

Brief Report on the Arrest and Prosecution of Fifteen Human Rights Defenders for Organising or Taking Part in Unauthorised Assemblies

April 2020

Background

On 18 April 2020, the Hong Kong Police Force arrested 15 human rights defenders for organising and taking part in unauthorised assemblies on 18 August, 1 October and 20 October 2019 respectively. They will appear before the Magistrate on 18 May 2020.

The 15 arrested were: Au Nok-hin, Figo Chan, Albert Ho, Cyd Ho, Jimmy Lai, Martin Lee, Lee Cheuk-yan, Leung Kwok-hung, Leung Yiu-chung, Avery Ng, Margaret Ng, Sin Chung-kai, Richard Tsoi, Wong Ho-ming and Yeung Sum. They are political leaders, Organisers of Civil Society Organisation, current or former lawmakers, and owner of a pro-democracy media outlet. The Police claimed more may be arrested.¹

Concerns and recommendations

As stated in the 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, the freedom of peaceful assembly is a right and not a privilege and as such its exercise should not be subject to prior authorization by the authorities.² Failure to notify authorities of an assembly does not render an assembly unlawful.³ Organisers and participants of a peaceful protest should not be prosecuted.⁴ Civil Rights Observer believes such arrest and prosecution violates the rights to freedom of expression and assembly enshrined in the International Covenant on Civil and Political Rights (ICCPR) and the Basic Law of Hong Kong. The Hong Kong government particularly targeting on human rights defenders with the charges of organising and taking part in a unauthorised assembly, and publicising unauthorised public meetings, would set out a dangerous precedent of suppressing freedom of assembly and expression, which also result chilling effect to citizens who want to exercising their rights.

¹ Citizen News, 2020. 【涉反送中遊行違《公安條例》】吳靄儀、李柱銘、黎智英等 15 民主派中堅被捕. Available at <https://www.hkcnnews.com/article/29091/%E5%A4%A7%E6%8A%93%E6%8D%95-%E5%90%B3%E9%9D%84%E5%84%80-%E6%9D%8E%E6%9F%B1%E9%8A%98-29092/%E3%80%90%E6%B6%89%E5%8F%8D%E9%80%81%E4%B8%AD%E9%81%8A%E8%A1%8C%E3%80%91%E5%90%B3%E9%9D%84%E5%84%80%E3%80%81%E9%BB%8E%E6%99%BA%E8%8B%B1%E3%80%81%E6%9D%8E%E6%9F%B1%E9%8A%98%E7%AD%8914%E6%B0%91%E4%B8%BB%E6%B4%BE%E4%B8%AD%E5%A0%85%E8%A2>

² United Nations Human Rights Council, 2016. 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, para 21. Available at <https://digitallibrary.un.org/record/831673?ln=en>

³ United Nations Human Rights Council, 2016. 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, para 23. Available at <https://digitallibrary.un.org/record/831673?ln=en>

⁴ United Nations Human Rights Council, 2016. 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, para 27. Available at <https://digitallibrary.un.org/record/831673?ln=en>

According to the Police's internal guidelines, the Police would seek legal advice from the Department of Justice before making prosecutions against persons arrested in relation to public order events⁵. Civil Rights Observer is of the view that the Department of Justice is involved and advised on the prosecution.

Civil Rights Observer calls on the Hong Kong government to immediately cease the criminal investigations into the fifteen human rights defenders and drop all related charges. As the Public Order Ordinance (the Ordinance) has been repeatedly criticised by the United Nations Human Rights Committee (the Committee) for falling short of international human rights standards, the Administration should propose amendments to the Ordinance in line with the ICCPR, particularly those that have been recommended made by the Committee on the freedom of expression and assembly.

List of the arrested persons and details of the arrest ⁶

(The list is based on the information from media reports and it is not exhaustive)

Name of the arrestees	Protests involved	Alleged charges
Martin Lee Chu-ming Founding Chairperson of HK Democratic Party (DPHK); Senior counsel	18 August 2019	Organising or taking part in unauthorised assemblies (Cap. 245 17A(3))
Margaret Ng Ngoi-yee Former Lawmaker; Trustee of 612 Humanitarian Relief Fund; barrister	18 August 2019	
Au Nok-hin Former Lawmaker; Former Convenor of the Civil Human Rights Front	18 August 2019	
Yeung Sum* Former Lawmaker; Former Chairman of DPHK	1 October 2019; 20 October 2019	
Wong Ho-ming Chairman of the League of Social Democrats (LSD)	20 October 2019	
Avery Ng Man-yuen General Secretary of the League of Social Democrats (LSD)	1 October 2019; 20 October 2019	
Richard Tsoi Yiu-cheong Vice-chairperson of the HK	1 October 2019	

⁵ Legislative Council of Hong Kong, 2017. Panel on Administration of Justice and Legal Services Background brief prepared by the Legislative Council Secretariat for the meeting on 18 July 2017 The rule of law and the role of the prosecutor.LC Paper No. CB(4)1386/16-17(07). Available at <https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170718cb4-1386-7-e.pdf>

⁶ Note 1 above.

Alliance in Support of Patriotic Democratic Movements in China		
Jimmy Lai Chee-ying* Owner of pro-democracy media outlet Apple Daily	18 August 2019; 1 October 2019	
Sin Chung-kai Former lawmaker (DPHK); Chairperson of the Kwai Ching District Council	1 October 2019	
Leung Yiu-chung Lawmaker (Neighbourhood and Worker's Service Centre); Kwai Ching District Councillor	18 August 2019	
Lee Cheuk-yan* General Secretary of the HK Confederation of Trade Unions; Vice-chairperson of Labour Party; Former Chairperson of HK Alliance in Support of Patriotic Democratic Movements in China	18 August 2019; 1 October 2019	Organising or taking part in unauthorised assemblies (Cap. 245 17A(3)); Publicising unauthorised public meetings (Cap. 245 17A(1)(d))
Cyd Ho Sau-lan Former vice-chairperson of Labour Party; Trustee of 612 Humanitarian Relief Fund	18 August 2019; 1 October 2019; 20 October 2019	
Leung Kwok-hung Recently disqualified lawmaker; Vice-chairman of the League of Social Democrats (LSD)	18 August 2019; 1 October 2019; 20 October 2019	
Albert Ho Chun-yan Former Chairman of DPHK; Chairman of HK Alliance in Support of Patriotic Democratic Movements in China; barrister	18 August 2019; 1 October 2019	
Figo Chan Vice-Convenor of the Civil Human Rights Front; Executive Committee Member of LSD	1 October 2019; 20 October 2019	

* On 28 February 2020, Jimmy Lai, Yeung Sum and Lee Cheuk-yan were also arrested for taking part in unauthorised assembly on 31 August 2019, around half a year after the protest.⁷

⁷ South China Morning Post, 2020. US government expresses concerns over arrests of Apple Daily owner Jimmy Lai and pro-democracy politicians in Hong Kong. Available at <https://www.scmp.com/news/hong-kong/politics/article/3053002/us-government-expresses-concerns-over-arrests-apple-daily>

Details of the charges

Public Order Ordinance (Cap. 245) - ⁸

Organising or taking part in an unauthorised assembly

Under section 17A(3), any public procession takes place in contravention of section 7 or 13 shall be an unauthorised assembly, every person who without lawful authority or reasonable excuse takes part in or organises or assists in organising of such unauthorised assembly shall be guilty of an offence and shall be liable—

- (i) on conviction on indictment, to imprisonment for 5 years; and
- (ii) on summary conviction, to a fine at level 2 and to imprisonment for 3 years.

Publicising unauthorised public meetings

Under section 17A(1)(d), any person who makes any announcement or publicises a public procession which has not been notified, or is prohibited or objected, commits an offence and is liable to a fine at level 3 and to imprisonment for 12 months.

Brief background of the protests involved

“Stop the Police and Organised Crime from Plunging Hong Kong into Chaos” Protest (18 August 2019)

- The Hong Kong Police Force objected the march proposed by the CHRF

The Civil Human Rights Front (CHRF) organised a public procession on 18 August. The Hong Kong Police Force (HKPF) issued a Letter of No Objection for a static demonstration in Victoria Park, but objected to the original plan to march from Causeway Bay to Central. The police notice claimed that there was “possible gathering of dissidents due to the nature of the event, and which may lead to breach of peace or other unlawful activities.” ⁹

- A million people march towards Central despite police’s opposition

The CHRF estimated at least 1.7 million people attended the demonstration, while the HKPF said there was 128,000 protestors in Victoria Park during the peak period.¹⁰ The Victoria Park had been filled up by crowds around 30 minutes after the static demonstration started, many protestors began marching to Central afterwards. According to a news report, Jimmy Lai, Martin Lee, Margaret Ng, Lee Cheuk-yan, Leung Kwok-hung, Cyd Ho, Albert Ho, Au Nok-hin and Leung Yiu-chung, took the lead to

⁸ HKSAR. Cap. 245 Public Order Ordinance. Section 17. Available at https://www.elegislation.gov.hk/hk/cap245?xpid=ID_1438402885700_003

⁹ Hong Kong Free Press, 2019. Hongkongers ignore protest restrictions, threats from Beijing as thousands join peaceful rally against gov’t. Available at <https://hongkongfp.com/2019/08/18/hongkongers-ignore-protest-restrictions-threats-beijing-tens-thousands-rally-govt/>

¹⁰ Hong Kong Free Press, 2019. Organisers say 1.7 million joined Hong Kong pro-democracy rally against police use of force, as protesters reiterate 5 demands. Available at <https://hongkongfp.com/2019/08/18/breaking-organisers-say-1-7-million-joined-hong-kong-pro-democracy-rally-police-use-force-protesters-reiterate-5-demands/>

leave the Victoria Park and marched to Chater Garden in Central via Wan Chai and Admiralty.¹¹ Lee Cheuk-yan told reporter that crowds were only able to leave the park by marching towards Central in accordance with the police's restrictions, as the park could not accommodate such a large number of people¹².

- The demonstration was peaceful with no one arrested

Some citizens then occupied the section of Harcourt Road near the government headquarters, while many left when they reached Central. Although the police had claimed that some protestors used slingshots to throw hard objects and aimed laser pens at them, most protestors left peacefully that night. The demonstration was peaceful and the police did not carry out any dispersal operation or arrest on the day.¹³

“Day of Mourning” Protests (1 October 2019)

- The Hong Kong Police Force objected to the march proposed by the CHRF

The HKPF objected the demonstrations proposed by the Civil Human Rights Front (CHRF), as the police said the organisers were unable to guarantee that no clashes would take place. Despite police opposition, Lee Cheuk-yan, Leung Kwok-hung, Albert Ho and Figo Chan said they would march on the original route. They said the right to protest is enshrined in the Basic Law and permission from the authorities is not required. Lee Cheuk-yan said between 100,000 and 150,000 people had joined the march.¹⁴ Avery Ng, Cyd Ho, Yeung Sum, Jimmy Lai, Sin Chung-kai and Richard Tsoi, also participated in the march.¹⁵

- Organisers called for protestors to leave and some participants stayed

They arrived in Central at around 2:45pm that day, and persuaded protestors to leave peacefully. Some protestors stayed and occupied roads. At around 4:15pm, clashes broke out between protestors and the police on Harcourt Road near the government headquarters. The police dispersed the crowds by continuously firing tear gas and splashing water with water cannons. Some protestors set fire and threw petrol bombs in order to deter police actions.¹⁶

¹¹ Note 1 above.

¹² Note 10 above.

¹³ Note 10 above.

¹⁴ RTHK, 2019. Tens of thousands defy ban on National Day march. Available at <https://news.rthk.hk/rthk/en/component/k2/1483580-20191001.htm?spTabChangeable=0>

¹⁵ Note 1 above.

¹⁶ HK01, 2019. 【10.1 港島全日總覽】中午維園遊行 下午中西區、灣仔區激烈衝突. Available at <https://www.hk01.com/%E6%94%BF%E6%83%85/381183/10-1%E6%B8%AF%E5%B3%B6%E5%85%A8%E6%97%A5%E7%B8%BD%E8%A6%BD-%E4%B8%AD%E5%8D%88%E7%B6%AD%E5%9C%92%E9%81%8A%E8%A1%8C-%E4%B8%8B%E5%8D%88%E4%B8%AD%E8%A5%BF%E5%8D%80-%E7%81%A3%E4%BB%94%E5%8D%80%E6%BF%80%E7%83%88%E8%A1%9D%E7%AA%81>

- Simultaneous protests across different districts and clashes broke out

Apart from the march proposed by the CHRF, protestors planned to hold simultaneous protests across different districts in Hong Kong, and violence broke out in Wong Tai Sin, Tuen Mun, Tsuen Wan and Sha Tin. Police fired tear gas in several districts and protestors threw petrol bombs and bricks in return.¹⁷ In Tsuen Wan, the police shot an 18-year-old protestor in the chest at close range with live ammunition and claimed that was an act of self-defence.¹⁸

Anti-mask Law Protest (20 October 2019)

- The Hong Kong Police Force objected the march proposed by the CHRF

The Civil Human Rights Front proposed to march from Salisbury Garden in Tsim Sha Tsui to the West Kowloon terminus of the Express Rail Link on 20 October in opposition to an anti-masking regulation imposed by the government on 4 October. The Hong Kong Police Force objected the march on the grounds that the injuries and violent incidents arising from the previous marches, as well as the fact that there were buildings on the route which protestors may storm.¹⁹ The CHRF officially abandoned their plans afterwards, but hundreds of thousands of protestors marched nonetheless.

- Organisers announced the end of the march at 2:30pm

Figo Chan and several former pro-democracy lawmakers led the march. They reached the terminus at around 2:30pm and announced the end of the march.²⁰ Although some protestors marched to the West Kowloon terminus, many continued to proceed northwards on Nathan Road, blocking traffic and chanting “Hongkongers resist.” Figo Chan estimated that around 350,000 people had attended the march.²¹

- Clashes broke out on Nathan Road, which was not on the route of the original march

Clashes broke out outside the Tsim Sha Tsui police station as some protestors gathered and vandalised the wall of the police station. At around 3:15pm, the police fired tear gas canisters from within the police station. Some protestors threw petrol bombs in return. At around 4pm, a water cannon was deployed to splash a blue liquid infused with tear spray to disperse the crowds along Nathan Road. It also fired blue liquid to the Kowloon mosque in Tsim Sha Tsui. Some protestors

¹⁷ Hong Kong Free Press, 2019. ‘Day of mourning’: Protests erupt around Hong Kong districts as China National Day marred by tear gas, clashes. Available at <https://hongkongfp.com/2019/10/01/day-mourning-protests-erupt-around-hong-kong-districts-china-national-day-marred-tear-gas-clashes/>

¹⁸ Hong Kong Free Press, 2019. Hong Kong police say shooting of 18-year-old at close range was in self-defence. Available at <https://hongkongfp.com/2019/10/01/hong-kong-police-say-shooting-schoolboy-close-range-self-defense/>

¹⁹ Hong Kong Free Press, 2019. Hong Kong police ban major protest against anti-mask law, citing risk of bombs, arson and unrest. Available at <https://hongkongfp.com/2019/10/18/hong-kong-police-ban-major-protest-anti-mask-law-citing-risk-bombs-arson-unrest/>

²⁰ Now News, 2019. 陳皓桓下午二時三十分宣布遊行結束. Available at <https://news.now.com/home/local/player?newsId=366935>

²¹ Hong Kong Free Press, 2019. Hundreds of thousands defy protest ban in Hong Kong amid tear gas, vandalism and Molotovs, as mosque hit by water cannon dye. Available at <https://hongkongfp.com/2019/10/20/thousands-defy-protest-ban-hong-kong-amid-tear-gas-vandalism-molotovs-mosque-hit-water-cannon-dye/>

vandalised and broke into stores linked to mainland China and barricaded MTR exits. The police fired rounds of tear gas and pepper spray projectiles at protestors.²²

Violations of human rights principles

Positive duty of the government

The Hong Kong Government stated in its Second Report to the Human Rights Committee that the Hong Kong Government has an obligation to assist and provide for the right of peaceful public assembly and demonstration. The Police need advance notice of demonstrations so that proper arrangements can be made to minimise any disruption to traffic and inconvenience caused to other members of the public. The Commissioner of Police cannot object to a public procession if he reasonably considers that the interests of public safety and public order could be met by imposing conditions.²³

However, the Hong Kong Police Force objected to the above-mentioned marches merely because of the clashes in other protests instead of proposing conditions to safeguard the public order, violates the Article 21 of the ICCPR on rights of freedom assembly as incorporated by Article 17 of the Hong Kong Bill of Rights.

Notification procedure should not function as a request for authorisation

As stated in the 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, authorities may put in place a system of prior notification, where the objective is to allow state authorities an opportunity to facilitate the exercise of the right, to take measures to protect public safety and/or public order and to protect the rights and freedoms of others. Any notification procedure should not function as a de facto request for authorisation or as a basis for content-based regulation.

Failure to notify authorities of an assembly/ spontaneous 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.²⁴

However, a person may be subject to criminal sanction for the offence of “unauthorised assembly” under section 17A of Public Order Ordinance if he/ she organises or takes part in a public assembly without notifying the police or without obtaining a notice of no objection from the police, even when the assembly is peaceful.

²² *Ibid.*

²³ HKSAR, 2004. Second Report of the Hong Kong Special Administrative Region of the People’s Republic of China in the light of the International Covenant on Civil and Political Rights, para 221-222. Available at <https://www.legco.gov.hk/yr05-06/english/panels/ha/papers/ha0310cb2-iccpr-e.pdf>

²⁴ United Nations Human Rights Council, 2016. 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, para 21-23. Available at <https://digitallibrary.un.org/record/831673?ln=en>

The Police objected to 21 marches and 26 public processions in last year, which is the most in the past five years.²⁵ This shows that the Police does use the notification mechanism to authorise or ban assemblies in its operation.

Organisers and participants of peaceful protests should not be prosecuted

The protest of 18 August was peaceful in general. In the protests on 1 and 20 October, the protestors were peaceful throughout the marches, and clashes broke out after the leaders arrived at the destinations and announced the end of the marches.

According to the United Nations' report, although organisers should make reasonable efforts to comply with the law and to encourage peaceful conduct of an assembly, they should not be held responsible for the unlawful behaviour of others. To do so would violate the principle of individual liability, weaken trust and cooperation between assembly organisers, participants and the authorities, and discourage potential assembly organisers from exercising their rights. No person should be held criminally, civilly or administratively liable for the mere act of organizing or participating in a peaceful protest.²⁶

It is particularly concerning that five of the arrested human rights defenders are accused of “publicising unauthorised public meetings” in relation to their announcements a day before the protests on 1 and 20 October. The Public Order Ordinance placed excessive restriction and criminal liability on the organiser of peaceful assembly of which a chilling effect may be resulted.

Public Order Ordinance may facilitate excessive restriction to the ICCPR rights

The United Nations Human Rights Committee has repeatedly highlighted the Public Order Ordinance infringes of freedom of expression and association. In the concluding observations on the third periodic report, the Human Rights Committee concerned about the application in practice of certain terms contained in the Public Order Ordinance, such as “disorder in public places” or “unlawful assembly”, may facilitate excessive restriction to the ICCPR rights, and the increasing number of arrests and prosecutions against demonstrators. The Committee also recommended the Hong Kong Government should ensure the implementation of the Public Order Ordinance is in conformity with the ICCPR.²⁷

²⁵ Legislative Council of Hong Kong, 2020. Examination of Estimates of Expenditure 2020-21 CONTROLLING OFFICER'S REPLY (SB134). Available at https://www.legco.gov.hk/yr19-20/english/fc/fc/w_q/sb-e.pdf

²⁶ United Nations Human Rights Council, 2016. 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, para 26-27. Available at <https://digitallibrary.un.org/record/831673?ln=en>

²⁷ United Nations Human Rights Committee, 2013. Concluding observations on the 3rd periodic report of Hong Kong, China, adopted by the Committee at its 107th session, 11-28 March 2013, para 10. Available at <https://www.refworld.org/docid/539031324.html>

About us

Established in 2014, Civil Rights Observer works to protect and promote civil and political rights in Hong Kong, with a focus on police abuse of powers. The four pillars of our work are: human rights education, police power monitoring, policy advocacy, and emergency human rights support.

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