

POLICING
PROTESTS
IN
HONG KONG
:
**TORTURE &
CRUEL,
INHUMAN
OR
DEGRADING
TREATMENT
OR
PUNISHMENT**

May 2020

Acknowledgements

We are grateful to the individuals who shared their experiences with us in the interviews. We also thank the volunteers who conducted and/or coordinated the interviews, including Chau Lee Lo and Ip Ho Kong and those who would like to stay anonymous, and Random Useless Doodles for the illustrations included in this report.

Contents

Introduction	p.01
Methodology	p.01
Definitions of torture and cruel, inhuman and degrading treatment and punishment	p.02

CASE STUDIES

P.04

Case 1: Simon	p.05
Case 2: David	p.09
Case 3: Alan	p.13
Case 4: Gabriel	p.15
Case 5: Jason	p.19
Case 6: Calvin	p.23
Case 7: Thomas	p.26
For all the cases described above	p.28

QUANTITATIVE ANALYSIS

P.29

CONCLUSION & RECOMMENDATIONS

P.32

Introduction

01. In this report, we study the experiences of individuals who have been arrested by the Hong Kong Police Force or otherwise come under police control in various assemblies in Hong Kong and evaluate whether they were subjected to torture and cruel, inhuman or degrading treatment or punishment. Policy recommendations are made based on this evaluation.

Methodology

02. We interviewed 45 persons who have been arrested by the Hong Kong Police Force or otherwise come under police control at the sites of assemblies from July to November 2019. These persons had all suffered some form of unreasonable treatment immediately before and/or while under the custody of the Hong Kong Police Force. We have also interviewed one witness of such unreasonable treatment. These victims and witness have approached Civil Rights Observer for assistance after the arrests or responded to the calls for interviews on Civil Rights Observer's support platform, which was promoted on social media.

03. The interviews were semi-structured, with questions about the arrest, the use of force by the police, body search, access to medical care, where applicable, and the victim's views or feelings about the experiences.

04. The analyses made in this report are based solely on the testimonies given by these individuals in their interviews with Civil Rights Observer. Due to resource constraints, we have not taken steps to corroborate their testimonies or to assist them to recall details of the incidents (for example by giving counselling services).

05. In the next part of the report, we have chosen seven case studies for qualitative analysis. The cases are chosen because the severity of the unreasonable treatment they received after the arrests, when they were in the custody and *de facto* control of the Hong Kong Police Force and therefore considered to be in a powerless situation.

06. These victims, except those in case 1 and case 3 who cannot be reached at the time of the writing of this report, have presented to us documents related to their arrests or prosecutions to show that they have indeed been arrested¹.

07. Following the qualitative analysis, we present a quantitative analysis of the experiences of the individuals. One of the interviewees have come under the control of the police twice and the two experiences were considered as two different cases. Some interviewees also described to us the experiences of other people as they could witness. Such information is also captured in this part of the report.

08. To protect the interviewees, the cases are anonymised and the names of the victims are not real.

¹ These documents may have their personal information redacted.

Definitions of torture and cruel, inhuman and degrading treatment and punishment

09. Torture is defined in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which applies to Hong Kong, as:

“Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

In other words, there are three elements:

- (1) Intentional infliction of severe pain or suffering;
- (2) A purpose, such as obtaining information or a confession, punishment, intimidation, coercion or discrimination; and
- (3) The instigation or consent or acquiescence of a public official or other person acting in an official capacity.

It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

10. For cruel, inhuman and degrading treatment and punishment (CIDTP), as explained by former Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Manfred Nowak, acts which fall short of this definition of torture, particularly acts without the elements of intent or acts not carried out for the specific purposes outlined, may constitute CIDTP under Article 16 of CAT.²

11. What constitutes torture and cruel, inhuman or degrading treatment depends on all the circumstances of the case, such as the duration of the treatment, the mental and physical effects on the victim, and the sex, age and state of health of the victim³.

12. Acts aimed at humiliating the victim constitute degrading treatment or punishment even where severe pain has not been inflicted⁴.

13. When explaining what constitutes CIDTP, former Special Rapporteur on torture Nowak points out that if the victim is in a powerless situation, ie if they are detained or otherwise under the *de facto* control of a police officer, the use of physical or mental coercion is not permitted⁵. Where the victim is not under the *de facto* control of another, if the use of force by a police officer is disproportionate to the purpose to be achieved and results in pain or suffering meeting a certain threshold, it amounts to cruel or inhuman treatment or punishment⁶.

² Nowak, M, (2005). *Civil and Political Rights, Including the Questions of Torture and Detention: Torture and Other Cruel, Inhuman or Degrading Treatment*. E/CN.4/2006/6. Available at: <https://undocs.org/en/E/CN.4/2006/6>, paragraph 35.

³ Human Rights Committee, (1989). *Vuolanne v. Finland*. Communication No. 265/1987. CCPR/C/35/D/265/1987. Available at: <https://www.refworld.org/cases,HRC,50b8ee372.html>

⁵ *Ibid*, paragraph 40.

⁶ *Ibid*, paragraph 38.

14. Torture and CIDTP is prohibited under Article 7 of the International Covenant on Civil and Political Rights (ICCPR), which applies to Hong Kong and has been domestically incorporated through the Hong Kong Bill of Rights Ordinance. States have various duties to combat torture and CIDTP under CAT, including the prevention of torture and CIDTP (Article 16) and ensuring acts of torture are offences under domestic law (Article 4).
15. In Hong Kong, torture is an offence under section 3(1) of the Crimes (Torture) Ordinance, Cap. 427: "A public official or person acting in an official capacity, whatever the official's or the person's nationality or citizenship, commits the offence of torture if in Hong Kong or elsewhere the official or the person intentionally inflicts severe pain or suffering on another in the performance or purported performance of his or her official duties."
16. However, the ordinance provides for a defence of lawful authority, justification or excuse under section 3(4). The definition of torture in domestic law in Hong Kong has been criticised by the Human Rights Committee and the Committee against Torture because this section may in practice contain loopholes that might prevent effective prosecution and allow possible defences. Also, the list of persons that count as public officials under the ordinance may have an exclusionary effect. Both committees have recommended Hong Kong amend the Crimes (Torture Ordinance) and eliminate any possible defences for the offence of torture, recognising the non-derogable character of the prohibition of torture. The Committee against Torture has also recommended Hong Kong adopt a more inclusive definition of the term "public official" to ensure that any person acting in an official capacity can be prosecuted for acts of torture.⁷
17. Article 10 of the ICCPR also establishes a right for persons deprived of liberty to be treated with humanity and with respect for the inherent dignity of the human person⁸.
18. If interrogation methods do not reach the level of severe pain or suffering but are intended to humiliate the detainee, they are still to be considered as degrading treatment or punishment⁹.
19. In evaluating whether the unreasonable treatment in the cases in this report was severe enough to amount to torture or CIDTP, we compare the unreasonable treatment with that in case law in various jurisdictions.

7 Human Rights Committee, (2013). *Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107th session (11 – 28 March 2013)*. CCPR/C/CHN-HKG/CO/3. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsr2bAznTlrtkyo4FUNHETCQOY7P%2fow040gd8LZ9d1NQukCEhx4dNtgXsWJSk7fStTBMEzROWsqHv9SIKqzjoKxAYOVEuYSz7bBCEBkn48xMZfM8%2brBXHTfUbyYz%2btX3U9w%3d%3d>, paragraph 8;

Committee against Torture, (2016). *Concluding observations on the fifth periodic report of China with respect to Hong Kong, China*. CAT/C/CHN-HKG/CO/5. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fCHN-HKG%2fCO%2f5&Lang=en, paragraphs 10 and 11.

8 *Ibid.*, paragraph 40.

9 *Ibid.*, paragraph 40.

CASE STUDIES

Case 1: Simon

Case 2: David

Case 3: Alan

Case 4: Gabriel

Case 5: Jason

Case 6: Calvin

Case 7: Thomas

CASE 1

Simon

Key incidents:

Sexual assault

Body search with only underwear on

Physical force to attempt to unlock his phone

Offences potentially committed by the police officers concerned in the cases of violence included: Assault occasioning actual bodily harm (contrary to section 39 of the Offences against the Person Ordinance, Cap. 212) and indecent assault (contrary to section 122 of the Crimes Ordinance, Cap. 200)

20. On the night of the arrest, Simon was walking down a staircase into a Mass Transit Railway (MTR) station, going to take the MTR home. Suddenly, a group of riot police appeared from behind and pushed the people on the staircase onto the floor. Five police officers subdued Simon. They stepped on his head and beat his legs with their batons. They also pushed Simon's elbow with the knee and bent Simon's left hand outward. Some other police officers passing by also stepped on Simon's head and limbs.

21. Then, Simon was taken onto the police vehicle. A police officer asked another officer to turn off the light and pulled the curtains as someone seemed to be taking pictures or shooting outside. Once the light was turned off, a police officer dashed Simon so that his head hit the window. At the same time, Simon was repeatedly hit in the head, his face near his eyes and his chest. He also felt that he was hit from something probably projected from a catapult. After a while, the police officers put on gloves and continued the beating, and pushed Simon onto the ground with a padded knee and kicked him. Simon believed the police officers put on gloves to avoid leaving traces. During this time, Simon had already been handcuffed.

CASE 1

Simon



10

22. During the beating, a police officer suddenly touched his whole body and grabbed his penis forcefully once. The police officer kept calling him a cockroach or swore at him.
23. After a journey of about 15 minutes, Simon was taken into the police station. Inside, while he was walking towards the briefing room, police officers who were passing by, including senior and junior ones, hit him in the head or with their elbows or verbally insulted him.
24. Inside the briefing room, someone whom Simon suspected to be a police officer tapped his head with something like an identity card. That person then asked Simon whether he wanted to see his/her Police Warrant Card; however, he/she flashed it continuously, so it was impossible to read the card. [Note: it was a common complaint of some members of the public that police officers often hid their Police Warrant Cards.]

¹⁰ The scenes illustrated in this report may be slightly different from the actual ones. This is because the interviewees shared their experiences verbally and we recorded it in writing, and then produced the illustrations based on the written records.

CASE 1

Simon

25. Then, a police officer tried to force Simon's finger onto his mobile phone a few times in order to unlock it. Simon was handcuffed at that time. The police officer also asked Simon for the passcode but Simon refused to give it to him/her. When it did not work, he/she beat Simon's face and head with his/her hand several times.
26. While the police was taking the statement with Simon, Simon requested to see the doctor as he felt dizzy, but the police did not arrange for a doctor, claiming every arrested person would feel dizzy. During the taking of the statement, the police officers kicked Simon's chair, slapped him in the head and insulted him verbally. One police officer spurt some coke onto his face.
27. Then, Simon was searched with only underwear on for five minutes in the search room. The police gave Simon a sheet of paper about his rights as far as Simon could recall but did not explain the reason for the search. Until then, Simon was not informed of the charges he had been arrested for. The police did not give Simon any instruction about which part of his body he should take off his clothes for first. The police asked Simon to squat and walk forward and backward. After the search, a police officer splashed a glass of water onto him, and he felt the water tasted saline.
28. Simon was then taken to the detention room. Every several minutes, a police officer would come to knock the gate. Simon thinks it was to keep the detained awake. It was early in the morning.
29. During Simon's stay in the police station, he kept requesting to call the lawyer, but was at times ignored by the police. When he finally saw the lawyer six to seven hours after his arrest, he was sent to the hospital and hospitalized for two days.

CASE 1

Simon

Analysis

30. The grabbing of Simon's penis, the flashing of the alleged police warrant card, the verbal insult (including calling Simon a cockroach) and the splashing of water or drinks onto Simon's body would amount to degrading treatment or punishment, as it seems they were done to humiliate him.
31. The body search would amount to degrading treatment or punishment as well. It was unclear to Simon at the point of the search for what charges he had been arrested. The police did not explain to Simon the reasons for the search either. If the police did not know what offences Simon was suspected of committing at this point, the Duty Officer would not be able to properly assess or reasonably conclude that a search without clothing was necessary and proportionate. Moreover, Simon did not exhibit any violent action or suicidal tendency during and after the arrest. He was not suspected of possessing dangerous drugs. It was unclear why it was necessary for the police to ask Simon to squat and walk to and fro during the search. It is argued that the search contravened section 49-04 of the Police General Orders and was arbitrary, therefore constituting degrading treatment or punishment¹¹.
32. It is argued that such repeated beatings of Simon on the police vehicle and inside the police station, including the grabbing of his penis and taking place while Simon was under the control of the police, together with the delayed access to medical treatment and the prohibition of sleeping when Simon was injured, would constitute cruel and inhuman treatment or punishment.

¹¹ See, for example, *Frerot v France* [2007] ECHR Application No 70204/01 (12 June 2007), in which the European Court of Human Rights held that the strip searches in question in that case led to excessive feelings of arbitrariness and inferiority and therefore constituted degrading treatment or punishment.

CASE 2

David

Key incidents:

Forced observance of urination and body check in hospital ward

Offences potentially committed by the police officers concerned in the cases of violence included: Assault occasioning actual bodily harm

33. David is a social worker. On the night of the arrest, he was trying to act as a mediator between some protestors and the police and was standing between the two groups, showing his social worker card to the police and stating to the police that he had no “malicious intentions”. Suddenly, he was pulled by a riot police officer and then surrounded by police officers. He was hit with fists and elbows in the head, arm and back for about ten to twenty seconds. He could not see who hit him but there were only police officers around him at that time.
34. He was then subdued by three to four police officers and held on the ground. A police officer kicked his face several times and he got hit in the face by a baton as well for tens of seconds.
35. Some journalists around captured his arrest but not the beating. Then, the police asked the journalists to leave.
36. The ground was wet, probably with tear gas residues. The part of David’s skin that was exposed was very irritated. Then, David was sent to the hospital upon his request. During the examination by medical staff, two male plain-clothes police officers demanded to observe the examination in the room, saying loudly, “That is a suspect.” The medical staff refused; after several minutes of argument, the police did not enter the room and David was examined by the medical staff. After the examination, the doctor sent David to another hospital.

CASE 2

David

37. The doctor advised David to wear a hard neck brace and not to leave his bed or eat. He had to use a portable urinal and the nurse closed the curtains to protect his privacy. While he was urinating, a police officer suddenly opened the curtains and said he had to be watched all time as a suspect. David objected but the police officer kept watching him. He then protected himself with his blanket and used the urinal underneath. He felt abused and very dirty because he only had one blanket.
38. Later, David was allowed by the doctor to leave his bed, but the two police officers refused to let him do so. David had to use the portable urinal and the police officers watched him through the windows. When new police officers reported duty, David could leave his bed to go to the washroom.
39. When the medical staff examined David, the police officers, who were male, requested to keep him within their sight. The medical staff refused. In the end, a small gap was left between the curtains for the police to watch.



CASE 2

David

40. Two to three days later, David had to attend the court for the charges against him. The doctor found him unfit for the court attendance and the police said he would be detained until he was discharged from the hospital. Since David did not want to be detained any longer, he signed the consent form for being discharged even though he had not fully recovered.
41. David felt much affected emotionally as he had to leave the hospital before all medical examinations were completed.
42. Even three months after the arrest, David still felt very upset and had to seek professional help for his emotional issues.

.....

“I was segregated for a long time in the hospital. I had a feeling of isolation and could not clean my own body. I could not stand being watched while I was urinating. I cried non-stop in the ward. My heartbeat was abnormal at times. I cried especially hard the night before my court attendance, as I had to be detained for a longer time without knowing what charges I would face. I was very stressed.”

“All my injuries were inflicted after I had been arrested and fully subdued.”

– David

.....

CASE 2

David

Analysis

43. It is argued that the police's observance of David during his medical examination and while he was urinating as well as the refusal to let him go to the washroom would constitute degrading treatment or punishment. David had to cover himself with his only blanket while he urinated, which affected his hygiene as a patient. In an isolated environment, he was quite severely impacted by it emotionally, as shown by his continuous crying during the detention. His emotional issues lasted at least three months afterwards.¹²
44. The beatings of David on the head, face, arms and back may constitute cruel and inhuman treatment or punishment. The first round of beatings happened when he was surrounded by fully-gearied riot police officers and the second round after he had been subdued. He was under the *de facto* control of the police. By the time of the second round of beatings, the ground was wet. If it was tear gas residues, any wounds inflicted on David by the police may have been irritated by the residues.
45. The fact that he was hospitalised for close to three days (until he left the hospital reluctantly against the doctor's advice) and had to wear a hard neck band after the beatings by the police officers showed the severity of the beatings.

¹² See, for example, *Her Majesty The Queen v Stephanie Mok*, 2014 ONSC 64 (2 August 2013), in which the court held that videotaping of detainees using the cell toilet by police officers of either gender is a highly intrusive invasion of privacy. In that case, it violated the detainee's right to be secure from unreasonable search and seizure, a right provided by the Canadian Charter of Rights and Freedoms. The police could have used a modesty screen that partially blocks the view of the toilet. See case summary prepared by Courtney, J., (2013). "Police detainee privacy rights breached by video monitoring toilet usage." Human Rights Law Centre. Available at: <https://www.hrlc.org.au/human-rights-case-summaries/ontario-superior-court-of-justice-upholds-detainees-rights-to-bodily-privacy-in-police-custody>.

CASE 3

Alan

Key incidents:

Sexual harassment

Intimidation of a young person

Offences potentially committed by the police officers concerned in the cases of violence included: Assault occasioning actual bodily harm or common assault (contrary to section 40 of the Offences against the Person Ordinance, Cap. 212)

46. On the night of the arrest, Alan was near a site where acts of vandalism had been reported to occur. Riot police arrived and there were quarrels between the passers-by and the police. Suddenly, some police officers rushed ahead and one of them hit Alan near his ear with the baton. Alan felt dizzy and fell to the ground. Three to four riot police officers subdued him - one sat on top of his waist, and another pushed his leg down and hit the bottom of his foot with the shield twice. Two other police officers hit Alan's head and back with their fists forcefully and repeatedly for about ten to 20 seconds. One of them kept swearing to Alan and called him a cockroach, saying to Alan, "Did you enjoy yelling at me just now?"
47. On the police vehicle, a police officer said to Alan, "There is no camera on the vehicle. No one will know if I beat you hard."
48. In the police station, a group of police officers said Alan deserved it and called him a cockroach. One of them asked Alan whether he was a virgin. Alan said yes, and all the riot police officers laughed. One of them said, "If I have sex with you/ rape you now, you will not have to remain a virgin."¹³ The other riot police officers laughed again.
49. One police officer suggested Alan to take the YiJin study programme and then apply to join the police force. [Note: Some members of the public have mocked some police officers as "YiJin boys" for their YiJin academic qualifications, which these members of the public consider to be basic.] Alan was a young adult at the time of the incident.

.....
"All of them were bullying me. I could only 'act like a dead dog'."

- Alan

13 The word Alan reported being used was 「雞姦」, which often means a man raping another man but can also mean sex between men.

CASE 3

Alan

Analysis

50. It is argued that the police officers' behavior of calling Alan a cockroach (with one officer using profanities) and asking whether he was a virgin would amount to degrading treatment or punishment. One police officer's suggestion that he would no longer be a virgin if he had sex with him added to the sexual harassment and may have constituted intimidation. Another police officer's suggestion that he take the YiJin programme was humiliating as well, given the context where some police officers are mocked for their YiJin qualifications.
51. The beating of Alan (hitting his head and back forcefully and repeatedly for ten to 20 seconds) immediately after he had been subdued may have constituted inhuman and degrading treatment or punishment. He was a young adult under the *de facto* control of the police at that point.

CASE 4

Gabriel

Key incidents:

Drawing on face

Severe beatings

Forced to take off
all clothes

Offences potentially committed by the police officers concerned in the cases of violence included: Torture (contrary to section 3(1) of the Torture (Crimes) Ordinance, Cap. 427) and wounding with intent to do grievous bodily harm (contrary to section 17 of the Offences against the Person Ordinance, Cap. 212)

52. Gabriel had just left a restaurant on a night and saw many people running on the street. He ran as well and was pushed to the floor by a police tactical squad unit officer. Gabriel was then surrounded by about 15 of them. One officer yelled and claimed a brick on the road “belonged to” Gabriel. Gabriel denied.
53. One police tactical squad unit officer tore Gabriel’s mask off his face and took Gabriel’s backpack off his body. Gabriel was lying on the floor at that time and tried to push himself up. The police tactical squad unit officers then yelled with profanities, “Why do you resist? Were you not very brave just now?” Then they beat Gabriel repeatedly with their batons: pressing Gabriel’s finger joint with the baton forcefully three to four times, hitting his arm eight to ten times, hitting his pelvis about two times and his thigh about two times. Gabriel put his hands at his back and said he had not resisted, but the beatings continued, this time including one to two beatings in his head.
54. Then, a police tactical squad unit officer picked the back of Gabriel’s helmet and pushed his head on the floor, rubbing his head continuously, until the accessories of the helmet fell off and the helmet scratched. This lasted several minutes.
55. The officers then tied his wrists with a cable tie. One officer tried to pull Gabriel up by holding the cable tie and his collar, which hurt his wrists a lot.
56. Then, the officers took photographs of Gabriel’s belongings, after which they put the brick into his backpack. Gabriel said the brick did not belong to him.
57. Gabriel tried to shout his name for the journalists nearby. A police officer immediately pushed his head against the floor. Gabriel stopped shouting as he assessed he would be beaten if he continued.

CASE 4

Gabriel



58. Gabriel was then escorted onto a van without the police emblem. All the windows of the van were covered in black plastics and Gabriel could not see what was happening outside. The police officers instructed him to take his own backpack. However, his wrists were still tied and his arms beaten, so he could not hold the backpack properly. The police officers then yelled at him with profanities repeatedly. They also pushed his head forcefully against the door frame about 13 times, saying Gabriel was manipulating police officers. They then asked Gabriel to crouch, with his head closed to his thighs. This lasted about 15 minutes, until they reached the police station.

59. When Gabriel arrived at the police station, he requested to be sent to the hospital as his arm (or hand) really hurt, but the police just responded that they were arranging. Other police officers passing by yelled at Gabriel with profanities and tapped his head with their hands.

60. When the police took the statement with Gabriel, he said he had a lawyer, but the officers did not respond. The officer asked Gabriel to take off all his clothes, including his underwear. Gabriel asked for the reasons. The officer said there was no reason; if Gabriel would not do it, he/she would take the clothes off for him. Gabriel complied. The officers took photos of his clothes but did not touch him.

61. The police officers found some items in Gabriel's bag that could be used to inflict injuries in some circumstances. Then, a third officer entered the room. The three officers hit Gabriel's abdomen in turn, about 30 times in total. It was very painful. During the 15-minute beating, the officers asked Gabriel what the items were for and used profanities. Then, another police officer covered Gabriel's eyes and beat his face, hands and abdomen with his/her fists repeatedly, and kicked his abdomen about two times. Gabriel answered the officers' questions. The officers then removed the cover on Gabriel's eyes.

CASE 4

Gabriel



62. Then, the officers hit Gabriel with an item they had found in his backpack. They hit his mouth and face three to four times and his head forcefully. Gabriel lost his consciousness for one to two seconds and had tinnitus. The police then hit his thigh one to two times and his chin about five times.

63. The police then asked Gabriel to swallow some items they had found in his backpack. Gabriel wanted to vomit. An officer then said with profanities that if Gabriel vomited, he/she would ask him to swallow it back. Then, another officer yelled profanities right next to Gabriel's ear and Gabriel had tinnitus again.

64. The police then asked Gabriel to unlock his phone and said they would throw it away if he did not do so. Gabriel did not comply.

65. Gabriel saw that there was some blank space at the end of a document that the police asked him to sign. Worrying that the police might write something on it after he signed the document, he drew a line across the space. The police officer then yelled at Gabriel and drew lines on his face. Another officer pressed Gabriel's hand where it was injured. Gabriel felt extremely painful and screamed. Gabriel only knew later on that the police was taking the statement at that time. No lawyer was present.

66. The police then took Gabriel to another room, and said to the people in that room that Gabriel felt nauseous because he was beaten by tactical squad unit officers, not by them.

67. About six hours after his arrest, Gabriel was sent to the hospital. Before the journey, the police asked Gabriel to wash the lines drawn on his face.

68. Gabriel had to be hospitalised in the neurosurgery ward.

CASE 4

Gabriel

Analysis

69. It is argued that yelling at Gabriel with profanities on the vehicle and in the police station, as well as the instruction to take off all his clothes, including his underwear, for which the police claimed there was no reason, would amount to degrading treatment. Forcing him to crouch with his head beneath the gate on the police vehicle for 15 minutes may have also amounted to degrading treatment or punishment. This is because this posture may have put him in an inferior position to the police while he was under the *de facto* control of the police with his wrists tied already.
70. The severe beatings that Gabriel received while the tactical squad unit officers were subduing him would amount to cruel and inhuman treatment or punishment. The beatings were excessive and not proportionate to the apparent aim of arrest.
71. After Gabriel was subdued, the physical coercion he received together with the delayed access to medical treatment would also amount to cruel and inhuman treatment or punishment. The severity of the ill-treatment was shown by the fact that Gabriel had to be hospitalised in the neurosurgery ward.
72. Considered altogether, the police's treatment of Gabriel may constitute a *prima facie* case of torture. Some of the beatings happened while the police were asking Gabriel questions, which Gabriel eventually answered after the beatings. It is argued that this would constitute the purpose element of torture - to obtain information or a confession.
73. Such ill-treatment is concerning also because it may deter suspects from exercising their human rights. For example, Gabriel shouted his name in the hope of informing his family and friends of his situation through media reports or the social media. However, he stopped in fear of being beaten by the police officers.

CASE 5

Jason

Key incidents:

Torch pointing at the eye

Delayed access to medical care and lawyer

Offences potentially committed by the police officers concerned in the cases of violence included: Torture and assault occasioning actual bodily harm

74. Jason came across some verbal arguments between citizens and the police on the street. He shot videos of the situation with his mobile phone and narrated the incidents. Jason never charged at the police and had only a surgical mask on without any gear at that time. At one point, seeing the police march towards the protestors, Jason scolded the police while continuing shooting his video on the pavement.
75. A police officer in a white shirt (which means he/she was an inspector or more senior) asked Jason to retreat and did so quite politely. Suddenly, a riot police officer nearby rushed to Jason and asked him to show his identity card, pushing Jason with his shield. The riot police officer was so close that his face almost touched Jason's. Jason asked the riot police officer to be mindful of his manners, like the officer in white was. Then, the riot police officer tried to grab Jason's phone. Jason held his phone firmly. A group of riot police officers then pushed Jason against the wall and that officer who had been trying to grab Jason's phone continued to do so. The riot police held Jason's four limbs and he fell to the ground.
76. After Jason had been subdued, one riot police officer pushed Jason's neck in front with his/her elbow forcefully, saying, "Were you not very powerful just now? I will definitely charge you with rioting." Jason could not breathe for 15 to 30 seconds. Afterwards, Jason was very unwell and nauseous. The police let Jason sit and rest on the pavement.
77. Jason requested to be sent to the hospital. There were some journalists nearby. A plain-clothes police officer told Jason that he would be sent to the hospital on an ambulance. However, five minutes later, Jason was taken onto a police vehicle. He reminded the police that he was nauseous and wanted to go to the hospital, but was then taken to the police station.

CASE 5

Jason

78. Arriving at the police station, Jason did not see a Duty Officer and was taken into a room directly. The riot police officer who had tried to grab his phone and the plain-clothes officer asked him questions. Jason requested a lawyer but the two police officers ignored him. The riot police officer asked Jason two questions about why he was at the scene. When Jason answered, the officer hit Jason's temple with his/her fist and then kicked Jason's abdomen with his/her knee. It was very painful. While the riot police officer did so, the plain-clothes officer held Jason's hands at the back. The riot police officer asked Jason to apologise. Jason did not say anything. The riot police officer then hit Jason's abdomen with his/her fist and flashed his/her baton in front of Jason. He/she said Jason's elbow had knocked against him and he would charge Jason for assaulting a police officer. Jason felt very scared and apologised. He was then allowed to leave the room.
79. Jason was then taken to another police station. He requested to see a lawyer again but was ignored. The officers started taking the statement and Jason said he had nothing to say. Then, a plain-clothes officer kicked a table towards Jason. Jason stopped the table with his hands. The officer then hit Jason's head two times with his/her fist and pointed a torch that was turned on at Jason's eye closely, saying, "Don't you like to shine light at things? If I do this to you for a minute, you will become blind." The torch was so close that Jason could not close his eye. This lasted about 15 seconds. Jason's eye hurt severely and he could not see anything at that time. The officer then said if he caught Jason again, he would catch his whole family. While Jason was beaten in the room, the door was open and the police officers outside could see he was being beaten. However, none of them tried to stop the beatings.



CASE 5

Jason

80. Then, the police asked Jason to take off all his clothes, except his underwear, for a body search. Jason thought the police had the right to do so and therefore did not refuse or ask for the reasons. Jason was not told anything about his rights in relation to the search. The search process was alright to Jason. The door to the room was closed and the search could not be observed by persons outside.

81. When the police let Jason contact his lawyer, it had been nine hours after his arrest. Before leaving the police station, Jason found out from the police's documents that the relevant offence was obstructing a police officer in the execution of his/her duties.

82. Jason was then taken home. The police did not search his home. They then took Jason back to the police station, where he was searched again, with only his underwear on.

83. About 12 hours after the arrest, Jason saw his lawyer for the first time. His lawyer asked him whether he wanted to lodge a complaint against the police. Jason said:

.....

“The police would not record how they beat me. I am required to stay at the police station still. I don't know what they will do to me if they know I complain against them. How can I lodge a complain? It is unfair.”

.....

84. Throughout his detention until the lawyer arrived, when Jason requested water, he had to wait for a long time to get it. One time he had to wait for two hours.

85. After seeing his lawyer, Jason was sent to the hospital and then sent back to the police station.

86. Jason later learned that his family had gone to all police stations in the region to look for him, but the police refused to tell his family his whereabouts.

CASE 5

Jason

Analysis

87. It is argued that the beatings and the shining of the torch close to his eye would constitute cruel and inhuman treatment or punishment and a *prima facie* case of torture. Jason was beaten repeatedly and he could not see anything for awhile due to the shining of the torch. These beatings and the shining of the torch happened after he had come under *de facto* control of the police, including when Jason was taking the statement. It is argued that this would constitute the purpose element of torture - to obtain information or a confession.
88. The delayed access to medical care and the lawyer and not allowing his family to find out his whereabouts may have been a means to facilitate such ill-treatment.
89. The refusal to inform his family at which police station Jason was detained may have amounted to inhuman treatment to Jason and his family as well¹⁴.

¹⁴ For example, in *Amnesty International, Comité Loosli Bachelard, Lawyers Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v. Sudan* (Communications 48/90, 50/91, 52/91, 89/93, Thirteenth Activity report 1999-2000, Addendum), the African Commission on Human and Peoples' Rights stated that 'holding an individual without permitting him or her to have any contact with his or her family, and refusing to inform the family if and where the individual is being held, is inhuman treatment of both the detainee and the family concerned.' (paragraph 54). See case summary prepared by Icelandic Human Rights Centre. "Conditions of Detention." Available at: <https://bit.ly/2wquepW>. Accessed on 4 March 2020.

CASE 6

Calvin

Key incidents:

Delayed medical treatment, which was tied to signing of statement

Forced to stand

Offences potentially committed by the police officers concerned in cases of violence included: Assault occasioning actual bodily harm

90. Calvin was arrested at the site of a protest. He was subdued by four riot police officers, who pushed his head, back, waist and legs respectively. After he had been subdued, a police officer hit his head with the baton once. A journalist nearby asked for his name and Calvin shouted his own name. Once he did so, he got hit on the head once again. He was hit on the shoulders several times as well.
91. After being pushed on the ground for some time, he had an asthma attack and could not breathe well. As Calvin also had certain heart conditions, he informed the police that he was feeling unwell. Then, a police officer hit Calvin's chest with the baton once. Calvin started wheezing and was then allowed to take medication.
92. When Calvin recovered, he was taken onto a van and sent to the police station. On the same van was another arrested person, who was bleeding. Calvin requested to go to the hospital. The police responded that only one of them could go and that they could only go after signing the statements. Calvin hoped that the other arrested person could see the doctor as soon as possible, so Calvin signed his statement reluctantly.
93. Calvin told the police that he was hungry and wanted some water, but the police responded that he could "eat shit". Calvin also told the police he wanted to use the washroom but was ignored.
94. For the five hours in the police station, Calvin was asked to stand the whole time. When he felt tired and wanted to sit down, the police would hit the gate with the baton.
95. Then, Calvin's lawyer arrived and Calvin requested to go to the hospital again. The police said Calvin had to be sent to another police station and he should request that of the officers there. At the other police station, the police asked Calvin whether he needed food and water. Calvin got some water there.

CASE 6

Calvin

96. At the hospital, the doctor advised Calvin to use a wheelchair. The police there objected on the grounds that Calvin might escape with the wheelchair. In the end, the medical staff suggested Calvin to be moved on a stretcher and the police agreed.
97. A few hours later, while Calvin was resting in the hospital ward, two police officers came to try to take Calvin's statements. Calvin requested to see his lawyer, but the police said in that case they would charge Calvin immediately with the previous statement. The medical staff requested the officers' warrant cards and documents, then the officers left.
98. While Calvin was in the hospital, the two police officers monitoring him verbally insulted him. They (or one of them) hit Calvin's shoulder to "see if he was really injured". This happened twice - once before Calvin's medical examination (which showed a bone fracture in the shoulder) and once after.



CASE 6

Calvin

Analysis

99. It is argued that Calvin received degrading treatment or punishment: he was asked to “eat shit” and not allowed to use the washroom, forced to stand for five hours and verbally insulted while he was in the police station or the hospital.

100. It is argued that the beatings after Calvin had been subdued, together with the delayed access to medical treatment and the enforced standing for five hours when Calvin had just had an asthma attack and was injured, would amount to cruel and inhuman degrading treatment, especially when the police officer had been told that Calvin had asthma and certain heart conditions and could observe that Calvin was having difficulty breathing.

101. The delayed access to medical treatment was particularly concerning as treatment was used as an incentive for Calvin to sign his statement, and the exercise of his right to medical treatment was tied to guilt as the police claimed that only one of the arrested persons could see the doctor.

102. The delayed access to the lawyer may have facilitated the ill-treatment as well.

103. The beatings of Calvin’s shoulder in the hospital ward may have amounted to cruel and inhuman treatment, especially when Calvin was hospitalised for injuries inflicted by the police, including in the shoulder. A medical examination after one of these beatings showed a bone fracture in the shoulder, possibly showing the severity of the beating in the hospital ward.

CASE 7

Thomas

Key incidents:

Excessive use
of force causing a
stampede

Strip search

Sexual assault

Offences potentially committed by the police officers concerned in cases of violence included: Indecent assault and assault occasioning actual bodily harm

104. Thomas followed the crowd to a street, and suddenly a group of police tactical squad unit officers ran out, beating people with their batons and firing at the crowd, causing a stampede. Thomas's calf was hit by what he suspected to be a pepper-spray projectile or sponge grenade. He had been stepped on by others for ten seconds until he could crawl out of the stampede. He was then subdued by the tactical squad unit officers on the pavement.
105. From the time when he was subdued to being escorted, the police prohibited Thomas from raising his head. The police officers yelled at him with profanities and called him a cockroach. A riot police officer asked Thomas to unlock his phone, which he refused. Then the officer required him to switch his phone to flight mode and turn it off. Thomas complied because he saw other arrestees being beaten after they had refused to do so.
106. Thomas was then sent to the police station, where he and the other arrested persons were each called by a code, not their name. One police officer said to Thomas and the other arrestees, "We will treat you as humans if you are obedient, or else you will be treated as a brute."
107. While Thomas was being escorted to the search room, two police officers kicked his calf one to two times, causing a bruise. A police officer complained there were too many CCTV cameras inside the police station and claimed that would "harm the colleagues".
108. A police officer asked the arrested persons whether they needed to contact their lawyers, but tried to persuade them not to do so, while the arrestees insisted. That officer later assigned one arrested person out of five to six to contact the lawyer for the group. Thomas was one of the representatives, but he had never been given the personal information of other arrestees.

CASE 7

Thomas

109. Thomas was taken to another police station on the second morning. A police officer from the Criminal Investigation Department (CID) asked Thomas to take off all his clothes, including his underwear, for a body search. The police did not explain the reasons for the search or serve the required Custody Search Form on Thomas before the search. Another police officer asked Thomas to crouch and stand up two times, and grabbed his penis three times with his/her glove on. Thomas later learned that not every arrested person was told to do the same.



110. During the detention, Thomas requested treatment for the injury to his calf, but was ignored.

CASE 7

Thomas

Analysis

111. The strip search and grabbing of Thomas' penis would amount to degrading treatment or punishment. Thomas had undergone a body search before he was taken to another police station and was in police custody between the two searches. A strip search was unnecessary and disproportionate. Thomas was not suspected of possessing dangerous drugs or weapons. No custody search form was served on him, contrary to the requirements of section 49-09 of the Police General Orders. It is argued that the police officers calling Thomas a cockroach with profanities would also amount to degrading treatment and punishment.
112. The police officer's complaint about the CCTV in the police station may indicate awareness of the illegality of certain acts of the police inside the police station. The delayed access to medical care and the lawyer may have facilitated such ill-treatment.
113. The firing of a pepper-spray projectile or sponge grenade at Thomas, if true and apparently while a stampede was taking place or was likely to take place, was disproportionate force, as Thomas was trapped inside the crowd and could not escape. In fact, the police should prevent a stampede and rescue individuals trapped in a stampede. It is argued that such disproportionate force may have amounted to cruel and inhuman treatment.
114. The beating of arrested persons for not complying with police instructions to turn off their phones may have also amounted to cruel and inhuman treatment, as the persons were under the *de facto* control of the police. It is particularly concerning because arrested persons may decide to turn off their phones against their wishes for fear of ill-treatment, as shown by Thomas' case.

For all the cases described above

115. Where there was arguably degrading treatment or punishment, the treatment would also violate Article 10 of the ICCPR, which establishes a right for persons deprived of liberty to be treated with humanity and with respect for the inherent dignity of the human person¹⁵.

¹⁵ The threshold level of severity of Article 10(1) of the ICCPR is lower than that of Article 7. Association for the Prevention of Torture and Center for Justice and International Law, (2008). *Torture in International Law A guide to jurisprudence*. Available at: https://www.ap.t.ch/content/files_res/jurisprudenceguide.pdf, p.9

QUANTITATIVE ANALYSIS

116. The seven cases studied in the last part of this report on qualitative analysis are included here.

Unreasonable treatment	Number of interviewees receiving such treatment	Number of times the interviewees witnessed such treatment happening to other persons under police control
Humiliation¹⁶		
Verbal humiliation	24	6
Sexual harassment	3	0
Body search not following guidelines	7	0
Police observing while urinating or during medical examination	2	0
Enforced postures ¹⁷	8	2
Water spurt or poured on face or food	4	1
Acts that may have been constitutive of torture, cruel or inhuman treatment or punishment, before the person came under police control		
Severe assault ¹⁸	2	2
Excessive force	13	1
Threat of force	3	0
Asking journalists or other witnesses to leave or stopping shooting	1	0
Sexual assault	0	0

¹⁶ This refers to humiliation by the police before or after the person came under police control.

¹⁷ For example, being forced to look down while sitting or walking, or being forced not to look around in the police station.

¹⁸ Examples include beating the head with the baton repeatedly, in one case about 14 times, and grabbing the neck.

Unreasonable treatment	Number of interviewees receiving such treatment	Number of times the interviewees witnessed such treatment happening to other persons under police control
Acts that may have been constitutive of torture, cruel or inhuman treatment or punishment, after the person had come under police control		
Severe assault or injuries	13	4
Excessive force	1	11
Threat of force	11	0
Threat of an additional charge or prosecution	2	1
Sexual assault	3	0
Asking witnesses to leave or blocking witnesses' views	3	2
Delayed access to medical care	15	9
Delayed access to the lawyer	16	1
Dissuading from contacting the lawyer	9	0
Refusal to inform family of whereabouts or delay in it	9	0
Delayed access to the toilet or making it difficult to use the toilet	3	0
Insufficient or dirty clothing	5	0
Not allowed to shower	2	0
Sleep deprivation	1	1
Inadequate food or water (or refusal to give hot water)	7	0
Prolonged detention ¹⁹	4	0
Any of the above treatment used for the purpose of gathering evidence, making the person sign the statement, taking the statement without a lawyer, or stopping the victim from saying their name to witnesses	9	5
Others		
The victim was a social worker, human rights observer, journalist or first-aider. ²⁰	3	0

¹⁹ It means detention that was longer than 48 hours or that the interviewee found unnecessary. It does not include detention lengthened by any delay in accessing medical care, the lawyer, etc. Given the interviewees had limited information about police investigations into their cases during the detention, the length of the detention does not necessarily mean it was unlawful or was a form of ill-treatment. "Detention" here also includes an instance where the interviewee was kept on the bus by the police.

²⁰ With the information available in the testimonies, it is not possible to fully determine in every case whether the victim was participating in an assembly or was physically present in the capacity of a social worker, human rights observer, journalist or first-aider. In one case, the victim was a first-aider but this identity was apparently not known to the police. This case is not included here.

117. For severe assault or injuries inflicted after the person had come under police control, in one case, the police's actions caused people to rush into a small space, leading to a stampede. Other examples included: rubbing a subdued person's hand against the grounds until he bled and pressing his chest against the ground while the person had no mask or respirator on and kept inhaling tear gas in the air; hitting the head with the baton; grabbing the person by the neck; throwing tear gas in front of arrested persons without a mask or respirator; and stepping repeatedly on a subdued person's ankle and banging his body against the wall.
118. Examples of sexual assault after the person had come under police control included the two cases discussed in the qualitative section of this report and one case of hitting the victim's penis with a water bottle.
119. In addition to the cases described in the qualitative analysis part of the report, in 14 cases, five or more of the above-listed "indicators" of ill-treatment were triggered.
120. For the unreasonable treatment witnessed by the interviewees, we did not proactively ask the interviewees for such information. Therefore, it is only captured if the interviewees mentioned it to us in the interviews. It is not comprehensive or representative of police behaviour.

CONCLUSION & **RECOM- MENDATIONS**

121. Based on the testimonies, it is assessed that police actions amounted to cruel, inhuman and degrading treatment and punishment in some cases and there was a *prima facie* case of torture in some cases. The Hong Kong Government is recommended to carry out its responsibilities under the ICCPR and CAT, specifically:

1. Establishing a fully independent mechanism mandated to conduct independent, proper and effective investigation into complaints about the inappropriate use of force, torture, cruel, inhuman and degrading treatment or punishment or other abuse of power by the police and empowered to formulate binding decisions in respect of investigations conducted and findings regarding such complaints;
2. Increasing its efforts to provide training to the police on the principle of proportionality when using force, taking due account of the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials, the absolute prohibition of torture and international standards on the use of force, as well as on their liability in the event of excessive use of force;
3. Ensuring that the prosecutor's office is duly informed of all the allegations of torture or ill-treatment received by that particular body and launch investigations on its own initiative whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed;
4. Guaranteeing that alleged perpetrators of torture and ill-treatment are immediately suspended from duty for the duration of the investigation, subject to the observance of the principle of presumption of innocence;
5. Establishing confidential complaints mechanisms in all places of detention to facilitate the submission of complaints by victims of torture and ill-treatment to the investigating body, including for obtaining medical evidence in support of their allegations, and to ensure in practice that complainants are protected against any reprisals as a consequence of their complaint or any evidence given;
6. Ensuring that the suspected perpetrators, including those officers who were complicit in the relevant acts or allowed them to occur, are duly prosecuted, tried and, if found guilty, punished in a manner that is commensurate with the gravity of their acts;
7. Amending legislation to include a definition of torture that is in full conformity with CAT and covers all the elements contained in article 1; in particular, adopting a more inclusive definition of the term "public official" in order to ensure that all public officials or any other person acting in an official capacity can be prosecuted for acts of torture and abolishing the defence contained in section 3(4) of the Crimes (Torture) Ordinance;
8. Ensuring that all detainees are afforded in practice all fundamental legal safeguards from the very outset of their deprivation of liberty, including the right to be assisted by a lawyer without delay; to have immediate access to examination and treatment by independent doctors, without conditioning such access on the permission of officials; to be informed of the reasons for arrest and the nature of any charges against them; to be registered at the place of detention; to inform promptly a close relative or a third party concerning their arrest; and to be brought before a judge without delay;

9. Adopting effective measures to ensure compliance with its legally prescribed procedures of arrest and monitor the compliance of public officials with the legal safeguards, and ensuring that those who are suspected of not complying with the legal guarantees or of arresting persons without justifiable reason are investigated and, if found guilty, duly sanctioned;
10. Providing full redress to the victims of police excessive use of force, including fair and adequate compensation;
11. Taking the necessary legislative and administrative measures to guarantee that victims of torture and ill-treatment benefit from all forms of redress, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
12. Fully assessing the needs of torture victims and ensure that specialized, holistic rehabilitation services are available and promptly accessible without discrimination;
13. Publicising the police general orders and related guidelines on the use of force and ensure compliance with international standards;
14. Empowering the Justices of Peace to monitor and visit all places of detention or, alternatively, establishing an independent body with the mandate to carry out effective unannounced visits at all places of detention under the Hong Kong Police Force; and making the recommendations of such body in a timely and transparent manner.
15. Extending the training on the Istanbul Protocol to all officials involved in the treatment and custody of persons deprived of their liberty, developing guidelines or regulations requiring staff to use it in practice, and ensuring that the training on CAT and the Istanbul Protocol is organized in a periodic and compulsory manner for all officials, is supported by guidelines for its implementation and that a methodology is developed for evaluating the effectiveness of such educational and training programmes.
122. Recommendations 1 and 2 above have been made by the United Nations Human Rights Committee and recommendations 3 to 16 (or similar ones) by the Committee against Torture for Hong Kong²¹.
123. For recommendation 12 above on rehabilitation, we add that it should be gender-sensitive with specialized services for victims of sexual assault or harassment. For recommendation 13 above on police guidelines and the Police General Orders, we add that these guidelines and orders should be updated to ensure the protection of the needs of persons of different gender, age groups, ethnicities and persons with disabilities. Civil society and persons from minority backgrounds should be consulted when updating these guidelines.

²¹ Note 7 above.

 hongkongcro

 HK_CRO

 hkcro

 hongkongcro

info@hkcro.org

www.hkcro.org

Civil Rights Observer

Established in 2014, the Civil Rights Observer works to protect and promote civil and political rights in Hong Kong, with a focus on police abuse of powers. The four pillars of our work are: human rights education, police power monitoring, policy advocacy, and emergency human rights support.