



The Conservative Party Human Rights Commission
Inquiry into Human Rights in China (2016-2020)

Submission by Rights Exposure

21 April 2020

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Introduction

This submission¹ to the Conservative Party Human Rights Commission's Inquiry into Human Rights in China (2016-2020) is made by Rights Exposure, a human rights consultancy registered in Hong Kong. Rights Exposure deployed a team of human rights observers at the protests in Hong Kong between August 2019 and January 2020. The team consisted of volunteers who received training in relevant international human rights standards, especially related to policing, and audio-visual training for video documentation. This submission focusses on the harassment and arrest by the Hong Kong Police Force (HKPF) of human rights observers, including from Rights Exposure, deployed during the protests. In addition, Rights Exposure has substantial amounts of video footage recorded by its team at 19 separate assemblies. This footage, complete with audio commentary recorded live, presents a comprehensive record of the policing of the protests, including violations of the right to peaceful assembly, as well as excessive and indiscriminate use of force. Rights Exposure is able to provide confidential access to this footage (in whole or in part) on request. Requests can be made for specific dates and/or locations, depending on the deployment of the team, or examples of specific types of policing violations. Please email rgodden12@protonmail.com.

¹ This submission is partially based on the "Joint Open Letter – Arrests of Human Rights Monitors in Breach of the Hong Kong Government's International Human Rights Obligations" that was published on 11 February 2020 by Amnesty International, Civil Rights Observer, Hong Kong Human Rights Monitor, and Rights Exposure. It was signed by a further 20 human rights organisations; and the Public Statement, "Hong Kong: Harassment and Arrest of Monitors Hamper Monitoring of Human Rights Violations at Protests" (ASA 17/1495/2019) published on 6 December 2019.

Background

Between June 2019 and January 2020 widespread public assemblies took place across the Hong Kong SAR. These initially were large scale, predominantly peaceful protests in opposition to the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019, commonly referred to as the Extradition Bill. The primary concern was that the amendment of the bill would allow for extradition of criminal suspects to mainland China. Many feared this would erode Hong Kong's legal system and its built-in safeguards by making it possible to arrest political dissidents in Hong Kong and extradite them to the Mainland.

After the police used excessive force against peaceful participants in a mass assembly near the Central Government Complex on 12 June, the movement's objectives broadened to the so-called "Five Demands", including: i) withdraw the Extradition Bill; ii) retract the official characterisation of the protests as "riots"; iii) drop all charges against protesters; iv) conduct an independent investigation into police misconduct; and v) implement genuine universal suffrage for both the Legislative Council and the Chief Executive.

According to credible reports by local and international human rights organisations, including the United Nations Office of the High Commissioner for Human Rights², police responded to the protests with indiscriminate and excessive force resulting in human rights violations, including restrictions on the right to peaceful assembly, arbitrary arrest and injuries, some amounting to ill-treatment. The majority of arrests and injuries have occurred at the scene of protests, however, there have also been alarming reports of the ill-treatment of arrested protestors inside detention facilities in Hong Kong³.

The police have increasingly refused to grant letters of no objection for assemblies⁴, thus criminalizing anyone who subsequently exercises their right to peaceful assembly. Where permission has been granted, a worrying pattern has emerged where permission for the assembly is withdrawn during the event and mass arrests subsequently take place. As of February 2020, over 7,000 people had been arrested and over 1,000 charged with offences.

² OHCHR "UN experts urge China to respect protesters' rights", 12 September 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24979&LangID=E>

³ Amnesty International "Hong Kong: Arbitrary arrests, brutal beatings and torture in police detention revealed", 19 September 2019, <https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/>

⁴ Under the Public Order Ordinance, those organising an assembly must apply for a letter of no objection from the police. This essentially amounts to a de facto licensing system, and as such means that those attending an assembly without such a letter can be arrested and prosecuted for "participating in an unlawful assembly."

Torture and ill-treatment

A significant amount of evidence suggests the conduct of the HKPF in response to the protests amounts to ill-treatment, if not torture, of protesters in violation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)⁵. The Convention Against Torture has been extended to cover Hong Kong and the prohibition of torture and other ill-treatment is absolute. It cannot be derogated under any circumstances, not even in a state of war or public emergency. States are not only obligated to refrain from using or tolerating torture, they are also required to take positive measures to prevent its occurrence, protect and support victims, investigate any allegations of torture and punish those responsible.

As importantly, particularly in the current context in Hong Kong, the obligation to prevent torture and to investigate and punish acts of torture requires that acts of ill-treatment (which might not amount to torture) be likewise investigated and punished and victims supported. The prohibition against ill-treatment is essential since conditions which give rise to ill-treatment are conditions which facilitate torture. Facilitating redress for acts of ill-treatment reduces the risk of torture.

Impunity

Police play a crucial role in upholding the rule of law. When they are seen to break the law, including by the disproportionate use of force, without accountability, it undermines public confidence and trust in the police and the overall rule of law. It is therefore fundamentally important that police not only abide by the absolute prohibition of torture and ill-treatment, including when responding to mass protests, but that they are also held accountable where they do not, and that victims of police violence receive adequate redress.

In Hong Kong, however, there is no independent mechanism which could investigate complaints against the police or assist victims to access reparations (including compensation) in cases of torture or ill-treatment. An additional challenge is that there are few trained legal or medical professionals who, in the absence of an investigation by the authorities, could adequately collect evidence of and document abuse with a view to ensuring accountability and redress for victims, or who can provide rehabilitation for victims. In the absence of investigations by the police and of trained legal and medical professionals to document abuse, victims have no access to justice; organisations supporting victims have little opportunity to conduct research-based

⁵ <https://www.scmp.com/comment/opinion/article/3024489/investigate-hong-kong-polices-use-force-against-protesters-or-risk>

advocacy to initiate change. In addition, the government has refused widespread calls, including from international policing experts, for an independent commission of inquiry to be established to look into the policing of the protests. Under these circumstances, there is a real risk that police violence, including in response to protests (current and future) will continue unabated. This also presents a severe challenge for the success of any independent inquiry to be carried out on what has taken place in Hong Kong when victims cannot rely on the state for the collection and preservation of evidence.

Targeting of human rights observers by the Hong Kong Police Force

In response to the human rights violations detailed above, several civil society organisations deployed teams of human rights observers at assemblies throughout this period. Much of what they observed fed into reports by international human rights organisations, such as Amnesty International, as well as United Nations' human rights mechanisms and treaty bodies.

This submission focusses on the harassment experienced by some of those observers, including the arrest of their volunteers and/or staff. The actions by the HKPF outlined here contravene the Hong Kong SAR government's international human rights obligations to respect, protect and facilitate the legitimate work of human rights observers in monitoring all aspects of assemblies within the territory.

Independent monitoring of assemblies, including through members of civil society groups, is essential to ensure full accountability of law enforcement agencies. Law enforcement officials should not interfere when human rights defenders or others are monitoring an assembly since they play a crucial "watchdog" role. The public has a right to be informed about public assemblies taking place and how they unfold, and the monitoring of assemblies by members of civil society groups should be respected, facilitated and protected.

Monitors' observations can be a vital source of independent information about any human rights violations that take place, and their observations can also serve to inform public debate about how to improve their measures to promote and protect the right of peaceful assembly.

Civil Rights Observer, Hong Kong Human Rights Monitor and Rights Exposure all deployed human rights observers at the Hong Kong protests. Before deploying to the protests each organisation contacted the HKPF to inform them of their intentions, and in the case of Rights Exposure, requested a contact point within the police in

order to facilitate communication and prevent any misunderstandings. The HKPF did not respond to this request.

All the teams deployed wore apparel that identified them as human rights observers as well as the organisation they were with. In addition, all the observers carried identification cards issued by their organisations. Despite being clearly identified as human rights observers all the teams experienced being targeted by the HKPF with tear gas, pepper bullets, pepper spray, and water cannon in locations where no immediate violence was taking place and where clearly identified assembly monitors and journalists, as well as bystanders, were gathered.

Members of the observer teams also reported that police ordered them to stop video recording police officers making arrests and dispersing protesters, even when the observers were already about 20 meters away. Some observers were threatened or even injured by police using batons and shields. On one occasion, police also forcibly removed an observer's respirator after tear gas was deployed. In another occasion, police officers pointed less-lethal rifles at assembly monitors and journalists to disperse them.

The use of less-lethal weapons against human rights observer team members would appear to be a combination of deliberate targeting or an example of indiscriminate use of force. On many occasions, these actions were in clear violation of the HKPF's own internal guidelines⁶ on the use of force.

Video footage that provides examples of such behaviour, including being targeted with tear gas, pepper bullets, and water cannon by the HKPF is available from Rights Exposure on request. In addition, video footage of examples where less-lethal weapons were used against peaceful individuals can also be provided.

Arrest of Rights Exposure human rights observers (18 November 2019)

On 17 November 2019, two members of Rights Exposure's human rights observer team were deployed in the vicinity of the Hong Kong Polytechnic University to monitor the protests taking place there. When they tried to leave the area on the morning of 18 November, they were both arrested on "suspicion of participating in a riot". This was despite the two explaining to the police their role, that the organisation is legally registered in Hong Kong, and that they had contacted the police in writing in August 2019 before they had begun their monitoring work. The two were clearly identifiable as human rights observers, including by bilingual high

⁶ "In Hong Kong crackdown, police repeatedly broke their own rules - and faced no consequences", Washington Post, 24 December 2019 <https://www.washingtonpost.com/graphics/2019/world/hong-kong-protests-excessive-force/>

visibility vests and work ID cards. The two observers had exclusively been engaged in monitoring the protest. When they were arrested, the area was peaceful, with no protest, violent or otherwise, taking place nearby.

The observers were then restrained with plastic hand ties and led to a coach. The coach drove to Hung Hom District Police Station in Ho Man Tin, Kowloon. They were taken into a temporary processing centre set up in the ground floor parking garage of the police station. Two uniformed officers sat behind a long desk with large log books to take down the name, age and occupation of each of the arrestees. Each arrestee had to walk up to the desk and face the officers. When asked for his name, age, and occupation, one of the observers pointed to "Human Rights Observer" written in Chinese on his high visibility vest. This was the trigger from a second officer, a station sergeant named K.Y. Chang at the booking desk to spout a torrent of verbal abuse in Cantonese, including the use of racial slurs, about the observer himself and human rights observers generally. He then proceeded to abuse the female observer in the same manner, including the use of sexist slurs based on her gender.

The observers were held for 15 and 26 hours respectively. During that time they were not provided with adequate food, somewhere to sleep nor blankets to keep warm during the night. Legal representatives for the two observers were delayed for several hours by the police from meeting with their clients, and one observer, a US national, was not provided with timely access to her consulate⁷ despite repeated requests. This was subsequently verified by consulate staff.

Five months after their arrest, neither of the observers have been charged nor have they been pro-actively contacted by the police in regard to an investigation. However, the threat of being re-arrested and charge remains. The police continue to hold equipment used by the observers for monitoring protests, including protective equipment and their mobile phones, despite requests by their lawyers for their return. The police have refused to provide information on whether they have applied for a search warrant to access the phones, arguing that they are not legally obliged to do so. It is our position that the police cannot legally hold the phones indefinitely, nor access them without a search warrant. As such, the observers are now in the process of planning legal proceedings against the HKPF.

Media coverage related to the arrest of the two observers or Rights Exposure's monitoring work:

Al-jazeera

<https://www.aljazeera.com/news/2019/11/blunt-unplanned-police-tactics-fire-hk-protests-191101070008742.html>

⁷ "Notice to Persons in Police Custody or Involved in Police Inquiries" https://www.police.gov.hk/mip/doc/pol_153e.pdf

CNN

<https://edition.cnn.com/videos/world/2019/11/28/hong-kong-protests-arrests-police-paula-hancocks-pkg-vpx.cnn>

Reuters

<https://www.reuters.com/article/us-hongkong-protests-arrestees-insight/arrested-hong-kong-protesters-stuck-in-limbo-as-cases-grind-forward-idUSKBN1ZM0LD>

RTHK - The Pulse

<https://www.rthk.hk/tv/dtt31/programme/thepulse/episode/606144>

The Times

<https://www.thetimes.co.uk/article/hong-kong-police-abusing-power-says-detainee-5rnn7jhjh?region=global>

Washington Post

https://www.washingtonpost.com/video/world/hong-kong-may-never-be-the-same-again-as-mass-arrests-erode-public-trust-in-the-government/2020/02/29/882c21e2-18f3-451f-ae2-67854fa760fc_video.html

Possible Ill-treatment in police custody

Sometime in the late afternoon of 18 November whilst in detention, the two Rights Exposure observers suddenly heard a struggle behind a large curtained area that was in front of them to the right. It was next to the photographing and fingerprinting area, which was adjacent to where the police officers guarding them were seated. The curtains were green, movable ones with wheels like those used in hospitals. When they heard the struggle, they looked over. The curtains were moved allowing one of the observers to then witness a man being held by his collar and pushed into a corner—one side was the metal floor-to-ceiling shutters and one side was the movable curtain—the curtain swung open enough for her to see him held by the collar and pushed against the metal shutter. He was then pulled back, the curtain closed back.

There was some yelling back and forth, but then it sounded like it was just one officer hurling verbal abuses at the man. Based on what the officer was saying, the man may have resisted in some way and the officer (there may have been more than one) got angry and tried to restrain him. The metal shutters (on one side of the curtained area) kept vibrating and shaking, then the man let out two extended howls of pain. After that, the metal shutters continued to vibrate for several minutes, then it stopped. The howls of pain indicated to the two observers that the man was experiencing sustained

and considerable pain (rather than short burst of pain from blows because no punching or hitting sounds were heard). This may have been from pain caused by twisting, pressure or invasion. The nature of the sound made them conclude that it was highly likely the individual was being subjected to what could constitute ill-treated at the hands of the police.

When this first started, the group that was seated behind the observers and facing the other side must have turned around to look and they heard officers shouting at them, "What are you looking at? Turn around and look straight ahead!" The observers were facing in the direction of the struggle, so they just stared at the curtained area. There was dead silence in the entire processing center except for what was going on behind the curtains. The observers looked at officers who were within their line of vision to make eye contact, but no one caught their eye. They all looked away or were staring at the ground throughout the entire incident. After the struggle ended, the observers kept looking at the curtained area to see if the man would be brought out, but they never saw anyone being taken out. They suspect he may have been taken away through the metal shutters (that led to the station grounds), or through the other side of the curtained area and brought out. Subsequently, one of the observers met with another individual (a first aider) who claimed to have been held in the same holding area, who confirmed the incident. He stated that he saw one police officer emerge from the curtained area but did not see the detainee emerge.

Arrest of Civil Rights Observer human rights observers (1 January 2020)

On 1 January 2020, 16 human rights observers of Civil Rights Observer (CRO) were deployed to record and monitor a procession and assembly organized by the Civil Human Rights Front. Three observers were arrested in Causeway Bay during police's dispersal operation⁸; together with a large crowd of citizens, they were detained outside the SOGO Department Store for around four hours until they were eventually informed they were to be arrested. They were arrested for "taking part in an unlawful assembly", even though they explained their role and work to the police, had done nothing violent or unlawful and were wearing uniforms and cards clearly identifying them as "Human Rights Observer". Police confiscated their clothes, observer uniforms, observer cards, protective gear, mobile phones and cameras which were used to document the Hong Kong Police Force's actions.

⁸ <https://www.scmp.com/news/hong-kong/politics/article/3044305/hong-kong-protests-civil-rights-group-accuses-police>

International human rights obligations of the Hong Kong SAR government and Hong Kong Police Force

Under international law and standards, the Hong Kong SAR government and HKPF have an obligation to protect the rights of human rights observers. Such monitors play an important “watchdog” role, and it is in fact considered good practice for civil society to be able to carry out such work. This right is established under a number of international human rights standards, including the International Covenant on Civil and Political Rights (Articles 19 and 21) that is incorporated into Hong Kong law through the Bill of Rights. These standards clearly express that, irrespective of whether an assembly is declared unlawful, is no longer peaceful, or is dispersed, that does not terminate the right of civil society groups to monitor it. Observers should not be harassed, arrested or penalized as a result of their attendance at demonstrations. Confiscation and/or damaging or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished.

At the time of their respective arrests, all five of the observers were wearing clothing and ID cards that clearly identified their role and the organisations they were working for. All of them were involved in conducting impartial and independent work, and at no time did they obstruct police operations. In addition, during the two separate incidents, each of the five observers were subjected to verbal abuse from police officers specifically in relation to their role as human rights observers. These events raise serious questions as to whether the Hong Kong SAR government and Hong Kong Police Force continue to honour their obligations on the right to freedom of peaceful assembly under international human rights law and standards, as well as Hong Kong law.

The Hong Kong SAR government and HKPF are obligated under a number of international human rights treaty and other standards to protect and respect the work of human rights observers. These include:

International Covenant on Civil and Political Rights, Articles 19 and 21:

Article 21: The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

General Comment No. 34 - Article 19: Freedoms of opinion and expression
(UN Doc. CCPR/C/GC/34)

45. It is normally incompatible with paragraph 3 to restrict the freedom of journalists and others who seek to exercise their freedom of expression (such as persons who wish to travel to human rights-related meetings) to travel outside the State party, to restrict the entry into the State party of foreign journalists to those from specified countries or to restrict freedom of movement of journalists and human rights investigators within the State party (including to conflict-affected locations, the sites of natural disasters and locations where there are allegations of human rights abuses). States parties should recognize and respect that element of the right of freedom of expression that embraces the limited journalistic privilege not to disclose information sources.

UNGA Resolution 66/164: Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms:

[Preambular para. 9] Recognizing the substantial role that human rights defenders can play in supporting efforts to strengthen peace and development, through dialogue, openness, participation and justice, including by monitoring, reporting on and contributing to the promotion and protection of human rights, [...]

6. Also calls upon States to ensure that human rights defenders can perform their important role in the context of peaceful protests, in accordance with national legislation consistent with the Charter of the United Nations and international human rights law, and in this regard to ensure that no one is subject to excessive and indiscriminate use of force, arbitrary arrest and detention, torture and other cruel, inhuman or degrading treatment or punishment, enforced disappearance, abuse of criminal and civil proceedings or threats of such acts;

Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (UN Doc. A/HRC/31/66):

41. A primary function of law enforcement, in addition to the obligation to facilitate, is protecting the safety and rights of those who participate in assemblies, as well as monitors and bystanders.

68. All persons enjoy the right to observe, and by extension monitor, assemblies. This right is derived from the right to seek and receive information,

which is protected under article 19 (2) of the International Covenant on Civil and Political Rights. The concept of monitoring encapsulates not only the act of observing an assembly, but also the active collection, verification and immediate use of information to address human rights problems.

71. Everyone — whether a participant, monitor or observer — shall enjoy the right to record an assembly, which includes the right to record the law enforcement operation. This also includes the right to record an interaction in which he or she is being recorded by a State agent — sometimes referred to as the right to “record back”. The State should protect this right. Confiscation, seizure and/or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished.

Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2011 – June 2012):

“The right to observe public assemblies is part of the more general right to receive information (a corollary to the right to freedom of expression). Freedom to monitor public assemblies should not only be guaranteed to all media representatives, including so-called citizen journalists, but also to others in civil society, such as human rights activists. provides a vital source of independent information on the activities of both participants and law-enforcement officials that may be used to inform public debate and serve as the basis for dialogue between state and local authorities, law-enforcement officials and civil society.” (Paragraph 224, p.85)

OSCE/ODIHR, Guidelines on the Protection of Human Rights Defenders (2014):

62. Authorities should also support and facilitate initiatives by human rights defenders for the independent monitoring of and reporting on assemblies, as these measures can contribute to greater accountability and improve the protection of the right to freedom of peaceful assembly. Human rights defenders and their organizations play a crucial watchdog role in any democracy and must, therefore, be permitted to freely observe public assemblies.

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (1996):

Principle 19: Access to Restricted Areas

Any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists or representatives of intergovernmental or nongovernmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists or representatives of such organizations from areas that are experiencing violence or armed conflict except where their presence would pose a clear risk to the safety of others.

Recommendations for the UK government

- Call on the Hong Kong SAR government and Hong Kong Police Force, in both bilateral communications and multilateral forums (such as the United Nations), to respect, protect and facilitate the right of human rights observers to monitor all aspects of assemblies, including to:
 - Publicly commit to upholding Hong Kong's obligations under international law and standards in relation to the role of human rights observers
 - Instruct all police officers deployed to assemblies that human rights observers have a right to conduct their work without being harassed or arrested, even when an assembly is declared "unlawful" or a "riot"
 - Protect human rights observers and their property from undue harm
 - Immediately cease the criminal investigations into the five human rights observers outlined above, drop all related charges and return all their belongings and equipment forthwith
- Urge the Hong Kong SAR government to establish a fully independent, impartial, effective and prompt investigation into the use of force by law enforcement during the Extradition Bill protests. This includes excessive use of force by police in the largely peaceful protest on 12 June 2019 and other instances, allegations of torture and other ill-treatment in detention, and the treatment of journalists and other observers such as outlined here.
- Take action to establish so-called Magnitsky legislation and/or use existing universal jurisdiction mechanisms to hold to account officials of the Hong Kong SAR government and Hong Kong Police Force where there is evidence of their

involvement (either material or via command responsibility) in human rights violations.

- Conduct a review to identify officials and senior police officers that are responsible for clear breaches of human rights and the Sino-British Joint Declaration in Hong Kong. This should include an investigation into the role played by UK nationals Rupert Dover, David Jordan, and Justin Shave in possible human rights violations perpetrated at the protests⁹ that could amount to ill-treatment and torture, and whether they may be liable for prosecution under the Convention Against Torture.
- Cease the provision of material and capacity enhancing cooperation between UK government agencies and the Hong Kong Security Bureau, including the Hong Kong Police Force, until such time as there has been an independent commission of inquiry into the policing of the protests and/or substantive reforms of the police that address the human rights violations that have been documented during the protests in 2019. This should prohibit the sale of less-lethal weapons for crowd control, as well as training (other than that in human rights policing).

⁹ <https://www.dailymail.co.uk/news/article-7168131/Shocking-moment-British-ex-pat-police-chief-orders-tear-gas-blasted-politician-protester.html>