

六四事件 34 周年報告：
港府侵犯人權阻撓市民悼念
以「帶走」為名強行剝奪人身自由
違反本地法律及國際標準

Report of the 34th Anniversary of the Tiananmen Square Massacre:
HK Government Committed Human Rights Violations by
Interfering with Commemoration
Restricting Personal Liberty
and Defying Local Laws and International Standards

香港人權資訊中心
Hong Kong Centre for Human Rights

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(Please scroll down for the English version)

六四事件 34 周年，香港市民本應可以行使法律所保障的言論自由及集會權利，和平地悼念死難者和表達自己的意見。不過，香港政府如臨大敵，派出大批警力於各區監察市民及阻撓悼念活動，其嚴厲程度屬前所未見。

香港人權資訊中心（本中心）根據公開資料，整理及研究政府在六四當天和前後日子處理悼念活動的手法。我們注意到警方除了舊有手段外，還採取了不少新策略以阻止市民公開悼念，其行動侵犯市民的集會及表達自由，違反本地法律及國際人權標準，部份行動更是完全欠缺法律基礎。香港政府正以國家安全為由，嚴密地監控和限制香港市民的權利及自由。

一、事先警告，阻嚇市民悼念

據《明報》報道，社民連副主席周嘉發、前支聯會常委梁錦威及多名社運人士，在 6 月 4 日前紛紛收到警方來電，詢問他們在六四當天會有什麼活動。警方更對部分人提出非常具體的要求，包括六四當天不要去維園或不要在社交媒體悼念，其中梁錦威稱警方着他「無必要唔好出街」。梁坦言警方的來電對他構成一定壓力。警方回應傳媒時，沒有證實曾否約談社運人士，僅稱會按實際情況依法處理。¹

本中心對警方的行動表示非常憂慮。《基本法》第 27 條、《香港人權法案》第 17 條及《國安法》第 4 條都明文保障市民和平集會的自由。根據《公安條例》，不超過 50 人的集會本身不需事先通知警方，換言之即使沒有「不反對通知書」，50 人或以下的和平集會也可自由舉行。因此，警方根本不應預先假設社運人士在六四當天的任何活動必然是違法，更不應因此提前警告他們，遑論明確要求他們不可去某個地方或離開住所。

《公民權利和政治權利國際公約》（《公約》）適用於香港，並透過《香港人權法案》成為本地法律的一部份。聯合國人權事務委員會詮釋《公約》條文時就曾明確指出，政府不應要求個人承諾或保證不組織或不參加未來的集會；反之，亦不得強迫任何人參加集會²。《公約》保護的集會是涵蓋在任何地點（戶外、室內和線上）舉行的集會，而且不論形式，無論是示威、靜坐或燭光晚會都受到保障³。委員會又指，政府有責任允許和平集會在不受無端干預的情況下進行，並應為這項權利的行使提供便利，而且需要保護參與者⁴。

¹ <https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20230603/s00002/1685731441923>

² 聯合國人權事務委員會《第 37 號一般性意見》，<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>，第 66 段

³ 同上，第 6 段

⁴ 同上，第 8 段

香港終審法院在 2005 年《梁國雄案》中亦明確裁定：「和平集會自由是一項基本權利，與言論自由這另一項基本權利緊密相連。言論自由及和平集會自由都是寶貴的權利，亦是民主社會的基石」。法院認同委員會的意見，認為政府負上一項積極責任（positive duty），那就是採取合理和適當的措施，使合法的集會能夠和平地進行⁵。

本中心發言人表示：「警方不但沒有為社運人士行使集會權利提供便利，更在毫無法律基礎下，以約談方式施壓威嚇，阻撓他們行使此項基本權利，其行動明顯違反《公約》及終審法院頒下的原則。」

二、以公權力騷擾市民，侵犯言論自由

除了事先阻止市民在六四當天集會，政府亦以不同方式騷擾市民及妨礙他們行使言論自由。由前民主派區議員陳嘉琳創立的雜貨店在 5 月底宣佈派發蠟燭後，遭到多個政府部門上門巡查，更有警車在店外駐守。及至六四翌日早上，警方突然拆走店外的一幅燭光掛畫，晚上則登門把陳帶回警署協助調查，其後向傳媒表示該掛畫涉嫌違反《刑事罪行條例》的「煽動意圖」罪⁶。另一前民主派區議員陳劍琴的攤檔在 5 月中開始擺放印有六四字句的電子蠟燭。六四當天，一批警察突然包圍其檔口，指她展示蠟燭有可能違反「煽動意圖」罪，警告她要立即收起⁷。

警方的打壓行動更伸延至其他與悼念無關的範圍。六四當晚，警察於銅鑼灣拖走一架車牌為「US 8964」的私家車⁸。藝人許軼適逢六四生日，其歌迷於旺角停泊雪糕車贈送雪糕，但都遭警方以「敏感日子」為由要求離開⁹。香港民研則稱，原定 6 月 6 日發布「六四週年調查報告」，但因應相關政府部門的建議，決定取消發布¹⁰。

本中心認為，政府正在以過於寬鬆甚至任意的方式，詮釋本已不符人權標準的煽動意圖罪，令警方可濫用公權力侵犯市民的集會及表達自由，甚至連與悼念六四無關的人亦一同遭殃。《刑事罪行條例》第 9 及 10 條的煽動意圖罪，主要是針對意圖引起憎恨或藐視政府、引起對司法的憎恨或煽惑他人犯法等行為。即使以最嚴苛的角度詮釋條

⁵ 梁國雄訴香港特別行政區 [2005] HKCFA 41, <https://www.hklii.hk/chi/hk/cases/hkcfa/2005/41.html>

⁶ <https://thecollectivehk.com/%e7%87%ad%e5%85%89%e7%85%bd%e5%8b%95%ef%bc%9f%ef%bd%9c%e8%a5%bf%e5%a4%9a%e9%96%98%e5%a4%96%e7%87%ad%e5%85%89%e6%a9%ab%e9%a1%8d%e3%80%80%e9%81%ad%e8%ad%a6%e6%8c%87%e6%b6%89%e3%80%8c%e7%85%bd%e5%8b%95/>

⁷ <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20230605/s00001/1685904355445>

⁸ <https://www.am730.com.hk/本地/六四 34-私家車 us8964 銅鑼灣被拖走-車主引述警稱車牌有凸字涉違例/380769>

⁹ <https://www.inmediahk.net/node/%E7%A4%BE%E9%81%8B/collar%E8%A8%B1%E8%BB%BC%E5%85%AD%E5%9B%9B%E7%94%9F%E6%97%A5-%E9%9B%AA%E7%B3%95%E8%BB%8A%E6%97%BA%E8%A7%92%E6%87%89%E6%8F%B4%E8%A2%AB%E8%A6%E8%B6%95%E9%9B%A2%EF%BC%9A%E6%95%8F%E6%84%9F%E6%97%A5%E5%AD%90>

¹⁰ <https://www.pori.hk/press-release/2023-06-06-pm.html>

文，任何合理的人也不可能會將一個純粹悼念死者、完全沒有批評政府的掛畫或蠟燭視為具有煽動意圖。警方明顯是在沒有其他法律基礎下，牽強地濫用煽動意圖罪以阻撓市民表達意見。

無論如何，煽動意圖罪是殖民時間留下的陳舊法例，與現代的人權標準並不相容。英國、紐西蘭及愛爾蘭等普通法地區早已廢除這條罪名。聯合國人權事務委員會亦在去年的《審議結論》表示對此法的憂慮，並建議港府廢除這條罪行，及檢視相關的案件以確保沒有人會因為行使言論自由而被起訴或針對¹¹。不過，港府至今拒絕接受委員會的建議，並堅持繼續以此罪打壓港人的言論自由，令人非常失望。

三、濫用截查權力，無視法律要求

本中心根據傳媒報道的資料作出統計，發現六四當天被警方截停及搜查的大批市民中，至少 12 人所接受的截查是不合理及缺乏法律基礎的。他們被截查的原因包括：身穿黑衫黑褲¹²、手持鮮花¹³、在現場拍照¹⁴、亮起手機燈光¹⁵、手持電子燭光或蠟燭¹⁶、打算前往《國殤之柱》原址¹⁷、派發悼念字條¹⁸以及手持與六四相關的書籍¹⁹。其中一人被截查後更向傳媒表示，警察要求他將手提電話解鎖後，就拿走電話並瀏覽其內容和訊息²⁰。

本中心對警方缺乏法律理據的行動表示關注。許多人誤以為警方有權隨意及毫無原因地截查市民、要求出示身份證及搜身，而市民在任何情況下都必須無條件配合，但事實上香港法律並非如此。

1. 《警隊條例》第 54 條列明，警察若發現任何人行動可疑，或警察合理地懷疑該人已經/即將/意圖犯法，則可截停該人以要求出示身份證，以及扣留他一段合理時間

¹¹ 聯合國人權事務委員會《關於中國香港第四次定期報告的結論性意見》，https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR%2FC%2FCHN-HKG%2FCO%2F4&Lang=en，第 16 段

¹² <https://news.mingpao.com/ins/%E6%B8%AF%E8%81%9E/article/20230604/s00001/1685872340430>

¹³ <https://www.inmediahk.net/node/%E7%A4%BE%E9%81%8B/%E3%80%90%E5%85%AD%E5%9B%9B34%E3%80%91%E6%9B%BE%E5%81%A5%E6%88%90%E5%B8%B6%E9%87%91%E8%8A%B1%E5%88%B0%E7%B6%AD%E5%9C%92%E5%A4%96-%E8%AD%A6%E6%88%AA%E6%9F%A5%E5%BE%8C%E6%94%BE%E8%A1%8C>

¹⁴ <https://www.hk01.com/article/905051>

¹⁵ <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20230605/s00001/1685904349837>

¹⁶ 同上

¹⁷ <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20230605/s00001/1685904353579>

¹⁸ <https://www.hk01.com/article/777628>

¹⁹ <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20230605/s00001/1685904349837>

²⁰ <https://web.archive.org/web/20230604140921/https://www.icable.com/%E9%A6%96%E9%A0%81%E6%96%B0%E8%81%9E/135359/%E5%85%AD%E5%9B%9B34%E5%91%A8%E5%B9%B4-%E8%AD%A6%E6%96%B9%E9%8A%85%E9%91%BC%E7%81%A3%E4%B8%80%E5%B8%B6%E6%88%92%E5%82%99-%E4%B8%AD%E8%81%AF%E8%BE%A6%E5%A4%96%E5%81%9C%E6%B3%8A%E8%AD%A6/>

進行調查，及搜查與罪行相關的物件。不過，高等法院在 2009 年的《王子鑫案》中表明，警察使用此權力時，其對受查人行動可疑的判斷「必須有某些客觀的事實為根據」²¹；

2. 《入境條例》第 17C 條則列明，市民在警方要求下必須出示身份證。但根據高等法院 2020 年就《郭榮鏗案》頒下的判詞，警方只可在目的為入境管制相關事宜的情況下才可使用第 17C 條的權力²²；
3. 《公安條例》第 33(6)條指出，警員若合理地相信某個地方有人已犯/正犯/可能干犯非法集結或暴動罪，並使用過攻擊性武器，則可於該地方截停及搜查任何人。
4. 《公安條例》第 49 條列明，凡警察合理地相信為防止、偵察或調查任何罪行而有需要，該警員可要求任何人出示身分證以供查閱。

換言之，法律並不容許警方無緣無故下突然截查市民。任何的截查行動都必須以上述條文為基礎及符合相關的條件。在去年的《韋秋盈案》中，高等法院就強調：「警察當然不可以任意截查一個人，及在有理由截查一個人的時候，在情況許可下須將理由告訴這個人」。法院指出，案中的警員在沒有任何原因令他們覺得事主行動可疑的情況下就進行截查，「這個做法明顯地並不符合法律的要求」，亦證明不到警員當時是正當地執行職務，因此事主「當然可以不理會他們的查問」²³。

聯合國人權事務委員會亦曾指出，截查集會參加者的權力「必須基於實施嚴重罪行或有此威脅的合理懷疑，並且不得以歧視的方式使用這種權力」²⁴。委員會強調，即使某人與某一和平集會有關聯，也不能構成截查此人的合理理由²⁵。再者，委員會亦認為，旗幟及幅額的使用一般而言應視為一種正當的表達形式，不應受到限制，即便這些標誌令人憶起痛苦的過往²⁶。

本中心認為，上述 12 名在六四當天被截查的市民，其行為或所持之物品並無任何威脅性及攻擊性，最多只是與悼念有關，不但沒有可疑，亦與任何犯法行為扯不上關係（部份人只是因為拍照就被截查）。當天全港各區亦沒有任何非法集結或暴動的跡象，警方也沒有提出任何涉及入境管制的事宜。因此，警方根本沒有任何法律理據截查該 12 名市民，甚至其他未被傳媒報道的市民。唯一合理的推論，就是警方故意透過任意截查的方式騷擾及阻嚇市民，從而令他們無法順利及無懼地行使其言論和集會自由。

²¹ 王子鑫訴香港警務處長 [2009] HKCFI 1679，<https://www.hklii.org/chi/hk/cases/hkcfi/2009/1679.html>，第 13 至 15 段

²² Kwok Wing Hang v Chief Executive in Council (No 2) [2019] HKCFI 2820，https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=125452，第 181(3)段

²³ 香港特別行政區訴韋秋盈 [2022] HKCFI 2647，<https://www.hklii.hk/cgi-bin/sinodisp/chi/hk/cases/hkcfi/2022/2647.html>，第 50 至 59 段

²⁴ 聯合國人權事務委員會《第 37 號一般性意見》，第 83 段

²⁵ 同上

²⁶ 同上，第 51 段

另外，除非持有法庭發出的搜查令，否則警方無權查閱市民的手機內容，市民在任何情況下亦沒有義務解鎖自己的手機。上訴庭在《岑永根案》曾明確指出，現行法律下警方無權強迫市民提供手機密碼；雖然警方在特殊情況下可在無法庭命令下查看市民手機內容（假設手機無上鎖），但此權力只適用於被捕人士，並不包括在街上被截查然後放走的市民²⁷。另一個警方近年使用的策略，是聲稱懷疑市民身上的手機是偷來的贓物，因此要求市民解鎖證明手機屬於自己。不過，警方通常無法提出任何客觀證據以支持其懷疑，而且基於無罪假定原則，市民亦沒有義務證明自己是無辜的。

本中心必須指出，即使是根據給予警方大量權力的《國安法》及其《實施細則》，如果警方希望在無法庭命令下進行搜查，也必須是由職級為警務處助理處長或以上的人發出命令才可，普通前線警員根本沒有相關權力²⁸。警員當天要求市民解鎖及查看其手機內容，明顯是不合法的。

四、無理拘捕市民及限制人身自由

警方表示，6月3日合共拘捕4人，另外「帶走」4人返回警署作進一步調查；6月4日當天則拘捕了1人，另外「帶走」23人返回警署進一步調查²⁹。

本中心整理發現，所有獲傳媒現場報道的被捕或被帶走人士，都沒有作出或企圖作出任何暴力行為，絕大部份人只是和平地作出悼念行為，甚至只是因為手持黑紙默站³⁰、手持六四書籍³¹或亮起手機電筒³²就被警方拘捕或帶走。

誠如上文所述，聯合國人權事務委員會早已明確指出，政府有責任允許和平集會在不受無端干預的情況下進行。雖然無人事先知會警方會在6月3日或4日舉行集會，但委員會在詮釋《公約》時已指出，自發性的集會同樣受到《公約》保護³³。委員會亦強調，對目標人物實施「預防性拘留」以阻止他們參加集會可能構成任意剝奪自由，與

²⁷ *Sham Wing Kan v Commissioner of Police* [2020] HKCA 186，<https://www.hklii.org/cgi-bin/sinodisp/eng/hk/cases/hkca/2020/186.html>

²⁸ 《國安法第43條實施細則》附表1第3條

²⁹ https://www.police.gov.hk/ppp_tc/03_police_message/pr/press-release-detail.html?refno=P202306040001

³⁰ <https://www.inmediahk.net/node/%E7%A4%BE%E9%81%8B/%E3%80%90%E5%85%AD%E5%9B%9B34%E3%80%91%E8%AD%A6%E6%96%B9%E9%8A%85%E9%91%BC%E7%81%A3%E5%B8%B6%E8%B5%B0%E8%87%B3%E5%B0%916%E4%BA%BA-%E8%97%9D%E8%A1%93%E5%AE%B6%E4%B8%89%E6%9C%A8%EF%BC%9A%E9%A6%99%E6%B8%AF%E4%BA%BA%E5%94%94%E5%A5%BD%E9%A9%9A>

³¹ <https://www.inmediahk.net/node/%E7%A4%BE%E9%81%8B/%E3%80%90%E5%85%AD%E5%9B%9B34%E3%80%91%E7%8E%8B%E5%A9%86%E5%A9%86%E6%8C%81%E9%AE%AE%E8%8A%B1%E8%88%89%E3%80%8C%E4%BA%94%E4%B8%80%E3%80%8D%E6%89%8B%E5%8B%A2-%E8%A2%AB%E5%B8%B6%E4%B8%8A%E8%AD%A6%E8%BB%8A>

³² <https://www.facebook.com/hkcitycreation/posts/pfbid02T8ZpShrXwkjadeteArXdfCv36PHYJD2HJ1zucPw22KGxnEA1Rxf2sFrbrM1r4VLQI>

³³ 聯合國人權事務委員會《第37號一般性意見》，第14段

和平集會權不符。委員會認為，只有在當局有證據表明所涉個人有意在特定集會期間實施或煽動暴力行為，以及其他措施顯然不足以防止暴力發生的情況下，才可使用這種預防性拘留。³⁴

委員會亦指出，政府必須讓參與者自由決定集會的目的或任何表達的內容，因此當局對待和平集會的方法和施加的任何限制原則上必須內容中立³⁵。換言之，只要悼念人士沒有使用暴力或犯法，他們有權決定悼念的形式及使用的工具，無論是書籍、蠟燭或手機電筒都不應受到限制，更遑論因此導致相關人士被拘捕或帶走。

今年六四令人特別憂慮的是，除了正式拘捕外，警方今次使用了新措施——「帶返警署調查」，作為實施預防性拘留的手段之一，限制人身自由。一般而言，若非正式拘捕，香港法律並無授權警方以「帶走」的形式將一名市民強制移離某個地方及限制其人身自由；若不是正式被捕，市民亦沒有義務協助警方調查。換言之，警方最多只可請求市民自願性跟隨警方離開現場。

不過，綜合傳媒報道，當天被帶走的人，很可能都是被警方強行帶上警車，或是在警方威嚇下非自願地登上警車。例如一名手持電子蠟燭的男子在維園被帶上警車時，就向現場記者投訴：「我拿着支蠟燭坐在這裏，這樣也被人拉」³⁶。另外一名女子得知須被帶走時，亦當場鼓噪及呼叫³⁷。根據記協新聞稿，記協前主席麥燕庭當時是因為遭警員警告若不合作就會將她抬上警車，所以她才屈服上車³⁸。由此可見，這些被帶走人士都並非自願離開，而是被警方以強制或威嚇手段帶走。

本中心發言人表示：

「我們促請警方立即停止此等以『帶走』為名的限制人身自由手段。在任何情況下，警方只可在必須的情況下才可拘捕一名市民，而在拘捕以外不可透過任何方式剝奪市民的人身自由，否則會構成非法禁錮。若警方希望市民協助調查，則應清晰地解釋其原因及提出請求，並說明是否協助純屬自願決定。」

「最後，我們必須重申，政府不應濫用國家安全的名義隨意限制市民的權利。聯合國人權事務委員會已明確指出，以國安為名限制集會自由的條件是，相關限制必需是用以保持國家的能力以抵禦可信的武力威脅或使用武力的情況³⁹。我們認為，和平的悼念活動根本不可能危害國家安全，因此政府沒有基礎阻撓市民悼念。」

³⁴ 同上，第 82 段

³⁵ 同上，第 22 段

³⁶ <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20230605/s00001/1685904349837>

³⁷ <https://news.mingpao.com/ins/%e6%b8%af%e8%81%9e/article/20230604/s00001/1685872340430>

³⁸ <https://www.facebook.com/HKJA.official/posts/pfbid02NMPgkZYdag9DQLRy7k6Ltz7yJWM4vH3Dth72vn6uoTYLLnZr9sHfMisteL6wJDHnl>

³⁹ 聯合國人權事務委員會《第 37 號一般性意見》，第 42 段

— 完 —

關於我們

香港人權資訊中心於 2022 年成立，由一群專注法律及政策研究的香港人權工作者組成，目標是向外界提供有關香港人權、法治及政治發展的最新和可靠的資訊，以支持香港的公民社會，並以國際人權法和標準，捍衛香港的人權和自由。

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June 4 of this year marks the 34th anniversary of the Tiananmen Square Massacre. Hong Kong people should have been able to exercise their constitutionally protected rights to freedom of speech and assembly to mourn the victims and express their views in a peaceful manner. However, the Hong Kong government deployed a large number of police officers to heavily-handedly surveil the people and interfere with the commemoration activities in various districts. The extent of severity and asperity was unprecedented.

Based on public information, Hong Kong Centre for Human Rights (“**HKCHR**”) has compiled and studied in detail the events that took place before, on and after June 4. We discovered a worrying trend that the Hong Kong government has adopted a number of new strategies which lack a solid legal basis. Its actions in a number of areas have clearly infringed basic rights of individual citizens, and violated local laws as well as international human rights standards.

A. Warnings in advance as a deterrent

As reported by Ming Pao, the vice chairman of the League of Social Democrats Dickson Chau, former member of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China Leung Kam-wai and a number of other activists have received phone calls from the police before June 4. The police asked them what they were going to do on that particular day.

The police even made very specific requests to some of them, including not to go to Victoria Park on June 4 or not to mourn on social media. Leung said the police told him "just do not go out if it is not necessary" which made him feel pressured. The police responded to the media without confirming whether they had contacted the activists, only saying that they would handle the situation according to the actual situations.⁴⁰

HKCHR is very concerned about the police’s actions. Article 27 of the Basic Law, article 17 of the Hong Kong Bill of Rights and article 4 of the National Security Law (“**NSL**”) guarantee the right to free peaceful assembly. According to the Public Order Ordinance, an assembly of not more than 50 persons does not even need to notify the police in advance, meaning that it can go ahead without a Letter of No Objection issued by the police. Therefore, the police should never presume that any activities of the activists on June 4 must be illegal, nor should they have warned them in advance, let alone explicitly asked them not to go to a certain place or not to leave their homes.

The International Covenant on Civil and Political Rights (“**ICCPR**”) applies to Hong Kong, and has been incorporated into domestic laws via the Hong Kong Bill of Rights Ordinance. When interpreting the provisions of the ICCPR, the UN Human Rights Committee has explicitly stated

⁴⁰ <https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20230603/s00002/1685731441923>

that authorities may not require pledges or undertakings from individuals not to organize or participate in future assemblies. Conversely, no one may be forced to participate in an assembly.⁴¹ The Committee also observed that the ICCPR protects peaceful assemblies wherever they take place (outdoors, indoors and online) and whatever the forms (including protests, sit-ins and candlelit vigils).⁴² States parties are also obliged to allow peaceful assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants.⁴³

The Hong Kong Court of Final Appeal (“CFA”) has pointed out that “[t]he freedom of peaceful assembly is a fundamental right. It is closely associated with the fundamental right of the freedom of speech. The freedom of speech and the freedom of peaceful assembly are precious and lie at the foundation of a democratic society.”⁴⁴ Approving the Committee’s opinion, the Court stated that the government has a positive duty to take reasonable and appropriate measures to enable lawful assemblies to take place peacefully.⁴⁵

The spokesperson of HKCHR said:

“Not only did the police fail to facilitate the activists' exercise of their right to assembly, but they also prevented them from exercising this fundamental right by making threatening phone calls without any legal basis. The police’s actions were a blatant violation of the ICCPR and the legal principles affirmed by the CFA.”

B. Using public power to harass people and violate freedom of speech

In addition to preventing the public from participating in assemblies, the government also harassed the people and infringed on their freedom of speech in various ways. After the grocery store, founded by former pro-democracy district councillor Debby Chan, announced in May the distribution of candles, a number of government departments took turns to inspect the store. In the morning of the day after June 4, the police suddenly removed the candlelight banner hanging outside the store, and in the evening brought Chan to the police station for the purpose of investigation. The police later told the media that the banner was suspected of having seditious intent under the Crimes Ordinance.⁴⁶

⁴¹ General Comment No. 37 on Article 21 (Right of peaceful assembly), para. 66, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>

⁴² Ibid, para. 6

⁴³ Ibid, para. 8

⁴⁴ *Leung Kwok Hung v HKSAR* [2005] HKCFA 41, <https://www.hklii.hk/eng/hk/cases/hkcfa/2005/41.html>

⁴⁵ Ibid

⁴⁶ <https://thecollectivehk.com/%e7%87%ad%e5%85%89%e7%85%bd%e5%8b%95%ef%bc%9f%ef%bd%9c%e8%a5%bf%e5%a4%9a%e9%96%98%e5%a4%96%e7%87%ad%e5%85%89%e6%a9%ab%e9%a1%8d%e3%80%80%e9%81%ad%e8%ad%a6%e6%8c%87%e6%b6%89%e3%80%8c%e7%85%bd%e5%8b%95/>

Another store owned by former pro-democracy district councilor Katrina Chan started in mid-May to display electronic candles with printed words related to June 4. On June 4, a group of police officers suddenly surrounded her store, saying that her display of candles might violate the crime of seditious intent and warning her to put them away immediately.⁴⁷

The police crackdown also extended to other areas unrelated to mourning. On the night of June 4, police towed a private car with the license plate "US 8964" in Causeway Bay.⁴⁸ A singer's birthday happens to be June 4 and thus her fans parked an ice-cream truck in Mongkok to give away free ice-cream before the police asked them to leave on the grounds that it was a "sensitive day".⁴⁹ Hong Kong Public Opinion Research Institute originally planned to release on June 6 its "June 4th Anniversary Survey Report". However, it decided to cancel the release "in response to suggestions from relevant government department(s) after their risk assessment".⁵⁰

HKCHR believes that the government's actions constitute a serious infringement of freedom of expression. The offence of seditious intent under sections 9 and 10 of the Crimes Ordinance only focuses on acts intended to cause hatred or contempt for the government, to bring into hatred against the administration of justice, or to incite others to break the law. Even adopting the most restrictive interpretation of the provisions, no reasonable person could regard a commemorating banner or candle which did not criticize the government at all as having a seditious intent. It is clear that the police were not able to justify their suppression of free speech on any other solid legal basis, so that they resorted to abusing the seditious intent offence even in such a far-fetched manner.

In any event, the seditious intent offence is an obsolete crime created in the British colonial era and is incompatible with international human rights standards today. It has long been abolished in common law jurisdictions such as the United Kingdom, New Zealand and Ireland. In its Concluding Observations last year, the Human Rights Committee expressed concern about this law and recommended that the Hong Kong government to abolish this offence and review the relevant cases to ensure that no one would be prosecuted or targeted for exercising freedom of expression.⁵¹ However, it is very disappointing that the Hong Kong

⁴⁷ <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20230605/s00001/1685904355445>

⁴⁸ <https://www.am730.com.hk/本地/六四 34-私家車 us8964 銅鑼灣被拖走-車主引述警稱車牌有凸字涉違例/380769>

⁴⁹ <https://www.inmediahk.net/node/%E7%A4%BE%E9%81%8B/collar%E8%A8%B1%E8%BB%BC%E5%85%AD%E5%9B%9B%E7%94%9F%E6%97%A5-%E9%9B%AA%E7%B3%95%E8%BB%8A%E6%97%BA%E8%A7%92%E6%87%89%E6%8F%B4%E8%A2%AB%E8%AD%A6%E8%B6%95%E9%9B%A2%EF%BC%9A%E6%95%8F%E6%84%9F%E6%97%A5%E5%AD%90>

⁵⁰ <https://www.pori.hk/press-release-en/2023-06-06-pm.html?lang=en>

⁵¹ Para. 16, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FCO%2FCHN-HKG%2FCO%2F4&Lang=en

government has so far refused to accept the recommendations and insists on continuing to suppress free speech by utilizing this offence.

C. Abuse of the stop-and-search power in defiance of the laws

According to our study based on media reports, among the large number of people stopped and searched by the police on June 4, **at least 12 people were stopped and searched unreasonably and without legal basis.** They were targeted for reasons such as wearing black shirts and pants⁵², holding flowers⁵³, taking pictures at the scene⁵⁴, turning on the flashlight of the cell phone⁵⁵, holding electronic candles or candles⁵⁶, intending to go to the original site of the Pillar of Shame⁵⁷, handing out commemoration material⁵⁸, and holding books related to the massacre⁵⁹. One of the searched citizens even told the media that after the police asked him to unlock his mobile phone, they took it away and checked its contents and messages.⁶⁰

We are concerned about the police actions which lacked clear legal grounds. Many people have the misunderstanding that the police have a legal power to, with or without reasons, randomly stop and search people, and ask for ID cards, and that people must cooperate unconditionally in all cases. However, the fact remains that the police never have such unfettered power under Hong Kong laws.

1. According to section 54 of the Police Force Ordinance, if a police officer finds any person **who acts in a suspicious manner**, or any person whom the officer **reasonably suspects of having committed/ being about to commit/ intending to commit any offence**, it shall be lawful for the officer to stop the person and demand his production of ID card, to detain the person for a reasonable period, and to search the person for anything that is likely to be of value to the investigation. As the Court of First Instance (“CFI”) held, a police officer who seeks to exercise such power **must rely on some objective facts as the basis of his conclusion** that the stopped person has acted suspiciously.⁶¹

⁵² <https://news.mingpao.com/ins/%E6%B8%AF%E8%81%9E/article/20230604/s00001/1685872340430>

⁵³ <https://www.inmediahk.net/node/%E7%A4%BE%E9%81%8B/%E3%80%90%E5%85%AD%E5%9B%9B34%E3%80%91%E6%9B%BE%E5%81%A5%E6%88%90%E5%B8%B6%E9%87%91%E8%8A%B1%E5%88%B0%E7%B6%AD%E5%9C%92%E5%A4%96-%E8%AD%A6%E6%88%AA%E6%9F%A5%E5%BE%8C%E6%94%BE%E8%A1%8C>

⁵⁴ <https://www.hk01.com/article/905051>

⁵⁵ <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20230605/s00001/1685904349837>

⁵⁶ *ibid*

⁵⁷ <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20230605/s00001/1685904353579>

⁵⁸ <https://www.hk01.com/article/777628>

⁵⁹ <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20230605/s00001/1685904349837>

⁶⁰ <https://web.archive.org/web/20230604140921/https://www.i-cable.com/%E9%A6%96%E9%A0%81%E6%96%B0%E8%81%9E/135359/%E5%85%AD%E5%9B%9B34%E5%91%A8%E5%B9%B4-%E8%AD%A6%E6%96%B9%E9%8A%85%E9%91%BC%E7%81%A3%E4%B8%80%E5%B8%B6%E6%88%92%E5%82%99-%E4%B8%AD%E8%81%AF%E8%BE%A6%E5%A4%96%E5%81%9C%E6%B3%8A%E8%AD%A6/>

⁶¹ *Wong Tsz Yam v Commissioner of Police* [2009] HKCFI 1679, para. 13-15,

<https://www.hklii.org/eng/hk/cases/hkcfi/2009/1679.html>

2. Section 17C of the Immigration Ordinance empowers the police to request a person to produce his ID card. But the CFI has held that the power could only be exercised **for purposes connected with immigration control** under the Immigration Ordinance.⁶²

3. Section 33 of the Public Order Ordinance provides that where a police officer **reasonably believes that an unlawful assembly or riot has been/ is being/ may be committed with offensive weapons in any place**, he may within the vicinity of such place stop and search any person.

4. According to section 49 of the Public Order Ordinance, where a police officer **reasonably believes that it is necessary for the purpose of preventing, detecting or investigating any offence**, the officer may require any person to produce proof of his identity for inspection.

In other words, the law does not allow the police to stop and search people for no reason. Such operation must be based on the above provisions and meet the relevant conditions. As the CFI put it in a case decided last year, police officers are not allowed to stop and search a person at will, and when there is a reason to do so, they must inform the person of the reason if circumstances permit.⁶³ The CFI also pointed out that the police officers in that case had stopped the subjects without any reason to believe that they were acting suspiciously, which was clearly not in accordance with the law and did not prove that the police officers were in the due execution of his duty, and thus the subjects were entitled to disregard their requests.⁶⁴

The Human Rights Committee has pointed out that power of “stop and search” applied to assembly participants must be exercised based on reasonable suspicion of the commission or threat of a serious offence, and must not be used in a discriminatory manner. The mere fact that authorities associate an individual with a peaceful assembly does not constitute a reasonable ground for stopping and searching them.⁶⁵ The Committee also observed that the use of flags, uniforms, signs and banners is to be regarded as a legitimate form of expression which should not be restricted, even if such symbols are reminders of a painful past.⁶⁶

HKCHR believes that the behaviors of or the objects possessed by the 12 people searched on June 4 were not threatening or offensive at all. Not only were they not suspicious, but they

⁶² *Kwok Wing Hang v Chief Executive in Council (No 2)* [2019] HKCFI 2820, para. 181(3), https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=125452

⁶³ 香港特別行政區訴韋秋盈 [2022] HKCFI 2647, para. 50-59, <https://www.hklii.hk/cgi-bin/sinodisp/chi/hk/cases/hkcfi/2022/2647.html>

⁶⁴ *ibid*

⁶⁵ General Comment No. 37 on Article 21 (Right of peaceful assembly), para. 83

⁶⁶ *Ibid*, para. 51

also have no relevance to any illegal behavior (some were stopped for taking photos). On June 4, there were no signs of unlawful assembly or riots in Hong Kong, and the police did not raise any issues related to immigration control. Therefore, there was no legal grounds for the police to stop and search the 12 citizens, or even other citizens who were not reported by the media. The only reasonable inference is that the police deliberately harassed and intimidated the public by stopping and searching them, thereby preventing them from fearlessly exercising their freedom of speech and freedom of assembly.

Besides, the police have no power to access the contents of a person's mobile phone unless they have obtained a search warrant issued by a court. A person is not obliged to unlock his cell phone under any circumstances. The Court of Appeal has made it clear that, under existing law, the police simply do not have any power to compel people to provide their cell phone passwords. Although the police may in exceptional circumstances access the contents of a person's phone without a court order (assuming the phone is unlocked), this power is, according to the judgment, only applicable to arrested persons and does not extend to people who are merely searched on the street and then released.⁶⁷

Another tactic used frequently in recent days is that the police would claim that they suspect the cell phone was a stolen property, and therefore ask the citizen to prove his ownership by unlocking it. However, the police usually are not able to provide any objective evidence to support their suspicion. Also, in light of the principle of presumption of innocence, a citizen has no duty to prove that he is innocent.

Even if the police invoke the draconian NSL and its Implementation Rules, the police can check the content of a person's phone without court orders *only when* an authorization is issued by an officer not below the rank of Assistant Commissioner of Police.⁶⁸ An ordinary front-line officer does not have such power. Thus, it was plainly unlawful for the police officer to demand the citizen to unlock his phone and to read its content on June 4.

D. Groundless arrest and restriction of personal liberty

The police said a total of 4 people were arrested and another four were "brought back" to the police station for further investigation on June 3; while one person was arrested and another 23 people were "brought back" to the police station for further investigation on June 4.⁶⁹

⁶⁷ *Sham Wing Kan v Commissioner of Police* [2020] HKCA 186 · <https://www.hklii.org/cgi-bin/sinodisp/eng/hk/cases/hkca/2020/186.html>

⁶⁸ Implementation Rules for Article 43 of the NSL, section 3 of schedule 1

⁶⁹ https://www.police.gov.hk/ppp_en/03_police_message/pr/press-release-detail.html?refno=P202306040001

HKCHR found that all those arrested or taken (who have been reported by the media) did not commit or attempt to commit any violent acts. The vast majority of them only mourned peacefully, with some of them were arrested or taken away merely because of standing silently with black papers⁷⁰, holding June 4 books⁷¹ or turning on the flashlight on the cell phones⁷².

As mentioned above, the Human Rights Committee observed that States Parties are obliged to allow peaceful assemblies to take place without unwarranted interference. It must also be noted that the ICCPR protects spontaneous assemblies as well.⁷³ The Committee further opined that "preventive detention" that keeps targeted individuals from participating in assemblies may constitute arbitrary deprivation of liberty, which is incompatible with the right of peaceful assembly. Such detention may be used only in the most exceptional cases, for no longer than absolutely necessary and only where the authorities have proof of the intention of the individuals involved to engage in or incite acts of violence during a particular assembly, and where other measures to prevent violence from occurring will clearly be inadequate.⁷⁴

Also, the Committee stressed that governments must leave it to the participants to determine freely the purpose or any expressive content of an assembly. The approach of the authorities to peaceful assemblies and any restrictions imposed must therefore in principle be content neutral.⁷⁵ In other words, as long as the people do not use violence or break the law, they have every right to decide the form of mourning and the material they use.

The most worrying trend in the anniversary of this year is the police's new tactic to restrict people's personal liberty – taking individuals to police stations without indication of arrests, as a de facto form of preventive detention. Generally speaking, Hong Kong law does not authorize the police to remove a citizen from a place and restrict his personal liberty by way of "taking him to police stations"; and if there is no formal arrest, a citizen is not obliged to assist the police in their investigation. Thus, the most the police can do is to ask a citizen to voluntarily leave the scene with them.

⁷⁰<https://www.inmediahk.net/node/%E7%A4%BE%E9%81%8B/%E3%80%90%E5%85%AD%E5%9B%9B34%E3%80%91%E8%AD%A6%E6%96%B9%E9%8A%85%E9%91%BC%E7%81%A3%E5%B8%B6%E8%B5%B0%E8%87%B3%E5%B0%916%E4%BA%BA-%E8%97%9D%E8%A1%93%E5%AE%B6%E4%B8%89%E6%9C%A8%EF%BC%9A%E9%A6%99%E6%B8%AF%E4%BA%BA%E5%94%94%E5%A5%BD%E9%A9%9A>

⁷¹<https://www.inmediahk.net/node/%E7%A4%BE%E9%81%8B/%E3%80%90%E5%85%AD%E5%9B%9B34%E3%80%91%E7%8E%8B%E5%A9%86%E5%A9%86%E6%8C%81%E9%AE%AE%E8%8A%B1%E8%88%89%E3%80%8C%E4%BA%94%E4%B8%80%E3%80%8D%E6%89%8B%E5%8B%A2-%E8%A2%AB%E5%B8%B6%E4%B8%8A%E8%AD%A6%E8%BB%8A>

⁷²<https://www.facebook.com/hkcitycreation/posts/pfbid02T8ZpShrXwkjadeteArXDfCv36PHYJD2HJ1zucPw22KGxnEA1Rxf2sFrbrM1r4VLQI>

⁷³ General Comment No. 37 on Article 21 (Right of peaceful assembly), para. 14

⁷⁴ Ibid, para. 82

⁷⁵ Ibid, para. 22

However, according to media reports, it is very likely that those who were taken away on June 4 were either forcibly taken to police vehicles by the police, or involuntarily boarded police vehicles under police intimidation. For example, when a man holding an electronic candle was taken to a police car in Victoria Park, he complained to reporters on the scene, "I am just sitting here with a candle, and that leads to my arrest".⁷⁶ Another woman also cried out when she was told that she had to be taken away.⁷⁷ According to the press release of the Hong Kong Journalists Association, the former chairperson of the Association Mak Yin Ting was warned by the police officers that she would be moved to the police car if she did not cooperate, so she finally gave in and got into the car.⁷⁸ It is very clear that these people did not leave voluntarily, but were taken away by the police by force or threat.

The spokesperson of HKCHR said:

"We urge the police to immediately stop restricting people's personal liberty under the guise of 'bringing them back to police stations'. Under all circumstances, the police should only arrest a citizen when it is necessary, and should not deprive a citizen of his personal liberty by ways other than a formal arrest, for otherwise such action would constitute unlawful detention. If the police need assistance from citizens, they should clearly explain their reasons and tell the people that their assistance is completely voluntary."

"Finally, we must reiterate that the government should not abuse the name of national security to restrict people's rights at will. The Human Rights Committee has stated that national security may serve as a ground for restrictions if such restrictions are necessary to preserve the State's capacity to protect the existence of the nation, its territorial integrity or political independence against a credible threat or use of force.⁷⁹ We believe that there is no basis for the government to prevent people from mourning because there is no way that a peaceful mourning event could jeopardize national security."

- End -

⁷⁶ <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20230605/s00001/1685904349837>

⁷⁷ <https://news.mingpao.com/ins/%e6%b8%af%e8%81%9e/article/20230604/s00001/1685872340430>

⁷⁸ <https://www.facebook.com/HKJA.official/posts/pfbid02NMPgKZYdag9DQLRy7k6Ltz7yJWM4vH3Dth72vn6uoTYLLnZr9sHfMisteL6wJDHnl>

⁷⁹ General Comment No. 37 on Article 21 (Right of peaceful assembly), para. 42

About us

Hong Kong Centre for Human Rights is established in 2022 by a group of human rights defenders from Hong Kong with background in policy and legal research. We aim to provide credible information on Hong Kong's legal, political, and human rights development with the goal of supporting the resilient civil society of Hong Kong and upholding international human rights standards.

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