

Findings of the Special Committee on Complaints
Against IPCC Chairman, Secretary-General and IPCC Member Mr. Eric CHEUNG

Introduction

Between August and September 2013, IPCC received 66 complaints from the public concerning statements made by IPCC Chairman Mr. JAT Sew-tong (“Chairman”), Secretary-General Mr. Ricky CHU (“SG”) and IPCC Member Mr. Eric CHEUNG (“CHEUNG”) in several media interviews they attended between 6 August 2013 and 14 August 2013. These statements related to the participation of retired and off-duty police officers, including Superintendent Mr. LAU Tat-keung (“LAU”) who was then on pre-retirement leave, in a pro-police rally organized by the Federation of Hong Kong Parents Associations (香港家長聯會) and the Hong Kong Action (香港行動) at Sai Yeung Choi Street South on 4 August 2013 (“the Rally”). Among the 66 complaints, 61 of them were made against SG, 3 against both Chairman and SG, 1 against CHEUNG and an unidentified IPCC Member, and 1 against SG and the IPCC Management.

2. The complaints against SG mainly queried whether he had any justification in designating the Rally as a “political activity” in the media interviews, alleged he was not fair, just and objective as he “passed judgment without a trial” (未審先判) against the police officers who participated in the Rally and his inappropriate remarks might affect the examination of relevant complaints by IPCC staff and Members. The complaints also questioned whether SG had the approval of the IPCC Management to make the statements that he made and alleged that he was not politically impartial, was biased against the Police because he had worked in the ICAC, and had deprived police officers of their freedom of speech and right of assembly.

3. The complaints against the Chairman expressed dissatisfaction that he did not handle the complaints against SG objectively and impartially, politicized the Rally, was biased against the Police, “passed judgment without a trial” and interfered with the Police in enforcing the law. One complaint criticized CHEUNG for not being independent, objective, fair and impartial in his comments given to the press, which were reported in a South China Morning Post article (“SCMP Article”) on 10 August 2013, on a public statement made by the Police on the Rally on 8 August 2013 (“Police Public Statement”), bringing IPCC into disrepute. Lastly, another complaint alleged IPCC Management had failed to supervise SG or to stop, rectify or clarify afterwards the alleged inappropriate comments SG had made, and had not exercised its duty under Section 8(1)(c) of the Independent Police Complaints Council Ordinance (“IPCCO”) to make recommendations to prevent complaints against police officers arising from situations where police officers

have been unfairly treated by abusive citizens.

4. A Special Committee comprising 3 Members of the IPCC Management Committee was established to investigate the complaints. To assess them, the Special Committee has examined all the relevant information as listed in Annex 1, which are the relevant media interviews, newspaper articles, Police Public Statement and the relevant police internal guidelines which govern police officers' participation in certain activities. The Special Committee has also considered what standard it should adopt to determine the merits of the complaints and, after deliberation, has decided to use the standard of a reasonable person equipped with the knowledge and expertise Chairman, SG and CHEUNG possess. The following is the assessment of the Special Committee on the complaints.

Special Committee's Assessment

I. Complaints Against SG

5. The Special Committee observes that after LAU had spoken at the Rally, the media questioned whether it was appropriate for LAU and off duty police officers to take part in the event and whether the Rally was a political activity. There was concern expressed at that time that LAU and the police officers who had taken part in the Rally might have breached the police internal guidelines which laid down restrictions on police officers attending certain activities, including those that are defined to be political ones. The Special Committee notes that in the media interviews, SG gave his reason for classifying the Rally as a political activity by making reference to a phrase of Dr. SUN Yat-sen that politics were "matters concerning everyone (眾人之事)". The Special Committee takes the view that SG was making a statement, in a general sense of his understanding of what is political, which was fair, not biased and with justifiable grounds.

6. In the media interviews, after SG had expressed his view that the Rally was a political activity, he went on to say that whether a police officer had breached the police internal guidelines could not be simply determined by the officer's attendance at a public activity. SG repeatedly emphasized that one must assess the whole incident before determining whether or not any police officers had breached the police internal guidelines, and the fact that LAU and other police officers had participated in the Rally was neutral and did not mean that they had breached any police internal guidelines, according to which police officers should abstain from taking part in activities which are likely to interfere with their impartial discharge of duties, or which is likely to give rise to such an impression amongst the public, unless what they had said or done would have any adverse

impact on the impartial discharge of their duties. SG further said that the matter would be most appropriately left for the Police management to judge. Hence, the Special Committee is of the opinion that SG had never attempted to “pass judgment without a trial”, and had not been unfair or biased.

7. In their interviews, Chairman, SG or CHEUNG had not commented on anything about any complaint case arising from LAM Wai-size’s incident or the Rally, nor had they said anything biased against any police officers. Nor had they talked about how they or IPCC would examine any possible complaint arising from the two events or about their views on any possible complaint. They did not say whether any police officer had been at fault or had breached any Police internal guidelines. Nothing they had said could have given the public a wrong impression that IPCC was unable to carry out its statutory functions independently, fairly and impartially and the complaints received were unfortunate.

8. The Special Committee further observes that IPCC would only be empowered to deal with complaints against the police officers in connection with the Rally if they have been categorized as Reportable Complaints¹, in which case IPCC would review the investigation conducted by the Complaints Against Police Office (“CAPO”) on them. So far, however, there has not been any Reportable Complaints against any police officer arising from the Rally. Even if there is such a complaint, as Chairman, SG and CHEUNG said in their interviews, the nature of the Rally would not be IPCC’s main concern. Instead, IPCC would focus on whether the officers’ participation in this event had interfered with their impartial discharge of duties, or had given rise to such an impression amongst the public. Hence, whether the event was a political activity or not would not be the major consideration of IPCC when reviewing such a complaint. It thus follows that SG’s remarks would not affect how the complaint would be examined.

9. It must be stressed that IPCC does not determine the conclusion of a complaint case singlehandedly. If CAPO does not agree with the views of IPCC, the case would be deliberated between the two parties at a Working Level Meeting. A case would only be endorsed when both IPCC and CAPO agree on the findings; otherwise, the case would be submitted to the Chief Executive by virtue of Section 19 of IPCCO. Furthermore, there is within IPCC a mechanism of exempting a Secretariat staff or IPCC Member from examining a complaint case if that staff or IPCC Member has said or done anything that IPCC considers would give rise to, or would be likely to give rise to, or may be perceived to give rise to concerns of bias, unfairness or not being impartial in the examination of that

¹Please refer to S.11 of the IPCCO.

complaint case. This scheme of checks and balances is to ensure that IPCC assesses each and every complaint case objectively and fairly, entirely based on evidence. Therefore, even if there is a Reportable Complaint, there can never be “judgment without a trial” (未審先判) or bias against any police officer. The Special Committee believes that the allegation that SG had “passed judgment without a trial”, and had been unfair or biased may have been brought about by a misunderstanding of IPCC’s working mechanics.

10. Regarding the accusation that SG had deprived police officers of their freedom of speech and right of assembly, the Special Committee does not see any evidence to support the allegation. Nothing said by SG indicated that he had the intention to deprive police officers of their freedom of speech or right of assembly. Lastly, SG attended the interviews with the prior knowledge of Chairman and had the necessary mandate to act for and on behalf of IPCC.

II. Complaints Against Chairman

11. The Special Committee observes that in the media interviews, Chairman reiterated that whether or not the Rally was a political activity was not IPCC’s main concern. What was important was whether police officers’ participation in public events would hinder them from discharging their duties impartially and fairly, or would give the public such perception. If the police officers’ conduct at the Rally did not give rise to any Reportable Complaints, it would be a matter for the Commissioner of Police to consider whether or not the police officers had breached any police internal guidelines. Chairman did not comment on LAU’s participation in the Rally in the media interviews. Chairman said he agreed with the Chief Executive that the dignity of the Police should be protected and relevant parties should make constructive contributions to remove the distrust between citizens and police officers. Given the above and the assessment in paragraphs 7 to 9, the Special Committee is of the view that Chairman was fair, had not politicized the Rally, had not been biased against the Police, nor had he “passed judgment without a trial” or interfered with the Police as alleged.

12. The Special Committee also notes that Chairman had not made any comment on the merits of the complaints against SG or the propriety of what SG had said to the media. It is the Special Committee, rather than Chairman, that is handling the complaints against SG. The Special Committee believes that the allegation that Chairman did not handle the complaints against SG objectively and impartially was brought about by a misunderstanding.

III. Complaints Against CHEUNG

13. The Special Committee notes that CHEUNG spoke in his personal capacity when interviewed by SCMP. During the interview, CHEUNG shared the same view as SG on the political nature of the Rally but he kept on stressing that the nature of the Rally should not be the focus. He suggested the Police management should give clearer guidelines to police officers on their participation in various activities. The Special Committee concludes that his statements, which were similar to those of SG's that have been dealt with in paragraphs 5 to 9 above, were fair and in line with IPCC's stance.

IV. Complaint Against IPCC Management

14. In the view of the Special Committee, the statements made by SG were justified. It was unnecessary for IPCC "to stop, rectify and clarify afterwards the alleged inappropriate remarks". Hence, there was no failure on IPCC Management's part as alleged. Concerning the assertion that IPCC Management had failed to exercise its duty under Section 8(1)(c) of the IPCCO to make recommendations to prevent complaints against police officers arising from situations where police officers have been unfairly treated by abusive citizens, the Special Committee concludes that this allegation arose out of a misunderstanding of IPCC's powers as under Section 8(1)(c), IPCC is only empowered to make recommendations to the Police when any fault or deficiency in any Police practice or procedure that might lead to or has led to Reportable Complaints is identified. To prevent complaints against police officers arising from situations where police officers have been unfairly treated by abusive citizens is not within the powers / ambit of IPCC's statutory functions. This allegation may have thus been brought about by a misunderstanding as to what IPCC can or cannot do.

Conclusion

15. The crux of the 66 complaints was that SG and CHEUNG had expressed their views in the media interviews that the Rally was a political activity, which subsequently gave rise to speculation that Chairman, SG and CHEUNG were biased against the Police and had "passed judgment without a trial" and that the retired police officer and other police officers who took part in the Rally might have breached the relevant police internal guidelines. The Special Committee concludes that there is no evidence to substantiate any of the allegations. Chairman, SG or CHEUNG had not made their comments in the media interviews without grounds or justification; and the complaints were brought about as a result of misinterpretation or misunderstanding as to what Chairman, SG and CHEUNG had said or what powers IPCC have.

Information / materials examined by the Special Committee

1	Record of CHEUNG's interview on "On a Clear Day" on 6.8.2013
2	Record of SG's interview on "Millennium Era" on 6.8.2013
3	Record of SG's interview on "The Tipping Point" on 6.8.2013
4	Relevant extracts of the Police internal guidelines
5	Police's public statement dated 8.8.2013
6	Record of SG's interview on TVB News on 8.8.2013
7	Record of SG's interview on Cable TV News on 8.8.2013
8	Article on Sing Tao Daily on 9.8.2013 re interview with SG
9	Article on Oriental Daily on 9.8.2013 re interview with SG
10	Record of CHEUNG's interview on TVB News on 9.8.2013
11	Record of SG's interview on "Hong Kong Today" on 9.8.2013
12	Article on South China Morning Post on 10.8.2013 re interviews with CHEUNG and one IPCC Member
13	Record of Chairman's interview on "On the Record" on 10.8.2013
14	Record of Chairman's interview on "Millennium Era" on 12.8.2013
15	Article on Sing Tao Daily on 14.8.2013 re interview with Chairman