

**Bills Committee on
Independent Police Complaints Council Bill**

Administration's response to the issues raised by Zi Teng, JJJ Association, Action for REACH OUT, Civil Human Rights Front, Hong Kong Christian Institute, Hong Kong Human Rights Monitor and Hong Kong Unison Limited on the Independent Police Complaints Council (IPCC) Bill in their submissions of November and December 2007 to the Bills Committee

Zi Teng, JJJ Association, Action for REACH OUT, Civil Human Rights Front, Hong Kong Christian Institute, Hong Kong Human Rights Monitor and Hong Kong Unison Limited provided their respective written submissions on the Independent Police Complaints Council (IPCC) Bill to the Bills Committee in November and December 2007. The table at the Annex sets out the Administration's response to the issues raised in these written submissions for Members' reference.

Security Bureau
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Administration's response to the issues raised by Zi Teng, JJJ Association, Action for REACH OUT, Civil Human Rights Front, Hong Kong Christian Institute, Hong Kong Human Rights Monitor and Hong Kong Unison Limited on the Independent Police Complaints Council (IPCC) Bill in their submissions of November and December 2007 to the Bills Committee

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1.	<p>IPCC's principles and objectives</p> <p>To incorporate a general statement on the principles and objects of the IPCC, to facilitate Members of the IPCC, the Police, government officials and the general public to understand the basic principles underlying the IPCC. It is also useful for the court to form a frame of intent for which detailed provisions may be interpreted.</p>	(E): paragraphs 19 - 21	<p>The principal function of the IPCC is to monitor and review the Police's handling and investigations of reportable complaints. This is reflected in clause 7 of the Bill. In carrying out its functions, the IPCC will seek to ensure that the complaints are investigated promptly, impartially and thoroughly. In reflection of this objective and to facilitate the IPCC in carrying out its oversight role, various checks and balances have already been built into the Bill.</p>
2.	<p>Power to investigate complaints against the Police</p> <p>To provide the IPCC with investigation power.</p> <p>To provide the IPCC with investigation power and the necessary financial and manpower resource to conduct independent investigation.</p> <p>To provide the IPCC with investigation</p>	<p>(A): paragraph 6</p> <p>(B): suggestion (1)</p> <p>(C): paragraph 1</p>	<p>Under the existing two-tier police complaints system, the Complaints Against Police Office (CAPO) is responsible for handling and investigating public complaints against members of the police force. CAPO works separately from other Police formations to ensure its impartiality in handling the complaints. The IPCC is an independent civilian oversight body specifically appointed to monitor and review CAPO's handling and investigation of complaints. Members of the IPCC are drawn from a wide spectrum of the community. Members are appointed to the IPCC having regard to their ability, expertise and commitment to public service to ensure that the complaints are dealt with fairly and impartially. To underline the IPCC's independence, an IPCC Secretariat has been established as an independent Government department to provide full-time support to the IPCC in carrying</p>

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	<p>power, and for the IPCC to conduct independent investigation and open inquiry of very serious cases.</p> <p>To provide the IPCC with power to investigate and collect evidence.</p> <p>The IPCC should be given power to investigate into complaints against the Police, in light of the international trend of police forces subjecting themselves to oversight by independent police complaint mechanisms with investigation powers.</p> <p>To provide the IPCC with investigation power.</p> <p>To provide the IPCC with investigation power. In the long term, to establish a mechanism independent of the Police to deal with the misconduct and abuse of power of the police and fault and deficiency of the procedures of the police force.</p>	<p>(D): suggestion (3)</p> <p>(E): paragraphs 3-7, 9-15</p> <p>(F): paragraph D(2)</p> <p>(G) and (H): suggestions (1) and (8)</p>	<p>out its monitoring and review functions.</p> <p>There are effective checks and balances to ensure that the complaints lodged with CAPO are handled thoroughly, fairly and impartially. CAPO prepares detailed investigation reports on all reportable complaints for submission to the IPCC. The IPCC rigorously examines the reports. Where IPCC members have doubts about a particular investigation, they may invite the complainants, complainees and witnesses to interviews. The IPCC can also ask CAPO to submit for its reference any documents or information relevant to a complaint. In discharging their duties, IPCC members may observe CAPO's investigations in person, on either a surprise or a scheduled basis. If the IPCC is not satisfied with the result of a CAPO investigation, it can ask CAPO to clarify any doubts or to reinvestigate the complaint. It may also bring the case to the personal attention of the Chief Executive (CE), together with recommendations as to its disposition. The IPCC has adequate means to ensure that the investigations of all reportable complaints lodged with CAPO are conducted properly and effectively.</p> <p>The IPCC also monitors CAPO's investigations directly through the Observers Scheme under which IPCC members and 70 lay observers can undertake scheduled or surprise observations of the interviews and collection of evidence conducted by CAPO during investigations. The observers will report to the IPCC their comments on whether the interviews or collection of evidence have been conducted in a fair and impartial manner as well as any irregularities detected.</p> <p>We consider that the suggestion of empowering the IPCC to investigate the complaints has a number of shortcomings :</p> <p>(a) The IPCC does not have investigative powers similar to those available to the Police (e.g. the search and seizure powers) or the necessary</p>

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			<p>expertise and knowledge for investigating complaints which often involve allegations of breaches of Police discipline or procedures or of criminal law. This would adversely affect the quality of the IPCC's investigations;</p> <p>(b) The IPCC would need to have its own investigation team, in addition to the investigation complement in CAPO. This would result in an overlapping of resource requirement and duplication of efforts. The cost-effectiveness of the suggestion is in doubt; and</p> <p>(c) Empowering the IPCC to investigate complaints lodged with CAPO would confuse the IPCC's role as an oversight body. The arrangement might create two different sets of findings and results in respect of a complaint, and hence cause confusion. In contrast, under the established practice, the IPCC and CAPO will seek to reach a consensus on the classification of a reportable complaint through discussions.</p> <p>The two-tier system as described above has been operating effectively and smoothly. It also enables the Police to identify inadequacies in their procedures and practices, and formulate solutions to improve their service. We consider it appropriate to maintain the current arrangement under which CAPO investigates the complaints it receives and the IPCC reviews and monitors CAPO's investigations. We are of the view that the system, as codified in the Bill, is appropriate and proportionate to our objective of ensuring that public complaints against members of the police force are handled fairly and impartially.</p>
3.	<p>Complaints against CAPO officers and senior members of the police force</p> <p>Even if it is impractical to empower the</p>	(E): paragraph 8	<p>The IPCC has set up a Serious Complaints Committee to monitor selected serious reportable complaints involving allegations of assaults resulting in death or serious injuries, or involving wide public interest as serious complaints for close monitoring. The Committee requires CAPO to provide</p>

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	<p>IPCC to investigate all or most of the complaints, the IPCC should at least have the power to investigate serious cases and those against officers in CAPO, officers in charge of CAPO or other senior police officers, like the Commissioner of Police (CP).</p>		<p>monthly progress reports on the cases so identified, and may seek clarifications or raise questions on the progress reports while the investigation of the cases is still being conducted. The flexibility of making such arrangements to closely monitor serious cases is preserved in the IPCC Bill.</p> <p>Any complaint lodged against a member of the police force will be investigated by another officer who is more senior than the complainee. Hence, if the reportable complaint is made against an officer of CAPO, the head of CAPO, or a senior member of the police force, the current arrangement will ensure that the complaint will be handled fairly and impartially by a more senior officer. The investigation of the complaint will also be subject to the monitoring and review of the IPCC. Depending on the seriousness of the incident, CE may appoint a senior officer (e.g. Secretary for Security) or a separate inquiry committee on an administrative basis or under the Commissions of Inquiry Ordinance (Cap. 86) to look into the complaint.</p>
4.	<p>IPCC's power to make recommendations</p> <p>Clarification should be made as to how active the IPCC should be in making recommendations.</p> <p>The IPCC should have the power to demand an oral or written report containing the most recent available information in relation to a case dated back as far as possible whenever the IPCC considers appropriate. The IPCC should be allowed to make recommendations relating to any practice or procedure, or</p>	(E): paragraphs 47 – 52	<p>Clause 16 provides that an investigation report submitted by the Police to the IPCC must contain a summary of the investigation, a finding of facts in relation to the complaint and the evidence in support of the finding, the Police's classification of the complaint, reasons for the classification, the action taken or to be taken by the Police in respect of the complaint and such other information as the Police think necessary. Such a full range of information should enable the IPCC to have a comprehensive overview of whether the Police have handled a complaint fairly and impartially. Clause 17 provides that an interim investigation report submitted by the Police to the IPCC must explain the progress of the investigation and the reasons for not being able to complete the investigation within a 6-month period or such shorter period agreed between the IPCC and the police. Such explanation should provide the IPCC with the necessary information on the details of the complaint concerned and how the Police have handled the complaint during the period covered by the report. In practice, it would therefore be reasonable that the</p>

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	<p>any investigation whether the investigation has ever been started, currently in progress, or has been completed. Such recommendations should not be made dependent upon the concluding case report prepared by the police.</p> <p>To speed up a case, the IPCC should also be allowed to make recommendations to CP verbally and record them in writing as soon as practicable afterwards. To avoid delay, a statutory time limit of three months should be imposed for making a decision and to inform the complainants and the victim's family of the decision. If the statutory time limit of six months is to be imposed, clarification in the clause is required to make it clear that the IPCC may request a shorter period for a particular case, a particular group of cases or even all cases notwithstanding the statutory maximum. If the time limit cannot be met, an explanation should be given to the IPCC and letters informing the delay with the explanations should be issued.</p> <p>The Bill's requirement that IPCC's interviewing of a witness be tied to a final or an interim investigation report should be dropped. The IPCC should be allowed</p>		<p>IPCC would make recommendations to CP or CE as it considers appropriate, or conduct interviews for the purpose of clarifying matters, after examining the relevant information on the complaint in an investigation report or interim investigation report.</p> <p>Meanwhile, clause 7(1)(a) empowers the IPCC to observe, monitor and review the manner in which reportable complaints are handled or investigated by the Police and to make recommendations (as the IPCC considers appropriate) to CP or CE or both of them in respect of the handling or investigation of reportable complaints. Clause 7(1)(d) provides that the IPCC may review anything submitted to it by the Police pursuant to the Bill. Clause 7(2) further generally provides that the IPCC may do all such things that are reasonably necessary for, or incidental or conducive to, the performance of its statutory functions. These provisions already enable the IPCC to make recommendations at any stage of the investigation of a reportable complaint, so long as the IPCC considers it necessary to do so in discharging its statutory functions.</p> <p>There are other provisions in the Bill which will provide sufficient powers and flexibility for the IPCC to closely monitor the Police's handling of complaints and to make recommendations in a timely manner. Clause 17(1) requires the Police to submit an interim investigation report to the IPCC if the investigation of a reportable complaint is not completed within 6 months <u>or such shorter period as agreed between the Police and the IPCC</u>. Should the IPCC consider it necessary for the Police to speed up its investigation of the complaint, it can agree with the Police on an early submission of the investigation report or the interim investigation report. The Police are obliged under clause 17(3) to explain the progress of the investigation and the reasons for not being able to complete the investigation within 6 months or the agreed shorter period in the interim investigation report. Clause 17(4) empowers the IPCC to advise the Police of its opinion on the explanation given under clause 17(3). Under</p>

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	to interview any person at any time it considers appropriate before or after the investigation report has been submitted.		clause 32 of the Bill, observers are charged with the function to assist the IPCC to observe the manner in which the Police handle or investigate reportable complaints. Both the IPCC members and observers may conduct surprise visits to the interviews conducted by the police under clauses 23 and 34 respectively. As mentioned above, the IPCC Serious Complaints Committee also monitors the Police's handling of selected serious complaint vigorously. The IPCC is also free to make its requests and recommendations orally.
5.	<p>The IPCC's power to require the Police to provide information and material</p> <p>The IPCC's power to require CP to provide any information and material relating to a reportable complaint should be extended to any information and material relating to several or all complaints, and to provide information and materials relating to any aspects of the police force.</p>	(E): paragraph 54	<p>Under the Bill, the IPCC will have access to adequate information on both reportable complaints and non-reportable complaints as well as sufficient means to effectively discharge its monitoring and review functions. Clause 20(1)(a) empowers the IPCC to require the Police to provide any information or material relating to a reportable complaint.</p> <p>As regards non-reportable complaints, clause 8 requires the Police to submit a list of non-reportable complaints to the IPCC at such intervals and in such manner, as the Police and the IPCC may agree. The list must contain a brief description of all non-reportable complaints received by the Police and the <u>reasons</u> for categorizing the complaints as such. Such reasons should have already provided sufficient justification for categorizing the complaints as non-reportable complaints. If the IPCC has any questions or needs any clarifications with respect to the categorization of a non-reportable complaint, clause 15(3) empowers the IPCC to require the Police to provide explanations to support the categorization, and in relation to a complaint that is a non-reportable complaint only by virtue of its belated nature, the Police's opinion that the complaint is not of a serious nature. With the general provision under clause 7(2) which empowers the IPCC to do all such things as are reasonably necessary for, or incidental or conducive to, the performance of its functions under the Bill, the IPCC will be able to require the Police to provide additional information in relation to non-reportable complaints as necessary. Under clause 15(1), if the IPCC considers that a non-reportable</p>

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			<p>complaint should be categorized as a reportable complaint, it may advise the Police of its opinion, and the Police must have regard to such opinion and reconsider the categorization. The Police are also obliged under clause 15(2) to inform the IPCC of the outcome of their reconsideration as soon as practicable. Clause 28 further empowers the IPCC to make reports to CE as it thinks necessary.</p>
6.	<p>IPCC's functions in relation to police's practice and procedure</p> <p>The IPCC should make recommendations and propose improvement measures on the practice and procedure of the police force.</p> <p>The IPCC should make concrete proposals to enhance the sense of human rights of the Police, e.g. it may suggest introducing human right courses to police officers.</p> <p>The public will be very surprised if the IPCC has no power or jurisdiction in complaint prevention. It is unsure if CP will have an obligation under the Bill to cooperate with the IPCC when IPCC works on complaint prevention. The Bill may inadvertently establish a new arrangement which will deprive the future body of the jurisdiction in complaint prevention and the right to conduct studies into police work. For legal certainty, it will be much more prudent to have the</p>	<p>(B): suggestion (3)</p> <p>(C): suggestion (5)</p> <p>(E): paragraphs 29-33, 35-36, 46</p>	<p>One of the IPCC's functions, as clearly set out in clause 7(1)(c) of the Bill, 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 IPCC considers appropriate) to CP or CE or both of them in respect of such practice or procedure. Such "practices or procedures" include all Police regulations and general orders made under the Police Force Ordinance, irrespective of whether they were made before or after the enactment of the IPCC Bill. Clause 18(1)(d) also empowers the IPCC to, in relation to an investigation report, advise CP of its recommendation on any fault or deficiency identified in any practice or procedure adopted by the police force. Under clause 26 of the Bill, the IPCC may require CP to consult it on any proposed new order or manual of the police force that relates to the handling or investigation of reportable complaints; or any significant amendment proposed to be made to the orders or manuals of the police force in so far as the amendment relates to the handling or investigation of reportable complaints. In addition, clause 7(2) of the Bill provides that the IPCC may do all such things that are reasonably necessary for, or incidental or conducive to, the performance of its statutory functions. With the above-mentioned provisions, we consider that the Bill has provided the IPCC with the appropriate powers to make recommendations to help prevent complaints against the Police. Moreover, the Bill does not prohibit the IPCC from conducting any studies which are necessary for, or incidental or conducive to, the performance of its statutory functions.</p>

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	<p>complaint prevention function explicitly stated in the Bill. At the same time, it is important to set out the obligation of CP to cooperate explicitly.</p> <p>The power for the IPCC to make recommendations should be strengthened.</p> <p>Clarification should be made about the definition of the terms “any practice and procedure” and “any fault and deficiency in any practice or procedure adopted by the police force”. These terms should be carefully clarified about what is included and what is excluded, for example, would the policies of the police be included or not. The IPCC should not be deprived of the existing jurisdiction to recommend the adoption of new procedures because they are new and do not exist as part of the current procedures of the police force.</p> <p>To empower the IPCC to conduct a review or to study any issues in any matter that relate to the police it considers worthwhile studying in the areas of the monitoring, investigation, reviewing and prevention of complaints or for the improvements of the work of the police force.</p> <p>The IPCC should be empowered to</p>	<p>(G) and (H):</p>	

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	investigate and review the existing practice, policy and procedure of the police force.	suggestion (3)	
7.	<p>Power to determine matters</p> <p>Instead of requiring the IPCC to consult CP and then determine the time interval and manner of submission of lists of reportable and non-reportable cases, the Bill requires the IPCC to agree with CP on these matters. While the IPCC has the power to require the Police to submit interim investigation reports on complaints, the intervals of such reports have to be agreed by CP.</p> <p>The Bill gives the power to classify (and to reclassify) a case as substantiated or not, the power to decide on the action to be taken in respect of a member of the police force who is at fault, and the power to categorize and re-categorize complaints as reportable or not to CP.</p> <p>If CP does not agree with the IPCC, his views will actually override the IPCC's.</p> <p>Unless the IPCC Bill gives clear powers to the IPCC to qualify the powers as entrusted to CP under section 4 of the</p>	(E): paragraphs 59 – 63	<p>Clauses 8 and 17 already oblige the Police to submit lists of reportable complaints and non-reportable complaints to the IPCC, and to submit interim investigation reports to the IPCC as soon as practicable after the expiry of every 6 months. Under the current practice, the Police submit lists of reportable complaints to the IPCC on a weekly basis, and lists of non-reportable complaints on a monthly basis. As for interim investigation reports, it is understood that the IPCC has accepted that 6 months constitute a reasonable interval for the Police to keep the IPCC posted on the progress of investigation. The intention is to follow such practices upon the establishment of the IPCC as a statutory body. Allowing the IPCC and the Police to agree on the intervals for the Police to submit the lists of complaints and interim investigation reports provides flexibility for the IPCC and the Police to liaise with each other for more efficient and effective monitoring of the Police's handling of complaints.</p> <p>Clause 15 of the Bill empowers the IPCC to require the Police to provide explanations to support the categorization of complaints as non-reportable complaints and to require the Police to re-consider such categorization. The Police must have regard to the IPCC's opinion and inform the IPCC of the outcome of the reconsideration. Clause 18 empowers the IPCC to advise the Police of its recommendation on the classification of a complaint. The Police are obliged under clause 25(b) to report on any action taken or to be taken in respect of IPCC's recommendations made. These provisions adequately empower the IPCC to monitor and review the Police's handling of public complaints.</p> <p>It is the mutual understanding between the IPCC and the Police that</p>

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	<p>Police Force Ordinance, CP remains the one who has the final say.</p> <p>To empower the IPCC to penalize police officers against whom a complaint is substantiated.</p>	<p>(C): suggestion (1)</p>	<p>disciplinary actions are within the prerogative of CP. This notwithstanding, clause 18 empowers the IPCC to advise the Police of its opinions on the Police's disciplinary actions taken or to be taken in respect of members of the police force. Clause 24 obliges the Police to provide explanations in relation to such actions.</p> <p>In the event of any disagreement between the IPCC and the Police, the IPCC may under clause 28 make reports to CE as it thinks necessary.</p>
<p>8.</p>	<p>CP's compliance with the IPCC's requirements</p> <p>CP's power under clause 27 to refuse to comply with a requirement of the IPCC should be substantially restricted. CP should be required to submit his reasons supported by adequate and unbiased information, including confidential materials, to at least the Chairman and Vice-chairmen of the IPCC to justify the decision. There should be safeguards procedures to ensure that these grounds of exemptions will not be raised without explanation or unchecked. In case of disagreement on the part of the IPCC and CP, the IPCC should be empowered to challenge such decision, by applying to a High Court judge in chambers. On application by the IPCC, the judge can order for compliance of CP in part or in full and the disclosure of all or part of the facts to the public if the court considers</p>	<p>(E): paragraphs 55 - 58</p>	<p>Under the existing practice, CP is committed to providing sufficient information to the IPCC to facilitate the IPCC in discharging its functions to monitor and review CAPO's investigation reports on reportable complaints. As CP is responsible for law and order issues and has the obligation to safeguard the security of Hong Kong as well as the integrity of crime investigation, in the course of providing information or materials required by the IPCC, he has the duty to ensure that disclosure of the information or materials concerned would not prejudice the security of Hong Kong or crime investigation. According to available information, CP has not so far declined the IPCC's requests for information or materials on these grounds.</p> <p>Under section 4 of the Police Force Ordinance (Cap. 232), CP, subject to the orders and control of CE, shall be charged with the supreme direction and administration of the police force. Clause 27 of the Bill seeks to ensure CP's compliance with the requirements of the IPCC under the Bill save in certain specified circumstances. CP will not lightly rely on this provision to decide not to comply with the IPCC's requirements. In response to the IPCC's requirement, CP will take into account the facts and evidence available, and assess the risk of the security of Hong Kong or crime investigation being prejudiced if the IPCC's requirements are complied with. In the very rare circumstances where CP makes decision of non-compliance, he will provide an explanation to the IPCC as to why the IPCC's requirement cannot be complied with. If the IPCC is not satisfied with CP's explanation, it may under clause</p>

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	such disclosure is in the interest of the public.		<p>28 make a report to CE. CE may direct CP as he sees fit. This arrangement is consistent with Cap. 232.</p> <p>In the very rare circumstances where CP decides not to provide information or materials required by the IPCC at a certain point in time having regard to clause 27, it is possible that such information or materials can be provided to the IPCC when CP is subsequently satisfied that such provision will no longer affect the security of Hong Kong or crime investigation.</p>
9.	<p>Handling of complaints made by third parties or cases without a complainant</p> <p>The IPCC should investigate/monitor complaints lodged by third parties.</p> <p>The IPCC should be required and empowered to deal with a police officer who may have committed a criminal offence or behaves in a manner which would justify disciplinary proceedings but is not the subject of a complaint. CP should be obliged to refer such matter to the IPCC.</p> <p>To amend the definition of “reportable complaints” so as not to bar all third party complaints.</p> <p>To remove the requirement of having a “means of contacting [the complainant]” in clause 10(d) because the absence of a</p>	<p>(B): suggestion (2)</p> <p>(E): paragraphs 37 – 45</p>	<p>Under the existing practice, CAPO will include in an investigation report submitted to the IPCC information on the handling and investigation of any misconduct of a member of the police force or criminal offence as may be revealed in the course of investigation of a complaint, even if it is not the subject of the original complaint. This practice will continue to be observed with the establishment of the statutory IPCC.</p> <p>CAPO receives complaints against members of the police force from various channels (e.g. members of the public, referrals from different police formations, other government departments and Legislative Council Members, etc). On receipt of a complaint lodged by the personally aggrieved person, CAPO will examine if the complaint relates to the conduct of a member of the police force while on duty or in the execution or purported execution of his duties, the conduct of a member of the police force who identified himself as such a member while off duty, or any police practices or procedures. If so, CAPO will categorize the complaint as a reportable complaint and will submit an investigation report to the IPCC for examination after the completion of its investigation. Complaints filed by an individual other than the personally aggrieved person will be categorized as non-reportable complaints. CAPO regularly submits a list of non-reportable complaints to the IPCC for reference. The Bill provides the IPCC with sufficient powers to monitor the appropriateness of the categorization of non-reportable complaints. Despite</p>

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	<p>means of contact may not necessarily mean that a case is not actionable or pursuable. At least amendments should be made to clarify the term in the Bill to ensure that it will be given a very liberal interpretation.</p> <p>Complaints made by persons properly authorized by the victims who are not closely related will be excluded by clauses 10 and 14 taken together from the list of cases to be monitored by the IPCC. In addition, complaints taken up by non-governmental organizations and their representatives on behalf of the victims given the authorization will also be excluded.</p> <p>The IPCC should be empowered to deal with cases where there is no complaint at all.</p> <p>The IPCC should investigate and make recommendations on cases which have attracted public attention, even if there is no complainant.</p>	<p>(G) and (H): suggestion (4)</p>	<p>the categorization of a complaint as a non-reportable complaint, CAPO will look into the facts of the case and refer it to the relevant police formation for further follow-up actions as appropriate. Every complaint received by CAPO, irrespective of whether it is categorized as a reportable complaint or a non-reportable complaint, will be examined and handled in a fair and proper manner.</p> <p>Clause 14 of the Bill already enables representatives to make complaints on behalf of complainants under a variety of circumstances. Specifically, clause 14(1)(c) allows a representative to make a complaint on behalf of a complainant if he/she has a written authorization from the complainant. We believe that this arrangement has provided for sufficient flexibility to enable a third party to make a complaint on behalf of an aggrieved person. A representative so authorized is not required to have a close relationship with the complainant. Hence a non-governmental organization or its officer having obtained written authorization as set out in clause 14(1)(c) will be able to lodge a reportable complaint on behalf of an aggrieved person.</p> <p>From a practical point of view, allowing other third parties without any authorization of the directly affected person to file a complaint may not have taken into account the wish and privacy of the directly affected person who may then be put under pressure to disclose information which he would otherwise not be willing to disclose. Indeed, without the full cooperation of the directly affected person in providing accurate and comprehensive information for the Police to investigate the complaint or the means of contacting the complainant or his duty authorized representative for collecting evidence, it would be difficult for the Police to draw up a full and fair report on the complaint and impracticable for the IPCC to observe, monitor and review whether the Police have handled the complaint impartially.</p>

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10.	<p>Public awareness of the role of the IPCC</p> <p>IPCC should educate the public on the role and functions of the IPCC.</p>	(B): suggestion (4)	<p>Clause 7(1)(e) of the Bill provides that one of the functions of the IPCC is to promote public awareness of the role of the IPCC.</p>
11.	<p>The IPCC's reports</p> <p>IPCC to submit all completed investigation reports to the Legislative Council (LegCo). LegCo Members may also make enquiries about IPCC's reports and comment on them.</p>	(C): suggestion (4)	<p>Clause 23 of Schedule 1 to the Bill obliges the IPCC to submit annual reports to the CE and cause the reports to be tabled in LegCo. The reports will cover, among others, the performance of the IPCC's functions. The IPCC may, therefore, mention any cases as it considers appropriate in its annual reports. LegCo may ask questions about the reports or comment on the reports.</p>
12.	<p>IPCC to refer cases to appropriate authorities</p> <p>The IPCC should have the power to refer a case to the Secretary for Justice or the Director of Public Prosecution with recommendations if it considers it appropriate to do so.</p> <p>The IPCC should be empowered to refer cases to the Independent Commission Against Corruption (ICAC) and the Department of Justice (DoJ).</p>	(E): paragraph 34 (G) and (H): suggestion (6)	<p>While IPCC members have the duty to keep confidence matters relating to any complaint that come to their actual knowledge in the performance of their statutory functions, disclosure of such information is allowed under clause 37(2)(b) of the Bill if it is for the purpose of reporting evidence of any crime to such authority (including ICAC and DoJ) and as they consider appropriate.</p>
13.	<p>Disclosure of confidential information</p> <p>Disclosure of confidential information should be allowed when it is in the public</p>	(E): paragraph 69	<p>There is an obvious need to protect confidential information that comes to the IPCC's knowledge in the performance of its statutory functions. The circumstances under which such information may be disclosed should therefore be subject to restrictions. A balance has to be struck. Clause 37(2)(a)</p>

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	<p>interest or reasonable and equitable to disclose that information. Once there is a decision on the classification of whether a case is substantiated or partially substantiated, it should be allowed to publish fully the information of the case. If a case is not substantiated, its summary can also be published.</p> <p>To enhance transparency by informing the complainant the progress, content and results of investigation.</p>	<p>(G) and (H): suggestion (5)</p>	<p>already generally allows the IPCC to disclose such information if the disclosure is necessary for the performance of its statutory functions. Clause 37(2)(b) further allows the IPCC to disclose such information for the purposes of reporting evidence of any crime to the relevant authorities as it considers appropriate. Clause 37(2)(c) additionally permits the IPCC to make disclosures if required by court orders or statute. Clause 37(2)(d) also enables disclosure for the purpose of complying with a data access request made under the Personal Data (Privacy) Ordinance. These clauses provide a sufficiently wide scope for the IPCC to make disclosures in justified circumstances.</p> <p>Clause 22 empowers the IPCC to require the Police to inform the complainant of the classification of the reportable complaint and the reasons for the classification. In addition, CAPO has put in place performance pledges to improve its efficiency, and the accountability and transparency to the complainants. Under the pledges, CAPO will attempt to establish contact with a complainant within two working days of the complaint being lodged, send an acknowledgment letter to the complainant within one working day of the complaint being received by CAPO, aim to complete the investigation of complaint cases within four months, (in case the investigation cannot be completed within two months) keep the complainant informed of the status of investigation and the reason for non-completion every two months, and inform the complainant of the outcome of investigation within ten working days of endorsement being received from IPCC.</p>
14.	<p>The IPCC Interviewing Witnesses Scheme</p> <p>The IPCC should be empowered to interview witnesses and that no part of the interview should be used to incriminate the witness.</p>	<p>(G) and (H): suggestion (2)</p>	<p>Under the IPCC Interviewing Witnesses Scheme, the IPCC may interview witnesses, including complainants, complainees, pathologists, government chemists and independent witnesses, to clarify matters. This current arrangement has been codified by clause 19 of the Bill. Witnesses attend interviews entirely on a voluntary basis and will not be compelled to disclose self-incriminating information.</p>

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	<p>If an interviewee prefers the interview to be conducted in public, then the interview should be conducted in public to enhance the credibility and transparency of the interviews.</p>	<p>(E): paragraph 53</p>	<p>Interviewing witnesses is only one of the means through which the IPCC monitors whether the Police have handled complaints fairly and impartially. Holding the interviews in public provide incomplete information to the public on how the IPCC has performed its monitoring role. Conducting the interviews in private has taken into account the need to protect the privacy of the interviewees and that the nature of complaint investigation is different from court proceedings. Clause 19(8) provides that the IPCC must keep a record of every interview and such record can be used for the purpose of performing the IPCC's functions under the Bill. The IPCC conducts open sessions regularly and publishes annual reports. If an interview conducted by the IPCC provides essential information for the IPCC to consider whether the Police have handled a complaint fairly and impartially, the IPCC may, subject to the confidentiality provisions in clause 37, make reference to the interview record in the open sessions and annual reports to publicize the relevant details.</p>
<p>15.</p>	<p>Visits to police stations, etc IPCC members, its staff and observers should be empowered to pay unannounced visits to police headquarters, stations, premises, vehicles, vessels, venues under police control, etc.</p>	<p>(E): paragraph 64</p>	<p>Clauses 23 and 34 already empower IPCC members and observers to attend interviews conducted by the Police or observe the collection of evidence by the Police in the investigation of reportable complaints without prior arrangement. These visits are effective measures to enhance the transparency of the police complaint system and ensure that every complaint is handled in a fair and impartial manner.</p>
<p>16.</p>	<p>IPCC's membership To appoint representatives of non-governmental organizations and ethnic minority and people with different sex orientation to IPCC.</p>	<p>(C): suggestion (3)</p>	<p>Appointments to the IPCC are made on an <i>ad personam</i> basis. In making such appointments, we are guided by the principle of selecting the best person for the job, having regard to the functions and nature of business of the IPCC, and an individual's integrity, ability, experience, expertise and commitment to public service. We shall continue to observe this principle in making appointments to the statutory IPCC.</p>

Item	Issues Raised	Parties Raised ^{Note}	Administration's Response
	<p>To establish an independent IPCC with “independent” members only. To appoint non-government representatives to the IPCC, who should be accountable to the public.</p> <p>Individuals who are closely connected to the police force, any related family members, or individuals with related substantial business transactions should not be eligible to be appointed as IPCC members. There should also be a requirement that a certain number of IPCC members should come from those who server the user groups, like those non-governmental organizations campaigning for criminal justice or civil liberty for sex workers and ethnic minorities. This could be achieved by requiring a number of members who have experience in dealing with police complaints.</p> <p>The IPCC should be able to appoint co-opted members to assist it in discharging some, if not all, of its functions. It should also be able to delegate its powers to such co-opted members, its secretariat, contractors or any person it deems fit.</p>	<p>(D): suggestions (1) and (2)</p> <p>(E): paragraphs 22 – 25</p>	<p>Clause 4(2) of the Bill provides that a person who is a civil servant of the Government, or who was a member of the police force, is not eligible for appointment to the IPCC. The intention is to avoid any conflict of interest and ensure that all IPCC members will maintain an objective and balanced view in considering whether the Police handle public complaints against members of the police force in a fair and just manner. In considering appointments to the IPCC, the Administration will take account of whether the candidates' background will affect the impartiality of the membership of the IPCC.</p> <p>Clause 1 of Schedule 1 to the Bill provides that an IPCC member is to be appointed for a term not exceeding 2 years and is eligible for re-appointment for a further term or terms not exceeding 2 years each. In making appointments and re-appointments to the IPCC, we take into account such factors as the performance of individual members during their term of office, the need to maintain continuity and the need to inject new blood to ensure a healthy turnover of members. It would be unnecessarily rigid to mandate that each term of appointment of IPCC members should be 5 years. As for other government advisory and statutory bodies, appointments to the statutory IPCC will have to comply with the 6-year guideline (i.e. a non-official member of an advisory and statutory body should not generally serve more than six years in any one capacity).</p> <p>In accordance with clause 25(1) of Schedule 1 to the Bill, the IPCC may delegate in writing any of its functions to a committee, an IPCC member, the Secretary, the Legal Adviser or any other IPCC employee. Such power of delegation should provide sufficient flexibility for the IPCC to allocate certain tasks to appropriate persons who are responsible to the IPCC, so as to facilitate the IPCC in discharging its statutory duties.</p>

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	<p>According to the Paris Principles, stability of mandate or security of tenure is important and it is best practice to ensure a tenure of two five-year terms. A term of a maximum of two years and an extension of only for a further term or terms not exceeding two years in the Bill are too short by exposing appointees to unnecessary pressure of renewal of mandate and therefore not consistent with the requirement of stable mandate.</p> <p>To appoint a certain number of ethnic minority representatives to the IPCC.</p> <p>The criteria for appointing IPCC Chairman and members should be open and representative. Representatives from non-governmental organizations should be made involved in the selection process and be appointed.</p>	<p>(F): paragraph D(3)</p> <p>(G) and (H): suggestion (7)</p>	
17.	<p>The Observers Scheme</p> <p>Persons closely connected to the police force, family members of police officers and persons with related substantial business transactions should not be eligible to become observers. There should also be requirement that a certain number of</p>	<p>(E): paragraphs 65 - 67</p>	<p>In line with the appointment of IPCC members, appointments of observers are made on an <i>ad personam</i> basis. In making such appointments, we are guided by the principle of selecting the best person for the job, having regard to the functions and nature of business of the IPCC, and an individual's integrity, ability, experience, expertise and commitment to public service. We shall continue to observe this principle in appointing observers.</p> <p>Clause 31(2) of the Bill provides that a person who is a civil servant of the</p>

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	<p>observers are from non-governmental organizations campaigning for criminal justice or civil liberty. Appoint a number of observers on a full-time employment basis.</p>		<p>Government, or who was a member of the police force, is not eligible to be appointed as an observer. The intention is to avoid any conflict of interest and ensure that all observers will maintain an objective and balanced view in considering whether the Police handle public complaints against members of the police force in a fair and just manner. In considering candidates for appointment as IPCC observers, the Administration will take account of the candidates' background to uphold the impartiality of observers.</p> <p>We do not consider it appropriate to appoint observers on a full-time basis. Given the job nature of such full-time observers, we doubt that the job itself would have sufficient job content, promotion prospect, and career development opportunities to attract and retain highly qualified individuals. The observation of CAPO's investigation requires common sense and dedication to perform an effective job. The IPCC is currently assisted by a pool of some 70 observers from a wide cross-section of the community (including retired IPCC members, District Council Chairmen and Vice-chairmen, District Fight Crime Committee Chairmen and other community leaders) in monitoring the handling of complaints against the Police. We consider the existing arrangement effective. If the need arises in the future, we can consider increasing the number of observers to assist the IPCC.</p>
18.	<p>Support to the statutory IPCC</p> <p>To have full-time IPCC members, and to equip the IPCC Secretariat with staff with the appropriate skills to assist the IPCC to conduct its investigation and monitoring functions.</p> <p>IPCC's financial provision should be made independent of the Security Bureau's</p>	<p>(C): suggestion (2)</p> <p>(C): suggestion (6)</p>	<p>Clause 4(1) of the Bill provides for a minimum number of IPCC members. Under clause 5, the IPCC will be supported by a Secretary, a Legal Advisor and other staff members on a full-time basis. There will also be a pool of observers to assist the IPCC to carry out its duties by making observations at the interviews or collection of evidence carried out by CAPO. We consider that this arrangement should enable the IPCC to carry out its monitoring and review duties effectively. Should the workload increase in the future, CE can consider appointing more members to the IPCC. In the meantime, we do not consider it necessary to appoint full-time IPCC members. Mandating appointment of full-time IPCC members will unnecessarily shrink the pool of</p>

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	<p>envelope.</p> <p>It is a very heavy workload for the IPCC to monitor all the handling of complaints thoroughly even with the assistance of full time staff. The IPCC Chairman and Vice-chairmen should be appointed on a full time basis.</p> <p>The Government should also provide enough resources to make it possible for the IPCC to recruit employees and contract for services to fulfill its duties.</p> <p>The IPCC's budget should not form part of the [Security Bureau]'s financial envelop. An arbitration process may be incorporated in the Bill to resolve any failure to reach agreements [with the Administration] such as the amount of adequate resources. The budgeting cycle should be prescribed by the Bill to enable the IPCC to have a certainty of a budget plan of three to five-year so that it will be able to plan its work and programme with certainty.</p>	<p>(E): paragraphs 26 – 28</p>	<p>possible candidates.</p> <p>The Bill will provide the statutory IPCC with its own secretariat and the flexibility to employ its own staff to assist it in performing its statutory functions. In this regard, we are committed to ensuring that the IPCC will continue to be provided with appropriate support and resources under the new regime. We are in discussion with the IPCC on this to work out the detailed arrangements.</p>
19.	<p>Head of CAPO</p> <p>CAPO should be headed by a civilian staff.</p>	<p>(E): paragraph 15</p>	<p>Since the CAPO head has to investigate into cases himself/herself from time to time, we consider that a civilian officer does not have the necessary expertise and knowledge to handle such duties.</p>

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20.	<p>Dealing with “tipping off” and victimization</p> <p>To facilitate the IPCC to discharge its duties of “observe, monitor and review” properly and effectively, it is important to make “tipping off” an offence, to require all liaison work of CAPO officers to be conducted through a telephone system (so that all conversations with complaints to prevent any discouragement of complainants to carry on with their complaints will be recorded and monitored), and videotaping entrances to police temporary holding areas to monitor any irregularities.</p> <p>A complainant or a potential complainant may be retaliated against or penalized for his actual or intended action to lodge a complaint against the Police. Such acts of victimization should be made a criminal offence.</p>	(E): paragraphs 18, 70 - 73	<p>We fully agree that members of the police force being complained against should not be forewarned as it may compromise the impartiality of the handling of the complaints concerned. The Police General Order already stipulates that all complainees should not be forewarned of the complaints against him by another police officer and that a breach of such an order should amount to disciplinary offence. Under the existing practice, a complainees will only be notified of the complaint when he/she is called upon to assist in the investigation.</p> <p>Under the existing law, the acts of “tipping off” and victimization can be prosecuted under a variety of criminal charges if such acts are committed during the investigation of complaints involving criminal elements. Depending on the facts of a case, a person who “tips-off” another person could be prosecuted for perverting the course of public justice under the common law, assisting offenders under section 90 of the Criminal Procedure Ordinance (Cap. 221), or concealing offences under section 91 of Cap. 221. For complaints not involving any criminal elements, we consider that it will be more appropriate and proportionate to maintain “tipping off” as a disciplinary offence having regard to the gravity of the act.</p> <p>As for victimization, depending on the facts of a case, an act of threatening a complainant or a potential complainant could constitute the offence of criminal intimidation under section 24 of the Crimes Ordinance (Cap. 200). Whenever an allegation of crime comes to police attention, all available evidence relevant to the incident will properly be gathered and, if there is sufficient evidence to lay a charge, presented to the Court.</p> <p>As regards the suggestion of requiring all liaison work of CAPO officers to be conducted through a recorded telephone system, it is relevant to note that under the established procedures, all complaints will be recorded in the Police Communal Information System (CIS) with the necessary details of the</p>

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			<p>complaints and sufficient information to identify the complainants and/or witnesses. A case number will be assigned to each complaint. All complaints will be referred to CAPO for handling. CAPO will issue an acknowledgement letter to the complainants within one working day upon CAPO's receipt of the complaints. CAPO officers currently communicate with complainants through different means, (e.g. in person, in writing or by telephone). The communication means used depends on the circumstances of individual complaints and the contact means provided by the complainants. It will hamper the effective communication with complainants and create inconvenience to complainants if CAPO officers are only allowed to use one single means to contact the complainants. In any case, every time when an investigating officer communicates with a complainant, he will record the purpose and results of such communication and such information will be made available to the IPCC in the investigation report.</p> <p>If a complainant wishes to withdraw his complaint or some of his allegations, the investigating officer will record the fact on a statement. An officer at least one rank higher than the interviewing officer will verify that the withdrawal is made voluntarily. If the interview takes place at a correctional services institution, a Correctional Services Officer will be requested to witness and countersign the statement. Under exceptional circumstances where withdrawal made by telephone is accepted, an officer more senior than the receiving officer will contact the complainant to make confirmation. On the other hand, IPCC members and observers may conduct observations at any interviews between the Police and the complainants under the IPCC Observers Scheme. IPCC members may also interview complainants under the IPCC Interviewing Witnesses Scheme to monitor whether the Police have handled complaints fairly and impartially. There are adequate safeguards to prevent police officers from discouraging complainants to carry on with their complaints.</p>

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			<p>The Police are conscious of the duty of care that they have towards persons detained in police custody. Any malpractice by police officers towards people detained in temporary holding areas will be subject to disciplinary actions. Moreover, a "Notice to Persons Under Investigation by, or Detained in the Custody of, the Police" is displayed conspicuously in poster-sized bilingual format in all interview rooms and detention areas (including the temporary holding area) in police stations, with A-4 sized bilingual versions being served on the individual who has been arrested. The Notice clearly sets out the rights and entitlements of persons in police custody. A person who feels being mistreated by police may lodge a complaint to the Duty Officer, who will record the complaint in CIS and refer it to CAPO for handling.</p>

^{Note} The written submissions from various parties are denoted as follows-

- (A) – Joint submission from Zi Teng and JJJ Association (LC Paper No. CB(2)530/07-08(01))
- (B) – Submission from Action for REACH OUT (LC Paper No. CB(2)499/07-08(03))
- (C) – Submission from Civil Human Rights Front (LC Paper No. CB(2)499/07-08(04))
- (D) – Submission from Hong Kong Christian Institute (LC Paper No. CB(2)550/07-08(02))
- (E) – Submission from Hong Kong Human Rights Monitor (LC Paper No. CB(2)499/07-08(02))
- (F) – Submission from Hong Kong Unison Limited (LC Paper No. CB(2)550/07-08(01))
- (G) – Submission from JJJ Association (LC Paper No. CB(2)499/07-08(05))
- (H) – Submission from Zi Teng (LC Paper No. CB(2)473/07-08(01))