-thirds of whom were arrested after being searched, including observers and first aiders.

The three observers were arrested for taking part in unlawful assembly, even though they did nothing violent nor otherwise unlawful and were wearing uniforms and cards which clearly identified them as "Human Rights Observer", and they explained their role and work to the police. They were later released on bail after more than 40 hours of detention. Police confiscated their clothes, observer uniforms, observer cards, protective gear, mobile phones and cameras which were used to document HKPF's actions.

During the detention, the three observers were subjected to verbal abuse by police officers, especially in relation to their role as human rights observers. Although they were allowed to contact their lawyers, an observer had to wait for more than 20 hours to seek legal assistance after being arrested, and another observer had to wait for more than 36 hours to seek legal assistance. Also, two male observers, together with other male detainees, were ordered to sit on chairs in the detention room throughout the whole detention period. They were not allowed to leave the chairs except when they requested to go to the toilet. They suffered from great discomfort and edema of the legs because of the lack of body movement.

Observers from Civil Rights Observer began observing the Hong Kong protests since July 2018. The organization wrote to inform the Hong Kong Police Force on 28 June 2018 and 11 June 2019, that it would be carrying out monitoring and welcome for enquiries regarding the observer program but received no response.

Rights Exposure (18 November 2019)

On the morning of 18 November 2019, Robert Godden and Jennifer Wang were arrested as they attempted to exit a police cordon set up around protests at the Hong Kong Polytechnic University. Police arrested Godden, director of the Hong Kong-based human rights consultancy Rights Exposure, and Wang, a volunteer with the company's monitoring team, on suspicion of "participating in a riot" and took them into custody, even though the pair were carrying identification as human rights monitors and wearing vests clearly marked with the words "Human Rights Observer" in both English and Chinese.

Godden, a former employee of Amnesty International, and Wang were later released on bail after about 15 and 27 hours of detention respectively, without announcement of a prosecution but "riot" charges were still pending. Police confiscated their vests, protective gear, Octopus (public transport) cards and mobile phones, effectively preventing them from continuing their work as human rights monitors. To date, their belongings are still held by the police despite them no longer being under bail conditions and requests from their lawyers for their return.

Both Godden and Wang, after being transported to a police station, were subjected to verbal abuse by a police officer that specifically referenced their role as human rights observers.

Although police allowed Godden and Wang to contact family and lawyers, Godden said that their lawyers had been made to wait at the police station for over three hours before they were able to meet.

Monitors from Rights Exposure began observing the current Hong Kong protests at the end of August 2019. On 15 August, the organization informed the Hong Kong Police Public Relations Branch in a letter "Notification of deployment of human rights observers at Hong Kong public assemblies" addressed to Chief Superintendent of Police, Mr. Tse, Chun Chung, that it would be carrying out monitoring and requested to open lines of communication with the police but received no response.

INTERNATIONAL STANDARDS:

The Hong Kong SAR government and Hong Kong Police Force are obligated under a number of international human rights treaty and other standards to protect and respect the work of human rights observers. These include:

International Covenant on Civil and Political Rights, Articles 19 and 21:

- Article 21: The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.
- General Comment No. 34 - Article 19: Freedoms of opinion and expression (UN Doc. CCPR/C/GC/34)

45. It is normally incompatible with paragraph 3 to restrict the freedom of journalists and others who seek to exercise their freedom of expression (such as persons who wish to travel to human rights-related meetings) to travel outside the State party, to restrict the entry into the State party of foreign journalists to those from specified countries or to restrict freedom of movement of journalists and human rights investigators within the State party (including to conflict-affected locations, the sites of natural disasters and locations where there are allegations of human rights abuses). States parties should recognize and respect that element of the right of freedom of expression that embraces the limited journalistic privilege not to disclose information sources.

UNGA Resolution 66/164: Promotion of 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

[Preambular para. 9] *Recognizing* the substantial role that human rights defenders can play in supporting efforts to strengthen peace and development, through dialogue, openness, participation and justice, including by monitoring, reporting on and contributing to the promotion and protection of human rights, [...]

6. Also calls upon States to ensure that human rights defenders can perform their important role in the context of peaceful protests, in accordance with national legislation consistent with the Charter of the United Nations and international human rights law, and in this regard to ensure that no one is subject to excessive and indiscriminate use of force, arbitrary arrest and detention, torture and other cruel, inhuman or degrading treatment or punishment, enforced disappearance, abuse of criminal and civil proceedings or threats of such acts;

Joint report 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 on the proper management of assemblies (UN Doc. A/HRC/31/66):

41. A primary function of law enforcement, in addition to the obligation to facilitate, is protecting the safety and rights of those who participate in assemblies, as well as monitors and bystanders.

68. All persons enjoy the right to observe, and by extension monitor, assemblies. This right is derived from the right to seek and receive information, which is protected under article 19 (2) of the International Covenant on Civil and Political Rights. The concept of monitoring encapsulates not only the act of observing an assembly, but also

the active collection, verification and immediate use of information to address human rights problems.

71. Everyone — whether a participant, monitor or observer — shall enjoy the right to record an assembly, which includes the right to record the law enforcement operation. This also includes the right to record an interaction in which he or she is being recorded by a State agent — sometimes referred to as the right to “record back”. The State should protect this right. Confiscation, seizure and/or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished.

“Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2011 – June 2012)”.

“The right to observe public assemblies is part of the more general right to receive information (a corollary to the right to freedom of expression). Freedom to monitor public assemblies should not only be guaranteed to all media representatives, including so-called citizen journalists, but also to others in civil society, such as human rights activists.^[17] provides a vital source of independent information on the activities of both participants and law-enforcement officials that may be used to inform public debate and serve as the basis for dialogue between state and local authorities, law-enforcement officials and civil society.” (Paragraph 224, p.85)

OSCE/ODIHR, GUIDELINES ON THE PROTECTION OF HUMAN RIGHTS DEFENDERS (2014)

62. Authorities should also support and facilitate initiatives by human rights defenders for the independent monitoring of and reporting on assemblies, as these measures can contribute to greater accountability and improve the protection of the right to freedom of peaceful assembly. Human rights defenders and their organizations play a crucial watchdog role in any democracy and must, therefore, be permitted to freely observe public assemblies.

THE JOHANNESBURG PRINCIPLES ON NATIONAL SECURITY, FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION (1996)

Principle 19: Access to Restricted Areas

Any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists or representatives of intergovernmental or nongovernmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists or representatives of such organizations from areas that are experiencing violence or armed conflict except where their presence would pose a clear risk to the safety of others.