



# 民間人權陣線

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## 民間人權陣線警權關注組 就香港落實《公民權利和政治權利國際公約》的情況 向聯合國人權事務委員會提交意見書

### 前言

現時香港的行政長官並不是經由普選制度產生，處理地區事務的區議會中有接近四份一的議席為委任或當然議席。而負責審議法例、審批公共財政撥款的立法會中有一半的席位屬於功能組別議席。同時，在立法會分組點票的規限下，議案即使獲得過半數的民選議員支持，仍然可因缺乏民意基礎的功能組別議員的反對而被否決。在此不民主的政治制度下，議會並不能有效地代表民意，也無法成為香港市民介入政治的渠道。故此，遊行、集會成為香港市民表達意見、彰顯民意的主要方法。

近年香港的社會矛盾加劇，市民珍重的核心價值，包括言論自由、法治及人權皆受到不同的社會事件衝擊，加上貧富懸殊、房屋問題日益嚴重，市民更積極地以遊行、集會的方式表達意見及向政府施壓，要求改善施政。

我們認為在一個不民主的社會，遊行、集會是市民的表達政治意見的重要手段。在近年，香港市民以更進取的方式去表達自己的訴求及以集體行動向政府施壓。但綜觀而言，市民的社會行動雖然有所升級，但並無任何流血事件或破壞財產的事情發生。我們在此尋求人權事務委員會的認同。同時，在以和平的社會行動為原則下，懇請委員會保護市民進行遊行集會的權利不被壓制。

我們特別於此簡報指出以下 4 點，請委員會向香港政府提出關注及作出持續的監察，以保護香港市民的公民及政治權利：

- (1) 政治檢控及濫用拘捕權力
- (2) 警方向示威者不恰當地使用武力
- (3) 監警會未能有效監察警察權力的行使
- (4) 憂慮香港警隊建立具規模的監察市民網絡

民間人權陣線警權關注組

2013 年 2 月 14 日

## 議題一： 政治檢控及濫用拘捕權力

1. 香港警隊於遊行集會拘捕示威者及作出檢控的的數字持續上升，而在 2011 年，警方在一年內更總共拘捕了 444 名參與示威活動的香港市民。值得注意的是，警方除了於 2011 年大幅拘捕示威者外，更多番使用《公安條例》的條文對示威者進行拘捕及檢控，而在該年引用《公安條例》的檢控數字亦高於過去 14 年間，即 1997 至 2010 年間的總和，當中常用的控罪包括「未經授權集結」<sup>1</sup>、「擾亂公眾秩序」<sup>2</sup>及「非法集結」<sup>3</sup>。
2. 以下為最近 10 年有關公眾集會的拘捕及檢控數字<sup>4</sup>：

	2003	2004	2005	2006	2007
被捕的示威者人數	0	3	1158*	23	30
被檢控的示威者人數	2	1	7	7	26
示威者被警方以《公安條例》作出檢控的數字	0	0	2	0	7

\*當中有 1132 人為於 WTO 事件被捕的示威者，而當中大多數為外國示威者

	2008	2009	2010	2011	2012
被捕的示威者人數	39	30	57	444	50
被檢控的示威者人數	19	14	15	54	9*
示威者被警方以《公安條例》作出檢控的數字	0	8	2	45	0*

\*此為 2012 年 1-10 月期間的數字

3. 而令人相當憂慮的是，警方於 2011 年間多次使用「擾亂公眾秩序」及「非法集結」的罪名拘捕及檢控示威者。在其中一個案件中，有示威者為了抗議中國政府在毒奶粉事件上跟進不力及打壓維權人士，於是在中央人民政府駐香港特別行政區聯絡辦公室外，投擲及拋撒比喻作奶粉的白色麵粉。警方在當時拘捕及以《公安條例》檢控了兩名示威者，指控他們的行為擾亂秩序及相當可能導致社會安寧被破壞。有關的案件於裁判法院被判罪名不成立，因示威者的行為並沒有破壞社會安寧，律政司不服裁決作出上訴。高等法院上訴庭的判詞中，對律政司的上訴有如此的評論<sup>5</sup>：

<sup>1</sup>香港法例245章《公安條例》，第17A條

<sup>2</sup>香港法例245章《公安條例》，第17B條

<sup>3</sup>香港法例245章《公安條例》，第18條

<sup>4</sup>有關數字是由警方提供。

<sup>5</sup> HCMA 163/2012 香港特別行政區 訴 招顯聰、姜靈彰 48-50段

「我相信，無論針對的是人身，抑或財產，涉及實質暴力的，必有可應對的法律可援。如果暴力的性質不明顯，又或缺乏針對性，那香港法例第 228 章《簡易治罪條例》第 4 條下的妨擾罪 (nuisance in a public place)，則可能適用。如果都不行，執法當局就要考慮，究竟是真的法律真空，要立法解決，還是社會根本沒有把涉案行為刑事化的共識，所以行為人也不應該被起訴。

另外，我相信，但不肯定，香港的警察，仍然擁有普通法所賦予的權力，以拘捕破壞社會安寧的人。如果這個想法正確，裁判官在現行的法律下又有權因應這種拘捕而判決肇事者簽保守行為，那也未嘗不是一個方法。<sup>6</sup>

無論如何，法庭不會因為有法律真空的可能而把一項罪名作不當擴張。」

4. 我們在法庭的判詞中可以看到，上訴庭對律政司引用《公安條例》檢控示威者的做法是抱有質疑的態度。我們認為現時《公安條例》中第 17B 及 18 條的「擾亂公眾秩序」及「非法集結」的控罪門檻極低，稍有被定義為擾亂秩序的行為出現，市民便即可被拘捕、檢控。我們認為警方隨意使用《公安條例》，將會削弱香港市民表達意見的空間及權利。
5. 然而，除了多番使用公安條例進行檢控外，在近年一些大型的示威行動中，警方往往以大規模拘捕終止示威活動，例如：
  - A. 在 2011 年 3 月 6 日的反對財政預算案遊行中，大批市民離開遊行路線，於行車道上進行靜坐。警方即場拘捕 113 人以終止該行動，並在其後以「未經授權集結」的罪名起訴 4 人。拘捕人數與被檢控的人數的比率為 3.53%；
  - B. 於 2011 年 6 月 4 日，一次抗議警察濫用拘捕權力的遊行中，警方於遊利中途終止遊行，並以「非法集結」的罪名拘捕 53 人，並於其後起訴 8 人。拘捕人數與被檢控的人數的比率為 15.09%；
  - C. 在 2011 年 7 月 1 日，兩批示威者在七一遊行後留守街頭抗議，一班青年及社民連成員在干諾道中靜坐，另外人民力量的成員則於灣仔修頓球場靜坐超過兩個小時後，遊行至中環花園道交叉口被警方截停，及後警方出動防暴警察及胡椒噴霧，並於當晚拘捕 228 名市民，其後起訴 19 人。拘捕人數與被檢控的人數的比率為 8.33%；
6. 根據警方的指引，如警方選擇向參與公眾遊行集會的人士作出檢控，則必須先向律政司尋求法律指引，以確保檢控有足夠的法理基礎。根據警方及律政司的數字，2011 年因犯罪而被捕的人數是 38327 人<sup>7</sup>；而根據律政司的數字，

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<sup>6</sup> 拒絕答保守行為的話，會構成藐視法庭，可能要入獄：Archbold Hong Kong 2012, 5-253A段

<sup>7</sup> 警方統計數字2011

2011 年在各級法庭處理的被起訴人數為 13679 人<sup>8</sup>。即刑事案件的檢控比率約為 35.69%。而 2010 年的相關比率亦錄得相近數字，即 38.12%。

7. 故此，有關遊行集會的案件的檢控比率是遠低於香港一般的刑事案件的平均檢控比率。根據過往經驗，由於被起訴的示威者多為較為有經驗及經常參與社會行動的組織者。我們質疑警方及律政司的檢控是帶有選擇性及政治考慮。同時，低於平均數值的遊行集會檢控比率可能亦在反映警方針對示威者的拘捕行動可能是缺乏法理支持，以至不乎合檢控的基本要求。

#### 建議：

- A. 要求警方如要以《公安條例》作出檢控，必須先向律政司尋求法律指引及取得副刑事檢控專員的批准；
- B. 要求香港政府檢討《公安條例》中有關「擾亂公眾秩序」及「非法集結」的條文，並以具體、明確的字眼及概念以取代現時條文中濛糊不清的地方，以確保條例只可應用於針對人身、財產作出涉及實質暴力的行為；
- C. 促請警方就遊行集會而作出的行動，包括警告、驅散、終止及拘捕訂立程序及讓公眾知悉。以確保當警方定義一個活動為「非法」或「不允許」時，市民有充足的資訊及時間以作出選擇。

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<sup>8</sup> 香港刑事檢控2011 P.76

## 議題二：警方向示威者不恰當地使用武力

12. 警方於近年處理遊行集會的手法越趨強硬及不合理，令人質疑警方的政治中立性及在行動中濫用武力對待示威者，以下個案值得委員會特別注意：

### 事件一：警方阻止市民於中聯辦正門外示威並以武力對待市民



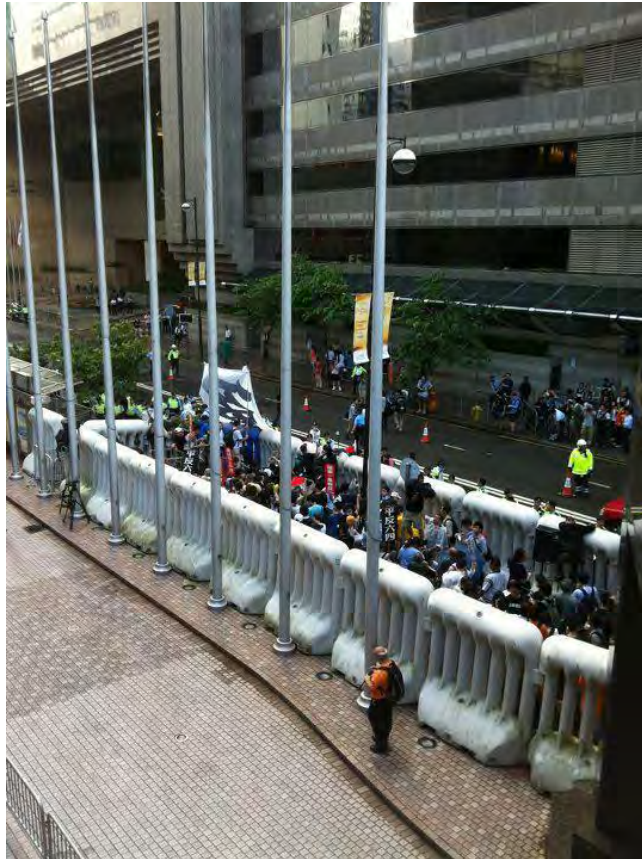
圖一：2012年4月1日於中央人民政府駐香港特別行政區聯絡辦公室外的示威活動

警方在過去一直以公共安全及空間有限的理由不容許市民於中央人民政府駐香港特別行政區聯絡辦公室的正門外示威。在2012年4月1日的一次示威活動中，警方於中聯辦正門外的行人路上以大量警力築起人牆及以鐵欄圍起警線，以阻止市民於中聯辦正門外示威。在警力充裕下，有6名警員仍然向1位堅持前進的示威者施放胡椒噴霧。此情況令人質疑警方有濫用武力之嫌及其所謂「最低武力原則」的做法。上圖紅圈為警方的胡椒噴霧裝置，黃格為警員以手捉著示威者的身體。

就著警方以不合理的原因阻止市民於中聯辦正門外進行示威集會，民間人權陣線籍2012年5月的一次遊行申請中提出上訴，成功推翻警方的安排，並獲公眾集會及遊行上訴委員會裁定，市民可於中聯辦正門外的空地及行人路示威。由此可見，警方於早前阻止市民於中聯辦正門外示威的做法是不合理及沒有法理依據。而警民衝突的事件亦是源於警方對示威活動的不合理安排所引致。

## 事件二：2012 年 6 月 30 日胡錦濤訪港事件

在 2012 年 6 月 30 日胡錦濤訪港期間，民間團體於香港灣仔會議展覽中心向國家主席胡錦濤進行抗議。但警方安排的示威區不但空間細小，而且更以逾兩米高的水碼圍起該示威區，有關的安排嚴重阻礙市民的視線和根本無法讓市民有效表達訴求。



圖二：2012 年 6 月 30 日胡錦濤訪港期間，警方於香港灣仔會議展覽中心所安排的示威區

同時，警方於當日更首次於行動中使用大支裝的胡椒噴霧。從下列相片可見，警方在施放胡椒噴霧時，在場的示威者並未有任何特別舉動，甚至都是背向警察的，但卻遭警方以大量的胡椒噴霧襲擊。根據警方在事後的解釋，是因為有示威者嘗試推到水碼，為免發生危險所以才施放胡椒噴霧。我們對此表示質疑，我們認為警方只應於別無他法的情況下才可使用武力及其動用武力的程序是必須符合比例的。警方設置的水碼圍牆環環相扣，在注水後每個水碼重逾兩噸，示威者根本難以移動水碼，更遑論將之推倒。再者，當時的示威者被圍堵在水碼牆內，在此情況內施放胡椒噴霧，將令無辜的示威者亦受波及和爭相躲避，更容易做成人踏人的危險和激起示威者反抗的情緒。



圖三：現場為 2012 年 6 月 30 日胡錦濤訪港期間，香港灣仔會議展覽中心對出的示威區。在警方施放的胡椒噴霧時程內，未見有激烈的示威行動。



圖四：現場為 2012 年 6 月 30 日胡錦濤訪港期間，香港灣仔會議展覽中心示威區內。有警員透過水碼的隙縫向示威者施放胡椒噴霧。



圖五：現場為 2012 年 6 月 30 日胡錦濤訪港期間，香港灣仔會議展覽中心示威區內。有示威者以水清洗眼睛期間，再被警員透過水碼的隙縫施放胡椒噴霧。



圖六：現場為 2012 年 6 月 30 日胡錦濤訪港期間，香港灣仔會議展覽中心示威區內。有警員透



過水碼的隙縫向示威者施放胡椒噴霧，示威者因無處走避而以雨傘遮擋胡椒噴霧，而現場亦有記者被波及。

### **事件三：2011年3月6日警方以人鍊方式衝擊和平示威者**

在2011年3月6日反對財政預算案，要求公平財富再分配的示威者以和平的方式佔據馬路。在行動的30分鐘後，警方在沒有任何警告及要求示威者離開的情況下，突然由數十名警員組成人牆，以衝擊示威者的方式進行清場，大量示威者因此倒地、被踢及拳擊。同時警方在未有警告下施放胡椒噴霧，並誤中一名八歲小童。

在事件中有女示威者報稱被一名男警於胸口拳擊三下，由於過程被記攝下來，事件引起公眾關注。惟因當時人不相信警察投訴課的機制，不願進行投訴。而警察投訴課亦沒有主動作出調查。

警察在沒有預警下以人牆方式衝擊示威者的清場手段，在香港近年前所未見。令人憂慮警方轉向以極強硬的手段作為處理遊行集會的方法。

### **建議：**

1. 促請警方就遊行集會而作出的行動，包括警告、驅散、終止及拘捕訂立程序及讓公眾知悉。以確保當警方定義一個活動為「非法」或「不允許」時，市民有充足的資訊及時間以作出選擇及預備；
2. 促請警方不應以水碼圍封示威區，以致不合理地令示威者無法有效表達訴求；
3. 要求警方公開使用胡椒噴霧的執行指引及在每次施放胡椒噴霧前必須作出清楚的警告；
4. 要求警方應統計未有按照執行指引而使用胡椒噴霧的次數及公開有關數據，以供公眾監察；
5. 要求警方應統計未有作出警告而使用胡椒噴霧的次數及公開有關數據，以供公眾監察。

### **議題三：監警會未能有效監察警察權力的行使**

現時有關投訴警察行為的個案依然是由警務處成立的投訴警察課所處理及調查。獨立監察警方處理投訴委員會的職權主要是監察和覆檢警務處對須匯報投訴的處理和調查，並未有強制索取文件及調查的權力，故此其法定權力並不足夠建立一個有效及具公信力的監察警察制度。我們亦注意到，在就李克強副總理訪港而衍生的投訴個案審查中，16宗投訴個案中，有3個案因為警方未有向監警會提

交相需文件，以致要延長處理投訴個案的時間。

過往曾有不同的民間團體及弱勢群體反映指，因為投訴警察課是屬於警務處的部門，有受害人因為這種「自己人查自己人」的狀況而對投訴警察制度沒有信心，因而拒絕作出投訴。同時，曾有關注性工作者權益的團體指出，有性工作者在作出投訴後被涉事的警員滋擾、恐嚇，要求撤銷投訴。我們認為獨立的調查對處理針對警察的投訴極為重要，亦是建立具公信力的監察制度的重要一環。

現時投訴警察課不會主動就警員的行為作主動的調查，只會在收到涉事人的正式投訴時才會就個案展開調查。我們認為此做法極不理想，在過往曾有警察濫權的事件引起公眾關注，縱使具備客觀的證據(如錄影帶)，但因為受害者不願作出投訴，而令事件無法跟進。就類此的狀況，監警會亦曾於其報告中指出即使投訴人未有錄取口供，投訴警察課仍然可就投訴作出全面調查，檢視新聞報導、錄像記錄、現場目擊證人，以及進行其他有需要的調查，從而對有關指控達致一個明確的分類<sup>9</sup>。

現時監警會的職權主要是監察和覆檢警務處對須匯報投訴的處理和調查，我們認為有關的職權定義過於狹窄，亦容易將警察濫權的事件約化成個別警員的操守行為。

### 建議

1. 要求擴闊監警會的職權，賦予其獨立及主動的調查權力及可以因處理投訴個案而強制相關部門提供所需文件；
2. 要求擴闊監警會的職權，讓監警會可以從政策層面監察警方是否有濫用權力或對公民權利作出不合理、不合法的壓制。

### 議題四：憂慮香港警隊建立具規模的監察市民網絡

香港警方經常於遊行集會中進行沒有明確目的的錄像紀錄，我們認為此舉是侵略了市民的私隱，而保障市民在表達政治意見時的私隱更是至為重要。否則將會容易引起政治審查、白色恐怖的恐慌。故此，警方應只在合理懷疑有罪案發生的情況下，才進行錄像記錄。我們應為警方進行錄影的目標是為了搜集罪案的證據，而非沒有明確目的收集遊行集會的內容及參與市民的容貌。

### 建議

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<sup>9</sup> 獨立監察警方處理投訴委員會 2012, 就李克強副總理訪港而衍生的投訴個案審查最終報告, 2.13.4段, P.29.

1. 要求警方訂定清楚、透明的指引，向公眾交代警方於何種情況會對遊行集會進行錄像記錄及所收集的資料的用途、處理方法及銷毀的限期；
2. 要求警方訂定清楚、透明、公開的指引，以防止警員任意對市民的活動進行錄像記錄。



# 民間人權陣線

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**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 107<sup>th</sup> 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 assembly<sup>1</sup>", "disorder in public places<sup>2</sup>" and "unlawful assembly<sup>3</sup>".
10. The number of arrests and prosecutions made in relation to public assemblies for the past 10 years<sup>4</sup> 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

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

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

<sup>3</sup> Section 18 of the Public Order Ordinance, Cap. 245 Laws of Hong Kong.

<sup>4</sup> 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 appeal<sup>5</sup>,

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 problem<sup>6</sup>.*

*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

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

<sup>6</sup> 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 1<sup>st</sup> 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 persons<sup>7</sup> were arrested for criminal offense in 2011; and according to figures from the Department of Justice, 13679 persons<sup>8</sup> 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

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<sup>7</sup> number provided by Hong Kong Police Force in 2011

<sup>8</sup> 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 action<sup>9</sup>.

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<sup>9</sup>Photo 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 allegation<sup>10</sup>.
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;

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<sup>10</sup> 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.