



2019 - Unrest in Hong Kong - Initiative to Form an Independent Commission of Inquiry

Background

Since February 2019 Hong Kong has been gripped by disturbances and tearing of its social fabric following the proposed introduction of the "Fugitive Extradition Amendment Ordinance" (the Bill). The like of such disturbances has not been seen in Hong Kong in over 50 years.

Notwithstanding statements from the Chief Executive as to halting work on the Bill, Government has not brought calm to the situation and is widely perceived as having failed to respond to two key requests from people in all sectors of society: first, that the Bill be formally withdrawn in accordance with LegCo's Rules of Procedure, and second, that violence and responses to that violence be examined by an independent Commission of Inquiry.

Indeed, just about every sector of the community believes that it is hardly possible to make these social conflicts worse. There is remarkably broad consensus from business, academia, political circles, and even former and current senior civil servants in favour of establishing a statutory independent investigation committee in some form in order to conduct a comprehensive review of all incidents of these social conflicts.

A comprehensive review would begin with fact-finding and then move on to making appropriate recommendations in the hope that current conflicts could be resolved and for Hong Kong society to resume maintenance of the rule of law and enjoy its customary freedoms, order and progress.

Objectives & Scope

The principal goal would be to conduct a thorough investigation of the events since February 2019 and to examine the range of causes of a series of peaceful mass protests; conflicts with the police and their responses; people being attacked by unidentified people; damage by protesters to public facilities including the forced entry into the Legislative Council; defilement of the People's Republic of China emblem at the Beijing Liaison Office; interruptions to public transportation; the use of offensive weapons; the discovery of explosives; and an analyses of background, influencing and funding.

Key persons whose role might be reviewed include the government's main leading officials, police management and on-site commanders, organizers or activists involved in organizing and handling the protests, including politicians, whether based in Hong Kong or overseas.

Participants whose role would be considered include individual demonstrators, current and former police officers, journalists, onlookers, government agencies, hospitals, and executives of transportation companies.

While the investigation would consider the roles of officials, protesters, government agencies, the media and others, it is important that the investigation is focused on the events and their causes, rather than be tasked with trying to apportion blame on particular individuals, groups or agencies. The investigation

would aim to report with conclusions and recommendations in order to achieve rebuilding and reconciliation:

1. Establish and reconstruct the main facts of the entire social conflict: the truth, including actions by senior levels of government leading up to and following the events of June; the police's decision-making process in the context of and in response to the occurrence of multiple conflict; the situation, role of each participant, and so forth.
2. Ascertain facts and draw high level conclusions: political structure and its impact on society, the economy and the people of Hong Kong; and any other relevant conclusions.
3. Recommend improvement and reform of systems, policies and ways of doing things in order to avoid the recurrence of such events.
4. Recommend remedies to address serious social conflict, promote social reconciliation; whether certain offences committed, by any party at all, might be exempt from prosecution or convictions pardoned; measures for parties, including public officials, police, and others to improve adherence to the rule of law; the matter of a partial or general amnesty; review of certain leadership and management steps, responsibility of politics, administration, and public morality.

Powers & Safeguards

Investigation would be in the form of an inquiry constituted with powers similar to those conferred by the Commissions of Inquiry Ordinance, Chapter 86 of the Laws of Hong Kong. The Commission would comprise a body of 5 Commissioners drawn from judges, retired senior civil servants and scholars. The chairman should be appointed from among Hong Kong's retired and esteemed senior judges. The Inquiry would draw from the expertise of relevant professionals with legal, social work, security services, and others with relevant expertise.

Evidence would be taken in public or, in exceptional circumstances, in camera. The Commissioners would exercise the kind of powers conferred by Cap.86, including to call witnesses to obtain information and documents. *Significantly, and as additional safeguard, persons appearing before the Commission would enjoy **total** privilege against evidence received being used against them **at all** in any later civil or criminal proceedings.*

Persons appearing before the Commission can be accompanied by a lawyer.

The Commission would be appointed by the Chief Executive no later than 31 August 2019 and expected to produce an interim report by 31 January 2020 with a final report by 31 March 2020. Alternatively, the Commission would be initiated by the Legislative Council following a Private Members' Bill.

Terms of Reference for the Commission

A proposed set of Terms of Reference for the Commission to undertake the inquiry is attached.

Conclusion

Solving serious political, ethnic, and social conflicts by means of independent investigations has proved effective and positive in previous years, both in Hong Kong and elsewhere. An independent investigation allows all parties to the conflict agree to calm down and look for the main truth of the facts; then, based on facts, they can rationally discuss the issue of responsibility and the treatment of aftercare. In addition, agreeing to accept the investigation is an important step for the government and the private sector to release goodwill and pursue rational resolution of contradictions; by taking this step, we can reduce the hatred and hostility of the other side and pursue a peaceful solution to justice.

2019 - Unrest in Hong Kong

Proposed Terms of Reference for a Commission of Inquiry

1. To ascertain the facts leading to the wide-spread public opposition to the introduction of the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019, including but not limited to inquiring into the manner of the Government's handling of the Bill from its presentation to the announcement of its decision on 15th June, 2019 to halt its work in relation to the Bill.
2. To ascertain the facts concerning clashes among the Police, protesters, journalists and other members of the public during and/or shortly after the public order events and other forms of demonstration or gathering during the months of June, July and August 2019 and such other occasion(s) as the Commission sees fit, including but not limited to establishing whether any person(s) employed deliberate tactics to provoke clashes, applied excessive force in relation to clashes or was otherwise responsible for the promotion or encouragement of clashes.
3. In the light of its findings to make recommendations on
 - a. consultative measures and other steps to be taken by the Executive when contemplating and presenting controversial or complex legislation;
 - b. appropriate measures to be adopted towards the policing of large crowds of protesters while preserving rights to free speech and peaceful assembly;
 - c. measures conducive towards securing consensus and reconciliation in society generally; and
 - d. such other matters as the Commission sees fit.

Prepared at a Forum on a Commission of Inquiry, organized by the Professional Commons and the Hong Kong Democratic Foundation at the Centre for Comparative and Public Law, on August 10, 2019.

Paul Zimmerman, Chairman, The Professional Commons and the Hong Kong Democratic Foundation

George Cautherley, Member, The Professional Commons and the Hong Kong Democratic Foundation

Kenneth Leung, Legislative Council Member

Charles Mok, Legislative Council Member

Joseph Yu-shek Cheng. Former professor of political science at City University of HK

Albert Lai, Policy Committee Convenor, The Professional Commons

Kelley Loper, Director, Centre for Comparative and Public Law, HKU

John Brewer, Barrister

Margaret Ng, barrister-at-law and Member of Legislative Council 1995-97, 1998-2012

倡議成立獨立調查委員會

背景

自二零一九年二月推出《2019年逃犯及刑事事宜相互法律協助法例(修訂)條例草案》後，香港一直受到動盪及其社會結構撕裂的影響。過去五十多年來，香港一直沒有出現類似動盪的情況。

儘管行政長官就暫緩執行該條例草案的工作發表聲明，但政府的聲明並沒有為熾熱的社會撕裂狀況降溫，主因是政府未能回應社會各界人士提出的兩項主要訴求：第一，條例草案需根據立法會的“議事規則”撤回，其次，由獨立調查委員會審查暴力和對暴力的反應。

事實上，幾乎社會的每個界別都認為，這些社會衝突不可能再繼續惡化。商界、學術界、政界、甚至前任和現任高級公務員都贊成以某種形式設立法定獨立調查委員會，以便對所有社會衝突進行全面調查。

全面調查應從事實調查開始，然後提出適當的建議解決目前的衝突，維護法治，恢復香港社會秩序，繼續享受其社會自由和進步。

目標和範圍

委員會主要工作目標是對自2019年2月以來的事件進行徹底調查，並審查一系列和平大規模示威活動的原因；與警察發生衝突及其反應、使用攻擊性武器、市民被身份不明的人襲擊事件；示威者對公共設施造成的損害，包括被迫進入立法會、在中聯辦的中華人民共和國國徽遭到玷污、公共交通中斷、發現爆炸物等，並分析其背景，影響和資金來源等。

須接受調查的主要人員包括政府主要領導官員，警察管理層，處理示威活動的現場指揮官以及組織示威活動的人士，包括在香港或海外的政界人士。

在調查時其角色應被考慮的參加者，包括個人示威者，現任和前任警官，記者，旁觀者，政府機構，醫院和運輸公司行政人員等。

雖然調查會考慮官員，抗議者，政府機構，媒體和其他人的角色，但更重要是調查的重點是事件及其成因，而不是試圖為特定的個人，團體或機構編配責任。調查的目標是透過報告結論和建議，以實現社會重建與和解：

1. 建立和重組社會衝突的真實成因，包括政府高層的行為，警察應對多次衝突發生的決策過程，個別參與者的角色等等。
2. 確定事實及得出高層次結論：政治結構及其對社會，經濟和香港人的影響；以及任何其他相關結論。
3. 建議改進和改革系統，政策和做事方式，以避免此類事件再次發生。
4. 建議解決嚴重社會衝突的補救措施，促進社會和解；會否免除起訴或赦免定罪；改善包括公職人員，警察和其他人士對法治的遵守；局部赦免或全面大赦的問題；審查高層領導的管理步驟、政治責任、行政管理和公共道德。

權力與保障

調查委員會應享有與香港法例第 86 章《調查委員會條例》所賦予相若的權力。委員將由法官，退休高級公務員和學者，共 5 名委員組成。主席應由香港退休及受尊敬的資深法官擔任。調查應充份運用相關人員的專業知識，提供法律，社會工作，保安服務以及其他相關專業支援。

委員會應公開聆訊，或者在特殊情況下以視象方式聆訊。委員會可行使第 86 章所賦予的權力，包括傳喚證人以取得資料和文件。值得注意的是，作為額外的保障措施，出席委員會聆訊的人士須享有全面豁免權，確保在任何後來的民事或刑事訴訟程序中他的證供不能被用來指控自己。

出席委員會會議的人員可由律師陪同。

調查委員會須於 2019 年 8 月 31 日前由行政長官委任，並且在 2020 年 1 月 31 日前提交中期報告，最後於 2020 年 3 月 31 日前提交最終報告。另外，調查委員會亦可由立法會議員根據私人議員條例草案提出。

委員會的職權範圍

隨函附上委員會進行調查的擬議職權範圍。

結語

過去在香港和其他地方都證明，透過獨立調查解決嚴重的政治、種族和社會衝突是積極有效的。獨立調查允許衝突各方冷靜下來，尋找衝突事實和真相，然後根據事實理性討論責任和待遇善後問題。此外，同意接受調查是政府和私營部門釋放善意，合理解決矛盾的重要一步。透過這一步，我們可以減少仇恨和敵意，以和平方式重拾公義。

**2019 年香港動盪調查委員會
擬議職權範圍**

1. 確定所有導致公眾廣泛反對引入《2019 年逃犯及刑事事宜相互法律協助法例(修訂)條例草案》的事實，包括但不限於由行政長官宣佈該草案起至 2019 年 6 月 15 日決定停止條例修訂工作為止，政府處理該事項的方式。
2. 確定警方，示威者，記者和公眾人士，在 2019 年 6 月，7 月和 8 月期間及其他委員會認為應包括的事件中，所有公共秩序事件和其他形式的示威或集會期間或其後發生衝突的事實，包括但不限於確定是否有人故意引發衝突，有人在衝突期間施加過度武力或以其他方式促成或鼓勵衝突。
3. 根據其調查結果提出建議：
 - 3.1 行政部門在醞釀和提出有爭議或複雜的立法時，須採取何種諮詢措施或其他步驟；
 - 3.2 在警方處理大型群眾活動時，須採取何種適當措施進行管理並同時保護示威者言論自由及和平集會權利；
 - 3.3 有利於全社會尋求共識及和解的措施；
 - 3.4 委員會認為合適的其他事項。

於 2019 年 8 月 10 日由公共專業聯盟及香港民主促進會於香港大學比較法及公法研究中心舉辦的調查委員會論壇編寫。

司馬文, 公共專業聯盟及香港民主促進會主席

高德禮, 公共專業聯盟及香港民主促進會會員

梁繼昌, 立法會議員

莫乃光, 立法會議員

鄭宇碩, 香港城市大學政治學退休講座教授

黎廣德, 公共專業聯盟政策召集人

吳靄儀, 香港執業大律師, 立法會議員 1995-97, 1998-2012

Kelley Loper, Director, Centre for Comparative and Public Law, HKU

John Brewer, Barrister

