

For Information
on 11 November 2010

**Legislative Council Panel on Security
Police's Handling of Public Meetings and Public Processions, and
Prosecution of Assault on Police Officers**

INTRODUCTION

This paper provides information on the Police's handling of public meetings and public processions, and prosecution of assault on Police officers.

HANDLING OF PUBLIC MEETINGS AND PUBLIC PROCESSIONS

Notification Mechanism for Public Meeting and Public Processions

2. The freedom or right of peaceful assembly and procession is enshrined in Article 27 of the Basic Law and Article 17 of the Hong Kong Bill of Rights Ordinance (Cap. 383). It is the Police's policy to facilitate all lawful and peaceful public meetings and processions. And in so doing, the Police have to strike a balance to reduce the impact of large-scale public assemblies and processions on other people or road users, and at the same time to ensure public safety and public order. In other words, while the Police would facilitate the expression of views by participants of processions, they also have the responsibility to maintain public order and ensure the rights and safety of other people in using public places or roads. Participants of public meetings or processions, in exercising their freedom of expression, should, under the premise of observing the Hong Kong law and without affecting public order, proceed in a peaceful and orderly manner.

3. Under the Public Order Ordinance (Cap. 245), any public meeting or procession the attendance of which exceeds the limit prescribed in the Ordinance should give notice to the Commissioner of Police (CP) and only be conducted if the CP has not prohibited or objected to it. The CP (or delegated officers) will carefully examine each case. He may impose condition(s) on a notified public meeting or procession as reasonably necessary to ensure public order and public safety. The Court of Final Appeal has pointed out in a judgment that Hong Kong's legal requirement for notification is widespread in jurisdictions around the world. It has also affirmed that the statutory

requirement for notification is constitutional, and is required to enable the Police to fulfil their duty of taking reasonable and appropriate measures to enable lawful assemblies and demonstrations to take place peacefully.

Statutory Appeal Mechanism

4. There is an independent appeal mechanism for the arrangements of public meetings and public processions. If the CP prohibits / objects to or imposes conditions on a notified public meeting or procession, the organiser may lodge an appeal to the statutory Appeal Board on Public Meetings and Processions (the Appeal Board) if he / she considers CP's decision unreasonable. The Appeal Board, which is chaired by a retired judge and consists of three members selected in rotation from a panel of 15 members, can be convened at short notice upon receipt of an appeal application. The Appeal Board may confirm, reverse or vary the prohibition, objection or conditions imposed by the CP.

Handling of Public Meetings and Processions

5. Generally speaking, upon receipt of a notification about a public meeting or procession, the Police will establish early contact and maintain an active and close communication with the event organiser to provide advice and assistance. The police community relations officers may also be present during an event as appropriate to act as a channel of communication between the organiser and the Field Commander. In assessing the crowd / traffic management measures and manpower required for maintaining public safety and public order during the events, the Police will make reference to the information provided by the organiser, past experience in handling similar events as well as other operational considerations.

6. The Police have a duty to take lawful measures to regulate public meetings and processions as appropriate to ensure public order and public safety. On occasions where the law is, or is likely to be, violated during public meetings or processions by acts of individuals, especially when there are acts which may cause danger to others or lead to a breach of the public order, the Police will make professional judgement based on the assessment at scene, and if intervention is required, issue verbal warnings to the person concerned when circumstances permit. Depending on whether the person involved has ceased the illegal or possibly illegal acts, and whether his acts lead to a breach of public order, or even public safety, the Police will take appropriate actions according to the circumstances.

Demonstration Objects

7. As mentioned above, the CP may impose condition(s) on a notified public meeting or procession to ensure that public order and safety would be preserved at the event concerned. Conditions imposed on a public meeting or procession may include restrictions on demonstration objects. The Police will communicate with the organiser prior to the event on the detailed arrangements including any demonstration objects the organiser intends to bring during the event. Based on the principle of facilitating the expression of views by participants of processions, the Police will try to accommodate requests from event organisers concerning the use of demonstration objects as far as practicable. At the same time, subject to the arrangements proposed by the organiser as well as physical restrictions of the venue or the demonstration objects, the Police will discuss with the organiser the arrangements of the objects concerned and set them out as conditions in the “letter of no objection” if necessary. The organiser may lodge an appeal to the Appeal Board if he/she considers that the conditions imposed by the Police are unreasonable. The Appeal Board will consider and rule on the appeal independently and objectively. Otherwise, the organiser should conduct the public meeting or procession in accordance with the conditions or requirements set out in the “letter of no objection”.

8. During the course of public events, the Police will, in accordance with the “letter of no objection”, facilitate the events to be conducted under peaceful and orderly circumstances on one hand, and ensure that such events will not jeopardise public order and the safety of people at scene as well as the general public. The Field Commander will make assessment according to the circumstances under which the protests are taking place. If any demonstration objects carried along or used by protestors are found to be without prior notification, or not in compliance with the conditions set out in the “letter of no objection”, and the progression of the event may pose a potential risk to the safety of the persons at scene due to the on-site conditions (e.g. a narrow road with many pedestrians or vehicles), the Police will liaise directly with the organiser/persons concerned and make suitable suggestions and arrangements.

9. As mentioned above, if any participant carries along demonstration objects without advance notification, or not in compliance with the conditions set out in the “letter of no objection”, the Field Commander will make a professional assessment taking into account the

objects, the number of people at scene, as well as the traffic and pedestrian conditions nearby, and decide whether to intervene or to liaise with the person concerned for an acceptable arrangement. In making the decision, the Police have to strike a balance between facilitating expression of views by participants and safeguarding public safety.

10. From July 1997 to June 2010, a total of about 23 422 public meetings and 12 169 public processions were held in Hong Kong (or an average of 7.5 events daily). The Police will continue to communicate with, and secure the support of, the event organisers so as to ensure that the public events are peacefully and orderly conducted.

11. On 2 February 2010, the Panel on Security discussed the arrangements of public meetings and public processions. Our response to the concerns raised by members at the meeting is set out in the **Annex**.

PROSECUTIONS OF ASSAULT ON POLICE OFFICERS

12. We provide the following information in response to an enquiry raised by a member on the Police's handling of prosecution of cases involving assault on police officers.

13. Hong Kong is governed by the rule of law. The responsibilities of the Police Force are to maintain law and order, fight crime, and protect the life and property of the people. When fulfilling these responsibilities, police officers deserve respect and cooperation from the general public. Any acts to resist or even assault police officers in the execution of their duties are neither acceptable by the community nor permitted under the laws of Hong Kong.

14. For cases involving assaults on police officers, in deciding whether prosecution should be instituted and if so, under which provision, the Police will take into account circumstances of the criminal conduct involved and the evidence collected and where necessary, obtain legal advice from the Department of Justice. Prosecutors of the Department of Justice will make the decision to prosecute in respect of each case independently in accordance with established principles as set out in the "*Statement of Prosecution Policy and Practice*" so as to appropriately and sufficiently reflect the criminal liability of the defendant.

15. The Police have consulted the Department of Justice in relation to the prosecution of cases involving assault on police officers and issued internal guidelines in August this year based on the recommendations of

the legal advice. The guidelines require all frontline officers to seek legal advice from the Department of Justice beforehand if they intend to proceed with a charge pursuant to Section 36(b) of the Offences against the Person Ordinance (Cap. 212). We believe that these guidelines will further ensure the consistency in enforcing the relevant provisions.

Security Bureau
Hong Kong Police Force
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Crowd control measures of public processions

(paragraphs 32 and 36 of the minutes of meeting on 2 February 2010)

- The Police will make every endeavour to facilitate the processions whilst they remain orderly and peaceful. The Police Field Commander have to take appropriate crowd management measures including erecting barriers so as to protect the safety of persons at scene and to ensure public order when there are signs indicating that the protest actions may become increasingly aggressive. This is also to ensure that the situation does not deteriorate further and at the same time peaceful and lawful protest activities can continue.

Principles governing the use of force by the Police

(paragraphs 27, 32 and 36 of the minutes of meeting)

- The Police will continue to respect all peaceful and lawful forms of self-expression. However, no violence and disorder at public assembly and procession which constitute criminal acts or threaten public safety and public order will be tolerated. The Police will deal with such situations in a professional and resolute manner in order to protect the wider interests of society. The principles governing the use of force by the Police are:
 - only the minimum force reasonably necessary to achieve a lawful purpose may be used and once that purpose has been achieved, the use of force shall cease;
 - when circumstances permit, police officers shall give a verbal warning of the intention to use force and of the nature and degree of force that they intend to use; and
 - persons shall be given every opportunity, whenever practicable, to obey police orders before force is used.

Use of Oleoresin Capsicum (OC) Foam

- When participants of public meetings or processions start crushing the police defence line by using violence, and after exhausting practicable options to stop the use of violence, police officers are still unable to control the protestors' active aggression, the police may resort to the use of OC foam to

defend attack from protestors, or to prevent protestors from charging the police cordon line. On each of the occasions when OC foam is used, the relevant officers shall give verbal warning first if circumstances permit. At the conclusion of the operation, police officers of Superintendent rank will assess each instance of the use of OC foam to ensure that all instances are justified.

Prosecution against event organisers for having provided false or misleading information in a notice of intention to hold a public meeting / public procession

(paragraph 40 of the minutes of meeting)

- The Police have no record of such prosecution.

Review

(paragraph 32 of the minutes of meeting)

- The Police have carried out an internal review of the crowd management measures taken in the incident and confirmed that police officers had managed to strike a balance between facilitating expression of views by participants of processions and safeguarding public safety.
- The importance of maintaining communication between the Police and the event organisers prior to the event as well as at scene is confirmed. Upon receipt of notifications about public meetings or processions, the Police will liaise promptly with the event organisers and provide them with advice and assistance through active and close communication. It is also our hope that the event organisers will maintain close liaison with the participants and inform the Police of their requests as far as possible. This will enable the Police to make appropriate arrangements and provide assistance so as to ensure that the public events or processions can take place in a safe and orderly manner.
- Moreover, to ensure public safety, the Police have examined the arrangements of setting up the defence line. If it is assessed that aggressive actions would probably be involved in a demonstration, the Police would form a defence line by placing two rows of interconnecting Mills barriers. This will help

strengthen the defence line, avoid direct head-on confrontation between police officers and protestors, and reduce the chance of injuries.

- The Police have also strengthened training provided to frontline officers in handling public meetings. In addition to verbal warnings, warning banners in orange and red colours are used in situations when protestors are charging the Police cordon line. “Orange banners” are used to remind protestors not to cross beyond the cordon line, while “red banners” signal a warning that if protestors do not stop charging the cordon line, the Police will resort to the use of force. Warning flags serve to give protestors a clear indication of the location of the Police cordon line, and send a clear signal that the cordon line shall not be crossed.
- The above measures have already been adopted in other operations. The Police will keep in view the developments and review the crowd management measures for handling public meetings and processions when necessary.