

# THE TRIPARTITE POLICE COMPLAINTS SYSTEM OF HONG KONG

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## Abstract

*Practitioners define the police complaints system of Hong Kong as a two-tier system. In this article, written at the request of the organisers of a 2014 Symposium, the international reform trend and purposes of police complaints systems are briefly outlined before examination of the Hong Kong system. A different conceptualisation is suggested to the one currently preferred by practitioners. It is observed that three organisations – the Independent Commission Against Corruption, the Complaints Against Police Office of the Hong Kong Police Force, and the Independent Police Complaints Council – share responsibility for handling complaints against the police. It is proposed that a full and comprehensive audit of the powers, duties and responsibilities of the three organisations that comprise this tripartite system, supported by research on the experiences of complainants, would provide an important evidence base for developing the system.*

## Introduction

In the last half-a-century or so, complaints about the conduct of police officers have been at the centre of an international reform trend. The trend started with the creation of independent police complaints bodies (IPCBs), which reviewed internal police investigations of complaints in English speaking jurisdictions. International human rights law, which emphasises respect for the interests of the individual, and democratic policing discourse, which emphasises the development of public orientated policing services, have been hugely influential in recent years, and several IPCBs have been provided with statutory powers to investigate the police.

In 1974, at an early stage of the reform trend, the Independent Commission Against Corruption (ICAC) was established in Hong Kong: then a colony of the British Crown and, since 1997, a Special Administrative Region of the People's Republic of China. Under section 12 of the Independent Commission Against Corruption Ordinance, responsibility for investigating complaints of corruption was transferred from the Royal Hong Kong Police Force (RHKPF, as it was then, and now the Hong Kong Police Force (HKPF)) to the ICAC Commissioner, who was directly responsible to the then Governor (replaced by the Chief Executive following the handing back to China). In the same year, the Complaints Against Police Office (CAPO) was set up in the RHKPF to handle general complaints. Although completed CAPO investigations have been independently reviewed for close to four decades, it was not until 2009 that a statutory IPCB, the Independent Police Complaints Council (IPCC), was created. Although there has been much debate about the powers of the IPCC, the Council does not currently have powers to investigate complaints against the police.

In his foreword to the IPCC's 2012/13 *Report*,<sup>1</sup> the outgoing Chairman, Jat Sew-Tong, explained that the Council was in the process of formulating a five-year road map. Of particular concern to the IPCC is the increase in the number of complaints against members of the HKPF arising

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<sup>1</sup> Independent Police Complaint Council (IPCC), *Report 2012/13* (IPCC 2013) <<http://www.ipcc.gov.hk/report/2012/report2012.pdf>> accessed 14 November 2014.

from the policing of public protest. Public order policing, historically related to resistance to colonial rule, opposition to police paramilitarism and issues of sovereignty, has been a long running sore in Hong Kong.<sup>2</sup> These concerns are currently associated with the emergence of the 'Occupy Central' social movement at the forefront of pro-democracy politics in the special administrative region.<sup>3</sup>

The CAPO<sup>4</sup> and IPCC<sup>5</sup> define the Hong Kong police complaints system as a two-tier system. This definition conceptually limits the scope of the system to the roles of the CAPO when handling and investigating complaints of *misconduct* and the IPCC when monitoring and reviewing CAPO investigations: and excludes the ICAC's responsibilities for processing complaints of *corruption* involving members of the HKPF. A different, holistic, conceptualisation of the Hong Kong system is suggested in this article. A tripartite police complaints system is understood to exist which encompasses the powers, duties and responsibilities of all institutions that process complaints against the police. Drawing on a review of research literature, official documents, and a working meeting with the IPCC Secretariat, the article is separated into four sections. The international reform trend is traced in the first; the purposes of police complaints systems are outlined in the second; the existing Hong Kong system is described in the third; and, in the final section, the role of the IPCC, and the importance of improving knowledge and understanding, is discussed in the context of a tripartite police complaints system.

## International Reform Trend

Since the advent of modern police forces in the first half of the nineteenth century, and commensurate with principles of independent and impartial law enforcement, internal affairs, discipline and complaints, or professional standards departments have been responsible for maintaining police discipline and standards of behaviour. Self-regulation has always been recognised as necessary for the fair and effective delivery of police services to the public.

Over the course of the last half-a-century, the police's monopoly on handling complaints has come under sustained challenge, and bipartite systems have been established in a number of jurisdictions.<sup>6</sup> The international trend in police complaints reform has been towards greater independence and the gradual transfer of police responsibilities to IPCBs, including the power to investigate police.<sup>7</sup> After taking the initial step to create an IPCB, legislatures in English speaking jurisdictions in North America, the UK, Ireland, Australia and New Zealand, found it necessary to introduce further reforms.<sup>8</sup> In North America, despite the introduction of IPCBs to oversee 68 per cent of police departments in the 50 largest cities in the USA,<sup>9</sup> development has been uneven.<sup>10</sup>

Police complaints reform in national jurisdictions has been characterised by iterative cycles of scandal and reform, which can be broken down into periods of mounting public concern with existing

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<sup>2</sup> Mark Gaylord and Harold Traver, 'Colonial Policing and the Demise of British Rule in Hong Kong' (1995) 23 Int'l J Sociology L 1, 23; Raymond WK Lau, 'Community Policing in Hong Kong: Transplanting a Questionable Model' (2004) 4 Criminal Justice 1, 61; Allan Y Jiao, Raymond WK Lau, and Percy Lui, 'An Institutional Analysis of Organizational Change: The Case of the Hong Kong Police' (2005) 15 Int'l Crim J Rev 1, 38.

<sup>3</sup> Karita Kan, 'Occupy Central and Constitutional Reform in Hong Kong' (2013) China Perspectives 3, 73.

<sup>4</sup> Complaints Against Police Office (CAPO), *Responsive to Change Striving for Excellence: CAPO Annual Review 2012* (undated).

<sup>5</sup> IPCC (n 1).

<sup>6</sup> Wayne A Kerstetter, 'Who Disciplines the Police? Who Should?' in William A Geller (ed), *Police Leadership in America: Crisis and Opportunity* (American Bar Association 1985) 149; Andrew J Goldsmith, 'New Directions in Police Complaints Procedures: Some Conceptual and Comparative Departures' (1988) 11 Police Studies 1, 60; Douglas W Perez, *Common Sense about Police Review* (Temple UP 1994); Tim Prenzler and Carol Ronken, 'Models of Police Oversight: A Critique' (2001) 11 Policing & Society 3, 151.

<sup>7</sup> Andrew J Goldsmith and Colleen Lewis, 'Introduction' in Andrew J Goldsmith and Colleen Lewis (eds), *Civilian Oversight of Policing: Governance, Democracy, and Human Rights* (Hart 2000) 1.

<sup>8</sup> Tim Prenzler, 'Scandal, Inquiry and Reform: The Evolving Locus of Responsibility for Police Integrity' in Tim Prenzler and Garth den Heyer (eds), *Civilian Oversight of Police: Advancing Accountability in Law Enforcement* (CRC Press 2015).

<sup>9</sup> Samuel Walker and Vic W Bumphus, 'Effectiveness of Civilian Review: Observations on Recent Trends and New Issues Regarding the Civilian Review of the Police' (1992) 11 Am J of Police 4, 1.

<sup>10</sup> Frank Ferdik, Jeff Rojek and Geoffrey Alpert, 'Citizen Oversight in the United States and Canada: An Overview' (2013) 14 Police Practice and Research 2, 104.

procedures; government appointment of inquiries to review procedures and make recommendations for reform; introduction of new legislation to address identified concerns; and inception of new structures and procedures.<sup>11</sup> As legislatures have moved to transfer responsibilities for the handling of complaints from the police to IPCBs, police have been vocal in their opposition to the introduction of non-police procedures.

The reform trend has not been fully global, and IPCBs have been slow to spread to Asia, Africa and South America.<sup>12</sup> In some jurisdictions, specialist agencies have been created with responsibilities for investigating criminal allegations against police officers. In addition to Hong Kong's ICAC, specialist counter-corruption agencies with powers of investigation have been established in Singapore and Malaysia,<sup>13</sup> and New South Wales, Australia.<sup>14</sup> Whereas these agencies have general responsibilities for investigating corruption, specialist agencies have also been established for the sole purpose of investigating criminal allegations against police officers. The Special Investigations Unit in Ontario, Canada has investigated deaths and serious injuries following contact with the police since 1991,<sup>15</sup> and separate departments with responsibilities to investigate and prosecute police officers have been created in public prosecutors' offices in Scandinavian countries.<sup>16</sup>

Since the turn of the millennium, international human rights law has been an important driver of complaints reform.<sup>17</sup> Positive obligations imposed on states by the European Court of Human Rights and the Inter-American Court of Human Rights to effectively investigate alleged violations of the right to life<sup>18</sup> or prohibition of torture, have been of major significance.<sup>19</sup> Five principles of effective investigation – independence, adequacy, promptness, public scrutiny and victim involvement – have been developed in the case law of the European Convention on Human Rights (ECHR).<sup>20</sup> In the event that the right to life or prohibition of torture may have been violated, a contracting state party to the ECHR is required to investigate all of the relevant circumstances on its own motion; that is, irrespective of whether or not a complaint has been made. The investigation must be conducted by members of an organisation that is institutionally and hierarchically independent of the agency responsible for the alleged violation, and there must be practical independence. The importance of independent investigations of alleged violations of the right to life following contact with the police is based on the premise that public confidence in the police's monopoly on the use of force requires that, in the event that they resort to lethal force, the police do not investigate

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<sup>11</sup> Graham Smith, 'A Most Enduring Problem: Police Complaints Reform in England and Wales' (2006) 35 J of Social Policy 1, 121.

<sup>12</sup> In Asia, in addition to Hong Kong, IPCBs currently operate in Malaysia, the Philippines and South Korea: Mahesh K Nalla and Chae Mamayek, 'Democratic Policing, Police Accountability, and Citizen Oversight in Asia: An Exploratory Study' (2013) 14 Police Practice and Research 2, 117. Research evidence on the situation in Africa (excepting South Africa: Julie Berg, 'Civilian oversight of Police in South Africa: from the ICD to the IPID' (2013) 14 Police Practice and Research 2, 144) and South America is limited. For an international overview see UNCHR, 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions' (28 May 2010) UN Doc A/HRC/14/24/Add.8.

<sup>13</sup> Jon ST Quah, 'Defying Institutional Failure: Learning From the Experiences of Anti-Corruption Agencies in Four Asian Countries' (2010) 53 Crime, Law and Social Change 1, 23.

<sup>14</sup> Louise Porter and Tim Prenzler, *Police Integrity Management in Australia: Global Lessons for Combating Police Misconduct* (CRC Press 2012). The recently formed Independent Broad Based Anti-Corruption Commission in Victoria, Australia, has responsibility for the investigation of corruption involving all public officials and police misconduct: Garth Den Heyer and Alan Beckley, 'Police Independent Oversight in Australia and New Zealand' (2013) 14 Police Practice and Research 2, 130.

<sup>15</sup> Tammy Landau, 'Back to the Future: The Death of Civilian Review of Public Complaints Against the Police in Ontario, Canada' in Goldsmith & Lewis (n 7) 63.

<sup>16</sup> Petter Gottschalk, 'Policing Police Crime: the Case of Criminals in the Norwegian Police' (2009) 11 Int'l J of Police Science and Management 4, 429; Anja Johansen, 'The Rise and Rise of Independent Police Complaints Bodies' in Jennifer M Brown (ed), *The Future of Policing* (Routledge 2014) 446.

<sup>17</sup> Graham Smith, 'Every Complaint Matters: Human Rights Commissioner's Opinion Concerning Independent and Effective Determination of Complaints Against the Police' (2010) 38 Int'l J of Law, Crime and Justice 2, 59.

<sup>18</sup> See eg *Velasquez Rodriguez v Honduras* (1989) 28 ILM 291; *Gayle v Jamaica* (2005) Inter-American Court of Human Rights Report No. 92/05, Case 12.418 (24 October 2005); *Jordan v UK* (2001) 37 EHRR 5; *Nachova v Bulgaria* (2006) 42 EHRR 43; *Ramsahai v Netherlands* (2008) 46 EHRR 43.

<sup>19</sup> See eg *Aksoy v Turkey* (1997) 23 EHRR 553; *Stefan Iliev v Bulgaria*, App. No. 53121/99, Judgment of 10 May 2007.

<sup>20</sup> Council of Europe Commissioner for Human Rights 'Opinion Concerning Independent and Effective Determination of Complaints Against the Police' (12 March 2009) CommDH(2009)4; Graham Smith, 'The Interface Between Human Rights and Police Complaints in Europe' in Prenzler and den Heyer (n 8).

themselves.<sup>21</sup> The adequacy principle holds that the investigation must be thorough and capable of obtaining evidence that will bring offenders to justice. The investigation must be conducted promptly and expeditiously in order to protect against the perception of collusion between the investigating agency and police, and to maintain public trust and confidence in the rule of law. In accordance with the public scrutiny and victim involvement principles, which are closely connected, proceedings must be open and transparent in order to dispel any impression of impunity, and in recognition of the legitimate interests of the complainant.

International human rights institutions hold that the existence of an IPCB with powers to investigate the police is an effective way of ensuring compliance with human rights standards.<sup>22</sup>

Allied to developments in human rights law, democratic policing discourse has played an important part in establishing IPCBs at the heart of modern police services.<sup>23</sup> The first tentative steps towards implementing a democratisation programme were taken by the International Police Task Force of the United Nations Mission in the Federation of Bosnia Herzegovina.<sup>24</sup> Charged with introducing internationally recognised policing standards following political upheaval in the former Yugoslavia, the Commissioner of the Task Force published guidance on seven democratic policing principles – orientation to democratic principles;<sup>25</sup> adherence to a code of ethics worthy of the public trust; protection of life; public service; focus on crimes against people and property; respect for human dignity; and non-discrimination.<sup>26</sup> The operation of an effective complaints process figured prominently in the Bosnia Herzegovina principles, and later practitioner guides by the Organisation for Security and Co-operation in Europe<sup>27</sup> and the United Nations Office on Drugs and Crime,<sup>28</sup> stress the benefits of IPCBs and citizen oversight of the police.

Citizen oversight mechanisms, which are also known as independent, external and civilian oversight mechanisms, are predicated on the simple principle that police should be scrutinised by non-police. IPCBs, with different administrative structures, governance arrangements and powers, have been set up for this purpose. Structurally, IPCBs can be separated into two types according to whether they are under the direction and control of a single individual, for example the Police Ombudsman for Northern Ireland,<sup>29</sup> or a group of individuals co-ordinated by a chairperson, for example the Independent Police Complaints Commission of England and Wales.<sup>30</sup> In regard to governance, the appointment, accountability and allocation of powers of the members of an IPCB should not be influenced by the police or those within government that have responsibilities for policing.<sup>31</sup> A range

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<sup>21</sup> *Ramsahai v The Netherlands* (n 18).

<sup>22</sup> Council of Europe Commissioner for Human Rights (n 20); Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights* (31 December 2009) OEA/Ser.L/V/II. Doc. 57; UNCHR (n 12).

<sup>23</sup> Trevor Jones, Tim Newburn and David Smith, *Democracy and Policing* (Policy Studies Institute 1994); David H Bayley, *Changing the Guard: Developing Democratic Police Abroad* (OUP 2006); David A Sklansky, *Democracy and the Police* (Stanford University Press 2008); Peter K Manning, *Democratic Policing in a Changing World* (Paradigm 2010).

<sup>24</sup> Andy Bair and Michael J Dziedzic, 'The International Police Task Force' in Larry Wentz (ed), *Lessons from Bosnia: The IFOR Experience* (Office of the Assistant Secretary of Defense, Command & Control Research Program 1998) 139 <<http://www.dtic.mil/dtic/tr/fulltext/u2/a461623.pdf>> accessed 14 November 2014.

<sup>25</sup> Vitiating the potential of the HKPF and other Hong Kong law enforcement agencies, including the IPCC, to develop as public services that fully adhere to democratic principles, due to the absence of universal suffrage and free elections in the special administrative region, is beyond the scope of this article.

<sup>26</sup> Peter Fitzgerald, *Commissioner's Guidance for Democratic Policing in the Federation of Bosnia-Herzegovina* (UNMIBH 1996).

<sup>27</sup> Senior Police Adviser to the OSCE, *International Police Standards: Guidebook on Democratic Policing* (Geneva Centre for the Democratic Control of Armed Forces 2009) <<http://www.dcaf.ch/Publications/International-Standard-Guidebook-on-Democratic-Policing>> accessed 14 November 2014.

<sup>28</sup> United Nations Office on Drugs and Crime, *Handbook on Police Accountability, Oversight and Integrity* (United Nations 2011).

<sup>29</sup> Graham Ellison, 'A Blueprint for Democratic Policing Anywhere in the World? Police Reform, Political Transition, and Conflict Resolution in Northern Ireland' (2007) 10 *Police Quarterly* 3, 243.

<sup>30</sup> Mary Seneviratne, 'Policing the Police in the United Kingdom' (2004) 14 *Policing & Society* 4, 329.

<sup>31</sup> The Office of Hearing and Inspection and the Civilian Review Commission, created in South Korea around the turn of the millennium (Wook Kang and Mahesh Nalla, 'Perceived Citizen Cooperation, Police Operational Philosophy, and Job Satisfaction on Support for Civilian Oversight of the Police in South Korea' (2011) 6 *Asian Criminology* 177) cannot be classified as IPCBs as a result of the role played by the Korean National Police Agency in their formation and determination of responsibilities.

of powers are available to IPCBs, and Prenzler and Faulkner<sup>32</sup> identify 11 core powers that are important to the effectiveness of an ideal counter-corruption body. Whether IPCBs have powers to review police investigations of complaints or conduct their own investigations distinguishes the two principal types. Early IPCBs established with review powers have been replaced in several jurisdictions by statutory bodies provided with investigative powers.

## Purposes of Police Complaints Systems

Until recently it was commonly accepted that the function of complaints systems was to identify the rogue officer for the purpose of maintaining a disciplined and effective force.<sup>33</sup> Widely expressed concerns with the fitness for purpose of complaints procedures has significantly contributed to reform, and the character of police complaints systems has been transformed. Today, with the development of bipartite and tripartite systems that comprise more than one mechanism, it is acknowledged that complaints procedures serve several purposes in the interests of a range of stakeholders.<sup>34</sup>

A standard purpose of police complaints procedures is to hold law enforcement officials accountable in criminal and disciplinary proceedings on the basis of evidence obtained in the investigation of a complaint. In addition, absent the need to conduct a full investigation, mediation procedures may provide an opportunity for a complainant to receive an account, given by the officer complained against or his or her supervisory officer, for the conduct complained of.<sup>35</sup>

Alongside their role as an accountability mechanism, police complaints procedures act as a regulatory mechanism, often in a network comprising a number of policing partners. Whereas accountability processes act retrospectively, sanctioning below standard behaviour for example, regulatory interventions are prospective, and serve to identify risks and prevent poor performance for the purpose of improving the delivery of policing services.<sup>36</sup> Complaints and discipline procedures are commonly available to police managers as self-regulating mechanisms and, in some jurisdictions IPCBs are empowered to intervene in police affairs in the form of an independent regulator.

Complaints procedures serve to address citizens' grievances with the police. This core purpose tends to be overlooked by those who see the system solely as a management tool.<sup>37</sup> If public trust and confidence in the complaints system is to be secured and maintained, it follows that grievances must be adequately and proportionately addressed in accordance with the nature of the complaint and the rights of the officer complained against.

International human rights law requires that an individual has access to an effective remedy to an alleged violation of his or her human rights and, as explained above, states are under a positive obligation to protect the right to life and the prohibition of torture by conducting an effective investigation into an alleged violation of these two fundamental rights. Thus, protection of individual human rights is an important function of a police complaints system.

Cultures of impunity are liable to develop as a result of the failure of police managers, prosecutors and the courts to take appropriate action against criminal or disciplinary offences committed by an officer, on the one hand, or the reluctance of citizens to complain because of their lack of confidence in the complaints system, on the other hand.<sup>38</sup> A further purpose of police

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<sup>32</sup> Tim Prenzler and Nicholas Faulkner, 'Towards a Model Public Sector Integrity Commission' (2010) 69 *Austr J of Pub Admin* 3, 251.

<sup>33</sup> Maurice Punch, 'Rotten Orchards: "Pestilence", Police Misconduct and System Failure' (2003) 13 *Policing & Society* 2, 171.

<sup>34</sup> Samuel Walker, *The New World of Police Accountability* (Sage 2005); Tim Prenzler, *Police Corruption: Preventing Misconduct and Maintaining Integrity* (CRC Press 2009); Maurice Punch, *Police Corruption: Deviance Reform and Accountability in Policing* (Willan 2009).

<sup>35</sup> Lonnie M Schaible, Joseph De Angelis, Brian Wolf and Richard Rosenthal, 'Denver's Citizen/Police Complaint Mediation Program Officer and Complainant Satisfaction' (2013) 24 *Crim J Pol'y Rev* 5, 626.

<sup>36</sup> Graham Smith, 'Citizen Oversight of Independent Police Services: Bifurcated Accountability, Regulation Creep and Lesson Learning' (2009) 3 *Reg & Govern* 4, 422.

<sup>37</sup> Graham Smith, 'Rethinking Police Complaints' (2004) 44 *Brit J Crim* 1, 15.

<sup>38</sup> Graham Smith, 'Why Don't More People Complain Against the Police?' (2009) 6 *Euro J Crim* 3, 25.

complaints is to provide protection against the development of cultures of impunity within police services.

Another function of police complaints systems is to facilitate and demonstrate police responsiveness to the communities that they serve.<sup>39</sup> As democratic policing standards have taken hold and police forces have been transformed into more public facing services, the substance, volume and handling of complaints have developed as measures of public trust and confidence in the police. A positive approach to public complaints, by which complainants are encouraged to come forward with their grievances, and their legitimate concerns are acknowledged, contributes significantly to good police community relations.

Finally, complaints are an important resource that may be researched and analysed so that lessons may be learned from past mistakes for the purpose of improving future performance.<sup>40</sup> Complaints provide lesson learning opportunities at the individual officer and service level, which enhance the effectiveness of the complaints system as accountability and regulatory mechanisms.

In summary, the overarching purpose of a police complaints system is to maintain high standards of policing practise and, in so doing, improve the delivery of policing services to the public.

### **The Police Complaints System of Hong Kong**

The origins of the existing Hong Kong police complaints system date back to a corruption scandal involving a chief superintendent of police, which led to the creation of the ICAC in 1974.<sup>41</sup> The ICAC has developed into an internationally respected counter-corruption agency with extensive statutory powers to investigate and prevent corruption.<sup>42</sup> RHKPF opposition to the introduction of an independent body failed to thwart the development of the ICAC,<sup>43</sup> and recent research by Jiao<sup>44</sup> identified a close working relationship between the two law enforcement agencies and development of a strong anti-corruption culture within the HKPF. The CAPO was set up in the same year that the ICAC was launched, and a sub-committee of the Unofficial Members of the Executive and Legislative Councils, which reported annually to the Legislative Council (LegCo), was introduced in 1978 to monitor CAPO investigations and make recommendations to the RHKPF.<sup>45</sup> In 1986, the ad hoc committee was replaced by a Police Complaints Committee, which was renamed the IPCC in 1994.<sup>46</sup> A Bill to place the Council on a legislative footing was withdrawn in 1997, and the IPCC was eventually established as a statutory body in 2009 under the IPCC Ordinance of 2008.

The ICAC, CAPO and IPCC share responsibility for handling complaints against members of the HKPF. Under section 12 of the ICAC Ordinance, in addition to investigating and preventing corruption, the Commission has responsibility for enforcing the Prevention of Bribery Ordinance and Elections (Corrupt and Illegal Conduct) Ordinance. Whereas the latter two ordinances define a range of corruption related criminal offences, corruption is not defined in the ICAC Ordinance. This is not surprising as corruption refers to a broad range of human behaviour that defies precise definition.<sup>47</sup> At one end of the spectrum, a person in authority may abuse their position and commit serious criminal offences for their own advantage, and, at the other end, a person may bend a procedural rule

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<sup>39</sup> Andrew Goldsmith, 'Police Reform and the Problem of Trust' (2005) 9 *Theoretical Criminology* 4, 443.

<sup>40</sup> Louise E Porter, 'Beyond "Oversight": A Problem-Oriented Approach to Police Reform' (2013) 14 *Police Practice and Research* 2, 169.

<sup>41</sup> Bernard Downey, 'Combating Corruption: The Hong Kong Solution' (1976) *HKLJ* 6, 27.

<sup>42</sup> Quah (n 13).

<sup>43</sup> Jeremiah KH Wong, 'The ICAC and its Anti-Corruption Measures' in Rance PL Lee (ed), *Corruption and its Control in Hong Kong: Situations up to the Late Seventies* (Chinese UP 1981) 45.

<sup>44</sup> Allan Y Jiao, 'Controlling Corruption and Misconduct: A Comparative Examination of Police Practices in Hong Kong and New York,' (2010) 5 *Asian J Crim* 1, 27.

<sup>45</sup> Michael Ng-Quinn, 'Bureaucratic Response to Political Change: Theoretical Use of the Atypical Case of the Hong Kong Police' (Hong Kong Institute of Asia-Pacific Studies 1991) Occasional Paper No. 2 <<http://www.cuhk.edu.hk/hkiaps/publications/op/OP2-text.pdf>> accessed 14 November 2014.

<sup>46</sup> Kam C Wong, 'Police Powers and Control in Hong Kong' (2010) 34 *Int'l J Comp & Appl Crim J* 1, 1.

<sup>47</sup> Rance PL Lee, 'Introduction: Definitions and Patterns' in Lee (n 43) 1; Tim Newburn, *Understanding and Preventing Police Corruption: Lessons from the Literature* (Home Office, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate 1999).

in the belief that they may more effectively perform their duty in the public interest. The definition of corruption presented on the ICAC's webpage<sup>48</sup> is as follows:

Corruption occurs when an individual abuses his authority for personal gain at the expense of other people. Corruption erodes fairness and the rule of law, and in some cases, puts lives and property at risk.

This definition captures a range of statutory and common law criminal offences, including deception, blackmail and misconduct in public office, and excludes what has come to be known as process corruption<sup>49</sup> or noble cause corruption.<sup>50</sup>

The CAPO has a delegated authority, from the Commissioner of the HKPF, to investigate all other complaints against members of the force; and the IPCC has statutory authority for monitoring and reviewing CAPO investigations and making recommendations to the Commissioner of the HKPF. A reportable complaint is defined in section 11(a) of the IPCC Ordinance as a complaint that relates to the conduct of a police officer while on duty, irrespective of whether they identified themselves as a police officer; off duty if they identified themselves as a police officer; and any practice or procedure adopted by the police force. Section 10 of the Ordinance excludes complaints that are made by a police officer acting in an official capacity, or relate to a summons or fixed penalty, or may be investigated under powers conferred by any other ordinance (complaints of corruption under the ICAC Ordinance, for example). A notifiable complaint is defined in section 14 of the IPCC Ordinance as a complaint that is not reportable (vexatious, frivolous or anonymous complaints, for example) or is excluded under section 10. The CAPO is obliged to submit reports relating to the handling and investigation of reportable complaints to the IPCC, and provide a summary of notifiable complaints received. This categorisation of complaints captures a broad range of allegations of wrongdoing, spanning serious criminal offences and relatively minor performance related failings.

In recognition of the need to prioritise the monitoring of CAPO's handling and investigation of serious complaints, the IPCC established a Serious Complaints Committee in 1996. A 'serious' complaint is defined by the IPCC and includes suspicious cases involving death or serious injury, and public interest or unresolved cases which the IPCC considers to be serious: the CAPO is expected to report serious complaints to the IPCC within 24 hours.<sup>51</sup> IPCC annual reports between 2003 and 2007 reported that the Serious Complaints Committee monitored a total of 59 complaints.<sup>52</sup>

The four definitions described above are crucial to understanding the nature of the existing police complaints system in Hong Kong: the ICAC's working definition of corruption, the two definitions of complaints, reportable and notifiable, in the IPCC Ordinance, and definition by the IPCC of a serious complaint. The threshold for an independent investigation into the conduct of a member of the HKPF, namely the triggering of an ICAC investigation, is that the complainant must allege that the officer abused his or her authority for personal gain at the expense of others.<sup>53</sup> A death, serious injury or violation of human rights arising from contact with a police officer, irrespective of whether a reportable, notifiable or serious complaint has been recorded, will not be investigated independently of the HKPF.

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<sup>48</sup> ICAC, 'Anti-Corruption Laws' in *Law Enforcement* (ICAC 2014) <[http://www.icac.org.hk/en/law\\_enforcement/acl/index.html](http://www.icac.org.hk/en/law_enforcement/acl/index.html)> accessed 14 November 2014.

<sup>49</sup> David Dixon, 'Reform, Regression and the Royal Commission into the NSW Police Service' in David Dixon (ed), *A Culture of Corruption: Changing an Australian Police Service* (Hawkins Press 1999) 138.

<sup>50</sup> John Kleinig, 'Rethinking Noble Cause Corruption' (2002) 4 *Int'l J Police Sci & Manage* 4, 287.

<sup>51</sup> Tony K Siu and Eddie C Tong, 'Complaints Against Police Office (CAPO)' (Challenges, Experiences and Solutions – CACOLE Conference, Halifax, 11 October 2007) <<http://www.cacole.ca/confere-reunion/pastCon/presentations/2007/HongKong-eng.pdf>> accessed 16 November 2014.

<sup>52</sup> IPCC, *Reports of IPCC* (2003 – 2007) <[http://www.ipcc.gov.hk/en/reports\\_annual.html](http://www.ipcc.gov.hk/en/reports_annual.html)> accessed 14 November 2014.

<sup>53</sup> The ICAC has routinely referred complaints of bribery against police officers that fall within its jurisdiction to the HKPF for prosecution: according to the ICAC, 'The aim of this arrangement is to enable the case to be resolved as expeditiously as possible. It also serves as a timely reminder that the responsibility for combatting corruption does not solely rest with the ICAC, and that the Police continue to make a very considerable contribution to the fight': ICAC, *Report by the Commissioner of the Independent Commission Against Corruption 1975* (ICAC 1975) 19 <[http://www.icac.org.hk/filemanager/en/Content\\_1238/1975.pdf](http://www.icac.org.hk/filemanager/en/Content_1238/1975.pdf)> accessed 14 November 2014.

The functions of the CAPO and IPCC have remained much the same for the last 20 years, and the IPCC's primary role as adviser to the CAPO has continued since the IPCC Ordinance codified arrangements between the Council and Commissioner of Police. The IPCC may advise the CAPO of its opinion that a notifiable complaint should be re-categorised as reportable; make recommendations in regard to the classification, handling and investigation of complaints; and, in connection with a complaint, advise on police practice or procedure, including any action to be taken against a member of the HKPF.

Complaints reported to the CAPO may contain more than one allegation and, after categorisation, a decision will be made in regard to determination. The IPCC Ordinance provides for 11 separate classifications of reportable complaints, of which six relate to fully investigated complaints – substantiated, substantiated other than reported, not fully substantiated, unsubstantiated, false and no fault – and five relate to non-investigation; withdrawn, not pursuable, curtailed, informally resolved and other determination, as agreed between the IPCC and Commissioner of HKPF.<sup>54</sup> The CAPO forwards reports of investigated and uninvestigated complaints to the IPCC for scrutiny.

A CAPO report will be scrutinised in the first instance by one of the IPCC Secretariat's vetting teams. Working under the direction of the Deputy Secretary General and guided by the Legal Adviser, a Vetting Officer may refer a query in regard to a complaint to the CAPO for clarification. When satisfied that the CAPO has addressed the query, the complaint investigation report will be vetted again by members of the IPCC, who also work in teams. After final examination by the Chairman, the CAPO investigation is 'endorsed' by the IPCC. In the event that the IPCC is unable to endorse an investigation, it may report to the Chief Executive of Hong Kong on its disagreement with the CAPO and resort to public disclosure.

In addition to scrutinising completed complaints investigation reports, the IPCC has statutory powers to monitor the way in which CAPO handles and investigates complaints. IPCC observers appointed by the Secretary for Security may attend interviews conducted by CAPO, although they may not intervene or participate in proceedings; and the Council may arrange to interview a complainant or witness, including members of the HKPF subjected to a complaint, although there is no obligation to attend an IPCC arranged interview. The IPCC has also reported on HKPF operations it has observed, including the policing of public processions.<sup>55</sup> Following public concern with the way in which the HKPF policed the August 2011 visit to Hong Kong of Li Keqiang, then Vice Premier of the State Council of the Central People's Government of China, the IPCC published a report of the CAPO's handling of complaints relating to the visit.<sup>56</sup> The functions of the three organisations are presented in Figure I (over).

Police complaints statistics are notoriously difficult to analyse as a result of the different priorities of organisations that have responsibilities for handling them, and frequent alteration of recording methods, partly as a result of legislative and procedural reforms. ICAC and IPCC statistics<sup>57</sup> are appended at the end in Tables I and II. Between 15 February 1974, when established, and 31 December 2012 the ICAC recorded 22,651 complaints of corruption against members of the HKPF, the vast majority of which were reported independently of the police (separately published figures for complaints received from the police between 1978 and 1989 show that 14.6 per cent of reports were from the RHKPF). 12,254 of the 22,651 corruption complaints received were investigated, and 990 criminal prosecutions resulted in 351 convictions of officers and staff (see Table I). Throughout this period, the ICAC regularly referred complaints to the CAPO (ICAC annual reports between 1991 and 1995 did not include figures of referrals). These were allegations that did not reach the corruption threshold, and included allegations that police officers committed criminal offences: perverting the course of justice or theft for example.

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<sup>54</sup> IPCC (n 1).

<sup>55</sup> *ibid.*

<sup>56</sup> IPCC, *Final Report on Complaint Cases Arising from the Visit by the Vice Premier Mr Li Keqiang* (IPCC 2012) <[http://www.ipcc.gov.hk/report/Other/Report\\_f\\_en.pdf](http://www.ipcc.gov.hk/report/Other/Report_f_en.pdf)> accessed 14 November 2014.

<sup>57</sup> The ICAC publishes comprehensive statistics in its annual reports, which are available at [http://www.icac.org.hk/en/about\\_icac/p/icacar/index.html](http://www.icac.org.hk/en/about_icac/p/icacar/index.html): IPCC statistics are also published online in annual reports dating back to 1 January 2003; IPCC (n 52).



**Figure I: Functions of the ICAC, CAPO and IPCC**

<b>Organisation</b>	<b>Independent Commission Against Corruption (ICAC)</b>	<b>Complaints Against Police Office (CAPO)</b>	<b>Independent Police Complaints Council (IPCC)</b>
<b>Authority</b>	Independent Commission Against Corruption Ordinance	Delegated by the Commissioner of Hong Kong Police Force	Independent Police Complaints Council Ordinance
<b>Operationalisation</b>	1974	1974	2009
<b>Principal duties</b>	Investigating corruption in public (including police) and private sectors, and preparing criminal proceedings	Investigating police misconduct and preparing criminal and disciplinary proceedings	Monitoring and reviewing CAPO investigations, outcomes and police operations

A similarly detailed record of complaints to the one published online by the ICAC is not available for complaints handled by the CAPO and overseen by the IPCC. The CAPO published figures dating back to 2003 in its 2012 *Annual Review*,<sup>58</sup> and recorded that 27,262 reportable complaints were received in this period. Thus, adding the 3,539 complaints of corruption received by the ICAC in this same period (see Table I) to the CAPO figure, it would appear that a total of 30,801 complaints were recorded against members of the HKPF, of which a significant minority, 11.5 per cent, were handled by the ICAC.

A more comprehensive set of statistics dating back to 2003 is available online in IPCC annual reports,<sup>59</sup> which are presented in Table II. A consequence of the IPCC's decision to change its unit of account from calendar to financial year in 2009/10 is that it is not possible to compare annual complaints figures handled by the ICAC and CAPO after 2009 (the IPCC's 2009/10 *Report* published statistics for 2009 and the first three months of 2010).

Table I reveals that, in the course of close to 40 years, annual complaints of police corruption recorded by the ICAC fell by close to a third. The drop in the number of investigations is not so pronounced, amounting to about half, and prosecutions and convictions also fell significantly from an average of 66 and 23 between 1974 and 1978, respectively, to five and two, between 2008 and 2012. After the ICAC's inception, the majority of complaints, 62.6 per cent in the first five years, were made anonymously, which partly accounts for the fact that only 40.3 per cent of allegations were pursued by way of investigation, whereas 74.8 per cent of complaints were pursuable between 2008 and 2012.

Focussing, firstly, on the performance of the ICAC between 2003 and 2012, 28 members of the HKPF were convicted of criminal offences as a result of 71 criminal proceedings brought. Thus, 74.5 per cent of complaints recorded by the ICAC were investigated, of which 2.7 per cent resulted in criminal proceedings. ICAC annual reports also recorded that 52 allegations of crime against members of the HKPF that did not relate to corruption, were referred to the CAPO in this period (included in the Referrals to CAPO figures in Table I).

Turning, now, to the IPCC statistics presented in Table II. Between 2003 and 2012/13, five criminal proceedings and 165 disciplinary proceedings were brought against members of the HKPF as a result of 16,242 CAPO investigations (IPCC reports did not mention how the 52 complaints forwarded to the CAPO by the ICAC noted in the paragraph above were handled). Thus, 54.3 per cent

<sup>58</sup> CAPO (n 4) 32.

<sup>59</sup> IPCC (n 52).

of complaints recorded by the CAPO were investigated of which 0.03 per cent concluded with criminal proceedings and 1.0 per cent concluded with disciplinary proceedings. The IPCC figures indicate a wide disparity in substantiation rates for the different types of allegations contained in recorded complaints (substantiation figures were not included in the IPCC's 2010/11 annual report). The substantiation rate for the total number of recorded allegations was 3.3 per cent (n=1570): of the 1,872 'threat' allegations, none were substantiated; 0.04 per cent (n=2) of 'assault' allegations were substantiated; 0.2 per cent (n=67) of 'fabrication of evidence' allegations were substantiated; and 1.7 per cent (n=152) of 'misconduct/improper manner/offensive language' allegations were substantiated. The highest substantiation rate was 12.4 per cent (n=153) for 'police procedures' allegations, followed by 7.3 per cent (n=1324) for 'neglect of duty' allegations; 3.3 per cent (n=3) of 'other' and 2.2 per cent (n=67) of 'unnecessary use of authority' allegations were substantiated.

In regard to the scrutiny of CAPO reports by the IPCC, Table II reveals that all were endorsed. Some reports were endorsed after the CAPO accepted IPCC recommendations to change the classification, and some were endorsed after the CAPO did not accept the IPCC's recommendation to reclassify. For all such cases the IPCC found that the explanation given by CAPO for their findings were satisfactory, and there was not a case recorded of the IPCC reporting to the Chief Executive arising from a disagreement between the Council and CAPO.

## Discussion: the role of the IPCC

For the last 40 years, debate on police complaints in Hong Kong has been characterised by similar arguments – about who should investigate the police – that have defined debate between police traditionalists and reformers on the international stage. When the ICAC was establishing its anti-corruption credentials in the face of police opposition,<sup>60</sup> concerns with the effectiveness of police investigations of complaints were accompanied by proposals that the CAPO should be independent of the RHKPF.<sup>61</sup> In 1993, 1995 and 1996 the IPCC recommended that CAPO should be headed by a civilian, and non-police investigators should be recruited.<sup>62</sup> Following heated discussion about the police investigating the police and the need for greater openness and transparency in proceedings, the first Independent Police Complaints Council Bill was withdrawn during its third reading.<sup>63</sup> These criticisms of the status quo were also prominent in IPCC Ordinance debates and the lead up to operationalisation of the statutory body;<sup>64</sup> and they continue to this day.

In spite of this fascination with the 'who investigates the police' problematic in Hong Kong, it is evident that the same weight does not attach to the 'conundrum' as in other jurisdictions. The Rubicon of non-police investigation of the police has already been crossed in Hong Kong, and the ICAC has won wide acclaim for its record of combating corruption in the police.<sup>65</sup> Annual public

<sup>60</sup> JE Over, 'Independent Element-Yes or No' (1982) 55 *Police Journal* 238.

<sup>61</sup> WS Clarke, 'Notes of Cases – *R v Chan Keong-lee*' (1984) 14 *HKLJ* 2, 238; Norman Miners, *The Government and Politics of Hong Kong* (5<sup>th</sup> edn, OUP 1991); Ng-Quinn (n 45).

<sup>62</sup> Legislative Council Panel on Security, 'Minutes of meeting of the Panel on Security, 1996.07.08', LC Paper No. CB(2)2112/95-96 (1996), [37].

<sup>63</sup> Wong (n 46).

<sup>64</sup> Legislative Council Panel on Security, *Public Consultation: Independent Police Complaints Council Bill*, LC Paper No. CB(2)1713/01-02(03) (2002) <<http://library.legco.gov.hk:1080/articles/1069147.81741/1.PDF>> accessed 16 November 2014; Legislative Council Panel on Security, *Background brief prepared by the Legislative Council Secretariat: Independent Police Complaints Council*, LC Paper No. CB(2)2200/05-06(05) (2006) <<http://library.legco.gov.hk>> accessed 16 November 2014; Hong Kong Bar Association, *Independent Police Complaints Council Bill*, LC Paper No. CB(2)649/07-08(01) (2007) <<http://library.legco.gov.hk>> accessed 16 November 2014; Legislative Council Bills Committee on Independent Police Complaints Council Bill, *Administration's Response to the Issues Raised on the Independent Police Complaints Council (IPCC) Bill in submissions of November and December 2007 to the Bills Committee*, LC Paper No. CB(2)829/07-08(02) (2008) <<http://www.legco.gov.hk/yr06-07/english/bc/bc63/papers/bc630115cb2-829-2-e.pdf>> accessed 16 November 2014; Joshua But, 'New police watchdog 'will be lacking clout'' *South China Morning Post* (Hong Kong, 7 May 2009) <<http://www.scmp.com/article/679330/new-police-watchdog-will-be-lacking-clout>> accessed 16 November 2014.

<sup>65</sup> Ian Scott, 'The Hong Kong ICAC's Approach to Corruption Control' in Adam Graycar and Russell G Smith (eds), *Handbook of Global Research and Practice in Corruption* (Edward Elgar 2011), 401; Sharon Ingrid Kwok and T Wing Lo, 'Crime and its Control in Hong Kong' in Liqan Cao, Ivan Y Sun and Bill Heberton (eds), *The Routledge Handbook of Chinese Criminology* (Routledge 2013) 284.

opinion surveys conducted by an independent research company have recorded consistently high satisfaction ratings for the work of the Commission. In the 2013 survey,<sup>66</sup> 79.9 per cent of respondents to the household survey considered the ICAC's anti-corruption work effective (a dip of 10 percentage points on previous years), and 95.6 per cent stated that the ICAC deserved their support.<sup>67</sup>

The grounds on which it is determined that complaints alleging criminal behaviour will be investigated independently is of major significance. Under existing arrangements, a suspicion that a member of the HKPF may be corrupt will be investigated by an ICAC officer, whereas a suspicion that a police officer may have committed murder or manslaughter will be investigated by a fellow HKPF officer. Bifurcation of the criminal justice process in this way signals to the public at large that alleged violations of human rights by police officers are not a priority, and the capacity of the complaints system to protect human rights is flawed.

This state of affairs has arisen despite incorporation of the International Covenant on Civil and Political Rights into Hong Kong domestic law under the Hong Kong Bill of Rights Ordinance of 1991. Following the handover to China, the courts have interpreted the Basic Law in a way that gives the Covenant the same constitutional force as the Basic Law<sup>68</sup> and reference continues to be made to the jurisprudence of the UK courts, which incorporates the case law of the ECHR. In *Sony Rai v Coroner*,<sup>69</sup> the government's procedural obligation to conduct a full inquiry into the 2009 fatal police shooting of Dil Bahadur Limbu, developed in the case law of the ECHR, was relied upon to challenge, unsuccessfully, the purpose of the coroner's inquest into the cause of Limbu's death. Adherence to the procedural obligation to effectively investigate the alleged violation of the right to life, however, was not challenged in the courts.<sup>70</sup>

The controversial shooting attracted much media attention, and news reports of the CAPO investigation and inquest proceedings indicate that human rights standards were not observed. The effectiveness of the investigation was vulnerable to challenge on several grounds. Firstly, the CAPO investigation lacked independence. Secondly, the investigation was arguably inadequate as a result of failure to conduct a thorough forensic examination and, then, follow relevant lines of enquiry.<sup>71</sup> Thirdly, public scrutiny was undermined as a result of non-disclosure of police documents and failure to publish a report of the investigation. A spokeswoman for the IPCC stated that 'it had monitored the case's progress',<sup>72</sup> but there has been no mention of the CAPO investigation of the shooting in IPCC publications. Finally, Limbu's bereaved widow claimed she was insufficiently involved in proceedings and decided not to attend the inquest hearings.<sup>73</sup>

The investigation of the shooting of Limbu exposed lacunae in the police complaints system that have not been addressed, as demonstrated by subsequent events. On 5 May 2014, Ho Sai-tung was shot dead by police. The HKPF sought to reassure the public by immediately issuing a statement

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<sup>66</sup> ICAC, *ICAC Annual Survey 2013 – Executive Summary* (2014) <[http://www.icac.org.hk/filemanager/en/Content\\_1283/2013surveysummary.pdf](http://www.icac.org.hk/filemanager/en/Content_1283/2013surveysummary.pdf)> accessed 14 November 2014.

<sup>67</sup> Sceptical voices have queried the level of public esteem enjoyed by the ICAC in recent years; see eg Simon NM Young, 'Prosecuting Bribery in Hong Kong's Human Rights Environment' in Jeremy Horder and Peter Alldridge (eds), *Modern Bribery Law: Comparative Perspectives* (CUP 2013) 267.

<sup>68</sup> Albert HY Chen, 'International Human Rights Law and Domestic Constitutional Law: Internationalisation of Constitutional Law in Hong Kong,' (2009) 4 Nat Taiwan U L Rev 237.

<sup>69</sup> [2011] 2 HKLRD 245.

<sup>70</sup> The family of Limbu, along with human rights and community organisations, expressed their opposition to the CAPO investigation and called for an Independent Commission of Inquiry into the shooting: Anita Lam, '2,000 March over Fatal Police Shooting: Coalition of Groups Demands Impartial Investigation into Death of Nepali Man', *South China Morning Post* (Hong Kong, 30 March 2009); Phyllis Tsang and Agnes Lam, 'Family of Nepali Shot Dead by Policeman Calls for Inquiry: Widow and Brother of Shooting Victim Lodge Complaint', *South China Morning Post* (Hong Kong, 8 April 2009).

<sup>71</sup> Phyllis Tsang, 'Family of Nepali Shot by Constable Want More Details After Autopsy Shows He Was Shot in Ear', *South China Morning Post* (Hong Kong, 32 April 2009); Joyce Man, 'Dispute Over Angle of Shot That Killed Nepali', *South China Morning Post* (Hong Kong, 5 February 2010).

<sup>72</sup> Phyllis Tsang and Maggie Ng, 'Nepali's Death Shows Up Need for Rules on Police Sensitivity', *South China Morning Post* (Hong Kong, 26 May 2010). Following inquest verdict of lawful killing, rights groups criticise the lack of guidelines and call for independent probe.

<sup>73</sup> Austin Chiu, 'Widow of Nepali Shot by PC Seeks Compensation', *South China Morning Post* (Hong Kong, 18 March 2012).

that a thorough and impartial internal investigation would be conducted.<sup>74</sup> In response to a call by the Civil Human Rights Front for publication of the rules governing police use of firearms and non-fatal weapons,<sup>75</sup> a HKPF spokesman stated that the relevant chapter of the General Orders was not disclosed because to do so may adversely affect operations.<sup>76</sup>

Whereas the powers and responsibilities of the ICAC and CAPO to investigate complaints and prosecute police officers in criminal and disciplinary proceedings are clearly established, the purpose of the IPCC is not clear. The IPCC's silence on the CAPO investigation of the Limbu shooting, which fell within the remit of the Serious Complaints Committee, raises questions about the role of the Council. The very low CAPO substantiation rates recorded for allegations of police abuse of power, especially when compared to the performance of the ICAC (see above), are likely to harm the credibility of the complaints process and have a debilitating effect on public trust and confidence in the HKPF generally. The fact that the IPCC endorsed every complaint report forwarded to it between 2003 and 2012/13, inescapably gives rise to a suspicion that the purpose of the Council is to 'rubber stamp' police investigations and decisions.<sup>77</sup> At a time when the HKPF is under increasing scrutiny as a result of the policing of public protests,<sup>78</sup> rather than play an important role facilitating and demonstrating police responsiveness, the IPCC is vulnerable to the accusation that it is the CAPO's public relations agent. A 2014 public opinion survey commissioned by the IPCC,<sup>79</sup> found that 39 per cent of respondents were satisfied with the Council's performance. The survey found that the two main reasons for dissatisfaction were that the IPCC lacked transparency and independence, although there was some improvement on the findings of a survey conducted the previous year.<sup>80</sup>

In a comparative study of police regulatory systems that operate in Hong Kong and New York, Jiao<sup>81</sup> found that the collaboration between the ICAC and HKPF that has been so effective in controlling corruption has not been transferred to relations between the police and IPCC. According to Jiao, development of a partnership between the police and IPCC, which is necessary for the development of a police culture against misconduct, will be difficult 'before the IPCC is able to obtain its own resources, expertise, and power for investigating individual complaint cases.'<sup>82</sup> It is suggested here that, if the IPCC is to more effectively serve as an IPCB, the absence of a formal framework for collaboration between the ICAC and IPCC needs to be addressed. The lack of co-operation between two organisations with not dissimilar regulatory functions is surprising given that the experiences gained by the ICAC have been tapped into by the IPCC.<sup>83</sup> At the time of writing, former ICAC officers represent one quarter (n=11) of the IPCC's 43 strong secretariat, and serve in senior positions of Secretary-General, Deputy and Assistant Secretary-General and senior vetting officers.<sup>84</sup>

Subservient to the CAPO and operationally distant from the ICAC, instead of serving in the central role of overseer of a tripartite arrangement, the IPCC operates on the periphery of the police complaints system. It is suggested that there is a need to go beyond the current conceptualisation of the Hong Kong police complaints system as a two tier system and carry out a full audit of the powers,

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<sup>74</sup> Clifford Lo and Ernest Kao, 'Probe After Police Shoot Man, 21, Dead', *South China Morning Post* (Hong Kong, 6 May 2014).

<sup>75</sup> Samuel Chan and Clifford Lo, 'Police Shooting Ridiculous, Father of Slain Man Says', *South China Morning Post* (Hong Kong, 7 May 2014).

<sup>76</sup> Samuel Chan, 'Should Police Firearms Rules Be Made Public in Wake of Fatal Shooting?', *South China Morning Post* (Hong Kong, 8 May 2014).

<sup>77</sup> Simon NM Young, 'Challenges and Opportunities for Hong Kong's Independent Police Complaints Council' ('The Police Complaints System in Hong Kong: Where are we heading?' Symposium, University of Hong Kong, 27 May 2014) <[http://www.ipcc.gov.hk/en/reports\\_other.html](http://www.ipcc.gov.hk/en/reports_other.html)> accessed 14 November 2014.

<sup>78</sup> IPCC (n 1); Robert Chung, *Independent Police Complaints Council Public Opinion Survey 2014* (University of Hong Kong Public Opinion Programme 2014) <<http://hkupop.hku.hk/english/report/ipcc2014/content/resources/pptExpand.pdf>> accessed 14 November 2014.

<sup>79</sup> Chung, *ibid*.

<sup>80</sup> Robert Chung, Karie Pang, Winnie Lee and Cynthia Tse, *Independent Police Complaints Council Public Opinion Survey 2013 Final Report* (University of Hong Kong Public Opinion Programme 2013) <<http://a2013.hkupop.hku.hk/english/report/ipcc2013/content/resources/report.pdf>> accessed 14 November 2014.

<sup>81</sup> Jiao (n 44).

<sup>82</sup> *ibid* 39.

<sup>83</sup> Simpson Cheung, 'ICAC Losing Seasoned Investigators', *South China Morning Post* (Hong Kong, 11 December 2011).

<sup>84</sup> Private communication from IPCC Secretariat to the author (18 June 2014).

duties and responsibilities of the ICAC, CAPO and IPCC in regard to police complaints. Ideally, this exercise should be conducted by an independent body and include research on the perceptions of complainants that have experience of the services provided by the ICAC, CAPO and IPCC.

A comprehensive audit of defined work areas at every stage of the complaints process – including access to and engagement with the complaints system; recording; investigation; determination; and monitoring and review procedures – would make a significant contribution to knowledge and understanding of existing practice, and identify best practice and knowledge transfer opportunities. Research of this description would be able to address some of the gaps in knowledge that have been unearthed by the all too shallow review of official documents presented in this article. For example, ICAC records show that 85.4 per cent of complaints of police corruption between 1978 and 1989 were not reported to the Commission by the police (see Table I). Data, which would considerably enhance understanding of the complaints system, on the principal triggers of ICAC investigations of the police, and how many arise out of complaints made by members of the public, are not available. Other unknowns relate to the cases the ICAC refers to the CAPO (see Table I). Information on the ICAC's decision-making process for referrals, and the arrangements in place to track their progress and outcomes, is not in the public domain.

## **Conclusion**

An alternative view of the police complaints system to the one that prevails in Hong Kong has been presented in this article. It is suggested that a holistic approach, that incorporates analysis of the powers, duties and responsibilities of the ICAC, CAPO and IPCC, will improve knowledge and understanding of the operation of a tripartite system. This conceptualisation of the Hong Kong police complaints system is aligned with democratic policing principles and the orientation of police forces as public facing services. The standpoint of the complainant, a member of the public with a grievance against the police, is paramount: irrespective of whether a complaint involves an allegation of corruption, crime, abuse of human rights or misbehaviour, the way in which it is processed is material to public trust and confidence in the police.

It is proposed that a stocktake of the police complaints system, informed by the international reform trend and purposes described above, would provide an evidence base on which the IPCC may map out a five year development strategy. In regard to the dilemmas associated with the principal stages of the complaints process, which organisation should be responsible for recording, investigating and reviewing procedures and outcomes, for example, it is suggested that the unitary, bipartite and tripartite systems that operate in other jurisdictions are available for modelling purposes. The international reform trend that has seen the transfer of police powers to IPCBs, followed by further far reaching reforms, is indication that the redistribution of powers and responsibilities are not a simple panacea for problems associated with public complaints against the police. It is vitally important, however, that development strategies draw on full and comprehensive knowledge and understanding of what works and what does not work from the standpoint of all stakeholders.

**Table I: Complaints of corruption against members of the Hong Kong police received, investigated and prosecuted by the Independent Commission Against Corruption, 1974 to 2012**

	1974 <sup>85</sup>	1975	1976	1977	1978
Total # received	1443	1429	1119	729	487
# received from RHKPF	n/a	n/a	n/a	n/a	n/a
Investigated/pursuable <sup>86</sup>	419	602	345	386	344
Prosecuted	30	58	55	126	62
Convictions	17	20	19	39	20
Referrals to CAPO	22	19	20	103	301

1979	1980	1981	1982	1983	1984	1985	1986
635	523	735	677	792	702	719	629
111	94	99	106	108	67	108	96
397	251	369	316	388	307	289	253
44	29	57	26	50	42	36	19
17	12	22	12	20	17	12	11
43	27	64	80	114	99	118	104

1987	1988	1989	1990	1991	1992	1993
536	441	463	475	446	455	614
79	61	72	n/a	n/a	n/a	n/a
225	151	214	185	255	261	389
15	13	16	10	8	9	15
9	3	5	1	3	2	5
75	127	53	39	n/a	n/a	n/a

<sup>85</sup> 15 February to 31 December 1974

<sup>86</sup> Recording category changed from 'investigated' to 'pursuable' in 1990 *Annual Report*: explained that pursuable complaints were 'those containing sufficient information to start an investigation': ICAC, *1990 Annual Report by the Commissioner of the Independent Commission Against Corruption* (1990) 52-3 <[http://www.icac.org.hk/filemanager/en/Content\\_1238/1990.pdf](http://www.icac.org.hk/filemanager/en/Content_1238/1990.pdf)> accessed 14 November 2014.

**Table I continued**

	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>
Total # received	668	560	576	512	560
# received from RHKPF/HKPF	n/a	n/a	n/a	n/a	n/a
Pursuable	414	362	378	339	365
Prosecuted	23	58	32	13	22
Convictions	6	8	10	2	14
Referrals to CAPO	n/a	n/a	133	86	85

<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
507	602	513	565	532	435	382	298
n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
336	370	338	371	381	317	312	215
11	14	8	18	16	10	8	7
2	7	6	2	5	6	2	3
84	99	102	79	60	63	38	40

<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
318	268	302	335	327	342
n/a	n/a	n/a	n/a	n/a	n/a
232	214	225	248	248	243
5	5	5	11	3	1
2	2	3	3	2	0
28	30	26	29	23	14

Source: ICAC annual reports 1974-2012 (available at [http://www.icac.org.hk/en/about\\_icac/p/icacar/index.html](http://www.icac.org.hk/en/about_icac/p/icacar/index.html))

**Table II: Complaints reports received by the Independent Police Complaints Council from the Complaints Against Police Office, 2003 to 2012/13**

	2003		2004	
<b>Complaints received/endorsed<sup>87</sup></b>				
# of complaints received	3383		3215	
# of allegation reports endorsed <sup>88</sup>	6262		5837	
# of allegations fully investigated (Investigated as % of # of allegs.)	1976 (31.6)		2043 (35.0)	
<b>Type of allegation<sup>89</sup></b>	No.	Subst.	No.	Subst.
Assault	714	1	776	1
Misconduct/improper manner/etc	2314	26	2105	16
Neglect of duty	2212	219	1983	219
Unnecessary use of authority	532	11	482	14
Fabrication of evidence	230	0	243	0
Threat	204	0	197	0
Police procedures	37	7	18	3
Other	19	1	33	0
(Subst. as % of endorsed reports)	(4.2)		(4.3)	

2005		2006		2007		2008	
2691		2437		2569		2535	
4695		3518		4341		4523	
1522		1053		1182		1159	
(32.4)		(29.9)		(27.2)		(25.6)	
No.	Subst.	No.	Subst.	No.	Subst.	No.	Subst.
710	0	532	0	587	0	538	0
1817	15	1293	11	1539	7	1520	10
1412	121	1144	85	1551	90	1675	105
344	4	237	4	277	2	360	8
201	0	143	0	146	0	172	0
182	0	152	0	227	0	238	0
18	5	10	0	10	0	17	0
11	0	7	0	4	1	3	0
(3.1)		(2.8)		(2.3)		(2.7)	

2009/10 <sup>90</sup>		2010/11		2011/12		2012/13	
4227		3576		2840		2427	
7280		7182		6239		4884	
1866		2105		1829		1507	
(25.6)		(29.3)		(29.3)		(30.9)	
No.	Subst.	No.	Subst.	No.	Subst.	No.	Subst.
618	0	515	n/a	417	0	323	0
2743	19	2632	n/a	2271	26	1789	22
2960	216	3211	n/a	2910	140	2317	129
387	8	341	n/a	270	7	200	9
226	0	157	n/a	145	2	97	1
318	0	294	n/a	209	0	145	0
19	0	19	n/a	13	3	11	1
9	1	13	n/a	4	0	2	0
(3.4)		(1.8)		(2.9)		(3.3)	

<sup>87</sup> Numbers published in original annual reports given, not corrected totals in subsequent annual reports.

<sup>88</sup> A complaint may contain more than one allegation.

<sup>89</sup> Totals not updated in subsequent reports: substantiation figure includes substantiation of allegations not included in original complaint.

<sup>90</sup> Annual report included figures for 2009 and first quarter of 2010 in preparation for using financial year as unit of account: 15 months of data included in 2009/10 totals as given in 2009/10 Report.



**Table II continued**

	2003	2004	2005	2006
<b>Police actions arising<sup>91</sup></b>				
Total #	306	305	176	140
Criminal proceedings	1	0	1	0
Disciplinary proceedings	38	9	20	9
Warning	23	17	9	5
Advice	244	279	146	126
<b>Queries and suggestions to CAPO</b>				
Total #	687	660	541	829
Accepted by CAPO	429	412	381	565
(Accepted as % of total)	(62.4)	(62.4)	(70.4)	(68.2)
Satisfactory explanation from CAPO	258	248	160	264
Outcome of investigation queries	151	130	93	75
Outcome reclassified by CAPO	105	89	64	44
(Reclassified as % of queries)	(69.5)	(68.5)	(68.8)	(58.7)

2007	2008	2009/10	2010/11	2011/12	2012/13
118	147	273	296	251	173
1	2	0	0	0	0
10	4	11	17	35	12
3	6	29	56	43	41
104	135	233	223	173	120
1700	1991	2969	2427	1153	938
1205	1604	2014	1708	662	468
(70.9)	(80.6)	(67.8)	(70.4)	(57.4)	(49.9)
495	387	646	719	491	470
123	202	469	653	429	401
82	133	234	286	154	166
(66.7)	(65.8)	(49.9)	(43.8)	(35.9)	(41.4)

Source: IPCC annual reports 2003 to 2012/13 (available at [http://www.ipcc.gov.hk/en/reports\\_annual.html](http://www.ipcc.gov.hk/en/reports_annual.html)).

<sup>91</sup> Revised numbers published in subsequent annual reports given, except 2009.