

# Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations  
Promoting human rights by protecting those who defend them

[www.lrwc.org](http://www.lrwc.org) – [lrwc@portal.ca](mailto:lrwc@portal.ca) – Tel: +1 604 736 1175 – Fax: +1 604 736 1170  
3220 West 13<sup>th</sup> Avenue, Vancouver, B.C. CANADA V6K 2V5

May 26, 2020

Carrie Lam Cheng Yuet-ngor  
Chief Executive of Hong Kong  
Via email to: [ceo@ceo.gov.hk](mailto:ceo@ceo.gov.hk)

Ms Teresa Cheng Yeuk-wah  
Secretary of Justice for Hong Kong  
Via email to: [sjo@doj.gov.hk](mailto:sjo@doj.gov.hk)

Dear Chief Executive Lam and Secretary of Justice Cheng;

## **Re: Independent investigation of police use of force required by law**

Lawyers' Rights Watch Canada (LRWC) again calls on Hong Kong to comply with its international law obligations to:

1. ensure an investigation by independent experts into allegations of excessive or unlawful use of force by police against protesters and journalists to determine whether use of force by police complied with or contravened international human rights laws and standards and to recommend the remedies and reform required to redress any violations, ensure accountability, and prevent reoccurrence.

In [the letter dated 19 December 2019](#), LRWC cited both the international law and standards binding on Hong Kong that require an independent investigation, and expert opinions that the Independent Police Complaints Council (IPCC) is not a competent body to conduct the investigation required by law.

Evidence of excessive or unlawful police actions underlying demands for an independent investigation is widely known and well documented. Hong Kong's international law obligations and the incorporation of the *International Convention on Civil and Political Rights* (ICCPR)<sup>1</sup> into the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Basic Law) are not controversial. The UN High Commissioner of Human Rights recently observed in relation to the protests,

The rights of freedom of expression and peaceful assembly and the right to participate in public affairs are expressly recognized in the Universal Declaration of Human Rights, as well

---

<sup>1</sup> In 1976, the Government of the United Kingdom ratified the *International Covenant on Civil and Political Rights* with certain reservations and declarations, and extended the Covenant to 10 British dependent territories including Hong Kong. Under the Joint Declaration of the Government of the United Kingdom of Great Britain and North Ireland and the Government of the People's Republic of China on the Question of Hong Kong ("Joint Declaration") signed on 19 December 1984, it is provided both in Section XI of Annex I to the Joint Declaration and Article 153 of the Basic Law that international agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong Special Administrative Region from 1 July 1997. The application of the Covenant is also provided for in Article 39 of the Basic Law.

as the International Covenant on Civil and Political Rights which is incorporated in the Basic Law of the Hong Kong SAR.<sup>2</sup> (underlining added)

The IPCC's lack of independence and capacity to conduct the investigation required by Hong Kong and international law was well known before the IPCC investigation began. In December 2019, an international panel of experts (IPE) appointed to advise the IPCC with its investigation withdrew after concluding that the IPCC lacked the "powers, capacity and independent investigative capacity" to conduct the required investigation even with the assistance of the IPE.<sup>3</sup> Earlier, the UN Human Rights Committee after reviewing the IPCC functions recommended that Hong Kong,

establish a fully independent mechanism mandated to conduct independent, proper and effective investigation into complaints about the inappropriate use of force or other abuse of power by the police and formulate binding decisions in respect of investigations conducted and findings regarding such complaints.<sup>4</sup>

The UN Committee Against Torture later made a similar recommendation after concluding that the IPCC "remains an advisory and oversight body of the investigations of the Complaints Office, with no power to conduct investigations on its own."<sup>5</sup>

On 15 May 2020, after the release of the IPCC report which cleared Hong Kong police of misconduct,<sup>6</sup> lawmaker Fernando Cheung stated, "This report has eliminated what little credibility is left of the IPCC."<sup>7</sup> Hong Kong Chief Executive Carrie Lam said publicly at a news conference that she disagrees with the independent investigation required by law and called for by protesters and international observers, because in her words, "an independent inquiry would weaken police powers."<sup>8</sup>

This comment suggests that Mrs. Lam sees the purpose of an investigation as a means to justify police actions, discredit complaints, prevent public knowledge of the facts, avoid criticism, redress and reform and override the applicable law.

The IPCC's report demonstrates its failure to elucidate the facts, identify the applicable law and recommend the remedies and reform required to redress violations, ensure compliance with the law, allow accountability, and prevent reoccurrence. The IPCC report fails to identify even excesses and inaction by police known to contravene legal obligations under the Basic Law or the ICCPR.

---

<sup>2</sup> Press briefing note on Hong Kong, China, Office of the UN High Commissioner of Human Rights 13 August 2019.

<sup>3</sup> See: [Hong Kong's Police Watchdog Is Unable to Do Its Job, Experts Say](#), Amy Gunia, Time, 11 November 2019, [Int'l Experts to Quit Hong Kong investigation into police handling of protests](#), 11 December 2019, AFP.

<sup>4</sup> Human Rights Committee, *Concluding observations on the 3rd periodic report of Hong Kong, China, adopted by the Committee at its 107th session, 11-28 March 2013: Human Rights Committee*, 29 April 2013, CCPR/C/CHN-HKG/CO/3, para 12.

<sup>5</sup> CAT, *Concluding observations on the fifth periodic report of China with respect to Hong Kong*, 3 February 2016, CAT/C/CHN-HKG/CO/5, para 8 and 9.

<sup>6</sup> [Hong Kong police watchdog clears force of misconduct citing online 'propaganda'](#), but says 'room for improvement', Tom Grundy, Hong Kong Free Press, 15 May 2020.

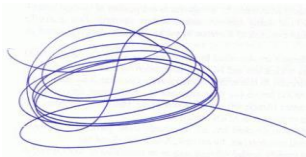
<sup>7</sup> [Hong Kong Leader Carrie Lam Rejects Protesters' Call for Independent Police Probe](#), Jessie Pang and Sarah Wu, The Globe and Mail, 15 May 2020.

<sup>8</sup> *Ibid.*

LRWC urges Hong Kong to allow the independent investigation as required by the ICCPR and related international laws and standards to:

1. investigate the complaints and evidence of unlawful exercise of police powers and use of force in relation to the protests;
2. assess whether the exercise of police powers and the use of force and armaments by police in relation to the protests were lawful or unlawful;
3. identify instances of unlawful or unsafe exercise of powers and use of force;
4. recommend such changes to regulation, training and discipline as are necessary to prevent reoccurrence; and,
5. make recommendations as to measures needed to ensure accountability and restitution.

Sincerely,



Gail Davidson, Executive Director, LRWC



Clive Ansley, LRWC Director



Helen Lau, LRWC Monitor

Copied to:

Mr. David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression  
[freedex@ohchr.org](mailto:freedex@ohchr.org)

Mr. Clément Nyaletsossi Voulé  
SR on the rights to freedom of peaceful assembly and of association  
[freeassembly@ohchr.org](mailto:freeassembly@ohchr.org)

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders  
[defenders@ohchr.org](mailto:defenders@ohchr.org)

Mr. José Guevara  
Ms. Leigh Toomey  
Ms. Elina Steinerte  
Mr. Sètondji Adjovi  
Mr. Seong-Phil Hong  
Working Group on Arbitrary Detention  
[wgad@ohchr.org](mailto:wgad@ohchr.org)

Philip J Dykes  
Hong Kong Bar Association Chairman  
Email: [info@hkba.org](mailto:info@hkba.org)

Mr. Chui Man Hin, Hinz  
Administrative Assistant to the Secretary of Justice for Hong Kong  
Email: [sjo@doj.gov.hk](mailto:sjo@doj.gov.hk)