

立法會
Legislative Council

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LegCo Panel on Security

**Minutes of special meeting
held on Saturday, 25 November 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
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHEUNG Man-kwong
Hon Howard YOUNG, JP
Hon Ambrose LAU Hon-chuen, JP
Hon IP Kwok-him, JP
- Members attending** : Hon Martin LEE Chu-ming, SC, JP
Hon NG Leung-sing
Hon Emily LAU Wai-hing, JP
Dr Hon LO Wing-lok
- Members absent** : Hon Andrew WONG Wang-fat, JP
Hon WONG Sing-chi
- Public Officers attending** : Mrs Regina IP, JP
Secretary for Security

Mr Raymond WONG
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 : The Law Society of Hong Kong

Mr IP Shing-hing
Vice President

Mr WONG Kwai-huen
Council Member

Hong Kong Bar Association

Mr Ronny TONG
Chairman

Mr Philip DYKES
Vice Chairman

Mr Johannes CHAN
Member

JUSTICE

Ms Gladys LI
Chairman

Mr WONG Hin-lee
Member

Ms Audrey EU
Member

Sham Shui Po Residents Association

Mr CHAN Keng-chau

Hong Kong Christian Institute

Ms Rose WU
Director

Mr Carl CHAN

The Kowloon Elderly Progressive Association

Mr CHAN Chee-sing

Kowloon Federation of Associations

Mr LEUNG Ying-piu

Hong Kong Women Christian Council

Ms Helena WONG
Chairperson

Lei Cheng Uk Residents' Association

Ms WONG Sau-ying

Association of Women East Kowloon District

Ms YEUNG Shek-tai
Chairman

Youth Executives Subcommittee
The Chinese General Chamber of Commerce

Mr KAN Wai-wah

Hong Kong Women Foundation

Ms FEI Fih

Jin Jiang Clans Association (Hong Kong)

Mr CHOI Ming-kei

The Foochow Association

Mr CHAN Kam-lam

The Fukienese Association

Mr CHOI Sai-chuen

Kwun Tong Resident Association

Mr TSO Kwai-ban

Kowloon Women's Organization Federation

Ms LI Lin
Deputy Chairman

East Kowloon District Residents' Committee

Mr LEE Tat-yan
Chairman

Hong Kong Women Professional and Entrepreneurs Association

Ms Marina WONG

Hong Kong Ching Fai Association

Mr CHIU Sik-ming

Hong Kong Chinese Reform Association

Mr Victor SIU
Executive Committee Member

Individuals

Mr Anthony LAW
School of Law
City University of Hong Kong

Mrs Elsie TU

Mr WONG Kuen-wai

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

Action

I. Matters arising

The Chairman informed Members that a special meeting had been scheduled for 9 December 2000 from 9:30 am to 1:00 pm to continue receiving the views of organizations and individuals on the regulation of public meetings and public processions and the review of the Public Order Ordinance (POO) (Cap. 245). As there were still another 12 organizations and individuals who had indicated interests in expressing their views to the Panel, members agreed that another special meeting be scheduled for 12 December 2000 from 9:00 am to 12:30 pm to receive the views of organizations and individuals.

2. Members also agreed that discussion of the item on "Enforcement and review of POO" originally scheduled for the meeting on 7 December 2000 be deferred to a special meeting with the Administration on the same subject on 16 December 2000 at 9:00 am.

(Post-meeting note : The meeting time for the special meeting on 16 December 2000 was subsequently advanced to 8:30 am at the request of the Administration.)

Action

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

Meeting with representatives of the Law Society of Hong Kong (the Law Society)

(LC Paper No. CB(2) 354/00-01(01))

3. Mr IP Shing-hing presented the views as detailed in the submission of the Law Society. He concluded that the Law Society considered that the issues raised in its submission should be examined fully, preferably by the Law Reform Commission.

Meeting with representatives of the Hong Kong Bar Association (the Bar)

(LC Paper No. CB(2) 345/00-01(01))

4. Mr Ronny TONG presented the views and recommendations of the Bar as detailed in his speaking note for the meeting. He concluded that POO should be amended. He informed Members that the information in the Bar's submission regarding the requirements in other countries was compiled after examining the relevant legislation in these countries.

Meeting with representatives of JUSTICE

(LC Paper No. CB(2) 334/00-01(02))

5. Ms Audrey EU informed Members that besides the views as set out in its submission, JUSTICE considered that -

- (a) the consistency of POO with the Basic Law (BL) should be examined from a legal perspective. It was more appropriate to examine the provisions of a piece of legislation rather than whether its enforcement was stringent;
- (b) the power of the Police under POO was too excessive. All restrictions in law should be constitutional. This required the restrictions to be reasonable and necessary in a democratic society. It also required that the penalties should be proportionate to the nature of offences;
- (c) it was inappropriate to adopt terms, such as "national security", direct from the International Covenant on Civil and Political Rights (ICCPR) in applying ICCPR to a place because the terms used in international covenants usually had a wide scope of meaning; and
- (d) the term "*ordre public*" had a much broader meaning than the

Action

term "public order".

Meeting with Mr Anthony LAW

(LC Paper No. CB(2) 334/00-01(01))

6. Mr Anthony LAW presented his submission for the meeting. He added that while the submission highlighted some areas which might be reviewed, it did not represent his stand on the subject.

Meeting with representative of Sham Shui Po Residents Association

(LC Paper No. CB(2) 334/00-01(03))

7. Mr CHAN Keng-chau presented the views as detailed in the submission of Sham Shui Po Residents Association. He concluded that there was no need to amend POO.

Meeting with Mrs Elsie TU

(LC Paper No. CB(2) 334/00-01(04))

8. Mrs Elsie TU presented the views as detailed in her speaking note for the meeting and concluded that there was no need to amend POO. She expressed objection to some speakers' view that legislation was more lax in other countries. She said that most large cities required four to 60 days' notice for the holding of a public meeting or public procession. Australia was only an exception among overseas countries.

(Post-meeting note : The speaking note of Mrs Elsie TU was issued to members vide LC Paper No. CB(2) 363/00-01(01) on 27 November 2000.)

Meeting with representatives of Hong Kong Christian Institute

(LC Paper No. CB(2) 334/00-01(05))

9. Ms Rose WU presented the views as detailed in the submission of Hong Kong Christian Institute. She informed Members of the recommendations as detailed in the submission and concluded that POO should be amended.

Meeting with representative of the Kowloon Elderly Progressive Association

(LC Paper No. CB(2) 334/00-01(06))

10. Mr CHAN Chee-sing presented the views as detailed in the submission of Kowloon Elderly Progressive Association and concluded that there was no need to amend POO. He said that the existing requirements in respect of the length of notice and number of persons taking part in a public meeting and public procession were appropriate.

Action

Meeting with representative of Kowloon Federation of Associations
(LC Paper No. CB(2) 334/00-01(07))

11. Mr LEUNG Ying-piu presented the views as detailed in the submission of Kowloon Federation of Associations. He concluded that there was no need to amend POO.

Meeting with representative of Hong Kong Women Christian Council
(LC Paper No. CB(2) 278/00-01(20))

12. Ms Helena WONG presented the views as detailed in the submission from Hong Kong Women Christian Council and the further submission tabled at the meeting and concluded that POO should be amended. She informed Members that when she made an application for the holding of a public meeting on 6 March 1988 to celebrate the Women's Day, the Police had imposed the conditions that any singing, clapping of hands, shouting of slogans and playing of music were prohibited. This reflected that the power of the Police was too excessive and should be restricted. Although the situation had improved over the years, there was still room for improvement. In response to Mr Howard YOUNG's question about whether such conditions were imposed by the Police after 1 July 1997, Ms Helena WONG said that she had not come across such a situation after 1 July 1997.

(Post-meeting note : The further submission of Hong Kong Women Christian Council was issued to members vide LC Paper No. CB(2) 363/00-01(02) on 27 November 2000.)

Meeting with representative of Lei Cheng Uk Residents' Association
(LC Paper No. CB(2) 334/00-01(08))

13. Ms WONG Sau-ying presented the views as detailed in the submission of Lei Cheng Uk Residents' Association. She concluded that there was no need to amend POO.

Meeting with representative of Association of Women East Kowloon District
(LC Paper No. CB(2) 334/00-01(09))

14. Ms YEUNG Shek-tai presented the views as detailed in the submission of the Association of Women East Kowloon District. She concluded that there was no need to amend POO.

Meeting with representative of Youth Executives Subcommittee, The Chinese General Chamber of Commerce
(LC Paper No. CB(2) 334/00-01(10))

Action

15. Mr KAN Wai-wah presented the views as detailed in the submission of the Youth Executives Subcommittee of the Chinese General Chamber of Commerce. He concluded that there was no need to amend POO.

Meeting with representative of Hong Kong Women Foundation
(LC Paper No. CB(2) 334/00-01(12))

16. Ms FEI Fih presented the views as detailed in the submission of Hong Kong Women Foundation. She said that there was no need to amend POO, which had allowed sufficient flexibility in the regulation of public meetings and public processions. She added that the Police should have the best knowledge, based on its past experience in mass control and handling of assemblies, about the most appropriate length of notice required for the holding of a public meeting or public procession.

Meeting with Mr WONG Kuen-wai
(LC Paper No. CB(2) 345/00-01(02))

17. Mr WONG Kuen-wai presented the views as detailed in his submission and concluded that there was no need to amend POO.

Meeting with representative of Jin Jiang Clans Association (Hong Kong)
(LC Paper No. CB(2) 334/00-01(13))

18. Mr CHOI Ming-kei presented the views as detailed in the submission of the Jin Jiang Clans Association (Hong Kong). He concluded that there was no need to amend POO.

Meeting with representative of the Foochow Association
(LC Paper No. CB(2) 345/00-01(03))

19. Mr CHAN Kam-lam presented the views as detailed in the submission of the Foochow Association and concluded that there was no need to amend POO.

Meeting with representative of the Fukienese Association
(LC Paper No. CB(2) 345/00-01(04))

20. Mr CHOI Sai-chuen presented the views as detailed in the submission of the Fukienese Association. He concluded that there was no need to amend POO.

Meeting with representative of Kwun Tong Resident Association
(LC Paper No. CB(2) 334/00-01(14))

Action

21. Mr TSO Kwai-ban presented the views as detailed in the submission of Kwun Tong Resident Association. He concluded that there was no need to amend POO.

Meeting with representative of Kowloon Women's Organization Federation
(LC Paper No. CB(2) 334/00-01(15))

22. Ms LI Lin presented the views as detailed in the submission of Kowloon Women's Organization Federation and concluded that there was no need to amend POO.

Meeting with representative of East Kowloon District Residents' Committee
(LC Paper No. CB(2) 334/00-01(16))

23. Mr LEE Tat-yan presented the views as detailed in the submission of East Kowloon District Residents' Committee and concluded that there was no need to amend POO. He said that firm actions should be taken by the Department of Justice against persons in breach of the law.

Meeting with representative of Hong Kong Women Professional and Entrepreneurs Association
(LC Paper No. CB(2) 334/00-01(17))

24. Ms Marina WONG presented the views as detailed in the submission of Hong Kong Women Professional and Entrepreneurs Association. She concluded that there was no need to amend POO.

Meeting with representative of Hong Kong Ching Fai Association
(LC Paper No. CB(2) 334/00-01(18))

25. Mr CHIU Sik-ming presented the views as detailed in the submission of Hong Kong Ching Fai Association and concluded that there was no need to amend POO.

Meeting with representative of Hong Kong Chinese Reform Association
(LC Paper No. CB(2) 278/00-01(64))

26. Mr Victor SIU presented the views as detailed in the submission of Hong Kong Chinese Reform Association. He concluded that there was no need to amend POO.

Issues raised by Members

27. Referring to the submission from the Law Society, Miss Emily LAU asked how the concept of national security should be applied in the enforcement of POO. Mr IP Shing-hing said that the Law Society had not made an in-depth

Action

examination of the enforcement of POO. Mr WONG Kwai-huen added that as the definition of national security might be too wide, it could be examined in the review of POO.

28. Mr Philip DYKES said that there was no need to refer to national security in the regulation of public order. One of the features of overseas legislation on public order was that the specific criteria to be adopted by the persons responsible for regulation were set out in legislation. Thus, there was no discretion on the part of the regulator. Moreover, the decision of the regulator was subject to review by an independent tribunal or a judge. He said that one of the criticisms against POO was a lack of such criteria in POO. The Bar considered that such criteria should be incorporated in POO and the burden of proof in appeal cases should be on the Police. The role of the Police should be focussed on the consequences of a public meeting or public procession.

29. Mr Johannes CHAN said that the Bar had mainly focussed its examination of POO on whether the existing notice requirement was reasonable and whether it should be amended. Although most countries had a notification system and the length of notice required varied from one country to another, the power to prohibit a public meeting or public procession was usually found with an independent board rather than the police. He added that if an assembly or procession degenerated into a wrongful act contrary to other laws, the provisions under other legislation, such as those against public nuisance and criminal damage, had already provided a sufficient safeguard.

30. In response to Mr Albert HO's question about the Bar's position regarding the penalties for failure to give prior notice, Mr Ronny TONG said that as POO was intended for the regulation of peaceful assembly and there was already other legislation against violent acts, failure to give notice should not constitute a criminal offence. It should be punishable only with a fine. Mr Johannes CHAN added that such a failure should not constitute a criminal offence.

31. In response to Mr Albert HO's question about the practice in other countries, Mr Ronny TONG said that although notification was usually given to the police in other countries, the power to prohibit or impose conditions on a peaceful assembly could only be exercised by the court. He stressed that the Police in Hong Kong should only be allowed to impose conditions on the time, manner and place of a public assembly. It should not have the power to prohibit a peaceful assembly.

32. Secretary for Security (S for S) said that the requirements in overseas countries should only serve as a reference, as different countries had different circumstances. If a fair comparison was to be made with the requirements in other countries, it should be made with major cities such as London, New York, Vancouver or Toronto. The information gathered by the Administration on

Action

overseas countries revealed that approval for the holding of an assembly was usually given by an administration department, while an appeal was usually dealt with by a court or a tribunal. It would also be inappropriate to compare the notice requirements only, as a place might require a notice period of 48 hours but a meeting of more than three persons would already constitute a public meeting. If all applications for the holding of a peaceful assembly in Hong Kong were to be submitted to the court, the length of notice required would probably be more than seven days. She further said that the notices of not less than 20% of some 6 000 public meetings and public processions held after reunification were given less than seven days and the Police had accepted all these applications. Bringing every case to court would only bring about inconvenience to people who organized public meetings or public processions, as the time needed in processing the applications would be longer. She added that the appeal board responsible for handling appeals under POO was also chaired by a retired judge.

33. Mr IP Kwok-him asked why the Bar considered POO in contravention of ICCPR. Mr Ronny TONG responded that POO was in contravention of ICCPR and BL because failure to give prior notice to the Police could result in an imprisonment of five years. He added that the requirement of prior notification was acceptable from a human rights point of view. However, there was no express provision in POO setting out the criteria to be adopted by the Police in assessing an application and the punishment for failure to give notice was disproportionate. Thus, there was room for improvement in POO. He further said that the Police should not have the power to prohibit a public meeting or public procession. Such a power should belong to a neutral body, such as a judge. He added that POO did not distinguish between organizers and participants of a public meeting or public procession. The Bar considered that such a distinction should be introduced in POO.

34. Mr IP Kwok-him asked whether the Bar agreed to the criteria as set out in POO in assessing whether a public meeting or public procession should be prohibited or objected. Mr Ronny TONG responded that while such criteria had been laid down for the Police, the decision of the Police was made in closed doors. It was more appropriate for a decision to be made by a neutral body.

35. On the question of whether the punishment for failure to give prior notification was too heavy, S for S said that as POO was enacted at a time of social instability in 1967, a heavier punishment was needed for a sufficient deterrent effect. The original intent of the penalty provisions was to ensure compliance with the notification requirement. The provisions reflected the views of the community at large when POO was enacted in 1967. She pointed out that the proportionality of the penalty provisions had not been questioned when legislative amendments were introduced to POO in 1995 and 1997. It was not questioned until the last one or two months. It could thus be concluded that the provisions reflected the view of the community at large in the last 30

Action

years. Nevertheless, the Administration was willing to examine as to whether the punishment for failure to give prior notification was too heavy.

36. S for S further said that it was inappropriate to compare the punishment as referred to in paragraph 14 of Bar's submission with that in section 17A of POO, as the former referred to the behaviour of a person whereas the latter referred to the behaviour of a group of persons. It could be noted from section 17A of POO that a person who could prove to the court that he had a reasonable excuse or did not knowingly take part in a public meeting or public procession would not be punished. She added that it was very difficult in practice to distinguish between the organizers and participants of a public meeting or public procession.

37. Referring to paragraph 34(a) and (b) of the Bar's submission, Miss Emily LAU asked whether the notice requirement in POO was in contravention of BL. Mr Ronny TONG said that ICCPR provided that restrictions on peaceful assembly should be necessary in a democratic society. A restriction in conformity with this requirement would be consistent with ICCPR and BL. POO provided that a person who failed to give prior notification to the Police might be liable to a maximum imprisonment of five years. The heavy custodial penalty imposed by this provision to deter people from exercising their right to peaceful assembly or procession was not necessary in a democratic society and therefore inconsistent with ICCPR and BL.

38. Mr IP Shing-hing said that Article 21 of ICCPR provided that the right to peaceful assembly should be recognized. It could be noted that the provision referred to an assembly that was peaceful. The word "recognized" was relatively mild in comparison with the use of the word "necessary" in other parts of ICCPR. Article 21 of ICCPR also provided that restrictions on the right to peaceful assembly should be necessary in a democratic society. He further said that the major decision of the United Nations Human Rights Committee (UNHRC) on Article 21 of ICCPR was only found in Kivenmaa v Finland. Although UNHRC pointed out in the case that Article 19 of ICCPR provided that everyone should have the right to freedom of expression, subject to restrictions for respect of the rights or reputations of others and for the protection of public security, it did not elaborate on the relationship between the rights to peaceful assembly and freedom of expression. He added that the Law Society considered that, as a matter of law, the advance notification requirements in POO were compatible with Article 21 of ICCPR as applied to the Hong Kong Special Administrative Region (HKSAR). However, the appropriateness of the restrictions to the right of peaceful assembly in the context of HKSAR should be further examined.

39. Mrs Elsie TU pointed out that while Mr Ronny TONG kept saying that the restrictions on peaceful assembly should be necessary in a democratic society, he did not mention the second part of BL39, which set out that the

Action

provisions of ICCPR as applied to Hong Kong should be implemented through the laws of HKSAR.

40. Mr Johannes CHAN said that the Court of Final Appeal (CFA) had stated in two recent cases that ICCPR was implemented in Hong Kong through the Hong Kong Bill of Rights Ordinance (Cap. 383). A restriction would be in conformity with the requirements of ICCPR if -

- (a) it was in conformity with the law;
- (b) it served a particular purpose;
- (c) it was necessary due to pressing social needs; and
- (d) the penalties were proportionate to the nature of the offences.

He said that although Kivenmaa v Finland did not directly elaborate on the relationship between the rights to peaceful assembly and freedom of expression, the European Court of Human Rights and the federal courts in the United States had stated that the right to peaceful assembly was a part of freedom of expression.

41. Mr Johannes CHAN said that if there had been more than 6 000 applications for public meetings or public processions, as claimed by some organizations attending the meeting, the coverage of POO might be too wide. Some organizations also claimed that there had been more than 400 public meetings or public processions where less than seven days' notice was given. The Police's objection to only one or two of these cases might reflect that the seven day's notice requirement was impractical. He considered that the Administration should provide information about the average length of notice given in these cases, the number of cases where notice was given less than 48 hours, the number of cases where no notice was given and the nature of these assemblies.

42. Referring to paragraphs 16 and 34(a) of the Bar's submission, the Chairman asked whether different people might have different perception of whether a restriction was necessary. Mr Ronny TONG responded that after BL came into force, the standard as required in ICCPR should be applied.

43. Referring to paragraph 34(b) of the Bar's submission, Mrs Selina CHOW said that although reducing the notice period to 48 hours might be feasible when the number of persons involved in a public meeting or public procession was small, there might be difficulties when time was needed for the Police to liaise with people who organized the activities, especially when a large number of vehicles was involved. Mr Ronny TONG responded that the possibility of laying down different notice requirements for different sizes of assemblies might

Action

be further explored.

44. Referring to paragraph 34(c) of the Bar's submission, Mrs Selina CHOW said that as any legislation could be abused, it was questionable whether restrictions on the ground of *ordre public*, which was permitted under ICCPR, should be removed merely because *ordre public* could be abused. The removal of this restriction would make it not available for use when it was needed in the future.

45. Mr Johannes CHAN responded that the requirement as set out in ICCPR was only a minimum standard. However, it had been interpreted by some people as a maximum standard. He said that according to the interpretation of CFA, *ordre public* included any public policy. He considered that *ordre public* as applied to Hong Kong should be more clearly defined. For example, a set of criteria for determining whether an article was indecent or obscene could be found in the Control of Obscene and Indecent Articles Ordinance (Cap. 390). Although ICCPR provided that restrictions could be imposed on the ground of *ordre public*, such a restriction would not satisfy the condition of being necessary if the scope of *ordre public* was too wide.

46. Deputy Law Officer (Civil Law) said that it would be difficult to list out all the scenarios covering public order and public safety. To his knowledge, the terms "public safety" and "public order" also appeared in the relevant legislation of Queensland in Australia. In the event of doubt about the definition of a term, reference should be made to the interpretation under ICCPR. If there was any abuse of power in the enforcement of POO, the party concerned could bring the case to an appeal board or seek a judicial review on the case. Mr Johannes CHAN said that he was just suggesting a more detailed definition for the term rather than a full list of scenarios covered by *ordre public*.

47. On the question of whether illegal parking, which was only punishable with a fine, constituted a criminal offence, S for S confirmed that such an act would not constitute a criminal offence. However, there were other traffic offences punishable with a fine that constituted a criminal offence. In this connection, Mr Ronny TONG said that there was a law which provided that where the fine imposed on a person was less than a certain amount, the criminal record in respect of the offence would be removed after two years.

48. In response to the Chairman's question about the Bar's views on the length of notice required, Mr Ronny TONG said that the notice requirement should be considered in conjunction with other requirements. A notice period of 48 hours would still be unreasonable if a person who failed to comply with such a requirement could be sentenced to 10 years' imprisonment. The Bar took the view that all requirements should, as required in ICCPR, be necessary in a democratic society.

Action

49. In response to Mr Albert HO's question about paragraph 33(d) and (f) of the Bar's submission, Mr Ronny TONG said that it was not right to prohibit the holding of a public meeting or public procession. Restrictions imposed by the Police should be confined to the time, manner and place of the assembly. Any dispute about these restrictions should be referred to the court for judgment. He added that the Bar called for the establishment of a model regime as set out in paragraph 33 of its submission.

50. The Chairman said that the organizations and individuals attending the meeting were welcome to provide supplementary submissions to the Panel, if they had any further views.

51. The meeting ended at 1:10 pm.

Legislative Council Secretariat
9 March 2001