

LCQ11: Maintain public safety and order

Following is a question by the Hon Tanya Chan and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (October 30):

Question:

On June 12 this year, quite a number of demonstrators gathered in the vicinity of the Legislative Council Complex, protesting against the Government's proposed legislative amendments concerning the surrender of fugitive offenders. Police officers used force to disperse the demonstrators and arrested quite a number of demonstrators on the spot and in the accident and emergency (A&E) departments of public hospitals. In this connection, will the Government inform this Council:

(1) of the total number of participants of the aforesaid demonstration arrested to date, with breakdowns (to be set out in Table 1 and Table 2 respectively) by (i) the offence that they were alleged to have committed and the location of arrest, and (ii) the age group to which they belonged (as set out in Table 2);

Table 1

		Location of arrest		
Alleged offence				

Table 2

Age group (years old)	Gender	Number of persons
Below 16	Male	
	Female	
16 to 18	Male	
	Female	
19 to 25	Male	
	Female	
26 to 40	Male	
	Female	

41 to 65	Male	
	Female	
Above 65	Male	
	Female	

(2) how the Police came to know that some demonstrators were receiving treatment in the A&E departments of public hospitals, upon which police officers were sent there to arrest them; and

(3) of the factors to be considered by the Department of Justice in deciding which of the offence provisions (e.g. section 17B (disorder in public places), section 18 (unlawful assembly) and section 19 (riot)) under the Public Order Ordinance (Cap 245) are to be invoked for instituting prosecutions against those arrestees?

Reply:

President,

It is the Police's statutory duty to maintain public safety and public order. When situations severely threatening public order and public safety occur, such as illegal road blockage, paralysed traffic, unlawful assemblies and violent charging of police cordon lines, etc., the Police, upon exercising risk assessment, will take appropriate actions to ensure public safety and public order.

At about 8am on June 12, a large number of violent protesters in mask and protective gear rushed out to Lung Wo Road, Tim Mei Avenue, Queensway and Harcourt Road in an organised manner. They occupied the roads, severely obstructed the traffic and disrupted social order. Some of them even did threatening and provocative acts. As police cars and private vehicles were trapped in a tunnel at Lung Wo Road, Police Negotiators had to be deployed to negotiate with protesters. As a result, some police officers and citizens were forced to stay in their cars for nearly eight hours, with their personal freedom severely impeded. The illegal traffic disruption and road blockage extensively paralysed the traffic in the vicinity of Lung Wo Road and Harcourt Road. Notwithstanding this, the Police had been maintaining a high degree of tolerance.

At around 3pm, the situation at the Legislative Council (LegCo) Complex further deteriorated. A large group of extremely violent persons repeatedly charged the police cordon line with weapons as bricks, metal poles, mills barriers and wooden planks. The Police set up a cordon line there mainly to protect the LegCo Complex and the people inside. Such violent charging not only posed serious threats to the personal safety of people at the scene (including other citizens, media workers and police officers on duty), but also seriously threatened public safety and public order. Having assessed the prevailing circumstances, the Police withdrew the cordon line at the LegCo Complex to the demonstration area outside its entrance to continue to

protect the complex and the staff concerned.

Having issued repeated advice and warnings but in vain, the field commander, in light of the actual circumstances, the overall situation and operational needs, and, without other choices, decided to use minimum force accordingly to disperse the crowd and control the situation, so as to prevent public safety and public order from being further jeopardised, as well as to protect the safety of others and police officers.

My reply to the various parts of the question is as follows:

(1) As at October 17, the Police have, in relation to the incident of June 12, arrested a total of 39 people, including 36 males and three females aged from 14 to 57, five of which were arrested in hospitals. The offences involved include behaving in a disorderly manner in a public place, unlawful assembly, assaulting police officer, etc.

(2) According to section 10 of the Police Force Ordinance (Cap 232), the duties of the Police include preserving the public peace; preventing and detecting crimes and offences; and apprehending all persons whom it is lawful to apprehend and for whose apprehension sufficient grounds exists.

The Police have all along been performing duties at hospitals under various circumstances, including going to a hospital upon receipt of a report to understand the situation from the informant or relevant persons, to find out the seriousness of injuries of the victims or the persons involved, and to arrange for arrested persons to receive treatment at hospitals, etc. Besides, if the healthcare personnel find any patients with suspicious injuries (for example, the injuries are suspected to be caused in incidents of a criminal nature), the Police will also be informed to take follow-up actions as appropriate. At the same time, if a police constable stationed at the Accident and Emergency (A&E) Department finds any patients (including victims or suspects) with suspicious injuries in the lobby of the A&E Department, the Police will take the initiative to follow up the case.

(3) In Hong Kong, law enforcement agencies (LEAs) are responsible for criminal investigations in Hong Kong, while the Department of Justice (DoJ) decides whether a prosecution should be initiated. Investigators of LEAs (such as the Police) will gather the evidence and other materials, while the prosecutors of DoJ will give legal advice based on such, including the making of a prosecutorial decision.

With regard to criminal prosecution in each and every case, DoJ makes prosecutorial decisions independently based on evidence, the applicable laws and the Prosecution Code. The factors and the test to be considered in making a decision to prosecute are detailed in Chapter 5 of the Prosecution Code. The prosecution must consider whether there is sufficient evidence to institute a prosecution, and the test is whether the evidence is sufficient to demonstrate a reasonable prospect of conviction; if there is sufficient evidence to initiate a prosecution, the prosecution will then consider whether it is in the public interest to do so. In addition, according to

paragraph 8.1 of the Prosecution Code, when choosing charges to be prosecuted, the prosecution should attempt to reflect adequately the criminality of the conduct alleged, in a manner that is both efficient and that will enable the court to do justice between the community and the accused. Such provisions are applicable to all types of cases.

Chapter 19 of the Prosecution Code reminds prosecutors of the applicable and widely established legal principles for handling cases relating to public order events (including offences which may involve the Public Order Ordinance (Cap 245)). Offences alleged to have been committed in conjunction with the exercise of freedoms guaranteed by the Basic Law or the Hong Kong Bill of Rights Ordinance, such as freedom of assembly, of procession and of demonstration, may give rise to special considerations by the prosecutor. On the one hand, there is a positive duty on the authorities to take reasonable and appropriate measures to enable lawful assemblies to take place peacefully; on the other hand, there is a need to protect persons and property by maintaining public order according to law. For cases in relation to public order events, prosecutors have to strike a balance between the interest of society in maintaining public order and the right of a person to lawfully and peacefully exercise his or her rights. In general, criminal prosecution should only be pursued when the relevant conduct exceeds sensible proportions or the bounds of reasonableness.

The Court of Final Appeal has also pointed out in recent cases that once protesters use or threaten to use violence (i.e. a breach of the peace), they will have gone beyond the constitutionally guaranteed bounds of peaceful demonstration and entered the domain of illicit activities, which may be sanctioned and restricted by law. Participants who go beyond the above bounds and infringe others' rights and freedom unlawfully shall bear the same consequences. There is no constitutional guarantee for any unlawful acts of violence.

DoJ will continue to adhere to the above principles and professionalism in carrying out its constitutional duty under Article 63 of the Basic Law to make prosecutorial decisions, free from any interference, in an impartial and fearless manner.