

立法會

Legislative Council

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Panel on Security

**Minutes of special meeting
held on Wednesday, 21 July 2010, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon LAU Kong-wah, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun
Hon WONG Yuk-man

Member attending : Hon Alan LEONG Kah-kit, SC

Members absent : Hon Albert HO Chun-yan
Dr Hon Margaret NG
Dr Hon Philip WONG Yu-hong, GBS
Hon Timothy FOK Tsun-ting, GBS, JP
Hon CHIM Pui-chung
Hon CHAN Hak-kan
Hon WONG Kwok-kin, BBS
Hon LEUNG Kwok-hung

Public Officers attending : Item I

The Administration

Mr LAI Tung-kwok, SBS, IDSM, JP
Under Secretary for Security

Mr David LAU Kam-kuen
Principal Assistant Secretary for Security

Mr William TANG How-kong
Director of Management Services
Hong Kong Police Force

Mr Stanley CHUNG Siu-yeung
Acting Chief Superintendent of Police
(Complaints & Internal Investigations Branch)

Independent Police Complaints Council

Mr JAT Sew-tong, SC
Chairman

Mrs Philomena LEUNG HO Ye-man
Secretary-General

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Ms Connie FUNG
Senior Assistant Legal Adviser 1

Mr Bonny LOO
Assistant Legal Adviser 3

Miss Josephine SO
Senior Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

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I. Operation of the statutory Independent Police Complaints Council
(LC Paper Nos. CB(2)2077/09-10(01) & (02))

At the invitation of the Chairman, Mr JAT Sew-tong, Chairman of the Independent Police Complaints Council, briefed Members on the salient areas of work of the Independent Police Complaints Council ("IPCC") since its establishment as a statutory body on 1 June 2009, details of which were set out in the paper provided by IPCC.

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Functions and powers of the statutory Independent Police Complaints Council

2. The Deputy Chairman noted that in 2009, IPCC had invited eight persons for interviews. They comprised four complainants and four Police officers involved in five complaint cases. Two complainants and one Police officer, however, refused to attend the interviews. The Deputy Chairman said that although the IPCC Ordinance (Cap. 604) provided IPCC with the power to interview any persons, IPCC could not compel any person to attend an interview. Hence, whether IPCC could effectively discharge its monitoring and reviewing functions in the two-tier police complaints system would, to a certain extent, depend on Police officers' willingness to cooperate and public confidence in the work of IPCC. He considered that to improve the existing police complaints system, amendments should be made to the Ordinance to empower IPCC to conduct independent investigations, to determine whether the complaints were substantiated, and to decide on the penalty or disciplinary actions to be applied in substantiated complaint cases.

3. In response, the Chairman of IPCC made the following points -

- (a) the IPCC Ordinance established IPCC as a statutory body and provided a legal basis for IPCC to discharge its functions to monitor and review the manner in which complaints were handled by the Complaints Against Police Office ("CAPO") of the Hong Kong Police Force. The Ordinance set out clearly the powers, functions and duties of IPCC. It also stipulated the obligation of the Police to provide assistance to IPCC in various respects and to comply with other requirements made by IPCC under the Ordinance;
- (b) the IPCC Ordinance conferred upon IPCC a wide range of powers for discharging its functions. Such powers included requiring the Police to provide information or materials relating to reportable complaints and clarify any facts, discrepancies or findings; requiring the Police to investigate or re-investigate reportable complaints; interviewing the persons concerned for the purpose of considering investigation reports on reportable complaints submitted by the Police; requiring the Police to submit to IPCC reports on any actions taken or to be taken by the Police in respect of any recommendations made by IPCC; requiring the Police to consult IPCC on any proposed new or significant amendments to Police orders or manuals relating to the handling or investigation of reportable complaints;
- (c) the IPCC Ordinance was enacted on the basis of maintaining the two-tier police complaints system. The Ordinance was conducive to enhancing the credibility and transparency of the system;

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- (d) IPCC was provided with the statutory power to interview any persons. Such interviews were useful in allowing IPCC to clarify directly with complainants, complainees and witnesses factual points relating to the complaints which were difficult to gather from reports. However, it should be emphasized that provided that the CAPO investigations were carried out thoroughly and the materials supplied to IPCC were sufficiently clear, it would only be in rare cases when interviews by IPCC would be required;
- (e) IPCC noted that some people might be reluctant or even refuse to be interviewed. To allay any worries that the interviewees might have about the Interview Scheme and ensure their understanding of IPCC's monitoring role, IPCC would explain to them the intended purpose of the interviews before they were held;
- (f) so far, Police officers had been cooperative in attending interviews by IPCC. As regards the case cited by the Deputy Chairman, a Police officer (who was a witness) declined to attend the interview but after interviewing the complainee of the same case, IPCC was satisfied with the investigation results and did not consider it necessary to interview the police witness any further. Two other Police officers also declined initially but following further explanation of the Interview Scheme to them, they subsequently agreed to attend the interviews; and
- (g) the suggestion of empowering IPCC to investigate complaints would entail significant and fundamental changes to the existing mechanism. The suggestion should be considered carefully and the meeting was not the appropriate occasion for discussion of that subject. However, IPCC would keep under review the Interview Scheme and if proved necessary, it would not hesitate to seek an amendment to the IPCC Ordinance to give IPCC express statutory power to compel attendance at an interview.

4. Mr WONG Yuk-man said that to his knowledge, 325 Police officers were disciplined on substantiation of the complaints against them in 2006 to 2008. Of these, 292 were given advice, 12 given warnings, 12 cautioned, two reprimanded, six severely reprimanded and one dismissed subsequent to criminal conviction. He expressed grave concern that although the number of reportable complaints received by IPCC from CAPO had increased substantially after the IPCC Ordinance came into operation, the disciplinary actions taken against the Police officers concerned remained at a relatively low level. Sharing the Deputy Chairman's concerns about the limited power of IPCC and the lack of public confidence in the existing police complaints system, Mr WONG sought views from the Chairman of IPCC on whether IPCC had effective means to ensure that the investigations of all reportable complaints were conducted thoroughly and impartially, and whether there was a need to enhance the powers

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of IPCC so that it had the power to investigate complaints against members of the Police and the authority to determine whether a complaint was substantiated.

5. In response, the Chairman of IPCC said that an increase in the number of reportable complaints did not necessarily bring about a concomitant increase in disciplinary action. He added that under the existing two-tier police complaints system, there were rigorous checks and balances to ensure that complaints were handled thoroughly, fairly and impartially. It should be noted that CAPO, responsible for handling and investigating complaints lodged by members of the public against members of the Police Force, operated independently from other Police formations to ensure its impartiality in handling the complaints. IPCC, at the other end, was an independent oversight body specifically appointed to monitor and review the handling and investigation of reportable complaints by CAPO. All investigation reports prepared by CAPO on reportable complaints were subject to IPCC's review and examination. If considered necessary, IPCC would seek clarification on points of doubt or request CAPO to provide supplementary information. IPCC would then re-examine the complaint cases based on the additional information provided by CAPO. Investigation results would only be endorsed when IPCC was satisfied that CAPO had conducted a thorough and impartial investigation. The Chairman of IPCC further said that cases that did not fall under the category of reportable complaints would be referred to the relevant police formation or other appropriate authorities for follow-up action. In view of the foregoing, the general public should have confidence that every complaint received by CAPO, irrespective of whether it was categorized as a reportable complaint, would be examined and handled in a fair and proper manner.

6. The Deputy Chairman remained of the view that there was room for improvement in the existing statutory regime for monitoring and reviewing investigations of complaints against members of the Police carried out by CAPO. He said that to reinforce public confidence in the impartiality and independence of the police complaints system, CAPO should be made independent of the Police Force.

7. The Chairman of IPCC acknowledged Members' concern about IPCC's impartiality and independence in performing its monitoring role. He assured Members that IPCC would use its best endeavours to ensure that all reportable complaints were fairly and impartially handled. It would also keep the present regime under review and identify scope for further improvement in the light of operational experience. If considered necessary, IPCC would make recommendations to the Administration for a review of the IPCC Ordinance.

Promotion of good procedures, practices and values with a view to minimizing police complaints

8. The Chairman noted that IPCC had made efforts to identify any inadequacies in Police practices and procedures with a view to minimizing complaints. He sought details on IPCC's work in this regard.

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9. The Chairman of IPCC said that under section 8(1)(c) of the IPCC Ordinance, one of the functions of IPCC was to identify any fault or deficiency in any practice or procedure adopted by the Police that had led to or might lead to reportable complaints, and to make recommendations, as IPCC considered appropriate, to the Commissioner of Police ("CP") or the Chief Executive or both of them in respect of such practice or procedure. In the light of this, IPCC had not confined its work to examining investigation reports and had taken a more proactive role in looking into Police policies or practices which had led to or might easily lead to reportable complaints. Over the past year or so, IPCC had looked into the Police's operations and internal procedures regarding the setting up of roadblocks, the Police's operational guidelines for regulating public order events, and the Police's policy and practice on the operation and maintenance of closed-circuit television ("CCTV") systems as well as the retention and timely seizure of CCTV recordings for the purpose of investigating a complaint. Recommendations subsequently made to CP included strengthening the professional sensitivity and communications skills of frontline Police officers through training, and enhancing public understanding of the Police's work. IPCC believed that these measures could help prevent avoidable complaints.

10. Ms Cyd HO appreciated the initiative of IPCC in identifying any fault or deficiency in practices and procedures adopted by the Police with a view to making recommendations to the latter for service improvement. She said that there were inadequacies in the Police's handling of the mass media, such as the setting up of remote designated press areas to limit news coverage by members of the media during public processions and demonstration. Ms HO held the view that the Police should respect the media's right to press freedom and maintain a good working relationship with the media. She requested IPCC to look into the matter proactively to ensure that the Police was fully committed to enhancing its communications with the media and developing a constructive police-media working relationship.

11. Echoing Ms Cyd HO's views, the Deputy Chairman considered that IPCC should pay more attention to and maintain a timely follow up on cases/Police operations which had aroused wide public concern or attracted criticism, as this could help identify the inadequacies within the Force and the improvement measures required.

12. In response, the Chairman of IPCC said that IPCC shared Members' views and concerns about the need to protect press freedom. It would follow up on the matter to which Ms HO had referred, and make full use of various channels, including news reports, to identify inadequacies in Police practices and procedures which could cause complaints. He emphasized that as an independent body, the main functions of IPCC included observing, monitoring and reviewing the handling and investigation of reportable complaints by the Police and making recommendations in respect of the handling or investigation of such complaints; and identifying any fault or deficiency in the practices or procedures adopted by the Police that had led or might lead to reportable

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complaints. IPCC was committed to maintaining a fair, effective and transparent police complaints system. It strove to ensure that Police's investigations into reportable complaints were fair and just, and that every complaint was dealt with properly and impartially. For this reason, IPCC welcomed views and suggestions from Members on its work. Proposals seeking to enhance the image and operational efficiency of the statutory IPCC would be carefully considered.

13. Responding to the Deputy Chairman's and Mr WONG Yuk-man's concerns about the possible abuse of power by Police officers and the credibility of the existing police complaints system, Director of Management Services made the following points -

- (a) the Police placed great emphasis on the proper conduct of Police officers. The Police management would not condone misconduct or abuses, if any, committed by Police officers in the course of discharging their public duties;
- (b) all complaints received against members of the Police Force would be thoroughly investigated by CAPO. If any allegations of abuse of authority were substantiated, the Police officer concerned would be subject to disciplinary action;
- (c) between 2007 and 2009, a total of 63 officers had been dismissed for breach of discipline or contravention of Police orders or regulations;
- (d) many people were concerned that investigations carried out by CAPO lacked credibility and impartiality since "complaints against Police officers were investigated by fellow Police officers". It should be noted that under the existing two-tier police complaints system, there were effective checks and balances to ensure that CAPO handled and investigated complaints with fairness and impartiality. CAPO's handling of complaints was closely monitored by IPCC;
- (e) the Police saw a substantial increase in the number of complaint cases registered by CAPO in 2009. It was believed that the significant increase in the number of complaint cases against the Police was likely caused by a number of factors instead of one single determining factor. These factors included the increasingly high public expectations of the Police and the growing demands for quality service. Besides, the public had a greater understanding of and confidence in the complaints handling mechanism after the enactment and implementation of the IPCC Ordinance. Among the complaints, the majority of the complaint cases were minor complaints, indicating that the public had relatively high expectations of Police officers. With reference to

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the materials on the Force's law enforcement, the law and order situation, crime figures and detection rates, all information available showed that the law enforcement level of the Force in the previous two years remained stable. Although there was no indication of any general deterioration in the quality of the service of Police officers, the Force was very concerned about all complaint cases and the trend of complaints, and would conduct reviews from time to time; and

- (f) the Police attached great importance to the communication with the public and was committed to preventing any avoidable complaints. In tandem with various initiatives to support the complaints prevention work, the Police would ensure that frontline officers and commanders were aware of the latest trend of complaints through visiting frontline formations and other communication channels. The Force would also strengthen the professional sensitivity and communication skills of officers through various training courses. Additionally, CAPO would enhance the public understanding of the law enforcement areas of the Force through the media and other interest groups to avoid complaints caused by misunderstanding.

Monitoring CAPO's investigation through the Observers Scheme

14. Ms Emily LAU said that the Observers Scheme was an important vehicle through which IPCC could effectively discharge its monitoring function to ensure that investigations into reportable complaints against members of the Force were conducted properly, impartially, and thoroughly. She noted that as at the end of 2009, the Administration had appointed 90 observers and required all newly appointed or re-appointed observers to conduct at least four observations a year. She considered the numbers of observers and observations conducted inadequate, when compared with the number of complaint cases received, and expected more observers and observations, in particular surprise observations, to be appointed and conducted in the future. She enquired whether it was possible for IPCC to strengthen the Observers Scheme.

15. The Chairman of IPCC responded that -

- (a) the IPCC Ordinance empowered IPCC members and observers to attend any interviews to be conducted by the Police and to observe the collection of evidence undertaken by the Police in respect of reportable complaints, with or without prior appointment at their discretion. After conducting an observation, they must submit a report to IPCC stating their opinion on whether the Police had conducted the interview or collection of evidence in a fair and impartial manner, and stating any irregularities detected. Such observation arrangements significantly reinforced the monitoring role of IPCC and ensured that the Police investigated complaints

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thoroughly and impartially;

- (b) as a continued effort to strengthen its monitoring role in the police complaints system, IPCC had reinvigorated the Observers Scheme. Among others, IPCC had updated its internal guidelines to remind IPCC members and observers of the issues requiring special attention when performing their observation functions;
- (c) IPCC also requested the Administration to appoint more observers so that IPCC could increase the number of observations performed by observers. In response to IPCC's request, the Secretary for Security had appointed more observers, from 70 observers at the end of 2007 to 84 observers at the end of 2008 and further to 90 observers at the end of 2009. At present, IPCC had 18 members and 90 independent observers from different sectors of the community and with different professional backgrounds;
- (d) to further improve the Observers Scheme, the Administration had required all newly appointed or re-appointed observers to perform at least four observations a year. IPCC nevertheless hoped that observers could perform more observations in addition to the minimum requirement of four observations, in particular, surprise observations;
- (e) to facilitate the conduct of observations, which could be arranged in advance or carried out on a surprise basis, IPCC had endeavoured to iron out the practical difficulties in conducting a surprise observation, such as the need for arranging parking in advance; and CAPO had agreed, as far as practicable, to notify the IPCC Secretariat at least 48 hours in advance of upcoming interviews or collection of evidence. Where possible, CAPO would allow for a longer notification period for IPCC members and observers;
- (f) with greater participation from IPCC members and observers, a total of 1 808 observations, including 331 surprise observations, were conducted in 2009; and in the first quarter of 2010, 426 observations, including 110 surprise observations, were conducted. Compared with 2007, the number of observations conducted in the recent two years represented a more than six-fold increase. In terms of percentage, there was also an increase. In 2007, of all the notifications received, IPCC members and observers observed 12.2% of the interviews/collection of evidence. This figure increased to 21.6% in 2008 and further to 24% in 2009 and 23.4% in the first quarter of 2010. IPCC would strive to make further improvements in this regard; and

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- (g) it should be noted that the unforeseen and sharp increase in caseload particularly since the latter half of 2009 had strained the limited resources of the IPCC Secretariat and undermined its ability to speed up the processing time. In 2008, a monthly average of 211 new investigation reports had been received from CAPO. In the first six months of 2009, a monthly average of 195 new investigation reports were received and this figure jumped to 338 in the second half of 2009, representing a 73.3% increase when compared with the monthly average in the preceding six months. In the first quarter of 2010, the monthly average further shot to 343 reports. The substantial increase in caseload, coupled with the increased workload arising from the reinvigoration of the Observers Scheme and the Interview Scheme, had generated pressure on the limited staffing resources of the IPCC Secretariat. While there was a need for an increase in manpower in the IPCC Secretariat to cope with the increased workload, IPCC had, as a temporary measure, re-deployed resources internally. It would conduct a critical review of its resources requirement and bid for additional resources, if and when necessary.

16. Under Secretary for Security ("US for S") said that the Administration appreciated the need to appoint more observers so as to facilitate IPCC's performance of its monitoring function through scheduled or surprise observations of the interviews and collection of evidence conducted by CAPO. To this end, the Administration had appointed more observers, from 70 at the end of 2007 to 84 at the end of 2008 and further to 90 at the end of 2009. The Administration would continue to work closely with IPCC on how to expand the Observers Scheme through appointing more observers.

Efforts to reach out to different groups

17. Ms Emily LAU enquired whether IPCC would make a report to the Human Rights Committee of the United Nations ("UNHRC") on whether and how Hong Kong's police complaints system fully met the principles and requirements specified by UNHRC for the establishment of an independent mechanism to investigate complaints relating to the Police. She held the view that IPCC should reach out to different vulnerable groups, such as ethnic minorities and sex workers, to understand their concerns about the police complaints system.

18. The Chairman of IPCC responded that the IPCC Ordinance did not require IPCC to make report to UNHRC. Nevertheless, he noted Ms LAU's views in this regard and would consider whether IPCC should, of its own volition, do so in future. Regarding the suggestion of meeting with different vulnerable groups, The Chairman of IPCC advised that in 2009, IPCC had met with four sex workers' concern groups, namely Zi Teng, JJJ Association, Action for Reach Out and Midnight Blue. These groups had shared with IPCC their concerns about abuse of police power during operations and their views on the

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police complaints system. IPCC, in turn, took the opportunity to explain to them the role of IPCC as well as the Observers Scheme. IPCC would seriously follow up the suggestion of holding meetings with ethnic minorities.

Financial and staffing arrangements for the statutory IPCC

19. Ms Cyd HO expressed deep concern about the staffing arrangements for IPCC. Stressing the importance for IPCC to maintain its impartiality and independence, she considered it necessary for the IPCC Secretariat to appoint its own staff and be provided with sufficient manpower resources.

20. In response, The Chairman of IPCC advised that when the statutory IPCC was established on 1 June 2009, 20 of the 28 established posts were filled by seconded civil servants and eight by non-civil service contract staff. As at the end of May 2010, 12 of the 28 posts were filled by seconded civil servants and 16 by IPCC employees. While the IPCC Ordinance empowered the statutory IPCC to appoint its own staff, in order to allow a smooth transition, it was the intention of IPCC to replace all seconded civil servants by IPCC employees in stages, with a view to fully replacing all civil servants within three years of establishment of the statutory IPCC, i.e. no later than the end of May 2012. The Chairman of IPCC said that the exact pace of phasing out seconded civil servants would have to depend on whether suitable candidates could be identified in the recruitment exercises and the wastage of existing and new employees. Regarding the post of Secretary-General, in an open recruitment exercise held earlier, a suitable candidate had been identified and would be in post in January 2011. The new Secretary-General would be tasked to review the staffing requirement and additional resources required in the light of operational experience. Where necessary, IPCC would bid for more resources.

21. Mrs Philomena LEUNG, the incumbent Secretary-General of IPCC, supplemented that all staff in the IPCC Secretariat, including those appointed on a secondment basis, had all along been discharging and would continue to discharge their duties in their usual professional way.

22. Mr Alan LEONG said that based on the information provided by IPCC, the current strength of 28 staff in the IPCC Secretariat was already overstretched with heavy workload. He asked whether the Administration was in full knowledge of IPCC's position and its financial needs. He held the view that the Administration should provide the statutory IPCC with sufficient resources, so as to enable the latter to effectively discharge its functions under the Ordinance. His view was echoed by Ms Emily LAU.

23. US for S responded that to facilitate IPCC in discharging its monitoring and reviewing functions in the police complaints system, the Administration was committed to ensuring that IPCC would continue to be provided with appropriate support and resources on becoming a statutory body. Any requests for additional resources would be subject to the established resource bidding procedures in the normal manner. In this regard, the Administration would

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advise the statutory IPCC annually of the time and manner in which the relevant Resource Allocation Exercise and Estimates of Expenditure were to be conducted/prepared. This would facilitate the statutory IPCC to consider the level of financial provision needed for the subsequent financial year and to prepare resource bids when necessary.

24. US for S further said that bids from the statutory IPCC for additional resources would be considered at a high-level forum, with the personal participation of both the Chief Secretary for Administration and the Financial Secretary. He assured Members that, as a statutory body, IPCC would have a high degree of flexibility and autonomy in managing its own finances. The financial provision for the statutory IPCC would be set out under a separate head of expenditure in the Government's Estimates in the form of a one-line vote with the Secretary-General of the statutory IPCC as the Controlling Officer who would have autonomy to deploy resources allocated or savings generated for purposes set out in the relevant provision of the IPCC Ordinance.

25. The Chairman requested the Administration and IPCC to take note of Members' views and concerns about the existing two-tier police complaints system, in particular the need to enhance the credibility of the system as well as to provide the statutory IPCC with sufficient resources to enable it to effectively discharge its functions under the IPCC Ordinance.

26. There being no other business, the meeting ended at 12:45 pm.