

OBSERVATION REPORT ON 1 OCTOBER 2018 PUBLIC ASSEMBLY

DECEMBER 2018



Observation Report on 1 October 2018 Public Assembly

Background

1. The organiser, Civil Human Rights Front (“the organiser”), convened a public assembly and procession on 1 October 2018 to protest against the construction scandal of Sha Tin-Central Link. 1 October is the National Day of the People's Republic of China, a public holiday in Hong Kong.
2. The organiser had notified the Police about the holding of public assembly and procession. Police issued a notice of no objection to the public assembly and procession.
3. The public assembly began at 2:00 p.m. at the East Point Road Pedestrian Precinct. At 3:00 p.m., the public procession (“**the procession**”) set off from East Point Road, and proceeded to the finishing point, i.e. the East Wing Forecourt of Central Government Offices, via the following route:

East Point Road Pedestrian Precinct (starting point) → cross Yee Wo Street → Yee Wo Street (westbound carriageway) → Hennessy Road (westbound carriageway) → Queensway (westbound carriageway) → across Queensway near Justice Drive → Rodney Street (southbound carriageway) → Harcourt Road (westbound carriageway) → U-turn slip Road near Far East Finance Centre → Harcourt Road (eastbound carriageway) → northern pavement of Harcourt Road → western pavement of Tim Mei Avenue → western pavement of Tim Mei Avenue and East Wing Forecourt of Central Government Offices (finishing point)

4. The organiser started a public assembly at around 5:00 p.m. at the finishing point. The public assembly ended at around 7:00 p.m. The organiser announced that 1,500 people had participated the demonstration. The Police said there were 1,250 people participating at peak.

Summary of the observation:

5. Civil Rights Observer (“**CRO**”) deployed 3 observers to monitor and document the arrangement and the course of the procession. The observers followed the procession for observing the procession progress. They also monitored

the assembly held at the East Wing Forecourt of Central Government Offices. The observation was conducted between 1:30p.m. and 6:00 p.m..

Overall observations

6. Hosted by the organiser, the public assembly at the East Point Pedestrian Precinct took place peacefully and smoothly, without any incidents of confrontation. The procession did not encounter significant obstruction at the start of the procession.
7. The procession from the East Point Road Pedestrian Precinct to the East Wing Forecourt of Central Government Offices was generally smooth. The procession were once halted near Southorn Playground, Wan Chai (at the junction of Luard Road and Hennessy Road). The halt in procession was caused by members of a counter-demonstration. Police officers intervened to maintain order. The obstruction lasted for about 15 minutes.
8. Hosted by the organiser, the public assembly at the finishing point, the East Wing Forecourt of Central Government Offices, carried out smoothly and peacefully. CRO noticed that a participant was banned by some security guards and police officers from entering the venue of the public assembly due to the content on his placard.

Specific incidents

9. Incident 1

3:16 p.m. Seven police officers in plain clothes and police vests and one Probationary Inspector of Police had set up video-recording cameras, tripods and amplifiers at the junction of Canal Road Flyover and Hennessy Road (westbound carriageway); and were filming the procession participants. The procession was smooth, and it was peaceful on the scene, without any incident that may be illegal.

10. Incident 2

3:49 p.m. When the procession arrived at the Southorn Playground, Wan Chai, near the junction of Luard Road and Hennessy

Road, they were obstructed by a counter-demonstration group “Caring Hong Kong Power” and could not proceed further. Members of this group assembled on the pedestrian pavements at the junction of Luard Road and Hennessy Road, and clamoured at the demonstrators. Some of the counter-demonstrators walked into the designated route of the procession, namely Hennessy Road (westbound carriageway), and confronted the demonstrators. The Police were mediating with the counter-demonstrators on the carriageway and requested them to return to the pedestrian pavements. Eventually, the Police formed human chains and fended off the counter-demonstrators and opened the middle lane of Hennessy Road (westbound carriageway) for the procession. The procession was obstructed by the counter-demonstration and paused for 15 minutes.

3:59 p.m. When the procession was passing by, some members of counter-demonstration followed the procession and waved placards to provoke them. Some counter-demonstrators even extended the placards to the reach of the procession, which antagonised the demonstrators.

11. Incident 3

4:49 p.m. The procession arrived at the Central Government Offices and entered the East Wing Forecourt for the public assembly. A demonstrator who was holding a placard stating “Hong Kong will become Mainland China without independence” was banned by the security guards of the Central Government Offices, aided by the Police as well, from entering the Forecourt for the public meeting.

Some demonstrators were negotiating and confronting with the Police. The organiser was also making an appeal at the

square stating that the “Notice of No Objection” issued by the Police had already approved the East Wing Forecourt of Central Government Offices as the designated location of the public meeting, and claiming freedom of speech should be a right, hence the Administration branch should not screen the expressions of opinions of participants. A crowd of demonstrators tried to squeeze into the East Wing Forecourt of Central Government Offices alongside that demonstrator who was holding the said placard. The security guards of the Central Government Offices and the Police were unable to stop the crowd, eventually that demonstrator successfully entered the Forecourt with the said placard.

Later on Media reported that at least two security guards fell onto the ground and were taken onto ambulances.

The Government responded later that Hong Kong residents shall have freedom of speech, demonstration and assembly. However, these right and freedom may be restricted if the restriction is provided by law and is necessary for the protection of national security, public order and rights and freedoms of others. The Hong Kong SAR Government is constitutionally responsible for upholding and implementing the Basic Law, and shall disallow any activities that advocate the independence of Hong Kong to be conducted at the Forecourt. It is stated that three security guards were injured and admitted into hospital.

Analysis

Incident 1

12. In Incident 1, CRO is of the view that the Police had violated their guidelines on recording public order events (“**POEs**”) on video for taking video in a peaceful procession without a clear objective and legitimate ground. The Police infringed the privacy of the participants, which may have chilling effect

on the exercises of rights. The participants' freedom of assembly, association and expression may be under threat.

13. On 22 October 2015, the "Special Report on Complaint Cases concerning Policing of Public Order Events ("**POEs**")" was published by the Independent Police Complaints Council ("**IPCC**"), which included a case on video recording outside the Chief Executive's Office during a POE. The report points out that the Complaints Against Police Office ("**CAPO**") previously stated the Police has set forth internal guidelines on recording POEs on video, including:

- (i) Recordings of POE serve two purposes, one for reviewing the management and policing of the event, and the other for the detection of offences;
- (ii) Normally, it is the event itself which is the subject of video recording. Individual become the subject only when there is a breach of the peace;
- (iii) Copying, movements, retention and destruction of the recordings are strictly controlled and must be recorded on the control registers. Making copies of a recording requires the written authorisation of a Senior Superintendent or above;
- (iv) A video recording has to be destroyed within 3 months of the recording of the event, unless it is required as a case exhibit or for investigative, evidential or other legitimate purpose¹.

14. In addition, in 2016, United Nations Human Rights Council published 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", which points out that the act of recording participants may have a chilling effect on the exercise of rights, including freedom of assembly, association and expression. Recording peaceful assembly participants in a context and

¹ According to the Police's reply to a question asked by a member of Legislative Council in 2017, video clips carrying no investigative or evidential value, or constituting no other legitimate purpose (such as internal review), will be deleted after 31 days from the date of recording. If it is necessary to retain the video clips for over 31 days, written authorisation from a Senior Superintendent must be obtained and such authorisation should be reviewed on a monthly basis by the authorising officer.

manner that intimidates or harasses is an impermissible interference to these rights.

15. In 2013, United Nations Human Rights Committee included some constructive comments in its concluding observations on the third periodic report of Hong Kong. The Human Rights Council expressed concerns about the Police's use of video-recording devices during demonstrations, and the subsequent implications on the rights to privacy and freedom of assembly, as enshrined in the International Covenant on Civil and Political Rights ("ICCPR"). The Committee recommended the Police should establish clear guidelines for records for the use of video-recording devices and make such guidelines accessible to the public.
16. CRO believes Incident 1 is not an isolated case of Police's abusive video-recording. We are aware that the Police have been deployed video-recording teams during peaceful public assemblies and processions in recent years, where they carried out video-recording duties without clear objectives or legitimate ground. We believe this is a privacy infringement of members of the public, and abuse of power; as well as posing threats on people's rights to freedom of assembly, association and expression.

Incident 2

17. The right of peaceful assembly involves a positive duty on the part of Government to take reasonable and appropriate measures to enable lawful assemblies. Therefore, the Police owed a duty of ensuring that the participants are able to take part in the procession and the assembly peacefully and smoothly, including by effectively separating the two camps of participants with opposite views, so that the two camps could peacefully express their views.
18. During the course of the procession, there were counter-demonstrators obstructing the procession, which was not an ideal situation. Obstruction as such did not only hinder the demonstrators' exercise of their freedom of expression, but also caused unnecessary confrontation. However, we understand that the obstruction caused by the members of counter-demonstration at the junction of Luard Road and Hennessy Road was an unexpected incident. We also noticed that the immediate intervention by the Police, including forming human chains to separate the counter-

demonstrators and appeal for their return to the pavements, and resuming the procession within reasonable time. We agree with the Police's approach.

Incident 3

19. The East Wing Forecourt of Central Government Offices was the designated location of the public meeting in the "Notice of No Objection" issued by the Police for this event. Participants of the demonstration were rightful to enter the Forecourt on the day.
20. During the incident, the demonstrator holding the placard stating "Hong Kong will become Mainland China without independence" was an act of peaceful expression. The content of his message and the means of his expression did not advocate violence or provoke others on the scene. His act should be protected by Article 27 of the Basic Law, Article 16 of the Hong Kong Bills of Rights, and Article 19 of ICCPR.
21. CRO is of the view that it was unlawful and unreasonable for the security guards of the Central Government Offices and the Police to bar that demonstrator from entering the East Wing Forecourt, and constitute a violation of the demonstrator's freedoms of expression and assembly. The acts of the security guards of the Central Government Offices and the Police caused unnecessary confrontations, albeit minor, in a peaceful public meeting. This had endangered the safety of the participating demonstrators, posed additional legal risks on them, as well as caused injury to some security guards. It was therefore regrettable that the situation was handled as such by the security guards of the Central Government Offices and the Police, which also breached the positive duty of ensuring the demonstrators were able to exercise their rights to freedom of assembly peacefully.
22. The Government linked the incident to legitimate reasons of restricting individual's right and freedom, including for the protection of national security, public order, and rights and freedoms of others. CRO finds this discourse incorrect and an attempt to confuse the public.
23. The "Siracusa Principles" are internationally recognised and the authoritative interpretation of ICCPR. In the Principles, Article 29 states that, "National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence **against force or threat of force**". As mentioned

above, displaying the placard stating “Hong Kong will become Mainland China without independence” was an act of peaceful expression, which did not contravene the issue of national security based on the international human rights standards. In addition, demonstrators had been entering the designated location of the public assembly- East Wing Forecourt of Central Government Offices in a peaceful and orderly manner. Minor confrontations were caused only when this demonstrator was unreasonably obstructed by the security guards at the Central Government Offices and the Police. The cause of the incident was unrelated to maintaining public order or protecting rights and freedoms of others.

Recommendations:

24. Police should ensure that commanders and frontline officers understand and follow the guidelines on recording POEs on video.
25. Police should make the guidelines on recording POEs on video accessible to the public;
26. Members of the public should be notified of the total number and length of any video footage recorded after each POE, and how the footage has been stored and destroyed.
27. Based on past experiences, counter-demonstrators often assemble at the junction of Wan Chai Southorn Playground, Luard Road, and Hennessy Road. Police should arrange sufficient manpower and assign reasonable demonstration areas for separating the two camps of members so that the two camps can peacefully express their views.
28. Government and Police should provide adequate trainings to frontline officers to make sure that they will maintain political neutrality when carrying out duties; and understand the positive duty of safeguarding demonstrators’ right to take part in peaceful and unhindered procession and public meeting, and that the rights to freedom of assembly and expression should not be hindered because of their political stance.

Civil Rights Observer

16 December 2018

For all inquiries, please contact Civil Rights Observer at info@hkcro.org.