



香港人權監察
Hong Kong Human Rights Monitor



28 June 2019

Carrie Lam

Chief Executive

Office of the Chief Executive, Tamar, Hong Kong

ceo@ceo.gov.hk

CC:

John Lee Ka-chiu

Secretary for Security

10th Floor, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong

Stephen Lo Wai-chung

Commissioner of Police

42th Floor, Arsenal House, Police Headquarters, No.1 Arsenal Street, Wan Chai, Hong Kong

Dear Chief Executive,

OPEN LETTER CALLING FOR AN INDEPENDENT COMMISSION OF INQUIRY

We are writing to urge the Hong Kong government to carry out an **independent, impartial, effective and prompt investigation** into the use of force, including tear gas, guns firing bean bag rounds and rubber bullets, batons and pepper spray by the Hong Kong police against protesters at the vicinity of the Central Government Offices on June 12, 2019.

On June 12, tens of thousands of protesters assembled around the Legislative Council (LegCo) building and its nearby roads, calling on the government to drop its proposed amendments to Hong Kong's extradition law. **The Hong Kong police used the violent acts of a small number of protesters as a pretext to use unnecessary and excessive force against the vast majority of peaceful protesters.**

The following incidents are of particular concern:

- Police unleashed tear gas from both sides of Lung Wui Road at the same time to disperse a large crowd gathered outside Admiralty's CITIC Tower. With no other escape routes,

hundreds of largely unarmed protesters were then cornered by the police while trying to get into CITIC Tower to escape the tear gas.

- A group of riot police using batons and the edge of their shields to brutally beat a female protester multiple times during the daytime after she had been wrestled to the ground outside the Legislative Council.
- Special Tactical Squad members firing what are thought to be rubber bullets into crowds of protesters on the pavement and the flyover at the intersection between Harcourt Road and Cotton Tree Drive during daylight hours on 12 June. The footage shows a protester being hit in the face by a suspected rubber bullet.
- A police officer in protective gear spraying 14 shots of suspected pepper liquid at close range in the face of a man sitting alone and passively on the edge of an outdoor planter during the daytime on 12 June in Lung Wo Road.

The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials clearly establish that law enforcement officials may only use force for certain justified legitimate purposes and when other non-violent means remain ineffective or are unlikely to be effective to stop persons engaged in violence. When using force, law enforcement officials should exercise restraint and act in proportion to the seriousness of the offense and to the legitimate objective to be achieved.

Despite public demands for an independent Commission of Inquiry to be established to carry out a full investigation into police conduct on June 12 and the events leading up to it, both the Commissioner of Police and you have been unwilling to do so on the basis that existing police complaint system is adequate to investigate allegations of police violence or other misconduct.

As of February 2016, various United Nations human rights treaty bodies have criticized on the shortcomings of Hong Kong's police complaint mechanism. In the existing mechanism, the Complaints Against Police Office (CAPO), which is a branch of the Hong Kong Police Force, is mandated to "oversee[s] the investigation and successful resolution of all complaints made both externally and internally against members of the force." CAPO is advised by the Independent Police Complaints Council (IPCC), a body that the UN Human Rights Committee in its Concluding Observations on Hong Kong in 2013 said had limited powers and lacked independence.

Despite a considerable number of reportable complaints filed with the CAPO, only a small percentage of them were classified as substantiated. Between 2004 and 2018, CAPO received 6,412 complaints alleging police assault. Only four cases were substantiated by CAPO, while over half of the cases were dismissed without actionable conclusions. Between 2010 and 2018, among all of the cases on police misconduct substantiated by the IPCC, the police responded by referring only one case for prosecution, while officers in the majority of cases were only given "advice."

Because of the **ineffectiveness and lack of independence of the existing mechanism in handling complaints against police**, it is therefore imperative that an independent Commission of Inquiry be set up to carry out an independent, impartial and thorough investigation into the use of force incidents by Hong Kong police against protesters on 12 June.

Amnesty International Hong Kong, Hong Kong Human Rights Monitor, and Human Rights Watch **call on the Hong Kong government to establish an Independent Commission of Inquiry to conduct an independent, impartial, effective and prompt investigation into the use of force on June 12, 2019. A suggested terms of reference is included in the annex.** This Commission of Inquiry should also provide the basis for bringing any law enforcement official responsible for the unlawful use of force as well as their superior officers to justice and disciplinary action. The Hong Kong government's failure to act appropriate action at this time will undermine the Hong Kong police force's reputation as a generally rights-respecting law enforcement agency.

We look forward to your reply and would be pleased to discuss these matters with appropriate officials at your convenience.

Sincerely,

Man-kei Tam

Director

Amnesty International Hong Kong

Claudia Yip

Spokesperson

Hong Kong Human Rights Monitor

Sophie Richardson

China Director

Human Rights Watch

Enclosure:

Annex with additional information on the existing police complaint system, Commissions of Inquiry Ordinance (Cap. 86), and suggested terms of reference for the independent Commission of Inquiry

Annex

Current police complaints system--the Complaints Against Police Office (CAPO) and the Independent Police Complaints Council (IPCC)

Several of the United Nations human rights bodies that monitor compliance with international human rights obligations have made specific findings and recommendations to the Hong Kong Government relating to concerns with the existing police complaints mechanism and its lack of independence. In 2013 the Human Rights Committee that monitors compliance with the International Covenant on Civil and Political Rights (ICCPR) which is implemented in Hong Kong law by the Bill of Rights stated:

“...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.”

More recently in 2016, the Committee Against Torture which monitors compliance with the Convention Against Torture raised similar concerns and recommendations:

“8. Recalling its previous recommendation (see CAT/C/HKG/CO/4, para. 12), the Committee remains concerned that investigations of police complaints continue to be conducted by the Complaints Against Police Office, which is a separate division of the police force. It is also concerned that the Independent Police Complaints Council remains an advisory and oversight body of the investigations of the Complaints Office, with no power to conduct investigations on its own....

9. The Committee reiterates its previous recommendation that Hong Kong, China consider establishing a fully independent mechanism mandated to receive and investigate complaints against all officials and ensure that there is no institutional or hierarchical relationship between the investigators of that particular body and the suspected perpetrators of the acts that form the basis of a complaint.”

For the above concerns, it is imperative that an independent commission of inquiry be set up to carry out an independent, impartial and thorough investigation into the use of force incidents by Hong Kong police against protesters on 12 June. Suggested terms of reference for the Commission of Inquiry are as follows:

Independent Commission of Inquiry: Police Actions during Extradition Bill protests

It is recommended that an Independent Commission of Inquiry be established by the Hong Kong Government, pursuant to the powers and requirements of Commissions of Inquiry Ordinance (Cap. 86) (“the Ordinance”) to investigate:

- the allegations of excessive use of force; and
- any other related misconduct by the Hong Kong Police Force during the period of the protests against the Extradition Bill in Hong Kong between 9 and 15 June 2019.

The terms of reference should include:

1. inquiring into the facts and circumstances surrounding the following:

- a) allegations of any excessive use of force or other misconduct with tear gas, rubber bullets, beanbag rounds, beatings against protesters, journalists and by-standers;
- b) allegations of Police officers failing to display their ID numbers on their uniforms;
- c) allegations of inappropriate use of stop and search by Police on the public;
- d) allegations that Police obtained and used the personal data of patients at hospitals who may have been involved in the protests;
- e) the circumstances surrounding the designation and partial retraction of the protests as "riots";
- f) the chain of command in the Police Force and Government for any decisions regarding the use of force or other related conduct;
- g) any other allegations of misconduct.

2. ascertaining whether in relation to any of the issues in (1) above there has been any improper conduct by the Police Force or Government;

3. reviewing the adequacy of the laws, Police Force's General Orders, Procedures Manual, guidelines and training on the use of force, stop and search, display of ID numbers and any related matters;

4. reviewing the adequacy of institutions responsible for handling complaints; and

5. in light of the findings on (1) to (4), make any recommendations on suitable laws, institutions, policies or other measures to prevent Police misconduct and improve the functioning of the Police Force in the future.

An independent Commission of Inquiry offers protection to the victims and witnesses giving evidence at the Inquiry, enhances a fair and transparent investigation, revealing facts and causes relevant to the incidents, and is hence definitely conducive to restoring public confidence in the Police Force and good governance and upholding the rule of law.

Under section 7 of the Ordinance, the verdicts and evidence given cannot not be used against victims or witnesses in any civil or criminal proceedings (except for perjury and contempt committed at the Inquiry). Section 12 further provides that all evidence given before a Commission shall be given absolute privilege, meaning that the persons giving evidence cannot be held liable to any suit or civil proceeding in respect of their evidence. These are important safeguards to ensure the effectiveness of the investigation and the comprehensiveness of collection of evidence. On the other hand, the current CAPO and IPCC mechanisms do not provide equivalent safeguards. Information collected by CAPO may be used by, disclosed to, or transferred to third parties who may be involved in the investigation of the complaint, including the IPCC. By virtue of section 40 of the Independent Police Complaints Council Ordinance (Cap. 604), any information held by the IPCC relating to a complaint may be disclosed and used for the purpose of reporting evidence of any actual or suspected crime, such that complainants and witnesses may be discouraged from making complaints or giving evidence, for fear of incriminating themselves.

Under section 11 of the Ordinance, an inquiry held by an independent commission shall be deemed to be a judicial proceeding. This offers to victims and witnesses the protection of legal safeguards generally provided in judicial proceedings, such as the right against self-incrimination. Further, any conduct amounting to contempt of court would also be treated with the same scrutiny as contempt committed in the Court of First Instance, imposing a higher standard of proof in relation thereof.

Moreover, the Commission's powers of investigation **under section 4 of the Ordinance** are far more extensive than both CAPO and IPCC. In conducting an inquiry, the Commission may consider any evidence submitted to it, notwithstanding that it would not otherwise be admissible in civil or criminal proceedings. **The Commission may also summon any person to give or produce any evidence, examine any person on oath or affirmation, prohibit the publication or disclosure of evidence, and issue warrants for the search and seizure of any evidence relevant to the investigation.** By contrast, the IPCC has limited functions and investigative powers, which are to be exercised in individual cases of complaints. Essentially, the IPCC only supervises and reviews the findings upon

evidence collected by CAPO. As such, the evidence available to the IPCC may be susceptible to bias and does not allow for a holistic review of all available evidence for the inquiry.

Co-signing Organizations of Human Rights Defenders and Journalists 共同簽署的人權及記者組織：



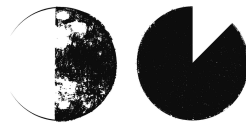
Co-signing non-governmental organizations 共同簽署的非政府組織：



Chosen Power (People First Hong Kong)
卓新力量



Civil Society Development Resources Center
公民社會發展資源中心



殘疾資歷生活館
DISABILITIES CV
Disabilities CV
殘疾資歷生活館



思言財雋
FINANCIER CONSCIENCE
Financier Conscience
思言財雋



香港教育專業人員協會
Hong Kong Professional Teachers' Union
Hong Kong Professional Teachers' Union
香港教育專業人員協會



香港融樂會
HONG KONG UNISON
Hong Kong Unison Limited
香港融樂會有限公司



人本教育文教基金會
Humanistic Education Foundation, Taiwan
人本教育文教基本會



FITH-IDWF-FITD
International Domestic Workers Federation



Justice and Peace Commission of the Hong Kong Catholic Diocese
香港天主教正義和平委員會



la la team
啦啦隊



女角
LES CORNER
平權協作組
LES CORNER
EMPLOYMENT ASSOCIATION
Les Corner Empowerment Association
女角平權協作組



活在觀塘
Living in Kwun Tong
活在觀塘

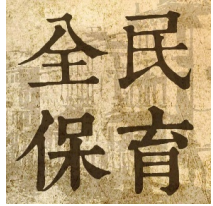


Midnight Blue
午夜藍



華人民主書院
New School for Democracy
華人民主書院

Northern California Hong Kong Club
北加州香港會



Save Hong Kong Heritages
全民保育行動



Scholars' Alliance for Academic Freedom
學術自由學者聯盟



囂民集作
The Human Commons
The Human Commons
囂民集作



Vancouver Society in Support of Democratic Movement