

LCQ4: Law enforcement by police officers in private properties

Following is a question by the Hon Gary Fan and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (November 20):

Question:

It has been reported that during a number of public meetings and processions relating to the "anti-extradition to China" movement held since June 9, this year, some police officers, without producing search warrants and without obtaining the consent of or giving an explanation to the occupiers of the premises concerned, intruded into shopping malls and private housing estates for law enforcement. During such operations, the police officers used various types of force and weapons, causing panic and injuries to quite a number of shopping mall customers and residents. In some cases, the police officers concerned were not in uniforms with police identification numbers and did not wear warrant cards, making it difficult for members of the public to verify their identity. In this connection, will the Government inform this Council:

(1) of the details of the law enforcement actions taken since June this year by police officers in shopping malls and private housing estates during public events, including the date and time, the name of the premises concerned, whether police officers had produced search warrants or obtained the consent of the occupiers before entering the premises (if they had not, of the reasons for that), the force and weapons used by police officers as well as the number of times or quantities concerned, whether any police officer not in uniform with police identification number and not wearing a warrant card participated in the law enforcement actions, and the respective numbers of persons who were arrested and reportedly injured; and

(2) whether it will review and amend the Police General Orders and the guidelines on the use of force to require that under normal circumstances, police officers are not allowed to use lethal weapons within the precincts of shopping malls and residential areas, and to specify the penalties for non-compliance; if so, of the details; if not, the reasons for that?

Reply:

President,

The Hong Kong law applies to all places in the territory and nowhere is above the law. Therefore, it is the statutory duty of the Police to take actions against anyone who contravenes the law anywhere in Hong Kong.

Section 10 of the Police Force Ordinance (PFO) (Cap 232) stipulates that the duties of the police force include taking lawful measures for preserving

public peace, preventing and detecting crimes and offences, and preventing injuries to life and property, etc. When public order and public safety are severely threatened by incidents such as illegal road blockage, paralysed traffic, unlawful assemblies, wounding, arson, criminal damage and violent charging of police cordon lines, the Police will definitely take appropriate actions to maintain law and order and safeguard public peace.

Section 50(3) of PFO stipulates that if any police officer has reason to believe that any person to be arrested has entered into or is in any place, the person residing in or in charge of such place shall allow the police officer free ingress thereto and afford all reasonable facilities for search therein. Section 50(4) of PFO also stipulates that "it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity of escape from a police officer, to enter such place and search therein".

In addition, according to section 17(2) of the Public Order Ordinance (Cap 245), any police officer of or above the rank of inspector may stop or disperse any gathering or procession whatsoever or wheresoever, if he reasonably believes that it is likely to cause or lead to a breach of the peace.

In fact, in the judgment handed down by the High Court in the recent injunction order application relating to the Chinese University of Hong Kong, the Court has affirmed the following two important principles. I try to translate the relevant judgment in English and quote:

(1) It should be noted that it is part of the obligations and duties of a police officer to take all steps which appear to the officer to be necessary for keeping the peace, for preventing crime, or for protecting property from criminal injury. The police has wide statutory duties and owes a duty to the public to enforce the law which he could be compelled to perform.

(2) At common law, where a police officer is off private premises, it would be within the officer's duty to enter such premises to prevent a breach of the peace.

(End of quote.)

Anyone who obstructs a police officer in lawfully executing his duty may contravene section 63 of PFO on assaulting or resisting any police officer acting in the execution of his duty, or section 36(b) of the Offences against the Person Ordinance (Cap 212) on assaulting, resisting or willfully obstructing a police officer in the due execution of his duty, and is liable on conviction to a maximum penalty of imprisonment for six months and two years respectively.

My reply to various parts of the question is as follows:

(1) There have been ongoing protests and clashes in Hong Kong since June,

with violent conflicts breaking out in various districts across the territory. Apart from illegally blocking roads and paralysing the traffic, a large number of protesters gathered in different shopping malls. Some rioters repeatedly committed serious illegal acts, wantonly vandalising shops in shopping malls by spraying paints or graffiti, vandalising shops, setting fires, sabotaging facilities in shops, maliciously vandalising escalators, fire service equipment and closed circuit television, assaulting people madly with different views, etc. To stop the violent acts, the Police must take actions and deploy officers to the relevant shopping malls to apprehend rioters or disperse the crowd and control the situation, with a view to restoring public safety and public order.

Besides the violent clashes in shopping malls, rioters also gather in private housing estates, engaging in illegal acts which breach the public peace, such as throwing hard objects to attack police officers. In light of these illegal acts, it is lawful, reasonable and necessary for the Police to make arrest.

The Police have strict guidelines on the use of force. Police officers will only use appropriate force when it is necessary. Since June 9 this year, there have been over 800 protests, processions and public assemblies in Hong Kong, the violence and serious illegal acts arising from which have kept escalating. The Police have used around 6 900 tear gas rounds, 2 700 rubber bullets, 590 bean bag rounds and 790 sponge rounds in the relevant operations.

As at November 14, the Police arrested over 4 300 people. According to the Hospital Authority's information, from June 9 to November 14, 2019, over 1 900 people were injured in public order events and sought treatment at public hospitals.

Uniformed police officers will display identifiable numbers or operational call signs while on duty. Plainclothes police officers exercising their powers will, on the basis of not affecting the effectiveness of the operation, display their warrant cards or identifiable operational call signs. The Police do not maintain the other figures mentioned in the question.

(2) I must point out that the Police use force in response to the prevailing situation; the location and extent of the use of force depend on the violent acts of rioters and the actual circumstances at the time. If members of the public could conduct public order events in a peaceful, lawful and orderly manner, there would be no need for the Police to use any force.

When someone commits an illegal act which undermines public safety and public order, or when there is a situation which may endanger the personal safety of others, the Police must take appropriate actions, including using the appropriate force as necessary.

The Police's guidelines on the use of force are prudent and strict. With regard to the situation of "not (being) allowed to use lethal weapons within the precincts of shopping malls and residential areas" mentioned in the

question, this is unfeasible and unreasonable. Measures taken by the Police must be considered in light of the actual circumstances. Police officers will only use appropriate force when it is absolutely necessary. Police officers shall give warnings prior to the use of force as far as circumstances permit, while the person(s) being warned shall be given every opportunity, whenever practicable, to obey police orders before force is used.

Thank you, President.