



Submission for the Session 54 for Committee against Torture in Considering the List of Issues of China (Hong Kong)

Introduction

The Hong Kong Civil Rights Observer (HKCRO) has been founded since January 2015. The HKCRO monitors the police practice in public assembly, and provides legal support to the arrestees who have been abused, or unreasonably arrested by the police in public assembly. We promote human rights and monitor the practice of law enforcement agencies through research and advocacy.

We hope the Committee can express grave concerns on the following issues during the discussion on the list of issues of Hong Kong in considering the reports submitted by States parties.

1. The use of force by the police

Baton and OC foam (pepper spray) were the weapons commonly used by the police to disperse the crowd of protestors in the course of demonstration of the Umbrella Movement between late September 2014 and January 2015. The HKCRO questions whether the police had applied excessive force against the protestors in the course of demonstration.

(a) Baton

On 17 and 19 October 2014, the frontline police were instructed to use batons to disperse the protestors occupying Nathan Road during their action in Mongkok. It was reported that Kwong Wah Hospital received 28 cases of head injury in the early morning between 17 and 19 October, which half of injured had to be treated with stitches. It was also claimed that the injuries were caused by the police's deliberate strikes of batons. 4 injured had to be hospitalised for observation, in which 2 suffering from bone fractures, and 2 from unconsciousness and memory disorders.¹

¹Ming Pao, 21-10-2014, “旺角急救站 女護救警背中棍”
<http://life.mingpao.com/cfm/dailynews3b.cfm?File=20141021/nalga/gag4.txt>

Recommendations:

1. Striking of batons at head is considered as the use of deadly force. The Hong Kong government should explain and justify why the police had applied deadly force in dispersing the crowd of protestors.
2. The Police's principles and guidelines of the use of forces are not available to the public. The Hong Kong government should improve the transparency of use of force by the law enforcement agency in order to enable the monitoring by the public.
3. The Committee should take further actions in understanding and evaluating the police's guidelines on the use of batons, as well as the corresponding training, documentation, and follow-up rescue.

(b) OC foam

The use of OC foam by the police has increased significantly in demonstration since 2012. The purpose of the use of OC foam is no longer limited to a self-defence device for the police to protect themselves in the execution of the duties. It can be served as a weapon for the police to disperse the crowd of protestors in maintaining the police cordon and even to clear a zone. The HKCRO has observed that the Hong Kong police have equipped a 'back-pack' type OC foam, which enables the police officers to release a large quantity of OC foam for dispersal purpose.

	2009-10	2010-11	2011-12	2012-13	2013-14 (as of 28 February 2014)
Number of times of using pepper spray by the whole Police Force	80	86	70	95	20
Number of times of using pepper spray by the Police Force in public processions and meetings	20	25	24	65	0

Source: Administration's replies to Legislative Council Members initial written questions for the budget 2014-15 (Reply Serial no. SB062)

Recommendations:

1. The Police's principles and guidelines of the use of forces are not available to the public. The Hong Kong government should improve the transparency of use of force by the law enforcement agency in order to enable the monitoring by the public.
2. The Committee should question the Hong Kong Government whether the OC foam is a self-defence device or for the purpose of crowd control.
3. The Committee should take further actions in understanding and evaluating the police's guidelines on the use of OC Foam, as well as the corresponding training, documentation, and follow-up rescue.

2. Body search of the detainee conducted by law enforcement agencies

In 2009, the Committee expressed grave concerns and provided recommendations as regards the body search of detainee conducted by law enforcement agencies in the Concluding Observations of the Committee. The Committee's recommendations has scrutinised the practice of body search conducted by the police. Since then, the Hong Kong Government has to provide the Panel on Security of the Legislative Council with statistics on Level III(c) searches conducted on detainees involving full removal of underwear and the nature of offences involved on a quarterly basis. However, the Government did not disclose the statistics of other levels of searches which bars the public from monitoring the practice of body search.

Recommendation:

1. Monitor the practice of all the law enforcement agencies (Hong Kong Police Force, Custom, Immigration Department, and Correctional Services Department) in conducting body search to ensure the search is reasonable, justified, and conducted by the least intrusive means.
2. Request the Hong Kong Government to provide statistics of different levels of body search in the past 3 years conducted by law enforcement agencies, in order to generate a full picture of the searches conducted by law enforcement agencies.

3. Independent investigation of police misconduct

Although the Independent Police Complaints Council (IPCC) is a statutory body, the IPCC only has advisory and oversight functions to monitor and review the activity of the Complaints Against Police Office (CAPO). The limited scope of the mandate of IPCC limits itself to focusing on complaint case. IPCC is barred from reviewing the police operation at a policy level, such as reviewing the principles and guidelines of

the use of force, and the introduction of new weapons to the police force.

There are two cases raising the public concern about the abusive force applied by the police: (1) 7 Police Officers were beating an arrested protestor in the street, which was clearly recorded by TV broadcasting cameras on 15 October 2014. The officers were arrested and suspended from duties on 26 November 2014. However, the progress of the investigation, and whether the Department of Justice has decided to prosecute remains unknown to the public². (2) A senior police officer used his baton to hit two pedestrians on their backs and waists who did nothing disorderly or threaten the safety of the superintendent³. The victim has filed a complaint but the progress of the handling is unclear. News reported that the Superintendent will soon be retired which may be able to escape from disciplinary investigation.

Recommendation:

1. Urge the Hong Kong Government to designate the IPCC with the necessary human, financial resources, investigation power and executive authority, to formulate binding recommendations corresponding to investigations conducted and findings regarding complaints on police misconduct.

² Information Service Department, HKSAR, "Police arrest seven police officers for assault occasioning actual bodily harm" , 26-11-2014

<http://www.info.gov.hk/gia/general/201411/26/P201411261003.htm>

³ South China Morning Post, New SCMP footage shows Apple Daily photographer's arrest in Mong Kok, 27-11-2014,

<http://www.scmp.com/news/hong-kong/article/1650334/new-video-emerges-apple-daily-photographer-being-arrested-mong-kok?page=all>