

LCQ2: Procedural issues of Police's handling of arrestees

Following is a question by the Hon Wu Chi-wai and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (November 13):

Question:

It has been reported that since June this year, the Police have arrested several thousand demonstrators during a number of demonstrations. Some arrestees had been detained for a period longer than 48 hours, the limit prescribed by law, before they were brought before a magistrate or released. Furthermore, a 13-year-old boy was not accompanied by any parent or guardian, nor was he informed of his rights, when he made a statement. Regarding the procedural issues of the Police's handling of such arrestees, will the Government inform this Council:

(1) of the total number of persons arrested since June this year, with a tabulated breakdown by age group (i.e. under 14 years old, 14 to 15 years old, 16 to 17 years old, 18 to 30 years old, 31 to 50 years old, and above 50 years old) and duration of detention (i.e. less than 12 hours, 12 to 24 hours, 25 to 48 hours, and more than 48 hours);

(2) of the respective numbers of persons arrested for the first time who, at present, have been released unconditionally, released on bail pending further enquiries, released unconditionally after declining to enter into further bail, and charged, as well as are in other situations, with a tabulated breakdown by the aforesaid age groups; and

(3) of the respective numbers of cases in which the arrestees under 16 years old and other arrestees experienced the following situations (set out in a table): not being informed of the reasons for the arrest when the arrest was made, not having been informed of their rights before they were questioned, not having been informed of their right to silence before they made a statement and, for those arrestees under 16 years old, not being accompanied by any parent or guardian when they made a statement?

Reply:

President,

Members of the public enjoy the freedom of expression, speech and assembly but they must do so peacefully and lawfully. If any unlawful act occurs, the Police have a statutory responsibility to take enforcement actions to maintain public safety and public order. Since early June this year, there have been over 700 public demonstrations, processions and public meetings staged in Hong Kong. Many of them have eventually turned into

violent illegal activities. In the past five months or more, on many occasions, rioters engaged in serious illegal acts such as blocking the roads, paralysing the traffic, throwing petrol bombs and setting fires at various locations, throwing bricks, vandalising and burning the shops and MTR and Light Rail facilities, etc, which posed serious threats to personal safety, public order and public safety.

Section 50(1) of the Police Force Ordinance (Cap. 232) empowers police officer to apprehend any person who he reasonably believes will be charged with or whom he reasonably suspects of being guilty of an offence for which a person may (on a first conviction for that offence) be sentenced to imprisonment.

When any person is arrested by the Police, the police officer will, as soon as possible, inform him of the fact that he is under arrest, as well as the factual grounds and the reasons for the arrest. The arrestee will be brought before the Duty Officer as soon as possible to confirm the legality of his custody and arrest. He will then be handed over to an investigation team for investigation. After the completion of the preliminary investigation, the Police will decide whether it is necessary to detain the arrestee. The Police will, depending on the circumstances of individual cases, consider releasing the arrestee on own-recognisance, on bail or unconditionally. The arrestee generally will not be detained over 48 hours.

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

(1) and (2) There have been ongoing demonstrations, protests and violent conflicts in Hong Kong since June 9. As at October 31, the Police arrested a total of 3 001 persons, aged between 12 and 83. Among them, one-third are students, 430 persons (or 14.3 per cent) are aged under 18. The offences involved include "taking part in a riot", "unlawful assembly", "wounding", "assault occasioning actual bodily harm", "common assault", "arson", "criminal damage", "assaulting police officer", "obstructing a police officer in the execution of his duty", "in possession of offensive weapons", "the use of facial covering in public meetings", etc. Regarding questions about the age of the arrestees, the number of arrestees being released unconditionally, the number of cases that are still under investigation, and the number of cases that have already entered into legal proceedings, we can see the related statistical figures at Annex 1. The Police do not maintain the statistics on the duration of detention of the arrestees.

(3) The Police have put in place clear guidelines on handling child or juvenile arrestees for ensuring their rights and welfare. According to the Police General Orders, the Police should, when arresting a child or young person, take all reasonable procedures to inform his parents or guardian. The Police will, as far as reasonably practicable, request an "appropriate adult" to accompany the arrested child or young person at the police station when questioning him. An "appropriate adult" refers to:

(i) a relative, guardian or other person responsible for care or custody of

the arrestee;

(ii) someone who has experience of handling a person with a particular special need but who is not a police officer nor employed by the Police; or

(iii) failing either of the above, some other responsible adult who is not a police officer nor employed by the Police.

The Police will arrange an "appropriate adult" for the arrestees according to the established procedures and guidelines. The Police do not maintain the information requested in the question.

Every "appropriate adult" will be issued a Notice to "Appropriate Adult" for Person Assisting/Under Police Enquiry/In Police Custody who is Mentally Incapacitated or Aged Under 16 ("Notice to Appropriate Adult"). The Notice to Appropriate Adult will state the roles and responsibilities of an appropriate adult so as to help them understand how they can provide appropriate support to the arrestees.

Before conducting a custody search on a detainee under the age of 16, the Duty Officer will ensure the presence of an "appropriate adult" aged 18 or above and of the same gender as the person being searched. The Police will ensure that male and female arrestees are not detained in the same temporary holding area, while adults should be detained separately from juveniles and children.

The Police always strive to protect the privacy and rights of detainees. The fundamental rights of children and juveniles under detention are the same as other detainees, which include the rights to seek legal assistance, communicate with a relative or friend, receive copies of written record under caution, be provided with food and drink, seek medical attention, etc. The rights of a detainee are clearly stated in the notice issued by the Police to every detainee in police custody or involve in police enquiries.

The Police do not maintain the relevant statistics mentioned in the question.

Thank you, President.