

Independence
trustworthiness
accountability

impartiality
vigilance
integrity

Tibetan Protest

INVESTIGATION OF COMPLAINTS BY PERSONS WHO PROTESTED
AGAINST CHINA'S ACTIONS IN TIBET DURING THE STATE VISIT TO
WELLINGTON BY THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF
CHINA ON 14 SEPTEMBER 1999

October 2007



PCA
Police Complaints Authority



October 2007

PCA
Level 10
342 Lambton Quay
PO Box 5025,
Wellington 6145
Aotearoa New Zealand

0800 503 728
P +64 4 499 2050
F +64 4 499 2053
www.pca.govt.nz

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INTRODUCTION

This is the report of an earlier investigation into complaints arising from two incidents involving police and protester interaction in Wellington on 14 September 1999 during visit to New Zealand of his Excellency, Mr Jiang Zemin, President of the People's Republic of China. The report has awaited amendments to the New Zealand Police General Instruction relating to demonstrations and a related update of the New Zealand Police Manual of Best Practice module for VIP Security Planning and Operations. These amendments, now implemented and published as of July 2007, were prompted by the report to Parliament of the Justice and Electoral Committee, following its inquiries into:

“the handling of the demonstrations during the State Visit of the President of China to New Zealand in 1999, and the impact of those events on the civil liberties and fundamental rights of New Zealanders”.

BACKGROUND

The President of China arrived in Wellington on the evening of Monday 13 September and stayed overnight at the Park Royal hotel. On the morning of 14 September he went to Government House where he received a formal welcome from the Governor-General followed by talks with government representatives and a state luncheon. At about 1.30pm the President left to return to the Park Royal from whence he was later to travel to Wellington Airport for his flight to Christchurch.

FIRST INCIDENT

Two women protesters had positioned themselves on a traffic island at the end of Adelaide Road where it meets the intersection by the Basin Reserve. One of the women had her two year old child with her. The women had been sitting on the traffic island for about one minute with their protest flags down when three police officers walked over to them and asked if they were planning to wave their flags or if they were just having a rest. The women said they proposed waving their flags and were told they could not protest there. The women thought this was because they were on a traffic island and suggested that they would move to the footpath, but were told they could not protest anywhere in the immediate vicinity.

When the President's motorcade approached on its way back to the Park Royal the women got to their feet and reached for their flags, but the three police officers stood in front of them and on top of their flags. The women shouted "free Tibet" but their right to peacefully protest as they had wished had been arbitrarily curtailed.

The women subsequently complained to the Authority.

SECOND INCIDENT

The second incident involving police and protester interaction occurred close to the Park Royal, at the corner of Featherston and Grey Streets. About twenty protesters had gathered at this point, some with megaphones, to stage a protest as the President arrived back at the hotel.

In anticipation of protest action police had erected an eight foot high heavy mesh barricade at the intersection of Featherston and Grey Streets the previous afternoon. Their intention was for the barricade to remain in place until after the departure of the President of South Korea who was due to arrive in Wellington some hours after the President of China departed.

Protesters who gathered at the site of the hotel were directed by police to stand behind the barricade. This meant they were looking along Grey Street towards the hotel entrance, which was to their left and some fifty metres away. The protest was peaceful. One of the protesters addressed the group with a megaphone and some of the group were chanting "talk Tibet". It appears however that Chinese officials at the hotel became seriously concerned that the noise from the protesters might be heard from within the hotel.

Without warning a group of fifteen to twenty police officers moved in at the double and placed themselves between the protesters and the barricade. Television cameras positioned in the area recorded this event and a police cameraman also videotaped the event.

Using a megaphone, police officers advised the protesters that they were in a road closure area and asked them to move. Understandably the protesters were reluctant. Police personnel then moved the protesters along using a skirmish line of some six policemen and women. By use of this method the protesters were moved south along Featherston Street for about one hundred meters, to the Hunter Street intersection. At that point they were out of sight and sound of the hotel.

Although some protesters complained about the use of excessive force during this manoeuvre there is no evidence of that on the videotapes of the event and the police officers who were present denied the use of such force.

Some protesters stood their ground and refused to move further. Five were arrested, four for obstruction and one for a minor assault on police. Three of the five protesters arrested made complaints to the Authority.

WAS THE POLICE ACTION JUSTIFIED?

The immediate justification given to the protesters by the police officers present for having moved the group of protesters, was that this area of road had been closed. However the road had not been formally closed by the Wellington City Council, although parking restrictions had been put in place and advertised. Whilst the police had the power to close the road temporarily, if required, the existence of one of three preconditions in section 342A of the Local Government Act 1974 was necessary to justify temporary closure. The only precondition that could have had any bearing on the situation as it pertained on 14 September 1999, was existing or imminent public disorder at or adjacent to the area. The scene captured on videotape made it clear that this precondition did not exist. Thus the explanation given to the protesters by police was without legal foundation.

Some of the officers present endeavoured to invoke section 22 of the Summary Offences Act 1981 to justify the action taken. However that provision relates to the offence of obstructing a public way and once again the videotape precludes that as a justification. The footpath by the barricade was wide and there were only a few protesters and members of the public using the footpath and without difficulty. Thus there was no justification for moving the protesters on the basis that they were obstructing the footpath.

THE POLICE INVESTIGATION INTO THE INCIDENTS

The complaints received by the Authority were investigated by the Office of the Commissioner of Police at the request of the Authority and the file then reviewed by the Internal Affairs Division (now Professional Standards) of the Office of the Commissioner. The conclusion reached by Internal Affairs was that there was no legal justification for the officers concerned to have acted as they did in moving the protesters. It was determined that the complaints of unlawful action, in forcing the protesters to move away from the Park Royal Hotel, the seizing of two of their megaphones, and the arrests made, should be upheld.

Similarly, the complaint of the women who had attempted to protest at the intersection of Adelaide Road and Basin Reserve was upheld, as there was no lawful justification for the officers concerned to have stood on the women's flags and prevented them from being used in a lawful and peaceful protest.

I record that as soon as the video tape of the Park Royal incident was viewed at the Office of the Commissioner there was an immediate acceptance that there had been no justification for what took place and damages were paid by New Zealand Police to the five persons arrested during that incident.

REVIEW BY THE AUTHORITY

The Authority subsequently conducted its own independent review of the police investigations and after a critical assessment of the evidence reached the same conclusion as Internal Affairs: that these were peaceful protests and that the noise levels at the Park Royal incident at that hour of the day (around 2.30pm) had not justified police intervention.

WERE THE POLICE ACTING UNDER POLITICAL DIRECTION?

Many complainants suggested that the police officers concerned may have been subject to political direction to ensure that the President of China did not see or hear protesters during his visit to New Zealand. Alternatively, it was suggested that there may have been a national or local police policy to that effect. It is clear that Chinese officials, in meetings with the Operational Commander for Wellington prior to the President's visit, had been at pains to impress upon him their wish that the President neither see nor hear protesters.

The Operational Commander told the Authority that although he advised the Chinese officials that he would take what steps he lawfully could to limit the President's exposure to protests, he had also made it clear that he could not give any guarantees and that protest was permitted in New Zealand so long as it was orderly and lawful.

The Police Operational Order prepared for both the visit of the President of China and the President of South Korea noted the President of China's sensitivity to both visible and audible protest and recorded that police would *"make every effort to minimise the impact of protest on either visit"*. That undertaking, whilst ostensibly innocuous, carried with it the obvious and inherent risk of curbing or inhibiting the right of protestors to carry out a lawful and peaceful protest.

It can now only be a matter of speculation as to how police proposed to ensure the right of peaceful protest, whilst at the same time limiting by lawful means the exposure of the Presidents to that protest. The duty to ensure the safety of the Presidents did not extend to shielding them from exposure to lawful and peaceful demonstration by New Zealand citizens. There is no evidence that the President of China was ever at risk during his visit to New Zealand.

It is clear however that no political directive was given to police, nor was there any national or local police policy directed at preventing the Presidents' exposure to protests. The difficulty occurred at the operational level, when the actions ultimately taken were on an ad hoc basis and outside the spirit of the instructions from the Wellington Operational Commander.

CONCLUSION

In the circumstances of the two Wellington incidents, as described, it is not appropriate to hold any individual officer responsible for the acknowledged breaches of the protesters' rights. What is absolutely clear however is that, in the circumstances, the lawful rights of the protesters should have been preserved.

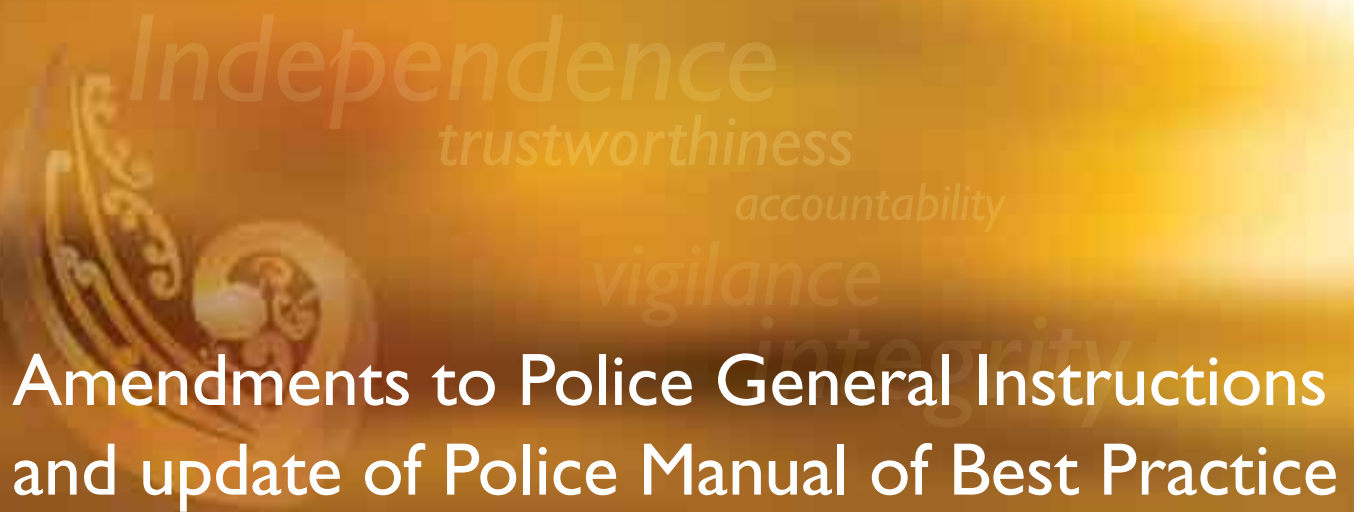
OTHER COMPLAINTS

A person involved in a protest in Christchurch during the President of China's subsequent state visit to that city also complained to the Authority about the interaction of police and protesters there. That complainant was not arrested but similarly sought compensation over her interaction with police during a protest.

Nobody involved in similar protests in Auckland complained to the Authority, although one person concerned with an issue other than Tibet did complain about police actions affecting him.

Another complainant, Mr Keith Locke, did not take part in any of the protests but was particularly concerned as to whether there had been any direction from the Government, or any national or local police policies, aimed at preventing lawful protest so as to ensure the President of China's wish that he neither see nor hear protesters.

Whilst the Authority's jurisdiction is limited to receiving complaints about police practice, policy or procedure affecting that person or a body of persons complaint in their personal capacity, the concerns expressed by Mr Locke are acknowledged by the Authority and have been taken into account.



Amendments to Police General Instructions and update of Police Manual of Best Practice

TIBET

October 2007

The recommendations of the Justice and Electoral Committee in its Report to the House of Representatives in December 2000 have now been incorporated into the relevant parts of the Police General Instructions and the Police Manual of Best Practice. The Authority has considered the implementation of these recommendations by New Zealand Police and is satisfied that the General Instruction and Manual of Best Practice appropriately reflect the Committee's recommendations and are in accordance with best practice in comparable overseas jurisdictions.

General Instruction D031 sets out the basic principles in policing demonstrations as follows:

- (1) During demonstrations, police must balance the need to maintain order against the rights of citizens. Among those rights are:
 - freedom of speech;
 - peaceful demonstration;
 - security of life and property;
 - freedom from intimidation or interference.

Preservation of the peace is paramount. Subject to that, police should as far as possible allow individuals and groups to exercise their rights.

(2) In policing demonstrations, members of the police should:

- maintain team work and discipline;
- exercise tact, tolerance and restraint;
- remain impartial;
- use their powers reasonably and properly.

The relevant extracts of the Police Manual of Best Practice relating to the planning and execution of an operation involving policing demonstrations against visiting VIP's are as follows:

- Measures taken to protect the dignity of a VIP are limited by the law and must be lawful in light of the rights and freedoms of demonstrators under international law and New Zealand domestic law;
- Tactical and operational decisions are to be made by police only, without influence or pressure from foreign officials. They are to be made and applied in a consistent and impartial manner, with police exercising restraint at all times;
- Police need to be deployed in sufficient numbers to be able to be confident of remaining in control of any demonstrations arising from the visit of a foreign VIP, in particular so as not to be forced into overly hasty actions;
- Places for demonstration can be arbitrarily ruled out or limited only if there are sound operational reasons for doing so;
- Demonstrators can be removed out of sight of the VIP or have their view deliberately obstructed **only** if their behaviour is disorderly or personally offensive and humiliating to the VIP;
- Behaviour that is offensive and humiliating could be offensive references directed at the VIP or the burning of national symbols such as flags;

- Police should only intervene when sound generated by demonstrators is excessive or preventing normal conversation by or with the VIP;
- Do not impede the display of banners, flags and other material consistent with lawful protest.

As with all demonstrations, police should maintain liaison with demonstrators so that appropriate warnings can be given of any change of plans and peremptory actions can be avoided.

A handwritten signature in black ink, appearing to read 'S. T. C. Goddard', written in a cursive style.

The Hon. Justice Goddard

POLICE COMPLAINTS AUTHORITY
07/09/2007

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PCA
Level 10
342 Lambton Quay
PO Box 5025,
Wellington 6145
Aotearoa New Zealand

0800 503 728
P +64 4 499 2050
F +64 4 499 2053
www.pca.govt.nz