

Chapter 3 Information and evidence relevant to the particulars of the misbehaviour set out in the Schedule to the censure motion

3.1 This Chapter sets out the information and evidence gathered by IC, which are relevant to the particulars of Dr CHENG's misbehaviour as set out in the Schedule to the censure motion. IC has made reference to the relevant video footages available on the LegCo website, the official records of proceedings of the relevant Council meetings, witnesses' written statements formally produced to IC and their evidence given to IC at its hearings, etc. The relevant minutes of evidence given by seven witnesses at IC's hearings are in **Appendices 3.1 to 3.7**.

Oath-taking by Dr CHENG

3.2 At the first meeting of the Sixth LegCo on 12 October 2016, Members including Dr CHENG shall take the LegCo Oath which shall be administered by the Clerk to LegCo ("the Clerk"). According to the video footage of the above Council meeting, after the Clerk had called Dr CHENG's name inviting him to walk up to the table at the centre of the Chamber to take oath, he walked down the hallway to the table. Then he made the following remarks:

“各位香港人，睇過去呢幾年我地嘅抗爭運動，為左捍衛我地香港未來，已經不惜走上街頭七十幾日，甚至睇年初一嘅事件，好多年青人為左自己嘅香港犧牲未來，所以我唔認為我今日宣誓嘅形式，會構成抗爭嘅具體效果。我相信大家會明白。”³³

3.3 Around eight seconds later, Dr CHENG took the LegCo Oath:³⁴

³³ English translation: "Dear Hong Kong people, our resistance movements over the past few years in fighting to defend our future have seen people take to the street for some 70 days without hesitation and many young people even sacrificed their future for their own Hong Kong in the incident on the first day of the Lunar New Year. Therefore, I do not think the way of my taking the oath today will make any specific effects of resistance. I believe that you will understand it."

³⁴ Dr CHENG opted to make an affirmation in accordance with the provisions of the Oaths and Declarations Ordinance.

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“本人鄭松泰，謹以至誠，據實聲明及確認，本人就任中華人民共和國香港特別行政區立法會議員，定當擁護《中華人民共和國香港特別行政區基本法》，效忠中華人民共和國香港特別行政區，盡忠職守，遵守法律，廉潔奉公，為香港特別行政區服務。”³⁵

3.4 Around two seconds later, Dr CHENG shouted the following words before signing the LegCo Oath in **Appendix 3.8** and returning to his seat:

“全民制憲，重新立約，港人為大，香港萬歲。”³⁶

3.5 The Clerk as the oath administrator under the Oaths and Declarations Ordinance did not decline jurisdiction to administer the oath taken by Dr CHENG.

3.6 At the above Council meeting, the Clerk declined jurisdiction to administer the oath taken by three Members (Dr YIU Chung-yim,³⁷ Mr Sixtus LEUNG Chung-hang and Ms YAU Wai-ching³⁸). After the meeting, a considerable number of Members requested the President to rule on the validity of the oaths taken by not only the above three Members but also another two Members (Dr LAU Siu-lai and Mr Nathan LAW³⁹). Another Member (Hon WONG Ting-kwong) also sought the President's

³⁵ English translation: “I, CHENG Chung-tai, solemnly, sincerely, and truly declare and affirm that, being a member of the Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity.”

³⁶ English translation: “Devising constitution by all people, making new covenant, Hong Kong people predominate, all hail Hong Kong.”

³⁷ According to the judgment of CFI in HCAL 226/2016 and HCMP 3378/2016 on 14 July 2017, Dr YIU Chung-yim has been disqualified from assuming the office of a member of LegCo or has vacated the same since 12 October 2016, and is not entitled to act as a member of LegCo.

³⁸ According to the judgment of CFI on 15 November 2016, Mr Sixtus LEUNG and Ms YAU Wai-ching have been disqualified from assuming the office of a member of LegCo or have vacated the same since 12 October 2016, and are not entitled to act as a member of LegCo. Mr LEUNG and Ms YAU appealed against the decision of CFI, but their appeal was dismissed by the Court of Appeal. Their applications for leave to appeal to CFA were refused by the Appeal Committee of CFA in FAMV 7-10/2017 (1 September 2017).

³⁹ According to the judgment of CFI on 14 July 2017 (HCAL 223 and 225/2016, and HCMP 3381 and 3379/2016), Dr LAU Siu-lai and Mr Nathan LAW have been disqualified from assuming the office of a member of LegCo or have vacated the same since 12 October 2016, and are not entitled to act as a member of LegCo.

permission for him to re-take oath. On 18 October 2016, the President ruled that the oaths taken by five Members (Dr YIU Chung-yim, Mr Sixtus LEUNG, Ms YAU Wai-ching, Dr LAU Siu-lai and Hon WONG Ting-kwong) were invalid. At those Members' requests, the President decided to allow them to re-take oath at the Council meeting of 19 October 2016 (i.e. "the said Council meeting").

Distribution and display of the mock-ups of the national flag and regional flag

3.7 As shown by the video footage of the said Council meeting, shortly before the start of the meeting, Hon LAU Kwok-fan ("Mr LAU") distributed the mock-ups of the national flag and regional flag to some Members in the Chamber. According to Mr LAU, those mock-ups were from his home, which were collected from the celebration activities for Hong Kong's return to the Motherland or the National Day.⁴⁰ He gave the mock-ups of one national flag and one regional flag to each of those Members. Those mock-ups are of the same size, each of which measures 20 cm in length and 14 cm in width, with its pole being 32 cm in length.⁴¹

3.8 The Members who were given those mock-ups of the national flag and regional flag by Mr LAU were mainly from DAB or seated near to Mr LAU in the Chamber. Those Members included Dr Hon CHIANG Lai-wan ("Dr CHIANG") who is one of the Members jointly signing the notice of the censure motion.⁴² Except Dr CHIANG who laid those mock-ups on her desk, most of those Members displayed those mock-ups by placing them in the glass holders on their desks, with them crossed or slantwise, as shown in **Appendix 3.9**.

⁴⁰ Lines 93 to 94 on page 4 of the verbatim transcript of Mr LAU attending a hearing in camera (Appendix 3.7).

⁴¹ Written statement of Mr LAU (Appendix 1.9). IC notes that the actual length of the poles of those mock-ups of the national flag and regional flag should be about 30 cm.

⁴² According to the video footage of the said Council meeting, at least seven other Members (Hon Starry LEE, Hon Christopher CHEUNG, Hon CHAN Hak-kan, Hon Holden CHOW, Hon LEUNG Che-cheung, Hon Jeffrey LAM and Dr Hon Elizabeth QUAT) were distributed with the mock-ups of the national flag and regional flag and/or placed those mock-ups on their desks in the Chamber.

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Reasons for distributing and displaying the mock-ups

3.9 Mr LAU told IC that as stated in his written statement (Appendix 1.9) produced to IC, his distribution of the mock-ups of the national flag and regional flag to some Members aimed at: (a) expressing his discontent with the conduct of Mr Sixtus LEUNG and Ms YAU Wai-ching which had humiliated the country, advocated secession and damaged “one country, two systems” during their oath-taking at the Council meeting of 12 October 2016;⁴³ and (b) highlighting the need for Members taking the LegCo Oath to respect BL. He told IC:

“在10月12日，我們立法會議員要進行宣誓，在那期間，游蕙禎及梁頌恆作出了一些侮辱及分離國家的行為。例如他們展示‘Hong Kong is not China’，我認為這是對國家侮辱及分離國家，亦是破壞‘一國兩制’的行為，亦與《基本法》相違。所以，我在[10月]19日把一些國旗及區旗帶到立法會，派給議員展示。”⁴⁴

3.10 Mr LAU further told IC that he had a clear memory of bringing along the same number of mock-ups of the national flag and regional flag to the said Council meeting, and intentionally distributed the mock-ups of one national flag and one regional flag to each Member seated nearby. His intention of doing so was to emphasize Hong Kong being part of China under “one country, two systems” and the need for respecting not only HKSAR but also the country:

⁴³ At that meeting, the Clerk declined jurisdiction to administer the oaths taken by Mr LEUNG and Ms YAU as they altered the contents of their oaths. Their oaths were subsequently ruled invalid by the President on the grounds that they could not be serious about their oaths and were unwilling to be bound by them, taking into account the manner of their oath-taking, namely the display of a banner bearing the words “HONG KONG IS NOT CHINA” and the use of a derogatory term for China as well as the use of expletives by Ms YAU. See paragraph 6 of the President’s ruling on the validity of the LegCo Oath taken by six Members at the Council meeting of 12 October 2016.

⁴⁴ Lines 58 to 63 on page 3 of the verbatim transcript of Mr LAU attending a hearing in camera (Appendix 3.7); English translation: “On 12 October, we LegCo Members had to take the oath. During that time, YAU Wai-ching and Sixtus LEUNG did some acts that humiliated the country and were seditious. For example, they displayed the words ‘Hong Kong is not China’, which I think was an act to humiliate the country and were seditious and to undermine ‘one country, two systems’, and a contravention of BL. Therefore, I brought some national flags and some regional flags to the Council on 19 [October] and distributed them to Members for display.”

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“這個我是很清晰地記得，數量是相等的，即是一支國旗配一支區旗，而派發的時候亦是一支國旗配一支區旗。因為我是要強調‘一國兩制’，香港是中國的一部分，所以我們要尊重我們的香港特別行政區，同時亦要尊重國家，愛國愛港。”⁴⁵

3.11 Mr LAU recalled that before the day of the said Council meeting, he had not communicated with other Members about the objective of distributing those mock-ups at that meeting or how they should be placed.⁴⁶ He told IC that shortly before the meeting, he had talked about the relevant objective when distributing those mock-ups to some Members in the Chamber:

“我在會議前是沒有的，不過我拿回到會議之後……即我在會議廳派發的時候有對大家說，今天又要再宣誓，我們應該要展示出來，告訴他們，其實香港是中國的一部分，我們需要尊重國家，尊重‘一國兩制’，希望大家也一起展示出來，就是這樣。”⁴⁷

3.12 Dr CHIANG told IC that she had not known about Mr LAU’s distribution of those mock-ups in advance. She recalled that Mr LAU, when distributing those mock-ups to her and some other Members, appeared to say some words to her but she could not hear clearly as the Chamber was quite noisy then. Dr CHIANG did not place those mock-ups in the glass holder on her desk. She told IC that the placing of those mock-ups by some Members aimed at making a strong expression that they were Chinese:

⁴⁵ Lines 191 to 194 on page 8 of the verbatim transcript of Mr LAU attending a hearing in camera (Appendix 3.7); English translation: “I remember that clearly. The numbers were equal, which meant one national flag for one regional flag. When I distributed them, I also handed them out in a set consisting of one national flag and one regional flag. It was because I wanted to emphasize ‘one country, two systems’ and the fact that Hong Kong is part of China. That is why we must respect our HKSAR. At the same time, we must respect our country, love our country and love Hong Kong.”

⁴⁶ Lines 105 to 108 on pages 4 to 5 and lines 160 to 161 on page 7 of the verbatim transcript of Mr LAU attending a hearing in camera (Appendix 3.7).

⁴⁷ Lines 105 to 108 on pages 4 and 5 of the verbatim transcript of Mr LAU attending a hearing in camera (Appendix 3.7); English translation: “I did not do that before the meeting. However, after I brought them to the meeting...I mean, when I handed them out in the Chamber, I did say to everyone that there would be oath-taking again today; we should display them and tell them that Hong Kong is in fact part of China; we need to respect our country and respect ‘one country, two systems’; and I hoped that everyone would display them together. That was it.”

“就這麼簡單，因為當日[2016年10月12日立法會會議]有兩位不尊重《基本法》，亦不尊重宣誓，並在宣誓過程中作出一些不尊重國家及中國人民的說話，因此我相信那天大家收到國旗和區旗而決定插在座位前面，我相信是一種強烈的表達‘我是中國人’的意思。”⁴⁸

Inverting the mock-ups

3.13 At 11:00 am, the said Council meeting began. The President announced that the Council proceeded to the taking of the LegCo Oath. Hon WONG Ting-kwong and Dr YIU Chung-yim took the LegCo Oath one after the other. As soon as the President called upon Mr Sixtus LEUNG to take the LegCo Oath, the President’s attention was drawn to the fact that a quorum was not present. The President directed the Clerk to ring the quorum bell to summon Members to the Chamber. At that time, some Members including those who had displayed the mock-ups of the national flag and regional flag on their desks had left the Chamber, while Dr CHENG was staying in his seat.

First round of inverting the mock-ups by Dr CHENG

3.14 At about 11:07 am, when the quorum bell was ringing, Dr CHENG left his seat, went to the vacant seats of the Members who had placed the mock-ups in the glass holders on their desks, and inverted them (i.e. turning the mock-ups upside down, resulting in them being stuffed inside the glass holders and their poles stretching out of the glass holders as shown in **Appendices 3.10 and 3.11**). At the meeting, Mr Alfred LEE (i.e. the witness mentioned in paragraph 1.18(e)), steward of the LegCo Secretariat, was on duty sitting on the right-hand side of the President and facing Members’ seats. He told IC that he had witnessed Dr CHENG inverting those mock-ups,⁴⁹ and had been asked by his supervisor to approach Dr CHENG to see what he was doing:

⁴⁸ Lines 94 to 97 on page 4 of the verbatim transcript of Dr CHIANG attending a hearing in camera (Appendix 3.6); English translation: “*It was that simple. Since two persons had disrespected BL, disrespected the oath-taking, and said something disrespectful to our country and the people of China during the oath-taking process on that day [the Council meeting of 12 October 2016], I believe that was why everyone got the national flags and regional flags and decided to place them in front of their seats. I believe it was a strong expression that ‘I am Chinese’.*”

⁴⁹ Page 1 of the written statement of Mr Alfred LEE (Appendix 1.10), and line 85 on page 4, line 130 on page 6 and lines 294 to 299 on page 13 of the verbatim transcript of Mr Alfred LEE attending a hearing in camera (Appendix 3.4).

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“第一次大約是開會後 10 多分鐘左右，當時剛開始響鐘傳召議員回來，過了一會兒，鄭議員走到建制派那邊的area，將放在那裏的國旗倒插一次。接着就是……情況就是，他倒插了大約……應該有十多二十個議員左右，把有國旗的杯放在桌面前方，他做了 10 個、8 個左右。我身旁的保安同事對我說：‘上頭叫你去看看情況’，我便走出去。在我走出去的時候，我只說了一句“鄭先生”，因為上頭沒有甚麼指示要我做，只不過是叫我了解情況……”⁵⁰

3.15 Despite Mr LEE walking up to him, Dr CHENG walked to Hon LAU Kwok-fan’s seat and inverted the mock-ups of the national flag and regional flag on Mr LAU’s desk, while Mr LEE stood next to Dr CHENG. At that time, those mock-ups on the desks of some Members had been inverted by Dr CHENG. Then Dr CHENG walked to the vacant seat of Hon Jeffrey LAM and inverted those mock-ups on his desk. A total of 21 mock-ups of the national flag and regional flag displayed on 11 Members’ desks were inverted by Dr CHENG.⁵¹ Meanwhile, Mr LEE walked away from Dr CHENG and returned to his seat.

Dr CHENG’s responses to Dr CHIANG

3.16 According to Dr CHIANG, she was in the ante-Chamber when Dr CHENG was inverting for the first time the mock-ups of the national flag and regional flag on some Members’ desks in the Chamber. When she, in the ante-Chamber, realized Dr CHENG’s act on the television screen showing live broadcast of the said Council meeting, she immediately dashed back to the Chamber witnessing Dr CHENG’s act.⁵²

⁵⁰ Lines 50 to 57 on page 2 of the verbatim transcript of Mr Alfred LEE attending a hearing in camera (Appendix 3.4); English translation: “The first occasion took place about ten-odd minutes after the start of the meeting when the quorum bell for summoning Members had just been rung. After a while, Dr CHENG went to the area of the pro-establishment camp and inverted the national flags placed there once. Then...what was happening was that he inverted them for about...it should be about 10 to 20 Members who had put the glasses containing the national flags on the front of their desks, and he did this to about 10 or eight of them. The security colleague beside me said to me, ‘The supervisor asks you to go over to see what is going on’, so I went over there. When I went over there, I only uttered the words ‘Mr CHENG’ because my supervisor did not instruct me to do anything but simply told me to find out what was going on...”

⁵¹ Those Members included Hon CHAN Han-pan, Hon LAU Kwok-fan, Hon Wilson OR, Dr Hon Elizabeth QUAT, Hon LEUNG Che-cheung, Hon Holden CHOW, Hon WONG Ting-kwong, Hon Steven HO, Hon Starry LEE, Hon Jeffery LAM and Hon Christopher CHEUNG.

⁵² Written statement of Dr CHIANG (Appendix 1.7), and lines 175 to 181 on page 8 of the verbatim transcript of Dr CHIANG attending a hearing in camera (Appendix 3.6).

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3.17 As shown in the video footage of the said Council meeting, Dr CHIANG shouted at Dr CHENG twice, “你搞咩呀？”⁵³ while pointing at Dr CHENG and saying “你將國旗倒轉咗！”⁵⁴. Dr CHENG paid no heed to Dr CHIANG and returned to his seat. Dr CHIANG then walked to the front of the desks of Hon Wilson OR and Hon Jeffrey LAM, put the mock-ups of the national flag and regional flag back to their original positions, and shouted at Dr CHENG “你再走..... 夠膽走呀！”⁵⁵ She then tried to put the inverted mock-ups on Hon Starry LEE’s desk back to their original positions, and said loudly “賤格！”⁵⁶ She and Dr CHENG hurled abuse at each other. She proceeded to put those inverted mock-ups on the desks of Hon LEUNG Che-cheung and Hon Holden CHOW back to their original positions. At her request,⁵⁷ Mr Tommy LEE (i.e. the witness mentioned in paragraph 1.18(f)), steward of the LegCo Secretariat who was then on duty in the Chamber, came to assist her in putting those inverted mock-ups on the desks of some Members⁵⁸ back to their original positions.⁵⁹

3.18 According to the video footage of the said Council meeting, Dr CHIANG then walked towards Dr CHENG and pointed her finger at him and said loudly, “唔好搞國家啲嘢！你唔好掂我地啲嘢！我話比你聽我唔見咗錢，唯你是問！而家電視機直播緊，你再係咁嘅話..... 唔好掂我哋枱面嘅嘢！”⁶⁰ She left the Chamber afterwards.

3.19 According to Dr CHIANG, she had clearly told Dr CHENG after his inverting of the mock-ups of the national flag and regional flag for the first time that his act was disrespect for the national flag and regional flag:

“因為我第一次進去警告他時，我自己很清晰地

⁵³ English translation: “What are you doing?”

⁵⁴ English translation: “You have turned the national flags upside down!”

⁵⁵ English translation: “You go away again...dare you go!”

⁵⁶ English translation: “Despicable!”

⁵⁷ Lines 195 to 197 on pages 8 and 9 of the verbatim transcript of Dr CHIANG attending a hearing in camera (Appendix 3.6).

⁵⁸ According to the video footage of the said Council meeting, those Members included Hon WONG Ting-kwong, Dr Hon Elizabeth QUAT, Hon Steven HO, Hon LAU Kwok-fan and Hon CHAN Han-pan.

⁵⁹ Lines 55 to 60 on page 3 of the verbatim transcript of Mr Tommy LEE attending a hearing in camera (Appendix 3.5).

⁶⁰ English translation: “Stop messing up the country’s stuff! Take your hands off our stuff! I tell you, if my money goes missing, you are the one to be held accountable! The television is doing a live broadcast, if you go on like this...hands off the stuff on our desks!”

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告訴他，他這樣做是不尊重國旗。當我說話的時候，他亦未有停止他的行動、行為，他應該十分清晰地聽到我的說話，因為我說得十分大聲，他只是一直在‘吟吟沉沉’說話。所以我相信他是聽得到的，他亦沒有停止他的行為。然後，事實上，當我離開會議廳之後，他又再次同樣地把國旗和區旗倒轉。所以，我覺得他是故意違反的。”⁶¹

3.20 According to Mr Alfred LEE, he saw Dr CHIANG scold Dr CHENG for inverting those mock-ups. He told IC:

“當然，*exactly*的對話，我已經不太記得了。‘有沒有搞錯啊’，或者我大約知道的意思是，‘有沒有搞錯啊’，‘你這樣倒轉那些國旗’，是這樣子。”⁶²

3.21 According to Hon HUI Chi-fung’s responses at IC’s hearing⁶³, he was present at the said Council meeting throughout the period when the quorum bell was ringing. He noticed the mock-ups of the national flag and regional flag displayed on the desks of DAB Members. He saw Dr CHENG walk to the seats of Members of the pro-establishment camp but could not see what he was doing there. He also saw Dr CHENG being scolded by Dr CHIANG but could not hear clearly what she said. He then saw on the spot that those mock-ups had been inverted, and learned from

⁶¹ Lines 140 to 146 on page 6 of the verbatim transcript of Dr CHIANG attending a hearing in camera (Appendix 3.6); English translation: “Because when I went over to warn him for the first time, I had already made it clear to him that what he did was a disrespect to the national flag. When I was speaking, he did not stop his action and behaviour. He should have heard my words very clearly because I spoke very loudly. He just kept ‘murmuring’. So I believed he should be able to hear me but he did not stop his behaviour. Afterwards, in fact, after I had left the Chamber, he inverted the national flags and regional flags in the same way again. So I think he made the violation wilfully.”

⁶² Lines 188 to 190 on page 8 of the verbatim transcript of Mr Alfred LEE attending a hearing in camera (Appendix 3.4); English translation: “*Of course, I do not quite remember the conversation exactly. ‘What is wrong with it?’, maybe the meaning, as I understand it, is probably ‘what is wrong with it?’, ‘you inverted the national flags like this’. That was it.*”

⁶³ In accordance with paragraph 22 of the Practice and Procedure of IC, the Clerk to IC wrote to Hon HUI Chi-fung on 10 August 2017 forwarding the relevant part of the draft verbatim transcript of the proceedings of the hearing held in camera on 3 July 2017 containing his evidence to him for sight and correction. On 16 October 2017, Mr HUI gave the Assistant Clerk to IC a verbal confirmation over the phone that he had no comments on the draft verbatim transcript, and the Assistant Clerk to IC recorded his confirmation in writing. On 15 March 2018, the Clerk to IC wrote to Mr HUI informing him that IC had decided to include the draft verbatim transcript (Appendix 3.3) as an appendix to this Report. Mr HUI replied in writing the next day that he had never indicated verbally or in writing that he had no comments on the draft verbatim transcript. Please refer to **Appendix 3.12** for the correspondence between Mr HUI and the Clerk to IC on the relevant matter.

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the media that they had been inverted by Dr CHENG.⁶⁴ He told IC that he could not remember whether Dr CHENG had inverted those mock-ups again after being scolded by Dr CHIANG.⁶⁵ When asked whether the mocked-ups of the national flag, which are of non-standard size, displayed on the desks of some Members were the national flag, Mr HUI told IC:

“我的判斷，那支肯定是國旗。”⁶⁶

Second round of inverting the mock-ups by Dr CHENG

3.22 According to the video footage of the said Council meeting, Dr CHENG left the Chamber at around 11:10 am but returned in less than 30 seconds and sat on his seat. At around 11:12 am, he left his seat, walked to Dr Hon Elizabeth QUAT's seat and inverted the mock-ups of the national flag and regional flag that were placed in a glass holder on her desk.

Dr CHENG's responses to the President's requests and order

3.23 The video footage of the said Council meeting and the Official Record of Proceedings of the meeting⁶⁷ also show that after leaving Dr QUAT's seat, Dr CHENG walked towards Hon LEUNG Che-cheung's seat. At this juncture, the President told Dr CHENG that the Council meeting was still in progress, and a headcount was being conducted due to the lack of a quorum. The President asked him to return to his seat. Despite the President's request, Dr CHENG continued to invert the mock-ups of the national flag and regional flag placed on the desks of Hon LEUNG Che-cheung and Hon Holden CHOW. The President advised Dr CHENG that he should not leave his seat at will and

⁶⁴ Lines 47 to 52 on page 2, lines 74 to 77 on page 3, lines 112 to 114 on page 5 and lines 207 to 216 on page 9 of the verbatim transcript of Mr HUI attending a hearing in camera (Appendix 3.3).

⁶⁵ Lines 86 to 89 on page 4 of the verbatim transcript of Mr HUI attending a hearing in camera (Appendix 3.3).

⁶⁶ Line 287 on page 12 of the verbatim transcript of Mr HUI attending a hearing in camera (Appendix 3.3); English translation: “According to my judgment, they were definitely national flags.” In accordance with paragraph 33 of the Practice and Procedure, the Clerk to IC wrote to Mr HUI on 2 March 2018 inviting him to sign a confidentiality undertaking (Appendix 3.13) and advising him that upon receiving his signed undertaking, IC would forward the relevant part of this Report which sets out the evidence on the basis of which IC had established the facts stated in the censure motion (i.e. paragraph 3.21) to him for comment. However, since Mr HUI replied that he would not sign the undertaking, the Clerk to IC subsequently informed him in writing that the aforementioned part of this Report would not be forwarded to him for comment (Appendix 3.14). The content of paragraph 3.21 is therefore not commented upon by Mr HUI.

⁶⁷ Official Record of Proceedings of the Council meeting of 19 October 2016 (Appendix 3.15).

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should not go to the seats of other Members to cause a disturbance.⁶⁸ Despite the President's advice, Dr CHENG proceeded to the front of the vacant seat of Hon WONG Ting-kwong and inverted those mock-ups placed on his desk. The President further advised Dr CHENG that if he did not return to his seat, his conduct would be ruled grossly disorderly. Dr CHENG continued to walk to the front of the vacant seat of Hon Steven HO to invert those mock-ups placed on his desk. When Dr CHENG was inverting those mock-ups placed on Hon Wilson OR's desk, the President told Dr CHENG that he was giving him a final warning. Dr CHENG continued to invert those mock-ups placed on the desks of Hon CHAN Han-pan and Hon LAU Kwok-fan. A total of 16 mock-ups of the national flag and regional flag placed on eight Members' desks were inverted by Dr CHENG.

3.24 According to the video footage of the said Council meeting, at around 11:13 am, the President ordered Dr CHENG to withdraw from the Council. Despite the President's order, Dr CHENG returned to his seat. He then took pictures of Dr CHIANG who had returned to the Chamber, putting the inverted mock-ups of the national flag and regional flag on the desks of Dr Hon Elizabeth QUAT and Hon LEUNG Che-cheung back to their original positions.

3.25 The President directed the Secretariat staff to enforce his order to require Dr CHENG to withdraw from the Council but Dr CHENG refused to leave. Dr CHIANG walked towards the front of Dr CHENG's desk and condemned him loudly, saying “你企喺度道歉，出去！”⁶⁹ Then Dr CHENG in his seat shouted loudly at the President, saying “第一，你有任何道理，趕我離開立法會。第二，建制派離開咗嗰會議廳，請你響完鐘叫佢哋返到嚟先至講。第三，你自己話嘅，你上任嘅時候，係會按照一切嘅規例……”⁷⁰ Dr CHENG remained in his seat and refused to withdraw from the Council.

3.26 At around 11:18 am, the quorum bell had rung for 15 minutes. Due to the lack of a quorum, the President announced that the said Council meeting be adjourned.

⁶⁸ Page 82 of the Official Record of Proceedings of the Council meeting of 19 October 2016 (Appendix 3.15).

⁶⁹ English translation: “Stand right here and apologize! Get out!”

⁷⁰ English translation: “Firstly, you do not have any grounds to expel me out of LegCo. Secondly, Members of the pro-establishment camp have left the Chamber. Please ring the bell and wait until they are summoned back before you speak. Thirdly, you have said it yourself, when you take up the office, you would follow all the rules...”

3.27 On the same day, after the said Council meeting, Mr LAU reported to the Police concerning Dr CHENG's acts of inverting the mock-ups of the national flag and regional flag at that meeting. He told IC:

“我認為他倒插國旗和區旗之後，是一而再，連續倒插了國旗和區旗，這個行為是屬於玷污了我們的國旗和區旗，是侮辱了我們的國家和香港。所以，我之後去了報警。在報警前和報警後，我都沒有跟他討論過這件事。”⁷¹

Dr CHENG's relevant remarks after the said Council meeting

3.28 Regarding Dr CHENG's acts of inverting the mock-ups of the national flag and regional flag at the said Council meeting, Hon Paul TSE proposed to move the censure motion at the Council meeting of 14 December 2016. At the HC meeting on 25 November 2016, Dr CHENG expressed his disagreement with the censure motion and cast doubt on whether those mock-ups of the national flag and regional flag could be taken as the national flag and regional flag. He also highlighted the meaning of turning the national flag upside down in the United States (“the US”):

“.....如果我當日的行為是違反了國旗法的話，其實大可大家已經報警，將這件事交由我們的司法程序及司法機關處理。至於在司法機關處理不了，為何呢？因為在我們的國旗法裏，是就着我們國旗的尺寸有一定的限制，而我相信當日那個東西，到了法庭上大家都會認為是一個展示品，為何這樣說呢？由一個很基本的角度出發，如果由謝偉俊議員剛才所講的，那個東西是這樣莊嚴、這樣神聖的話，你是不會將兩支國旗插在我們的杯座上面的。你怎能說服大眾，如果你當日那兩支展示品是國旗的話，會插在我們放水杯的杯座上面呢？.....當你建制派能夠將自己國旗帶入我們的議事廳，但是捨它而去，

⁷¹ Lines 175 to 178 on pages 7 and 8 of the verbatim transcript of Mr LAU attending a hearing in camera (Appendix 3.7); English translation: “In my view, after he inverted the national flags and regional flags, he did this again and inverted the national flags and regional flags repeatedly. Such an act defiled our national flags and regional flags, and humiliated our country and Hong Kong. That was why I made a report to the Police afterwards. I had not discussed the matter with him, neither before nor after my reporting to the Police.”

**Report of the Legislative Council Investigation Committee established under
Rule 49B(2A) of the Rules of Procedure in respect of the motion
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以流會去解決當時的政治爭拗的時候，請問國德何在呢？如果大家真是真心背負你的國家的時候，我不相信你會這樣輕易離棄你的國旗在議事廳，所以我會認為今日謝議員這個做法，只是他作為一個政治鬥爭、一個政治表態展示的行為，而且香港人會看在眼內……”

“……其實關於……如果假設那展示品是國旗的話，將那個東西調轉是有一個含意的。在軍方的背景下，這是一個‘Call for Help’的signal，就是一個國家有危難的時候，將國旗倒轉是希望能夠得到大家的關注。這一點在美國的國旗，即Flag Code裏面是寫得好清楚的……。”⁷²

⁷² English translation: “...if my behaviour on that day had violated the national flag law, everyone, in fact, might make a report to the Police and handled the matter by way of legal proceedings and brought the case before the judicial authority. As to why the judicial authority could not handle the matter, the reason is that the size of the national flag is specifically prescribed in the national flag law. I believe that, in the court, the objects on that day would be regarded by everyone as mock-ups. Why say so? From a fundamental point of view, if, as Mr TSE has just said, the objects were so solemn and sacred, you would not put the two national flags in our glass holders. How can you convince the public that the two mock-ups which were put in the glass holders for holding our glasses on that day were the national flags?...When you, the pro-establishment camp, brought the national flags to the Chamber but then left them behind and walked out in a bid to resolve the prevailing political controversies by causing the meeting to be aborted, where is the moral of the country? If everyone carries the burden of the country with their heart, I do not believe that you would leave your national flags behind in the Chamber so casually. So, I will consider what Mr TSE does today is merely a practice of political struggles and a political gesture which in the eyes of Hong Kong people...if the mock-ups are assumed to be the national flags, their inversion has a meaning. In a military sense, this is a ‘Call for Help’ signal, i.e. when the country is in distress and danger, the purpose of turning the national flag upside down is to attract attention. This is written very clearly in the US Flag Code.”