

Individual Civil Society Report submitted to the
Human Rights Committee

for consideration in the preparation of the list of issues
at the 129th Session (29 June 2020- 24 July 2020) of ICCPR

Submitted by:
Sounds of the Silenced
Human Rights Now

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1. Introduction

1. The Sounds of the Silenced¹ ('SOS') was founded in response to the rapid erosion of rights in Hong Kong amid the 2019 Protests. The SOS is a non-profit organisation comprising of Hong Kong citizens that are legal practitioners, law students and individuals with a legal background. Human Rights Now² ('HRN') is a Tokyo-based international human rights NGO focusing on human rights issues in the Asia region through fact-finding, advocacy, and empowerment work. HRN was founded in 2006 by lawyers, academics, and journalists; has over 700 members; and received special consultative status with the Economic and Social Council in 2012.
2. This report responds to the Fourth Report of the Hong Kong Special Administrative Region ("HKSAR") in light of the International Covenant on Civil and Political Rights ("ICCPR") (hereinafter referred to as the "HKSAR 4th ICCPR Report") and the concluding observations on the fourth report of Hong Kong, adopted by the Committee at its 107th session (hereinafter referred to as the "Concluding Observations 2013").
3. In view of the recent protests that began over the now withdrawn Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 (the "Amendment Bill 2019", or "Extradition Bill") in June 2019, we can see an opportunity to provide critical updates and supplementary information to that already contained in the HKSAR 4th ICCPR Report. Another goal of the present report is to provide information to the Committee on drafting its list of issues to HKSAR.
4. The present report addresses the concerns surrounding the excessive use of force and illegal actions employed by the Hong Kong Police Force ("HKPF") beginning in June 2019 which touches on the scope of the ICCPR.
5. The relevant thematic issues furnished by the HKSAR which we consider areas in which government compliance may have fallen short are:
 - Issue 1: Excessive restriction to the freedom of peaceful assembly, which emerged from arbitrary arrests and detention (ICCPR Art 9)—in response to Concluding Observations 2013 para 10; HKSAR 4th ICCPR Report paras. 126-132
 - Issue 2: The current Public Order Ordinance notification regime (ICCPR Art 9)—in response to Concluding Observations 2013 para 10; HKSAR 4th ICCPR Report paras. 126-132

¹ For contact information, see, Sounds of the Silenced Facebook Page, <https://www.facebook.com/soundsofthesilenced/>.

² For contact information, see, Human Rights Now Homepage, <https://hrn.or.jp/eng/>.

- Issue 3: HKPF use of excessive force (ICCPR Art 7, 19, 21)—in response to Concluding Observations 2013 para. 11; HKSAR 4th ICCPR Report para. 132 & Annex 7A.
- Issue 4: Inadequate system for police complaints (ICCPR Art 2, 7)—in response to Concluding Observations 2013 para. 12; HKSAR 4th ICCPR Report para. 10-12.
- Issue 5: Infringement of media and academic freedom (ICCPR Art 19, 25)—in response to Concluding Observations 2013 para. 13; HKSAR 4th ICCPR Report paras. 112, 114.

2. Methodology

This report has made its findings on the basis of the “reasonable grounds to conclude” as the standard of proof, unless otherwise specified. For this report, SOS collected primary (including face-to-face interviews and online interviews between September and November 2019) and secondary information on police violence during its first phase of investigations leading up to the presentation of an urgent appeal submitted via the Special Procedure on 2 October 2019.

3. Documentation

Issue 1: Arbitrary arrests and detention

Issue 2: Notification and authorisation regime

The Committee is concerned about (a) the application in practice of certain terms contained in the Public Order Ordinance, inter alia, “disorder in public places” or “unlawful assembly”, which may facilitate excessive restriction to the Covenant rights, (b) the increasing number of arrests of, and prosecutions against, demonstrators, and (c) the use of camera and video-recording by police during demonstrations (arts. 17 and 21). Hong Kong, China, should ensure that the implementation of the Public Order Ordinance is in conformity with the Covenant. It should also establish clear guidelines for police and for records for the use of video-recording devices and make such guidelines accessible to the public. (Concluding Observation 2014, para. 10)

127. The Police have the responsibility to take necessary measures against any unlawful behavior. Where there is evidence suggesting that a person may have committed a criminal offence, the matter will be referred to the Prosecutions Division of the DoJ for deciding whether or not to prosecute the person in question, and if so, for what offence(s) [...]

132. It is evident that since the establishment of the HKSAR, the public continues to enjoy a high degree of freedom of assembly. The majority of these activities were conducted in a peaceful and orderly manner and in accordance with the law.

(HKSAR 4th ICCPR Report paras. 127, 132)

6. In the Third Cycle United Nations Universal Periodic Review for China (which includes Hong Kong), 12 countries unprecedentedly used the process to highlight concerns about the deteriorating human rights environment in Hong Kong.³ Of particular importance for the purpose of this report is that the Hong Kong government has accepted the recommendation made by France, namely to “guarantee freedom of speech, assembly and association, including in Hong Kong, and remove restrictions on freedom of information on the internet, in particular for human rights defenders.”⁴
7. Since June 2019, many people who have been involved in the public order events, which stemmed from the Extradition Bill (hereafter in referred to as the “Public Order Events”), have been charged under the Public Order Ordinance. It is our observation that, despite the Hong Kong government’s assurance and promises made in its 4th ICCPR Report and UPR process, the range and vague definitions in the colonial-era law have allowed for broad application, and thus the ability to deter undesired protests. There have also been concerns raised in relation to whether the current appeal processes and/or other remedies within the current notification or authorization regimes comply with Article 21 of the ICCPR.

Updates to Issue 1 Arbitrary arrests and detention

8. Falling under the umbrella of a fundamental human rights abuse is the arbitrary deprivation of liberty. Article 9(1) of the ICCPR stipulates that no one shall be subjected to arbitrary arrest or detention. However, violations of Article 9(1) in Hong Kong by the police force have been extremely commonplace since June 2019. The HKPF has arrested more than 7,000 people since in the context of the Public Order Events since June 2019, and 500 of them have been charged with a crime.⁵ Bystanders, commuters, journalists and others have all been targeted for baseless arrest throughout the last ten months, contrary to the prescribed law in Hong Kong.
9. The HKPF’s *modus operandi*, as evidenced by its practices over the last ten months, is to arrest first and ask questions later. The frequency and ease with which arrests may occur free of any restraint and burdens from the prescriptions of law are highly indicative of the police utilizing “catch, detain and release” as a form of intimidation. This is the tactic adopted when the police enclose the universities for days knowing that their food supply will be blocked, and when first-aiders with clear indications on their clothing were handcuffed (by cable tie) and had to prove themselves not guilty in

³ Justice Centre Hong Kong, “COALITION WELCOMES ACCEPTANCE OF UPR RECOMMENDATIONS ON HONG KONG AT UNITED NATIONS, NOW IS TIME FOR ACTION”, 13 March 2019, <https://www.justicecentre.org.hk/framework/uploads/2019/03/Press-Release-China-UPR-Plenary-ENG.pdf>.

⁴ *Ibid.*

⁵ The Guardian, “Hong Kong media tycoon Jimmy Lai arrested on charges of illegal assembly”, 28 February 2020, <https://www.theguardian.com/world/2020/feb/28/hong-kong-media-tycoon-jimmy-lai-arrested-on-charges-of-illegal-assembly> (accessed 29 February 2020).

order to leave. On 18 November 2019, 51 first aid volunteers, including those from Medecin Inspires, a voluntary group, provided medical treatment to the injured and were arrested for rioting amid the siege of the Hong Kong Polytechnic University conducted by the police.⁶ Police policy during the time of the siege and its aftermath was to arrest all individuals leaving or spotted around the campus for participation in a riot. Secretary for Security, John Lee declared on 20 November 2019 that “all protesters who left a besieged university would be arrested”.⁷

10. Another area of concern is the transformation of the arbitrary arrest policy by the HKPF into one of using state organs to pacify political opponents and dissent as sanctioned by the Hong Kong government and the People’s Republic of China’s Liaison Office in Hong Kong. Seven Hong Kong pro-democracy lawmakers were either arrested or received notice of pending arrest in a police operation days ahead of the local elections that were scheduled in November of 2019.⁸ Prominent legislator Au Nok-Hin was arrested for assault when he was attempting to parley between crowds of protesters and police using a megaphone, under the allegation that the sound was injuring a police officer in the vicinity.⁹ Although Mr. Au was carrying out his duty as a legislator, the state insisted on prosecuting him because his act had caused the apprehension/fear of injury to a fully armed police.
11. It is our observation that certain terms in the Public Order Ordinance, such as “disorder in public places” and “unlawful assembly”, have facilitated the excessive restrictions of ICCPR rights during the Public Order Events. For example, under s19 of the Public Order Ordinance, a riot is “an unlawful assembly” where someone commits a “breach of the peace”; the assembly is “a riot” and the persons assembled are “riotously assembled”. Law-enforcement agencies have misused these words by exercising wide discretion to define an act as a “riot”. Bystanders, commuters, journalists and others have all been targeted for baseless arrests throughout the last ten months, contrary to the prescribed law in Hong Kong.
12. The United Nations Working Group on Arbitrary Detention has found deprivations of liberty arbitrary under Category II when such deprivations are made in response to the exercise of the rights or freedoms guaranteed under international conventions.

⁶ Holmes Chan, “Hong Kong police arrest 51 who ‘claimed to be medics or journalists’ near besieged PolyU campus”, Hong Kong Free Press, <https://www.hongkongfp.com/2019/11/18/hong-kong-police-arrest-51-claimed-medics-journalists-near-besieged-polyu-campus/> (accessed 29 February 2020).

⁷ Kimmy Chung and Kanis Leung, “Hong Kong protests: security chief accused of hampering efforts to de-escalate Polytechnic University stand-off with remarks that all inside will be arrested, South China Morning Post”, <https://www.scmp.com/news/hong-kong/politics/article/3038653/hong-kong-protests-security-chief-accused-hampering-efforts> (accessed 29 February 2020).

⁸ South China Morning Post, “Hong Kong opposition camp slams arrest of seven lawmakers, accusing government of trying to stir up chaos so they can cancel district council elections”, 9 November 2019, <https://www.scmp.com/news/hong-kong/politics/article/3037022/hong-kong-opposition-camp-slams-arrest-seven-lawmakers> (accessed 29 February 2020).

⁹ South China Morning Post, “Hong Kong protests: ex-lawmaker Au Nok-hin accused of damaging police officer’s hearing during Yau Ma Tei stand-off”, 20 January 2020, <https://www.scmp.com/news/hong-kong/law-and-crime/article/3046886/hong-kong-protests-ex-lawmaker-au-nok-hin-accused> (accessed 29 February 2020).

HKPF's catch-all tactic used in peaceful protests is indicative of arbitrariness as defined by the UN Working Group. In the Hong Kong Polytechnic University incident, all individuals who left the campus were arrested on grounds of contravening the Public Order Ordinance regardless of whether they were first-aid providers or whether there was sufficient evidence supporting the arrest of each individual. There is a tenuous link between the wave of arrests and people's exercise of their freedom of expression and right to peaceful assembly. While both the ICCPR and Hong Kong's Bill of Rights Ordinance provide for derogations from Article 9 of the ICCPR and its counterpart in local legislation in times of "public emergency", no such action was taken at any point during the Public Order Events, and therefore there are likely multiple violations of Article 9(1) of the present convention by the HKPF.

Case Study 1&2¹⁰

Arbitrary deprivation of liberty, detention and arrest

Summary of Facts:

Keith Fong is the president of the Student Union of the Hong Kong Baptist University. Andy Chui is a district councilor from the camp of pan-democrats.

On 6 August, Fong was arrested by a group of 5 plainclothes minutes after he bought 10 laser pointers, discharged of battery, from a street vendor. He was accused of possessing offensive weapons and was released without a charge after almost 48 hours of detention.

On the night of 31 August, as a group of protesters entered the subway station in Chai Wan, ready to leave after a protest that took place earlier that evening, the management of the subway announced an abrupt suspension of the train services but without further instruction or guidance on alternative transportation arrangements. Chui was called upon to intervene as a local district councilor. He stayed inside the station to offer assistance to the intended passengers and broadcast the situation live on Facebook. 10 minutes later, about 30 riot police stormed into the subway station. Chui was arrested for alleged disorder in a public places.

On the evening of 3 September, Fong was stopped and searched by police officers in a Kowloon district. A wallet belonging to another student was found in his backpack. Although evidence existed and was shown to the police that the owner of the wallet had granted Fong his consent to keep his wallet for him, he was arrested again, this time for alleged theft. Fong was detained for almost 20 hours before he was released without charge. It is generally believed that Fong has been targeted by the police as a student leader.

In all the three instances, both Fong and Chui were unarmed and they were not engaged in any act of violence.

For more details, please refer to the following news reports:

<https://www.thestandard.com.hk/section-news/section/4/211859/Crowdfunding-campaign---launched-to-sue-police>

¹⁰ Interviews with Mr. Chui and Mr. Fong by SOS conducted on 23 and 18 September 2019, respectively.

<https://www.hongkongfp.com/2019/09/05/hong-kong-student-leader-keith-fong-consider-suing-police-compensation-absurd-unreasonable-arrest/>

Analysis:

The arrest and detention of Chui and Fong amounted to arbitrary deprivations of liberty under Category II as defined by the UN working Group on Arbitrary Detention. It is argued that they were arrested and detained for having exercised their freedom of expression and freedom of assembly as protected under article 19 and 21 of the ICCPR.

The context of the arrest and detention of Chui and Fong bear the following commonalities:

- a. They are high-profile activists;
- b. They have extensive involvement in the anti-Extradition Bill movement;
- c. They are vocally supportive of the Anti-Extradition Bill movement; and
- d. The arrests were unreasonable because there was no objective basis or valid reason for such arrests.

Details of the unreasonableness are as follows:

- a. Keith Fong: Laser pointers, logically speaking, are neither offensive in nature nor are they commonly used as an offensive weapon. Also, even though he has explained to the police officer that he had already contacted the owner of the lost item, the arrest was still made.
- b. Andy Chui: He was merely carrying out his duty as district councilor and live streaming in the subway station.

The purpose of the present claim is not to invite a decision on whether the above-mentioned arrests are lawful or not but to indicate the arbitrariness of these arrests. The unreasonableness as illustrated above shows that the genuine purpose of these arrests was not to investigate the crimes as alleged. Given the characteristics in relation to the political profiles of Fong and Chui and their participation in the anti-Extradition Bill movement at the time of the arrests, we submit that there is a tenuous link between the wave of arrests and the exercise of their freedom of expression and right to peaceful assembly.

Alleged violations:

#CAT (article 1): Prohibition of torture and other cruel, inhuman or degrading treatment or punishment

#ICCPR (articles 7, 9, 19 & 21): No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; arbitrary arrest or detention, right to peaceful assembly, freedoms to hold opinion and expression

#HKSAR Basic Law (articles 27, 28, & 39): Freedoms of speech, of assembly, of procession and of demonstration; arbitrary or unlawful arrest, detention or imprisonment. Continual application of ICCPR and ICESCR.

Issue 1 Recommendations

13. We recommend that the Hong Kong government should bring the Public Order Ordinance in line with the ICCPR by fully implementing the recommendations made by the United Nations Human Rights Committee.

Updates to Issue 2 Notification and authorisation regime

14. In Hong Kong, the Public Order Ordinance provides for a statutory notification regime and its appeal process. Under the regime, the Commissioner of Police may object to or impose conditions on a notified public meeting or procession under the Public Order Ordinance and if the organiser disagrees, the organiser may lodge an appeal to the independent statutory Appeal Board on Public Meetings and Processions. On the other hand, if the Commission of Police does not object to the holding of a public meeting, a letter of No-Objection will be issued (“No-Objection Notice”). The Appeal Board is chaired by a retired judge and consists of three other members selected in rotation from a panel of 15 independent members appointed by the Chief Executive. It may confirm, reverse or vary the prohibition, objection or condition imposed by the Commissioner of Police. It is necessary for us to first briefly summarise the government’s duty under the ICCPR before we provide the Committee with the relevant updates.

Positive Duty of the Government to Promote the Right of Assembly

15. It is internationally recognized that the right of peaceful assembly involves a positive duty on the part of the government. In *Plattform “Ärzte für das Leben” v. Austria*,¹¹ the European Court of Human Rights imposed a duty on the state to take positive measures to enable lawful demonstrations to proceed.
16. The existence of the positive duty is also recognized in Hong Kong. It is held that the right of peaceful assembly involves a positive duty on the part of the government to take, depending on the circumstances in the particular case, reasonable and appropriate measures to enable lawful assemblies to take place peacefully. The duties of the police force shall be to take lawful measures for preserving the public peace, preventing injury to life and property, regulating assemblies in public places and preserving order in public places.¹²
17. The court of Hong Kong, after considering multiple cases from the United Kingdom and the European Court of Human Rights, held that *prima facie* steps taken to prevent a breach of peace can be directed against not just those who were about to breach it, but against third parties who were not about to breach the peace, even though this

¹¹ (A/139) (1991) 13 EHRR 204.

¹² *Chan Hau Man, Christina v Commissioner of Police* [2009] 4 HKLRD 797, 805-806, applying *Leung Kwok Hung & Ors v HKSAR* (2005) 8 HKCFAR 229.

would curtail the fundamental rights of the third parties. However, this can only be done when the following exceptional circumstances exist:

(a) The imminent breach of the peace by the others was provoked or otherwise caused by the third party, whose action was not only deliberate, but also interfered with the rights or liberties of others and was likely to provoke violence;

(b) The third party's conduct, though technically lawful or not involving any interference with others' rights or liberties as such, was nonetheless "outrageous", "unreasonable" or "provocative"; and

(c) There was a reasonable belief that no other means whatsoever existed to prevent the imminent breach of the peace.¹³

Operation of the Notification and Authorization Regime since June 2019

18. After the anti-extradition law movement in Hong Kong started from June 2019, several proposed assemblies or processions were banned under the current regime. SOS made an access to information request to the relevant government authorities on 31 December 2019 and received the latest figures in relation the total number of public meetings held in 2019 and the appeals for the notification regime on 20 January 2020:

Number of Public Order Events held with Letter of No Objection in 2019

Public Meeting	Public Procession
410	474

Number of Prohibited or Objected Public Order Events in 2019

Prohibited Public Meeting	Objected Public Procession
26	21

Number of Appeals for No-Objection Notice refused being granted in 2019

Number of failed appeals	Number of successful appeals
18	4

19. Although the number of objected Public Order Events in 2019 and those whose appeal applications were refused is relatively low, it is observed that the HKPF has in some occasions taken a passive approach to ban assemblies and processions they perceived as risky.

¹³ *Ibid.*

20. The Civil Human Rights Front (“the CHRF”), which is well-known in Hong Kong for organizing peaceful marches including the annual July 1st marches, a 1.03-million-citizens march on 9 June 2019 and the “almost-2-million-plus-10-citizens” march on 16 June 2019, made multiple attempts to organize assemblies and processions. However, their assembly and procession plans for 20 July 2019,¹⁴ 31 August 2019¹⁵ and 1 October 2019¹⁶ were all opposed by the Hong Kong Police, which decision the Appeal Board affirmed.
21. To give one example, the CHRF planned to organize a procession in the Tsim Sha Tsui area of Hong Kong on 20 October 2019. However, the Hong Kong Police objected to it, and the Appeal Board affirmed the police’s decision.¹⁷ In explaining the police’s decision to object to the proposed procession, the representative of the Hong Kong Police said that the procession would pass by many “high-risk buildings” along the route on Kowloon Park Drive.

The march destination at the high-speed rail terminus in West Kowloon is deemed a highly possible target of vandalism and attack, as it is a major MTR terminal with many mainland tourists crossing the co-location checkpoint.¹⁸

22. We submit that the HKPF’s reason for its objection was plainly unjustifiable in law and therefore that the subsequent decision of the Appeal Board was also mistaken. Applying the principles as articulated in *Chan Hau Man, Christina v Commissioner of Police*,¹⁹ we observe that: Firstly, the opposition of the assembly was not based on any imminent breach of peace. Secondly, the HKPF had cited no reasons to support its belief that there was no other means whatsoever to prevent an imminent breach of the peace. In fact, it could hardly be the truth, as the HKPF has sufficient manpower and capability to stop and arrest anyone they considered to be a threat, as well as to protect the terminal purported to be subject to vandalism and attack. Therefore, the result was not justifiable; if such broad brush explanations become the practice, the

¹⁴The Civil Human Rights Front (“the CHRF”), which is well-known in Hong Kong for organizing peaceful marches including the annual July 1st marches, the 1.03-million-citizens march on 9 June 2019 and the “almost-2-million-plus-10-citizens” march on 16 June 2019, made multiple attempts to organize assemblies and processions. However, their plans of assembly and procession on 20 July 2019, 31 August 2019 and 1 October 2019 had all been opposed, the Hong Kong Police’s decision for which was affirmed by the Appeal Board.

¹⁵ South China Morning Post, “Police ban of mass Hong Kong protest planned by Civil Human Rights Front upheld on appeal”, 30 August 2019, <https://www.scmp.com/print/news/hong-kong/politics/article/3025020/police-ban-mass-hong-kong-protest-planned-civil-human> (accessed 5 March 2020).

¹⁶ The Standard, “Appeal board upholds National Day march ban”, 30 September 2019, <https://www.thestandard.com.hk/breaking-news/section/4/135223/Appeal-board-upholds-National-Day-march-ban> (accessed 5 March 2020).

¹⁷ South China Morning Post, “Hong Kong protests: Civil Human Rights Front loses appeal against police ban on Sunday march, but members will press on in ‘personal capacity’”, 19 October 2019, <https://www.scmp.com/print/news/hong-kong/politics/article/3033700/hong-kong-protests-civil-human-rights-front-loses-appeal> (accessed 5 March 2020).

¹⁸ *Ibid.*

¹⁹ *Chan Hau Man, Christina v Commissioner of Police* [2009] 4 HKLRD 797, 805-806, applying *Leung Kwok Hung & Ors v HKSAR* (2005) 8 HKCFAR 229.

constitutionality of the notification and authorisation policy itself should be re-considered.

23. Looking into the above example, instead of allowing the assemblies and processions to be organized and taking active measures to maintain peace during them, the police took a passive approach to ban assemblies and processions they perceived as risky.
24. The fact that members of the Appeal Board are appointed by the Chief Executive and it is reported that most members are closely connected to the pro-government camp has cast doubts on the impartiality and independence of the Appeal Board.
25. The effect of the HKPF's passive approach in banning assemblies has been serious. The legal representative of the CHRF commented that under these circumstances, the police ban would not achieve any desired social benefits nor restore peace to the city, as radical protesters would still take to the streets while peaceful ones would be forced to stay home and watch the events on television.²⁰ Also, the spokesman of the CHRF said peaceful demonstrators, particularly the elderly or frail, had not had a chance to march for a long time.²¹
26. It is to be recalled that it is not necessary under international human rights law for legislation to require advance notification of an assembly. Should a notification procedure be in place, it should mainly serve the purpose of facilitating assemblies, a positive duty on part of the HKSAR government as recognised by the Hong Kong Court of Final Appeal. In any case, it should never be turned into a *de facto* authorisation procedure. Spontaneous, unnotified assemblies, often in response to developments requiring immediate reaction, are also likely to multiply, notably because of the use of social media. They are a way for citizens to express themselves in a timely manner regarding certain events and should therefore be regarded as a feature of democratic societies. As such, they should be protected in the same way as other assemblies, rather than dispersed and banned. While the notification system was declared constitutional under local law in 2005 on the basis that it facilitates the government's positive duty to facilitate assemblies, and premised on the duty of police to give adequate reasons if they wish to impose conditions, it merits re-examination in the present context in light of the tendency for police to refuse assemblies without giving satisfactory reasons. Further, the number of spontaneous meetings is on the rise, many arrests were effected on these occasions, and the 2005 decision has failed to address (if not anticipate) the right of citizens to participate in spontaneous meetings.

²⁰ South China Morning Post, "Hong Kong protests: Civil Human Rights Front loses appeal against police ban on Sunday march, but members will press on in 'personal capacity'", 19 October 2019, <https://www.scmp.com/print/news/hong-kong/politics/article/3033700/hong-kong-protests-civil-human-rights-front-loses-appeal> (accessed 5 March 2020).

²¹ *Ibid.*

Issue 2 Suggested Questions

27. We invite the Human Rights Committee to provide guidance and/or inquire into the following matters in relation to compliance with Article 21 of the ICCPR of the appeal process and/or other remedies within notification or authorization regimes, including:

- Whether the current appeal process is independent and impartial;
- Whether the 47 cases of barred public meetings and processions were legitimately and reasonably prohibited and in compliance with Art. 21 of the ICCPR;
- Whether the 18 cases of appeals were rejected based on reasonable and legitimate grounds and in compliance with Art 21 of the ICCPR;
- Whether members of the appeal board should have a track record in human rights;
- Whether the appeal process should be efficient and accessible given the time-sensitive nature of public assemblies.

Issue 3: HKPF excessive use of force (ICCPR Art. 7, 19, 21)

The Committee expresses concern about reports of excessive use of force by members of the police force, not compatible with the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials, in particular by the inappropriate use of pepper spray to break up demonstrations to restore order, notably with regard to demonstrations surrounding the annual Hong Kong march on 1 July 2011, the visits of Vice-Premier and President of China, respectively in August 2011 and July 2012 (arts. 7, 19 and 21). Hong Kong, China, should increase its efforts to provide training to the police with regard to the principle of proportionality when using force, taking due account of the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials. (Concluding Observation 2013, para. 11, *sic*.)

It is evident that since the establishment of the HKSAR, the public continues to enjoy a high degree of freedom of assembly. The majority of these activities were conducted in a peaceful and orderly manner and in accordance with the law. (HKSAR 4th ICCPR Report para. 132)

All police officers are trained – in their basic training and in subsequent courses – to treat all persons as individuals with humanity and to respect and act within the law at all times. A major purpose of these courses is to ensure the proper treatment of arrested and detained persons. They cover the procedures governing the questioning of suspects, as well as the relevant requirements as stipulated in the Police Force Ordinance (Cap. 232), Police General Orders and Headquarter Orders. All police officers are made aware that an infringement of a person's legal rights may in some circumstances constitute a criminal offence. (HKSAR 4th ICCPR Report, Annex 7A)

28. Contrary to the Committee's recommendations and the Hong Kong government's replies in its 4th ICCPR Report, the HKPF has been relentlessly violating the United Nation Principles on the Use of Force and Firearms by Law Enforcement Officials ("Principles on the Use of Force") during the Public Order Events.
29. The Principles on the Use of Force clearly indicate that its principles still hold in exceptional cases like political instability (Principle 8).²² Not only was force unnecessary in the majority of cases where force was executed, but the officers applying it were also not held accountable for any arbitrary use of force or firearms as a criminal offence; also, no disciplinary action was imposed. This has indirectly further intensified social conflict.

Updates to Issue 3 HKPF excessive use of force

Excessive use of riot control agents ("RCA")

30. More and more protests have been cut short despite the peaceful nature of these protests. In most of the unlawful dispersals, participants are only given an unreasonably short timespan to leave from the pre-approved routes. Given the short lead time and heavy traffic, protestors were unable to leave accordingly. Thus, police officers began to use riot control agents ("RCAs") like pepper spray and tear gas to disperse crowds.
31. A case in point was on the first day of 2020, in which the HKPF unreasonably cut off the protests, citing an outbreak of violence and vandalism when the whole assembly was peaceful at large.²³ After declaring the demonstration unlawful three hours into the protest, police gave the organizer and tens of thousands of protesters just 30 minutes to disperse, stating that the organiser would be criminally liable if he failed to comply.²⁴ The police then started firing tear gas and water cannons at the protesters, including those who remained peaceful. The HKPF clearly violated the freedoms of expression and peaceful assembly by violently dispersing the largely peaceful protest. This is incompatible with the Principles on the Use of Force which note that: "The presence of smaller groups of people within a public assembly who use violence is not a sufficient reason for the police to restrict, prohibit or disperse the whole assembly"²⁵ (Principle 12). Such practice also imposes a huge burden on organisers and in turn deters people from taking up the role of organisers, to say nothing of the political costs of being condemned to implement the will of the police.

²² UNOHCHR, "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials", Principle 8.

²³ Amnesty International, "Hong Kong: Peaceful protesters targeted as police start 2020 with renewed attack on dissent", 2 January 2020, <https://www.amnesty.org/en/latest/news/2020/01/hong-kong-peaceful-protesters-targeted/> (accessed 29 February 2020).

²⁴ *Ibid.*

²⁵ UNOHCHR, "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials", Principle 12.

32. On the one hand, in a lot of the cases in which RCAs were used, they were unnecessary as the crowds had been trying to leave anyway. On the other hand, how these RCAs were used raises concerns. In early August, tear gas shells found at the scene of a protest were expired. When asked about it in a press conference held on 12 August 2019, the HKPF admitted that they had used tear gas that had gone past the “best before date”.²⁶ According to The Weapons Law Encyclopedia of the Geneva Academy, usage of equipment after its recommended shelf life causes the equipment to malfunction.²⁷ Further, videos have shown that riot police in Hong Kong have directed pepper spray at the face of protestors and even at press. A specific incident happened on 31 December 2019 in which the riot police intentionally removed the mask of legislative councillor Mr. Hui Chi-fung before directing pepper spray at his face.²⁸
33. The effects of RCAs on Hong Kongers’ health is evident. There have been reported cases of dead birds in districts where tear gas canisters have been fired and of respiratory diseases among press and protestors due to constant exposure to dioxin.²⁹ It has been reported that a reporter was diagnosed with chloracne, a condition consisting of “rare skin eruption of blackheads, cysts and nodules, which has been linked directly to dioxin exposure,” according to the United States Department of Veteran Affairs.³⁰ Not only do police officers deny their responsibility in the excessive use of tear gas causing the excessive amount of dioxin in the region, the Secretary for Food and Health has further indicated that there is no evidence based on existing academic articles that tear gas generates such toxic substances.

Unjustified use of other lethal weapons

34. Other than RCAs, the HKPF has also turned to other arms that have caused permanent damage to protestors, press and even first-aiders. The first isolated case was on 30 July 2019 when a police officer waved a Remington gun, with his finger on the trigger, at protestors.³¹ As the instability has intensified, police officers have turned to

²⁶ RTHK, “Police admit fake protestors, deny eye injury link”, 12 August 2019, <https://news.rthk.hk/rthk/en/component/k2/1474218-20190812.htm> (accessed 29 February 2020).

²⁷ The Weapons Law Encyclopedia of the Geneva Academy, Riot Control Agents, <http://www.weaponslaw.org/weapons/riot-control-agents> (accessed at 29 February 2020).

²⁸ Kris Cheng, “Officer removed lawmaker’s goggles to pepper spray him as he displayed ‘passive resistance,’ Hong Kong police say”, Hong Kong Free Press, 2 January 2020, <https://www.hongkongfp.com/2020/01/02/officer-removed-lawmakers-goggles-pepper-spray-displayed-passive-resistance-hong-kong-police-say/> (accessed 29 February 2020).

²⁹ The Guardian, “Dead birds and rashes: Hong Kong residents fear teargas poisoning”, 4 December 2019, <https://www.theguardian.com/world/2019/dec/04/nowhere-is-safe-hong-kong-residents-fearful-of-teargas-poisoning> (accessed 29 February 2020).

³⁰ Hong Kong Free Press, “Hong Kong reporter diagnosed with chloracne after tear gas exposure, prompting public health concerns”, <https://www.hongkongfp.com/2019/11/14/hong-kong-reporter-diagnosed-chloracne-tear-gas-exposure-prompting-public-health-concerns/> (accessed 29 February 2020).

³¹ The Business Insider, “Hong Kong police officer makes a grave safety error waving a shotgun in protestors’ faces”, 31 July 2019, <https://www.businessinsider.com/hong-kong-police-officer-waves-shotgun-in-protesters-faces-2019-7> (accessed 29 February 2020).

more acute methods. On 11 August 2019, a voluntary first-aider at the scene was severely injured as a bean bag bullet was lodged in her right eye.³² The first-aider lost her sight permanently.³³ Several images display police officers aiming at the press while shooting.

35. On November 12th, media recorded the commander in chief instructing his subordinates to aim and shoot at protesters' heads at a siege at the City University of Hong Kong,³⁴ violating Principle 5b of the Principles on the Use of Force and Firearm, which notes that: “Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall ... minimising damage and injury, and respect and preserve human life.”³⁵
36. While the police has been keen on reporting the number of arrested persons and weapons used, it has barely engaged in any inquiry into police misconduct or prosecutions in response to complaints or health/environmental impacts. This further infringes principles 6 and 22 of the Principles on the Use of Force, which state explicitly the responsibility of the government to conduct a holistic review, investigation and, necessarily, prosecutions in cases of injury caused by the use of force or arms by law enforcement officials.

Decline of police quality

37. Contrary to the allegations made in the HKSAR 4th Report that “[a]ll police officers are trained – in their basic training and in subsequent courses – to treat all persons as individuals with humanity and to respect and act within the law at all times”, we observe that there are substantial deficits in police quality.
38. As stated in the Police General Orders,³⁶ police officers should produce their warrant cards at all times when exercising their police power whether they are on or off duty. However, there have been multiple reports since June 2019 of police not producing a warrant card when exercising their duty. Since such police officers are not identifiable, it becomes harder for citizens to file any complaints to the Independent Police Complaints Council (“IPCC”) against any police misconduct during public activities.³⁷ This has created impunity as officers have been repeatedly recorded on media picking fights, initiating attacks, and provoking and dehumanising protestors.

³² The Guardian, “‘An eye for an eye’: Hong Kong protests get figurehead in woman injured by police”, 16 August 2019, <https://www.theguardian.com/world/2019/aug/16/an-eye-for-an-eye-hong-kong-protests-get-figurehead-in-woman-injured-by-police> (accessed 29 February 2020).

³³ *Ibid.*

³⁴ The South China Morning Post, “Campus clashes as universities become new battleground in Hong Kong anti-government unrest”, 12 November 2019, <https://www.scmp.com/news/hong-kong/politics/article/3037448/campus-clashes-universities-become-new-battleground-hong> (accessed 29 February 2020).

³⁵ UNOHCHR, “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”, Principle 5b.

³⁶ Chapter 20-14, Police General Order.

³⁷ For further details, please refer to Issue 4 of this submission.

This is only the tip of the iceberg of consequences due to the absence of a warrant card.

39. According to Rule 35 of the ICRC's Customary Rules of International Humanitarian Law (CRIHL), which echoes Article 12 of the 1977 Additional Protocol I, attacks on medical units, educational institutions and religious establishments are strictly prohibited. Although the CRIHL are not directly applicable in Hong Kong's context, this rule provides an international standard for crowd control guidance. On 20 October 2019, the HKPF's water cannons targeted and sprayed coloured water at the Kowloon Mosque and Islamic Centre even though the protesters had largely already dispersed and only yellow-clothes press were close to the gate of the Mosque. Although the HKPF apologised after the event had occurred, the responsible personnel was neither identified nor disciplined. Further, the HKPF fired tear gas next to the Queen Elizabeth Hospital on 18 November 2019³⁸ and a total of 1,567 and 1,458 canisters of tear gas at, respectively, the Chinese University of Hong Kong and the Hong Kong Polytechnic University campuses during the sieges on the 12th and 18th of November 2019.³⁹ These incidents offer strong evidence of law enforcement publically violating Hong Kong's international obligations.
40. The HKPF has also been re-employing retired police to report duty, claiming that it has increased manpower in light of the ongoing unrest and to assist the force in stopping violence and curbing societal disorder. In addition, the HKPF has issued extendable batons "for the purpose of executing constabulary duties whilst off duty."

Case Study⁴⁰

Deployment of excessive force constitutes cruel, inhuman and degrading treatment

Summary of Facts:

On 12 June 2019, several hundred protesters assembled outside the Hong Kong Legislative Council building in a peaceful demonstration organised by the Civil Human Rights Front (CHRF) for which the police granted a "No Objection Notice". The victim, Mr. A, was one of the protesters. He recalled that riot police suddenly turned up and, without any warning, started firing rubber bullets and tear gas at the assembly at very short range. Mr. A was about 5 meters from the police when he was shot at the face by a rubber bullet. The bullet penetrated into the muscle layer of his cheek and caused extensive injury, requiring 10 sutures to close up the wound. His

³⁸ Holmes Chan, "Hong Kong PolyU campus surrounded: police warn live ammo may be used as protesters set fire to armoured vehicle", 18 November 2019, <https://www.hongkongfp.com/2019/11/18/hong-kong-polyu-campus-surrounded-police-warn-live-ammo-may-used-protesters-set-fire-armoured-vehicle/>. (accessed 29 February 2020).

³⁹ Hong Kong Free Press, "Hong Kong reporter diagnosed with chloracne after tear gas exposure, prompting public health concerns", <https://www.hongkongfp.com/2019/11/14/hong-kong-reporter-diagnosed-chloracne-tear-gas-exposure-prompting-public-health-concerns/> (accessed 29 February 2020).

⁴⁰ Interview with Mr. A by SOS on 20 September 2019.

visual acuity, a vital function, was impaired for about two weeks as a result of the facial hematoma which rendered his eyes incapable of opening.

Mr. A was not engaged in any act of violence nor was he armed when he was shot.

Analysis:

We argue that the physical injuries suffered by Mr. A constituted cruel, inhuman or degrading treatment or punishment (CIDTP) and this position is supported by international jurisprudence. For example, in *Abdullah Yasa and others v Turkey* (2013) ECHR 839, the applicant was struck in the face by a tear gas grenade fired from a launcher and consequently sustained serious injuries, namely “a facial oedema, a fractured nose bone and a series of concave incisions”, which had been acknowledged as having caused “moderately severe damage to his vital functions”. It was considered as amounting to CIDTP.

We argue that the firing of rubber bullet at Mr. A’s face was potentially lethal and/or subjected him to the risk of permanent blindness. A study which examined 152 cases of injuries caused by rubber bullets in the context of the Israeli-Arab conflict in 2000 found that “the body region most vulnerable to fatal penetrating rubber-bullet injury was the anterior part of the face with its thin bony structures, with particular susceptibility of the eyes”. Among the 27 cases of injuries made to the face, two patients suffered permanent blindness, and two others died after a penetrating ocular injury into the brain.

In accordance with Principle 9 of the OHCHR Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter referred to as “Principles on the Use of Force and Firearm”), “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”. Mr. A was not engaged in any violence activity nor was he armed at the time of the shooting. He was merely participating in a peaceful assembly and exercising his freedom of expression. In the absence of an imminent threat of death or serious injury, we submit that the use of rubber bullets was not “strictly unavoidable”. Considering i) the severity of the injuries to Mr. A’s face; and ii) the risks of permanent blindness and/or death imposed on him, the use of rubber bullets by the police could not have been proportionate to their alleged aim of crowd dispersal. Such use of force was therefore unjustified and amounted to CIDTP.

References:

Abdullah Yasa and others v. Turkey (2013) ECHR 839

OHCHR Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Mahajna, A. et al (2002). Blunt and penetrating injuries caused by rubber bullets during the Israeli-Arab conflict in October, 2000: a retrospective study. *The Lancet*, 359(9320), 1795-1800.

Alleged violations:

#CAT (article 1): Prohibition of torture and other cruel, inhuman or degrading

treatment or punishment

#ICCPR (articles 7, 19 & 21): No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; right to peaceful assembly, freedoms to hold opinion and expression

#OHCHR Principles on the Use of Force and Firearms (principle 9)

#HKSAR Basic Law (articles 27 & 39): Freedoms of speech, of assembly, of procession and of demonstration. Continual application of ICCPR and ICESCR

#Police General Orders (PGO) (chapter 29-01): Use of force

Issue 3 Suggested Questions

41. We invite the Human Rights Committee to provide guidance/inquire into the following matters in relation to the use of less-lethal weapons by the HKPF, for instance:

- whether at present, the HKPF has procured tear gas rounds which are not made in China; and if so, (a) the places of origin of such tear gas rounds, and (b) how such tear gas rounds compare with those which are made in China in the following aspects: (i) composition, (ii) velocity of explosion, (iii) power (including the functions, effects and the highest temperature during combustion), and (iv) possible impacts on human health (set out in a table);
- whether the HKPF has issued guidelines to police officers, relevant government departments, public organisations and/or members of the public with respect to how to clean up tear gas residue at scenes where tear gas rounds have been fired and how to deal with the aftermath; and
- whether relevant authorities, including the Department of Health and the Hospital Authority, should disclose information on effective medical treatment for injuries inflicted by the weapons.

Issue 4: Inadequacy of the system of complaints against police

While noting that the statutory framework has reinforced the role of the Independent Police Complaint Council (IPCC), the Committee remains concerned that investigations of police misconduct are still carried out by the police themselves through the Complaints Against Police Office (CAPO) and that IPCC has only advisory and oversight functions to monitor and review the activities of the CAPO and that the members of IPCC are appointed by the Chief Executive (arts. 2 and 7). Hong Kong, China, should take necessary measures to establish a fully independent mechanism mandated to conduct independent, proper and effective investigation into complaints about the inappropriate use of force or other abuse of power by the police and empowered to formulate binding decisions in respect of investigations conducted and findings regarding such complaints. (Concluding Observation 2013, para. 12)
The Hong Kong Government responded that IPCC is an independent statutory body,

which consists of civilian members being drawn from a wide spectrum of the community. CAPO needs to address queries and suggestions from IPCC and IPCC can observe the investigation of CAPO. The role of IPCC on monitoring CAPO's investigation and the transparency of the police complaints system is actually enhanced. (HKSAR 4th ICCPR Report para. 10-12)

42. This issue relates to the complaints police system in Hong Kong, a two-tiered system formed by the Complaints Against Police Office (“CAPO”) and the IPCC.
43. Despite the Committee’s recommendation that Hong Kong should take necessary measures to establish a fully independent mechanism mandated to conduct independent, proper and effective investigations into complaints, the Hong Kong government, in replying to a Legislative Council member’s question, insisted that the current complaint mechanism operates effectively under the law.⁴¹ The adverse consequence of the government’s ignorance was experienced in the context of the Public Order Events.

Updates to Issue 4 Incompetence of the system of complaints against police

44. As of 25 November 2019, 1,261 complaints had been received by CAPO. However, despite the allegation that all complaints were under investigation, CAPO classified 794 complaints as anonymous, lodged by persons who are not directly affected, or vexatious and frivolous.⁴² This indicates that CAPO may have an established position favoring the police before investigations are concluded.

Further Hurdle for Complaints Against Police – Police Officers Unidentifiable

45. It is crucial for a complainant to clearly identify a police officer as the subject of a complaint; otherwise, the complaint may be classified as “not fully substantiated” and “not pursuable” by CAPO.
46. At present, police officers participating in the public order events mask their faces. The police have explained that that is for protection and not for anonymity.⁴³ Recently, instead of showing their warrant cards, police officers have been wearing identification tags with “operational callsigns” which are said to be unique to each officer.⁴⁴ However, it has been found that multiple police officers have worn the same

⁴¹ Hong Kong Government, Press Releases – LCQ1: IPCC’s Work, 20 November 2019, <https://www.info.gov.hk/gia/general/201911/20/P2019112000444.htm?fontSize=1> (accessed on 22 January 2020).

⁴² Hong Kong Government, Press Releases – LCQ3: Complaints against Police Officers, 27 November 2019, <https://www.info.gov.hk/gia/general/201911/27/P2019112700431.htm?fontSize=1> (accessed on 20 January 2020).

⁴³ Hong Kong Free Press, “Hong Kong police say officers will wear unique identifiers as force defends recent treatment of journalists”, 29 October 2019, <https://www.hongkongfp.com/2019/10/29/hong-kong-police-say-officers-will-wear-unique-identifiers-force-defends-recent-treatment-journalists/> (accessed on 21 January 2020).

⁴⁴ *Ibid.*

operational callsign on their uniforms, casting doubts on the credibility and motives behind the new identification method.⁴⁵

47. The aforementioned actions make it continuously difficult for police officers to be identified.

The Lack of Independence and Ability of the IPCC

48. The members of the IPCC are appointed by the Chief Executives.⁴⁶ The IPCC has an Observers Scheme to observe the collection of evidence in connection with CAPO's investigations.⁴⁷ The observers are appointed by the Secretary for Security.⁴⁸ Given that the Secretary for Security had served the police for 33 years⁴⁹ and is nominated by the Chief Executive, as well as that the Chief Executive has given her full support to the Hong Kong Police,⁵⁰ the independence of the IPCC is questionable.

49. Note also that only CAPO, but not the IPCC, has the power to receive and investigate complaints. The IPCC has the power to review investigation reports done by CAPO, but it has no power to force the police to accept its recommendations.⁵¹

Thematic Study on the Public Order Events by the IPCC

50. On 6 August 2019, the IPCC decided to conduct a fact-finding study of the Public Order Events and to submit a report of the study to the Chief Executive. Also, the IPCC established an International Experts Panel ("the Panel") to provide opinions to the IPCC for drafting the report.

51. On 9 November 2019, Professor Clifford Stott, who is one of the experts in the Panel,⁵² opined on behalf of the Panel that the IPCC needs more power if it is to conduct a rigorous inquiry into policing of the protests in Hong Kong. The Panel also

⁴⁵ The Standard, "Several Riot Cops Wearing Identical ID Tag", 27 December 2019, <https://www.thestandard.com.hk/breaking-news/section/3/139106/Several-riot-cops-wearing-identical-ID-tag> (accessed on 21 January 2020).

⁴⁶ Section 5, Independent Police Complaints Council Ordinance, Cap. 604, Laws of Hong Kong.

⁴⁷ Independent Police Complaint Council, Observers Scheme, 10 January 2018, https://www.ipcc.gov.hk/en/what_we_do/observers_scheme.html (accessed on 19 January 2020).

⁴⁸ Section 33, Independent Police Complaints Council Ordinance, Cap. 604, Laws of Hong Kong.

⁴⁹ Hong Kong Government, Mr. John Lee Ka-chiu, SBS, PDSM, PMSM, JP, Secretary for Security, August 2017, <https://www.gov.hk/en/about/govdirectory/po/ss.htm> (accessed on 21 January 2020).

⁵⁰ Hong Kong Free Press, "Hong Kong's Carrie Lam defends police, criticises protests, dodges question over 'autonomy' of decision-making", 13 August 2019, <https://www.hongkongfp.com/2019/08/13/hong-kongs-carrie-lam-defends-police-criticises-protests-dodges-question-autonomy-decision-making/> (accessed on 21 January 2020).

⁵¹ Section 16, Independent Police Complaints Council Ordinance, Cap. 604, the Laws of Hong Kong.

⁵² The other members are Sir Denis O'Connor, CBE, QPM, Judge Colin Doherty, the Hon Michael F Adams QC, Mr Gerry McNeilly (Independent Police Complaints Council, Press Release –IPCC announces membership of International Expert Panel, 4 September 2019, https://www.ipcc.gov.hk/doc/en/pr/pr_20190816_e.pdf (accessed on 20 January 2020).

suggested that an independent inquiry may be the best way to proceed.⁵³ In December 2019, the panel stood aside from its role.⁵⁴

52. Subsequently, the IPCC completed its interim report for the Thematic Study and planned to release it in early 2020. However, the IPCC has been withholding the release because of the ongoing judicial review concerning its power to conduct the Thematic Study.⁵⁵ Mr. Eric Cheung, a principal lecturer in the Department of Law at the University of Hong Kong, said the delay is weird since the court has not issued an interim injunction against the police complaints body.⁵⁶

Issue 4 Recommendations

53. In view of the limitations of the police complaints system, we recommend that the Hong Kong government set up an independent commission of inquiry to investigate the use of force by the police in the Public Order Events.

54. Further, in the long run, the Hong Kong government must reform the police complaints system by:

- setting up an independent organisation to investigate complaints against the police,
- the IPCC being given the power to initiate investigations and collect evidence, including to summon and interview witnesses as well as to seize exhibits,
- the IPCC being given the power to order the police to take suitable disciplinary actions against police officers in case complaints against them are substantiated and
- the Legislative Council being given the power to appoint members and observers into the IPCC.

Issue 5: Media and academic freedom

The Committee is concerned about reports that Hong Kong, China, has seen deterioration in media and academic freedom, including arrests, assaults and harassment of journalists and academics (arts. 19 and 25). Hong Kong, China, should, in line with the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, take vigorous measures to repeal any unreasonable direct or indirect restrictions on freedom of expression, in particular for the media and

⁵³ Radio Television Hong Kong, "IPCC needs more powers say expert panel", 10 November 2019, <https://news.rthk.hk/rthk/en/component/k2/1491070-20191110.htm> (accessed on 22 January 2020)

⁵⁴ *Ibid.*

⁵⁵ Independent Police Complaints Council, Press Release – Press Statement from the Independent Police Complaints Council, 16 January 2020, https://www.ipcc.gov.hk/doc/en/pr/pr_20200116_e.pdf (accessed on 22 January 2020).

⁵⁶ EJ Insight, "IPCC decides to delay release of report on social unrest", 17 January 2020, <http://www.ejinsight.com/20200117-ipcc-decides-to-delay-release-of-report-on-social-unrest/> (accessed on 22 January 2020).

academia, to take effective steps including investigation of attacks on journalists and to implement the right of access to information by public bodies. (Concluding Observation 2013, para. 13)

Freedom of expression and freedom of the press are guaranteed by the Basic Law and the HKBORO. The Government supports the principle of editorial autonomy for journalistic work, and does not interfere with the internal operations of media organisations. Prevention and protection against intimidation and harassment of legislators, media personnel and academics. [...] The Government is fully committed to protecting the safety of all members of the public, regardless of whether he or she is a person of particular categories or is an ordinary member of the public. (HKSAR 4th ICCPR Report paras. 112,114)

55. Despite the commitment of the Hong Kong government to protecting the safety of all members of the public and promoting media and academic freedom in Hong Kong irrespective of one's political stance/standing, the reality in Hong Kong lies in stark contrast. In the past ten months, there has been substantial credible physical and recorded evidence, along with testimonies of victims, suggesting that a contrary principle applies to the general public. Since the beginning of June, journalists and students alike have been repeatedly subject to all kinds of physical assault on their persons and sustained verbal harassment and intimidation from members of the HKPF. There is a clear and emerging pattern of the state using the police as a means to severely limit media and academic freedom by flaunting the existing legal system and through political retribution. Examples of this include arbitrarily arresting individuals that voice political dissent and pro-democracy media publishers and journalists, besieging and charging into university campuses, and the overall use of disproportionate force towards both journalists and students alike.

Updates to Issue 5 Media and academic freedom

56. It has been reported that journalists from a great variety of media organizations, except for those which are pro-Beijing, have been, amidst their live broadcasts of the Public Order Events, suffering from inhuman treatments such as arbitrary searches, obstruction of live broadcasts, verbal intimidation, doxing, stalking and physical assaults committed by members of the HKPF and to a lesser extent alleged pro-Beijing mobs, leaving some seriously injured, detained and/or arrested.⁵⁷

57. On one occasion in November 2019, a journalist from the online journal Mad Dog Daily was inflicted with a serious brain injury after being found to have been hit hard by the use of a water cannon by HKPF.⁵⁸ Within the same month, it was found that

⁵⁷ Report Without Borders, "Hong Kong: five months of violence against the press", November 22, 2019, <https://rsf.org/en/news/hong-kong-five-months-violence-against-press> (accessed 3 February 2020).

⁵⁸ *Ibid.*

journalists from Now TV and other media organizations were subject to deliberate tear gas attacks by HKPF officers.⁵⁹

58. On 29 September 2019, an Indonesian journalist named Ms. Veby Mega Indah was hit by a rubber bullet shot by a riot police officer while live-streaming in Wan Chai. As a result of the illegitimate and excessive use of force, Ms. Veby suffered permanent loss of eyesight.⁶⁰ On 27 October 2019, Mr. May James, a freelance American photojournalist exempted from the “Prohibition on Face Covering Regulation”, was arrested under such an accusation, the legality of which was challenged by the local court as being unconstitutional in November 2019.⁶¹ However, HKPF has yet to admit to violating media freedom and assaults on journalists at this time.
59. Of particular concern is the HKPF’s siege of different university campuses since 12 November 2019, during which a total of 1,567 and 1,458 canisters of tear gas were launched at the siege of Chinese University of Hong Kong on 12 November 2019 and at the siege of Hong Kong Polytechnic University campus on 18 November 2019, respectively.⁶² As elucidated above in Issue 1, the police employed a “catch-all” policy to arrest all protesters who left the besieged university. Among the eight universities in the territory, at least four of them have been subjected to such fierce episodes of confrontation. In the case of City University, it was reported that student residential halls have become the targets of the HKPF offensive campaign through the use of several dozen rounds of tear gas canisters.⁶³
60. HKPF has denied any intent to charge into campuses and apply unnecessary use of force against student protestors within university campuses. According to Matthew Evans, who is the Science Dean of University of Hong Kong on the scene, “What is happening now is not sustainable. What happens is that the police come, there is a fight, people get arrested and then tomorrow it starts all over again – maybe not here, maybe somewhere else; it needs to end somehow”.⁶⁴ Similar views were also shared among other academics in the territory, saying that the police have entered “a dangerous phase” of suppression as HKPF enter university campuses as they please.⁶⁵

⁵⁹ *Ibid.*

⁶⁰ The Straits Times, “Injured Indonesian journalist seeks answers from Hong Kong police”, 6 December 2019, <https://www.straitstimes.com/asia/east-asia/injured-journalist-seeks-answers-from-hong-kong-police> (accessed 29 February 2020).

⁶¹ *Ibid.* See also Hong Kong e-Legislation, “Prohibition on Face Covering Regulation”, 5 October 2019, <https://www.elegislation.gov.hk/hk/cap241K>.

⁶² Hong Kong Free Press, “Hong Kong reporter diagnosed with chloracne after tear gas exposure, prompting public health concerns”, <https://www.hongkongfp.com/2019/11/14/hong-kong-reporter-diagnosed-chloracne-tear-gas-exposure-prompting-public-health-concerns/> (accessed 29 February 2020).

⁶³ University World News, Police storming of campuses condemned internationally, 22 November 2019, <https://www.universityworldnews.com/post.php?story=20191112165359859> (accessed 29 February 2020).

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

61. The arrest of pro-democracy newspaper owner and publisher Jimmy Lai, the owner of Apple Daily, a major news publication in Hong Kong, and Labour Party vice-chair and politician Lee Cheuk-yan denotes an increased willingness by the HKSAR government and Beijing to further pervert the freedom of media and speech.⁶⁶ Yeung Sum, ex-lawmaker and former chief of the Democratic Party, was also detained for allegedly organising an unlawful assembly on the same day.⁶⁷ On 27 February 2020, Mr. Lai, Mr. Lee and Mr. Yeung were both arrested on suspicion of taking part in an illegal assembly during an anti-extradition law demonstration on August 31 the previous year. Hundreds of thousands of protesters participated in the August 31st march, but prominent figures such as Mr. Lai, an outspoken critic of Beijing and a major financial backer of Hong Kong's pro-democracy movement, were specifically targeted by the HKSAR government six months after the march and coincidentally arrested soon after the appointment of Xia Baolong as the Director of the Hong Kong and Macau Affairs Office only two week prior.⁶⁸

Issue 5 Recommendations

62. We urge the Hong Kong government to set up an independent commission of inquiry to investigate the serious allegations of infringement of press freedom, including but not limited to the excessive use of force by the HKPF in the Public Order Events.

⁶⁶ Natalie Lung & Sheridan Prasso, "Hong Kong Newspaper Owner Arrested on Charges of Unlawful Assembly and Intimidation", *Time*, 27 February 2020, <https://time.com/5792171/apple-daily-jimmy-lai-arrested/> (accessed 18 March 2020).

⁶⁷ Rachel Wong and Tom Grundy, "Hong Kong police arrest pro-democracy newspaper tycoon Jimmy Lai and Labour Party vice-chair Lee Cheuk-yan", *Hong Kong Free Press*, 28 February 2020, <https://www.hongkongfp.com/2020/02/28/hong-kong-police-arrest-pro-democracy-newspaper-tycoon-jimmy-lai-labour-party-vice-chair-lee-cheuk-yan/> (accessed 18 March 2020).

⁶⁸ Reuters, "China replaces head of its Hong Kong and Macau affairs office", 13 February 2020, <https://www.reuters.com/article/us-china-hongkong/china-replaces-head-of-its-hong-kong-and-macau-affairs-office-idUSKBN2070CV?feedType=RSS&feedName=worldNews> (accessed 18 March 2020).