

立法會
Legislative Council

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the Administration)

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LegCo Panel on Security

**Minutes of special meeting
held on Saturday, 9 December 2000 at 9:30 am
in the Chamber of the Legislative Council Building**

Members present : Hon LAU Kong-wah (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Howard YOUNG, JP
Hon Ambrose LAU Hon-chuen, JP

Members attending : Hon NG Leung-sing
Hon LAU Chin-shek, JP
Hon Emily LAU Wai-hing, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP

Members absent : Dr Hon LUI Ming-wah, JP
Hon CHEUNG Man-kwong
Hon Andrew WONG Wang-fat, JP
Hon WONG Sing-chi
Hon IP Kwok-him, JP

Public Officers attending : Mrs Regina IP, JP
Secretary for Security

Mr Raymond WONG, JP
Deputy Secretary for Security 1

Miss Eliza YAU
Principal Assistant Secretary for Security E

Mr LEE Ming-kwai
Director of Operations
Hong Kong Police Force

Mr Benedict LAI
Deputy Law Officer (Civil Law)
Department of Justice

Ms Roxana CHENG
Senior Assistant Solicitor General
Department of Justice

Attendance by invitation : Heung Yee Kuk, New Territories

Mr SIT Ho-yin
Co-opted Councillor

Mr LAM Kwok-cheong
Co-opted Councillor

Hong Kong Students Christian Movement

Mr WAN Hoi-wing

Justice and Peace Commission of Hong Kong Catholic Diocese

Ms Jackie HUNG

Ms Mary YUEN

Hong Kong Christian Industrial Committee

Mr CHAN Ka-wai

Hong Kong Catholic Commission for Labour Affairs

Mr LEUNG Kai-yin
Research Officer

Hong Kong Swatow Merchants Association

Ms CHAN Kit-may

Hong Kong Alliance in Support of Patriotic Democratic
Movements of China

Mr TSUI Hon-kwong
Committee Member

Chuk Yuen (North) Estate Residents' Association

Mr TO Kwan-hang

Cooperative Social Service Centre

Ms LAI Lai-har

Choi Shek Resident Service Centre

Mr LAM Sum-shing

April Fifth Action

Mr LEUNG Kwok-hung

June Fourth Action

Mr LAU San-ching

Association of North Point Estate Residents Against Estate
Redevelopment and Forced Eviction

Mr YAN Ip-on

Mr CHAN Chee-yan

Hong Kong Professional Teachers' Union

Mr CHAN Hung
Secretary General

Mr CHIK Pun-shing
Deputy Chief Executive

Joint Committee of Hong Kong Fisherman's Organizations

Mr WAN Kwong-lam

Individuals

Mr POON Chun-yuen

Mr Eric T M CHEUNG
Faculty of Law
The University of Hong Kong

Ms Janice BRABYN
Faculty of Law
The University of Hong Kong

Mr Patrick KO

Mr CHUI Pak-tai

Mr TSANG Kin-shing

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Matters arising

The Chairman informed Members that about 20 organizations and individuals had indicated their interests in expressing to the Panel their views on the regulation of public meetings and public processions and the review of the Public Order Ordinance (POO) (Cap. 245) at the next special meeting scheduled for 12 December 2000 from 9:30 am to 1:00 pm.

II. Views of organizations/individuals on the regulation of public meetings and public processions and review of the Public Order Ordinance

Meeting with representatives of Heung Yee Kuk, New Territories
(LC Paper No. CB(2) 436/00-01(01))

2. Mr SIT Ho-yin presented the views as detailed in the submission of Heung Yee Kuk, New Territories and concluded that there was no need to amend POO. He added that the maximum sentence of five years' imprisonment for failure to comply with the prior notification requirement might be reviewed.

Meeting with representatives of Justice and Peace Commission of Hong Kong Catholic Diocese
(LC Paper No. CB(2) 436/00-01(02))

3. Ms Mary YUEN presented the views as detailed in the submission of Justice and Peace Commission of Hong Kong Catholic Diocese and concluded that POO should be amended.

Meeting with representative of Hong Kong Students Christian Movement

4. Mr WAN Hoi-wing presented the views as detailed in the submission of Hong Kong Students Christian Movement, which was tabled at the meeting, and concluded that POO should be amended.

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(*Post-meeting note* : The submission of the Hong Kong Students Christian Movement was issued to members vide LC Paper No. CB(2) 467/00-01(01) on 11 December 2000.)

Meeting with representative of Hong Kong Christian Industrial Committee
(LC Paper No. CB(2) 436/00-01(03))

5. Mr CHAN Ka-wai informed Members that besides the views as set out in its submission, Hong Kong Christian Industrial Committee considered that -

- (a) the provisions of POO restricted the rights of workers to hold public meetings and public processions, especially given that labour disputes could not be anticipated. The International Labour Organization had also stated that such restriction was an infringement of the rights of workers;
- (b) as public meetings and public processions had always been held peacefully in Hong Kong in the past, the provisions in POO were unnecessarily stringent; and
- (c) as Mr QIAO Xiao-yang of the Legislative Affairs Committee of the Standing Committee of the National People's Congress (NPCSC) had recently stated that any amendment to POO would be repealed by NPCSC, the Hong Kong Special Administrative Region (HKSAR) Government should clarify whether the amendment of POO was a matter within the autonomy of HKSAR.

Meeting with representative of Hong Kong Catholic Commission for Labour Affairs
(LC Paper No. CB(2) 436/00-01(04))

6. Mr LEUNG Kai-yin presented the views as detailed in the submission of Hong Kong Catholic Commission for Labour Affairs and concluded that POO should be amended.

Meeting with Mr POON Chun-yuen
(LC Paper No. CB(2) 346/00-01(01))

7. Mr POON Chun-yuen presented the views as detailed in his submission and concluded that there was no need to amend POO. He quoted his experience in organizing public processions and highlighted the following -

- (a) without the prior notification system, different groups of people might hold public processions at the same place at the same time. This might result in clashes and chaos; and

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- (b) in exercising the right of holding peaceful public meetings and public processions as provided in POO, one should not affect the rights and freedoms of other people.

Meeting with Mr Eric T M CHEUNG
(LC Paper No. CB(2) 436/00-01(05))

8. Mr Eric CHEUNG presented the views as detailed in his submission and concluded that a comprehensive review of the relevant provisions of POO should be carried out by the Law Reform Commission (LRC).

Meeting with Ms Janice BRABYN
(LC Paper No. CB(2) 436/00-01(06))

9. Ms Janice BRABYN presented the views as detailed in her submission, which set out that POO should be amended, and provided the following additional information regarding paragraph 14 of her submission -

- (a) under section 36 of the Offences Against the Person Ordinance (Cap. 212), any person who resisted or wilfully obstructed any police officer in the execution of his duty would be liable to a maximum imprisonment of two years;
- (b) under section 63 of the Police Force Ordinance (Cap. 232), any person who resisted a police officer in the execution of his duty would be liable to a maximum imprisonment of six months; and
- (c) under section 23 of the Summary Offences Ordinance (Cap. 228), any person who resisted or obstructed a public officer in the performance of any public duty would be liable to a maximum imprisonment of six months.

She shared Mr Eric CHEUNG's view that the provisions of POO should be reviewed by LRC.

Meeting with representative of Hong Kong Swatow Merchants Association
(LC Paper No. CB(2) 436/00-01(07))

10. Ms CHAN Kit-may presented the views as detailed in the submission of Hong Kong Swatow Merchants Association and concluded that there was no need to amend POO.

Meeting with Mr Patrick KO
(LC Paper No. CB(2) 346/00-01(02))

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11. Mr Patrick KO presented the views as detailed in his speaking note for the meeting and concluded that there was no need to amend POO.

(Post-meeting note : The speaking note of Mr Patrick KO was issued to members vide LC Paper No. CB(2) 467/00-01(02) on 11 December 2000.)

Meeting with representative of Hong Kong Alliance in Support of Patriotic Democratic Movements of China
(LC Paper No. CB(2) 346/00-01(03))

12. Mr TSUI Hon-kwong presented the views as detailed in the submission of Hong Kong Alliance in Support of Patriotic Democratic Movements of China and concluded that POO should be amended. He added that a relaxation of the requirements in a piece of legislation would only bring about social stability. On the other hand, stringent legislation might be abused for the suppression of people.

Meeting with representative of Chuk Yuen (North) Estate Residents' Association
(LC Paper No. CB(2) 436/00-01(08))

13. Mr TO Kwan-hang presented the views as detailed in the submission of Chuk Yuen (North) Estate Residents' Association and concluded that POO should be amended.

Meeting with Mr CHUI Pak-tai
(LC Paper No. CB(2) 436/00-01(09))

14. Mr CHUI Pak-tai presented the views as detailed in his submission and concluded that POO should be amended.

Meeting with representative of Cooperative Social Service Centre
(LC Paper No. CB(2) 436/00-01(10))

15. Ms LAI Lai-har presented the views of the Cooperative Social Service Centre and concluded that POO should be amended. She said that while the Cooperative Social Service Centre accepted that prior notification should be given to the Police, it objected to the requirement for the issue of a notice of no objection by the Police.

Meeting with representative of Choi Shek Resident Service Centre
(LC Paper No. CB(2) 436/00-01(11))

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16. Mr LAM Sum-shing said that besides the views as detailed in its submission, Choi Shek Resident Service Centre considered that -

- (a) the Police should have sufficient time for manpower deployment and making traffic arrangements if notification was given 24 hours in advance by fax; and
- (b) failure to give prior notification should not be criminalized. It should only be punishable with a fine. The Police should be required to obtain an injunction from the court in order to prohibit the holding of a public meeting or public procession on the ground of public order.

Meeting with Mr TSANG Kin-shing
(LC Paper No. CB(2) 436/00-01(14))

17. Mr TSANG Kin-shing presented the views as detailed in his submission and concluded that POO should be amended. He added that the Police's power under POO was excessive.

Meeting with representative of April Fifth Action
(LC Paper No. CB(2) 346/00-01(04))

18. Mr LEUNG Kwok-hung presented the views as detailed in his submission and concluded that POO should be amended. He added that -

- (a) the prior notification requirement was in contravention of BL, the International Covenant on Civil and Political Rights (ICCPR) and the Hong Kong Bill of Rights Ordinance (Cap.383);
- (b) the Police's power under POO was excessive;
- (c) the Administration should solicit public views on POO, issue a green paper for public consultation, and hold a referendum on the amendment of POO; and
- (d) restrictions should not be imposed on public processions on the ground of protection of the freedom of others, unless the HKSAR Government and the Legislative Council were chosen by one-person-one-vote elections and public officers were to be fully responsible for their acts.

Meeting with representative of June Fourth Action
(LC Paper No. CB(2) 436/00-01(12))

19. Mr LAU San-ching presented the views as detailed in the submission of

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June Fourth Action and concluded that POO should be amended. He added that the discretion as provided under POO was intended for allowing the Police to make political decisions. He considered that restrictions in POO should be relaxed as far as possible.

Meeting with representatives of Association of North Point Estate Residents Against Estate Redevelopment and Forced Eviction
(LC Paper No. CB(2) 346/00-01(05))

20. Mr YAN Ip-on presented the views as detailed in the submission of the Association of North Point Estate Residents Against Estate Redevelopment and Forced Eviction and concluded that POO should be amended. He said that the Police's power under POO was too excessive.

Meeting with representatives of Hong Kong Professional Teachers' Union
(LC Paper No. CB(2) 436/00-01(13))

21. Mr CHAN Hung presented the views as detailed in the submission of the Hong Kong Professional Teachers' Union and said that the notice should be shortened to 24 hours. He concluded that POO should be amended.

Meeting with representative of Joint Committee of Hong Kong Fisherman's Organizations
(LC Paper No. CB(2) 346/00-01(06))

22. Mr WAN Kwong-lam presented the views as detailed in the submission of the Joint Committee of Hong Kong Fisherman's Organizations and concluded that there was no need to amend POO. He said that notice periods of 21 days, 90 days, seven days, 90 days and 60 days were required for the holding of public processions in Toronto, Vancouver, Chicago, New York and San Francisco respectively. Thus, the notice requirements in many other places were more stringent than that in Hong Kong.

Issues raised by Members

23. Referring to some organization's suggestion that the power to prohibit a public meeting or public procession should be delegated to the court or a tribunal, Mr James TO asked whether the court or a tribunal was the more appropriate body, from a legal point of view, to be delegated such a power.

24. Mr Eric CHEUNG said that the power to prohibit a public meeting or public procession should not be delegated to the Police. As many of the terms used in POO were directly adopted from ICCPR and had a broad meaning, it was more appropriate for an objection to the holding of a public procession to be made by the court. It was stated in the Report of the Electoral and

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Administrative Review Commission (the Report) of Queensland that the use of terms with a broad meaning would lead to enforcement difficulties for the police. He considered that enforcement by the Police would be much easier if more specific terms such as those adopted in the relevant legislation of England were used. The Report also stated that the burden of justifying the restriction on the right of assembly should be on those who wished to restrict the right. However, the opposite was found in POO. He added that as members of an appeal board did not serve on a full time basis, it might be difficult to contact them in urgent cases. He quoted his experience in organizing a public procession in the previous year and pointed out that -

- (a) the Police was very polite in its liaison with organizers of public processions. However, the broad coverage of the provisions in POO was unfair to the Police, who was responsible for enforcement of POO but could not enforce it strictly; and
- (b) in practice, there was very little time for organizers of public processions to lodge an appeal with the appeal board.

25. Mr Eric CHEUNG said that when more than one group of people held public processions or public assembly at the same place and at the same time, the two groups would automatically adjust themselves.

26. Ms Janice BRABYN said that the Police should not be delegated the power to prohibit a public meeting or public procession. It was difficult for the Police to make politically sensitive decisions. Such a decision should be made by the court, as an appeal board was a body responsible for handling appeals. She added that she had not examined the composition of the appeal board. She informed Members that the Peaceful Assembly Act 1992 of Queensland provided that after a notice was given to the police, the police could give a notice of no objection and specify arrangements to facilitate the demonstration. In the event that the police objected to the public procession, the matter would be referred to the court for a decision. As this was not an appeal process, the time involved was much shorter. She undertook to provide Members with a copy of the Peaceful Assembly Act 1992.

(Post-meeting note : The Peaceful Assembly Act 1992 had already been circulated to members vide LC Paper No. CB(2) 303/00-01(01) on 20 November 2000.)

27. Referring to section 13(2)(a) of POO, Mr James TO asked whether a public procession held on the sea was "a public procession on a public highway or thoroughfare or in a public park". He also asked whether a public procession which started and ended on a pedestrian path and where the route did not pass through any public highway or thoroughfare or public park was exempted from section 13 of POO. He further asked whether public highways

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and thoroughfares only covered roads used by vehicles and excluded roads used by pedestrians only.

28. Secretary for Security (S for S) said that a public procession on the sea was probably regulated by marine-related legislation. To her understanding, the public procession as referred to in section 13(2)(a) did not include those held in schools or private housing estates. She added that there should not be any distinction in the application of the section between roads used by pedestrians only and roads used by vehicles. Deputy Law Officer (Civil Law) (DLO(CL)) said that as section 13(2)(a) provided that it applied to public processions held on a public highway, thoroughfare and public park, he considered that it should not be applicable to those held on small streets and alleys. As no distinction was made in POO between thoroughfare and small streets, whether a street fell within section 13(2)(a) would ultimately be determined by the court having regard to the particular circumstances of each case.

29. Director of Operations (Dir of Ops) said that to his knowledge, all public processions had been held in public places in the past.

30. Mr TSANG Kin-shing asked whether section 13(2)(a) was applicable to the area outside the building in which the office of the Chief Executive of HKSAR was located, where many public meetings were classified by the Police as illegal public meetings. Dir of Ops said that the section was applicable to public processions, which should be distinguished from public meetings. Public meetings were usually held in public places, which had a much broader meaning. In response to Mr TSANG's question about the legislation used for the regulation of public processions by vehicles, Dir of Ops said that such processions were regulated by road traffic-related legislation.

31. Miss Emily LAU sought the views of the Association of North Point Estate Residents Against Estate Redevelopment and Forced Eviction on the notice period for holding public meetings or public processions. She also asked about the manner of the Police in its communication with the Association. Mr YAN Ip-on responded that the Police was polite in its communication with the Association. He added that the Association considered that the notice period should be amended to 24 hours and no prior notification of the Police should be required if there were less than 200 participants in a public meeting or public procession.

32. In response to Mr James TO's question about why social instability might result if POO was amended, Mr Patrick KO said that if everyone behaved and debated rationally, the involvement of the Police might not even be needed. However, even where the organizer of a public procession intended to hold a peaceful procession, some participants might deliberately initiate chaos to facilitate their planned robberies. Such incidents had occurred in overseas countries in the past. There might be serious consequences in the event of a

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clash between two groups of people with different views holding public processions at the same place and time. He added that some students' recent act of violating POO knowingly was unacceptable. It would have been more acceptable if the students expressed their views peacefully to the Panel.

33. Mr James TO said that existing provisions in POO were very stringent. If the Administration insisted that no amendment should be made to POO, the dissatisfaction of some people who called for amendment of POO might result in a riot. On the other hand, a relaxation of POO should not result in a riot. Mr Patrick KO responded that there was a crisis of divisiveness among different sectors of the community. If the punishment for failure to give prior notification was only a fine of \$450, which was easily affordable by most people, everyone would easily hold public processions whenever they had any dissatisfaction. As Hong Kong was a very crowded place, clashes between different people might occur easily. Mr LEUNG Kai-yin said that a relaxation of the provisions in POO would not increase the possibility of social unrest.

34. Mr Michael MAK asked whether there were operational problems with the Police if the notice period was shortened to 24 hours or 48 hours. Dir of Ops responded that if the notice period was shortened to 48 hours, there might be difficulties in the event that the public procession was a large one. He said that more than 6 500 demonstrations had been held after reunification. Among these, most of the liaison work could be completed within seven days or less by the Police. However, a notice period of seven days was not sufficient for liaison work by the Police in the recent demonstration involving a large number of trucks. He further said that as a number of public processions were held in the weekends, sufficient time was needed for the Police to liaise with different organizers on matters such as the time, place and route of the demonstrations. He added that most organizers could not be contacted throughout the 24 hours of a day. A notice period of seven days was thus necessary. He further said that the organizations which proposed shortening the notice period to 24 hours or 48 hours did not explain why such periods were proposed. DLO(CL) added that POO had already provided the Police with the discretion to accept notice periods of less than seven days. POO had also provided that the Police must accept a shorter notice, if it was reasonably satisfied that earlier notice could not have been given.

35. Mr Michael MAK asked why about 60 Police officers were deployed to monitor the recent public meeting of a group of about 20 students in early November. Dir of Ops responded that the number of participants of a public meeting was sometimes exaggerated before it was held. More Police officers were thus deployed. Mr Michael MAK considered that the deployment of Police officers should not be a problem in view of the advanced communication equipment used by the Police. In this connection, Mr LEUNG Kai-yin quoted his experience in a previous public procession and said that in a public

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procession relating to Diaoyutai, the organizer did not notify the Police because it was envisaged that there would only be 20 participants. However, as the number of participants increased unexpectedly, the Police quickly mobilized a group of officers to the scene. It was thus evident that a large number of Police officers could be mobilized within a short period of time.

36. Mr James TO asked whether requiring different levels of notice periods for different numbers of people participating in a public meeting or public procession was in order from a legal point of view. Mr Eric CHEUNG responded that such requirements were in order from a legal point of view. He said that there were different requirements in POO for different numbers of people participating in a public meeting or public procession. For example, no notification of the Police was currently required if the number of participants in a public procession was less than 30. Given that the Police possessed substantial experience in handling thousands of public assemblies since unification, information should be sought from the Police on the notice period required for different sizes of public assemblies. He further said that the requirement in POO that the manner of notification had to be submitted in person to a Police station should be relaxed, especially given that some people were very resistant against entering a Police station. Notification by fax should also be allowed.

37. Dir of Ops said that POO required that a notice of intention to hold a public meeting or public procession together with certain particulars should be submitted in person and given in writing. This was to enable the Police to contact the organizer in its liaison work. Where an organizer had resistance in entering a Police station, a Police Communication Officer could visit the organizer and bring along a notification form for completion by the organizer. He stressed that the number of participants was not the only factor that affected the length of notice required. Other factors such as the route and whether there was any clash with other events would also affect the time needed for liaison.

38. In response to Mr Michael MAK's question about how the maximum imprisonment term of five years for failure to give prior notification was determined, Secretary for Secretary (S for S) said that the issue would be addressed in a paper to be provided for the special meeting of the Panel on 16 December 2000.

39. Referring to section 17 of POO, Mr LEUNG Kwok-hung said that the power of the Police to prevent or stop a public meeting or public procession was too excessive. He expressed strong opposition to delegating the Police with the power to impose conditions on matters such as the route of a public procession. Referring to section 3 of POO, he said that it was unfair for a Police officer of or above the rank of inspector to be given the power to prohibit the display of any flag in a public gathering. Mr TSANG Kin-shing considered that prior application should not be required for the use of loudspeakers in public

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assemblies.

40. DLO(CL) responded that the power of the Police under section 17 of POO could be exercised only when the Police officer reasonably believed that an activity was likely to cause or lead to a breach of the peace. S for S added that the power of the Police as provided under section 6(2) of POO to control the use of amplifiers in public meetings could be exercised only if the Commissioner of Police reasonably considered it necessary to prevent an imminent threat to the interests of national security, public safety, public order or for the protection of rights and freedoms of others. As regards the power of the Police under section 3 of POO, S for S said that besides the requirement for the power to be exercised by a Police officer of or above the rank of inspector, it was also required that the Police officer had to reasonably believe that the display of the flag was likely to cause or lead to a breach of the peace.

41. Mr TSANG Kin-shing said that there was discrimination by the Police against April Fifth Action, as many Police officers were deployed to monitor public processions organized by April Fifth Action even when the number of participants was very small. Dir of Ops responded that factors such as the nature and atmosphere of the public assembly, number of participants, route and place were all considered in deciding the number of Police officers to be deployed for maintaining order in a public procession. He added that besides the safety of the participants of a demonstration, the safety of other people in the area where a demonstration was held was also considered in deciding the number of Police officers to be deployed.

42. Members noted the submission, which was tabled at the meeting, from Mr CHAN Kwok-leung who advised in the same morning that he was unable to attend the meeting.

(Post-meeting note : The submission of Mr CHAN Kwok-leung was issued to members vide LC Paper No. CB(2) 467/00-01(03) on 11 December 2000.)

43. The meeting ended at 1:15 pm.

Legislative Council Secretariat
16 March 2001