

Independent Police Complaints Council

**Special Report on Complaint Cases concerning
Policing of Public Order Events**

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Introduction

1.1 Policing public order events (“**POE**”) is one of the major duties of the Police, which has been subject to close public scrutiny. The Independent Police Complaints Council (“**IPCC**”), as the police complaints system oversight body, has concerns about policing arrangements in POEs from the perspective of complaints prevention. In 2011, 16 complaint cases arose from the policing operations in connection with the visit of the then Vice Premier Mr. LI Keqiang. As a result, the IPCC compiled an Interim Report and a Final Report on these 16 complaint cases in 2012. The Final Report concluded 15 of these complaint cases. Only one case (“**Case 15**”), in which the complainant (“**COM**”) was arrested by the Police for “Resisting or Obstructing a Police Officer in the Execution of Duties” by charging the Police cordon, remained unresolved at the time of issuing the Final Report for reason of the outstanding legal proceedings against COM. Upon the conclusion of the court proceedings, the Complaints Against Police Office (“**CAPO**”) has conducted investigation into the complaint and the IPCC has also examined the CAPO’s investigation report.

1.2 Since the release of the Final Report, there have been three POE complaint cases, namely (i) the 2011 June 4 Candlelight Vigil Case, (ii) the Video-recording Case and (iii) the Bear Hugging Case, that the IPCC considers should be brought to public attention for the purpose of enhancing public awareness of the Two-tier Complaint System. In the 2011 June 4 Candlelight Vigil Case, the IPCC has made a number of observations and recommendations on enhancing the policing arrangements for the annual event, and the Police consequently took on board our observations and recommendations in addition to their own following their internal review of the event. Since 2011, the Police have not received similar complaints arising from the June 4 Candlelight Vigil.

1.3 In the Video-recording Case, COM gave a statement to CAPO in person, providing details of the incident that led to the complaint. CAPO investigation subsequently revealed that two complainees (“**COMEEs**”) had inappropriately captured video images of a post-POE

event that took place outside the Chief Executive's Office ("**CE Office**"), contrary to the relevant guidelines. Hence, CAPO classified the allegations against the two COMEEs as "Substantiated".

1.4 In the Bear Hugging Case, the allegations were classified as "Not Pursuable" as COM did not come forward to give a complaint statement or provide sufficient details of the incident and the alleged conduct of the COMEEs that led to the complaint. In the absence of such details from COM, the complaint could not be meaningfully investigated. In this Report, the IPCC takes the opportunity to highlight the importance of COM providing detailed information to CAPO by way of a complaint statement after lodging a complaint so as to facilitate the complaint investigation.

Case 1 – Protest Outside Central Plaza during Mr. LI Keqiang’s Visit in 2011

[Case 15 in the “Final Report on Complaint Cases Arising from the Visit by the Vice Premier Mr. Li Keqiang” (VP Visit Report) published by the IPCC in December 2012]

Complaint

2.1 Around 2045 hours on 16 August 2011, COM, holding placards and wearing a dress with slogans, crossed the footbridge connecting Central Plaza and the Hong Kong Convention and Exhibition Centre (“**HKCEC**”), with a view to protesting at Grand Hyatt Hong Kong (“the Hotel”) where Mr. LI Keqiang stayed during the VP Visit. COMEE 2 (also a Woman Police Constable) intercepted COM and, after enquiry, learnt of COM’s intended action. COMEE 2 then led COM to the Designated Public Activity Area (“**DPAA**”) which was situated inside the garden of Central Plaza.¹

2.2 At the garden, COM refused to enter the DPAA and attempted to go in the direction of the Hotel. COMEES 1 and 2 tried to stop COM. *[Note: Information obtained from the Police transpired that in the security operation, the Police demarcated the Hotel as the Core Security Zone (“**CSZ**”) and the surrounding vicinity north bound of Harbour Road (i.e. on the side of HKCEC) as the Security Zone (“**SZ**”), and that surrounding the SZ was an area termed as Security Buffer Zone (“**SBZ**”). CSZ was the core area where security measures were set at the highest level with deployment of the VIP Protection Unit of the Police. Security measures and logistic arrangement within both the SZ and SBZ were determined by the District Commander based on his assessment on security requirements. Only authorized or permitted personalities would be allowed access to the CSZ and SZ, and no protest activity would be allowed therein. Appropriate actions*

¹ See Map and Photo at Annex 1.

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.] COM put up a struggle, but was subdued by COMEES 1 and 2 together with COMEE 3 (a Woman Senior Inspector). At 2135 hours, COMEE 1 arrested and handcuffed COM, after which COMEES 1 – 3 escorted COM to board a police vehicle for Wanchai Police Station.

Allegations

2.3 COM alleged that:-

- (a) COMEE 1 arrested her without justifiable reason [Unnecessary Use of Authority];
- (b) COMEE 1 failed to accurately record the location of the arrest in COMEE 1's statement by stating that COM was arrested on the pavement outside Central Plaza instead of inside the garden of Central Plaza. [Neglect of Duty] *[Note: COM learnt from the newspaper report that she was arrested on the pavement outside Central Plaza and she believed the incorrect information came from COMEE 1.]; and*
- (c) COMEES 1 – 3 treated her rudely in the course of arrest and pressed her head on the floor of the police vehicle. [Rudeness] *[Note: At the time when the VP Visit Report was released, this allegation was categorized as "Assault". When CAPO interviewed COM on video in the course of the complaint investigation, COM clarified that COMEES had not assaulted her and she was only dissatisfied with the officers' "Rudeness".]*

CAPO Investigation

2.4 In September 2011, CAPO investigation into the instant

complaint was suspended on the ground of “Sub-Judice” pending the conclusion of the criminal proceedings against COM. On 29 December 2011, COM was charged for two counts of “Resisting a Police Officer in the Execution of Duty”. On 27 July 2012, COM was convicted after trial at the Eastern Magistrates’ Court with a sentence of “Bound Over”. On 4 October 2013, upon COM’s appeal, the Court of First Instance quashed COM’s conviction. On 22 October 2013, upon conclusion of COM’s court proceedings, CAPO reopened the complaint investigation.

COMEEs’ Version

2.5 When interviewed by CAPO, COMEEs 1 – 3 denied the allegations. According to COMEEs 1 and 2, both of them had been instructed not to allow unauthorized persons to cross Harbour Road or to enter the Hotel in order to ensure the safety of Mr. LI Keqiang. On the material day, when COMEE 2 spotted COM on the footbridge connecting Central Plaza and HKCEC and learnt of COM’s intention to go to the Hotel to stage her protest, COMEE 2 invited COM to go to the DPAA at Central Plaza. COM at first appeared cooperative. However, upon arrival at the garden of Central Plaza, COM became emotional. COM insisted to go to the Hotel and charged against COMEEs 1 and 2 when the two officers tried to block her way. After issuing two verbal warnings to COM but to no avail, COMEE 1 arrested COM inside the garden of Central Plaza for “Obstructing Police Officer in the Execution of Duty” and handcuffed her. Afterwards, COMEEs 1 – 3 escorted COM onto a police vehicle which took her to Wanchai Police Station.

Review of COMEE 1’s Notebook and Statement

2.6 COMEE 1 made a post-recorded entry of the incident on her notebook. Concerning the location where COM was arrested, which is the crux of Allegation (b), COMEE 1 wrote on her notebook and later in her statement that she arrested COM inside the garden of Central Plaza.

Independent Witness' Version

2.7 CAPO located a security supervisor of Central Plaza who witnessed the incident. According to the independent witness, at the garden of Central Plaza, COM insisted on crossing the Harbour Road via the footbridge nearby, ignoring the direction of the police officers. COM was emotional and kept yelling at the police officers. Seeing this, other protesters at the DPAA also shouted loudly at the police officers. The police officers later escorted COM to leave the garden in the direction of Fleming Road.

Medical Findings

2.8 COM received medical treatment on 17 August 2011. She was found to have sustained “*multiple bruises over both upper limbs, associated with mild tenderness*”.

2.9 COMEE 2 also received medical treatment and was found to have sustained “*tenderness and linear redness over whole forearm*”.

Court Case Result

2.10 On 27 July 2012, COM was convicted after trial of two counts of ‘Resisting Police Officer’ at the Eastern Magistrates’ Court. During the trial, COM did not lodge any allegations concerning the location of arrest or that she was being assaulted by any police officers. In the verdict, the Magistrate quoted the cases of *Chan Hau Man Christina v Commissioner of Police* [2009] 6 HKC 44 and *R v To Kwan Hang* [1994] HKC 293 which stated that in preserving order during processions and protests, the Police had a wide discretion in deciding what measures were to be used, and the Police might need to cordon off and stop people from entering an area. Applying these principles, the Magistrate found that the setting up of the DPAA and the SBZ in the vicinity of the Hotel was both necessary and proportionate to the aim of protecting Mr. LI Keqiang. The Magistrate also held that it was understandable and nothing improper

that different levels of security arrangements were adopted by the Police for visits made by officials of different ranks. COM's conduct of charging the cordon line of the Police thus constituted an obstruction to the lawful exercise of COMEEs' police duties.

2.11 Upon an appeal lodged by COM, the Court of First Instance ("CFI"), however, quashed the conviction. The High Court Judge considered that "... [t]he main issues in the present case are whether the "security buffer zone" set up by the police at the material case was too large, whether the protest area (i.e. DPAA) was too far away from the Hotel in which the Vice Premier stayed, and whether the measures adopted by the police were necessary and proportionate." The Judge had reservations about the principles adopted by the Magistrate and commented that:-

"In To Kwan Hang, although the Court of Appeal agreed that the police were empowered to establish cordon lines, the police power referred to by the Court is not free from any restrictions. The Court of Appeal said, "... the establishment of the cordon in question was a proportionate response to it." (at 259, para.45) In other words, the establishment of cordon is such measure as is appropriate in the circumstances."

"As for Chan Hau Man Christina, it is true that Andrew Cheung J said in his judgment that the police had a very wide discretion when preserving order during processions and protests. However, the learned Judge then went on to quote the following statement made by the Court of Final Appeal in Leung Kwok Hung: "What are reasonable and appropriate measures must depend on all the circumstances in the particular case." (at 805, para.14). By the same token, there is no universally applicable general rule and in each case a decision has to be made in light of its particular circumstances."

“... the Magistrate should not have held, for the reason that “there is nothing improper for different levels of security arrangement to be made for officials of different ranks”, that the arrangements on the day in question were reasonable and appropriate. While what amounts to reasonable and appropriate deployments may differ according to the rank of the official to be protected, the underlying concern is not about the ranks of officials, but about their personal safety or the need for the police to address issues of public safety or public order as a result of the presence of the officials. In the present case, the prosecution witnesses were merely junior police officers who were responsible for preserving order. The prosecution had not adduced any evidence to show why it was necessary for the police to make the deployments as they did on the day in question, nor had they indicated that the measures taken at that time were reasonable, appropriate and proportionate.”

2.12 The Judge concluded that:

“... In the absence of evidence to show that it was reasonable and appropriate for the police to set up protest areas and security buffer zones on the day in question, it could not possibly be a duty of the police officers, in the particular circumstances, to stop the Appellant from submitting a petition letter to express her views. Accordingly, the prosecution had failed to prove that the two female police officers [i.e. COMEEs 1 and 2] were acting in the execution of duty at the material time, and the two charges against the Appellant could not possibly be established.”

CAPO Initial Findings and Analysis

2.13 For Allegation (a), CAPO considers that there are two issues in dispute, namely, (i) whether COMEE 1 was justified in preventing

COM from going to the Hotel; and (ii) whether COMEE 1 was justified in arresting COM.

2.14 Concerning the first issue, CAPO noted that the explanation of COMEEs was supported by the independent witness who saw that COM was emotional and attempted to break the Police cordon to cross the Harbour Road. CAPO was of the view that, although the High Court Judge commented that *“the prosecution had not adduced any evidence to prove that it was necessary for the Police to make the deployments as they did on the day in question, nor had they indicated that the measures taken at that time were reasonable, appropriate and proportionate”*, and ruled that *“...it could not possibly be a duty of the police officers, in the particular circumstances, to stop the Appellant (i.e. COM) from submitting a petition letter to express her views...”* as *“... the prosecution had failed to prove that the two female police officers (i.e. COMEEs 1 & 2) were acting in the execution of duty at the material time, and the two charges against the Appellant could not possibly be established”*, the Court might have ruled differently had the prosecution adduced such evidence during the trial. Hence, CAPO considers that the first issue remains unresolved. Since whether COMEE 1 was justified in preventing COM from going to the Hotel is unresolved, the second issue, i.e. whether COMEE 1 was justified to arrest COM, could not be proved or negated. On this basis, CAPO classified Allegation (a) as **“Unsubstantiated”**.

2.15 As to Allegation (b), CAPO concluded that COMEE 1 had correctly recorded in her notebook and subsequently in her statement that she arrested COM near the DPAA situated inside the garden of Central Plaza instead of “the pavement outside Central Plaza” as alleged. CAPO thus classified Allegation (b) as **“No Fault”**.

2.16 With regard to Allegation (c), CAPO reasoned that there was no independent evidence or witness to prove or negate the allegation. Hence, it should be classified as **“Unsubstantiated”**.

IPCC Assessment

Allegation (a)

2.17 In IPCC's examination of the whole series of complaint cases arising from the Mr. LI Keqiang's visit, IPCC had scrutinized the relevant Operational Orders and interviewed the relevant District Commanders. It was revealed that frontline officers, who participated in the security operation, i.e. including COMEE 1, had been instructed not to allow unauthorized persons to enter the SZ. The evidence of the independent witness corroborates COMEES' version that at the material time, COM attempted to break the police cordon with a view to going to the Hotel, which was situated inside the SZ. Unless there was information suggesting that COMEE 1 should have questioned the legality and the appropriateness of the instructions given by her superiors, or the demarcation of the SZ and the security measures adopted within it, it would be fair and reasonable for COMEE 1 to follow the instructions given by her superiors to stop unauthorized persons, including COM, to enter the SZ.

2.18 As CAPO has pointed out in its initial analysis, the CFI might have ruled differently had the prosecution adduced evidence at the trial "*... to show why it was necessary for the police to make the deployments as they did on the day in question...*" or to indicate "*...that the measures taken at that time was reasonable, appropriate and proportionate.*". The High Court Judge did not make any adverse comments on the handling of COM by COMEES 1 and 2. The mere fact that the conviction of COM was quashed does not mean that the arrest of COM by COMEE 1 was unlawful.

2.19 Based on CAPO's investigation findings, at the material time COMEE 1 was acting in accordance with her superiors' order, which she genuinely believed to be lawful, to stop COM from approaching Harbour Road, which was demarcated as SBZ. COM refused to cooperate and continued charging the cordon set by COMEES 1 and 2. COMEE 1,

after issuing two verbal warnings to COM, had no choice but to arrest COM. The handling of the whole incident by COMEE 1 was reasonable and professional. There was nothing to indicate that COMEE 1 was not acting in good faith in arresting COM.

2.20 That said, the IPCC shares the High Court Judge's concerns over the size and demarcations of security zones set by the Police and the choice of location for DPAA. In this regard, the IPCC had inspected the relevant Operational Orders of the Police during the examination of other complaint cases arising from Mr. LI Keqiang's visit. It was revealed that there were no guidelines in the Operational Orders on how the SZ was determined, and it appeared that the decision was left to the discretion of individual District Commander. Despite having assessed all information provided by the Police, the IPCC still found it not in a position to confirm whether the requirement that the DPAA had to be outside the SZ was justifiable and whether there could be better arrangements for setting the DPAA at a location closer to the Hotel to facilitate protestors to express their views without compromising the security concerns. As such, as stated in Part III of the VP Visit Report,² the IPCC has reservation about the legal basis of the setting up of SZ. The IPCC has made a number of recommendations to the Police in this regard. In particular, IPCC has recommended that the Police should endeavour to ensure that the size and demarcation of SZ are reasonable, appropriate and proportional to the security need under the particular circumstances of each future security operation.

2.21 After deliberation, IPCC considers that the arrest action taken by COMEE 1 against COM was proper, even though the IPCC is unable to ascertain whether the demarcation of the SBZ is reasonable and appropriate, in the absence of the necessary information. Hence, the IPCC is of the view that the classification for Allegation (a) should be "**No Fault**" instead of "**Unsubstantiated**".

² Excerpts of the relevant paragraphs of the VP Report are reproduced at Annex 2.

2.22 One IPCC Member, however, holds a dissenting view. The Member is of the opinion that the arrest action taken by COMEE 1 against COM was based on the security measures of stopping people from entering the SZ. In the absence of any information as to whether the establishment and demarcation of the SZ concerned was reasonable and proportionate, the IPCC is not in a position to judge whether it was justified for COMEE 1 to arrest COM when COM charged against the police cordon set in accordance with the demarcation of the SZ. The Member is of the view that the “**Unsubstantiated**” classification for Allegation (a) as originally proposed by CAPO is appropriate.

2.23 CAPO subscribes to the majority of IPCC Members’ views and changed the classification for Allegation (a) to “**No Fault**”. The IPCC endorses such finding.

Allegation (b)

2.24 For Allegation (b), the IPCC observes that both COM and COMEE 1 stated that the location of arrest was inside the garden of Central Plaza. COM alleged that COMEE 1 failed to accurately record the location of the arrest because COM learnt from the newspaper that she was arrested on the pavement outside Central Plaza. The IPCC accepts that Allegation (b) was made because of a misunderstanding and thus endorses CAPO’s proposed classification of “**No Fault**”.

Allegation (c)

2.25 As to Allegation (c), the IPCC agrees that there is insufficient evidence to prove or negate the allegation, and hence endorses the “**Unsubstantiated**” classification.

IPCC Conclusion

2.26 During the IPCC’s examination of the 16 cases arising from Mr. LI Keqiang’s visit in 2011, it was revealed that the security

operation in protecting Mr. LI Keqiang necessitated stringent security measures. Staging of any protest within the SZ was not allowed during the whole 24-hour period of the 3-day visit of Mr. LI Keqiang between 16 and 18 August 2011, whether or not Mr. LI Keqiang was present in the vicinity. While appreciating the need to have vigilant security control and there might be a need to avoid the congregation of a large number of people in the vicinity of the dignitary, the IPCC is of the opinion that it would not serve any purpose for the Police to set up DPAA in areas where there was no chance of seeing the dignitary or his motorcade. It is only natural that protestors, like COM in this case, would be frustrated, and complaints ensue.

2.27 The IPCC was given to understand that, further to the recommendations given by the IPCC in the VP Visit Report, the Police has introduced a number of improvement measures to address our concerns. For facilitating protestors to express their views and help minimize potential conflicts between protestors and frontline police officers, the Police has improved the arrangements by setting up Forward Petition Areas within security zones. This arrangement was adopted during the visit of the then President Mr. HU Jintao in June to July 2012. The IPCC welcomed this improvement measure and sincerely hopes that our observations and recommendations in this Report and the VP Visit Report could help prevent similar complaints in future dignitary visits.

Case 2 – June 4 Candlelight Vigil Case

Background

3.1 On the evening of 4 June 2011, the Candlelight Vigil (“**the Vigil**”), an annual event for more than 20 years, was held at the Victoria Park (“**the Park**”). The location of the assembly areas and the access gates of the Park are shown in the map at **Annex 3** for easy reference.

3.2 Prior to the Vigil, the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China (“**the Alliance**”), organizer of the Vigil, and the Police, led by the Police Community Relation Officer (“**PCRO**”) of Eastern District (“**EDIST**”), held a preparatory meeting and an on-site inspection at the Park to discuss the crowd control arrangements for the Vigil.

3.3 The Police also issued an Operational Order for implementing the crowd control measures during the Vigil (“**the Operation**”). The District Commander of EDIST, who stationed at the Police Command Post inside the Park, was the Overall Commander of the Operation. The Deputy District Commander of EDIST, assisted by the Police Public Relation Branch (“**PPRB**”), handled all press enquiries. Officers from PCRO of EDIST were responsible for the liaison work with the Alliance throughout the event.

3.4 There were five phases in the Operation, namely, Arrival Phase 1, 2 & 3, the Contingency Phase and the Departure Phase. Prior to 1800 hours, participants would be directed to go to the six Football Pitches (“**FBPs**”) in the Park, which was the main assembly area. When Arrival Phase 1 began at 1800 hours, crowd flow on the east side of the Park, i.e. from Tin Hau area, would be directed to use Gate 15 to enter the six FBPs. A souvenirs selling area would be set up at the Basketball Courts (behind the stage at FBP No.6). Gate 14 and the South Boulevard would be used as an emergency vehicle access (“**EVA**”). Arrival Phase 2 commenced at 1900 hours when arriving crowds would need to queue up in the parking area adjacent to Gate 14 for entering the FBPs orderly. When the six FBPs were 80% full, the

Operation would enter into Arrival Phase 3. Arriving crowds would be directed to go to the Central Lawn. In the event that the Basketball Courts were 80% occupied, crowds would be directed to enter the Park via Gate 13. When the Central Lawn became 80% full, crowds would be directed to go to the Band Stand, Hill Knoll and the rest of the Park. As soon as the entire Park was 80% full, the Operation would enter the Contingency Phase when entry to the Park would be disallowed, but participants could still use the gates to leave the venue. Once the event concluded, the Departure Phase would be activated when participants would depart the venue upon the direction of the Police.

Complaint

3.5 After the event, the Alliance and some participants of the event aired their dissatisfactions on the Police's Operation to the press. On 16 June 2011, COM, on behalf of the Alliance, lodged the instant complaint with a total of 11 allegations (the details of which are set out in **Annex 4**). The first 10 allegations can be categorized into three groups.

3.6 The first group consists of Allegations (a), (b) & (c) accusing the Police of breaching various agreements with the Alliance during the Operation. COM alleged that prior to the Vigil, COMEE 1 (who remained unidentified) and the Alliance had reached agreements that (i) Gate 15 would be used as an entrance to the Park on the east; (ii) the Central Lawn would only be used when the six FBPs had been fully occupied; and (iii) the Police would play a supplementary role in performing crowd management duty inside the Park. During the Vigil, however, the Police breached the above agreements.

3.7 The second group consists of Allegations (d), (e), (f), (g) & (h) criticizing the Police's crowd management measures. COM stated that during the Vigil, participants had been directed to enter the Central Lawn via Gate 13 but the path leading to Gate 13 was narrow and had stairs. The Police had also disallowed participants to get into the Central Lawn before it was fully occupied and directed the participants to other assembly areas (such as the Band Stand and Hill Knoll) by using a path north of Central Lawn which was rough and lighting was insufficient.

COM complained that COMEE 2 (District Commander of EDIST, the Overall Commander of the Operation) had failed to give due consideration to the safety of the participants in implementing those crowd control measures. COM further claimed that the marshals hired by the Alliance had tried to negotiate with police officers at the scene when they found the Police using Gate 13 in lieu of Gate 15 and directing participants to go to the Band Stand and Hill Knoll areas prematurely, but police officers gave inappropriate responses. In addition, police officers had failed to direct participants to leave the Park swiftly during the Departure Phase.

3.8 The third group consists of Allegations (i) & (j) accusing the Police of disseminating inaccurate information to the public. COM alleged that the Police had delivered wrong message to the participants by publicized on a big TV screen next to the Water Fountain Plaza that “Football pitches full, please enter Central Lawn along the left path (足球場已滿，請沿左邊小路進入中央草坪)” when the six FBPs were not full, and inaccurately informed the media that the Police implemented special crowd control measures at 2000 hours, whereas in fact the special crowd control measures had already taken effect half an hour earlier, i.e. at 1930 hours.

3.9 These first 10 allegations [Allegations (a) – (j)] have led to the final and most serious Allegation (k), which is that the Police had a political agenda, namely, to suppress the number of participants in the Candlelight Vigil.

IPCC Monitoring

3.10 On 27 June 2011, in view of the public interest in the instant complaint, the IPCC decided to put it under the close monitoring and examination by the Serious Complaints Committee.

3.11 In April 2012, CAPO completed the investigation and submitted its Investigation Report to the IPCC for scrutiny. The IPCC raised a number of queries for CAPO’s response. As a result, CAPO carried out further investigations, and re-submitted its 1st & 2nd Amended

Report in January 2013 and April 2014 respectively for IPCC's scrutiny. Apart from two identified COMEEs (COMEEs 2 and 6), a total of 24 Police Officers were interviewed by CAPO. CAPO also interviewed COM and another representative of the Alliance, as well as an attendee of the Vigil who called CAPO hotline to indicate his wish to act as a witness after knowing the instant complaint from the newspapers.

3.12 Having closely scrutinized CAPO's investigation reports and the relevant records and documents, the IPCC took the view that more information or clarification was necessary for evaluating CAPO's findings on the allegations. Hence, the IPCC interviewed the following people between July and September 2013 under Section 20(1) of the Independent Police Complaints Council Ordinance ("IPCCO")³:-

- i. COM,
- ii. COMEE 2, a Chief Superintendent who was the District Commander of the EDIST and the Overall Commander of the Police's Operation,
- iii. COMEE 6, a Station Sergeant who gave instructions to a Police Constable ("PC") to display the message "Football pitches full, please enter the Central Lawn along the left path(足球場已滿，請沿左邊小路進入中央草坪)" on the big TV screen next to the Water Fountain Plaza on the west side of the Park,
- iv. Police Witness 1 (PW 1), a Superintendent who was the Field Commander in the Operation,
- v. Police Witness 3 (PW 3), an Inspector who was a Zone Commander in the Operation, and

³ Section 20(1) of the Independent Police Complaints Council Ordinance provides that in the course of examining CAPO investigation report, the IPCC may interview any person who is or may be able to provide information or assistance to the IPCC in relation to the report. The purpose of interviews is to clarify matters with the concerned persons.

- i. Police Witness 23 (PW 23), a Woman Superintendent of PPRB.

3.13 Apart from obtaining clarification through the IPCC Interviews, the IPCC has also examined the notes of meeting between the Police and the Alliance, extracts of the relevant police records, photos taken on the event night, the gist of the relevant conversations on the Police’s beat radio on the event night, media reports, the statements issued by the PPRB to the media, the relevant extracts of the respective Operational Orders for 2010 and 2011 Vigil as well as the After Action Review.

3.14 Having examined CAPO’s investigation reports and the relevant material as well as conducting the IPCC Interviews, the IPCC has the following analysis, findings, observations and recommendations.

Chronological Summary of Events

3.15 The following is a chronology of events of the Vigil based on the beat radio recording and occurrence book and other written records of the Police:-

Date	Time	Event
16 May 2011	pm	Preparatory meeting between the Police and the Alliance to discuss the crowd control arrangements on the event day.
19 May 2011	pm	The Police and the Alliance made a site visit to the Park.
4 June 2011	1655 – 1710 hours	The Police briefed the marshals of the Alliance.
	Before 1800 hours	Participants entered the Park via any of the Park entrances, including Gate 14.
	1800 hours	Arrival Phase 1 commenced. Gate 14 was closed and was reserved as

Date	Time	Event
		<p>the EVA entrance. Gate 15 was used as the main entrance on the east side of the Park.</p>
	1900 hours	Arrival Phase 2 commenced.
	1920 hours	<p>Police officers found that entry passages were heavily blocked by people gathering at the selling booths and fund raising activities at the Basketball Courts behind the stage at FBP No.6 near Gate 14.</p>
	1930 hours	<p>The Police escalated the Operation to Arrival Phase 3. The Police closed Gate 15. The Police directed participants from the east side to use Gate 13 to enter the Central Lawn of the Park.</p>
	1932 hours	<p>The Police displayed the message “football pitches full, please enter the Central Lawn along the left path (足球場已滿，請沿左邊小路進入中央草坪)” on the big TV screen next to the Water Fountain Plaza on the west side of the Park. A photograph (Annex 5) taken from Catic Plaza (West of the Park) showed that FBP No.2 was around two-third occupied and FBP No.1 was basically unoccupied. Another photograph (Annex 6) taken from the East of the Park showed that the Basketball Courts were by and large unoccupied.</p>

Date	Time	Event
	1937 hours	A Zone Commander reported that only five FBPs were full.
	1951 hours	The Command Post ordered to close Gate 6 (West).
	1957 hours	All FBPs were full (N.B. Arriving crowd from Gate 7 were allowed to continue to fill up the FBPs until then).
	2019 hours	The Central Lawn 80% full.
	2025 hours	The Central Lawn full.
	2034 hours	Gate 15 re-opened as ordered by PW 1. Part of the crowd in the east was diverted to Basketball Courts until they were full while others continued to enter via Gate 13.
	2055 hours	The Band Stand and Hill Knoll were 80% full.
	Around 2130 hours	The event concluded and participants started leaving the Park.
	After the Vigil and before 2312 hours	The PPRB issued a press statement that “今日晚上約八時，位於興發街的維多利亞公園閘口，因人流過多，入場通道擠塞。基於安全理由，警方一度實施疏導人群措施，指示參與晚會人士利用鄰近閘口前往會場。”

IPCC Assessment

3.16 Based on what transpired from the IPCC Interviews and scrutiny of the additional information and documents, the IPCC critically re-examined the instant complaint. The following matters are of particular importance in assessing the allegations:

Analysis of the Operational Order in 2010 and 2011

3.17 In line with its established practice, the Police would issue an Operational Order for implementing crowd control measures during the Vigil. The IPCC has examined the relevant extracts of the Operational Order in 2010 and in 2011 (both were issued by District Commander of EDIST, i.e. COMEE 2) and notes that the mission stated is the same in both, namely, to facilitate the public meeting, maintain law and order and ensure public safety. However, there are a number of changes in the Operational Order in 2011 when compared with that in 2010. In general, the plan in 2011 is more detailed and sophisticated. Below is a highlight of the major differences:

- i. **Arrival Phases:** In 2010, there were only two arrival phases defined, namely Arrival Phase 1 as from 1700 hours onwards and Arrival Phase 2 when the six FBPs were almost full (i.e. FBP No.1 is half-full). In 2011, there were three arrival phases defined, namely Arrival Phase 1 from 1800-1900 hours with the lowest level of police deployment, Arrival Phase 2 from 1900 hours with additional police deployment and crowd management measures, and Arrival Phase 3 when the six FBPs were reaching 80% of its saturation (i.e. FBP No.1 was going to be half-full).
- ii. **Action to be taken when Central Lawn became saturated:** In 2010, there was no explicit planning on how to act in the event that the Central Lawn was nearly full. In the Arrival Phase 3 in 2011, it was planned to direct the crowd to the Band Stand, Hill Knoll and the rest of the Park in the event that the Central Lawn was approaching 80% of its saturation.

- iii. **Contingency Phase:** There was no contingency phase in 2010. In 2011, it was planned in the event that the entire Park was approaching 80% of its saturation, all gates would be temporarily closed for access with contingency crowd holding areas set up in the east and west of the Park for crowds to queue up and wait.

- iv. **Use of Gates for arrival in the East:** While there was no significant difference between the plan in 2010 and 2011 for the use of gates for the arriving crowd in the West (i.e. the Causeway Bay area), the situation was more complicated in the East (i.e. the Tin Hau area). In 2010, Gate 14 was designated as the main entrance for arrival in the East and it would continue to be used when the FBPs were almost full, and the crowd entering from Gate 14 would be directed to the Central Lawn by crossing the South Boulevard. In 2011, the South Boulevard including the extension from it to Gate 14 was reserved as an EVA and Gate 14 would be closed for arrival as from 1800 hours in Arrival Phase 1. Instead, Gate 15 was designated as the main entrance as from Arrival Phase 1. Arrival Phase 2 would start at 1900 hours, if the crowd flow was obstructed or slowed down at Gate 15, Gate 14 would be opened to allow additional crowd flow into the Park. When the six FBPs were reaching 80% full (i.e. FBP No.1 was going to be half-full), the Operation would be escalated to Arrival Phase 3. The arriving crowds would continue to use Gate 14 and 15 and they would be directed to the Central Lawn via East Boulevard and North Boulevard. In the event that the Basketball Courts were approaching its 80% saturation, crowds would be directed to enter the Park via Gate 13 through Hing Fat Street.

3.18 The IPCC notes that both Operational Orders in 2010 and 2011 were issued by COMEE 2 and accepts the Police's explanation as to the reasons for the changes to the Operational Plan in 2011. According to the Police's statistics, the number of participants in the Vigil suddenly

surged from 62,800 in 2009 to 113,000 in 2010, which was the highest (N.B. The second highest figure beforehand was 80,000 in 1990). Hence, in 2011, the Police needed to formulate a more sophisticated crowd management plan with contingency measures to address the safety concerns to accommodate over 100,000 participants. In particular, the need to preserve the integrity of the EVA was emphasized in 2011 due to the experience in 2010 (as a result of the heavy congestion and gathering of participants caused by the souvenir selling booths and fundraising activities behind the Basketball Courts near Gate 14, the EVA at the South Boulevard and Gate 14 could not function effectively in case of emergency). The IPCC also accepts the Police's explanation that in formulating the operational plan in 2011, they took on board the recommendations outlined in Justice Bokhary's Report in 1993 on the Lan Kwai Fong disaster in 1991 and sought to provide a reasonably wide margin of safety in the planning and execution of crowd management measures.

Deficiencies observed from the Operational Plan in 2011

3.19 The IPCC however considers that there are some unsatisfactory aspects in the Operational Plan in 2011:

- i. The Operational Order used the threshold of 80% full to describe when the assembly area (e.g. FBPs) was considered to be saturated to trigger the elevation of the Operation to another phase. While it was the Police's intention to provide a reasonably wide margin of safety given the lead time required for frontline officers to implement the change of operational phases, it transpired from the IPCC Interviews that various supervisory officers of the Police and frontline police officers appeared to have held different views as to when the six FBPs were 80% full. The supervisory officers regarded 80% full of the six FBPs would mean 5.5 of the six FBPs full. However, the frontline police officers' general perception was that it would mean five FBPs were full and the last one reached 80% of its capacity. Another problem is that there was no clear guidance to frontline police officers under the Operational

Order as to how to assess whether the FBPs, the Central Lawn and the entire Park were considered to have reached its 80% saturation, as there is flexibility in its holding capacities, depending on how close the participants are to one another. Due to different interpretation amongst police officers for the terms of “80% full”, there were discrepancies in police officers’ actions in the implementation of security measures during the Operation, including the opening /closure of gates as well as the display of messages via the big TV screen next to the Water Fountain Plaza.

- ii. It transpired from the IPCC Interviews that the Police regarded Gate 15 in principle would not be used in Arrival Phase 3 (though there might be some lead time for the change of phases so that some people might still move through Gate 15 to go to the Central Lawn). In that case, the Operational Order should specify clearly the circumstances under which Gate 15 would be closed and police officers participating in the Operation be briefed accordingly, and that such plan should also be conveyed to the Alliance and its marshals to avoid any unnecessary misunderstanding.

Intelligence-led special arrangements by the Police

3.20 It was revealed in the IPCC Interviews that prior to the event, the Police had received reliable intelligence that serious crowd endangering activities might take place somewhere near the stage of FBP No.6 during the event. Given the intelligence, the Police had to make special arrangements to ensure fire engines could have quick access into the Park through the EVA, and Gate 14 was the crucial access point for fire services to get into the Park. In case Gate 15 was congested and jammed up with participants, Gate 13 would then become the logical option to allow the crowd to get into the Park.

3.21 Upon learning the details of this piece of intelligence, the IPCC agrees that, given the seriousness of the threat, it was reasonable for the Police to make the necessary arrangement of keeping the EVA

clear and that Gate 14 be the crucial access point for the fire services to get into the Park.

Closure of Gate 15 and Use of Gate 13

3.22 It is obvious that the main cause of the instant complaint was the closure of Gate 15 and the use of Gate 13 at around 1930 hours. Particularly, COM and many participants of the event might have grievances given the following:

- i. At around 1930 hours, FBP No.2 was only around two-third occupied and FBP No.1 was scarcely occupied; and that the Basketball Courts behind FBP No.6 were by and large unoccupied.
- ii. In previous years when Gate 14 was used as the main entrance in the east side and it was never closed even after the FBPs and the Central Lawn were filled up with participants. In 2011 when it was agreed between the Alliance and the Police that Gate 15 be used in lieu of Gate 14 as the main entrance, the Police had not expressly informed the Alliance or the public in advance under what circumstances Gate 15 would be closed and Gate 13 be used in lieu.
- iii. Upon the closure of Gate 15, a lot of participants of the Vigil were required to queue up for considerable time along Hing Fat Street to enter the Park, and Gate 15 was only reopened around one hour later at 2034 hours.
- iv. At the end, according to the Police's figures, there were only around 77,000 participants in 2011 while there were around 113,000 participants in 2010.

3.23 It is worth noting that there was deviation from the original plan set out in the Operational Order in 2011 in that even after escalation into Arrival Phase 3 when the six FBPs were 80% full, the crowd from the East should have been first directed to the Central Lawn

via Gate 14 and 15 through East Boulevard until the Basketball Courts were 80% saturated, in which case the crowd would then be directed to enter via Gate 13.

3.24 In practice, the responsible police officers decided to close Gate 15 and use Gate 13 instead at around 1930 hours.

3.25 It transpired from CAPO investigation and the IPCC Interviews with various police officers that at 1920 hours on the event night police officers found that entry passages were heavily blocked by people gathering at the souvenir selling booths and fund raising activities near Gate 14. Police officers had asked the marshals to rectify the situation but to no avail. Police officers had used loudhailers to remind the participants to follow the Police's instructions but the effect was not satisfactory in view of the heavy crowd flows. At 1926 hours, police officers on the ground reported the situation to COMEE 2, who then immediately gave the instruction to escalate the Operation to Arrival Phase 3 and ordered to close Gate 15 and to direct the crowd to use Gate 13 to go to the Central Lawn.

3.26 Police officers attended the IPCC Interviews explained that it was necessary to close Gate 15 at that time as the situation was chaotic at the EVA as the crowds at the East Boulevard connecting to the EVA were pushing the metal barricades. It was the Police's top priority to maintain uncompromised accessibility of the EVA. Therefore, closing Gate 15 and prevention of overflow of the crowd became essential as Gate 15 was connected to Gate 14.

3.27 While it may be arguable as to whether it was premature for the responsible police officers to order the closure of Gate 15 at that time or whether there was any delay in re-opening it, the IPCC accepts CAPO's assessment that given in particular the piece of intelligence received as mentioned above, the judgment call made by the responsible police officers could not be considered as an unreasonable or unjustified decision. There is no sufficient evidence to show any neglect of duty or misconduct on the part of the police officers concerned.

Due consideration of the public safety for using Gate 13

3.28 Police officers attended the IPCC Interviews produced a number of photos of the entry route via Gate 13 and illustrated that prior to the commencement of the Vigil, Police had conducted a hazard check inside the Park and toured around Gate 13 and the path north of the Central Lawn to identify items which may pose danger to the event participants. They explained that the pathway through Gate 13 was wide enough for crowd movements. Despite of the pathway having a short stair of a few steps, it became flat ground on the side of the swimming pool where there was lighting to allow people to see where they were going to. When it came to the path north of the Central Lawn, there was additional illumination from some construction works nearby, so the lighting on that part of the passageway was considered sufficient.

Finding and Observations on the 11 Allegations

3.29 The classifications of the 11 allegations endorsed by the IPCC are set out in **Annex 4**. Instead of explaining in detail CAPO's findings and the IPCC's assessment in each of these allegations, in this Report we highlight only the more important issues and observations by reference to the three groups of allegations below.

Alleged breach of agreements (Allegations (a), (b) & (c))

3.30 Three agreements were alleged to have been breached by the Police, namely, (i) an agreement not to close Gate 15; (ii) an agreement to direct the public to go to the Central Lawn only when all the six FBPs had been fully filled up; and (iii) an agreement that the Police would play a supplementary role while performing crowd management inside the Park. The Police deny the existence of all these agreements.

3.31 The IPCC notes that neither COM nor the Alliance has kept or produced any written records of the alleged agreements. COM also cannot identify the police officer who allegedly reached the agreements

with the Alliance, and when and how they were reached. The IPCC has also examined the internal records of the Police and cannot find the existence of such agreements. It appears that what COM alleged was not so much any agreement expressly reached with the Police, but what COM perceived to have been agreed / consented by the Police based on past conducts/practice/experience/communications.

3.32 As regards the use of Gate 13, it is revealed from the records of the site visit on 19 May 2011 that the Police had suggested using Gate 13 and East Boulevard as the route to Central Lawn subject to the crowd situation at the Basketball Courts. However, it did not mention the result of the deliberation. Although COM claimed that the Alliance had expressed objection to the Police for using Gate 13 as an entrance in the east side of the Park during the site visit and explained the reason thereof to the Police, it is worth noting that on a map of the Park submitted by the Alliance to the Leisure and Culture Services Department (“**LCSD**”) for the Vigil (**Annex 7**), Gate 13 was marked as an alternative entry route. It therefore seems that Gate 13 was contemplated by the Alliance to be used as an entrance to the Park, though the crux is whether it would be used in parallel with Gate 15 or in lieu of Gate 15.

3.33 According to COM, the Police and the Alliance had agreed in the preparatory meeting and site visit that Gate 15 would be served as the main entrance in the east side of the Park. COM said that the Police had never told the Alliance in advance that Gate 15 would be closed at any point of time. On the other hand, police officers who had attended the preparatory meeting and site visit stated that the Police had told the Alliance that the crowds would be diverted to Gate 13 if Gate 15 was heavily congested but they had not specifically mentioned whether Gate 15 would be closed when Gate 13 was used. Given that Gate 14, which was used as the main entrance in the past, had never been closed, the IPCC finds it understandable for COM and the Alliance to assume that Gate 15 would not be closed even if Gate 13 was used at the same time. However, it does not mean that the Police had agreed not to close Gate

15 in all circumstances. In particular, it was clearly contemplated in the Operational Order in 2011 that Gate 15 might be closed in Arrival Phase 3, and so it is inherently improbable that any police officer would have agreed with COM or the Alliance not to close Gate 15.

3.34 Obviously, there exists a gap between the Alliance's expectation on the use of Gate 15 and the Police's action in closing Gate 15 at around 1930 hours on the event night. The IPCC reckons that the expectation gap is mainly attributed to the lack of clear communication in advance.

3.35 As regards the alleged agreement under Allegation (b) to direct the public to go to the Central Lawn only when all the six FBPs had been fully filled up, it appears that there was a mutual understanding between the parties that this should be the case, but the key difference between the parties is when the six FBPs were considered to be fully occupied.

3.36 The IPCC observes that the views as to when the six FBPs were fully occupied were quite diverse. To COM's understanding, the six FBPs would be considered "fully filled" if 90% of the six FBPs were occupied, i.e. when FBPs No.2 - 6 were totally full while FBP No.1 was two-thirds full. However amongst the police officers they appear to hold different views towards when the six FBPs were regarded as full. As a result, COM and the Alliance may have been caught by surprise when the Police's Command Post decided to divert the crowds to Central Lawn when FBP No.1 was only scarcely occupied.

3.37 The IPCC believes there is clear room for improvement in the communication between the Police and the Alliance.

3.38 As regards the alleged agreement under Allegation (c) that the Police had undertaken to take a supplementary role in performing crowd control duty inside the Park, again it seems that there is some misunderstanding between the parties due to a lack of clear

communication.

3.39 According to COM, it was a long established practice that the Alliance would be responsible for the crowd control duty inside the Park while the Police would be responsible for the crowd management outside the Park. That said, COM agreed that if come chaos happened inside the Park, the Police should have the ultimate responsibility to handle it inside the Park according to the law as it was the Police's duty to maintain law and order in public places.

3.40 Police officers on the other hand said the mutual understanding was that the Alliance would generally be responsible for crowd management in the assembly areas within the FBPs and the Central Lawn, but did not include the passageway inside the Park. The Police confirmed that their principal duty was to maintain public safety and order while not interfering with the Vigil's activities. Some tasks, such as which particular FBP should be filled up first, could be undertaken by the Alliance themselves, but tasks such as gate control, coordinating the buffer zones, changing the crowd control operation from one phase to another in case of change of crowd dynamics, and forming cordon lines to prevent crowd disorder from happening etc. remained as the Police's duties. It is understandable that the marshals hired by the Alliance did not have the training and expertise to recognize and handle changes in crowd dynamics and they did not have the necessary equipment to monitor the crowd situations in various areas of the Park. It is reckoned that the Alliance might have mistakenly expected that they would be responsible for effecting crowd control management inside the Park with minimal police officers presence.

3.41 The IPCC observes from the Letter of No Objection (“**LONO**”) issued by the Police for the Vigil has highlighted the assisting and supportive role and duty of the marshals: “1. 在他/她們負責的區段內協助警方管理人群;及2. 確保在活動結束後,場地得以清理妥當。”, which tends to support the Police's stance that the Alliance would only take a supplementary role in performing crowd control duties inside the

Park.

Criticisms on the actual operation of the crowd management plan (Allegations (d), (e), (f), (g) & (h))

3.42 As regards the allegations from (d) to (f), as discussed above, while there are unsatisfactory aspects in the execution of the crowd management operation, there is no sufficient evidence to show any neglect of duty or misconduct on the part of the Police officers concerned. The IPCC accepts CAPO's assessment that given the need to provide a reasonably wide margin of safety particularly in view of the piece of intelligence received as mentioned above, the judgment call made by the responsible police officers could not be considered as unreasonable or unjustified.

3.43 For Allegations (g) and (h) which concern the alleged encounters between the marshals/public and the police officers, it is noted that COM was unable to identify the involved marshals/public or the Police officers concerned. Hence, the IPCC subscribes to CAPO's views that both allegations be classified as "Not Pursuable" for the reason that not only were the details of the conversations between the marshals/public and the police officers and the circumstances that gave rise to the conversations were unknown, both the marshals/public and the police officers were also unidentified.

Accusations against the Police for disseminating inaccurate information to the public (Allegations (i) & (j))

3.44 Under Allegation (i), COM complained that COMEE 5 (an unidentified police officer) had wrongly informed the media that the crowd management measures were implemented at 2000 hours, whereas in fact the Police started the measures around 1930 hours.

3.45 CAPO investigation revealed from the instant news archive that before 2312 hours on the event night, the PPRB issued a press statement informing the media that “今日晚上約八時，位於興發街的維

多利亞公園閘口，因人流過多，入場通道擠塞。基於安全理由，警方一度實施疏導人群措施，指示參與晚會人士利用鄰近閘口前往會場。”。 CAPO argued that the press statement did not state that the crowd control management started at 2000 hours sharp but used the word “around”. CAPO considered that the statement was not inaccurate and proposed to classify the allegation as “No Fault”.

3.46 It transpired from the IPCC Interview that it was the Headquarters Command and Control Center (“HQCCC”) which drafted the press statement based on information of the actual situation at the venue and faxed it to the newsroom of the PPRB for modification. Upon receiving from the HQCCC confirmation of the accuracy of the modified contents and the instruction to issue the statement to the media, newsroom staff made the press release.

3.47 Following the IPCC Interviews, the IPCC asked CAPO to examine the relevant records of the PPRB for the purpose of identifying the officer(s) at the HQCCC who drafted the press statement and subsequently instructed the PPRB to release the finalized version, and who at the newsroom of the PPRB received the instruction from the HQCCC. The IPCC also requested CAPO to retrieve all relevant records in relation to the release of the press statement. In CAPO’s further enquiry with the newsroom staff, one of the staff was able to retrieve a copy of the statement faxed by the HQCCC to the PPRB at 2214 hours that night. Other than this copy of the statement, there was no other record as to the release of the press statement. On the draft statement, the crowd control implementation time was, however, left blank. That newsroom staff could not recall who was responsible for dealing with the HQCCC to modify and subsequently to issue the press statement. It was unknown who finalized the press statement.

3.48 The IPCC is of the view that the circumstances under which the press statement was prepared and who drafted and finalized the press statement were unknown. It cannot be ascertained why the HQCCC and the newsroom informed the media that the crowd control measures were implemented around 2000 hours instead of at the exact time the crowd control measures were carried out. Given these unknowns and having

considered that “around 2000 hours”, strictly speaking, is not entirely accurate but at the same time cannot be said to be inaccurate, the IPCC considers that it is more appropriate to classify Allegation (i) as “Unsubstantiated” instead of “No Fault”. CAPO took heed of the IPCC’s advice and re-classified Allegation (i) from “No Fault” to “Unsubstantiated”.

3.49 Under Allegation (j), COM alleged that on the night of the Vigil when the six FBPs were still not fully occupied, the Police displayed on the big TV screen next to the Water Fountain Plaza that the six FBPs had been fully filled up and misled participants to go to the Central Lawn.

3.50 CAPO investigation transpired that a few weeks before the Vigil, COMEE 6 was instructed to draft different messages for display on the big TV screen next to the Water Fountain Plaza to advise the participants to go to different assembly areas at different stages. One of the messages to be displayed was to advise participants to go to the Central Lawn when the six FBPs were fully occupied. A PC was assigned to operate the big TV screen which was under the management of LCSD. The arrangement was that after COMEE 6 had received verbal instruction from the Field Commander via the beat radio, he would relay the instruction to the responsible PC to display the relevant message on the big TV screen.

3.51 Information transpired from the IPCC Interviews revealed that frontline police officers were told in the briefing that participants should be diverted to the Central Lawn when the six FBPs were full. At 1932 hours, COMEE 6 heard on the beat radio that the six FBPs were full. He, therefore, gave the instruction to display the message “足球場已滿，請沿左邊小路進入中央草坪” on the big TV screen. COMEE 6 stated it was not possible to wait until the last FBP was 100% full before displaying the message as some time was needed for diverting the participants to go to the Central Lawn. However, soon after he had instructed the PC to display the message on the big TV screen, frontline police officers noticed that space was still available at the FBPs to accommodate more participants. Hence police officers directed

participants to proceed to the FBPs until the FBPs were filled up.

3.52 The IPCC accepts CAPO's views that COMEE 6 simply followed the procedure to display the message on the big TV screen and that there is no evidence to prove that he had any malicious intent to mislead the participants to go to the Central Lawn. There is no fault on his part in so far as displaying the message is concerned, which is the subject matter of Allegation (j). CAPO classified Allegation (j) as "No Fault". The IPCC concurs with this classification.

Allegation (k): The Police hindering participants from joining the Vigil to suppress the number of participants

3.53 COM alleged that the overall policing arrangements were intended to hinder participants from joining the Vigil in order to suppress the number of people participating in the event. COM made this allegation based on his observations of the policing arrangements. COM did not provide any other information to support his claim.

3.54 The IPCC notes that this allegation is the most serious one in this complaint case.

3.55 Having critically examined all the relevant documents and conducted the IPCC Interviews, and evaluated the Police's Operation in the whole context of the 2011's Vigil and the policing arrangements that COM complained against in each of the other allegations, the IPCC is satisfied that notwithstanding the existence of some unsatisfactory aspects, the overall policing arrangements were carried out in good faith to ensure public safety and there was no ulterior motive to hinder participants from joining the Vigil in order to suppress the number of people participating in the event. The IPCC notes in particular the following:-

- i. There was a divergence of the objectives between the Police and the Alliance in the Vigil. The Police mainly focused on ensuring a reasonably wide margin of the safety for the participants whereas the Alliance focused on ensuring more

participants could join the event without unnecessary delay or hindrance. COM felt that the Police had looked down upon the Alliance's ability to manage the crowd movement and over-reacted towards the building up of the crowd. The Police, on the other hand, maintained that they were obliged to perform crowd control duty at the event and there should not be any compromise on the safety standard. The Police were also in possession of a piece of confidential intelligence information indicating the possible existence of a serious threat which materially affected their safety assessment and heightened the Police's concern to ensure the EVA be kept clear at all time to allow fire engines or ambulance services access into the Park. The IPCC perceived that the expectation gap between COM/Alliance and the Police is likely to be the cause of the allegations.

- ii. That said, COM stated in his IPCC Interview that the senior officers in the chain of command of the Operation for 2011's Vigil might be different from those of previous years and, therefore, might be inexperienced in managing the event with the Alliance, causing misunderstanding and inappropriate crowd control arrangements. The IPCC notices that the Field Commander and at least one of the Zone Commanders had not taken part in the Vigil's Operation prior to 2011
- iii. CAPO's investigation as well as the IPCC's close scrutiny of all the available records do not reveal any evidence or information which suggest any ulterior motive on the part of the police.
- iv. The IPCC accepts CAPO's assessment that given in particular the piece of intelligence received as mentioned above, the judgment call made by the responsible police officers could not be considered as unreasonable or unjustified, and that there is insufficient evidence to show any neglect of duty or misconduct on the part of the police officers concerned. The IPCC notes in

particular that as soon as the frontline officers noticed that space was still available at the FBPs to allow more participants to go there, they re-directed people to proceed to the FBPs until they were filled up. What we observe from CAPO's investigation and IPCC Interviews is that at no time the participants were disallowed to go into the Park. Apart from Gate 13, participants could still enter the Park at any time from other directions via other gates save Gate 14 and 15. Furthermore, Police re-opened Gate 15 at a later time when there were no more crowd congestions at the passage of EVA.

- v. This allegation is a very serious one against not an individual officer but the Police as a whole. COM was unable to provide any evidence or factual basis for the accusation. CAPO investigation also did not unearth any evidence that could support the allegation.

3.56 Having considered the above, the IPCC agrees to the "No Fault" classification as proposed by CAPO.

Lessons Learnt and Recommendations

3.57 Both the Police and the Alliance have learnt a lesson from 2011's Vigil, and have made improvements in the Vigil of the following years. For instance, in 2012's Vigil, the Police only reserved a 3-foot width EVA so that the passageway inside the Park was wider, and the Alliance also did not set up souvenir selling booths and fundraising activities close to the East Boulevard and Gate 14, as a result no more undue congestion appeared in that area. With these improvements, Gate 14 and 15 remained as the major entrances on the east side of the Park and Police did not direct the arriving crowd to use Gate 13 anymore.

3.58 In the course of its thorough monitoring and examination of the instant complaint investigation, the IPCC also exercises the statutory function under section 8(1)(c) of the IPCC Ordinance (IPCCO)⁴ to conduct a holistic review on the relevant police actions and crowd control measures adopted in the Operation of the 2011's Vigil with a view to seeking possible ways to improve the interaction between the Police and the Alliance in the planning and execution of the events with similar nature in future. The IPCC believes that the key directions for improvement are to enhance the communication and cooperation between the Police and Alliance, as well as the transparency and record-keeping of the policing arrangements. To this end, the IPCC considers that there is room for improvement in the following areas:-

- i. It is noted that the PCRO was the contact point of the Police with the Alliance. Given the involvement of hundreds of police officers from different units of the Police in the crowd control measures and the large number of participants in the Vigil, it would be more pragmatic and effective for a more senior officer (such as the Field Commander) to chair the preparatory meetings and site-visit with the Alliance.

⁴ Section 8(1)(c) of the IPCCO stipulates that one of the functions of the IPCC is to identify any fault or deficiency in any practice or procedure adopted by the Police that has led to or might lead to reportable complaints, and to make recommendations (as the IPCC considers appropriate) to the Commissioner or the Chief Executive or both of them in respect of such practice or procedure.

- ii. The supervisory police officers should give clear instructions to frontline police officers and marshals of the Alliance in advance regarding the change of operational levels and the corresponding actions.
- iii. The IPCC suggests that discussions and decisions made at the preparatory meetings and details of site visits should be properly documented and the records should be duly signed by both the Police and representatives of the Alliance if it is in written format.
- iv. The Police should seek to improve the dialogue with the Alliance for the purpose of enhancing better mutual understanding in developing measures that are effective in facilitating the Vigil and to ensure a proportionate policing response. Should there be any significant changes in the planning of police operation, the Police should as far as practicable explain the same in advance to the Alliance and the public if necessary.
- v. Saving those parts which the Police considers to be confidential and sensitive, the Police should advise the Alliance and the public of the arrangements and contingency plan, if any, of the crowd control operation both in advance and during the Vigil when appropriate and necessary.
- vi. To prevent similar complaint in the future, the Police may consider inviting representatives of the Alliance to visit the Police Command Post in the Park as observers and / or liaison contacts for the purpose of enhancing mutual understanding. Such move may, where appropriate, help revolving disputes between the Police and the Alliance stemmed instantly during the Vigil.

- vii. Both the Police and the Alliance should have a responsibility for ensuring a safe environment for the participating public. In particular, they should ensure that the chosen paths and entry gates are safe for walking on the night of the event, in particular whether they are wide enough for use by large crowds, and equipped with adequate lighting and signage. The IPCC suggests that the Police should conduct a comprehensive on-site visit with the Alliance, in particular the selected pathways that would be used on the Vigil night.
- viii. It is believed that the lack of effective communication was a cause leading to the instant complaint. To improve better communication, the IPCC considers that a designated communication channel, such as “action team” (行動小組) or “pair-up” arrangements, should be maintained between the Police and the marshals of Alliance so that key decisions can be conveyed to each party in an effective way during the Vigil night.
- ix. The IPCC considers that the Police should consider releasing to the public non-sensitive information concerning the traffic / crowd arrangements in advance of the event date for the purpose of enhancing transparency and gaining public confidence.
- x. Communication between the HQCCC, the PPRB and on-site Command Post and all subsequent instruction or decisions made should be properly documented. It is considered prudent to consult the Overall Commander before disseminating the press release to the media so as to ensure the accuracy of the content of the press release.
- xi. The Police should develop a strategy to improve communication with the media before, during and after the Vigil.

- xii. Finally, a clear audit trail of all communications with the Alliance, the media and the wider public should be maintained.

3.59 The above recommendations have been passed to the Police. The IPCC is pleased to see that the Police have enhanced the crowd control measures in the Vigil in the following years and there has not been any complaint against the Police's crowd control measures in the Vigil after 2011. At last, the IPCC wishes to take this opportunity to appeal to both the Police and the Alliance to enhance the cooperation with each other for smooth operation of similar public order events in future.

Case 3 – Video Recording Outside the CE’s Office

Complaint

4.1 Around 1550 hours on 28 June 2012, COM and ten to twelve other people staged a protest on Hong Kong’s human rights situation outside the CE’s Office. Some 15 minutes after they commenced the protest, they walked up to the main entrance of the CE’s Office with a view to handing in two protest placards (18 inches x 27 inches) to the staff there, but the latter refused to receive the placards. As a result, someone threw the two placards over the main gate into the CE’s Office.

4.2 After the public meeting, the press interviewed COM (and two other protestors) on the pavement outside the CE’s Office. During the interview, COM noticed that COMEES 2 and 3 (two PCs) were taking video of him. COM then approached them and demanded an explanation for their action. COMEE 1 (a Station Sergeant) came forward, telling COM that he decided to record the event on video after someone had thrown something into the CE’s Office and he was concerned that the situation might deteriorate and the protestors’ further actions might cause harm to others. COM disagreed to what COMEE 1 said and questioned the legal basis for the action which he believed was an infringement of freedom of speech.

4.3 Being dissatisfied with the Police’s action, COM lodged the instant complaint on the spot.

Allegations

4.4 On 10 August 2012, COM gave a statement to CAPO, making the following allegations:-

- i. Unnecessary Use of Authority (against COMEES 1-3)
(*Allegation (a)*)

The Police should not record the POE on video at close range when the participants were giving speech of political nature.

ii. Police Procedures

(Allegation (b))

The POE should not be video-recorded by the Police in the absence of a strong reason as it is an infringement of privacy.

CAPO Investigation and Findings

4.5 CAPO investigation and findings are as follows:-

- i. The footage lasted for about 6 minutes from 1618 hours to 1624 hours. At 1618 hours, when apparently the protest had commenced for a while, COM and other protestors were gathering outside the main entrance of the CE's Office. Subsequently, someone threw two placards over the main gate (which was closed) into the CE's Office. There was no close up images of the participants. The protestors then dispersed and the media interviewed COM who was accompanied by two protestors on the pavement by the side of the CE's Office. The interview lasted for 3 minutes (from 1621 hours to 1624 hours) during which the camera intermittently zoomed in and out, with close up shots of COM. Having noticed that COMEE 3 was video-recording the interview, COM approached him, asking why he recorded the event on video and at such close range. COMEE 1 came forward and instructed COMEE 3 to stop the recording.
- ii. COMEE 1, when interviewed by CAPO, said that after the staff inside the CE's Office refused to receive the two placards, a protestor indicated that they would throw the placards over the main gate into the CE's Office. He had advised the protestors not to do so, for fear that the placards might cause harm to the staff on the other side of the main gate. When he saw two female protestors were about to throw the placards into the CE's Office, he ordered COMEE 3 to start the video recording

and COMEE 2 to assist. He explained that the purpose of the video recording was to collect evidence. He added that he had briefed COMEE 3 that according to the internal guidelines on recording POEs on video, it was the event, not the personalities, to be recorded.

- iii. COMEE 3, when interviewed by CAPO, said that the subject of the recording was the event but not any individual. He recorded the protest out of concern that the action of the protestors might harm someone and might cause obstruction to vehicular access to the CE's Office. He further explained that in the process of recording the interview, he zoomed in and out occasionally with intermittent close up shots of COM and the other protestor to prevent the video images from being out of focus.
- iv. COMEE 2, who stood beside COMEE 3, was to safe guard COMEE 3 when the latter recorded the event on video.
- v. At the material time, the relevant guidelines concerning the recording of POEs on video indicated that:-
 - a) Recordings of POE serve two purposes, one for reviewing the management and policing of the event, and the other for the detection of offences.
 - b) Normally, it is the event itself which is the subject of video recording. Individuals become the subject only when there is a breach of the peace.
 - c) Copying, movements, retention and destruction of the recordings are strictly controlled and must be recorded on the control registers. Making copies of a recording requires the written authorization of a Senior Superintendent or above.

- d) A video recording has to be destroyed within 3 months of the recording of the event, unless it is required as a case exhibit or for investigative, evidential or other legitimate purpose.

- vi. For Allegation (a), CAPO considered that the crux of the matter was whether recording the event on video was unreasonable in the circumstances and whether the video recording was carried out in a manner that amounted to Unnecessary Use of Authority (“UUOA”). CAPO argued that initially there was justification, out of safety concern, to record on video the protest when the participants threw placards into the CE’s Office. CAPO, however, was of the view that subsequent press interview of COM should not have been recorded. COMEE 1, who was the most senior officer at the scene, instructed COMEE 3 to start the recording based on his assessment that a breach of the peace might be imminent. CAPO concluded that there was insufficient evidence to show that the recording of the event on video was unreasonable and would amount to UUOA. On this basis, CAPO classified Allegation (a) as “Unsubstantiated”.

- vii. CAPO was also of the view that COMEE 1 should have instructed COMEE 3 to cease the video recording as soon as the protest had concluded, and COMEE 3 should not have zoomed in and out the video camera, unnecessarily capturing close up views of COM and other people. Hence, CAPO registered an “Outwith”⁵ matter against both of them.

- viii. Regarding Allegation (b), CAPO stated that video recording per se was a record of facts and the guidelines governing video-recording of POE was adequate and reasonable, having struck a balance between the need of effective policing and

⁵ An Outwith matter is a breach of discipline or Police Force orders which has been disclosed in the course of the complaint investigation but is not closely related to the complaint.

human rights, including the right of privacy, freedom of speech, and freedom of meeting and procession. Hence, CAPO classified the allegation as “No Fault”.

IPCC Examination of Case and Queries

4.6 After critically examining the CAPO investigation report, the IPCC queried CAPO on the following matters:-

- i. The IPCC was of the view that the “Outwith” matter against COMEE 1 and COMEE 3 for taking close up shots in the recording is the essence of Allegation (a). The IPCC was of the view that instead of classifying Allegation (a) as “Unsubstantiated” and at the same time registering an “Outwith” matter against COMEES 1 and 3, CAPO should classify Allegation (a) as “Substantiated”.
- ii. There is contradiction within the guidelines, according to which “the subject to be filmed is the event but not personalities” but at the same time one of the purposes of recording POEs on video is for the “detection of offences”. Since offences are committed by individuals, in order to detect offences, it would seem natural, and in many cases essential, that frontline police officers would record individuals and their acts during POEs at close range. The principles of “detection of offences” and “the subject to be filmed is the event but not personalities” appear to be conflicting to each other. The IPCC requested CAPO to conduct a review on this matter.
- iii. The IPCC asked for the legal basis of the guidelines.
- iv. The guidelines stipulates that video records of POEs can be kept for 3 months, and extension for such period is allowed if the recording is a case exhibit or for investigative, evidential or other legitimate purposes, upon the written authorization of a

Senior Superintendent or above. The IPCC considered the ambit of these exceptional circumstances for retention and extension too wide and the retention period too long.

- v. The IPCC asked whether the training for frontline police officers on video recording of POEs was sufficient.
- vi. The IPCC asked whether the Police management would release to the public the guidelines on video recording of POEs.

CAPO Response

4.7 CAPO responses to the IPCC queries were as follows:-

- i. CAPO re-classified Allegation (a) from “Unsubstantiated” to “Substantiated” against COMEE 1 and COMEE 3, and the originally suggested “Outwith” matter was scrapped. As COMEE 2 only played a supporting role in video recording the event, CAPO classified the allegation against COMEE 2 as “Unsubstantiated”. CAPO split Allegation (a) into 2 different allegations (with the same particulars) against COMEES 1 and 3, and COMEE 2 respectively.
- ii. CAPO did not subscribe to the IPCC’s viewpoint that there is a contradiction within the guidelines. CAPO explained that according to the guidelines that only if a breach of the peace is likely to occur / has occurred, the individuals suspected of causing that breach become the subject. It clearly defines the situation under which an individual would become the subject to be filmed.
- iii. As to the legal basis for recording POEs, CAPO made reference to section 10 of the Police Force Ordinance, in particular section 10(e) where it states that the Police has the duty “*to take lawful measures for regulating processions and assemblies in*

public places or places of public resort.”

- iv. CAPO informed the IPCC that the guidelines had been revised in 2013. On 27 February 2014, the Police briefed the IPCC Members on revised guidelines. In relation to the retention policy raised by the IPCC, the Police explained that the designated period which the footage can be kept has been significantly reduced. The exceptional circumstances allowing retention of the video record have also been confined to investigation or court purposes. Furthermore, monthly review has to be conducted by Senior Superintendent (“SSP”) or above and any further extension of retention period has also to be approved by SSP or above with justification. The Police emphasized that the digital storage media of video recordings is tamper-proof, and any copying is under strict internal control.
- v. The Police said that they had adopted the train-the-trainer model for the training of frontline officers on video recording of POEs and they considered that the training to frontline officers is adequate.
- vi. The Police would not release the guidelines on video recording of POEs to the public. CAPO considered that the existing “Code on Access to Information” already provided the avenue for the public to apply for access to information.

IPCC Conclusion

4.8 Following the re-classification of Allegation (a) from “Unsubstantiated” to “Substantiated”, the IPCC endorses the classification of Allegation (a).

4.9 The IPCC observes that the Police Procedures on video recording POEs are clearly laid down in the HQO. The video recording per se is a record of facts and is carried out in public place. Thus, the

IPCC endorses the “No Fault” classification for Allegation (b).

Outstanding Issues

4.10 With a view to preventing similar complaints like Allegation (b) in the future and for reasons stated at paragraph 4.6(ii) above, the IPCC asked CAPO to consider revising the relevant guidelines to state clearly that if an offence, in particular, breach of the peace, is likely to occur, or has occurred, the individuals suspected of committing that offence become the subject.

4.11 With regard to the issue of disclosing the guidelines, Police is of the view that the existing Code on Access to Information has already provided the avenue for the public to apply to access the guidelines. IPCC, however, believes the release of guidelines to the public by the Police on its own initiative may minimize the number of complaints against Police in this aspect. The Police may wish to re-consider its stance on this issue.

Case 4 – The “Bear Hugging” Case

Complaint

5.1 COM was the then Secretary-General of Hong Kong Federation of Students (“**HKFS**”) 香港專上學生聯會) and WIT (a female student) was Deputy Secretary-General of the HKFS. On 16 May 2013, together with other students of the HKFS, they staged a protest at the Caritas Bianchi College of Career (“**the College**”) in Tseung Kwan O where the Chief Executive (“**CE**”) officiated at the Hong Kong Caritas 60th Anniversary Conference (“**Conference**”).

5.2 When the CE entered the Conference venue, the HKFS representatives presented a petition letter to the CE who did not take it. The HKFS representatives presented the petition letter to the CE again when he walked out of the venue after the Conference. After the CE had got on his vehicle to leave the College, about 15 HKFS representatives sat around his vehicle on the road to prevent his vehicle from leaving the spot. Police officers at the scene then formed a cordon line to separate the HKFS representatives from the CE’s vehicle and to press open a way to let the vehicle leave the spot. The Police also forcibly removed HKFS representatives after warning them they might have committed offences of unlawful assembly.

5.3 WIT was among the HKFS representatives. When the CE’s vehicle drove near her, she broke through the Police cordon and rushed towards the CE’s vehicle in order to stop the vehicle from leaving the spot. A male police officer (who was later identified as COMEE) at that very juncture grabbed her from behind by adopting a “bear hugging” gesture holding her body with his arms, and dragged her onto the floor.

5.4 Being dissatisfied with the Police’s handling, COM, WIT and a number of HKFS members went to the office of the IPCC on 30 May 2013 to present to the IPCC a complaint letter which gave details of the incident as described above and made the following allegations:-

- i. Misconduct (against COMEE)
(Allegation (a))
Male Police officers (including COMEE) should not have handled female protestors.

- ii. Police Procedures
(Allegation (b))
The Police did not give warnings to the protestors before evacuation.

- iii. Unnecessary Use of Authority (against unidentified officers)
(Allegation (c))
The Police actions at the scene caused physical danger to the protestors.

5.5 Two photos were enclosed in the letter, the first one showing a male uniformed officer wearing a white shirt (COMEE) grabbed hold of a female (WIT) from behind and the second one showing some protestors holding placards and chanting slogans behind the Police cordon line. It was alleged in the complaint letter that the male police officer (COMEE) had pressed his arm on the chest of the WIT, using unnecessary force on WIT. It was improper for male officers to handle female protestors. The complaint letter requested the Police to disclose the internal guidelines on handling protestors of opposite sex.

5.6 It was also alleged in the complaint that the Police took actions to remove the protestors without giving them prior warning, rendering the protestors unable to co-operate with the Police. Finally, the complaint letter contended that the protestors staged the protest in a peaceful manner but police actions to remove the protestors and to press them onto the floor were unreasonable and might cause danger to the protestors.

5.7 Upon receiving the complaint letter, the IPCC referred it to CAPO and advised COM to contact CAPO directly and provide CAPO with all the information or materials in relation to the complaint.

CAPO Initial Investigation and Findings

5.8 CAPO initial investigation findings were as follows:-

- i. CAPO categorized Allegation (a) as a “Notifiable Complaint”⁶ (“NC”) on the grounds that COM was not directly affected in the incident.
- ii. CAPO categorized Allegations (b) and (c) as “Reportable Complaint”⁷ (“RC”) and classified both allegations as “Not Pursuable” for reason that COM did not respond to CAPO’s request to give a statement for the complaint.

IPCC Examination of Case and Queries

5.9 After examining the CAPO Investigation Report, the IPCC queried CAPO on the following matters:-

- i. The IPCC was of view that CAPO had categorized Allegation (a) as a NC merely on a technical ground. The Police, however, have an obligation to give the public an explanation on the incident. The Police should also disclose to the public police internal guidelines on how female offenders should be handled and how male officers should handle female protestors if female officers are not available.
- ii. WIT was one of the office bearers of HKFS and she was present when COM submitted the complaint letter to IPCC on

⁶ CAPO may categorize 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.

⁷ 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 of the IPCCO, 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.

30 May 2013. Her presence signified her wish to pursue the matter. Under Section 15(1)(c) of Independent Police Complaints Council Ordinance⁸, COM could lodge the complaint on behalf of WIT if COM had a written authorization from WIT.

CAPO Response

5.10 CAPO made the following responses to the IPCC queries:-

- i. CAPO re-categorized Allegation (a) as a RC.
- ii. COM and WIT did not respond to CAPO's two call-up letters where CAPO sought their assistance in the complaint investigation.
- iii. In the absence of further information from either COM or WIT, CAPO conducted the following enquiries:-
 - (a) CAPO identified COMEE being the officer who grabbed hold of WIT from behind and interviewed him. COMEE said that he had encountered with WIT when he tried to assist other police officers in removing the protestors from breaking through the police cordon line. He explained that the "bear hug" removal action was a spontaneous act, which lasted for around 2 seconds. Having grabbed hold of the protestor (WIT), he immediately passed that protestor to his colleagues to handle. He was not aware at that moment that the protestor was a female and only came to know it from news reports afterwards.
 - (b) CAPO examined the available video recordings of the

⁸ Section 15(1)(c) of the IPCCO provides that a person ("the representative") may make a complaint or a request for review on behalf of a complainant only if the representative has written authorization from the complainant to make the complaint or request for review (as the case may be) on behalf of the complainant.

event, including footage from i-Cable News, CCTV footage of the College and two video clips taken by the Police Video Team, to ascertain the facts of the incident. None of the video clippings recorded the entire event. The footage from i-Cable News captured images of COMEE grabbing hold of WIT from behind, whereas the two video clips taken by the Police Video Team recorded the event from the protestors encircling the CE's vehicle to the Police action of forming a cordon line around the CE's vehicle and giving warnings to the protestors. The CCTV footage of the College was of low quality and recorded the incident from a distance that the CE's vehicle was being blocked by protestors. None of the above recordings captured the entire event.

Nonetheless, it transpired from watching all the video recordings that protestors blocked the CE's vehicle from leaving, waved their arms and yelled at the CE. The Police gave two warnings in Cantonese on a loudhailer that the Police would use minimum force if protestors do not comply with the law. Despite the warnings, the protestors, including WIT, pressed their bodies against the Police cordon line, in attempt to break through the cordon line to reach the CE's vehicle. Under the circumstances, there were unavoidable contacts between female protestors and the police officers, male and female. What transpired on the video recordings tallied with COMEE's description of the incident.

- (c) CAPO also interviewed 4 police officers as witnesses, conducted a scene visit, reviewed the notebook records of the 4 police witnesses, and examined the incident log of the event, but no further useful information could be retrieved.
- (d) CAPO remarked that it is an established practice that protestors or offenders should be physically handled by

police officers of the same gender. However, during the operation on that day, female protestors outnumbered female police officers. Therefore, it was not always feasible to adhere to the established practice given the chaotic situation.

- iv. CAPO was unable to identify the COMEEs in Allegations (b) and (c) due to the limited information available.

CAPO Findings

5.11 CAPO had conducted the necessary enquiry and examined the video recordings available. However, in the absence of assistance or further information /evidence from COM and WIT, especially the details of the “bear hug” and the use of force by COMEE on WIT, CAPO classified the three allegations as “Not Pursuable”.

IPCC Conclusion and Observation

5.12 The IPCC notes that a definite finding on the three allegations could not be reached despite the investigative actions taken by CAPO. The IPCC agrees that due to the chaotic situation in the incident and the large number of female protestors, it was unavoidable that male police officers might have to incur physical contact in the handling of female protestors. Under such circumstances, physical contact between protestors and police officers of opposite gender were inevitable. In times of emergency, like in the present case where a protestor suddenly dashed against a cordon line, the Police would have practical difficulties to ensure that a protestor be handled by an officer of the same gender. Although it did not appear on the video recordings that police officers had used any unnecessary force in carrying out the removal actions, the video recordings were not conclusive evidence for such a finding due to circumstantial limitations. In the absence of WIT’s assistance (by providing a witness statement detailing her encounter with COMEE) in the complaint investigation, CAPO is unable to reach a definite finding as to whether the use of force by COMEE was appropriate, reasonable and proportionate. As the evidence available does not support a

“False”, “Not Fully Substantiated” or “Substantiated” classification, IPCC is of the view that the “Not Pursuable” classification recommended by CAPO for all three allegations would be the most appropriate one in the circumstance.

5.13 The IPCC is of the view that the Police may be able to minimise similar complaints in the future by conducting risk assessment critically for POEs where a large number of female participants are anticipated, and deploy more female police officers for crowd management for such events if feasible.

5.14 In general, Police officers should not have direct physical contact with protestors of opposite gender. However, there are situations such as handling emergency situations and maintaining law and order during POEs where officers’ physical contact with citizens of opposite gender is unavoidable. The Police should also consider devising and publishing clear guidelines in the Police General Orders and Force Procedures Manual governing situations where there is physical contact with citizens of different gender during POEs. As a general rule, Police officers should avoid physical contact with citizens of the opposite gender unless it is necessary. However, consideration should also be given to exceptional circumstances when physical contact with the opposite gender could not be avoidable. The Police should also consider providing specific training to the Police officers on the application of the guidelines.

Conclusion

6.1 The endorsement of Case 15 which is the only outstanding complaint case arising from the visit of the then VP marks the conclusion of the episode. It is glad to see that the Police has taken the valuable opportunity from the VP's visit to reflect upon the lessons learnt to make improvements in the planning and execution of future security operations. As a result of the recommendations made by the IPCC in the VP Visit Report, the Police has introduced a number of improvement measures to address public concerns, and hopefully to avoid similar complaints in the future.

6.2 In the June 4 Candlelight Vigil Case, the IPCC is pleased to see that the Police took the opportunity to review the policing arrangements for the Vigil and subsequently adopted measures, either as a result of the review or upon the IPCC's recommendations, to improve the crowd control operation for the event in the following years and there has not been any complaint against the Police's policing arrangements in the Vigil after 2011. The case exemplifies the merits of the police complaints system in Hong Kong and the IPCC's role in police services enhancement and complaints prevention under Section 8(1)(c) of IPCCO.

6.3 One of the significant factors marking the difference in the findings of the Video-recording Case where an allegation was found substantiated and those of the "Bear Hugging" Case where all the allegations were classified as "Not Pursuable" was that in the former case COM came forward to provide a detailed statement, whereas in the latter case the COM and WIT did not do so. The outcomes of these two cases highlight the importance of the assistance and information provided by COM / WIT to a complaint investigation. It would normally be of paramount importance for COM and / or WIT to provide a statement to CAPO, detailing his / her encounters with the COMEE(s) and the incident(s) that led to the complaint. In the absence of such details from COM, a complaint investigation would be handicapped,

and in many circumstances definitive findings could not be reached. The IPCC would therefore take this opportunity to appeal to members of the public that, after lodging a complaint, it would be most desirable for COM to give a complaint statement or provide detailed information of the events that gave rise to the complaint to facilitate the complaint investigation.

- END -

Annex 1

Map – Footbridge leading to HKCEC and DPAA in the vicinity



Photo of the DPAA concerned



Annex 2

Excerpt of the VP Visit Report concerning SZ and DPAA

(Relevant parts of paragraphs 3.9-10 & 3.13-18)

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 ...

3.12 ...

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. ...
- 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. 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. 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 makes 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.

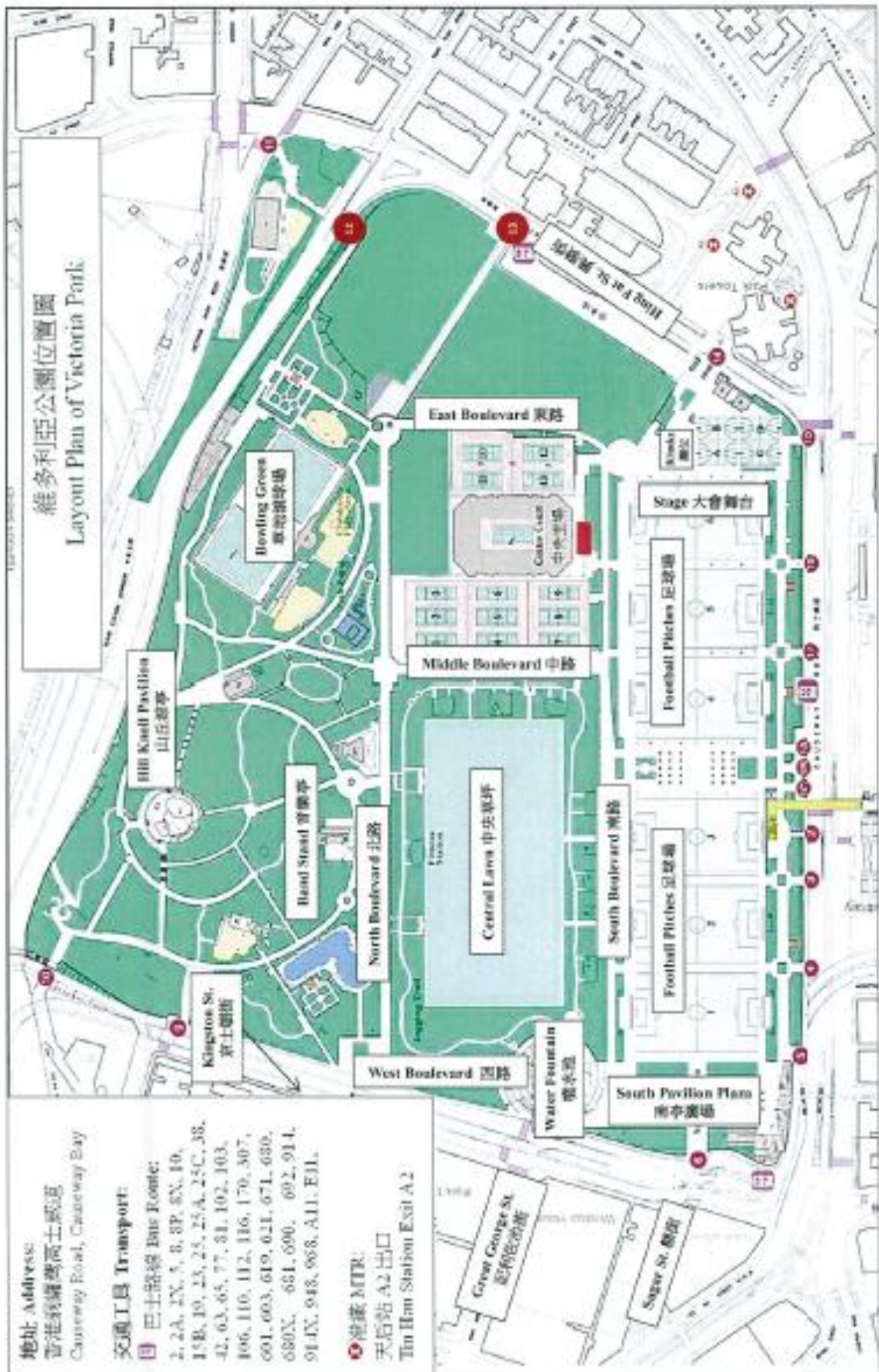
3.18 During the vetting process of the various complaints, IPCC is given to understand that the Police has already introduced the following improvement measures:

- i. ...
- ii. ...
- iii. ...
- iv. ...
- v. ...

- 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.

Annex 3



Annex 4

Case 2 – June 4 Candlelight Vigil Case Summary of the 11 Allegations and CAPO Final Classifications

Allegations	Categorizations	Content of Allegation	CAPO Final Classifications
a	Misconduct	COM alleged that prior to the Vigil, agreement had been made between COMEE 1 (an unidentified police officer of Eastern District) and the Alliance over the use of Gate 15 as the entrance to the Park on the east. However, on the night of the Vigil, the Police breached the agreement by closing Gate 15 and directed participants to use Gate 13 instead.	Unsubstantiated
b	Misconduct	COM alleged that prior to the Vigil, agreement had been made between COMEE 1 and the Alliance that the Central Lawn would be used only when the six FBPs had been fully filled. However, around 1945 hours on the night of the Vigil, the police breached the agreement by directing participants to get into the Central Lawn when the six FBPs had not been fully occupied at that time.	Unsubstantiated
c	Misconduct	COM alleged that prior to the Vigil, COMEE 1 had agreed to play a supplementary role in performing crowd management duty inside the Park. However, during the Vigil, the Police breached the agreement by taking a dominant role in lieu of the Alliance when conducting crowd	Unsubstantiated

Allegations	Categorizations	Content of Allegation	CAPO Final Classifications
		management measures in the Park.	
d	Neglect Of Duty	COM opined that COMEE 2 (a Chief Superintendent) who was the District Commander of Eastern District had decided to use Gate 13 as an entry route was inappropriate because the route was not suitable to accommodate crowd and it would easily cause danger to participants.	Unsubstantiated
e	Misconduct	COM alleged that COMEE 2 had disallowed participants to get into the Central Lawn and directed them to use a path north of the Central Lawn to the Band Stand and Hill Knoll areas before the Central Lawn was fully filled.	Unsubstantiated
f	Neglect Of Duty	COM accused that COMEE 2 had failed to give due consideration to the safety of the public as the path north of the Central Lawn was rough with insufficient lighting.	Unsubstantiated
g	Misconduct	Marshals of the Alliance had tried to negotiate with police officers at scene upon discovery of the situation mentioned in Allegations (d) and (e). COM alleged that COMEE 3 (some unidentified police officers) had inappropriately told the marshals that “上頭指示”, “與主辦單位講好”, and “找話事人嚟傾”.	Not Pursuable
h	Neglect Of Duty	When participants left the Park at the end of the Vigil, COMEE 4 (some unidentified officers of Wanchai District) disallowed them to leave	Not Pursuable

Allegations	Categorizations	Content of Allegation	CAPO Final Classifications
		<p>directly via Great George Street and directed them to use Kingston Street. When the participants reached Great George Street junction with Kingston Street, COMEE 4 intercepted the crowd, causing them to wait on the street. COM alleged that the act of COMEE 4 had wasted the time of the public.</p>	
i	Misconduct	<p>After the Vigil, COMEE 5 (an unidentified police officer) informed the media that the crowd management measures were only implemented at 2000 hours but COM noted that police had started the measures at about 1930 hours. COM alleged that COMEE 5 had delivered wrong messages to the public.</p>	Unsubstantiated
j	Misconduct	<p>COM alleged that when the six FBPs were not full, COMEE 6 (a Station Sergeant) had publicized on the display screen next to the Water Fountain Plaza that the six FBPs had been fully filled and misled the participants to go into the Central Lawn.</p>	No Fault
k	Misconduct	<p>COM alleged that all of the above police arrangements hindered participants from joining the Vigil and suppressed the number of participants of the Vigil.</p>	No Fault

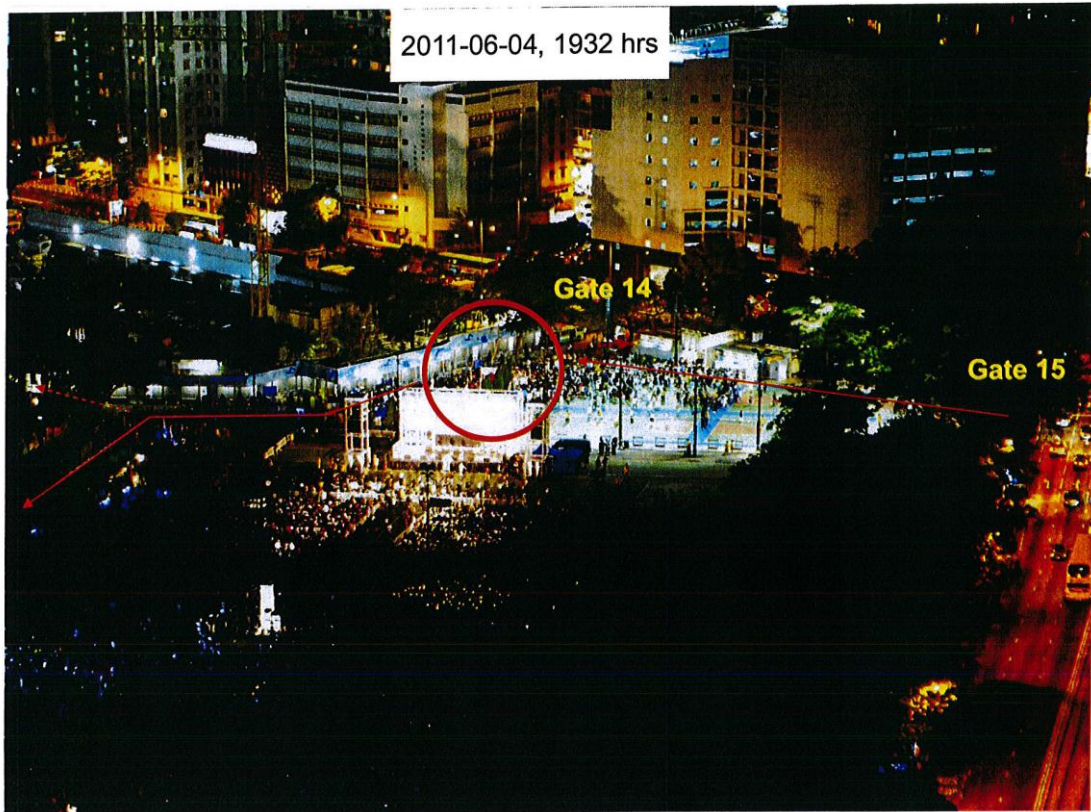
Annex 5

Catic Plaza (From the West of Victoria Park)



(e) Taken at Catic Plaza at 1932 hours on 2011-06-04 (Showing Football Pitch No. 1-3)

Annex 6



Annex 7

