

# **FINAL REPORT ON COMPLAINT CASES**

**Arising from the Visit by the Vice Premier  
Mr. LI Keqiang**



**Independent Police Complaints Council**

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**Independent Police Complaints Council**  
**Final Report on Complaint Cases**  
**Arising From The Visit by the Vice Premier Mr. LI Keqiang**

**Executive Summary**

**Part I - Overview**

1.1 Between 16 and 18 August 2011, the Hong Kong Police Force (“**the Police**”) conducted a series of security operations to protect Mr. LI Keqiang, the Vice Premier of the State Council of the Central People’s Government (“**the VP**”), during his visit to Hong Kong. Some members of the public, including reporters, protestors, petitioners and road users who were inconvenienced by the security arrangements lodged a total of 16 Reportable Complaints against various police officers. There were also widespread public discontent and concern over the magnitude of the security arrangements adopted by the Police.

1.2 As a result, the Independent Police Complaints Council (“**IPCC**”) decided that, in addition to discharging its statutory responsibilities in monitoring and scrutinising the relevant complaint investigations conducted by the Complaint Against Police Office (“**CAPO**”), it would also exercise its function under section 8(1)(c) of the Independent Police Complaints Council Ordinance (“**IPCCO**”) to conduct a holistic review of the security measures implemented in the security operations with a view to making recommendations to the Chief Executive (“**CE**”) and the Commissioner of Police (“**CP**”) for better planning and execution of similar operations in the future.

1.3 In May this year, IPCC released an Interim Report on its monitoring

and review of the CAPO complaint investigations, in which 9 out of the 16 complaint cases were endorsed.

1.4 Since then IPCC has raised further queries with CAPO, and inspected the relevant extracts of the Police Operational Orders for the purpose of resolving the outstanding issues.

1.5 This Final Report summarises the work done by IPCC in its monitoring and scrutiny of the remaining 7 complaint cases as well as its observations and recommendations on the security measurements implemented by the Police.

## **Part II - The 7 Outstanding Complaint Cases**

2.1 Of the 7 outstanding complaint cases, 5 cases (Case 2, 3, 11, 12 and 13) are now endorsed by IPCC after its queries being satisfactorily answered by CAPO.

2.2 One case (Case 15) remains “Sub-Judice” as COM 15 has lodged an appeal against her conviction, which is still pending. Complaint investigation would be resumed upon the completion of the judicial proceedings.

2.3 The last case (Case 16) contains 6 allegations, 4 of which have been endorsed in the Interim Report. The remaining 2 allegations [Allegations (d) & (f)] relate to complainees’ decisions on setting up the Designated Press Areas (“DPA”). IPCC was unable to endorse these 2 allegations for want of further information.

2.4 Upon examination of all information supplied by CAPO, IPCC is of

the view that it is uncertain whether there could be more proper arrangements for setting the DPA at a location closer to the venue having regard to the key issue of striking a balance between security needs and the freedom of press. Hence IPCC opines that the allegations should be more appropriately classified as “Unsubstantiated”.

2.5 CAPO does not subscribe to the views of IPCC, and maintains that the allegations should be classified as “No Fault”. Hence this case is submitted to CE for his consideration pursuant to section 19(3) of the IPCCO.

### **Part III - The Security Measures: Observations & Recommendations**

3.1 According to the Police, the security operation in protecting the safety of the VP during his visit to Hong Kong necessitated stringent security measures including closure of footbridges and control of pedestrians on roads where the VP’s motorcade would pass, and that no protest activities would be allowed in the Security Zone (“SZ”) the demarcation of which was decided by the relevant police commanders and kept confidential.

3.2 With regard to the planning of the security operations, IPCC observes that some Operational Orders contained guidelines, the wording of which was ambiguous in meaning and application, which might confuse the frontline officers in carrying out their duties or making decisions on the spot. An example is that officers were reminded to take action where necessary to pre-empt embarrassment or threat to the VP, and that they should ensure that events attended by the VP be conducted in a smooth and dignified manner.

3.3 IPCC is given to understand that the Police had not further elaborated on the meaning and application of the above guidelines. In order to avoid

inconsistencies and confusions on the part of the frontline officers in interpreting these guidelines, IPCC recommends that all Operational Orders, in particular those containing general and overriding guidelines, should be standardised in wording and coordinated by the Operations Wing, and that ambiguous wording should be avoided.

3.4 IPCC is further given to understand that improvement measures along the above lines have been implemented by the Police in the security operations relating to the visit by President Mr. HU Jintao this year.

3.5 With regard to the setting up of SZ, DPA and Designated Public Activity Areas (“**DPAA**”) as well as related security measures adopted therein, IPCC observes that there were no clear guidelines in the Operational Orders. The demarcation of SZ, the locations of DPA and DPAA, and the related security measures were all deferred to the discretion of the individual police commanders. This may give rise to inconsistencies or even failure in striking the right balance between security needs and the rights of the citizens.

3.6 In particular, IPCC perceives that the blanket prohibition against any protesting activities within the SZ may inhibit the rights of citizens in petitioning or expressing their views in a manner which is otherwise permitted by law.

3.7 With a view to minimising similar complaints in the future, IPCC has made a number of recommendations for CP’s consideration. Details of these recommendations are in paragraph 3.17 of this Final Report.

3.8 Paragraph 3.18 of this Final Report illustrates some improvement measures adopted by the Police in this aspect. IPCC welcomes these measures.

3.9 IPCC has also made observations and recommendations on the Police actions in footbridge closure, pedestrian clearance and traffic control. Details are in paragraphs 3.19 to 3.26 of this Final Report.

## **Part IV - Conclusion**

4.1 IPCC is of the view that there is room for improvement in the planning and execution of the relevant security measures.

4.2 IPCC opines that the Police should seek improvement in the following areas:

- i) Better communication co-ordinated by the Operations Wing as the central command unit;
- ii) Clear guidelines be used in Operational Orders or other form of instructions to the frontline officers so as to ensure that police powers are exercised without any misunderstanding or confusion on the missions and objectives to be achieved;
- iii) Enhanced communication with members of the public and the press insofar as practicable for the purpose of enlisting their cooperation and understanding; and
- iv) Review the relevant security measures vigilantly and at regular intervals so as to ensure that a right balance between security requirements and rights of the citizens is always maintained.

Independent Police Complaints Council

18 December 2012



**Independent Police Complaints Council**  
**Final Report on Complaint Cases**  
**Arising from the Visit by the Vice Premier Mr. LI Keqiang**

**Part I - Overview**

**Background**

1.1 Between 16 and 18 August 2011, Mr. LI Keqiang, the Vice Premier (“**the VP**”) of the State Council of the Central People’s Government, visited Hong Kong. The VP stayed at the Grand Hyatt Hong Kong (“**the Hotel**”) in Wanchai. During his stay, the VP attended the following official functions:-

- i) Visiting the Tung Wah Group Hospital Wong Cho Tong Social Service Building (“**WCT Building**”) in Homantin around 1500 hours on 16 August 2011;
- ii) Visiting the Hong Kong Housing Authority Headquarters (“**HKHAH**”) in Homantin around 1600 hours on 16 August 2011;
- iii) Visiting a family at Laguna City in Kwun Tong in the late afternoon on 16 August 2011;
- iv) Attending a welcome dinner hosted by the Government of the Hong Kong Special Administrative Region at the Hotel in the evening on 17 August 2011;
- v) Attending The University of Hong Kong Centenary Ceremony in the morning on 18 August 2011; and
- vi) Visiting the New Central Government Complex (“**CGC**”) at Tamar in the afternoon on 18 August 2011.

1.2 For the purpose of protecting the VP, the Hong Kong Police (“**the Police**”) conducted security operations at all the above venues and along the related motorcade routes.

1.3 A number of local journalists and protestors were of the view that the security measures adopted by the Police were unnecessarily tight and excessive and the locations of the Designated Press Area (“**DPA**”) and Designated Public Activity Area (“**DPAA**”)<sup>1</sup> were too far away from the venues of the events, making it difficult for reporters to carry out their duties and protestors to express their opinion to the VP. A number of Hong Kong citizens were also inconvenienced by the security arrangements.

1.4 As a result, 22 complaints were received by the Complaints Against Police Office (“**CAPO**”) of the Police, 16 of which were categorised as Reportable Complaints<sup>2</sup> involving 40 separate allegations with the remaining 6 as Notifiable Complaints<sup>3</sup> for reason that the complainants (“**COM**”) of these 6 complaints<sup>4</sup> were not directly affected by the alleged police conduct.

1.5 On 1 September 2011, in view of the public interest in these 16 complaints, the Independent Police Complaints Council (“**IPCC**”) decided that the CAPO investigation into these cases should be monitored and examined by the Serious Complaints Committee of the IPCC.

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<sup>1</sup> DPA is an area set up for reporters to provide news coverage of an event of the protected political dignitary, whereas DPAA is an area designated for protestors to make their protest.

<sup>2</sup> It is the purview of IPCC to observe, monitor and review CAPO’s handling and investigation of Reportable Complaints, but not Notifiable Complaints. According to section 17(1) of the Independent Police Complaints Council Ordinance (**IPCCO**), CAPO must, after the investigation of a Reportable Complaint, submit to IPCC an investigation report. According to section 9, CAPO only needs to submit to IPCC at regular interval a list of Notifiable Complaints, but CAPO’s subsequent handling and investigation of Notifiable Complaints will be outside the purview of IPCC.

<sup>3</sup> CAPO may categorise a complaint as a Notifiable Complaint if it considers the complaint vexatious or frivolous or not made in good faith or if the complaint is made by a party not directly affected by the police conduct. CAPO has to inform IPCC of the reasons for the categorisation.

<sup>4</sup> Details of the 6 Notifiable Complaints are given at **Appendix 1**.

## The Complaints

1.6 The table at **Appendix 2** gives an overview of the 16 complaint cases, their subject matters, CAPO's handling / classification and IPCC's interim assessment in May 2012. The subject matters of the complaints are as follows:

<u>Subject Matter of Complaint</u>	<u>Number of Cases</u>
Closure of footbridge	4
Clearance of pedestrians	2
Security arrangements at HKU	1
Execution of Police Powers and location of DPAA	5
Execution of Police Powers	3
Location of DPA	1

1.7 In May 2012, IPCC submitted the *Report (Interim) on Complaint Cases Arising from the Visit by the Vice Premier Mr. LI Keqiang* (“**the Interim Report**”) to the Chief Executive (“**CE**”). 9 out of the 16 reportable complaints were endorsed. (Appendix 2 refers.)

### Cases Not Resolved in the Interim Report

1.8 The following table summarises the issues in relation to the 7 outstanding cases not resolved in the Interim Report:-

<u>Cases</u>	<u>CAPO Classifications</u> <sup>5</sup>	<u>Issues to be Resolved</u>
Case 2 – Closure of Footbridge to Immigration Tower	Informally Resolved	<u>Senior officer should be held accountable</u> Complainee (“COMEE”) should be the senior officer who decided to close the footbridge instead of the Sergeant who guarded the footbridge.
Case 3 – Closure of Footbridge to CITIC Tower	Not Pursuable	<u>Full investigation should be conducted</u> Though COM has not given a statement, she has provided all the information by email. She is cooperative and can be contacted via the internet.
Case 11 – Protest Outside Convention Plaza	Unsubstantiated & No Fault	<u>Operational Orders<sup>6</sup> yet to be examined</u> Allegations stemmed from police actions in the security arrangements but CAPO has yet provided the necessary information and documents about the security arrangements for IPCC assessment.
Case 12 – Submission of Petition Letter to VP	No Fault	<u>Operational Orders yet to be examined</u> CAPO has yet provided the necessary information and documents about the security arrangements for IPCC assessment.

<sup>5</sup> See **Appendix 3** for definition of classifications.

<sup>6</sup> Operational Orders are documents giving instructions to frontline police officers on the execution of their duties in an operation.

<u>Cases</u>	<u>CAPO Classifications</u> <sup>5</sup>	<u>Issues to be Resolved</u>
Case 13 – Removal of a male at Laguna City	Not Pursuable	<i>Full investigation should be conducted</i> With the available information, CAPO should be able to conduct a full investigation in order to arrive at a definite finding of the complaint.
Case 15 – Protest outside Central Plaza	Sub-Judice <sup>7</sup>	<i>Case pending conclusion of COM's trial</i> Complaint investigation which has been suspended will commence once COM's appeal concludes.
Case 16 – DPA locations and search of reporters' personal belongings	No Fault [Allegations (d) & (f)]	<i>Operational Orders yet to be examined</i> Allegations stemmed from police determination of two DPA locations but CAPO has yet provided the necessary information and documents about the security arrangements for IPCC assessment.

## IPCC Monitoring

1.9 Following the Interim Report, IPCC requested CAPO :-

- i) To list the Senior Superintendent in charge of the security operation in

<sup>7</sup> Sub-Judice means “under judicial consideration but not yet decided”. For a Sub-Judice complaint, investigation would be suspended until the conclusion of the judicial matter.

- Wanchai as the complaine in Case 2;
- ii) To conduct full investigation into Cases 3 and 13;
  - iii) To provide the relevant Operational Orders and instructions given to frontline officers in the security operations for IPCC inspection in order to assess the appropriateness of the security measures adopted by the Police as listed in **Appendix 7**; and
  - iv) To reconsider the “**No Fault**” classifications of Allegations (b) in Case 11 and Allegations (d) and (f) in Case 16, based on what has transpired from the examination of the relevant Operational Orders.

1.10 For a chronology of the monitoring actions taken by IPCC, please see **Appendix 4**.

#### **Further Information from the Police**

1.11 Since issuing the Interim Report, IPCC has inspected the relevant extracts of the following Operational Orders on a confidential basis:-

- i) Hong Kong Police Headquarters;
- ii) Hong Kong Regional Headquarters;
- iii) Kowloon Regional Headquarters;
- iv) Central District;
- v) Kowloon City District (No Operational Order issued but only Tasking Sheet issued);
- vi) Wanchai District;
- vii) Western District; and
- viii) VIP Protection Unit (“**VIPPU**”).

1.12 During the inspection, Senior Police Officers from the Operations Wing were present for answering the questions raised by IPCC. IPCC is

satisfied that all relevant extracts of the Operational Orders were made available for inspection.

1.13 CAPO also furnished to IPCC the Police's justification and legal basis for implementing the security measures during the VP's visit (see **Appendix 8**), and the Police's response to the questions raised by IPCC in Appendix 7 of the Interim Report (see **Appendix 11**).

## Part II – The 7 Outstanding Complaint Cases<sup>8</sup>

### **Case 2 – Closure of Footbridge to Immigration Tower**

#### Complaint

2.2.1 Around 1100 hours on 18 August 2011, COM-2 accompanied his relative to go to the Immigration Tower to handle some immigration matters. When COM-2 wanted to cross the footbridge from O'Brien Road to the Immigration Tower,<sup>9</sup> he found that the footbridge had been closed. COM-2 did not know any other route to go to the Immigration Tower; therefore, he left the spot with his relative. COM-2 considered that since the footbridge was the only way to get to the Immigration Tower, it should not be closed for whatever reason including the VP's security. COM-2 stated that he did not have any encounter with any police officer at the scene.

#### Allegation

2.2.2 COM-2 alleged that COMEE-2 inappropriately closed the footbridge causing inconvenience to him [**Neglect of Duty**].

#### Outstanding Issues

2.2.3 Although CAPO has sought COM-2's agreement in resolving this complaint case by Informal Resolution ("IR"), IPCC disagreed that the Sergeant who was deployed by the Police to close the footbridge (hence identified by

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<sup>8</sup> This Final Report should be read in parallel with the Interim Report. Therefore, the paragraph numbering in Part II is assigned according to the respective Case number. For instance, paragraphs numbered 2.2.x refer to Case 2 whereas paragraphs numbered 2.3.x refers to Case 3.

<sup>9</sup> See Map at Appendix 6.2.



CAPO as COMEE-2) should be held responsible for the purpose of this complaint case. IPCC is of the view that COMEE-2 should be the Police Commander who made the decision to close the footbridge instead of the frontline officer who arranged the closure. IPCC therefore requested CAPO to re-consider the identity of COMEE-2.

2.2.4 IPCC also considered it necessary to examine the relevant Operational Orders for the purpose of assessing the justification for closure of the footbridge.

### **Further Information from the Police**

2.2.5 CAPO agreed with IPCC that COMEE-2 should be the Senior Superintendent who planned and executed the security operation in Wanchai District. Pursuant to the IR procedures, an interview was conducted by the Chief Superintendent of Police of the Complaints and Internal Investigations Branch with the Senior Superintendent. (COMEE-2, now the Senior Superintendent, also features as COMEE-11d, COMEE-12a and COMEE-16e in this Final Report.)

2.2.6 The relevant extracts of the Operational Orders were made available for IPCC inspection. Senior police officers from the Operations Wing were present during the inspection for answering the questions raised by IPCC.

2.2.7 It is revealed that for the purpose of protecting the VP, the Police Headquarters (“**PHQ**”) had issued a PHQ Operational Order (“**PHQ Order**”) to all Regional and District Commanders involved in the security operation so as to define the framework for the security arrangements. The Regional Commanders then issued their own Regional Operational Orders. The District

Commanders in turn issued their own District Operational Orders (“**District Orders**”) which set out guidelines and instructions for police officers to carry out duties in the security operations at the District Level.

2.2.8 The security operation in protecting the VP during his visit between 16 and 18 August 2011 necessitated stringent security measures, including closure of footbridges underneath which the motorcade of the VP would pass. The Police was concerned that when the motorcade drove underneath a footbridge, attacks might be launched or objects might be thrown or dropped from it. Congregation of people on the footbridge would also provide a cover for persons who might pose a security threat. There would not be any prior notice of footbridge closure to the public, as the motorcade routes had to be kept secret for security reasons, and that there might always be last minute changes to the motorcade routes. Uniformed police officers deployed to guard the footbridges were instructed to re-open the footbridge as soon as the motorcade had driven past the spot. However, they were not instructed to keep records of the closure time and period, the information of which was therefore not available.

### **The Police’s Justification for its Power for Footbridge Closure**

2.2.9 The Police elaborated that the power for footbridge closure has been conferred to the police officers under section 10 of the Police Force Ordinance (“**PFO**”), which empowers the Police to take lawful measures for, inter alia, preserving public peace, preventing and detecting crimes and offences, preventing injury to life and property, regulating processions and assemblies in public places or places of public resort, and preserving order in public places and places of public resort.

2.2.10 **Appendix 8** lists out a number of legal authorities which the Police further relies upon as justification for implementing the measures in the security operations with regard to the VP's visit.

### **Conclusion**

2.2.11 Following the rectification by CAPO in identifying the Senior Superintendent as COMEE-2, IPCC endorses CAPO's recommended classification of "**Informally Resolved**".

2.2.12 Given the stringent security requirements for this security operation, IPCC notes there were security reasons for implementing footbridge control in order to protect the VP's motorcade.

### **Observations by IPCC**

2.2.13 IPCC is of the view that the Police may be able to minimise similar complaints in the future by considering the following:-

- i) Whether partial closure of the footbridge is practicable without compromising the integrity of security operation;
- ii) Whether police officer(s) on the spot could provide information to members of public on the duration of closure and / or any alternative route to the destination the access to which has been blocked by the closure;
- iii) Whether the Police could disseminate via press conferences general information about the traffic arrangements and footbridge closure to alert members of the public in advance; and
- iv) Whether police officer(s) deployed to guard the footbridge could keep proper records of the time and duration of the closure.

## Case 3 – Closure of Footbridge to CITIC Tower

### Complaint

2.3.1 Around noon on 16 August 2011, COM-3 intended to walk from CITIC Tower to Admiralty, but found that the footbridge connecting the two locations<sup>10</sup> had been temporarily closed for the security arrangements for the VP's visit. COM-3 learnt from a security guard of CITIC Tower that no prior notice of the closure had been received. COM-3 was dissatisfied with the arrangements as there was no alternative route to go to Admiralty. COM-3 lodged her complaint via e-mail.

### Allegation

2.3.2 COM-3 alleged that COMEE-3 failed to make a proper arrangement on the closure of the footbridge, causing her inconvenience [**Neglect of Duty**]. (Note: CAPO identified a Superintendent in charge of the security arrangements in Central District as COMEE-3. This Superintendent also features as COMEE-12b in this Final Report.)

### Outstanding Issues

2.3.3 As COM-3 insisted not to provide a written statement, CAPO concluded that investigation could not be meaningfully conducted and classified this complaint as “**Not Pursuable**” on the grounds that, according to the Complaints Manual,<sup>11</sup> a complaint should be classified as “Not Pursuable” if “*It*

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<sup>10</sup> See Map in Appendix 6.3.

<sup>11</sup> The Complaints Manual, developed by CAPO in consultation with IPCC, sets out the framework and working protocol for CAPO to handle and investigate complaints against police officers in line with statutory duties imposed under the IPCCO. It contains information, advice and guidelines on procedures for the handling and investigation of reportable complaints.

*has not been possible to obtain the cooperation of the complainant to proceed with the complaint investigation”.*

2.3.4 IPCC did not endorse CAPO’s proposed classification of “**Not Pursuable**”, on the reasoning that definitive findings might be reached by examining the justification of the Police action in closing the footbridge. Therefore, IPCC considered it necessary to examine the relevant Operational Orders for the purpose of assessing the justification for closure of the footbridge.

### **Further Information from the Police**

2.3.5 The relevant extracts of the Operational Orders were made available for IPCC inspection. Senior police officers from the Operations Wing were present during the inspection for answering the questions raised by IPCC.

2.3.6 It is revealed that the security operation in protecting the VP during his visit between 16 and 18 August 2011 necessitated stringent security measures, including closure of footbridges underneath which the motorcade of the VP would pass. The Police was concerned that when the motorcade drove underneath a footbridge, attacks might be launched or objects might be thrown or dropped from it. Congregation of people on the footbridge would also provide a cover for persons who may pose a security threat. There would not be any prior notice of footbridge closure to the public, as the motorcade routes had to be kept secret for security reasons, and that there might always be last minute changes to the motorcade routes. Uniformed police officers deployed to guard the footbridges were instructed to re-open the footbridge as soon as the motorcade had driven past the spot. However, they were not instructed to keep records of the closure time and period, the information of which was therefore not available.

## **The Police's Justification for its Power for Footbridge Closure**

2.3.7 The Police elaborated that the power for footbridge closure has been conferred to the Police Officers under section 10 of the PFO, which empowers the Police to take lawful measures for, inter alia, preserving public peace, preventing and detecting crimes and offences, preventing injury to life and property, regulating processions and assemblies in public places or places of public resort, and preserving order in public places and places of public resort.

2.3.8 **Appendix 8** lists out a number of legal authorities which the Police further relies upon as justification for implementing the measures in the security operations with regard to the VP's visit.

### **Conclusion**

2.3.9 Given the stringent security requirements for this security operation, IPCC notes there were security reasons for implementing footbridge control in order to protect the VP's motorcade.

2.3.10 IPCC holds a different view with CAPO as to what circumstances would lead to a complaint being classified as "Not Pursuable". IPCC is of the view that the refusal of a COM to give a statement is just one of the factors to be considered. In the event that, even without the COM's statement but given the information available to or can be obtained by CAPO, a complaint can still be meaningfully investigated and that it is likely that a definite finding can be arrived at, then the complaint should be fully investigated.

2.3.11 Having said that, further information from the Police revealed that the Police did not keep any records of the time and duration of footbridge closure and in the instant complaint, as COM-3 only alleged in broad terms when she

lodged her complaint that the closure of the footbridge had caused her inconvenience without providing details as to the duration and arrangement of the footbridge closure, a definite finding of her allegation could not be reached despite all the investigative actions CAPO has taken. Hence IPCC endorses CAPO's recommended classification of "**Not Pursuable**".

### **Observations by IPCC**

2.3.12 IPCC is of the view that the Police may be able to minimise similar complaints in the future by considering the following:-

- i) Whether partial closure of the footbridge is practicable without compromising the security operation;
- ii) Whether police officer(s) on the spot could provide information to members of public on the duration of closure and / or any alternative route to the destination which access has been blocked by the closure;
- iii) Whether the Police could disseminate via press conferences general information about the traffic arrangement and footbridge closure to alert members of the public in advance; and
- iv) Whether police officer(s) deployed to guard the footbridge could keep proper records of the time and duration of the closure.

## Case 11 – Protest Outside Convention Plaza

### Complaint

2.11.1 Around 0900 hours on 17 August 2011, COM-11 was stopped outside the Convention Plaza<sup>12</sup> when she attempted to go to the Hotel to submit a petition letter to the VP. COM-11 told the Police that she wanted to see a friend who resided at the Hotel, but she did not provide the particulars of her friend or her friend's room number. The Police told her that the Hotel had been closed as a political dignitary was residing therein.

2.11.2 When COM-11 saw the VP's motorcade leaving the Hotel, she took out a petition letter and showed it to the reporters. Observing that COM-11 was a protestor, Police Officers requested COM-11 to go to the DPAA. COM-11, however, refused and attempted to force her way to the Hotel. Subsequently, COMEE-11a (a Sergeant), COMEE-11b (a Police Constable) and COMEE-11c (a Woman Police Constable) together with some other police officers removed COM-11 to the lobby of the Convention Plaza.

### Allegations

2.11.3 COM-11 lodged 2 allegations against the COMEES:-

(a) **Assault** (against COMEE-11a, COMEE-11b and COMEE-11c)

In removing her from the scene, COMEE-11a pulled her hair and ears, and punched her mouth and head twice; COMEE-11b twisted her arms; and COMEE-11c grabbed her neck in order to press her onto the ground; and

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<sup>12</sup> See Map and Photos 1 – 4 in Appendix 6.11.



(b) **Unnecessary Use of Authority** (against COMEE-11d)

The Police had unnecessarily used their authority to refuse her access to the Hotel to see her friends who were residents there. (Note: The Senior Superintendent in charge of the security operation was identified as COMEE-11d of this allegation.)

**CAPO Investigation**

2.11.4 Allegation (a) – Assault

- i) CAPO interviewed 14 police officers who were present at the scene, including COMEE-11a, COMEE-11b, COMEE-11c and the Senior Inspector (“**the SIP**”) in charge of security arrangements outside the Hotel. According to them, COM-11, who was holding a placard, was among a group of about 8 protestors. The SIP advised the protestors to go to the DPAA but the protestors declined. COM-11 then attempted to break through the police cordon to go to the Hotel but was stopped by police officers, including COMEE-11b and COMEE-11c. COM-11 became emotional and lied on the floor. Upon the SIP’s instruction, COMEE-11a to COMEE-11c together with other police officers carried COM-11 into the Convention Plaza. COMEE-11a to COMEE-11c denied assaulting COM-11.
- ii) According to the SIP, bona fide customers of the Hotel would be allowed to go into the Hotel after verification of their status. COM-11, however, was not a bona fide customer. During the commotion, COM-11 fell onto a police officer and shouted “差人打人!” [Police assaults! (CAPO’s translation)]. Seeing that COM-11 was getting emotional and public peace was likely to be breached, he ordered COM-11 be removed for security reason.
- iii) The events recounted by COMEE-11a to COMEE-11c and the SIP

were captured by the video filmed by the Police Video Team (“PVT”).

- iv) Neither the PVT video nor the CCTV installed at the lobby of the Convention Plaza captured any image of the alleged assault.
- v) Apart from the 14 police officers, CAPO also interviewed 3 civilian witnesses, including a bellboy of the Hotel who witnessed part of the incident. The bellboy witnessed the incident from his position at the entrance of the Hotel, and he did not see COM-11 being assaulted by any police officers.
- vi) CAPO proposed that this allegation be classified as “**Unsubstantiated**” on the grounds that:-
  - (1) There has not been any evidence showing that any of the COMEEs had assaulted COM-11; and
  - (2) No definite finding can however be reached owing to the possibility that the relevant video images may not have covered the whole scene at all times.

#### 2.11.5 Allegation (b) – Unnecessary Use of Authority

- i) When interviewed by CAPO, COM-11 admitted that her purpose of going to the Hotel was to submit a petition letter to the VP, though she told police officers at the ramp that she wanted to go to the Hotel to see her friends. COM-11 also said her friends she claimed she wanted to see at the Hotel were with her on the spot, also intending to submit a petition letter to the VP.
- ii) CAPO identified a Senior Superintendent responsible for the security operation in the vicinity of the Hotel as COMEE-11d for Allegation (b). (Note: COMEE-11d also features as COMEE-2, COMEE-12a and COMEE-16e in this Final Report.)
- iii) COMEE-11d, when interviewed by CAPO, stated that the Hotel

management did not allow any protest within the Hotel. Only people with bona fide reasons for going to the Hotel, such as residents of the Hotel, would be allowed access after the reasons had been verified. COM-11, being a protestor, was denied access. PVT video showed that COM-11 dashed towards police officers at the scene in attempt to break through police cordon to go to the Hotel. It was reasonable for the Police to exercise powers to remove COM-11.

- iv) The SIP and other police officers interviewed by CAPO said COM-11 had never made any request to see her friends at the Hotel.
- v) CAPO proposed that this allegation be classified as “**No Fault**” on the grounds that:-
  - (1) COM-11 was denied access to the Hotel as she did not have a bona fide reason to go into the Hotel;
  - (2) COM-11 had started a commotion upon being requested by the Police to enter the DPAA;
  - (3) The removal of COM-11 was reasonable and necessary as she had attempted to break through the cordon line; and
  - (4) COM-11’s emotional behaviour was reasonably perceived as an obstruction and threat to the execution of the security operation.

### **Outstanding Issues**

2.11.6 After examining the CAPO investigation report, IPCC did not endorse CAPO’s proposed classifications of the allegations for want of further information.

2.11.7 IPCC requested CAPO to provide the relevant Operational Orders and further information, if any, with regard to the DPAA locations in the vicinity

of the Hotel for the VP's visit and previous visits by other political dignitaries, as well as the legal basis for removing COM-11.

### **Further Information from the Police**

2.11.8 The relevant extracts of the Operational Orders were made available for IPCC inspection. Senior police officers from the Operations Wing were present during the inspection for answering the questions raised by IPCC.

2.11.9 As mentioned in paragraph 2.2.8, this security operation necessitated stringent security measures. In the security operation, the Police defined the Hotel (where the VP resided) as Core Security Zone (“CSZ”). The surrounding vicinity of the Hotel was demarcated as Security Zone (“SZ”). The VIPPU was responsible for the security measures in CSZ whilst police officers of Wanchai District were responsible for the security measures in the SZ.

2.11.10 Only authorised or permitted personalities would be allowed access to the CSZ and SZ, and that any public activities would have to be conducted at locations outside both the CSZ and SZ. No protest activity would be allowed within the CSZ or SZ throughout the 3-day security operation, whether or not the VP was inside the Hotel. Appropriate actions including removal of persons who were suspected to have compromised, or posed a threat, to the security operation would be carried out by police officers at the scene. An individual, or individuals, whose behaviour, if found or reasonably suspected to have caused a breach of peace or obstruction in public place would be dealt with accordingly.

## The Police's Justification for Removal Action

2.11.11 Concerning the legal power for removing COM-11, CAPO stated that the removal action was taken pursuant to section 10 of the PFO, which empowers police officers to take lawful measures for, inter alia, preserving public peace, preventing and detecting crimes and offences, preventing injury to life and property, regulating processions and assemblies in public places or places of public resort, and preserving order in public places and places of public resort.

2.11.12 CAPO also quoted the court cases listed in **Appendix 8** to further support the legal basis for implementing the measures in the security operations with regard to the VP's visit and taking removal action on COM-11. In particular, it was stated in *YEUNG May Wan & ors v HKSAR* (2005) 8 HKCFAR 137, "*The law also calls upon demonstrators to accommodate other people's rights ... For that purpose demonstrators have to tolerate some interference with their own freedom to demonstrate. Such tolerance is expected of demonstrators however strongly they may feel about their cause.*"

2.11.13 CAPO maintained the originally proposed classifications of both allegations. CAPO stated that COM-11 presented herself as a protestor, holding the placard and intending to submit a petition letter. COM-11 wished to protest at a close proximity of the Hotel. When denied access to the Hotel, COM-11 became emotional and dashed towards the police cordon. CAPO considered that removal of COM-11 was a lawful, necessary and proportionate measure as COM-11 had displayed a strong tendency towards escalating emotions which might result in injury to herself or others.

## Conclusion

2.11.14 IPCC accepts the finding of facts that at the material time, the purpose of COM-11 going to the Hotel was not for seeing her friends who were residents there, but was to submit a petition letter to the VP. As the Hotel was a private property and its management had indicated to the Police that it would not allow any protesting activity inside the Hotel, COM-11 was justifiably refused access to the Hotel (see *HKSAR v Au Kwok Kuen* [2010] 3 HKLRD 371). Furthermore, she was removed from the scene as a result of her attempt to break through the police cordon and her escalating emotion and un-cooperative behaviour which aroused the Police's concern over the security at the scene. COMEE-11d was merely exercising his duty under section 10 of the PFO and in accordance with the instructions from the Operational Orders. IPCC therefore endorses CAPO's proposed classification of "**No Fault**" for Allegation (b). As to Allegation (a), IPCC agrees that there is insufficient evidence to prove or negate the allegation despite thorough investigations carried out by CAPO, and hence endorses the "**Unsubstantiated**" classification.

## Observations by IPCC

2.11.15 There are no guidelines in the Operational Orders on how the SZ was determined. Having assessed all the information provided by the Police, IPCC has reservation over whether the Police was justified to disallow all protesting activity within the SZ throughout the 3-day security operation. In particular, the SZ seems to cover a large area outside the Hotel (including the Convention Plaza area) and no protesting activity was allowed inside the SZ irrespective of whether the VP was inside the Hotel, whether one was protesting in a peaceful manner or whether one was willing to be subject to any security checking. IPCC will further address this issue in Part III of this Final Report.

## Case 12 – Submission of Petition Letters to VP

### Complaint

2.12.1 In the afternoon on 17 August 2011, COM-12 intended to go to the CGC to submit a petition letter to the VP. On the footbridge connecting Admiralty Centre and CITIC Tower,<sup>13</sup> police officers asked her where she was going and requested her to provide her personal particulars. (Note: It was unknown whether COM-12 had acceded to such request.)

2.12.2 After learning that the VP had not arrived at CGC, COM-12 left for Wanchai. On the footbridge connecting Luk Kwok Hotel and Immigration Tower,<sup>14</sup> a police officer asked her the reason for being there and requested her to provide her personal particulars. COM-12 showed to the police officer her petition letter. As a result, the police officer took COM-12 to the DPAA between Wanchai Tower and Immigration Tower<sup>15</sup> where another police officer also asked for her personal particulars. At the DPAA, COM-12 gave her petition letter to two police officers and provided her personal particulars for record purpose.

2.12.3 In the afternoon on 18 August 2011, COM-12 went to CGC again, in the hope of submitting another petition letter to the VP. COM-12 gave her petition letter and personal particulars to a police officer at CGC. On 28 August 2011, COM-12 received a letter from the Chief Executive's Office informing her that her two petition letters had been passed to the VP's delegation.

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<sup>13</sup> See Map in Appendix 6.12.

<sup>14</sup> See Map in Appendix 6.12.

<sup>15</sup> See Map in Appendix 6.12.

## **Allegation**

2.12.4 COM-12 alleged that COMEE-12a (a Senior Superintendent in charge of the security operations in Wanchai) and COMEE-12b (a Superintendent in charge of the security operations at CGC) failed to make proper arrangements in the security operation for the VP's visit by making enquiry with her on several occasions and making her unable to express her views to the VP's delegation [**Neglect of Duty**]. (Note: COMEE-12a also features as COMEE-2, COMEE-11d, and COMEE-16e, whereas COMEE-12b also features as COMEE-3 in this Final Report.)

## **Outstanding Issues**

2.12.5 After investigation, CAPO proposed that the allegation should be classified as "**No Fault**" on the grounds that it was proper for the police officers to request COM-12 to provide her personal particulars and escort her to the DPAA as well as receiving her petition letters.

2.12.6 IPCC did not endorse CAPO's proposed findings, and requested CAPO to provide the relevant Operational Orders for the purpose of assessing whether any security measures adopted by the Police would cause hindrance to protestors to express their views to the VP.

## **Further Information from the Police**

2.12.7 The relevant extracts of the Operational Orders were made available for IPCC inspection. Senior police officers from the Operations Wing were present during the inspection for answering the questions raised by IPCC.



2.12.8 CAPO also furnished the following information:-

- i) Frontline officers had not been instructed to check the personal particulars of protestors in DPAA. In execution of their duties, frontline officers could depend on the situations request certain persons to provide their personal particulars.
- ii) Police officers are empowered under section 10 of the PFO to request citizens to provide their personal particulars.
- iii) For security reason, the VP's delegation would not receive petition letters directly from any citizen. Police officers would record the particulars of a petitioner who would then be informed when his petition letter had been passed to the VP's delegation.

2.12.9 After examination of the relevant extracts of the Operational Orders, IPCC did not notice any written instructions therein as to whether or not frontline police officers involved in the security operation should obtain the personal particulars of persons who were intercepted by the Police during the security operation.

### **Conclusion**

2.12.10 IPCC observes that police officers who intercepted COM-12 on the aforesaid occasions had made brief enquiries with COM-12 as to her intention of going towards the direction of SZ. Upon knowing that COM-12 intended to submit a petition letter to the VP, the police officers had appropriately assisted COM-12 by accepting the petition letters from her and duly passed the petition letters to the VP later on. Overall there is no evidence to show that any police officer had hindered, nor was instructed to hinder, COM-12 to express her views freely, and that her petition letters were duly passed to the VP delegation by the Police.

2.12.11 Therefore, IPCC endorses CAPO's proposal that the allegation be classified as "**No Fault**".

## Case 13 – Removal of a Male at Laguna City

### Complaint

2.13.1 This complaint relates to the removal of COM-13, who was wearing a T-shirt with “平反六四” [Vindication of June 4<sup>th</sup> (CAPO’s translation)] printed on the back, by force by five police officers of the VIPPU (COMEE-13b to COMEE-13f) upon the instructions of a Senior Superintendent of VIPPU (COMEE-13a who was responsible for the security operation) in the afternoon on 16 August 2011 outside Block 26 of Laguna City<sup>16</sup> when the VP was paying a visit to a family in Block 26.

### Allegation

2.13.2 COM-13 alleged that 4 unidentified officers of the VIPPU assaulted him, causing injuries to his right arm and pain on his shoulders [**Assault**].

### Outstanding Issues

2.13.3 Since COM-13 lodged the complaint, CAPO had made several attempts to interview COM-13 for statement taking purpose. COM-13, however, did not attend any interview appointment with CAPO, nor did he respond to call up letters sent to him by CAPO. Hence, CAPO proposed to classify the allegation as “**Not Pursuable**”.

2.13.4 IPCC disagreed with CAPO’s proposal. IPCC was of the view that, notwithstanding that COM-13 failed to provide a statement, CAPO should still

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<sup>16</sup> See Map in Appendix 6.13.

conduct full investigation into the complaint by examining the relevant news reports and video clippings which captured the removal of COM-13 by a number of individuals wearing black suits who were subsequently confirmed to be police officers of the VIPPU, as well as conducting other necessary enquiries with a view to identifying witnesses, if any, at the scene, for the purpose of striving for a definite finding on the classification of the allegation.

2.13.5 IPCC interviewed COM-13 and also sought clarification from CAPO on the justification and legal basis for removing COM-13 from the scene. To this end, IPCC had requested CAPO to provide the relevant Operational Orders for examination.

#### **Further Information from the Police**

2.13.6 As mentioned in paragraph 2.2.8, this security operation necessitated stringent security measures. The visit of the VP to Laguna City was not publicly announced, and so no officer from the District Formation was involved in the security arrangement as the visit was only arranged on short notice. VIPPU decided to assign its own members to cover the route of the VP in Laguna City.

2.13.7 CAPO clarified that the removal actions were based on section 10 of the PFO, which empowers police officers to take lawful measures for, inter alia, preserving public peace, preventing and detecting crimes and offences, preventing injury to life and property, regulating processions and assemblies in public places or places of public resort, and preserving order in public places and places of public resort.

2.13.8 CAPO also quoted the court cases listed in **Appendix 8** to further

support the legal basis for the removal actions. In particular, it was stated in *Chan Hau Man Christina v Commissioner of Police* [2009] 6 HKC 44 that “...the court must guard against the danger of hindsight, and the judgment of the officer on the spot, in the exigency of the moment, deserves respect.”

### **Investigative Actions by CAPO**

2.13.9 Despite the fact that COM-13 had not provided any statement, at the request of IPCC, CAPO did proceed to conduct the following investigative actions:-

- i) CAPO managed to obtain the relevant video records which captured the removal of COM-13 from the scene, and thoroughly examined the same;
- ii) CAPO managed to identify the COMEES involved in the removal of COM-13;
- iii) CAPO had conducted site visit at Laguna City with a view to identifying any witness of the incident, but in vain; and
- iv) CAPO managed to interview all the COMEES and take statements from them.

2.13.10 Upon completion of the above investigative actions, CAPO maintained that the classification of the allegation should be “**Not Pursuable**”. CAPO’s reasoning is as follows:-

- i) The behaviour of COM-13 at the scene had aroused COMEE-13a’s concern over the safety of the VP whose departure from Block 26 was imminent;
- ii) The relevant video records were thoroughly examined but no evidence of COM-13 being assaulted emerged therefrom;
- iii) No other witness could be identified;

- iv) COM-13 refused to be interviewed by CAPO; and
- v) In view of the above, no definite findings could be reached.

### **An Outwith Matter**

2.13.11 During the IPCC's interview, it was revealed that COMEE-13a and a Chief Inspector of Police of the VIPPU ("**the CIP**") had failed to reveal their police identities when they intercepted COM-13, which was in breach of Police General Orders ("**PGO**"), which stipulates that "*an officer in plain-clothes when dealing with members of the public and exercising his police powers...shall identify himself and produce his warrant card.*" The Police has confirmed that VIPPU officers must always carry their warrant cards and be subject to the same disclosure of identity requirement under the PGO. Both COMEE-13a and the CIP accepted that they should have disclosed their police identities but explained that they omitted to do so in the instant case because they were in a rush. CAPO, therefore, registered an "**Outwith**" matter of "**Neglect of Duty**" against them. COMEE-13a and the CIP will be "advised without DRF entry".

### **Conclusion**

2.13.12 Since the Interim Report, CAPO has carried out a number of investigative actions as detailed in paragraph 2.13.9. The enquiries conducted by CAPO are comparable to those of a full investigation. Despite so, CAPO still cannot reach a definite finding on the complaint allegation. Having further reviewed the information supplied by CAPO and the investigative actions conducted by them, IPCC agrees that no definite finding can be reached for COM-13's allegation in the absence of his cooperation to give a statement to CAPO. Hence, IPCC endorses CAPO's proposal that the allegation be classified as "**Not Pursuable**".

## **Observations by IPCC**

2.13.13 Notwithstanding the endorsement by IPCC on the classification of the allegation, IPCC is of the view that the handling of the situation by the COMEEs could be improved from a complaint prevention perspective. To this end, IPCC observes:-

- i) At the material time, COM-13 was seen by COMEE-13a to be moving away from Block 26 of Laguna City (the very building that the VP was visiting and where COM-13 resided at). It may be prudent for COMEE-13a to covertly monitor COM-13's movement for a longer while before intercepting him for questioning. That said, IPCC agrees that the decision of intercepting COM-13 was practically a judgment call.
- ii) It would definitely be prudent for COMEE-13a to identify himself immediately upon the interception, so as to minimise the chance of misunderstanding on the part of COM-13. (The "Outwith" matter refers.)
- iii) In the instant case, the Police must be aware that Laguna City is a residential area where movement of residents would be frequent. The Police should therefore plan ahead as to how to deal with the residents who were seen to be moving around, or even coming in and out of Block 26, in an appropriate manner.
- iv) As the visit was not publicly announced, it is only natural that the residents of Laguna City would be caught by surprise of the VP's visit. The Police should be prepared to explain the reason why they need to take stringent measures in intercepting and questioning persons whom they encountered.

## Case 15 – Protest Outside Central Plaza (Sub-Judice)

### Complaint

2.15.1 Around 2135 hours on 16 August 2011, COM-15 who wanted to protest outside the Hotel was escorted by COMEE-15a (a Woman Police Constable) to the DPAA outside the Central Plaza. When they arrived at the DPAA,<sup>17</sup> COM-15 refused to enter the designated area but attempted to go in the direction of the Hotel. COMEE-15a and COMEE-15b (another Woman Police Constable) tried to stop COM-15 but COM-15 put up a struggle. Subsequently, with the assistance of COMEE-15b to COMEE-15e (COMEE-15c to COMEE-15e were respectively a Woman Senior Inspector and 2 Police Constables), COMEE-15a arrested COM-15 for “Resisting a Police Officer in the Execution of Duty”. COM-15 was later charged with 2 counts of the offence.

### Allegations

2.15.2 COM-15 alleged that:-

- (a) COMEE-15a arrested her without justifiable reason [**Neglect of Duty**]; and
- (b) COMEE-15a to COMEE-15e assaulted her during the arrest [**Assault**].

### Outstanding Issues

2.15.3 On 27 July 2012, COM-15 was convicted after trial and was ordered to be bound over for 1 year. COM-15 subsequently lodged an appeal against

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<sup>17</sup> See Map in Appendix 6.15.



both her conviction and sentence. The appeal will be heard at the High Court on 18 December 2012. The complaint investigation has been suspended on the ground of “Sub-Judice” and will remain so until the conclusion of the appeal hearing when the investigation will be re-activated and dealt with separately.

## Case 16 – DPA Locations and Search of Reporters’ Personal Belongings

### Complaint

#### *Location of DPA outside WCT Building*

2.16.1 COM-16 is a reporter of Metro Broadcast. On 16 August 2011, she covered the news of VP’s visit to HKHAH and WCT Building in Homantin. At 1200 hours on 16 August 2011, COM-16 went to WCT Building and noticed that reporters had placed video equipment at a location opposite to the entrance of WCT Building across Sheung Shing Street (denoted as “A”; about 24.5 meters from the entrance of WCT Building).<sup>18</sup> Later, COM-16 left the location for HKHAH.

2.16.2 When COM-16 returned to WCT Building, she noticed that a DPA had been set up on the pavement at the road junction of Sheung Shing Street and Sheung Lok Street, diagonally opposite to WCT Building (denoted as “B”; about 39.2 meters from the entrance of WCT Building).<sup>19</sup> COM-16 considered the location too far from WCT Building, making her unable to see the VP. [Note: Subsequent CAPO enquiries revealed that the Police initially set the DPA at another location (denoted as “C”)<sup>20</sup> which is farther away from WCT Building. After negotiation with the reporters on the material day, the Police eventually agreed to settle the DPA at location “B”.]

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<sup>18</sup> See location “A” on Map 1 and Photo 1 in Appendix 6.16.

<sup>19</sup> See location “B” on Map 1 and Photo 2 in Appendix 6.16.

<sup>20</sup> See location “C” on Map 1 and Photo 3 in Appendix 6.16

### *Searching of COM-16's Purse*

2.16.3 When COM-16 entered the DPA (at location "B") outside WCT Building, COMEE-16b searched her personal belongings, which COM-16 had no objection. In the search, COMEE-16b examined COM-16's purse closely, counting every banknote, taking out a taxi receipt from the inner compartment of her purse and even rubbing the taxi receipt with her (COMEE-16b's) fingers. COM-16 felt that her privacy had been unreasonably invaded, so she asked COMEE-16b the reason for searching her purse so meticulously but COMEE-16b did not give a reply. COM-16 then turned to COMEE-16c (a Sergeant), who instructed COMEE-16b to search COM-16's belongings, for an answer. COMEE-16c, however, also did not offer her any explanation.

### *Location of DPA at HKHAH*

2.16.4 COM-16 was also dissatisfied with the location of the DPA at HKHAH which was set up at the entrance of a sidewalk of HKHAH,<sup>21</sup> about 20 meters from where VP would enter HKHAH. COM-16 reckoned that the DPA was too far away to let her see the VP clearly. COM-16 noticed that before the VP's arrival, the Police allowed residents to use the sidewalk but forbade reporters to go there. COM-16 thought that it was not a fair arrangement. COM-16 did not however stay at HKHAH until the VP's arrival but went to WCT Building to provide news coverage there.

### *Security Arrangements at the Hotel*

2.16.5 In the evening on 17 August 2011, HKSAR held a welcome dinner at

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<sup>21</sup> See Map 2 and Photo 4 in Appendix 6.16.

the Hotel. COM-16 was tasked to provide news coverage on the banquet. COM-16 and other reporters were arranged to stay inside a room in the Hotel to watch the live broadcast of the event. Sometime that evening, COM-16 requested to use the toilet. COMEE-16d (a Woman Police Constable) accompanied her to the toilet. COM-16 felt embarrassed by COMEE-16d waiting for her inside the toilet.

2.16.6 After the banquet, COM-16 and other reporters were required to leave the Hotel to continue news coverage at the DPA located on the sidewalk between Wanchai Tower and Shui On Centre.<sup>22</sup> COM-16 considered the DPA too far away from the Hotel.

### Allegations

2.16.7 COM-16 alleged that:-

- (a) COMEE-16a (a Senior Superintendent) failed to make a fair arrangement for her to properly discharge her duty as a reporter at HKHAH [**Neglect of Duty**] (Note: CAPO identified COMEE-16a for this allegation because he planned and executed the security operation at HKHAH);
- (b) COMEE-16b invaded her privacy by searching (at the DPA outside WCT Building) the personal items in her purse [**Unnecessary Use of Authority**];
- (c) COMEE-16c failed to offer her an explanation for searching her purse [**Neglect of Duty**];
- (d) The location of the DPA set up by COMEE-16a outside WCT Building was inappropriate as it was too far away from the visiting

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<sup>22</sup> See Map 3 and Photo 5 in Appendix 6.16.

spot of the VP [**Neglect of Duty**] (Note: CAPO identified COMEE-16a for this allegation because he planned and executed the security operation at WCT Building);

(e) COMEE-16d embarrassed her by waiting for her inside the toilet near the sink [**Misconduct**] (Note: COM-16 later withdrew this allegation); and

(f) COMEE-16e inappropriately set up a DPA at a location too far away from the Hotel [**Neglect of Duty**]. (Note: CAPO identified COMEE-16e for this allegation because he planned and executed the security operation in Wanchai where the Hotel was located. COMEE-16e also features as COMEE-2, COMEE-11d, and COMEE-12a in this Final Report.)

### **Outstanding Issues**

2.16.8 Of the 6 allegations as above, IPCC has endorsed 4 of them, namely Allegations (a), (b), (c) and (e) as “**No Fault**”, “**Substantiated**”, “**Substantiated**” and “**Withdrawn**” respectively. (Please refer to the Interim Report for details.)

2.16.9 IPCC did not endorse the classification proposed by CAPO on Allegations (d) and (f) (both “**No Fault**”) on the grounds that IPCC has yet to examine the relevant Operational Orders to ascertain if the setting up of the DPA were reasonable and justified. CAPO was therefore requested to provide the relevant Operational Orders for IPCC inspection.

### **Further Information from the Police**

2.16.10 The relevant extracts of the Operational Orders were made available for IPCC inspection. Senior police officers from the Operations Wing were present during the inspection for answering the questions raised by IPCC.

2.16.11 It was the responsibility of COMEE-16a and COMEE-16e to decide on the locations of the DPA respectively outside WCT Building and the Hotel. For security reasons, a DPA must be located outside the SZ. However, no Operational Order for the Kowloon City District was issued by COMEE-16a as all the visits of the VP within that District were not publicly announced. SZ was therefore not formally demarcated in the Kowloon City District. Instead, COMEE-16a demarcated a “Secure Area” in the vicinity of the WCT Building on an ad hoc basis for security management shortly before the arrival of the VP.

2.16.12 In considering the location for a DPA, COMEE-16a and COMEE-16e had to keep an appropriate distance between the reporters and motorcade as the motorcade was subject to higher risk at the arrival and departure locations when the motorcade moved at a lower speed. COMEE-16a and COMEE-16e must also consider the following factors:

- i) The need to facilitate media work;
- ii) The demarcation of the SZ;
- iii) The geographical layout of the location; and
- iv) The need to minimise obstruction to other members of the public.

2.16.13 COMEE-16a and COMEE-16e explained that they had considered the need to facilitate media work without compromising the safety of the VP and his motorcade. The locations of the DPA that they eventually chose were the best vantage points they could safely and reasonably offer. On this basis, CAPO maintained that both allegations should be classified as “**No Fault**”.

### **IPCC Assessment**

2.16.14 IPCC notes that the DPA outside the Hotel was at a position quite far away from the Hotel (on the opposite side of Harbour Road), but it was already

the closest location outside the SZ. According to the Police, the size and demarcation of the SZ were determined by District Commanders based on security requirements. COMEE-16e stated that the DPA had to be set up outside the SZ in the vicinity of the Hotel. So the question is whether the SZ at the Hotel had to be demarcated with such a dimension, and even if so, whether a DPA had to be set up outside the SZ. There are no guidelines in the Operational Orders on how the SZ was determined, and it appears that it was left to the discretion of individual District Commander. Having assessed all information provided by the Police, IPCC is not in a position to confirm whether the requirement that the DPA had to be outside the SZ was justifiable and whether there could be more proper arrangements for setting the DPA at a location closer to the Hotel to give effect to the right and freedom of the press without compromising the security concerns. In particular, IPCC notes that in the absence of a formal SZ set up in the Kowloon City District, the DPA could be set up within the Secure Area during the visits of the VP to the HKHAH and WCT Building.

2.16.15 As regards the DPA outside the WCT Building, IPCC appreciates that COMEE-16a made a judgment call based on the security requirements for this operation. IPCC is generally satisfied that COMEE-16a made the decision purely out of security concerns and had tried to be flexible in accommodating the media's interests (e.g. in eventually accepting a compromised position of DPA). On the other hand, IPCC notes that the original DPA planned by COMEE-16a at the bus stop (location "C") was quite far away from the venue (61.8m away) and at an angle which made it difficult, if not impossible, for the reporters to perform their reporting duties. IPCC notes COMEE-16a's concern about the need to keep an appropriate distance between the reporters and motorcade as the motorcade was subject to higher risk at the arrival and departure locations when the motorcade moved at a lower speed. However,

IPCC also notes the Police's reply (see **Appendix 11** for details) that some DPA were situated in relatively close proximity within the SZ to venues where the VP's motorcade would arrive or depart in order to provide the media with a vantage point to cover the arrival or departure of the VP. In that situation, because of the close proximity to the arrival or departure of the motorcade, arrangements including a search and verifying the identities of members of the media would be necessary. Having assessed all information provided by the Police, IPCC is not in a position to confirm whether there could be more proper arrangements for setting up the DPA at a location closer to the WCT Building to give effect to the right and freedom of the press without compromising the security concerns.

### **Conclusion**

2.16.16 IPCC therefore opines that it is more prudent to classify Allegations (d) and (f) as "**Unsubstantiated**". Hence, IPCC does not endorse the "**No Fault**" classification proposed by CAPO for Allegations (d) and (f). CAPO, however, maintains that both allegations should be classified as "**No Fault**". Since CAPO does not subscribe to the view of IPCC, IPCC's opinion as aforesaid is submitted to CE for consideration pursuant to section 19(3) of the IPCCO.

### **Observations by IPCC**

2.16.17 IPCC is of the view that the Police may be able to minimise similar complaints in the future by considering the following:-

- i) To refrain from setting up DPA in areas which are generally accessible to the public i.e. allow reporters to move around in areas that are not a restricted zone. If setting up of DPA is required, as far



as is practicable, the Police should do so in consultation with the reporters as to the desirable location without compromising the safety of the dignitary;

- ii) To strengthen communication during the planning and execution phases between the Police Public Relations Branch (“**PPRB**”) and frontline police officers, particularly those involved in the setting up of DPA and organising the associated press arrangements; and
- iii) To inform media in advance of the media arrangements as long as to do so would not compromise the integrity of the security operation.

## **Part III– The Security Measures:** **Observations and Recommendations**

3.1 Other than the 16 reportable complaints, there have been widespread concerns over the magnitude of the security measures implemented by the Police during the VP’s visit. In addition to examination of each individual reportable complaint separately, IPCC finds it necessary to examine the overall security arrangements adopted by the Police from a holistic perspective, with a view to preventing similar complaints in the future and making appropriate recommendations to the Commissioner of Police (“CP”) and / or the CE, pursuant to section 8(1)(c) of the IPCCO.

3.2 The Police’s response to the various queries raised by IPCC in **Appendix 7** of the Interim Report can be found at **Appendix 11**. IPCC has carefully considered the Police’s response and all other available information (including information obtained through IPCC interviews of various police officers and inspection of the relevant extracts of the Operational Orders). In this Part, IPCC sets out its observations and recommendations in respect of the security arrangements.

### **Planning of the Security Operation**

#### *Information from the Police*

3.3 IPCC is given to understand that the security measures and related Police actions to be adopted in a security operation are commensurate with the security requirements. This particular security operation necessitated stringent security measures. For the purpose of coordinating among various units and Districts involved in this security operation, a “Planning and Liaison Group”

was set up by PHQ, chaired by Assistant Commissioner of Police (Operations).

3.4 The Planning and Liaison Group coordinated and specified the missions and framework for the security operations to be planned and executed by the respective Regional and District Commanders, through the means of the PHQ Order. The PHQ Order highlighted the situation leading to the security operations, its missions, and guidelines on execution of Police duties. Upon receipt of this PHQ Order, the relevant Regional and District Commanders and VIPPU issued their own Operational Orders for police officers as execution guidelines. The District Operational Orders should have been submitted to the Operations Wing to confirm that the security measures to be implemented by different Districts were consistent and commensurate with the situation, missions and guidelines set out in the PHQ Order. However, it was revealed that due to time constraint, the District Operational Orders for the VP's visit were not submitted to the Operations Wing for prior scrutiny. As a result, there were inconsistencies among the Operational Orders of different levels or loose wording which might give rise to misunderstandings.

3.5 For example, even though the paramount mission of this security operation stated in the PHQ Order, and repeated in other Operational Orders, was to protect the safety of the VP, IPCC noticed that, in some Operational Orders, officers were reminded to take action where necessary to pre-empt embarrassment or threat to the VP, while guidelines were also given to the frontline officers that the overriding principle was to ensure the personal safety of the VP and the events attended by the VP be conducted in a smooth and dignified manner. Since there was no elaboration of the wording (such as smooth and dignified manner and embarrassment) in the Operational Orders, IPCC therefore sought clarification from the Police on the application and meaning of the wording. The Police clarified that the wording did not carry

any special meaning and no verbal briefings had been given to frontline police officers as to the meaning and application of the wording. The Police reiterated that the sole purpose of the security operation was to protect the personal safety of the VP and to maintain public order, without any political consideration.

3.6 Due to time constraint, the Operations Wing did not have the opportunity to give briefings to frontline commanders (Inspectors or above) on the missions and execution of the security operations. The Operations Wing only had time to give a briefing to the District Commanders who in turn gave instructions to the frontline commanders. To ensure the consistency in the execution of duty by frontline officers, the Operations Wing has subsequently adopted a policy of giving briefings directly to Inspectorate officers or above who need to supervise the security operation.

#### *Observations and Recommendations by IPCC*

3.7 IPCC is of the view that there is clear room for improvement in the coordination of the overall securities arrangements. The wording in some Operational Orders as mentioned in paragraph 3.5 is ambiguous in meaning and application. Hence it is capable of causing confusion to police officers receiving such instructions, in that they might wrongly and inappropriately over-react against civilians whose behaviour was mistakenly construed as causing the VP to suffer from indignity or embarrassment, or causing disturbance to the smooth running of the event attended by the VP. Therefore it is recommended that in future all Operational Orders, in particular those containing general and overriding guidelines, should be standardised for the use at different levels, and that ambiguous wording should be avoided. To ensure consistency, the Operations Wing should scrutinise all Operational Orders

prepared by District Commanders prior to execution. The Operational Order should further stipulate clearly the positive legal duty on the part of the Police to facilitate peaceful assembly and demonstration, without compromising the overriding concern and mission for ensuring the personal safety of the dignitary being protected.

3.8 IPCC is given to understand that the Police has since then avoided the usage of ambiguous wording that may cause confusion or misunderstanding in the drafting of Operational Orders. For the purpose of standardising all operational plans at the District level in the security arrangements for President Mr. HU Jintao's visit to Hong Kong in June to July 2012, the Operations Wing scrutinised all Operational Orders prepared by District Commanders prior to execution. The Operations Wing also made use of the opportunity to make sure clear instructions were given in the Operational Orders without any ambiguous or unnecessary words.

### **Location and operation of the SZ, DPA and DPAA**

#### *Information from the Police*

3.9 Based on the security requirements for this operation, the Police would set up CSZ and SZ. CSZ and SZ are not legal terms, but are operational terms used by the Police. The concept of security zoning is built on the principle of graduated defence layering with intensifying security measures towards a core security zone to ensure the personal safety of the dignitary. CSZ was the area or place where the VP stayed or visited, and access to this area would normally only be permitted after the person had gone through some degree of security screening. Officers of VIPPU would be responsible for the security measures within the CSZ. Following the principle of a layered

approach, surrounding the CSZ was the SZ in order to provide an area of heightened security around the CSZ. Police officers at District Level would be responsible for the security arrangements within the SZ. The District Commander where the CSZ was located would be responsible for determining the size and demarcation of the SZ and setting the security measures within the SZ, in consultation with the VIPPU.

3.10 It is revealed that staging of any protest within the SZ was not allowed in this security operation during the whole 24-hour period of the 3-day visit of the VP, whether or not the VP was present in the vicinity.

3.11 In addition to protecting political dignitaries, the Police is also vested with the responsibility to safeguard the media's right of reporting. DPA are set up to facilitate the work of reporters. For the VP's visit, the District Commanders of the scheduled locations set up DPA based on a number of factors (including the need to facilitate the work of the media; the location of the SZ; the layout of the locations and the need to minimise obstruction to other people).

3.12 In the Police's written reply to IPCC,<sup>23</sup> it is stated that some DPA were situated in relatively close proximity within the SZ to venues where the VP's motorcade would arrive or depart in order to provide the media with a vantage point to cover the arrival or departure of the VP. In that situation, because of the close proximity to the arrival or departure of the motorcade, arrangements including a search and verifying the identities of members of the media would be necessary. IPCC notes however that for this security operation for the VP's visit, all DPA were required to be located outside the SZ.

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<sup>23</sup> See Appendix 11 for details.

3.13 One of the operational concepts that the Police adopts in managing public activities is the setting up of DPAA to facilitate such activities while at the same time to ensure that the proximity of the congregation does not create a threat to the personal safety of the dignitary. The authority to set up DPAA in this security operation was delegated to the relevant District Commanders, but all DPAA had to be located outside the SZ.

*Observations and Recommendations by IPCC*

3.14 IPCC notes that there has been widespread public concern about the locations of the DPA and DPAA being too far away from the venues of the events, making it difficult for reporters to carry out their duties and protestors to express their opinion to the VP.

3.15 IPCC observes that 3 DPAA in Wanchai were at different locations outside the boundary of the SZ with the farthest one at the Golden Bauhinia Square. Protestors at all 3 DPAA locations could not see the VP's motorcade turning into the ramp leading to the entrance of the Hotel. The DPAA for protest outside the CGC was set outside CITIC Tower opposite the eastern entrance of the CGC, and so the protestors could not see the VP's motorcade entering the CGC from the western entrance opposite the PLA Building. As the SZ at the CGC was bounded by Tim Mei Road outside CITIC Tower in the East and the Edinburg Place in the West, covering the PLA Building, no DPAA could be set outside the western entrance of the CGC because that area was within the SZ. The Police explained that in setting up the SZ at the CGC and the DPAA, the relevant District Commander did not know that the VP would enter the CGC on the western side, as the exact motorcade route would only be decided shortly before the event. IPCC appreciates that for security reasons the actual motorcade route might need to be decided and kept secret until the last

minute, but the key question is why the SZ had to be extended beyond the PLA Building, rendering that no other DPAA could be set up outside the western side of the CGC.

3.16 It therefore appears that the root problem lies with the demarcation and operation of the SZ and the requirement that all DPA and DPAA had to be located outside the SZ. IPCC has concerns / reservations in particular to the following:

- i) There were no guidelines in the Operational Orders on how the SZ was determined, and it appears that it was left to the discretion of individual District Commanders. This may give rise to inconsistencies or failure to strike a proper balance between protecting the safety of the dignitary and respecting the right of peaceful demonstration and press freedom.
- ii) It is revealed that staging of any protesting activities within the SZ was not allowed in this security operation during the whole 24-hour period of the 3-day visit of the VP, whether or not the VP was present in the vicinity. IPCC is of the view that setting up SZ is one matter, and that imposing prohibition against any protesting activities within the SZ is another. Whilst there may be operational needs for the Police to set up SZ as a security measure for protecting the personal safety of the VP, the blanket prohibition against all protesting activities within the SZ might have inhibited the rights of citizens who wish to petition or protest in a peaceful manner that does not require any prior notification or permission under the Public Order Ordinance (e.g. an individual protestor or a small number of protestors). Other possible scenarios that may give rise to concerns include where the protestors agree to be subject to any necessary security screening and be kept at a reasonably safe distance away



from the dignitary, and where the dignitary is not present at that time. Issues may also arise as to whether the Police has a duty to disclose to the public the exact demarcation of the SZ and how it may affect them given its potential impact on an individual's right and freedom. It would therefore be preferable if the legal issues involved could be clarified by the Police in this regard.

- iii) There seems little point for setting up a DPA outside the SZ. The reporters should be free to move around in areas that are accessible generally by the public. It is only when the Police allows the media a special privilege (subject to the necessary security screening and verification of the media identities) to congregate at locations of close proximity not generally open to the public that a DPA is meaningful.
- iv) Given the stringent security requirements for this operation, IPCC appreciates the need to have vigilant security control and there may be a need to avoid the congregation of a large number of people in the vicinity of the VP. However it would not serve any constructive purpose for the Police to set up a DPAA in an area where there was no chance of even seeing the VP's motorcade, let alone the VP himself. In Case 8 where only one DPAA was set up on the eastern side of the CGC outside its SZ, a number of protestors gathered there and waited a long time for the purpose of protesting / petitioning, only to find out later that the VP's motorcade had entered and left the CGC from the western side. It was only natural that the protestors would be frustrated, and complaints ensued.

3.17 In order to minimise similar complaints in the future, IPCC recommends the following:

- i) The setting up and operation of the SZ should not be left to the discretion of individual District Commanders without any written

guidelines and scrutiny by, for example, the “Planning and Liaison Group”. The Police should endeavour to ensure the size and demarcations of CSZ and SZ are appropriately and reasonably set.

- ii) The Police should consider seeking legal advice as to whether it is justifiable for them to disallow the staging of any protesting activities within the SZ, irrespective of the number of protestors and / or the absence of the dignitary.
- iii) The Police should consider reviewing, at appropriate and regular intervals during a security operation, the demarcation of SZ and the security measures implemented therein such that the size of SZ and the security measures are commensurate with the actual situation and security need.
- iv) DPA and DPAA should be set up at an appropriate distance from the location of the event attended by the dignitary to facilitate media’s right of reporting and the right to peaceful demonstration in a meaningful way, having regard to the paramount requirement of protecting the dignitary’s personal safety and the integrity of the security operation.
- v) The Police should refrain from setting up DPA in areas which are generally accessible to the public, but should allow reporters to move around in areas that are not a restricted zone. In setting up the DPA, as far as is practicable, the Police should do so in consultation with the reporters as to the desirable location without compromising security concerns. It is through enhancement of communication between the Police and members of the press that any misunderstanding could be avoided.
- vi) The Police should endeavour to facilitate protestors by setting up DPAA at a reasonable distance where the protestors can see the dignitary or his motorcade, having regard to the relevant security

concerns. If the physical constraint of the location make it impossible to set up a DPAA which can accommodate a large number of people without comprising security concerns, the Police should consider setting up smaller DPAA in closer proximity to the venue and larger DPAA further away. The Police should come up with reasonable and transparent arrangements for access to the smaller DPAA (e.g. on a “first-come, first-served” basis or allow different groups of protestors to nominate representatives) and once it is full, other protestors may be directed to the larger DPAA. If necessary, people who seek to enter the smaller DPAA may be required to undergo the necessary security screening.

3.18 During the vetting process of the various complaints, IPCC is given to understand that the Police has already introduced the following improvement measures:

- i) The Police has adopted a different arrangement for setting up DPA. No DPA will be set outside the SZ. So long as the protection of their safety is not compromised, DPA can be set closer to the venues attended by the protected dignitaries and within the SZ. Reporters would be required to undergo security screening to ensure no weapons or dangerous items are being carried into the SZ, before they enter the DPA location.
- ii) The Police has strived to improve the media arrangements by strengthening communication during both planning and execution phases between the PPRB and all frontline units involved in a security operation, particularly those frontline officers involved in the setting up of DPA and organising the associated press arrangements. The Police will also engage the media at an early stage by conducting closed-door briefings and press conferences to inform reporters of the

media arrangements and other police arrangements such as temporary traffic and pedestrian access diversion.

- iii) In order to maintain a consistent level and standard of search to be conducted on the reporters before they enter DPA for news coverage, the Police has established a Media Liaison Team (“**MLT**”) with officers from PPRB and other Police Regions who have worked in the media field. MLTs would be paired up with Designated Checking Teams (“**DCT**”) formed by officers from Force Search Unit who would be responsible for searching the bags and equipment of reporters prior to their access to DPA inside SZ. Training and briefings have been arranged for the officers of MLT and DCT and representatives from the involved Police Districts.
- iv) The Police has also arranged sharing sessions for frontline officers with the media to help both parties to appreciate the difficulties and duties of each other and improve mutual understanding.
- v) During President Mr. HU Jintao’s visit to Hong Kong between 29 June 2012 and 1 July 2012, the Police adopted the above enhanced media arrangements. No DPA was set up outside SZ and reporters were free to move outside SZ.
- vi) In order to facilitate protestors to express their views and help minimise potential conflicts between protestors and frontline police officers, the Police has improved the arrangements by setting up Forward Petition Areas (“**FPA**”) within SZ during President Mr. HU Jintao’s visit.

IPCC welcomes these improvement measures.

### **Closure of Footbridges**

3.19 The Police actions of closing the footbridges along the route of the

VP's motorcade had caused complaints from members of the public. Given the stringent security requirements for this operation, IPCC notes there were security reasons for implementing footbridge control in order to protect the VP's motorcade. However, IPCC is of the view that, from a complaint prevention perspective, there is room for improvement in the way such actions are executed.

### *Recommendations by IPCC*

3.20 IPCC noticed that some footbridges are wide enough for pedestrians to walk through even if both sides facing the traffic are blocked in order to prevent the motorcade that passes underneath the footbridge from attack. Therefore it is recommended that the Police may consider a partial closure of those wide-enough footbridges if to do so would not compromise the safety of the dignitary under protection. Furthermore, the Police should consider enhancing transparency and meeting public expectation by providing a team of police officers to stand by at both ends of any closed footbridge to answer questions from members of the public in addition to posting a notice declaring the closure of the footbridge.

3.21 IPCC notes that the Police has improved the practice of closing footbridges by adopting partial closure with buffer areas set up on both sides of footbridges wider than 3 metres, and that a newly designed notice would be placed at both ends of a closed footbridge to advise members of public on the closure and the duration.

### **Pedestrian Clearance**

3.22 Two of the 16 complaint cases (Cases 5 and 6) concerned police

officers clearing pedestrians from the pavement of roads along the route of the VP's motorcade. However, it was confirmed from the Operational Orders that frontline police officers had not been instructed to implement route lining actions (i.e. pedestrian clearance actions) along the motorcade routes. It therefore appears that pedestrian clearance was a decision made by individual officers based on their own judgment.

### *Recommendations by IPCC*

3.23 It is recommended that the District Commanders should, insofar as practicable, provide clear cut instructions as to (a) whether or not pedestrian clearance actions should be carried out on the roads along the route of the VP's motorcade; and (b) even if the District Commanders were of the view that such action should be at the discretion of the frontline police officers at the scene who would be able to make an intelligent decision upon assessment of the risk level of the scene, the District Commanders should set down clear guidelines in the Operational Order for frontline officers' reference.

### **Traffic Control Measures**

3.24 In Case 7, COM-7, a professor of HKU, was caught in a traffic jam on Pokfulam Road caused by a police van parked near Lady Ho Tung Hall, which sought to confine the traffic to single lane in order to facilitate the Police to conduct snap checks. The complaint was resolved through "Informal Resolution" and so no full investigation was conducted. IPCC however observes that the position of the police van and the snap checks was set at a location which would affect not only vehicles going into HKU (i.e. the venue which the VP was visiting), but also vehicles going to Central or other places. As Pokfulam Road is one of the major communication routes on Hong Kong

Island, there are bound to be road users who just passed the road without any intention of going into HKU campus. If the concern was the personal safety of the VP who visited HKU, it would be reasonable for the Police to set up traffic control point at the HKU western entrance for conducting checks on cars that were about to enter HKU, but not merely passing by. IPCC further observes that during the IR process, COM-7 expressed that he only saw the police officers chatting at the spot without properly conducting the screen duty. It is therefore a legitimate concern whether the traffic control arrangement was excessive and unnecessarily inconvenienced the public. IPCC notes however that there were no guidelines in the relevant Operational Order in this connection, and so the matter was apparently left to individual commanders.

3.25 IPCC further observes that during the IR process, COM-7 opined that the Police should have given a prior warning to the public regarding the implementation of the traffic control. The Police's explanation was that in view of the need to keep confidential the precise whereabouts and itinerary of the protected person, there were real difficulties in giving prior notice to the public. IPCC however observes that the VP's visit to HKU on 18 August 2011 was a scheduled event which was made public a few days beforehand. It is doubtful whether there is justification for not informing the public about the traffic control arrangement beforehand. IPCC further notes that there were no guidelines given in the relevant Operational Order to guide individual commanders to decide whether and when to make prior public announcement of traffic control measure.

#### *Recommendation by IPCC*

3.26 To minimise similar complaints in future, it is recommended that the Police should consider providing concrete instructions in the Operational Orders

to guide individual commanders to decide on the necessary traffic control arrangements which are proportionate to and commensurate with the security requirements for the security operation. The Police should also endeavour to make public announcement of such traffic control arrangements so long as it would not compromise the security concerns. The Police should take serious consideration on balancing the security requirements for the operation and the convenience and rights of the public.



## **Part IV – Conclusion**

4.1 In view of the complaint cases and widespread public concerns over the magnitude of the security measures implemented by the Police during the 3-day VP's visit, IPCC has scrutinised the CAPO investigation reports on the 16 complaint cases thoroughly and meticulously with a view to determining the classifications of the allegations, and exercised its function under section 8(1)(c) of the IPCCO to conduct a holistic review on the relevant Police actions and security measures adopted during the visit of the VP with a view to minimising or avoiding similar complaints in the future. To this end, IPCC has:-

- i) Thoroughly and meticulously examined each and every complaint case by scrutinising the relevant statements and information made available by COMs as well as statements made by witnesses and COMEEs to CAPO;
- ii) Conducted interviews with 2 COMs, 4 COMEEs and 2 witnesses;
- iii) Viewed all available video records;
- iv) Considered relevant Police documents including internal guidelines and manuals as well as various Operational Orders, and sought clarifications from the Police where necessary; and
- v) Analysed the arguments and rationale submitted by the Police with regard to the justifications of the relevant Police actions and security measures.

### **Summary of the 16 Reportable Complaints**

4.2 Of the 16 reportable complaints,<sup>24</sup> IPCC has endorsed 14 of them:-

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<sup>24</sup> See **Appendix 9** for details.

<u>Case</u>	<u>CAPO's Classification</u>
Closure of Footbridge to HKCEC (Case 1)	Withdrawn
Closure of Footbridge to Immigration Tower (Case 2)	Informally Resolved
Closure of Footbridge to CITIC Tower (Case 3)	Not Pursuable
Closure of Footbridge to HK Arts Centre (Case 4)	Not Pursuable
Clearing Pedestrian on Cotton Tree Drive (Case 5)	Informally Resolved
Clearing Pedestrian on Harbour Road (Case 6)	Not Pursuable
Security Arrangements at HKU (Case 7)	Informally Resolved
Protest Outside CGC (Case 8)	Informally Resolved
Protest on Footbridge to CGC (I) (Case 9)	Informally Resolved
Protest on Footbridge to CGC (II) (Case 10)	Not Pursuable
Protest outside Convention Plaza (Case 11)	Unsubstantiated (1 count) No Fault (1 count)
Submission of Petition Letters to VP (Case 12)	No Fault
Removal of a Male at Laguna City (Case 13)	Not Pursuable (1 count) Outwith Matter (1 count)
Reporters' Encounters with Police at Laguna City and Wong Cho Tong Building (Case 14)	Substantiated (8 counts) No Fault (2 counts) Substantiated Other Than Reported (2 counts) and Outwith Matter (1 count)

4.3 Case 15 remains as “**Sub-Judice**”, and its complaint investigation would be resumed upon completion of the judicial proceedings.

4.4 For Case 16, IPCC endorsed 4 of the allegations but does not endorse the classifications of Allegations (d) and (f), which concern the locations of the DPA outside WCT Building and the Hotel. IPCC maintains the view that these two allegations should be classified as “**Unsubstantiated**” for reasons stated in Part II – Case 16. As no consensus was reached in this regard, IPCC has already advised the CP of its opinion and recommendation on the classification of the allegations under section 19(1) of the IPCCO. IPCC includes this part in this Final Report to CE for his consideration pursuant to section 19(3).

4.5 In some cases (Cases 13, 14 and 16 refer), individual police officers were found at fault in exercising their powers, with relevant allegations found “**Substantiated**”, “**Substantiated Other Than Reported**” or “**Outwith**” matters registered against them. IPCC is of the view that these cases only show isolated incidents where the COMEEs had committed the mistakes out of misunderstanding or wrong judgment. There is no evidence of any systemic abuse of Police power.

### **Overview on the Security Arrangements**

4.6 In addition to vetting these 16 complaint cases separately, IPCC has also examined the relevant security arrangements adopted by the Police with a view to preventing the recurrence of similar complaints in the future and making recommendations to the CP and / or CE where appropriate. IPCC has made a number of observations on the security arrangements, which have been detailed in Part III in this Final Report.

4.7 The Police was vested with the prime responsibilities in designing dedicated security measures so as to ensure the personal safety of the VP. Given the stringent security requirements for this operation, it is understandable

that vigilant security measures which might cause inconvenience to the public had to be introduced. Having said that, IPCC is of the view that the Police also has a positive duty to take reasonable and appropriate measures to facilitate the exercise of fundamental rights and freedoms of the citizens (such as the right of peaceful assembly and press freedom). Therefore, in designing security measures which by their very nature would inevitably cause inconvenience to the public or limit their exercise of some rights and freedoms, the Police must be vigilant and tactful in striking a proper balance without compromising the integrity of the security operation on the one hand, and preserving the rights of the public on the other. Needless to say, this was by no means an easy task, and that the highest degree of professionalism on the part of all police officers would be called for. There is clearly room for improvement on the design and execution of the security arrangements, and recommendations are made in Part III above in this regard.

4.8 Having reviewed all the available information and documents, IPCC does not find any evidence to show that the Police actions in the security operations were politically motivated. However, the ambiguous wording used in some of the Operational Orders (Paragraph 3.5 of Part III refers) might give rise to misunderstanding or confusion on the meaning and application of those instructions. IPCC recommends the Police to take due caution and diligence in avoiding recurrence in this regard.

### **Summary of Improvement Areas**

4.9 To sum up, with regard to the Police's security arrangements in the VP's visit, IPCC is of the view that there is room for improvement in the following areas:-

- i) Coordinating the security operations by PHQ to ensure District

Commanders and frontline police officers involved have a clear understanding of the operational objectives and details;

- ii) Using unambiguous wording in Operational Orders to avoid confusion and misunderstanding among frontline police officers;
- iii) Giving clear guidelines to frontline officers as to under what circumstances and how they should exercise their powers, as transpired from the handling of pedestrians in Cases 5 and 6;
- iv) Adequately engaging the reporters in a meaningful way on how to facilitate their work and on the arrangements of DPA, as transpired from the handling of reporters in Cases 14 and 16;
- v) Planning the security operations with due consideration from the stance of the public, as transpired from the arrangements for the closure of footbridges in Cases 1 to 4 and the arrangements for the VP's visit to a family in Block 26 in Laguna City in Case 13;
- vi) Informing the public of the security arrangements, in particular areas where restricted access is imposed, when practicable without compromising the effectiveness of the security operation, as transpired from the incidents in Cases 7 to 11 and 15, and
- vii) Informing the public of the arrangements for submitting a petition letter, as transpired from Case 12.
- viii) Reviewing the setting up and operational details of CSZ, SZ, DPA and DPAA and legal justifications for the police powers to disallow protesting activities within the SZ.

4.10 IPCC has been informed that Operations Wing has tightened its co-ordination role in the security operation for the visit by President Mr. HU Jintao between 29 June and 1 July 2012. After conducting a review on the policing arrangements for the VP's visit, the Police has also adopted the

following improvement measures:-<sup>25</sup>

- i) Tightening the wording in the Operational Orders to minimise any misinterpretation of the instructions;
- ii) Enhancing liaison with stakeholders;
- iii) Establishing MLT;
- iv) Conducting force-level briefing before security operation to provide a forum for officers to raise their concerns, offer ideas or suggestions;
- v) Adopting enhanced footbridge closure management; and
- vi) Establishing FPA to facilitate members of public to submit petition letters.

4.11 IPCC hopes that in order to prevent similar complaints in the future, the Police will consider the observations and recommendations made by IPCC as set out in detail in Part III, particularly in relation to:-

- i) Setting up DPAA at locations where the dignitaries can see or hear the protestors;
- ii) Reviewing whether it is justifiable for the Police to disallow the staging of any protesting activities within the SZ;
- iii) Regularly reviewing the demarcation of CSZ and SZ and the measures implemented in the zones to ensure that they are commensurate with the actual situation and security need for protecting a dignitary; and
- iv) When practicable and without compromising the security operation, disseminating information to the public on the security arrangements which may inconvenience the public or may impact on their rights and freedoms.

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<sup>25</sup> See **Appendix 10** for details of all Improvement Measures.

## **Concluding Remarks**

4.12 The 16 complaints and public concerns over the magnitude of the security operation have unfortunately created an overcast on the reputation of the Police. The episode, nonetheless, provides the Police a valuable opportunity to reflect upon the lessons learnt, to make improvements in the planning and execution of security operations, to avoid similar complaints in the future and to reaffirm its commitment to discharging its duties professionally and lawfully without any political consideration, and safeguarding fundamental rights and freedoms of the public. The IPCC welcomes the Police's reiteration that the sole purpose of the security operation is and was to protect the personal safety of the visiting dignitaries and to maintain public order, without any political consideration. IPCC sincerely hopes that its observations and recommendations in this Final Report may help prevent similar complaints in the future.

Independent Police Complaints Council

December 2012

Summary of Notifiable Complaints (NC) related to Vice Premier’s Visit

Case	Summary of the Case	Remarks
1	<p>COMs (seven ordinary citizens) learnt from the media of the public order events that took place at HKU and Laguna City on 16 and 17 August 2011. They made the following allegations:</p> <ul style="list-style-type: none"><li>(i) A police officer (COMEE 1) unlawfully detained some students at HKU. [<b>Allegation (a) – Unnecessary Use of Authority</b>]</li><li>(ii) COMEE 1 used excessive force on some students at HKU and did not allow them to enter certain area of the HKU campus. [<b>Allegation (b) –Unnecessary Use of Authority</b>]</li><li>(iii) COMEE 1 disallowed reporters to enter certain area of the HKU campus. [<b>Allegation (c) – Unnecessary Use of Authority</b>]</li><li>(iv) Another police officer (COMEE 2) arrested a male at Laguna City without justifiable reason. [<b>Allegation (d) - Unnecessary Use of Authority</b>]</li></ul>	<p>The complaint was categorised as “NC” since it was not made by or on behalf of a complainant directly affected by the police conduct.</p>
2	<p>COMs (five ordinary citizens) learnt from the press that a male was arrested at Laguna City on 16 August 2011. They separately made the following allegations:</p> <ul style="list-style-type: none"><li>(i) A police officer (COMEE) arrested the male at Laguna City without justifiable reason. [<b>Allegation (a) - Unnecessary Use of Authority</b>]</li><li>(ii) COMEE failed to declare his police identity to the male during the arrest. [<b>Allegation (b) – Neglect of Duty</b>]</li><li>(iii) COMEE used excessive force on the male during the arrest. [<b>Allegation (c) – Unnecessary Use of Authority</b>].</li></ul>	<p>The complaint was categorised as “NC” since it was not made by or on behalf of a complainant directly affected by the police conduct.</p>



Case	Summary of the Case	Remarks
3	<p>COM claimed himself a resident residing at Connaught Road West. He alleged that:</p> <p>(i) Around 0830 hours on 18 August 2011, there was road closure in Western district but a senior police officer (COMEE 1) failed to make proper announcement to the public regarding police deployment in Western district. <b>[Allegation (a) – Neglect of Duty]</b></p> <p>(ii) Another police officer (COMEE 2) inappropriately directed a woman not to stay on the roadside at the material time. <b>[Allegation (b) – Neglect of Duty]</b></p>	<p>The complaint was categorised as “NC” since it was not made by or on behalf of a complainant directly affected by the police conduct.</p>
4	<p>COMs (five ordinary citizens) learnt from the media that the Commissioner of Police (COMEE) had attended the LegCo special panel meeting on 29 August 2011 and made some comments on the police action at HKU on 18 August 2011.</p> <p>(i) COM 1 alleged that COMEE lied to the members of the special panel of LegCo regarding the police action taken on 3 students at HKU on 18 August 2011. <b>[Allegation (a) - Misconduct]</b></p> <p>(ii) COM 2 alleged that COMEE failed to take proper action in response to the query made by LegCo member WONG Yuk-man during the special panel meeting on 29 August 2011. <b>[Allegation (b) - Neglect of Duty]</b></p> <p>(iii) COM 3 to 5 alleged that COMEE told a lie at the LegCo special panel meeting on 29 August 2011. <b>[Allegations (c) to (e) – Misconduct]</b></p>	<p>The complaint was categorised as “NC” since it was not made by or on behalf of a complainant directly affected by the police conduct.</p>

Case	Summary of the Case	Remarks
5	<p>COM learnt from the press that on 3 September 2011 some protestors staged a protest outside the police headquarters (PHQ) to express their view on the failure of the Police on 29 August 2011 to give an accurate account of the Police action at the security panel meeting of the LegCo. COM alleged that the protestors insulted the police by covering the police badge displayed on the outer wall of PHQ but the Police failed to take any action to control such activity. <b>[Allegation – Neglect of Duty]</b></p>	<ul style="list-style-type: none"> <li>- COM stated that he only wished to reflect his opinion to police.</li> <li>- The complaint was categorised as “NC” since it was not made by or on behalf of a complainant directly affected by the police conduct.</li> </ul>
6	<p>COM (a District Councillor) stated that he had received a number of complaints from the citizens that on 18 August 2011, police improperly conducted traffic control on Pokfulam Road without making prior announcement to the public so that many citizens were caught in a traffic jam on Pokfulam Road. He alleged that COMEE failed to make proper arrangement for the road closure on the material day. <b>[Allegation – Neglect of Duty]</b></p>	<ul style="list-style-type: none"> <li>- COM explained that he lodged a complaint on behalf of the citizens reflecting the issue to him. However, COM refused to disclose the particulars / identities of the citizens.</li> <li>- COM confirmed that he was not directly affected by the matter stated in the complaint. Therefore, the complaint was categorised as “NC”.</li> </ul>

No.	Case Name	Nature of Complaint	Allegations	CAPO Classification	IPCC Interim Assessment
1	Closure of footbridge to HKCEC	Closure of footbridge	(a) - (c) Neglect of Duty ("NOD")	Withdrawn	Endorsed
2	Closure of footbridge to Immigration Tower		NOD	Informally Resolved	Further query
3	Closure of footbridge to CITIC Tower		NOD	Not Pursuable	Further query
4	Closure of footbridge to HK Arts Centre		NOD	Not Pursuable	Endorsed
5	Clearing pedestrian on Cotton Tree Drive	Clearance of pedestrians	Rudeness	Informally Resolved	Endorsed
6	Clearing pedestrian on Harbour Road		Rudeness	Not Pursuable	Endorsed
7	Security arrangements at HKU	Security arrangements at HKU	(a) - (c) NOD	Informally Resolved	Endorsed
8	Protest outside CGC	Execution of Police Powers and location of DPAA	(a), (b) & (e) NOD (c) & (d) Misconduct	Informally Resolved	Endorsed
9	Protest on footbridge to CGC (I)		NOD	Informally Resolved	Endorsed
10	Protest on footbridge to CGC (II)		Unnecessary Use of Authority ("UUOA")	Not Pursuable	Endorsed
11	Protest outside Convention Plaza		(a) Assault (b) UUOA	<i>Not yet agreed by IPCC</i>	Further query
12	Submission of petition letters to VP		NOD	<i>Not yet agreed by IPCC</i>	Further query
13	Removal of a male at Laguna City	Execution of Police Powers	Assault	Not Pursuable	Further query
14	Reporters' encounters with Police at Laguna City and Wong Cho Tong Building		(a), (g) & (h) UUOA (b) & (i) NOD (c) Impoliteness (d) & (j) Misconduct (e) Misconduct (f) NOD	Substantiated Substantiated Substantiated Substantiated No Fault No Fault	Endorsed
15	Protest outside Central Plaza		(a) NOD (b) Assault	Sub-Judice	Pending Investigation
16	DPA locations and search of reporters' personal belongings	Location of DPA	(a), (c), (d) & (f) NOD (b) UUOA (e) Misconduct	<i>Not yet agreed by IPCC</i>	Further query

**Classification of Investigation Results**

<b><u>After Full Investigation</u></b>	
Substantiated	An allegation is classified as “Substantiated” where there is sufficient reliable evidence to support the allegation made by the complainant.
Substantiated Other Than Reported (SOTR)	An allegation is classified as “SOTR” where matters other than the original allegations raised by the complainant, which are closely associated with the complaint and have a major impact on the investigation, have been discovered and are found to be substantiated.
Not Fully Substantiated	An allegation is classified as “Not Fully Substantiated” where there is some reliable evidence to support the allegation, but it is insufficient to fully substantiate the complaint.
Unsubstantiated	Where there is insufficient evidence to support the allegation.
No Fault	Two common reasons for classifying a complaint as “No Fault” are first, the complainant may have misunderstood the facts; and second, the complaine e was acting under the lawful instructions of his superior officer or in accordance with established police practice.
False	An allegation is classified as “False” where there is sufficient reliable evidence to indicate that the allegation made by the complainant is untrue, be it a complaint with clear malicious intent or a complaint which is not based upon genuine conviction or sincere belief but with no element of malice.
<b><u>Without Full Investigation</u></b>	
Withdrawn	<p>A complainant is classified as “Withdrawn” where the complainant does not wish to pursue the complaint made.</p> <p>Even when a complainant initiates the withdrawal of a complaint, IPCC will ensure that no undue influence has been exerted on the complainant, and that the Police can learn from the complaint. IPCC will also ensure that CAPO will take corresponding remedial action.</p>

<b><u>Without Full Investigation</u> (cont'd)</b>	
Withdrawn (Cont'd)	<p>A complainant's withdrawal does not necessarily result in the case being classified as "Withdrawn". IPCC and CAPO will examine the available evidence to ascertain whether a full investigation is warranted despite the withdrawal and/or whether any of the allegations are substantiated on the basis of information available.</p>
Not Pursuable	<p>An allegation is classified as "Not Pursuable" when:-</p> <ul style="list-style-type: none"> <li>- the identity of the complainee cannot be ascertained;</li> <li>- there is insufficient information to proceed with the investigation;</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>- the cooperation of the complainant cannot be obtained to proceed with the investigation.</li> </ul> <p>The above definition does not mean that no further action will be taken when the complainant cannot identify the complainee. CAPO will make an effort to identify the complainee(s) on the basis of the information available. Only after such an effort has been made to no avail will the conclusion be reached that the identity of the complainee cannot be ascertained.</p> <p>If a complaint has been classified as "Not Pursuable" due to the lack of cooperation from the complainant, it may be reactivated later when the complainant comes forward to provide the necessary information.</p>
Informally Resolved	<p>The Informal Resolution Scheme aims at a speedy resolution of minor complaints, such as allegations of impoliteness or use of offensive, the nature of which is considered relatively minor.</p> <p>A minor complaint suitable for "Informal Resolution" will not be subject to a full investigation. Instead, a senior officer, at least at the rank of Chief Inspector of Police, will act as the Conciliating Officer. He will make enquiry into the facts of a complaint with the complainant and the complainee separately. If he is satisfied that the matter is suitable for "Informal Resolution", and with the agreement of the complainant, the complaint will be informally resolved.</p>

**Handling of Complaints Emanated from the Visit of VP**  
**Chronology of Events**

<b>Date</b>	<b>Event</b>
16 – 18 August 2011	VP visited Hong Kong.
1 September 2011	IPCC decided to place all complaints emanated from the VP's visit under the monitoring by the Serious Complaints Committee ("SCC") of the IPCC.
14 September 2011	IPCC received Investigation Report for Case 1 from CAPO.
26 September 2011	IPCC received Investigation Reports for Cases 2 and 9 from CAPO.
3 October 2011	IPCC received Investigation Report for Case 5 from CAPO.
6 October 2011	IPCC received Investigation Report for Case 3 from CAPO.
10 October 2011	IPCC received Investigation Reports for Cases 7 and 10 from CAPO.
18 October 2011	IPCC received Investigation Report for Case 8 from CAPO.
19 October 2011	IPCC received Investigation Reports for Cases 4 and 6 from CAPO.
2 December 2011	A meeting was held among SCC Members to consider the Investigation Reports for Cases 1 – 10.
12 December 2011	IPCC received Investigation Report for Case 11 from CAPO.

Date	Event
14 December 2011	IPCC received Investigation Reports for Cases 12, 13 and 16 from CAPO.
15 December 2011	IPCC raised queries with CAPO on Cases 1 – 10.
19 December 2011	A Joint IPCC/CAPO Meeting was held, during which progress on IPCC monitoring of complaints relating to VP's visit was discussed.
16 January 2012	A Working Level Meeting was held between SCC and CAPO, during which SCC Members urged CAPO to reply to IPCC's queries and to provide further information for scrutiny.
17 January 2012	An In-house Meeting was held among IPCC Members, during which SCC reported their progress on the monitoring of complaints relating to the VP's visit.
20 January 2012	IPCC raised further queries with CAPO on Cases 1 – 13 and 16.
15 February 2012	IPCC received CAPO's reply to the query on Case 9.
16 February 2012	SCC Members interviewed the complainant of Case 16.
17 February 2012	SCC Members interviewed 1 Senior Superintendent and 1 Chief Inspector of Police in relation to Case 13.
20 February 2012	SCC Members interviewed 2 Senior Superintendents, 1 Superintendent and 1 Senior Inspector in relation to Cases 11, 12 and 16.
20 February 2012	IPCC received Investigation Report for Case 14 and Interim Report for Case 15 from CAPO.

Date	Event
24 February 2012	IPCC raised further queries with CAPO as a result of the information revealed from the IPCC interviews.
1 March 2012	IPCC received CAPO's replies to queries raised on Cases 1 – 8, 10 – 12 and 15 together with Amended Investigation Reports for Cases 1, 3, 4 and 7.
2 March 2012	A Joint IPCC/CAPO Meeting was held, during which progress on the IPCC's monitoring of complaints relating to VP's visit was discussed.
5 March 2012	SCC Members interviewed the complainant of Case 13.
19 March 2012	A meeting was held among SCC Members to consider the Investigation Reports for Cases 1 – 16.
30 March 2012	IPCC received CAPO's reply to query raised on Case 13 together with an Amended Investigation Report.
30 April 2012	IPCC raised further queries with CAPO on Cases 2, 3, 11, 12, 13 and 16 and the issues listed in Appendix 7.
3 May 2012	IPCC released the Interim Report.
1 June 2012	IPCC received CAPO's reply to the IPCC query dated 30 April 2012 on Cases 2, 3, 11, 12, 13 and 16 together with Amended Investigation Reports for Cases 2, 11, 12 and 13.
5 June 2012	Representatives of IPCC attended Legislative Council to answer queries from Members of the Panel on Security on the Interim Report.
8 June 2012	A Joint IPCC/CAPO Meeting was held, during which progress on the IPCC's monitoring of complaints relating to VP's visit was discussed.



Date	Event
13 June 2012	A meeting was held among SCC Members to consider the Investigation Reports for the 7 outstanding cases.
25 June 2012	IPCC raised further queries with CAPO on Cases 2, 3, 11, 12, 13 and 16.
19 July 2012	An In-house Meeting was held among IPCC Members, during which SCC reported their progress on the monitoring of complaints relating to the VP's visit.
14 August 2012	A meeting was held among SCC Members to discuss the way forward for the examination of the 7 outstanding cases.
28 August 2012	IPCC received CAPO's reply to the IPCC query dated 25 June 2012 on Cases 2, 3, 11, 12, 13 and 16 together with Further Amended Investigation Report for Case 13.
6 September 2012	A Joint IPCC/CAPO Meeting was held, during which progress on the IPCC's monitoring of complaints relating to VP's visit was discussed.
25 September 2012	CAPO arranged the IPCC delegation to examine extracts of the relevant Operational Orders.
10 October 2012	IPCC raised query with CAPO to request for further documents / information for examination.
12 October 2012	IPCC raised query with CAPO to request for further information regarding the security arrangements at HKU on 18 August 2011.
15 October 2012	A meeting was held among SCC Members to consider the Investigation Reports for the 7 outstanding cases.

Date	Event
15 October 2012	IPCC received CAPO's reply to the IPCC query dated 12 October 2012.
1 November 2012	An In-house Meeting was held among IPCC Members, during which SCC reported their progress on the monitoring of complaints relating to the VP's visit.
1 November 2012	IPCC raised further queries with CAPO on Cases 11, and 16.
14 November 2012	IPCC received CAPO's reply to the IPCC queries dated 10 October 2012 and 1 November 2012.
19 November 2012	IPCC raised further queries with CAPO to request for document for inspection.
23 November 2012	A meeting was held among SCC Members to consider the Investigation Reports for the 7 outstanding cases
23 November 2012	IPCC received CAPO's reply to the IPCC query dated 19 November 2012.
5 December 2012	CAPO arranged the IPCC delegation to examine extracts of the relevant Operational Orders.
17 December 2012	IPCC endorsed the investigation results of Cases 2, 3, 11, 12, and 13.
From 30 August 2011 to 17 December 2012	IPCC Observers attended / observed 108 out of the 111 (97%) interviews / collection of evidence in relation to the 16 Reportable Complaints arising from the visit of the VP.

**Basic Information on  
the Security Arrangements for the VP's Visit**

The following is basic information on the security arrangements for the VP's visit:-

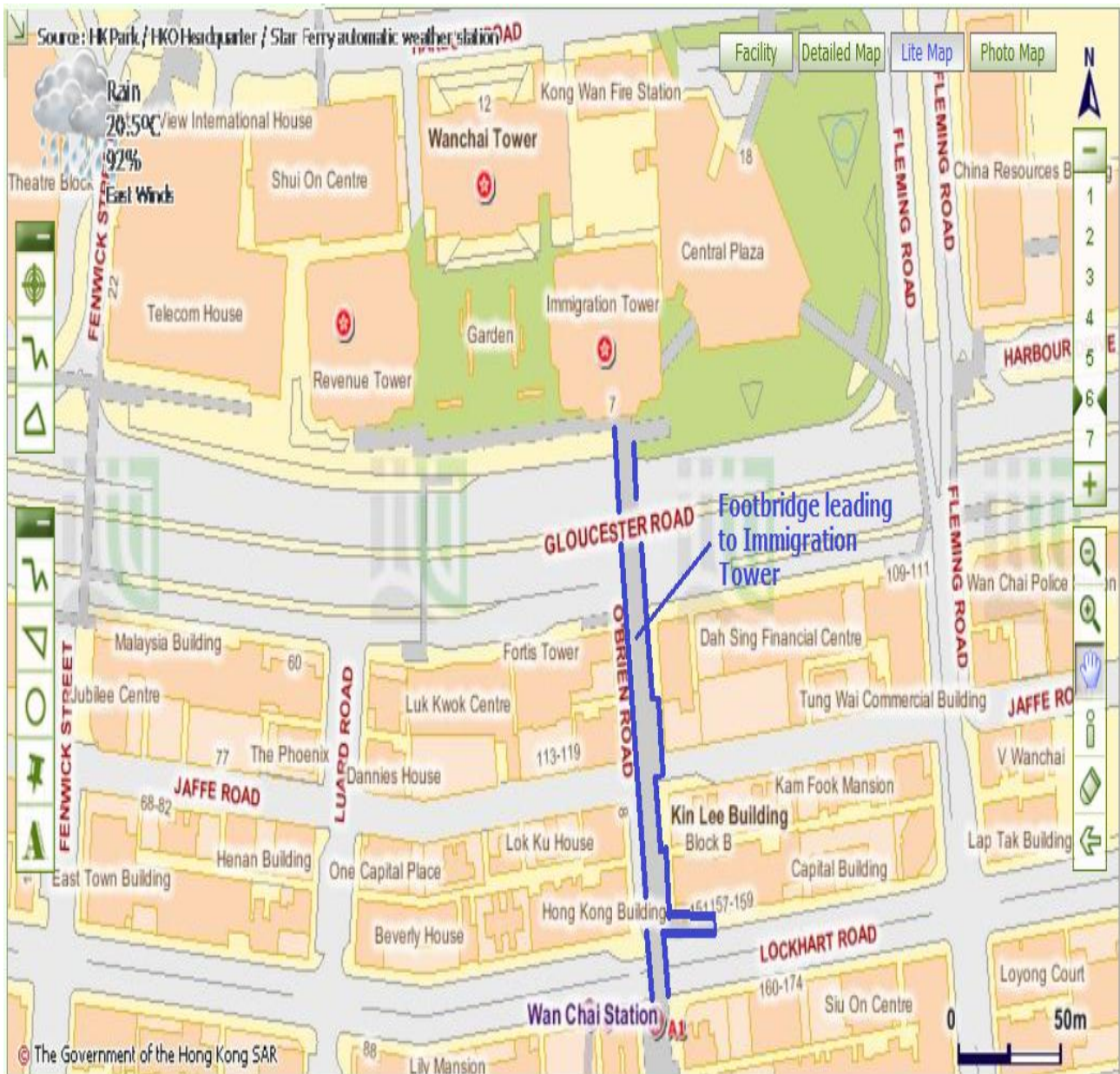
- The level of security arrangements for protecting a visiting political dignitary is commensurate with the risk assessment on the personal safety of the political dignitary carried out by the Police.
- The security arrangements for the VP's visit were similar to previous political dignitary visits.
- The venue of each function attended by the political dignitary is designated as the Core Security Zone ("CSZ"). The surrounding area of the CSZ is the Security Zone ("SZ"). The size of CSZ and SZ will be determined by the security risk assessment.
- Protection of the political dignitary within the CSZ rests on the VIP Protection Unit, whereas security arrangements in the SZ are the responsibility of the Commander of the Police District.
- Operations Wing and Commanders of the involved Police Districts give instructions on the duties in security operations by way of Operational Orders.

- Setting the locations of DPAs and DPAAAs, which must be outside the CSZ, is the purview of the respective District Commander.
- In order to prevent attacks or other offensive acts against the motorcade of the visiting political dignitary from a footbridge when the motorcade drives underneath it, the footbridge would be closed during the passage of the motorcade.

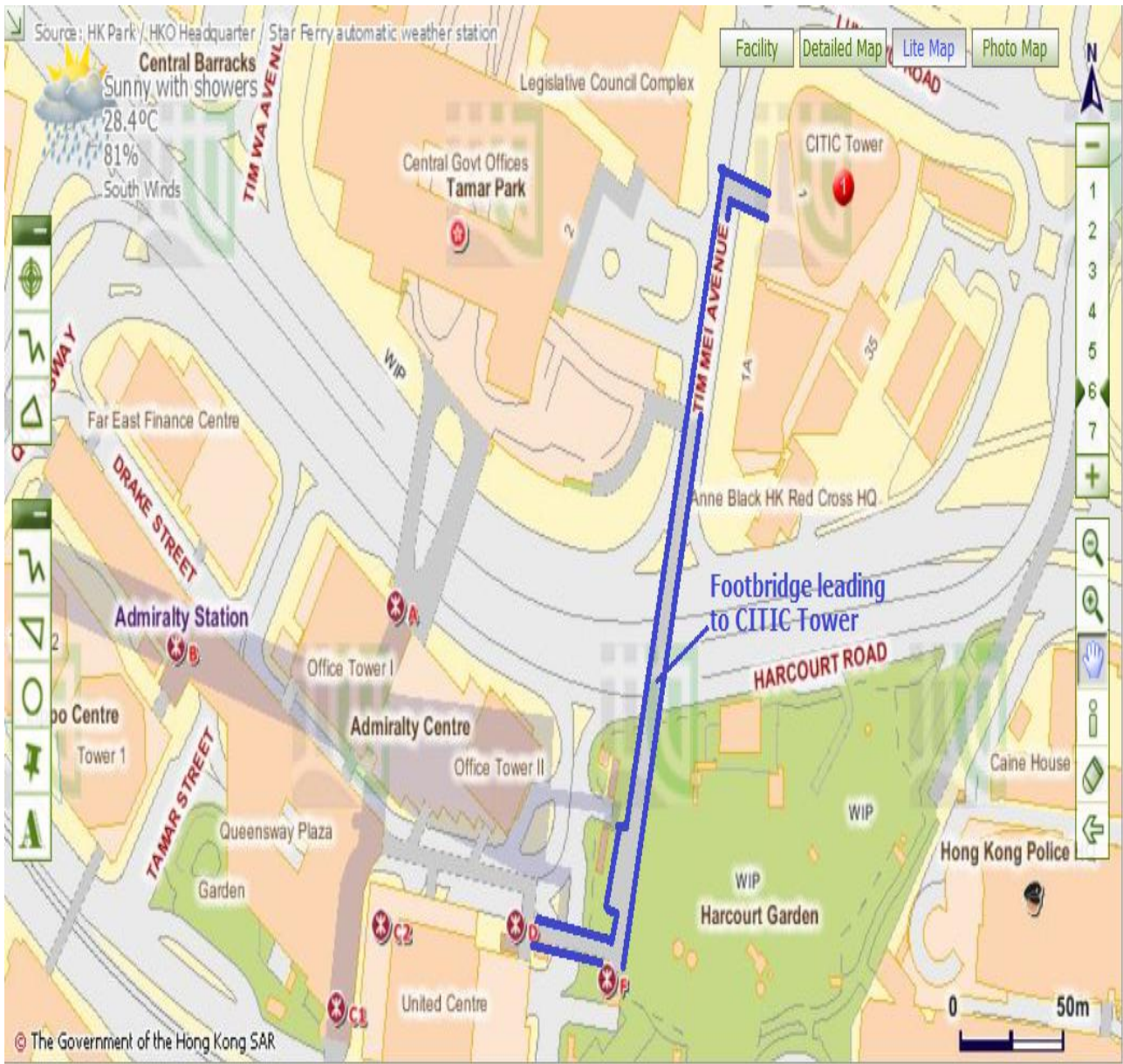
**Map – Footbridge leading to HKCEC**



**Map – Footbridge leading to Immigration Tower**



**Map – Footbridge leading to CITIC Tower**

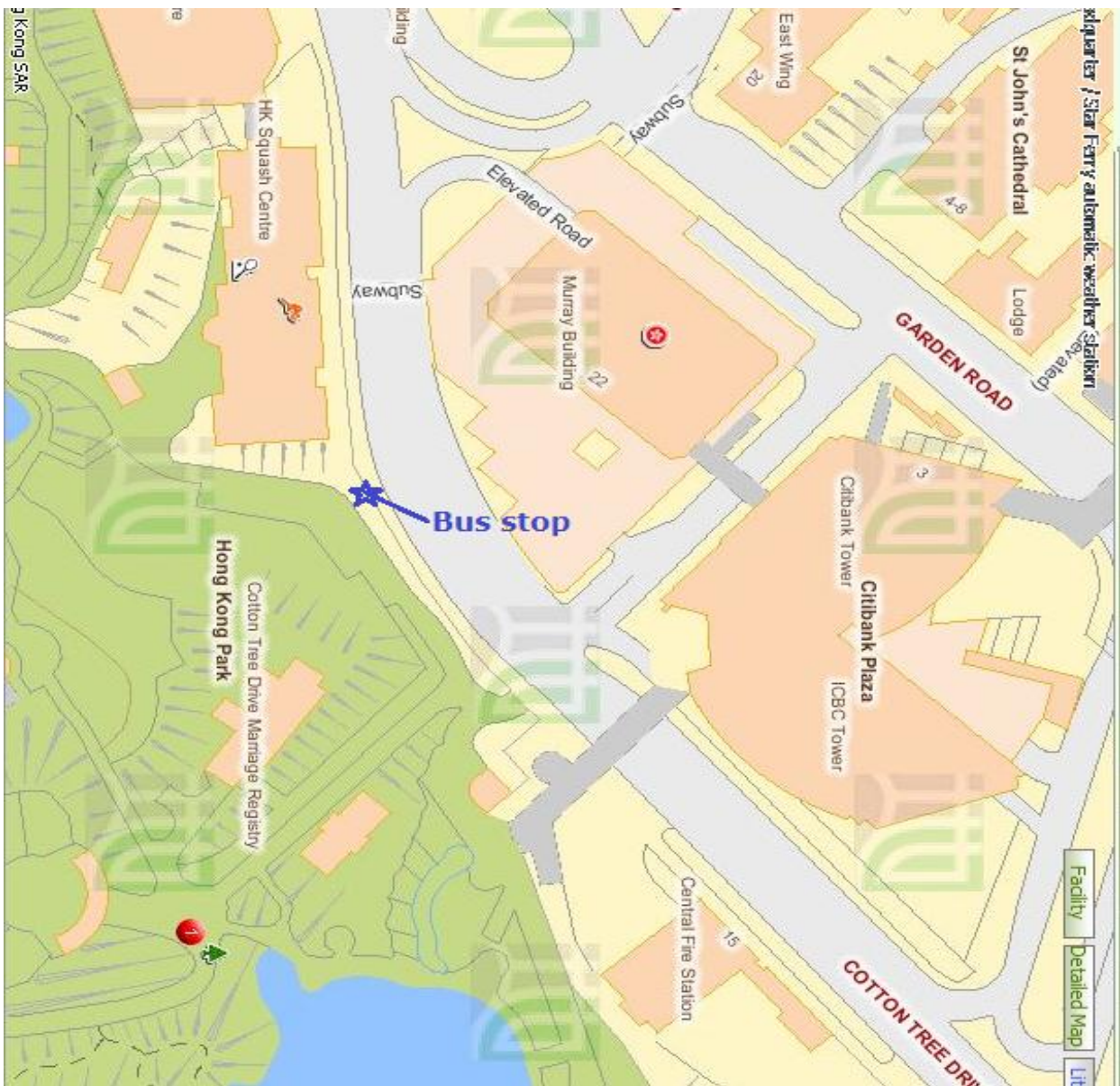


**Map – Footbridge leading to Hong Kong Arts Centre**

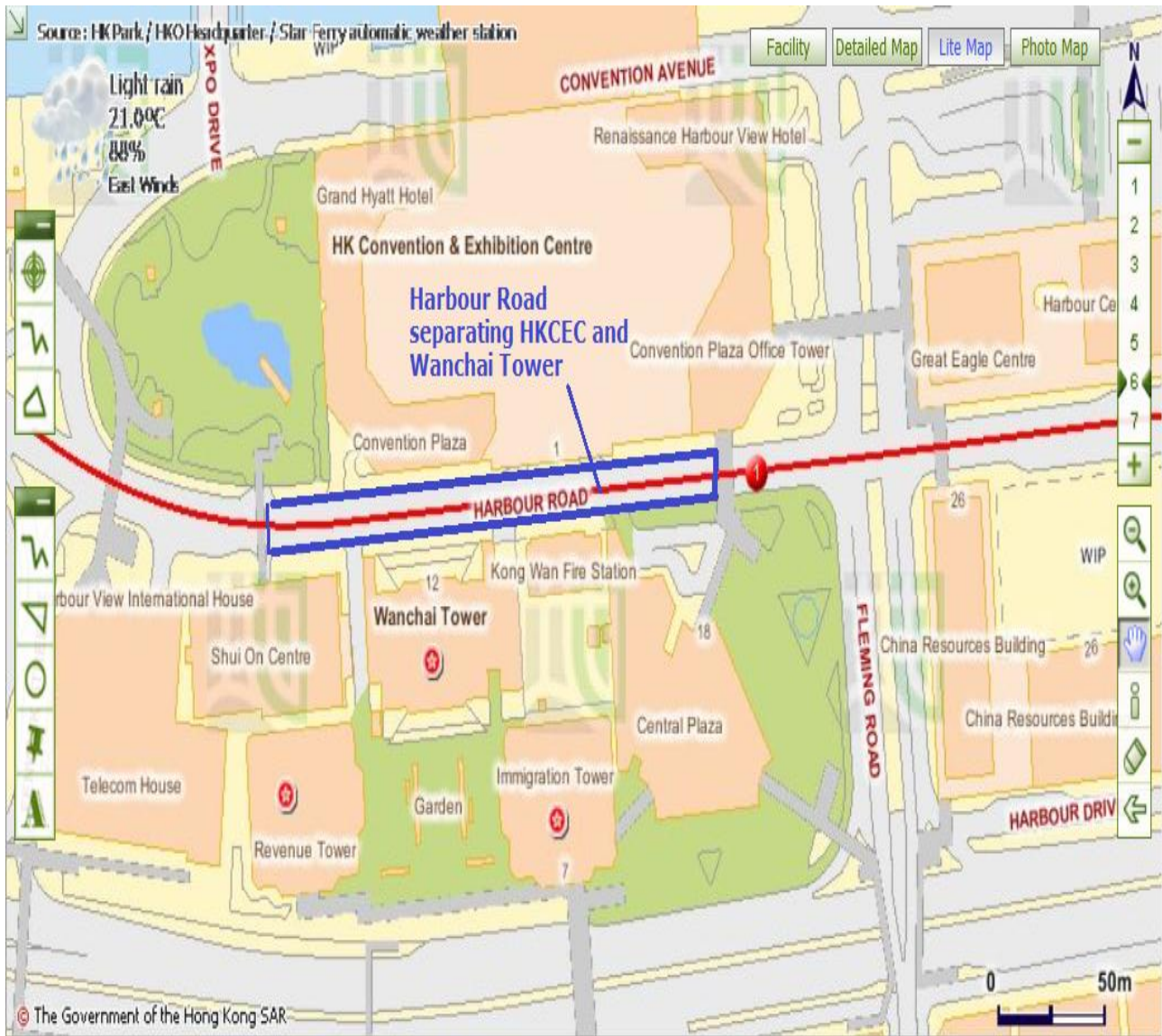




**Map – Bus stop outside Hong Kong Park**



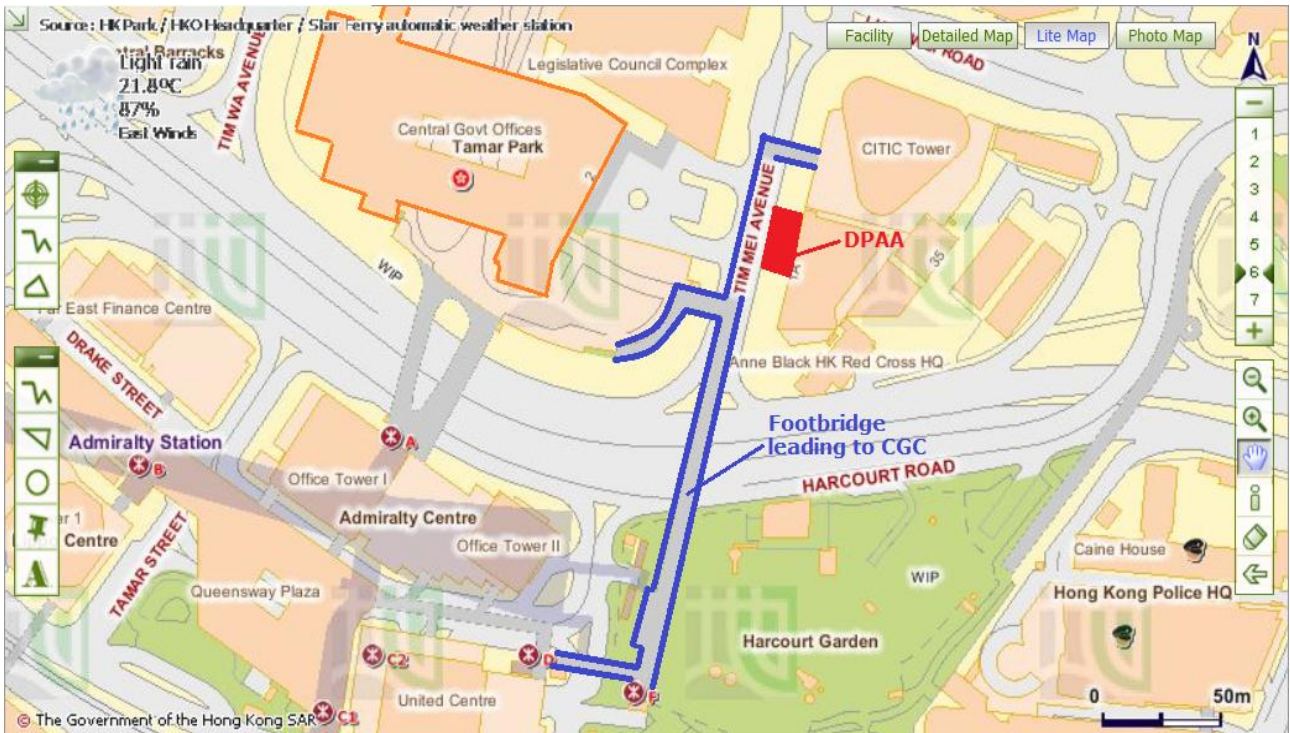
Map – Harbour Road



**Map – Pokfulam Road (near Lady Ho Tung Hall of HKU)**



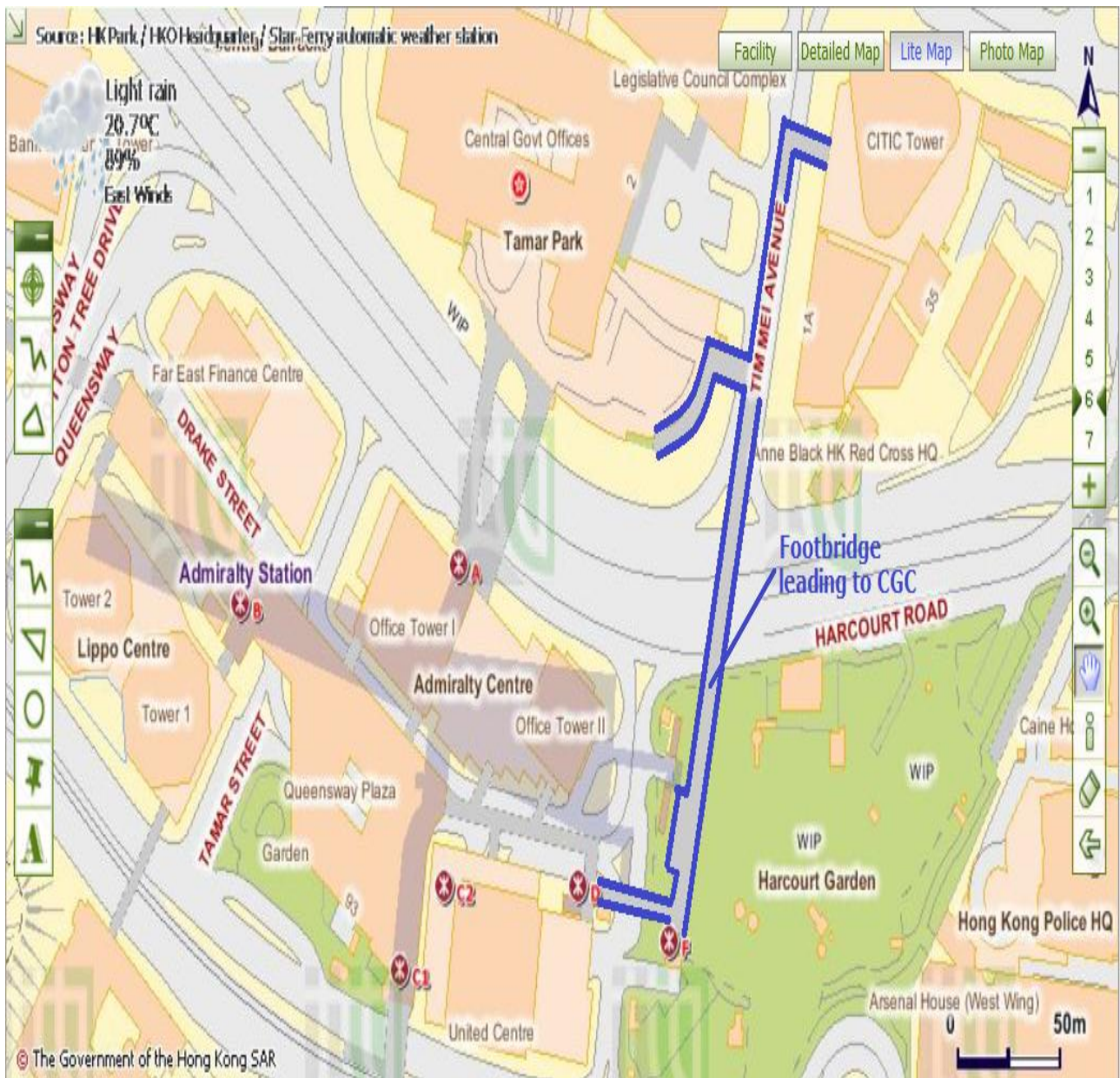
**Map – DPAA outside CGC**



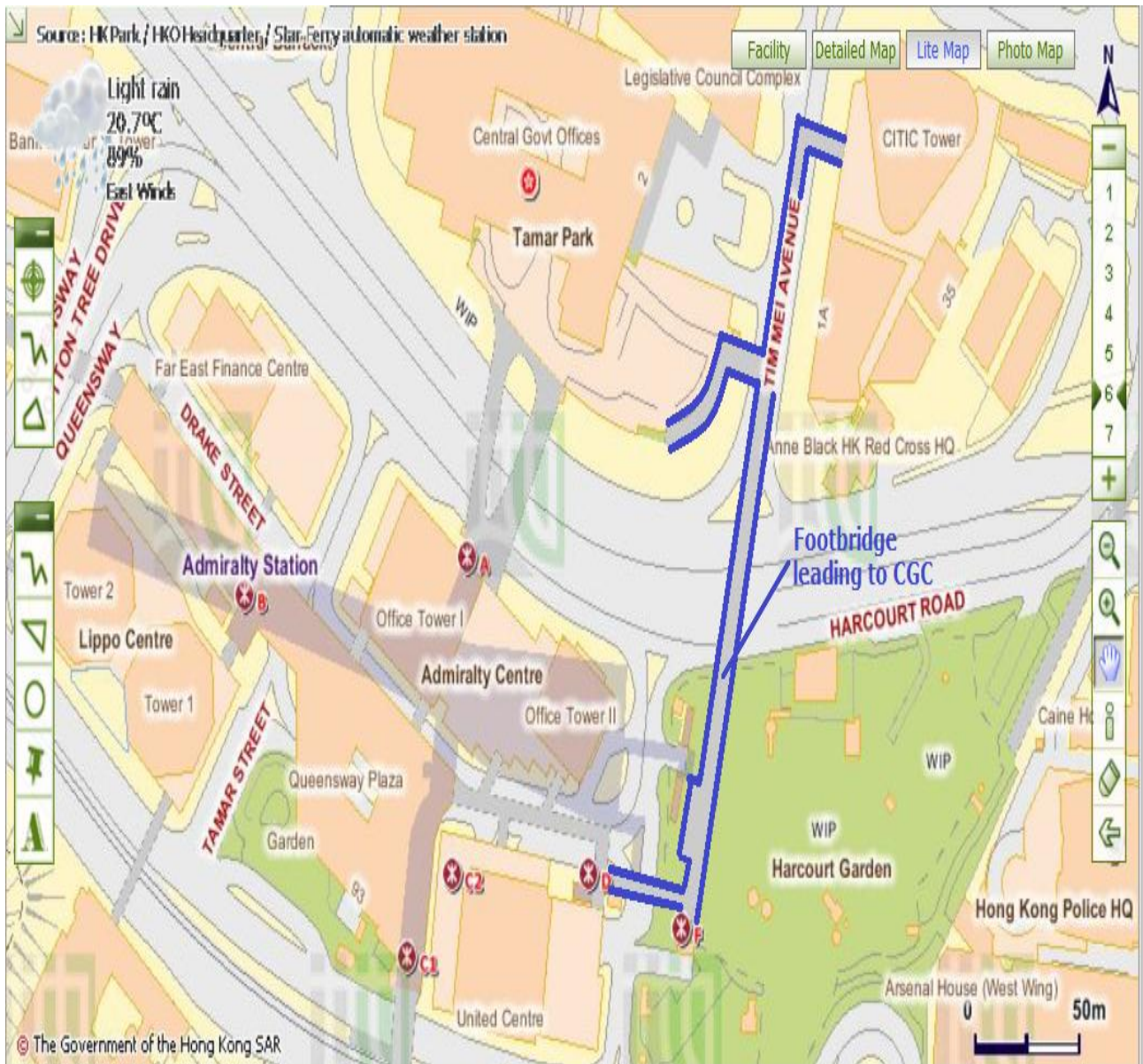
**Photo – DPAA outside CGC**



**Map – Footbridge leading to Central Government Complex**



**Map – Footbridge leading to Central Government Complex**



**Map – Grand Hyatt Hong Kong**



**Photo 1 - Grand Hyatt Hong Kong**



Photo 2 – The spot outside Convention Plaza



Photo 3 – Another view of the spot outside Convention Plaza



Photo 4 – Grand Hyatt Hong Kong





**Map – Vicinity of CGC and Wanchai**



Map – Laguna City



Map 1 – Laguna City



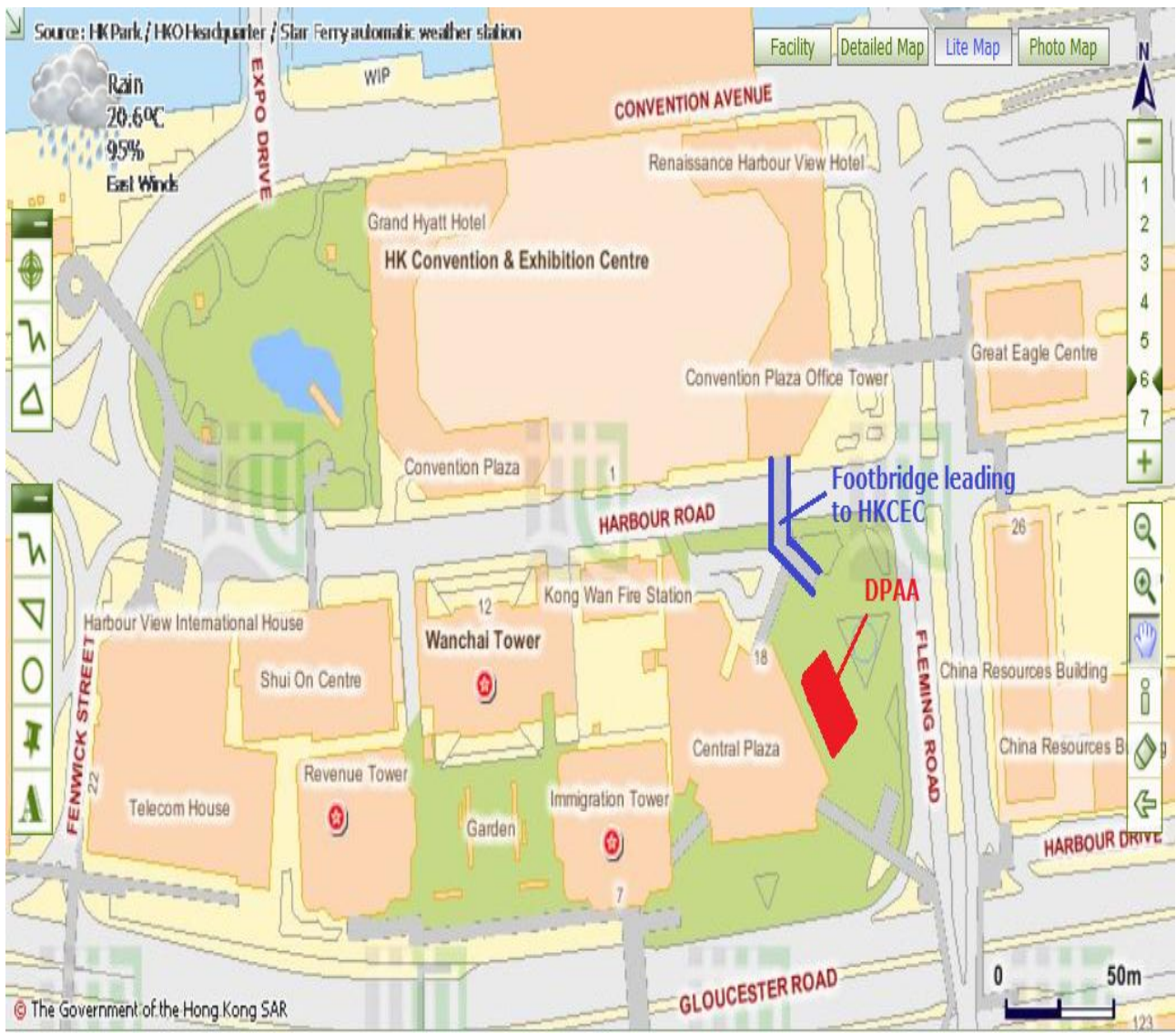
Photo – Model of the Park between Blocks 26 and 27 of Laguna City



Map 2 – Vicinity of Wong Cho Tong Social Service Building



**Map – Footbridge leading to HKCEC and DPAA in the vicinity**



**Map 1 – Vicinity of Wong Cho Tong Social Service Building**



**Photo 1 – Location “A” outside Wong Cho Tong Social Service Building**



**Photo 2 - Location “B” and “C” outside Wong Cho Tong Social Service Building**



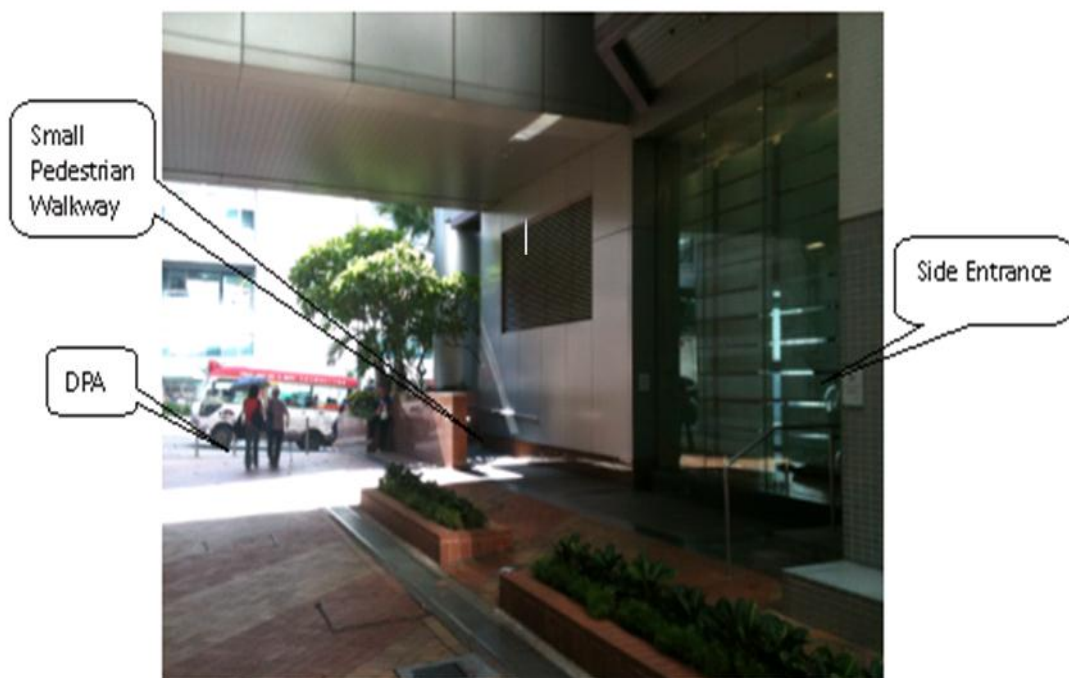
**Photo 3 – View from Location “C” outside Wong Cho Tong Social Service Building**



**Map 2 – Hong Kong Housing Authority Headquarters**



**Photo 4 – DPA outside Hong Kong Housing Authority Headquarters**





**Map 3 – Grand Hyatt Hong Kong**



**Photo 5 – Grand Hyatt Hong Kong (View from DPA-1)**



CAPO was requested to clarify on the following:-

*Footbridge Closure & Pedestrian Clearance*

- i. Justifications for the Police to completely close the footbridges under which the motorcade of VP would pass as part of the security arrangements;
- ii. Justifications for the Police to clear pedestrians along VP's motorcade routes;
- iii. Confirmation as to whether or not similar measures were implemented in previous visits of political dignitaries;

*Setting Up of DPA*

- iv. Justifications for confining reporters to provide news coverage at a DPA;
- v. Rationale for setting up the DPAs far away from the Building and the Hotel;
- vi. Confirmation as to whether or not similar measures were implemented in previous visits of political dignitaries;

*Setting Up of DPAA*

- vii. Justifications for confining protestors / members of the public to protest at a DPAA;
- viii. Justifications and rationale for the Police to set up 3 DPAA's in Wanchai at locations not within sight of the Hotel;
- ix. Justifications and rationale for the Police to set up for the VP's visit to CGC only one DPAA, which was located outside CITIC Tower opposite to the eastern side of CGC, when eventually the VP entered CGC on the western side, making the protestors unable to see the VP;

- x. Justifications for setting up the Security Zone for CGC which extended beyond the Chinese People's Liberation Army Forces Hong Kong Building in Central, rendering it impracticable to set up a DPAA outside the western side of CGC;
- xi. Justifications for the Police to remove by force the male (COM-13) from the vicinity of Block 26 at Laguna City; and
- xii. Justifications for the Police to remove by force the 2 protestors in Case 11 and Case 15 (COM-11 and COM-15) who refused to go to the DPAA, but insisted to go to the Hotel which was designated by the Police as the Core Security Zone.

**Police's Legal Justification for their Security Measures in the VP's Visit**

- i) The duties of the Police are set out in section 10 of the Police Force Ordinance (Cap 232) which include taking lawful measures for, inter alia, preserving public peace, preventing and detecting crimes and offences, preventing injury to life and property, regulating processions and assemblies in public places or places of public resort, and preserving order in public orders and places of public resort.
- ii) Section 39(1) of the Interpretation and General Clauses Ordinance (Cap 1) provides that where any Ordinance confers any power or imposes any duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires. The Police are therefore conferred with the powers to carry out the duties under section 10 of the PFO as long as the exercise of powers is reasonable and proportionate.
- iii) Every police officer enjoys the power and is subject to a duty to seek to prevent, by arrest or other action, any breach of the peace occurring in his presence. The power and duty extend to any breach of the peace which (having occurred) is likely to be renewed, or any breach of the peace which is about to occur. (*Chan Hau Man Christina v Commissioner of Police* [2009] 6 HKC 44)
- iv) In *Rice v Connolly* [1966] 2 QB 414, Lord Parker CJ said that it is clear “*that it is part of the obligations and duties of a police constable to take all steps which appear to him necessary for keeping the peace,*

*for preventing crime or for protecting property ... There is no exhaustive definition of the powers and obligations of the police ...”*

- v) The Police in the frontline often have to assess the situation and the risks involved, and to make timely judgment and taken prompt actions. This is not always an easy task. It has been held that when freedom was involved, the court must scrutinize the conduct of the Police with care. On the other hand, the courts should not carry the scrutiny to the length of second-guessing the Police on operational matters. [*R v To Kwan Hang* [1994] HKC 293 at 304B per Bokhary JA (as he then was)]
  
- vi) According to the House of Lord judgment in *R (Laporte) v Chief Constable of Gloucestershire* [2007] 2 AC 105 and the judgment in *Chan Hau Man Christina v Commissioner of Police* supra at 55, “[t]he court must guard against the danger of hindsight, and the judgment of the officer on the spot, in the exigency of the moment, deserves respect.”
  
- vii) “The law also calls upon demonstrators to accommodate other people’s rights ... For that purpose demonstrators have to tolerate some interference with their own freedom to demonstrate. Such tolerance is expected of demonstrators however strongly they may feel about their cause” (*YEUNG May Wan & ors v HKSAR* (2005) 8 HKCFAR 137, at 185, per Bokhary PJ)
  
- viii) “A right of peaceful assembly is not infringed by the police doing their duty to preserve the public peace and to prevent injury to life and property. On the contrary, the right would be put in peril if the

*police were to refrain from doing that duty.” (R v To Kwan Hang supra, at 303F per Bokhary JA (as he then was)*

- ix) In exercising the above powers, Police officers may need to cordon off and stop people from entering an area (*R v To Kwan Hang supra, Chan Hau Man Christina supra and HKSAR v Au Kwok Kuen [2010] 3 HKLRD 371*).

No.	Case Name	Nature of Complaint	Allegation	Final Classification
1	Closure of footbridge to HKCEC	Closure of footbridge	(a) - (c) Neglect of Duty ("NOD")	Withdrawn
2	Closure of footbridge to Immigration Tower		NOD	Informally Resolved
3	Closure of footbridge to CITIC Tower		NOD	Not Pursuable
4	Closure of footbridge to HK Arts Centre		NOD	Not Pursuable
5	Clearing pedestrian on Cotton Tree Drive	Clearance of pedestrians	Rudeness	Informally Resolved
6	Clearing pedestrian on Harbour Road		Rudeness	Not Pursuable
7	Security arrangements at HKU	Security arrangements at HKU	(a) - (c) NOD	Informally Resolved
8	Protest outside CGC	Execution of Police Powers and location of DPAA	(a), (b) & (e) NOD (c) & (d) Misconduct	Informally Resolved
9	Protest on footbridge to CGC (I)		NOD	Informally Resolved
10	Protest on footbridge to CGC (II)		Unnecessary Use of Authority ("UUOA")	Not Pursuable
11	Protest outside Convention Plaza		(a) Assault (b) UUOA	Unsubstantiated No Fault
12	Submission of petition letters to VP		NOD	No Fault
13	Removal of a male at Laguna City		Execution of Police Powers	Assault
14	Reporters' encounters with Police at Laguna City and Wong Cho Tong Building	(a), (g) & (h) UUOA (b) & (i) NOD (c) Impoliteness (d) & (j) Misconduct (e) Misconduct (f) NOD		Substantiated Substantiated Substantiated Substantiated No Fault No Fault
15	Protest outside Central Plaza	(a) NOD (b) Assault		Sub-Judice (Pending Investigation)
16	DPA locations and search of reporters' personal belongings	Location of DPA		(a) NOD (b) UUOA (c) NOD (d) & (f) NOD (e) Misconduct

\* "No Fault" proposed by CAPO; "Unsubstantiated" proposed by IPCC

**Improvement Measures Adopted by the Police during President Mr. HU Jintao's Visit Between 29 June and 1 July 2012 After the Review of Security Arrangements for Vice Premier Mr. LI Keqiang's Visit**

Tightening the wording of Operational Orders

- In order to minimise any misinterpretation of the instruction, the Operational Orders for President Mr. HU Jintao's visit between 29 June and 1 July 2012 were carefully prepared, in particular the wording. The Police will continue this practice.

Enhanced Liaison with Stakeholders

- A force-wide experience sharing session for officers of inspectorate rank and above was held on 23 May 2012 on the review with areas covering lessons learnt, media management and complaints prevention.
- Effective liaison channels with the lead departments such as Home Affairs Department and Information Services Department were maintained with a view to strengthening communication and arriving at clear delineation of responsibilities.
- Strengthening liaison with other external stakeholders concerned such as venue operators and protocols in handling incidents.
- Strengthening communications of the Police Public Relations Branch ("**PPRB**") with all frontline units involved in particular in the setting up of DPAs and associated press arrangements during the planning and execution phases.
- Early engagement of media by closed-door briefing to the media, informing them about the media arrangements, and press conference outlining the police arrangements such as temporary traffic and pedestrian access diversion respectively.
- No DPA is to be set outside the security zones for the security operation and the media are free to move outside the security zones.



- Experience sharing sessions for frontline officers with the media were organised by PPRB. This helped both parties to appreciate the difficulties and duties of each other and improve mutual understanding.
- Engagement of local and neighbourhood groups as well as the building management offices to advise the possible impact of the police arrangements for the security operation.

#### Establishment of Media Liaison Team (“MLT”)

- Establishment of MLT with officers from PPRB and other Regions who had worked in the media field. MLTs were paired up with Designated Checking Teams (“DCT”) formed by officers from Force Search Unit who were responsible for bag and equipment search of media prior to their access to DPAs inside the security zones. This is to maintain the consistent level and standard of search to be conducted.
- A total of 8 MLTs were deployed for the President HU’s visit. Both MLT and DCT were headed by one team leader with 2 members, making a total of 6 officers in one group.
- Two half-day training sessions were arranged for the MLTs and a detailed briefing was given to the MLTs and DCTs prior to the operation. Representatives from the affected Districts were also invited to attend the briefing.

#### Force-level Briefing

- A Force-level briefing to officers of inspectorate rank and above was held prior to the security operation for the President HU’s visit.
- This served as a forum for officers to raise their concerns, offer ideas or suggestions and to clarify any parts of the briefing.

#### Enhanced Footbridge Closure Management

- In order to achieve the Police’s commitment to minimise inconvenience to the public without compromising the security of the motorcade movements, footbridges with at least 3 metres in width

above motorcade route could remain open during the security operation and buffer areas were set up on both sides of the footbridges.

- Newly designed notices were placed to advise members of public on the closure and the duration.

#### Establishment of Forward Petition Areas

- Forward Petition Areas were arranged within security zones to facilitate members of public and it also helps minimise potential conflicts between protesters and frontline duties.

**Police's Reply to Questions in Appendix 7**

*Footbridge Closure & Pedestrian Clearance*

- i. Justifications for the Police to completely close the footbridges under which the motorcade of VP would pass as part of the security arrangements
  
- ◆ The movement of a dignitary by motorcade is a particularly difficult operational concept to manage, as the motorcade will be more vulnerable to risks as it will be moving through an environment that is not totally under the police control, unlike an enclosed environment within a venue that the dignitary is visiting. This is particularly so when the dignitary is moving between venues on their official itinerary and especially in the confined area of the HKSAR where the variety of routes that can be taken are limited and as such, routes may be anticipated and attacks planned in advance.
  
- ◆ Disruptions and delays to traffic in the area or build up of unscreened crowds in the immediate vicinity of the dignitary may per se provide a cover or offer a target for potential attacks.
  
- ◆ In order to minimise the risks involved when dignitaries move in motorcades, special measures are required to be put in place to ensure the personal safety of dignitaries and these have to be considered by the police

commanders. In addition to the provision of a Police traffic escort, footbridge controls and pedestrian clearance will also be implemented along routes between known venues.

- ◆ Footbridge control is implemented to regulate the flow of pedestrians on footbridges along the motorcade route to prevent objects being dropped or thrown from height directly onto the motorcade or onto the route as the motorcade is approaching. The control is maintained by uniformed officers and prevents persons from congregating on the footbridges prior to the approach of the convoy. In order to ensure that inconvenience to the community is limited, footbridges will normally only be controlled just prior to the imminent approach of the motorcade and resumes normal immediately after the motorcade had passed.
- ◆ The operational decisions on what security measures will be implemented to ensure the personal safety of visiting dignitaries are dependent on specific security requirements. Footbridge control has been implemented during previous visits by dignitaries based on the security requirements for the security operation in question.
- ◆ The duties of the Police are stipulated in section 10 of the Police Force Ordinance (“**PFO**”). This include preserving the public peace, preventing and detecting crimes and offences; preventing injury to life and property; regulating processions and assemblies in public places or places of public resort and preserving order in public places and places of public resort.

- ◆ In section 39(1) of the Interpretation and General Clauses Ordinance (“IGCO”), it is stipulated that where any Ordinance confers any power or imposes any duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires. Hence, police duties and powers laid down in section 10 of the PFO are bound by conditions.
- ii. Justifications for the Police to clear pedestrians along VP’s motorcade route
- ◆ Same as (i).
- iii. Confirmation as to whether or not similar measures were implemented in previous visits of political dignitaries
- ◆ Similar measures were implemented in the previous visits of political dignitaries.

Setting up of DPA

- iv. Justifications to confine reporters to provide news coverage at a DPA
- ◆ In order to facilitate the work of the media, it is a common practice for the Police to set up DPA in the vicinity of activities and / or incidents which attract media interest. In relation to the visit of the VP there included both the movements and activities associated with the visit.
- ◆ In the setting up of DPA during protective security operations due to the

risks and threats associated with a dignitary the Police have to balance the need to facilitate the work of the media with the need to ensure that the proximity of unscreened persons and the congregation of large numbers of people do not in themselves pose security risks or threats.

- v. Rationale for setting up the DPA far away from WCT Building and the Hotel
- ◆ In order to facilitate the work of the media, it is a common practice for the Police to set up DPA in the vicinity of activities and / or incidents which attract media interest. In relation to the visit of the VP these included both the movements and activities of the VP as well as demonstration activities with the visit.
- ◆ In the setting up of DPA during protective security operations due to the risks and threats associated with a dignitary the Police have to balance the need to facilitate the work of the media with the need to ensure that the proximity of unscreened persons and the congregation of large numbers of people do not in themselves pose security risks or threats.
- ◆ For the visit of the VP, the District Commanders of the scheduled locations which were visited made the decision for the sites where DPA were established based on a number of factors including, but not limited to:-
  - a) The need to facilitate the work of the media;
  - b) The location of the SZ;
  - c) The physical and geographical layout of the locations; and
  - d) The need to minimise obstruction to other members of the community

- ◆ It should also be noted that some DPA were situated in relatively close proximity within the SZ, where other non-accredited persons were not allowed to stay, to where the VP's motorcade would arrive / depart a venue and in these circumstances the risk to the motorcade is at its greatest due to the fact that the motorcade would be moving slowly. The setting up of the DPA at these locations was to provide the media with a vantage point in order to cover the arrival / departure of the VP. However in such circumstances in order to facilitate this and allow members of the media to congregate in locations of such close proximity, arrangements including a search and verifying the identities of members of the media were necessary.
- vi. Confirmation as to whether or not similar measures were implemented in previous visits of political dignitaries
- ◆ The setting up of DPA to facilitate the work of the media has been implemented during previous visits of dignitaries based on the factors and considerations outlined above.

#### Setting up of DPAA

- vii. Justifications to confine protestors / members of the public to protest at a DPAA
- ◆ One of the operational concept that Police adopts in managing public activities is the setting up of DPAA's to facilitate such activities whilst, at the same time, protecting the rights and freedoms of others. These are

areas which have been identified for members of the public to congregate in to express their views. The use of DPAAAs better facilitates the public activities and also minimises the disruption to other members of the community who wish to go about their own business.

- ◆ Police officers will be assigned to manage DPAAAs, usually to invite members of the public within a locality to make use of the DPAA and then to monitor the conduct of the public activities within its boundaries. When setting up DPAAAs during protective security operations, there is a need to carefully consider their locations. This is to ensure that the proximity of the members of the public located within a DPAA does not in itself create a threat to the personal safety of the dignitary, through the congregation of members of the public becoming a potential target or cover which may be utilised to make an attack on the dignitary.
- ◆ The concept of setting up areas to facilitate public activities is a common practice that is also adopted in other overseas jurisdictions. Such a practice ensures the better management of the activity and helps minimise disruptions that the activity may cause to other members of the community.
- ◆ The duties of the Police are stipulated in section 10 of the PFO. This include preserving the public peace, preventing and detecting crimes and offences; preventing injury to life and property; regulating processions and assemblies in public places or places of public resort and preserving order in public places and places of public resort.
- ◆ In section 39(1) of the IGCO, it is stipulated that where any Ordinance



confers any power or imposes any duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires. Hence, police duties and powers laid down in section 10 of the PFO are bound by conditions.

- ◆ *“The Law requires protestors to also take note of the rights of other people... Therefore, protestors must tolerate some interference to their freedom of demonstration. Irrespective of the importance of their goals, demonstrators should have such tolerance” [YEUNG May Wan & ors v HKSAR (2005) 8 HKCFAR 137, at 185, per Bokhary PJ]*

viii. Justifications and rationale to set up three DPAA locations in Wanchai District at locations not within sight of the Grand Hyatt Hotel

- ◆ With the above considerations in mind, during protective security operations it is not always possible to site DPAA locations in as close proximity to a venue or person as is normally the case in the HKSAR during public activities. This is an important operational consideration that police commanders must bear in mind during planning to facilitate public activities during protective security operations.
- ◆ COMEE-11d explained that his choice of the DPAA locations in Wanchai District was to ensure a balance between a suitable proximity to the Hotel from the viewpoint of the protestors and a clear unobstructed passage for all other members of the public. COMEE-11d explained that the DPAA had to be outwith the designated SZ in order not to compromise the

integrity of some whilst striving to achieve the correlations described of convenience and safety to the protestors and the public at large. The considerations of COMEE-11d in fixing the location of the DPAA were in general in line with the rationale of the Force governing the setting up of a DPAA.

ix. Justifications and rationale to set up only one DPAA for the visit of the VP to Central Government Complex (“CGC”) which was located outside CITIC Tower opposite to the eastern side of CGC, when eventually the VP entered CGC on the western side, making it impossible for the protestors to see him

- ◆ Points under (vii) and (viii) are relevant.
- ◆ The setting up of SZ to ensure the personal safety of visiting dignitaries who are subject to a threat is an established international practice that is adopted all over the world. In the HKSAR context it is not a new concept and is one that has been adopted in the past in relation to visiting dignitaries. The term “Security Zone” is not a legal one but rather a Police operational term which also assists in the command and control functions of the Police.
- ◆ The concept of security zoning is built on the principle of graduated defence layering with intensifying security measures towards a CSZ to ensure the personal safety of the dignitary. In effect this results in a CSZ where the dignitary will be physically present, visits or passes through. It

is in these locations that the dignitary will be subject to the greatest threat and as such it is in these areas where security will be at its highest. Access to this area by authorised persons will normally only be permitted after the person has gone through some degree of security screening of his / her person and belongings. Following the principle of a layered approach, around the CSZ, an additional SZ is set up to provide an area of heightened security around the core.

- ◆ The creation of SZ, allows the Police to better control the environment immediately around the dignitary and, from a protective security perspective, to reduce potential threats as well as minimising the risk and disruption to the community. This includes ensuring that traffic in the area is properly controlled to allow for the rapid and unhindered movement of the dignitary's motorcade which minimises disruption and delays to other traffic in the area and ensuring that there are no build up of unscreened crowds in the immediate vicinity of the dignitary which may in itself provide a cover, or offer a target, for potential attacks.
- ◆ Given the security requirements for the VP's visit, the Police needed to manage public activity with due regard to the SZ and this inevitably meant that large gatherings of people needed to be avoided within the SZ. DPAA's were situated outside of SZ and ad-hoc public activities were also handled accordingly.
- ◆ In establishing SZ for the protection of the VP during his visit, public activities, large groups of people or other suspicious people were not allowed to remain in the zones. The rationale is clear and justifiable;

unknown elements or people possessing unknown intention would create a threat if they were allowed to get too close to the SZ and this needed to be avoided given the security requirements.

- ◆ COMEE-12b explained that the subject DPAA was the closest location that could be managed as (a) it was based on the threat assessment level; (b) it stroke a good balance between the security of the Delegation, public safety and the rights of other road users; and (c) it could allow over 800 people to conduct public activities there safely. The considerations of COMEE-12b in fixing the location of the DPAA were in general in line with the rationale of the Force governing the setting up of a DPAA.
  
- x. Justifications for setting up a SZ at CGC which extended beyond the Chinese People’s Liberation Armed Forces Hong Kong Building in Central, rendering it impracticable to set up a DPAA outside the western side of CGC
  
- ◆ Same as (ix).
  
- xi. Justifications and legal basis to remove by force the male wearing a June 4<sup>th</sup> T-shirt (COM-13) from the vicinity of Block 26, Laguna City, Lam Tin on 16.8.2011
  
- ◆ The duties of the Police are set out in section 10 of the PFO which include taking lawful measures for, inter alia, preserving public peace, preventing and detecting crimes and offences, preventing injury to life and property,

regulating processions and assemblies in public places or places of public resort, and preserving order in public orders and places of public resort.

- ◆ Every duty carries with it the power to perform that duty. Section 39(1) of the IGCO provides that where any Ordinance confers any power or imposes any duty, then the power may be exercised and the duty shall be performed from time to time as occasion required. (see *R v To Kwan Hang* [1994] HKC 293) Therefore, the Police are conferred with the powers to carry out the duties under section 10 of the PFO. However, the courts have also held that the exercises of powers must be reasonably necessary and proportionate.
- ◆ Every police officer enjoys the power and is subject to a duty to seek to prevent, by arrest or other action, any breach of the peace occurring in his presence. The power and duty extend to any breach of the peace which (having occurred) is likely to be renewed, or any breach of the peace which is about to occur. (*Chan Hau Man Christina v CP* [2009] 6 HKC 44)
- ◆ In *Rice v Connolly* [1966] 2 QB 414, Lord Parker CJ said that it is clear “*that it is part of the obligations and duties of a police constable to take all steps which appear to him to be necessary for keep the peace, for preventing crime or for protecting property...There is no exhaustive definition of the powers and obligations of the police...*”
- ◆ The Police are often in the frontline having to assess the situation and the risks involved, and to make timely judgment and take prompt actions. This is not always an easy task. It has been held that when freedom was

involved, the courts must scrutinise the conduct of the Police with care. On the other hand, the courts should not carry the scrutiny to the length of second-guessing the Police on operational matters. (see *R v To Kwan Hang* [1994] 2 HKC 293 at 304B per Bokhary JA (as he then was))

- ◆ According to the House of Lord judgment in *R (Laporte) v Chief Constable of Gloucestershire* [2007] 2 AC 105 and the judgment in *Chan Hau Man Christina v Commissioner of Police* *surpa*, at 55, “[t]he court must guard against the danger of hindsight, and the judgment of the officer on the spot, in the exigency of the moment, deserves respect.”
- ◆ “The law also calls upon demonstrators to accommodate other people’s rights... For that purpose demonstrators have to tolerate some interference with their own freedom to demonstrate. Such tolerance is expected of demonstrators however strongly they may feel about their cause” [see *YEUNG May Wan & ors v. HKSAR* *supra*, at 185, per Bokhary PJ]
- ◆ “A right of peaceful assembly is not infringed by the Police doing their duty to preserve the public peace and to prevent injury to life and property. On the contrary, the right would be put in peril if the police were to refrain from doing that duty.” [see *R v To Kwan Hang* *supra*, at 303F per Bokhary JA (as he then was).
- ◆ In exercising the above powers, police officers may need to cordon off and stop people from entering an area (see *R v To Kwan Hang* *supra*, *Chan Hau Man Christina* *supra* and *HKSAR v Au Kwok Kuen* [2010] 3 HKLRD 371). In the context of public assembly and demonstration for example, the court

has sanctioned the setting up of “clear zones” by the Police to maintain order or where necessary.

- ◆ COMEE-13a explained that he decided to remove COM-13 given COM-13’s unusual and uncooperative behaviour as the VP could come down for departure at anytime and thus potential threat needed to be eliminated. He needed to find out COM-13’s bona fides and reasons for behaving in such an unusual manner as well as what his intentions were. The conduct, manner, demeanor as well as the refusal to cooperate displayed by COM-13 raised significant alarm for COMEE-13a in the location and context in which COM-13 did it. He therefore resorted to removal which was done in as sympathetic, sensible and professional way as he could. The thinking process of COMEE-13a there and then was in line with the justifications of the Police Force before moving a person from an incident scene.

xii. Justifications and legal basis to remove by force the three protestors in Cases 11, 12 and 15 (COM-11, COM-12 and COM-15) who refused to go to the DPAA but insisted to go inside the Hotel or the CGC which was listed by the Police as the CSZ on 16 August 2011 and 17 August 2011.

- ◆ Points under (xi) are relevant.
- ◆ For Case 11, COMEE-11d explained that the Hotel’s management and Security Wing personnel were responsible for the grounds of the Hotel and the vehicular and pedestrian ramp leading up to it, whilst the duties of him

was to look after all other areas in the SZ. COMEE-11d clarified that the Hotel had stated that they would not allow any protest within the Hotel. He recalled that there was an agreement between the Police and the Hotel that any person who had bona fide reasons for entering the Hotel, such as being a resident of the Hotel, would be allowed access once the veracity of any claim for legitimate business was confirmed. The bona fide reasons of COM-11 entering the Hotel could not be verified and she was thus removed from the scene. The thinking process of COMEE-11d there and then was in line with the justifications of the Force before removing a person from an incident scene.

- ◆ COM -12 had not been removed by force.
- ◆ CAPO cannot comment on the removal of COM-15 as the case has entered “Sub-Judice” procedures with investigation suspended since 6 September 2011.