

立法會
Legislative Council

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LC Paper No. CB(2)551/05-06
(These minutes have been seen
by the Administration)

Panel on Security

**Minutes of special meeting held on Friday, 22 July 2005
at 4:30 pm in the Chamber of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Daniel LAM Wai-keung, BBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon LAU Kong-wah, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung

Members attending : Hon Fred LI Wah-ming, JP
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Ronny TONG Ka-wah, SC

Members absent : Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Hon CHOY So-yuk, JP
Hon CHIM Pui-chung

Public Officers attending : Item I
Mr Raymond WONG Hung-chiu
Commissioner
Independent Commission Against Corruption

Mr Daniel LI Ming-chak
Head of Operations
Independent Commission Against Corruption

Mrs Betty CHU FU Kam-lui
Assistant Director/Administration
Independent Commission Against Corruption

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2)1

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Raymond LAM
Senior Council Secretary (2) 5

Ms Alice CHEUNG
Legislative Assistant (2) 1

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I. Circumstances surrounding the resignation of the Director of Investigation (Government Sector) of the Operations Department and manpower of the Independent Commission Against Corruption
(LC Paper No. CB(2)2370/04-05(01))

Members noted the supplementary information provided by the Independent Commission Against Corruption (ICAC) on staff turnover and a letter dated 19 July 2005 from Mr Gilbert CHAN, which were tabled at the meeting. The Chairman drew Members' attention that, as advised by ICAC, the letter from Mr Gilbert CHAN was restricted to the reference of Members only.

(Post-meeting note : The supplementary information and the letter tabled at the meeting were circulated to members vide LC Paper Nos. CB(2)2374/04-05 and CB(2)2375/04-05 respectively on 25 July 2005.)

2. Commissioner, Independent Commission Against Corruption (C/ICAC) briefed Members on the circumstances surrounding the resignation of Mr Gilbert CHAN, Director of Investigation, Government Sector of the Operations Department of ICAC and the staffing position of ICAC. He informed Members that ICAC had embarked on a comprehensive review of the professional training needs of its staff. The review would serve as a reference in the formulation of the long-term training programmes of ICAC. The Operations Department of ICAC had appointed an overseas training consultant well versed in law enforcement work to conduct a

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consultancy study and make recommendations on the training of investigators of all ranks. ICAC would allocate more resources for strengthening professional training for its staff so as to enhance their capability in law enforcement and anti-corruption work.

3. Mr LAU Kong-wah asked whether Mr Gilbert CHAN had submitted an application for taking up outside employment in Hong Kong one year within his departure from ICAC and, if so, whether approval had been given by ICAC.

4. C/ICAC responded that ICAC so far had not received any application from Mr Gilbert CHAN for taking up outside employment in Hong Kong. Any such application, if received, would be processed in accordance with established procedures.

5. Referring to two recent cases where the court commented on the surveillance work of ICAC, Mr LAU Kong-wah asked whether the morale of ICAC officers had been affected by the comments of the court. He also asked about the measures adopted by ICAC to uphold the morale of its officers.

6. C/ICAC responded that there had recently been a few cases where the court expressed concern about the surveillance work of ICAC officers. In one of the cases, the court had commented that the covert surveillance conducted by ICAC officers had contravened the Basic Law. He said that the morale of ICAC officers had been affected to some extent. As it was the first time when the court held such a view, ICAC was studying the issue with the Security Bureau, which hoped to report to the Panel shortly. ICAC had also formed an internal working group to conduct a review of the Commission's Standing Orders (the Standing Orders), in consultation with the Department of Justice, to ensure that the procedures being followed in investigation work were in compliance with the law.

7. Mr LAU Kong-wah asked whether there would be any changes in the investigation techniques of ICAC officers before the review of the Standing Orders was completed. He also asked whether the low morale of ICAC officers had given rise to a high turnover rate of ICAC officers.

8. C/ICAC responded that there should not be a direct relationship between the courts' comments and the staff turnover rate. He said that with the increasingly complex nature of the cases handled by ICAC officers and the more stringent evidential requirement imposed by the court, the pressure on ICAC officers had inevitably increased. Nevertheless, ICAC was committed to carrying out its duties in accordance with the law. It was reviewing the Standing Orders to ensure consistency with legislation.

9. Mr Albert HO said that the letter from Mr Gilbert CHAN reflected that Mr CHAN did not have any negative feeling about ICAC. He asked how ICAC would improve the low morale of its officers arising from the views expressed by the court.

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He also asked whether ICAC would appoint a legal expert to review its operations so as to avoid future challenges by the court.

10. C/ICAC responded that ICAC was a professional law enforcement body. Although the views of the court had affected the morale of ICAC officers, they had not affected their work. He said that the review being conducted by the internal working group was a comprehensive one and the advice of the Department of Justice would be sought in the review.

11. Head of Operations, Independent Commission Against Corruption (HO/ICAC) informed Members that a Principal Investigator of ICAC had been appointed to head an internal working group to conduct a comprehensive review, with the assistance of the Department of Justice, on the Standing Orders and the relevant legal backing to ensure compliance with international law enforcement standards and local legislation. The review was expected to be completed in about six months to a year.

12. Mr Albert HO expressed concern that the working group might conduct the review from the perspective of investigators and prosecutors only. He considered that the working group should seek the views of legal experts who were experienced in representing defendants and human rights experts in the review. C/ICAC noted the views of Mr HO.

13. Ms Emily LAU said that there were reports that the Central People's Government had assigned the Chief Executive of the Hong Kong Special Administrative Region (CE) with the task of regulating ICAC, the judiciary and Radio Television Hong Kong. She expressed concern that ICAC would not be allocated sufficient resources to perform its duties. She asked whether ICAC had sufficient manpower to discharge its duties. She also asked whether there had been any reduction in the benefits of ICAC staff and whether this had affected the morale of staff.

14. C/ICAC responded that there was no question of CE regulating ICAC. He said that CE had expressed support for the work of ICAC and had stressed that ICAC's anti-corruption work was very important to Hong Kong. He pointed out that as the Government was suffering from a financial deficit in the past few years, there had been a reduction in the financial resources allocated to government departments. However, the reduction in the financial resources allocated to ICAC had been relatively mild in comparison with those of other government departments. He said that there had not been any reduction in the benefits of ICAC staff, which were in line with those of the civil service. Should there be any review on the benefits of the civil service in the future, a corresponding review would be conducted by ICAC.

15. Referring to the information tabled at the meeting, Ms Emily LAU expressed concern that there had been a more substantial decrease in the number of Commission Against Corruption Officers (Middle/Lower) and the total number of employees of ICAC. She asked whether there had been any reduction in the financial resources

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allocated to ICAC.

16. C/ICAC responded that a total of 16 posts had been deleted and 44 posts had been frozen in the past three years. The staff turnover rate had remained at about the same level over the past few years, although it was slightly higher in 2004. ICAC had looked into the problem. In general, the turnover of staff was susceptible to changes in the labour market. He noted that a higher staff turnover rate was found with frontline staff, who were generally younger and subject to higher work pressure. ICAC had addressed the problem through filling vacancies by both recruitment and promotion promptly to ease the work pressure faced by frontline staff.

17. Assistant Director/Administration, Independent Commission Against Corruption (AD/ICAC) informed Members that there was a reduction of \$66 million in recurrent expenditure between 2000-01 and 2005-06, the details of which were as follows –

<u>Year</u>	<u>Reduction in recurrent expenditure</u>
2000-01	1%
2001-02	2%
2002-03	2%
2003-04	1.8%
2004-05	1.5%
2005-06	1%

18. Ms Emily LAU asked whether there had been an increase in the number of corruption complaints and the workload of ICAC staff.

19. HO/ICAC responded that about 3 800 to 4 000 complaints were received annually and the number of corruption complaints had decreased in 2004 and 2005. However, the workload of ICAC staff had increased. This was due to an increase in paper work arising from increased complaints about corruption in the private sector, which amounted to 60% of the total number of complaints. It was also due to a substantial increase in the preparation work required in relation to legal proceedings.

20. Mr LEUNG Kwok-hung expressed concern whether ICAC was subject to monitoring by the Legislative Council (LegCo) and whether ICAC would become a political tool of CE. He considered that the post of Commissioner of ICAC should not be filled by civil servants who would return to the civil service after a certain period of time.

21. C/ICAC responded that there were established mechanisms for monitoring the work of ICAC. The three major departments of ICAC were each monitored by an independent advisory committee. The Operations Department had to report the outcome of investigation into each complaint to the Operations Review Committee of ICAC, regardless of whether prosecution would be instituted. Being a law

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enforcement agency, the work of ICAC was subject to monitoring by the judiciary. LegCo also played a monitoring role. He pointed out that since the establishment of ICAC about 31 years ago, all commissioners of ICAC, including two who came from the Attorney General's Chambers, came from the civil service. Some of them had returned to the civil service after completing their contract with ICAC.

22. Mr LEUNG Kwok-hung considered that it was inadequate for the work of ICAC to be monitored by the judiciary and LegCo. He reiterated that the Commissioner of ICAC should not be a civil servant. A civil servant who was appointed as Commissioner of ICAC should not return to the civil service after completing his service with ICAC.

23. Mr Ronny TONG said that ICAC officers should discharge their duties in accordance with the law. He asked whether each investigator of ICAC was aware that a defendant had the right to communicate privately with his lawyer. He also asked how ICAC interpreted "privacy of communications" in BL30 and "confidential legal advice" in BL35.

24. C/ICAC stressed that ICAC officers had every respect for the BL. They had always discharged their anti-corruption duties in strict accordance with the law. He informed Members that there were recently only two cases where the court commented on the surveillance work of ICAC. In the first case, the court ruled that recordings obtained by covert surveillance was in contravention of BL. To his knowledge, an appeal was being lodged by some defendants against their conviction. In the second case, the Department of Justice would seek a judicial review on whether the acts of ICAC officers had contravened legal professional privilege. He reiterated that covert surveillance had long been one of the effective investigation techniques used by ICAC. Evidence thus obtained had been admitted by the court on many occasions.

25. Mr Ronny TONG and Ms Margaret NG expressed concern whether covert surveillance of communications between lawyers and their clients were frequently made by ICAC.

26. C/ICAC replied in the negative. He stressed that ICAC officers had every respect for legal professional privilege and had always discharged their duties in accordance with the law. HO/ICAC added that ICAC would consider monitoring the communication between a lawyer and his client only in the exceptional circumstances where ICAC had strong reasons to suspect that the lawyer was a party to corruption or related crime.

27. Dr LUI Ming-wah asked why ICAC had not considered clarifying the legal issues by seeking the interpretation of a higher level court on the relevant provisions of BL.

28. C/ICAC responded that ICAC had to study the judgments in consultation

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with the Department of Justice. Depending on the advice of the Department of Justice, ICAC might apply for a judicial review or lodge an appeal. As one of the two cases concerned was subject to appeal and the other case was subject to judicial review, he was not in a position to comment further on the cases.

29. Ms Audrey EU expressed concern that the review of the Standing Orders would take some six months to a year to complete. She considered this undesirable, as the work of ICAC might be subject to further challenge in court during such a long period. She asked whether the review could be expedited and completed within two or three months.

30. HO/ICAC responded that the Standing Orders, which had been in use for about 30 years, had been constantly updated whenever there were amendments to local legislation. The review on the Standing Orders was a comprehensive one covering the compatibility of the Standing Orders with BL, international standards and local legislation. As complex legal issues were involved, it would take about six months to one year to complete the review.

ICAC

31. Ms Audrey EU expressed concern that ICAC had not reviewed the consistency of the Standing Orders with BL until such a late stage. She considered that the internal review of ICAC should be expedited. C/ICAC agreed to examine whether the review could be expedited. The Chairman said that ICAC should consider engaging more legal experts to assist in the review to expedite the process.

32. Referring to the supplementary information tabled at the meeting, Ms Audrey EU expressed concern that a higher staff turnover rate was found with the posts of Commission Against Corruption Officers and Assistant Commission Against Corruption Officers, especially in the first six months of 2005. She asked about the nature of work of such officers and the reasons for their higher turnover rate. She also asked whether there were difficulties in recruiting such officers.

33. C/ICAC responded that on the basis of known information, ICAC envisaged that the overall staff wastage rate in 2005, which included cases of retirement and resignation, would be around 6%. Over the years, a higher staff turnover rate was found with Commission Against Corruption Officers (Middle/Lower) and Assistant Commission Against Corruption Officers, who were frontline staff and generally younger. He added that ICAC had not experienced any difficulties in recruitment. In the recruitment exercises conducted in the previous year, there were about 2 000 to 3 000 applicants of high calibre competing for 30 to 40 vacancies. He informed Members that ICAC was examining ways of retaining its staff.

II. Letter dated 21 July 2005 from Hon LAU Kong-wah concerning the handling of “Target Link” incident by the Independent Commission Against Corruption and the follow-up actions to be taken by the Independent Commission Against Corruption

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(LC Paper No. CB(2)2361/04-05)

34. The Chairman declared his interests in Target Link. At the invitation of the Chairman, the Deputy Chairman took the chair of the meeting.

35. Mr LAU Kong-wah said that after ICAC had concluded its investigation into the “Target Link” incident, the investigation report of a three-member panel appointed by the Democratic Party had revealed new information and queries in the case concerned. He had therefore proposed discussing ICAC’s handling of the case and the follow-up actions to be taken by ICAC. As he had learnt in the morning that ICAC had just decided to re-open investigation into the case concerned, it was no longer appropriate to discuss the matter until further investigation by ICAC had been concluded.

36. Mr LEUNG Kwok-hung said that he had full confidence in the integrity of Mr James TO. He considered that the investigation findings would only confirm the integrity of Mr TO.

37. The meeting ended at 6:30 pm.