

## CHAPTER 2

### LEGAL POWERS, CONSTRAINTS AND IMPLICATIONS

2.1 The Study is conducted pursuant to the IPCC's authority under sections 8(1)(a), 8(1)(c) and 8(2) of the IPCC Ordinance. The aim is to make recommendations to the Commissioner of Police (Commissioner) and the Chief Executive on how police practices and procedures may be improved in the light of the Police handling of the Public Order Events (POEs) arising from the Fugitive Offenders Bill since 9 June 2019 in Hong Kong.

#### **Legal Basis to Conduct Study under the IPCC Ordinance**

2.2 One of the statutory functions conferred by section 8(1)(c) of the IPCC Ordinance to the IPCC is *“to 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 (as the Council considers appropriate) to the Commissioner or the Chief Executive or both of them in respect of such practice or procedure”*. In accordance with this section, the purpose of the Study is to identify any fault or deficiency in the practice and procedure adopted by the Police in specific POEs covered by the Study; and to make recommendations to the Chief Executive and the Commissioner accordingly. The Study also enables the IPCC to effectively discharge its duty under section 8(1)(a) of monitoring the police investigation of individual complaints arising out of or in connection with those specific POEs, by providing the Council with an overall and more comprehensive picture of the POEs. In this regard, the Study aids the work of different IPCC committees, including the Serious Complaints Committee, Operations Advisory Committee, and Publicity and Survey Committee.

2.3 With regard to the actual operation of the Study, section 8(2) of the IPCC Ordinance empowers the IPCC, stipulating that *“[t]he Council may do all such things that are reasonably necessary for, or incidental or conducive to, the performance of its functions under this Ordinance”*. For this Study, the IPCC has proactively taken various steps, including in particular:

- (a) inviting the general public to provide information;
- (b) commissioning research on display of police insignia in POEs in other jurisdictions;
- (c) engaging academics and scholars to conduct two surveys, one on how police officers view themselves as officers of the law and the other on how protesters and the general public view the Police action in the POEs; and

(d) inviting a panel of international experts to advise on the conduct of the Study.

2.4 This Report is made by the IPCC to the Chief Executive pursuant to section 30 of the IPCC Ordinance and to the Commissioner pursuant to section 8(1)(c) of the IPCC Ordinance.

### **Legal Limitations and Their Implications**

2.5 The IPCC has attempted to reconstruct all essential and important episodes on the six incident days. To this end, the IPCC has collated information from all possible sources, including the Police, the media, Government departments, public and corporate bodies, as well as the general public.

2.6 The IPCC does not, however, have legal powers to summon witnesses, seize records (e.g. video footage, police records), issue search warrants or compel the production of documents by the Police and other stakeholders. The IPCC also lacks statutory authority to require members of the public or the Police to answer specific questions.

2.7 In the absence of such powers, on the part of the IPCC, the basis for the Police's provision of information to the IPCC has been the Chief Executive's indication of full support for the Study and her pledge to the IPCC Chairman of her Administration's full co-operation, as well as Commissioner's indication to the IPCC Chairman that the Police would support and cooperate with the IPCC.<sup>1</sup>

2.8 The IPCC considers that the Chief Executive and her Administration have used their best endeavours to cooperate and abide by their pledge.

2.9 Given the magnitude and rapidly evolving circumstances of POEs over the past months, the IPCC recognises that the Police has had to face unprecedented challenges and understandably did not have the manpower or resources to meet these challenges and respond to the IPCC within the time requested as well as carrying out normal duties. In most cases, the information requested was subsequently provided. In some instances, the Police has explained that some of the requested information was not available due to the fact that officers were unable to make detailed contemporaneous records as the circumstances were extremely chaotic and demanding.

2.10 Apart from the Police, the IPCC has also received assistance and cooperation from various stakeholders, including the Fire Services Department, the Hospital Authority, the MTR Corporation Limited and CITIC Limited, for which the IPCC wishes to express its gratitude.

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<sup>1</sup> The IPCC's Press Release on 2 July 2019

Due to privacy or related concerns, some stakeholders could not fully meet the requests of the IPCC in their entirety regarding transfer of personal data. This was particularly with requests for release of CCTV footage capturing facial images. Meanwhile, the Secretariat of the Legislative Council (LegCo) to date has not been able to provide CCTV footage of the storming of the LegCo Complex on 1 July 2019 because the Legislative Council Commission (LCC) for the 2019-2020 legislative session has yet to be formed. Hence, the LegCo Secretariat cannot present IPCC's request for LCC's consideration.

2.11 As a result of the above challenges and the scale and evolving nature of the POEs, the Study has taken time to progress despite the efforts of the IPCC Members and Secretariat.