



**Convention Against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment (“CAT”)**

**Follow up submission to the Committee Against Torture concerning the
fifth report of the Hong Kong Special Administrative Region of the
People’s Republic of China**

Submitted by: Sounds of the Silenced

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Executive summary

1. This is a follow up submission in relation to the fifth periodic report (CAT/C/CHN-HKG/5) of Hong Kong Special Administrative Region (“HKSAR”) considered by the Committee against Torture at its 1368th and 1371st meetings, held on 17 and 18 November 2015, and the Concluding Observations of the Committee, as adopted at its 1392 and 1393 meetings, held on 3 December 2015.¹ This submission is also riding on the subsequent follow-up information submitted by the HKSAR in November 2016 against the third periodic report of the region concerned.
2. In the recent protests that started over the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment Bill 2019, or “Extradition Bill”) from June 2019, the issue of Hong Kong Police Force (HKPF) excessive use of force was condemned by UN Special Rapporteurs, including the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in a joint statement dated 12 September 2019.²
3. In view of the urgency and escalation of the matter, we therefore invite the consideration of the issues of HKPF use of excessive force against protestors and persons in custody/detention by the Committee and its Rapporteur for follow-up on the Concluding Observations, when examining the information provided by the HKSAR Government.
4. This report presented 7 case studies of Hong Kong people who provided their testimonies to our organization, in which some of them were protesters, while the others are passers-by, being subjected to torture, and other cruel, inhuman or degrading treatment or punishment by the HKPF in the context the Anti-Extradition Bill movement.³ Apart from the first-hand information we gathered from those 7 victims, relevant observations from other second-hand sources are also included herein to illustrate the rampant police brutality and the nosedive human rights infringement here in Hong Kong.⁴

¹ Available at: https://www.cmab.gov.hk/en/press/reports_human.htm

² Leila Zerrougui, Situation of detainees at Guantánamo Bay, Report of the Chairperson-Rapporteur of the Working Group on Arbitrary Detention; Leandro Despouy, the Special Rapporteur on the independence of judges and lawyers; Manfred Nowak, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Asma Jahangir; the Special Rapporteur on freedom of religion or belief, and Paul Hunt, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, February 27, 2006, E/CN.4/2006/120.

³ Please refer to Case 1, Case 3-7.

⁴ Including Case 2, which was drawn from internet source.

I. Introduction

5. The Sounds of the Silenced (“SOS”) is an organisation founded by a group of Hong Kong citizens in response to the 2019 protests wherein most of the personnel are either legal practitioners or law students.
6. Further to the Concluding Observations of the Committee on the third periodic report of the HKSAR and the Follow-up information submitted by the region, the SOS hereby provides our follow-up submission with evidence to show the inaction of the HKSAR on the relevant matters, as well as to indicate the abusive conduct and tactics employed by the HKPF within the scope of the CAT.
7. The relevant Follow-ups provided by the HKSAR which the SOS considers the region has fallen short were that:

Paragraphs 8-10, 16 of the Follow-up

- Any perpetrators of torture or ill-treatment (including public officials acting in the course of duty) will be prosecuted, tried, and punished in accordance with the law;
- A public official or person acting in an official capacity, whatever the official’s or the person’s nationality or citizenship, commits the offence of torture under the Crimes (Torture) Ordinance (Cap.427) if in Hong Kong or elsewhere the official or the person intentionally inflicts severe pain or suffering on another in the performance or purported performance of his or her official duties;
- Where there is evidence suggesting that a public official may have committed a criminal offence, the matter will be referred to the Prosecutions Division of the Department of Justice (“DoJ”) for deciding whether or not to prosecute the official in question, and if so, for what offence(s);
- The relevant authority may, after taking into consideration the circumstances and relevant factors of the case, interdict a civil servant from duty if the civil servant has been or is likely to be charged with or convicted of a criminal offence (including the offence of torture) and it is in the public interest to cease his/her official duties.

Paragraph 18 of the Follow-up

- The Police always respect the rights of persons under police custody. Every arrested person will, as soon as possible, be informed that they are under arrest, together with the factual grounds and the reason for the arrest. A notice listing the rights of a detained person will be served on and signed by every detained person. These rights include the right to seek legal assistance, to communicate privately with a

lawyer of their choice, and to have a lawyer represent during any interview with the Police the right to communicate with a friend, relative or consulate, etc. as soon as possible provided no unreasonable delay or hindrance is reasonably likely to be caused to the process of investigation or administration of justice; and the right to receive medical attention, etc. When a person in police detention so requests or if a duty officer considers that the detainee is in need of medical attention, the duty officer shall send the detainee to the nearest public hospital or clinic by ambulance under escort. When a person in police custody is charged with an offence, the person shall normally be taken before a Magistrate as soon as practicable. The Police conduct investigations into all allegations against police officer in a fair and impartial manner, and the Independent Police Complaints Council possesses statutory power to monitor the Police's handling and investigation of complaints. The Police will duly prosecute alleged perpetrators when appropriate in consultation with the DoJ.

II. Methodology

8. This report has made its findings on the basis of the “reasonable grounds to conclude” standard of proof, unless otherwise specified. Part of the primary and secondary information of police violence was collected during SOS's first phase of investigations leading up to the presentation of an urgent appeal submitted via the Special Procedure.

III. Context

9. On 9 June 2019, over one million people, about one-seventh of the HKSAR population, demonstrated peacefully against the proposed legislative changes to the Extradition Bill, which would expand the extradition arrangement to mainland China.⁵ In response to the demonstration, the HKSAR government issued a statement confirming that LegCo would continue considering the amendments as planned, completely ignoring the clearly-expressed public opinion in overwhelming opposition.⁶

On 12 June 2019, tens of thousands of protesters gathered around the streets in the vicinity of LegCo, aiming to press the government to drop the bill, which was scheduled to be considered that day.⁷ The protesters were largely peaceful and equipped with only masks, goggles, and umbrellas. However, the HKPF responded by firing 150 rounds of tear gas and using potentially lethal weapons including bean bag rounds and rubber

⁵ James Griffiths, “More than 1 million protest in Hong Kong, organizer says, over Chinese extradition law”, *CNN*, 10 June 2019, available at: <https://edition.cnn.com/2019/06/08/asia/hong-kong-extradition-bill-protest-intl/index.html>

⁶ *Ibid.*

⁷ Anonymous, “As it happened: Hong Kong police and extradition protesters renew clashes as tear gas flies”, *South China Morning Post*, 12 June 2019, available at: <https://www.scmp.com/news/hong-kong/politics/article/3014104/thousands-block-roads-downtown-hong-kong-defiant-protest>

bullets for the first time in Hong Kong history.⁸ Notwithstanding the HKSAR government announcing the suspension of the legislative process and formal withdraw of the Extradition Bill in June and early September respectively, the matter of police brutality appeared to have escalated in severity in the past six months and has formed a pattern as in a kind of general practice of the HKPF's excessive use of force and/or potentially-lethal weapons arbitrarily towards Hong Kong citizens.

10. As the Committee has previously noted, the HKPF has suffered problems of excessive use of force, deprivation of rights in detention and allegations of assault and sexual violence. During the anti-extradition protests, the HKPF has perpetrated human rights abuse on a larger scale and to a more severe degree. Many in the HKPF have used dehumanizing language to describe the protesters, including "cockroaches" and subhumans.⁹ The Hong Kong government has consistently refused to form an independent commission to investigate allegations of police abuse, but has held weekly press conferences to justify police behavior.
11. Against this background, the HKPF has operated with de facto impunity. As of 9 December 2019, the HKPF has fired about 16,000 rounds of tear gas, 10,000 rubber bullets, 2,000 bean bag rounds, 1,850 shots of sponge grenade and also 19 live rounds; over 6,000 people have been arrested, at least 930 people got laid charge and prosecuted.¹⁰ Amongst the arrests and detention, there have been credible reports of widespread ill-treatment, beatings and sexual abuse of people in police detention, which constitute violations of fundamental human rights.¹¹
12. On 1 October, a protester was shot in the chest at close range by a Special Tactical Squad police officer with live ammunition as the protester beat the officer with a stick. He was sent to the hospital and was once in critical condition.¹² The shooting represents a major escalation of force as this is the first time the police has hit a protester with a live round; and the intentional lethal use of firearms represents a gross violation of

⁸ Kris Cheng, " 'Very restrained' – Hong Kong police say 150 rounds of tears gas, 20 bean bag shots fired during anti-extradition law 'riot'", *Hong Kong Free Press*, 13 June 2019, available at: <https://www.hongkongfp.com/2019/06/13/just-restrained-hong-kong-police-say-150-rounds-tears-gas-20-bean-bag-shots-fired-anti-extradition-law-riot/>

⁹ Shibani Mahtani, "'Dogs' vs. 'cockroaches': On Hong Kong streets, insults take a dangerous turn", *The Washington Post*, 4 November 2019, available at: https://www.washingtonpost.com/dogs-vs-cockroaches-on-hong-kong-streets-language-of-genocide-rears-its-head/2019/11/04/32498608-fea7-11e9-8341-cc3dce52e7de_story.html

¹⁰ Kris Cheng, "Hong Kong police used crowd control weapons 30,000 times since June; over 6,000 arrested", *Hong Kong Free Press*, 10 December 2019, available at: <https://www.hongkongfp.com/2019/12/10/hong-kong-police-used-crowd-control-weapons-30000-times-since-june-6000-arrests/>

¹¹ See for example: Amnesty International, "Hong Kong: Arbitrary arrest, brutal beatings and torture in police detention revealed", 19 September 2019, available at: <https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/>

¹² Anonymous, "As it happened: Hong Kong protester shot in chest, six live rounds fired on National Day", *South China Morning Post*, 1 October 2019, available at: <https://www.scmp.com/news/hong-kong/politics/article/3031044/chaos-expected-across-hong-kong-anti-government-protesters>

human rights as it is not “strictly unavoidable in order to protect life” (Principle 9 of the OHCHR Basic Principles on the Use of Force and Firearms by Law Enforcement Officials). Furthermore, on 4 October and 10 October, live rounds have also been fired at two young protestors at close range.¹³ One of the protestors who is 21-year old needed to undergo urgent surgery which removed his damaged kidney.¹⁴

13. On November 17, the HKPF laid siege to the campus of Hong Kong Polytechnic University. The police deployed water trucks and armoured vehicles on campus and fired more than 1,458 rounds of tear gas and 1,391 rounds of rubber bullets on November 18.¹⁵ More than 1,100 people were arrested in relation to the incident, and new allegations of abuse in police detention have emerged, including beating, delaying medical care, and naked strip search.¹⁶

IV. Detention and Fundamental Legal Safeguards

14. Hong Kong, China should ensure that all detainees are afforded in practice all fundamental legal safeguards from the very outset of their deprivation of liberty, including the right to be assisted by a lawyer without delay; to have immediate access to examination and treatment by independent doctors, without conditioning such access on the permission of officials; to be informed of the reasons for arrest and the nature of any charges against them; to be registered at the place of detention; to inform promptly a close relative or a third party concerning their arrest; and to be brought before a judge without delay. Hong Kong, China should adopt effective measures to ensure compliance with its legally prescribed procedures of arrest and monitor the compliance of public officials with the legal safeguards. It should also ensure that those who are suspected of not complying with the legal guarantees or of arresting persons without justifiable reason are investigated and, if found guilty, duly sanctioned. (paragraph 13 of the Concluding Observations)
15. Committee has previously noted the consistent reports of massive detentions of persons and the alleged restrictions of the detainees’ legal safeguard which occurred after the annual march on 1 July 2014. In response to the Committee’s recommendation at paragraph 13, the HKSAR government published follow-up information in 2016, which stated that:

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Anonymous, “Hong Kong Polytechnic University: Protesters still inside as standoff continues”, *BBC News*, 19 November 2019, available at: <https://www.bbc.com/news/world-asia-china-50465337>

¹⁶ Anonymous, “8 留醫青年被控暴動今提堂 投訴警毆打、要求全裸抬高臀部、拖延 18 小時送院 眼腫瘀青”, *The Stand News*, 21 November 2019, available at: <https://www.thestandnews.com/politics/8-留醫青年被控暴動今提堂-投訴警要求全裸抬高臀部-毆打-拖延-18-小時送院-眼腫瘀青/>

The Police always respect the rights of persons under police custody [...] These rights include the right to seek legal assistance, to communicate privately with a lawyer of their choice, and to have a lawyer present during any interview with the Police; the right to communicate with a friend, relative or consulate, etc. as soon as possible provided no unreasonable delay or hindrance is reasonably likely to be caused to the process of investigation or administration of justice; and the right to receive medical attention, etc. When a person in police detention so requests or if a duty officer considers that the detainee is in need of medical attention, the duty officer shall send the detainee to the nearest public hospital or clinic by ambulance under escort... (paragraph 18 of the follow-up information, emphasis added)

16. Despite committing itself to respect the rights of persons under police custody, credible reports and victim testimonies show that, in the context of the Anti-Extradition Bill movement, detained protesters have been severely beaten in custody, suffered other ill-treatment amounting to torture, and deprived of the aforesaid basic rights and legal guarantees.
17. San Uk Ling Holding Centre (the “SUL”) is located at a remote area, which is about 1.5 km from Shenzhen and only a few hundred metres away from the Man Kam To Control Point. The center has ceased operation and was not known by the general public until it started to detain protestors firstly on 5 August 2019, then detained the second batch of arrested persons on 11 August 2019, and most recently on 31 August 2019. According to one of the authors of this submission, Ms. Angie Te, who is working as the back-office secretary of the pro bono services, the police would not inform the lawyers or relatives of the whereabouts of the arrested persons:
18. On 5 August 2019, the pro bono lawyers’ group only managed to discover that SUL was being used to detain protestors through a GPS tracking system that was activated on one of the arrested persons’ smart phone and the result was sent back to the mother of the person.
19. According to Ms. Angeline Chan and Mr. Billy Li, both of whom are the pro bono lawyers for the recent protests, SUL is particularly hard to reach for the lawyers to offer legal support as it is far from the city. It is also not a suitable and normal venue of custody for 48-hour detention, given that the police could only offer one meeting room and a pantry for the lawyers to meet their clients. One time, 5-7 lawyers had to wait outside the holding centre in a rural area for up to over 10 hours. A police officer then claimed that there was not enough facility and only let two lawyers in to deal with over 50 arrested persons. There were also instances where the police claimed that there was no available room for lawyers to meet clients, but then reverted hours later that the arrestees had been taken caution statement when the lawyers were physically waiting outside the holding centre.

20. Apart from the delayed access to legal assistance, interviews of arrested persons show that detained protesters have been severely beaten in police custody and suffered other ill-treatment and torture, including deprivation of timely medical treatment, sexual assaults perpetrated by opposite and/or same gender police officers, verbal abuse, and forced confession.

Case 1

Deprivation of timely medical treatment constituted CIDTP

Summary of Facts:

Although the victim made no attempt to resist or evade the arrest, he was pinned down to the ground when he was confronted by 2 to 3 police officers near a scene of demonstration on 11 August. The police officers then pressed themselves on him until he suffered immense pain and shortness of breath. He made more than 10 requests for medical treatment but the requests were all ignored by the police. C was sent to the hospital after 8 hours in detention in San Uk Ling Detention Centre. He was diagnosed with rib fractures and was hospitalized for 3 days.

Analysis:

Rib fracture may bring forth complications such as pneumothorax which can become fatal. According to Dr. Sharma and Dr. Jindal, “[w]ith non penetrating trauma, a pneumothorax may develop if the visceral pleura is lacerated secondary to a rib fracture, dislocation”. We therefore submit that the intentional withholding of critical medical service from a detainee for a potentially fatal condition constituted cruel and inhuman treatment, especially if the medical service delayed or denied for the purposes of extracting a statement or confession from the injured detainee treatment (See: Standard Minimum Rules for the Treatment of Prisoners, Rule 25).

Reference:

- Sharma, A., & Jindal, P. (2008). Principles of diagnosis and management of traumatic pneumothorax. *Journal of Emergencies, Trauma and Shock*, 1(1), 34.

Alleged violations:

- #CAT (article 1): Prohibition of torture and other cruel, Inhuman or degrading treatment or punishment
- #ICCPR (article 7): No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment
- #ICESCR (article 12): Enjoyment of the highest attainable standard of physical and mental health
- #Standard Minimum Rules for the Treatment of Prisoners (Rule 25)

Summary of Facts:

The victim was arrested in Wong Tai Sin in mid-August and sent to a police station. One of the victims recalled that he/she was detained in a “very cold room” in the police station and shivered with his hands clasped. A middle-aged police officer asked whether the victim was cold and, putting his hand on his shoulder, asked the victim to perform oral sex on him to make the victim “warm and comforting”. The police officers also took the victim to the toilet for a thorough search, and requested the victim to take off his underpants. The officer threatened the victim by saying, “You’re dead meat if you don’t cooperate”.

For more details, please refer to the interview video (00:39- 1:35):

https://www.youtube.com/watch?v=MaJJ5NXc0N8&has_verified=1

Analysis:

It is well established that rape and other forms of sexual violence can amount to torture and ill-treatment (for example, see: Ortega et al. vs. Mexico (2010) Inter-American Court of Human Rights). More specifically, stripping detainees naked has been recognised as a form of torture and/or cruel and and degrading treatment. According to the International Criminal Tribunal for the former Yugoslavia (ICTY), “... some acts establish per se the suffering of those upon whom they were inflicted [...] sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterisation as an act of torture.” Strip-search is one of such conduct of sexual humiliation which could cause severe mental suffering on the victim. According to the ICTY jurisprudence, sexual violence can also be used for the purpose of humiliation and it need not involve physical contact.

The UN Working Group on Arbitrary Detention and four UN Special Rapporteurs issued a report titled Situation of Detainees at Guantanamo Bay, which stated that:

“[S]tripping detainees naked, particularly in the presence of women, and taking into account cultural sensitivities, can in individual cases cause extreme psychological pressure and can amount to degrading treatment, or even torture.”

The nature and extent of the sexual humiliation employed by the police clearly meets the requirements of torture and/or cruel and inhuman treatment. Not only was the victim stripped-searched, he/she was subjected to inappropriate physical contact with the intimate parts of the officer’s body. This has also created mental suffering on the part of the victim.

Reference:

- Prosecutor v. Kunarac et al., ICTY, Case No. ICTR-96-23/1-A, Judgment of 12 June 2002, paras.149-151.
- Leila Zerrougui, Situation of detainees at Guantánamo Bay, Report of the Chairperson-Rapporteur of the Working Group on Arbitrary Detention; Leandro Despouy, the Special Rapporteur on the independence of judges and lawyers; Manfred Nowak, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Asma Jahangir; the Special Rapporteur on freedom of religion or belief, and Paul Hunt, the

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, February 27, 2006, E/CN.4/2006/120.

Alleged violations:

- #CAT (article 1): Prohibition of torture and other cruel, Inhuman or degrading treatment or punishment
- #ICCPR (article 7): No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment
- #HKSAR Basic Law (article 28): Torture of any resident or arbitrary or unlawful deprivation of the life of any resident shall be prohibited.
- #Standard Minimum Rules for the Treatment of Prisoners (Rule 25)

V. Excessive use of force when containing demonstrations

21. The Committee is concerned at consistent reports of excessive use of tear gas, batons and sprays against protesters during the 79-day protest of the so-called “umbrella” or “occupy” movement in 2014. It is also concerned at consistent reports that police resorted to violence against more than 1300 people, and around 500 were subsequently admitted to hospitals. The Committee expresses concern at allegations of threats of sexual violence and assaults by the police to demonstrators while they were following the instructions of leaving the scene. Furthermore, it notes with concern of various instances of violence perpetrated by counter-demonstrators. As regards the complaints received by the Complaints Against Police Office during the protest and their investigation, the Committee is concerned that, out of 527 complaints made by a total of 2078 complainants, only 172 complaints were considered “reportable”. Of those 172 reportable complaints, the Complaints Office submitted investigation reports to the Independent Police Complaints Council for 151 cases, which were considered unsubstantiated by the Complaints Office. The Complaints Council endorsed the findings of the Complaints Office in 104 cases. The Committee is also concerned at the lack of information with regard to the outcome of the 47 complaints not endorsed by the Complaints Council (arts. 12, 13 and 16). (paragraph 14).

22. We wish to draw your attention to the latest publication of the advanced edition of The United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement¹⁷ issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in October 2019- outcome of research and broad consultations carried out under the auspices of the Geneva Academy and the University of Pretoria (hereinafter referred to as the “Geneva Guidance”). As the Academy stated in its website, the publication of the advanced version of the Guidance was prompted

¹⁷ Geneva Academy of International Humanitarian Law and Human Rights, “New Human Rights Guidance on the Use of Less-Lethal Weapons”, 15 October 2019, available at: <https://www.geneva-academy.ch/news/detail/269-new-human-rights-guidance-on-the-use-of-less-lethal-weapons>

by the recent events in Hong Kong and Iraq, which show that, “use of force during assemblies raises major challenges under International human rights law”¹⁸.

23. The HKPF frequently used less-lethal weapons during assemblies or protest in a manner that has contravened international guidance and caused unnecessary and disproportionate harm to civilians. In particular, the use of kinetic impact projectiles (eg rubber bullets, bean bag rounds and sponge rounds) against the head, face or neck (para. 7.5.8 of the Geneva Guidance); firing of irritant projectiles at protesters (para. 7.3.8 of the Geneva Guidance); use of chemical irritants in confined space (para. 7.3.7 of the Geneva Guidance); and the use of these weapons without clear prior warning.
24. Instances of violence perpetrated by counter-demonstrators also persisted in the context of the Anti-Extradition Bill movement, in spite of the fact that concerns have been raised by the Committee in its 2015 Concluding Observation.

A. Kinetic impact projectile (eg rubber bullet)

25. Of particular concern is the HKPF’s excessive and indiscriminate use of kinetic impact projectiles which posed substantial risk of serious injuries on demonstrators. On 29 September, an Indonesian reporter, Ms Veby was hit by a rubber bullet/bean bag round by police in the right eye when she was reporting on the protests for her publication.¹⁹ She was situated on the elevated footbridge linking HK Immigration Tower to Wanchai subway exit, and wearing a high visibility vest with ‘Press’ markings and a protective helmet with ‘Press’ markings. Her press credentials were displayed from a lanyard round her neck and she was standing with other members of the press on the footbridge at the top of the stairs, who were similarly dressed in high visibility vests and helmets with ‘Press’ markings.²⁰
26. Moments before the shooting, some riot police officers, including the shooter, had been at the top of the stairs where the group of journalists were gathered. The shot was fired by the officer from a position half way up the stairs to the footbridge in the direction of the group of journalists.²¹

¹⁸ Ibid.

¹⁹ Kris Cheng, “Hong Kong riot police target journalists during Sunday unrest, as reporter shot in the eye with projectile”, *Hong Kong Free Press*, 30 September 2019, available at: <https://www.hongkongfp.com/2019/09/30/hong-kong-riot-police-target-journalists-sunday-unrest-reporter-shot-eye-projectile/>

²⁰ Chris Lau, “Lawyer of Indonesian journalist shot in the eye mulls legal action against Hong Kong police to bring guilty to book” *South China Morning Post*, 12 October 2019, available at: <https://www.scmp.com/news/hong-kong/politics/article/3032644/lawyer-indonesian-journalist-shot-eye-mulls-legal-action>

²¹ Ibid.

27. The projectile struck Ms Veby's protective eye goggles from a distance of approximately 12 meters, resulting in permanent blindness in her right eye.²² This act constituted an intentional infliction of grievous bodily harm on Ms. Veby. As shown in an online video, the fact that the riot police, whilst retreating, suddenly stopped, turned back and fired the projectile towards Ms. Veby whose press credentials was clearly shown to him, indicates that he made a conscious judgment to fire the projectile at her.²³ As Ms Veby displaced no danger to anyone, the reasonable inference is that the riot police intentionally inflict severe harm on her in order to punish or intimidate her for reporting at the scene.

Case 3

Deployment of excessive force constituted cruel, inhumane and degrading treatment

Summary of Facts:

On 12 June, 2019, several hundreds of 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 was one of the protesters. He recalled that riot police suddenly turned up at about 16:00 and, without any warning, started firing rubber bullets and tear gas at the assembly at very short range. The victim was about 5 meters from the police when he was shot at the face by a rubber bullet. The extensive injury penetrated into the muscle layer of the cheek, requiring 10 sutures to close up the wound. His 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. Victim 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 the victim constituted cruel, inhuman or degrading treatment or punishment. 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.

The firing of rubber bullet at the victim's face was potentially lethal and/or subject 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

²² Tom Grundy, "Journalist shot in face with Hong Kong police projectile will lose sight permanently in right eye, lawyer says", *Hong Kong Free Press*, 2 October 2019, available at: <https://www.hongkongfp.com/2019/10/02/breaking-journalist-shot-face-hong-kong-police-projectile-will-lose-sight-permanently-right-eye-lawyer-says/>

²³ *Ibid.*

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”. In the absence of an imminent threat of death or serious injury, we submit that the use of rubber bullet was not “strictly unavoidable”. Considering i) the severity of the injuries caused to the victim; and ii) the risks of permanent blindness and/or death imposed on him, the use of rubber bullet 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.

Reference:

- Abdullah Yasa and others v. Turkey (2013) ECHR 839
- 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.
- Amnesty International, “Verified: Hong Kong police violence against peaceful protesters”, 21 June 2019, available at: <https://www.amnesty.org/en/latest/news/2019/06/hong-kong-police-violence-verified/>
- Anonymous, “引渡惡法, 近距離遭橡膠子彈射眼 示威者血流披面縫近 10 針”, *Apple Daily*, 12 June 2019, available at: <https://hk.news.appledaily.com/breaking/realtime/article/20190612/59709179>

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

B. Tear Gas

28. Chemical irritant or riot-control agent such as tear gas and pepper spray are dangerous chemical weapons that should be handled with great cautions owing to the risk of death or serious injury from asphyxiation.²⁴ As a result, the use of riot control agents in

²⁴ Repeated exposure of chemical irritants should be avoided. Use of chemical irritants can temporarily cause breathing difficulties, nausea, vomiting, irritation of the respiratory tract, tear ducts, and eyes; spasms; chest pains; dermatitis; and allergies. In high doses, it can cause necrosis of the tissue in the respiratory tract and the

warfare is explicitly forbidden by international law (see the 1925 Geneva Protocol²⁵ and the 1993 Chemical Weapons Convention²⁶). However, there were multiple instances where tear gas was deployed in confined space in spite of the international guidelines which strictly prohibited such use. Repeated exposure of tear gas during a short time period without adequate ventilation can cause breathing difficulties, nausea and vomiting, or even a risk of death from asphyxiation (Geneva Guidance, para. 7.3.5). Examples include: the firing of tear gas into the Taikoo and Kwai Fong MTR station on 11 August 2019,²⁷ as well as the firing of tear gas on 12 June 2019 from Lung Wui Road near CITIC Tower on 12 June 2019.²⁸

29. Further, the HKPF has used expired tear. At a press conference held on 12 August, the Hong Kong police admitted that they had used tear gas that had gone past the “best before date”.²⁹ We strongly oppose the misleading equation of “expiry date” with “best before date” as it is plainly illogical and misleading- the latter is only about quality but not safety whereas tear gas is a dangerous chemical weapon whose usage is subjected to stringent safety guidelines. According to the Dr. Anna Feigenbaum, “[t]ear gas canisters normally have an expiry date. The expiry date lets users know when the ammunition is no longer safe or effective to use. ... the chemical compound contained in the grenade may no longer be approved according to the most recent safety tests and certificates”³⁰. A study carried out by Mónica Kräuter, a Venezuelan professor at Simón Bolívar University, which collected thousands of tear gas canisters fired by Venezuelan authorities in 2014, showed that 72% of the tear gas used was expired and noted that expired tear gas “breaks down into cyanide oxide, phosgene and nitrogen that are extremely dangerous”.³¹

digestive system, pulmonary oedema, and internal bleeding. See: *Abdullah Yaşa and others v. Turkey* (2013) ECHR 839, para.30.

²⁵ United Nations, *Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare*, 17 June 1925, available at: <https://www.refworld.org/docid/4a54bc07d.html>

²⁶ United Nations, *The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, 3 September 1992, available at: https://www.icrc.org/en/doc/assets/files/other/1993_chemical_weapons.pdf

²⁷ Anonymous, 警方一度否認葵芳站內放催淚彈, I-Cable News, 12 August 2019, available at:

http://cablenews.i-cable.com/ci/videopage/news/554681/即時新聞/%7B%7Bcate.program_link%7D%7D

²⁸ Amnesty International, “How not to police a protest: unlawful use of force by Hong Kong police”, 2019, available at:

https://www.amnesty.lu/uploads/media/HONG_KONG_How_not_to_police_a_protest_2019_EN.pdf

For a live video footage filmed on 12 June in the CITIC Tower, see:

<https://www.youtube.com/watch?v=13eauJMTokU>

²⁹ Anonymous, “Police admit fake protesters, deny eye injury link”, *RTHK*, 12 August 2019, available at:

<https://news.rthk.hk/rthk/en/component/k2/1474218-20190812.htm>

³⁰ Feigenbaum (2015). *Riot Control Agents: The Case for Regulation*. *SUR 22*. Accessible at:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2837878

³¹ "Bombas lacrimógenas que usa el gobierno están vencidas y emanan cianuro (+ recomendaciones)". *La Patilla* (in Spanish). 8 April 2017. Retrieved 9 April 2017.

30. Lastly, the HKPF confirmed purchase of tear gas cannisters made from mainland China in a press conference on 12 October.³² HKPF refused to reveal the name of the manufacturer of the tear gas cannister, saying that it was a sensitive matter.
31. Unfortunately, Chan Yu-hong of digital news outlet Stand News wrote in a Facebook post on 13 November that he had been diagnosed with chloracne.³³ The condition is a “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.³⁴ Public Health Research Collaborative, a citizen-led research group on public health, questioned whether the development of chloracne was linked to exposure to tear gas:
32. “Under high temperature, CS, a key component of tear gas, will produce a dioxin-like substance. Dioxin can enter the human body through skin exposure, food, water, air and other channels.”³⁵
33. When asked in a Legislative Council meeting about public health concerns in relation to use of China-made tear gas, the Secretary for Food and Health Sophia Chan later admitted that her department was not fully informed of the chemical composition of the tear gas used by the police.³⁶

C. Indiscriminate attack against passers-by perpetrated by riot police or counter-demonstrators (with police acquiescence)

Cases 4 & 5

³² Kris Cheng, “Hong Kong police confirm purchaser of tear gas canisters made in mainland China”, *Hong Kong Free Press*, 12 October 2019, available at: <https://www.hongkongfp.com/2019/10/12/hong-kong-police-confirm-purchase-tear-gas-canisters-made-mainland-china/>

³³ Kris Cheng, “Hong Kong reporter diagnosed with chloracne after tear gas exposure, prompting public health concerns”, *Hong Kong Free Press*, 14 November 2019, available at: <https://www.hongkongfp.com/2019/11/14/hong-kong-reporter-diagnosed-chloracne-tear-gas-exposure-prompting-public-health-concerns/>

³⁴ Available at: <https://www.publichealth.va.gov/exposures/agentorange/conditions/chloracne.asp>

³⁵ Ibid.

³⁶ The Government of HKSAR (Press release), LCQ16: Health impacts of the chemical used to disperse crowds, available at: <https://www.info.gov.hk/gia/general/201911/13/P2019111300483.htm>

Police acquiescence/ non-action to the conduct of the violence perpetrated by counter-demonstrators constituted CIDTP

The claim involves two victims, a reporter and a Legislative Councillor, Mr. Lam Cheuk Ting.

Summary of Facts:

In the early evening of 21 July 2019, a mob of several hundred, all in white shirt, were seen scattering in the streets around the train station in Yuen Long, and they were reported to randomly attack passers-by. .

Towards 23:00, over a hundred of them, wielding rods in metal, wood or cane, forced themselves into the station. They started by attacking passengers wearing black, some of whom were believed to have returned from a protest on the Hong Kong island earlier that day. The attacks soon escalated into indiscriminate beating of all passengers and passers-by in the station concourse, platforms and in the trains.

Throughout the episode, repeated calls for emergency police assistance were either unattended or answered. The police did not arrive till 23:20 when the mob was already dispersed after their first round of attack at the station. At around 00:30, the white shirt mob returned to launch a second round of attack, this time with riot police standing nearby but not intervening. The attacks resulted in a few dozens injured and several were reportedly in critical condition.

One of our victims, who was performing her duty as a journalist during the first round of attack, had her arms, back, and hindbrain bruised, requiring four sutures to close up the wound; and Mr Lam, who was called upon to intervene and arrived towards the end of the first round of assault, suffered injuries and needed 18 stitches for a mouth wound.

Analysis:

We argue that the failure of police to take appropriate steps to protect the victims amounted to acquiescence to these acts. We argue that the following facts, considered as a whole, constituted acts of acquiescence:

- a. Citizens made initial calls to the emergency hotline upon seeing the armed group assembling but two police officers only arrived three hours after these calls were made;
- b. The two police officers who had arrived decided not to intervene and instead left the scene to call for backup;
- c. Around thirty police officers returned to the scene 39 minutes after the attack was unleashed and when the mob had already left the station;
- d. There is footage showing a commander chatting with the men who appeared to be part of the mob; and
- e. No arrests were made that night.

In *Hajrizi Dzemažl et al. v. Yugoslavia*, the Committee against Torture found that the failure of the police authorities to take appropriate steps to protect the applicant amounted to acquiescence to these acts because, “[s]hortly after the attack began, rather than intervening to halt the violence, these officers simply moved their police car to a safe distance and reported to their superior officer. As the violence and destruction unfolded, police officers did no more than feebly

seek to persuade some of the attackers to calm down pending a final decision of the Municipal Assembly with respect to a popular request to evict Roma from the Bozova Glavica settlement.” Similarly, although police in Yuen Long were informed of the immediate risks facing the Victims and were even present at the scene, they made no attempt- not even a verbal warning- to stop the attacks. The unreasonable period of non-intervention and the fact that no immediate arrests were made represent de facto acquiescence to the unlawful acts of the white-shirt mob.

Such failure and de facto acquiescence constituted a violation of Article 7 of the ICCPR. The Committee, in its General Comment No. 20 on article 7 of the ICCPR prohibiting torture and cruel, inhumane and degrading treatment stated that,

“It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.” (emphasis added)

Reference:

- Hajrizi Dzemažl et al. v. Yugoslavia (161/1999) CAT/C/29/D/161/2000
- Shibani Mahtani, “Hong Kong protesters outmaneuver police, vandalise Chinese liaison office”, *The Washington Post*, 22 July 2019, available at: https://www.washingtonpost.com/world/asia_pacific/police-dramatically-increase-security-in-hong-kong-as-protests-continue-unabated/2019/07/21/1de14dd2-aafa-11e9-8733-48c87235f396_story.html
- Austin Ramzy, “Mob Attack at Hong Kong Train Station Heightens Seething Tensions in City”, *The New York Times*, 22 July 2019, available at: <https://www.nytimes.com/2019/07/22/world/asia/hong-kong-protest-mob-attack-yuen-long.html>
- Kris Cheng, “Hong Kong police made no arrests after mob assaulted commuters, protesters, journalists in Yuen Long”, *Hong Kong Free Press*, 22 July 2019, available at: <https://www.hongkongfp.com/2019/07/22/hong-kong-police-made-no-arrests-mob-assaulted-commuters-protesters-journalists-yuen-long/>
- Kris Cheng, “Chaos and bloodshed in Hong Kong district as hundreds of masked men assault protesters, journalists, residents”, 22 July 2019, *Hong Kong Free Press*, available at: <https://www.hongkongfp.com/2019/07/22/just-chaos-bloodshed-hong-kong-district-hundreds-masked-men-assault-protesters-journalists-residents/>

Alleged violations:

- #CAT (article 1): Prohibition of torture and other cruel, Inhuman or degrading treatment or punishment
- #ICCPR (article 7&26): No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; equality before the law

D. Arrest Involving Excessive Force

Case 6

Arrest involving excessive force which constituted CIDTP

Summary of Facts:

The victim is a middle-aged man of around 50. On 4 August, the victim went on a post-meal walk with his son in a park in the neighborhood. As the location was close to the spot where protest broken out, the police blocked off one of the entrances to the park.

At around 10pm, they decided to head back after the walk. During that time, some “gaifong” or neighbors yelled at the police who were leaving the scene. All of a sudden, another team of riot police arrived and started dispersing the crowd without any prior warning. As the victim recalled, “we were all “gaifongs”, wearing flip-flops and enjoying ourselves in the park”. As the victim and his son tried to leave, one riot police officer suddenly hit his head with batons before around 2-3 riot police subdued him to the ground. As a result of the indiscriminate use of force, he suffered severe bleeding from the head injury.

The incident was captured on i-Cable News, accessible at: https://youtu.be/Xw1AStq_2u4

Analysis:

This is a clear case of indiscriminate, unjustified and excessive use of force against the sensitive part of the victim’s body. Taking into account (i) the victim was unarmed; (ii) the physical disparities between the riot police (with their anti-riot protective gear) and the victim was so great that less forceful means should have been employed; and (iii) the victim sustained severe bruises and other injuries, we argue that the use of force by the police was disproportionate and amounted to CIDTP.

Alleged violations:

- #CAT (article 1): Prohibition of torture and other cruel, Inhuman or degrading treatment or punishment
- #ICCPR (article 7): No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment
- #HKSAR Basic Law (articles 27 & 39): Freedoms of speech, of assembly, of procession and of demonstration. Continual application of ICCPR and ICESCR
- #Police General Order (PGO) (chapter 29-01): Use of Force

Case 7

Arrest involving excessive force which constituted CIDTP

Summary of Facts:

The victim was a young woman of 20. On 31 August, she was stopped by 3-4 riot police in a district where an unauthorized assembly took place. The Victim was unarmed and did not make any attempt to resist or evade arrest She was however pushed to the ground by the riot policemen who then pressed themselves on her for about 6-10 minutes. She was later hand-cuffed and

arrested by a woman officer. The process caused severe bruises on both of her arms, which took two weeks to recover.

Analysis:

We argue that the pain and suffering arising from such excessive use of force amounted to CIDTP. In *Keremedchiev v. Bulgari*, the victim suffered “multiple bruising on various external parts of his body, to the extent that the injuries inflicted caused bruising to his kidneys and blood in his urine”. The Committee Against Torture found “the complainant's injuries too great to correspond to the use of proportionate force by two police officers, particularly as it would appear that the complainant was unarmed”. Whilst conceding that such ill-treatment did not amount to torture, the Committee did consider that the treatment of complainant by the police officials amounts to acts of CIDTP.

Taking into account the following factors: i) she was unarmed; ii) she did not resist and had already been brought under control; and iii) physical disparities between the riot police (with their anti-riot protective gear) and the victim was so great that less forceful means should have been employed, iv) the victim sustained severe bruises and other injuries, we argue that the use of force by the police was disproportionate and amounted to CIDTP.

Reference:

- *Keremedchiev v Bulgaria (257/2004) CAT/41/D/257/2004*

Alleged violations:

- #CAT (article 1): Prohibition of torture and other cruel, Inhuman or degrading treatment or punishment
- #ICCPR (article 7): No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment
- #HKSAR Basic Law (articles 27 & 39): Freedoms of speech, of assembly, of procession and of demonstration. Continual application of ICCPR and ICESCR
- #Police General Order (PGO) (chapter 29-01): Use of Force

VI. Conclusion

34. The development of the Hong Kong protests has exposed the underlying institutional malpractices of the HKPF, which is posing grave threats to the human rights of Hong Kong people. The deterioration of standards of police conduct is alarming, inter alia, as evidenced by the torturous conduct adopted by the HKPF even when cameras and journalists were present;

35. The impunity of HKPF, along with the tolerance from the HKSAR government, has been inflaming the unrests. The major demands of the protestors have therefore shifted from the complete withdrawal of the controversial Bill to investigation of police brutality;
36. As illustrated in the aforementioned cases, it was not just the protestors who were subjected to violence deployed by the HKPF; every ordinary reasonable citizen could be the next victim of police violence without any sort of provocation;
37. As the risk of arbitrary arrests increases, the risk of torturous treatment during the course of arrest and/or in the police station also rises accordingly;
38. To stop the worrying and intensifying trend of human rights violation Hong Kong, the SOS recommends that the HKSAR Government improve the HKPF compliance with its international obligations, including a full, independent inquiry into the issues raised in the communication, with reference to its investigative duty arising under Articles 2 and 12 of CAT.