

The Third Report of the Hong Kong Special Administrative Region of the People's Republic of China in the light of the International Covenant on Civil and Political Rights

**Civil Human Rights Front Police Powers Monitoring Group's
Submission to the United Nations Human Rights Committee
(At the 107th Session, 11-28 March 2013, Geneva)**

Executive Summary

1. We have observed an extensive and repeated citation of the Public Order Ordinance provisions in making arrests and prosecutions. There is also a substantial increase in the number of demonstrators arrested by the Hong Kong Police Force ("the Police"). In the year of 2011, 444 Hong Kong citizens participating in demonstrations and assemblies were arrested by the Police and the number of charges making reference to the Public Order Ordinance in the year of 2011 is bigger than the sum of total charges made from the year of 1997 to 2010, including the charges of "unauthorized assembly", "disorder in public places" and "unlawful assembly".
2. The strategies in dealing with demonstrations and assemblies used by the Police have become increasingly tough and unreasonable, including the recurring use of pepper-spray, the abusive use of force in dealing with the demonstrators and even enclosing and fencing a small demonstration area with two-meter-high water-safety barriers.
3. The existing statutory power of Independent Police Complaints Council (the "IPCC") is not enough to establish an effective and credible mechanism in monitoring the Police. In a case, the victim refused to complain the Police because the investigation is to be conducted by the Police themselves, instead of an independent entity with a separate mechanism. Moreover, since the IPCC is not vested with any mandatory power to obtain documents and conduct investigation, the investigation of some complaint cases were then obstructed as the Police did not submit the documents required to IPCC.
4. Throughout the duration of demonstrations and assemblies, the Police often carried out video recording extensively without a defined purpose. The act infringed the privacy of a citizen. The arbitrary use of video recording machines by the Police in demonstrations and assemblies raised public concerns on political censorship and even "White Terror" panic.

Preface

5. At present, the Chief Executive of Hong Kong Special Administrative Region is not elected by a system of universal suffrage, about a quarter of the seats in the District Council in dealing with regional affairs are appointed or ex-officio membership seats. For the Legislative Council deliberating legislations, examining and approving the appropriation of public finances, half of the seats belong to the functional constituency portion. At the same time, the functional constituency members who are only with the mandate of a small group of elites, could overturn the decision of the members elected through direct elections in the voting of a motion moved by Legislative Council Member. Under this undemocratic political system, the legislature cannot represent the people effectively expressing their opinion, nor act as a channel for Hong Kong citizens to involve in politics. Thus, demonstrations and assemblies act as the crucial way for Hong Kong citizens to express their views and thereby manifesting public opinion.
6. In recent years, social conflicts in Hong Kong aggravated. Core values deeply treasured by Hong Kong citizens including the freedom of speech, rule by law and human rights were stricken. Adding to the extreme disparity between the rich and the poor, worsening housing problems, Hong Kong citizens were forced to actively participate in demonstrations and assemblies to express their demands and to pressure the government to improve governance.
7. We believe that in an undemocratic society, demonstrations and assemblies are more than an important means for the citizens to express political views. In recent years, Hong Kong citizens have been more active in voicing their demands and using collective action to pressure the government and seek for social justice. All in all, however, even public social action has escalated, there is no violence, bloodshed or nor any damage to property. We are here to seek the recognition of the Human Rights Committee (the "Committee") for the aforesaid. Under the principle of peaceful social action, we urge the Committee to protect the right to demonstration and assembly of Hong Kong citizens not to be suppressed.
8. This report pinpointed four main concerns to invite the Committee to raise concerns to the Hong Kong government and to monitor continuously accordingly, so to protect the civil and political rights of the citizens of Hong Kong:
 - (i) **Political prosecution and abuse of the power of arrest by the Police;**
 - (ii) **The improper use of force by the Police against the demonstrators;**
 - (iii) **The failure of Independent Police Complaints Council ("IPCC") in monitoring the exercising of power by the police; and**
 - (iv) **The arbitrary use of video recording machines by the Police in demonstrations and assemblies.**

Topic 1: Political prosecution and abuse of the power of arrest

9. The number of demonstrators arrested by the Police in demonstrations and assemblies has continued to rise, and in the single year of 2011, 444 Hong Kong citizens participating in demonstrations and assemblies were arrested by the Police. It is worth noting in the year of 2011, besides the substantial increase in the number of arrested demonstrators by the Police, there is also a repeated extensive use of the Public Order Ordinance provisions in making arrests and prosecutions. The number of charges making reference to the Public Order Ordinance in the year of 2011 is bigger than the sum of total charges made from the year of 1997 to 2010, including the charges of "unauthorized assembly¹", "disorder in public places²" and "unlawful assembly³".
10. The number of arrests and prosecutions made in relation to public assemblies for the past 10 years⁴ as follows:

	2003	2004	2005	2006	2007
Number of demonstrators arrested	0	3	1158*	23	30
Number of demonstrators prosecuted	2	1	7	7	26
Number of demonstrators prosecuted under the Public Order Ordinance	0	0	2	0	7

* Among the 1158 demonstrators arrested, 1132 were arrested in the World Trade Organization Ministerial Conference, most of them were foreign demonstrators.

	2008	2009	2010	2011	2012
Number of demonstrators arrested	39	30	57	444	50
Number of demonstrators prosecuted	19	14	15	54	9*
Number of demonstrators prosecuted under the Public Order Ordinance	0	8	2	45	0*

*The figures only counted from January to October 2012

11. It is more than vexing that in the year of 2011, on many occasions and repeatedly, the Police has used the "disorder in public places" and "unlawful assembly" accusations in arresting and prosecuting demonstrators. To cite one case, in an event there were demonstrators protesting against the Central People's Government of China at the gate of Liaison Office of the Central People's Government in Hong Kong, for the ineffective pursue on the toxic milk powder issue and the suppress of human rights activists. Demonstrators were throwing and tossing white flour symbolizing milk

¹ Section 17A of the Public Order Ordinance, Cap. 245 Laws of Hong Kong.

² Section 17B of the Public Order Ordinance, Cap. 245 Laws of Hong Kong.

³ Section 18 of the Public Order Ordinance, Cap. 245 Laws of Hong Kong.

⁴ Number provided by the Hong Kong Police Force.

powder. In this event the Police arrested two demonstrators under the provisions of the Public Order Ordinance, alleging them behaving against public order and is likely to be a breach of peace. The case was heard in the Magistrates' Court and was ruled not guilty with the judgment that the act of the demonstrators was in no breach of peace. The Department of Justice subsequently appealed against the decision. In the judgment of the Court of First Instance in the High Court, the following comments were made regarding the Department of Justice's appeal⁵,

12. *"I believe that there must be legal provisions to deal with situations involving actual violence, whether such violence be directed against the person or property. Where the nature of violence is not obvious, or where the conduct in question is not directed against any particular person or object, then the offence of committing nuisance in a public place under section 4 of the Summary Offences Ordinance, Cap. 228 Laws of Hong Kong, may be applicable. If not, the law enforcement authority should consider whether there is a real legal vacuum which needs to be remedied by legislation, or whether there is no consensus in society on criminalizing the act in question, so that the person who does the act should not be prosecuted.*

Moreover, I believe, although I am not sure, that police officers in Hong Kong still possess the power under the common law to arrest those who break the peace. If this is correct, then under the existing law the magistrate is empowered, subsequent to such arrest, to bind over the offender to keep the peace. That could be a possible way of dealing with the problem⁶.

In any event, it is not for the court to improperly enlarge the scope of an offence solely by reason of the possible existence of a legal vacuum."

13. Regarding the prosecution made by the Department of Justice's under the Public Order Ordinance provisions, it is more than obvious that the Court gave its judgment with a doubtful attitude. In our view the present thresholds of "disorder in public places" and "unlawful assembly" under sections 17B and 18 of the Public Order Ordinance are far too low. In the event that the act of a citizen is slightly nearer to the definition of disturbing public order, the citizen could be arrested and prosecuted. Thus, a random and arbitrary use of the Public Order Ordinance will certainly undermine Hong Kong citizens' right and room for opinion expression.

14. However, except the extensive and repeated use of the Public Order Ordinance in prosecution, in recent years in a number of large-scale

⁵ *HKSAR v CHIU Hin-chung and KEUNG Ling-cheung* (HCMA 163 of 2012) paragraph 48-50.

⁶ An offender who refuses to be bound over is liable to committal to prison for contempt of court: *Archbold Hong Kong* 2012, paragraph 5-253A

demonstrations, the Police tend to make mass arrest for dismissing and terminating demonstrations and protests, such as the following :

- A. On March 6, 2011, in the demonstration opposing the Government Budget, there were a large number of citizens left the demonstration route and sit-in in the driveway. Police arrested 113 persons right at the scene so to terminate the action, and subsequently prosecuted 4 persons on the charge of "unauthorized assembly". The ratio of the number of persons arrested to the number of persons prosecuted is 3.53%;
 - B. On June 4, 2011, in the protest against abuse of the power of arrest of the Police, the Police put an end to the protest in the middle of it and arrested 53 people on the charge of "unauthorized assembly" and then subsequently filed prosecutions against 8 persons. The ratio of the number of persons arrested to the number of persons prosecuted is 15.09%;
 - C. On July 1, 2011, two groups of demonstrators stayed behind on the streets after the July 1st demonstration. A group of youth and members from the League of Social Democrats sit-in on Connaught Road, whereas after members from the People Power sit-in for more than two hours at Wan Chai Southorn Playground, then subsequently protested to the intersection of Garden Road in Central and were intercepted by the Police there. Riot-control Police were dispatched and pepper-spray was used by the Police. In that night 228 persons were arrested and 19 persons were subsequently prosecuted. The ratio of the number of persons arrested to the number of persons prosecuted is 8.33%;
15. According to the guidelines issued by the Police, if the Police chooses to prosecute the participants in demonstrations and public assemblies, legal guidelines shall be sought from the Department of Justice in order to ensure there is substantial legal ground for the prosecution. According to the figures provided by Police and the Department of Justice, 38327 persons⁷ were arrested for criminal offense in 2011; and according to figures from the Department of Justice, 13679 persons⁸ were being tried at all levels of courts in 2011. Thus, the prosecution ratio of criminal cases is approximately 35.69%. In the year of 2010, a similar figure of 38.12% was also recorded.
16. Therefore, the prosecution ratio of demonstrations and assemblies cases is far below the average of the prosecution ratio of criminal cases in Hong Kong. Based on the past experience, demonstrators prosecuted tended to be the more experienced activists and organizers. For this reason, we have the

⁷ number provided by Hong Kong Police Force in 2011

⁸ Prosecutions Hong Kong 2011 P.76

ground to call into question whether prosecutions made by the Police and the Department of Justice were selective and subject to any political concern. At the same time, the below average prosecution ratio of demonstrations and assemblies cases can possibly reflect the arrests made to the demonstrators by the Police may fall short of legal reasoning support and do not comply with the basic requirements of prosecution.

17. Recommendation:

- (i) To request the Police to seek legal guidelines from the Department of Justice with the approval from the Deputy Director of Public Prosecutions, prior to making prosecutions under the Public Order Ordinance;
- (ii) To request the Hong Kong government to review the provisions of the Public Order Ordinance regarding "disorder in public places" and "unlawful assembly", and to make amendments to clear the ambiguity with concrete and definite words and concepts to ensure that the Ordinance shall only be applied to acts of actual violence against persons and property;
- (iii) To urge the Police to establish procedures for actions regarding demonstrations and public assemblies operations, including warning, dispersing, termination and arrest and shall be known to the public. This is to ensure in the case that the Police categorize the event as "unlawful" and "unauthorized", the citizen shall be provided with sufficient information and time to make choices.

Topic 2: The improper use of force of the Police against the demonstrators

18. In the recent years, the strategies in dealing with demonstrations and assemblies used by the Police have become increasingly tough and unreasonable. The political neutrality and the abusive use of force against demonstrators in the operation of the Police are thus doubted, with the following cases worth the Committee's special attention,

Event 1: The Police stopped the citizens from demonstrating outside the main entrance of the Liaison Office of the Central People's Government in Hong Kong, with the use of force



Photograph 1:

Demonstration outside the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region on April 1, 2012. (Photo taken by Oriental Daily News)

19. In the past, the Police had been using public safety and limitation of space as the reasons for not allowing citizens to demonstrate outside the main entrance of the Liaison Office of the Central People's Government in Hong Kong. In a demonstration on April 1, 2012, the Police outlaid a vast amount of police force outside the main entrance of the Liaison Office with a human wall built and enclosed a police line with metal railings. This was to stop citizens from demonstrating outside the main entrance of the Liaison Office. With abundant police force, six police officers still pepper-sprayed one single demonstrator who insisted to go forward. This situation drove the Police to query of potential force abuse and its so-called "principle of minimum force" approach. As illustrated in the photo, the Police's pepper-spray devices are circled in red and the Police officers holding onto the body of the demonstrators are squared in yellow.

20. Regarding the Police using unreasonable reasons to stop citizens from demonstrating outside the main entrance of the Liaison Office, the Civil Human Rights Front appealed to a demonstration application made to the Police in May 2012 and successfully overturned the Police's arrangements. The Appeal Board on Public Meetings and Processions ruled that citizens shall be able to demonstrate outside the open space and on the pavement at the main entrance of the Liaison Office of the Central People's Government in Hong Kong. This signifies that in the earlier case of the Police's obstruction on the demonstration outside the main entrance of the Liaison Office of the Central People's Government in Hong Kong is unreasonable with no legal basis. And the conflict between the Police and the public is also derived from the Police's unreasonable arrangement.

Event 2: Hu Jintao's visit to Hong Kong on June 30, 2012

21. On June 30, 2012 during Hu Jintao's visit to Hong Kong, groups of citizens protested to the President of the People's Republic of China, Hu Jintao at the Hong Kong Convention and Exhibition Centre, at Wan Chai. But the demonstration zone arranged by the Police was not only small and also surrounded by more than two-meter-high water-safety barriers. The arrangement seriously impeded the sight of the citizens and the public was not allowed to express their demands effectively.



Photograph 2:

During Hu Jintao's visit to Hong Kong on June 30, 2012, the demonstration zone arranged by the Police at the Hong Kong Convention and Exhibition Centre, Wan Chai (The photo taken by an internet user "Wong Pok Lung" and posted on internet)

22. Meanwhile on the very same day, it was the first time for the Police to use big bottles of pepper spray in the operations. It is obvious from the

following photos that when the Police discharged pepper-spray, the demonstrators at the scene did not perform any special act, and some were even only facing away from the Police with their back. But they were all pepper-sprayed very extensively by the Police. According to the subsequent explanation from the Police, as demonstrators tried to push the water-safety barriers, pepper spray was thus discharged in order to avoid danger. We expressed doubts towards this, as we believe the Police shall only use force as the very last resort with no other options available and the procedure for the Police to apply force shall be in proportion. The water-safety barriers arranged by the Police built a chained wall and after the water-safety barriers were injected with water, every water-safety barrier weighed more than two tons. It was certainly very difficult for demonstrators to move the water-barriers, not to say to push the water-safety barriers down. Furthermore, at the time when the demonstrators were under containment inside the water-safety barriers wall, pepper-spraying will certainly involve and affect innocent demonstrators driving them to get to escape vigorously. This situation appears to be even more dangerous, prone to drive demonstrators stepping on each other and with the demonstrators provoked into the mood of revolt.



Photograph 3:

On-site during Hu Jintao's visit to Hong Kong on June 30, 2012 at the demonstration zone arranged by the Police at the Hong Kong Convention and Exhibition Centre, Wan Chai. When the Police were discharging pepper-spray, there was no obvious violent or intense demonstration action⁹.

⁹Photo taken by unknown photographer



Photograph 4:

On-site during Hu Jintao's visit to Hong Kong on June 30, 2012 at the demonstration zone arranged by the Police at the Hong Kong Convention and Exhibition Centre, Wan Chai. The Police pepper-sprayed the demonstrators through the slits of the water-safety barriers. (Photo taken by Associated Press)



Photograph 5:

On-site during Hu Jintao's visit to Hong Kong on June 30, 2012 at the demonstration zone arranged by the Police at the Hong Kong Convention and Exhibition Centre, Wan Chai. When demonstrators were washing their eyes with eyes, the Police pepper-sprayed the demonstrators through the slits of the water-safety barriers again. (Photo taken by Associated Press)



Photograph 6:

On-site during Hu Jintao's visit to Hong Kong on June 30, 2012 at the demonstration zone arranged by the Police at the Hong Kong Convention and Exhibition Centre, Wan Chai. The Police pepper-sprayed the demonstrators through the slits of the water-safety barriers, demonstrators had no way of escape and used umbrellas to shelter. Reporters were also involved and affected at the scene. (Photo taken by Associated Press)

Event 3: The Police formed a human chain to strike against peaceful demonstrators on March 6, 2011

23. On March 6, 2011, there were protests against the Government Budget demanding a fair redistribution of wealth. Demonstrators occupied the road in a peaceful manner. After 15 minutes, without any prior warning to the demonstrators or request to leave made by the Police, dozens of police officers suddenly formed a human wall and stroke against the demonstrators in order to clear the scene. A large number of demonstrators therefore fell onto the ground, were kicked and hit. At the same time, the Police discharged pepper spray without any prior warning and even mistakenly hit an eight-year-old child.
24. In this event a female demonstrator reported that she was hit by a male police officer three times in the chest. As the entire incident was recorded and filmed, public concern was aroused. However, as this female demonstrator involved did not believe in mechanism of the Complaints Against Police Office ("CAPO"), she was not willing to make a complaint, whereas the CAPO also did not take the initiative to investigate.

25. The way that the Police cleared the scene with the use of human wall to strike against demonstrators without prior warning is unprecedented in recent years. It is vexing whether the Police has turned to imposing extremely tough measures to deal with demonstrations and assemblies.

26. Recommendation:

- (i) To urge the Police to establish procedures for actions regarding demonstrations and public assemblies operations, including warning, dispersing, termination and arrest and shall be known to the public. This is to ensure in the case that the Police categorize the event as “unlawful” and “unauthorized”, the citizen shall be provided with sufficient information and time to make choices;
- (ii) To urge the Police not to enclose and fence the demonstration area with water-safety barriers, unreasonably causing demonstrators not to have any effective way of expressing demands;
- (iii) To request the Police to disclose to the public the operational guidelines in using pepper-sprays and a clear warning must be made before every pepper spray discharge;
- (iv) To demand the Police to gather statistics on the number of times of the use of pepper-spray not complying to the operational guidelines and disclose such data to the public, so for the public to monitor;
- (v) To demand the Police to gather statistics on the number of times of the use of pepper-spray without any prior warning and disclose such data to the public, so for the public to monitor.

Topic 3: Independent Police Complaints Council (“IPCC”) failed to monitor the exercise of police power effectively

27. At present complaints against police behavior are still processed and investigated under the CAPO established by the Hong Kong Police Force. The power of IPCC is to monitor and review the report-required complaints processed and investigated by the Hong Kong Police Force without any mandatory power to obtain documents and conduct investigation. Therefore, the statutory power of IPCC is not enough to establish an effective and credible mechanism in monitoring the Police. We also note that, in the event of the Vice Premier of the People's Republic of China, Li Keqiang’s visit to Hong Kong, there were 16 complaint cases derived. Among them there were 3 complaint cases owing to the reason that the

Police did not submit the documents required to IPCC, the time for handling complaint cases was extended.

28. In the past, it was reflected by various non-government organizations and vulnerable groups in the society that as CAPO is actually under the Hong Kong Police Force, people have no confidence in this system of “we investigate our peers”, a victim even rejected to make a complaint. At the same time, it had been pointed out by sex worker rights concern group that after a complaint was made by a sex worker, the sex worker was harassed and intimidated by the police officer involved demanding the sex worker to withdraw the complaint. We believe that independent investigation is extremely important for dealing with complaints against the Police. It is also a crucial part of establishing a monitoring mechanism with integrity and credibility.
29. Currently the CAPO will not take the initiative to conduct investigation on the behavior of police officers, CAPO will only conduct investigation when a formal complaint is made by the party involved. We believe that this practice is highly undesirable. It is owing to the reason that in the past there were incidents of police power abuse causing public concern, even with objective evidence submitted (such as video tapes), but when the victim was unwilling to make a complaint, the incident could not be followed or pursued. Regarding any similar situation as such, IPCC did pinpoint in its report that even with no statement taken or provided, CAPO should still be able to conduct full investigation into the complaint, by examining relevant news reports, video recordings, on-the-scene eyewitnesses, as well as conducting other necessary enquiries, for the purpose of striving a definite finding on the classification of the allegation¹⁰.
30. At present, the power of IPCC is mainly to monitor and review the report-required complaints processed and investigated by the Hong Kong Police Force. We are in the view that the mandate is too narrow, and is prone to dilute an abuse of police power case into an individual police officer’s conduct and ethical behavior issue.
31. **Recommendation**
 - (i) To demand expanding the mandate and powers of IPCC, vest the IPCC with the power of conducting independent and active investigations, and the power of compelling relevant departments to provide the relevant documents required in handling complaints;

¹⁰ Independent Police Complaints Council 2012, Final Report on Complaint Cases Arising from the Visit by the Vice Premier Mr. Li Keqiang, Paragraph 2.13.4, P.29.

- (ii) To demand expanding the powers of IPCC, to enable the IPCC to monitor at the policy level, whether there is any abuse of police power or infringement on citizen rights with unreasonable and illegal suppression.

Topic 4: The arbitrary use of video recording machines by the Police in demonstrations and assemblies.

- 32. Throughout the duration of demonstrations and assemblies, the Police often carried out video recording without a clear purpose, we believe this is an act of infringement to the privacy of the general public. Whereas privacy protection of the general public becomes even more important when political views are expressed. Otherwise political censorship may be attracted and even give rise to “White Terror” panic. Therefore, the Police shall only carry out video recording with reasonable doubt of crime occurrence.
- 33. We are in the view that the object of the Police’s video recording could only be for obtaining evidence of crime and not for recording the content and happenings of the demonstration and assemblies capturing the faces of the participating citizens without a clear purpose.

34. Recommendation

- (i) To demand the Police to set clear and transparent guidelines, and give an account to the public on under what circumstances the demonstrations and assemblies will be video recorded. The use, treatment approach, and the time limit for the collected data to be destroyed;
- (ii) To demand the Police to set clear and transparent guidelines, to prevent police officers from video recording the activities of the citizens in an arbitrary manner.