

# Balancing Civil Rights and Police Powers



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27 May 2014

# Relationship between civil rights & police powers

- Police powers should NOT be seen as something in opposition to civil rights; or vice versa
- Police should in general exercise its power to protect and facilitate civil rights
- However, protecting and facilitating a person's civil rights or the society's order may necessitate some interference with another's civil rights/liberties (e.g. prevention or detection of crime may necessitate an arrest of a person)





# Section 10 of Police Force Ordinance (Cap 232)

- The duties of Police include taking lawful measures for, *inter alia*,
- (a) preserving the public peace;
- (b) preventing and detecting crimes and offences;
- (c) preventing injury to life and property;
- (d) apprehending all persons whom it is lawful to apprehend and for whose apprehension sufficient grounds exists;
- (e) regulating processions and assemblies in public places or places of public resort;
- (f) controlling traffic upon public thoroughfares and removing obstructions therefrom;
- (g) preserving order in public places and places of public resort, at public meetings and in assemblies for public amusements, for which purpose any police officer on duty shall have free admission to all such places and meetings and assemblies while open to any of the public;
- ...



# Hong Kong Bill of Rights Ordinance (Cap 383)

- Article 16

- The exercise of the rights provided for in the above paragraph carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary-
  - for respect of the rights or reputations of others; or
  - for the protection of national security or of public order (ordre public), or of public health or morals.



# IPCC's role in balancing civil rights & police powers



- Whether any curtailment/interference with a person's civil rights/liberties by the police is justified in a particular case very often cannot be determined without first ascertaining all the relevant facts and looking into the same in an objective and impartial manner
- => significant role played by an independent monitoring body (IPCC) to help strike the right balance



# IPCC's role in balancing civil rights & police powers



IPCC helps to strike the right balance through two main routes:

- Scrutinize the investigation results of individual reportable complaints thoroughly in a fair and just manner and to give recommendations/advice on whether any interference with civil rights/liberties is lawful/justified (S 8(1)(a) and (b) of IPCCO)
- Identify any fault or deficiency in any practice or procedure adopted by the police force that has led to or might lead to reportable complaints, and to make recommendations to the Commissioner of Police or the Chief Executive in respect of such practice or procedure (S 8(1)(c) of IPCCO)



# Illustrations of the role played by IPCC:

- **Common Problems relating to Arrest:**
- Should the police officer arrest a person in a relatively minor criminal offence in circumstances when further investigation is clearly required before the police can decide whether there is sufficient evidence to charge that person?
- Any reasonable suspicion?
- Any necessity for the arrest?
- the offence is serious vs the offence appears to be of a serious nature



# Case Illustration – Stop and Search

- On the material day, COM was intercepted by a Sergeant and a PC for a search on the street. COM reportedly refused to be searched on the street and requested to go to a police station. At the police station, the PC, upon the Sergeant's instruction, conducted a strip search on COM, with COM's clothes removed COM was released after nothing suspicious was found on him.





# Case Illustration – Stop and Search

- Upon close examination of the police notebook entries, relevant witness statements and other documents, IPCC was of the view that the strip search on COM at the police station was not justified. After deliberations, CAPO registered one SOTR count of UUOA against the officers for conducting the strip search



# Case Illustration – Use of Handcuff

- COM was arrested for a relatively minor offence of ‘Common Assault’ and was brought back to Police Station. COM alleged that the Duty Officer of Report Room of the Police Station had abused police power by applying a handcuff transport belt on COM while taking him to hospital for medical treatment





# Case Illustration – Use of Handcuff

- After rounds of queries and discussion with CAPO, CAPO subscribed to IPCC's view that the use of handcuff transport belt on COM might be unnecessary, and upgraded the classification of the allegation from 'Unsubstantiated' to 'Not Fully Substantiated'.



# IPCC's role in public order events

According to survey results in 2013 & 2014, public interest on how IPCC deals with complaints against Police in their handling of POEs are on the rise. In fact IPCC has continuously spent significant resource working in this area including attending on-site visits and visits to Police units handling POEs, holding liaison meetings with external stakeholders who from time to time have chosen POE as an avenue for expressing their views and opinions etc.





**IPCC's Report  
19/12/2012 on  
Complaint Cases  
Arising from the Vice  
Premier's Visit**





# Some Observations in IPCC's Report

- Some Operational Orders contained guidelines which were ambiguous in meaning and application, which might confuse the frontline officers in carrying out their duties or making decisions on the spot. An example is that officers were reminded to take action where necessary to pre-empt embarrassment or threat to the VP, and that they should ensure that events attended by the VP be conducted in a smooth and dignified manner
- IPCC notes that there has been widespread public concern about the locations of the Designated Press Area (DPA) and Designated Public Activities Area (DPAA) being too far away from the venues of the events, making it difficult for reporters to carry out their duties and protestors to express their opinion to the VP.
- It is revealed that staging of any protesting activities within the Security Zone (SZ) was not allowed in this security operation during the whole 24-hour period of the 3-day visit of the VP, whether or not the VP was present in the vicinity
- It appears that the root problem lies with the demarcation and operation of the SZ and the requirement that all DPA and DPAA had to be located outside the SZ.



# Some Recommendations in IPCC's Report

- In order to avoid inconsistencies and confusions on the part of the frontline officers in interpreting these guidelines, IPCC recommends that all Operational Orders, in particular those containing general and overriding guidelines, should be standardised in wording and coordinated by the Operations Wing, and that ambiguous wording should be avoided.
- The setting up and operation of the Security Zone should not be left to the discretion of individual District Commanders without any written guidelines and scrutiny.
- The Police should consider seeking legal advice as to whether it is justifiable for them to disallow the staging of any protesting activities within the SZ, irrespective of the number of protestors and / or the absence of the dignitary.



# Some Recommendations in IPCC's Report

- DPA and DPAA should be set up at an appropriate distance from the location of the event attended by the dignitary to facilitate media's right of reporting and the right to peaceful demonstration in a meaningful way, having regard to the paramount requirement of protecting the dignitary's personal safety and the integrity of the security operation
- The Police should refrain from setting up DPA in areas which are generally accessible to the public, but should allow reporters to move around in areas that are not a restricted zone.



# Some Recommendations in IPCC's Report

- The Police should endeavour to facilitate protestors by setting up DPAA at a reasonable distance where the protestors can see the dignitary or his motorcade, having regard to the relevant security concerns.
- If the physical constraint of the location make it impossible to set up a DPAA which can accommodate a large number of people without comprising security concerns, the Police should consider setting up smaller DPAA in closer proximity to the venue and larger DPAA further away.
- The Police should come up with reasonable and transparent arrangements for access to the smaller DPAA (e.g. on a “first-come, first-served” basis or allow different groups of protestors to nominate representatives) and once it is full, other protestors may be directed to the larger DPAA. If necessary, people who seek to enter the smaller DPAA may be required to undergo the necessary security screening.






# Concluding Remarks

- A fair and impartial complaints monitoring system is important in maintaining the professionalism of the Hong Kong Police Force and in helping to strike a right balance between police powers and civil rights/liberties
- IPCC serves to ensure and enhance the Police's service quality and a right balance being struck





THANK YOU