

立法會
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Panel on Welfare Services

Subcommittee on Strategy and Measures to Tackle Family Violence

Minutes of the 17th meeting
held on Monday, 8 October 2007, at 4:30 pm
in Conference Room A of the Legislative Council Building

Members present : Dr Hon Fernando CHEUNG Chiu-hung (Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon CHAN Yuen-han, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung

Member absent : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP

Public Officers attending : Item I
Miss Hinny LAM
Principal Assistant Secretary for Labour and Welfare (Welfare)2

Ms Winnie LEUNG
Assistant Secretary for Labour and Welfare (Welfare)2A

Mr NG Kam-wing
Chief Superintendent (Crime Support) (Crime Wing)
Hong Kong Police Force

Ms Irene HO
Superintendent (Child Protection Policy Unit) (Crime Wing)
Hong Kong Police Force

Mr John READING
Deputy Director of Public Prosecutions
Department of Justice

Mr Patrick CHEUNG
Senior Assistant Director of Public Prosecutions
Department of Justice

Miss Agnes CHAN
Senior Government Counsel
Department of Justice

Deputations : Item I
by invitation

The Against Elderly Abuse of Hong Kong

Mr Bernard TANG
Supervisor (Policy & Legal Support)

Hong Kong Chinese Civil Servants' Association, Social Work Officer
Grade Branch

Mr LEUNG Kin-hung
Chairman

Mr CHEUNG Kam-ki
Vice-Chairman (External Affairs)

Hong Kong Women's Coalition on Equal Opportunities -
Anti Domestic Violence Programme

Ms CHUNG Yuen-yi
Co-ordinator

Association Concerning Sexual Violence Against Women

Ms Linda WONG
Executive Director

Caritas-Hong Kong Family Service

Miss HO Yee-ching
Social Worker

Harmony House

Ms Margaret WONG
Executive Director

Hong Kong Association for the Survivors of Women Abuse
(Kwan Fook)

Ms LIU Ngan-fung
Chairperson

The Hong Kong Council of Social Service

Ms Elsa CHIU
Chief Officer, Service Development (Family and Community)

Ms Jeff WONG
Officer, Service Development (Family and Community)

Association for Concern for Legal Rights of Victims of
Domestic Violence

Ms NG Wai-ching
Chairperson

Ms POON Shuk-ying
Member

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2) 5

Staff in attendance : Ms Maisie LAM
Council Secretary (2) 2

Ms Sandy HAU
Legislative Assistant (2) 5

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I. Further discussion on prosecution of abusers

[LC Paper Nos CB(2)2777/06-07(01) and (02), CB(2)2810/06-07(01) and (08)]

The Subcommittee deliberated (Index of proceedings attached at **Annex**).

2. The Subcommittee received views from the following deputations on the prosecution policy of the Department of Justice (DoJ) for abusers in cases involving domestic violence and the enforcement actions taken by the Police against such abusers -

- (a) The Against Elderly Abuse of Hong Kong
[LC Paper No. CB(2)2810/06-07(01)];
- (b) Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch
[LC Paper No. CB(2)2810/06-07(03)];
- (c) Hong Kong Women's Coalition on Equal Opportunities
[LC Paper No. CB(2)2810/06-07(02)];
- (d) Association Concerning Sexual Violence Against Women
[LC Paper No. CB(2)2810/06-07(04)];
- (e) Harmony House
[LC Paper No. CB(2)2810/06-07(06)];
- (f) Caritas-Hong Kong Family Service
[LC Paper No. CB(2)2810/06-07(05)];
- (g) Hong Kong Association for the Survivors of Women Abuse (Kwan Fook);
- (h) The Hong Kong Council of Social Service
[LC Paper No. CB(2)2810/06-07(07)]; and
- (i) Association for Concern for Legal Rights of Victims of Domestic Violence
[LC Paper No. CB(2)37/07-08(01)].

3. Major views expressed by deputations were as follows -

- (a) responsibility for prosecuting abusers in cases involving domestic

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violence should not be placed on the victims. Frontline Police officers should proactively gather sufficient circumstantial evidence of all reports of domestic violence, including interviewing witnesses and seizing case exhibits etc., instead of relying on the willingness of the victims to give evidence in deciding whether to initiate prosecution action;

- (b) prosecution policy for domestic violence should premise on safeguarding victims' safety, rather than on preserving a family unity as evidenced in paragraph 15 of "The Policy for Prosecuting Cases involving Domestic Violence" which stated that "The prosecutor should obtain information about the family circumstances and the likely effect of a prosecution on the members of the family";
- (c) domestic violence-related crime cases were trivialised and, as a result, dealt with by the court by way of binding over proceedings. Moreover, the prosecutors or Police officers were not professional trained to assess the likely effect of a prosecution on the members of the family of the victims. Paragraph 15 of "The Policy for Prosecuting Cases involving Domestic Violence" stated that "In deciding whether to prosecute a case involving domestic violence, the prosecutor should take the views of the victim into account, without treating them as determinative. The prosecutor should obtain information about the family circumstances and the likely effect of a prosecution on the members of the family". To rectify such deficiency, multi-disciplinary teams comprising the Police, prosecutors and social workers, among others, should be set up to handle prosecution of abusers in cases involving domestic violence as practised in the United States of America;
- (d) role of social workers in rendering support to victims of domestic violence should not be limited to providing the victims with housing assistance, financial assistance and making welfare referrals. A mechanism should be put in place for social workers to contact the victims two to four weeks' time after the commission of the offence, with a view to encouraging the victims to come forward to report and testify against their abusers. Failure of the victims to give evidence at the scene of domestic violence should not be the reason for the Police not initiating prosecution action;
- (e) to encourage victims of domestic violence to give evidence and testify against their abusers in court, additional resources should be allocated to the Social Welfare Department (SWD) for establishing a

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new service dedicated to providing support to victims of domestic violence in undergoing the criminal proceedings, victims should be allowed to use video-recorded statement without the victims having to testify in court or to attend court by the use of special measures, such as CCTV, separate access for victims to enter court should be provided, and a specialised domestic violence court that would handle all criminal and civil cases involving allegations of domestic violence or an violation of an injunction order should be set up;

- (f) disagreed that bind over order as an alternative to prosecution was made on rare occasions in the handling of domestic violence crime cases as claimed by the Police and DoJ. For instance, in 2005, 904 out of 1 274 reported domestic violence-related crime cases (or 71%) were dealt with by the court. Out of these 904 crime cases, 628 cases (or 69%) resulted in bind over orders being made by courts, the percentage of which was much higher than other crimes;
- (g) to ensure proper use of bind over order as an alternative to prosecution against the abuser, decision on applying to the court to make bind over order should rest with prosecutors at the senior rank;
- (h) although the subjects in only seven out of 628 bind over cases in 2005 (or 1.1%) and 20 out of 343 bind over cases in the first six months of 2006 (or 5.8%) re-offended during bind over period, these relapse rates were much higher than those in prosecuted cases where abusers re-offended within 12 months at 0.3% in 2005 and 1.8% in the first six months of 2006. Moreover, the fact that the re-offending rate was a single-digit did not necessarily mean that bind over orders were effective in deterring abusers from molesting the victims as in many instances such act went unreported or was not considered a crime by frontline Police. To ensure the overall effectiveness of the bind over order in domestic violence cases in achieving preventive justice, a review should be conducted annually by the Police, in conjunction with SWD, based on not only the relapse rates of the bind over subjects and also feedback from the victims and the subjects; and
- (i) to better deter bind over subjects in domestic violence cases from re-offending, legislative amendments should be made to enable the court to require these subjects to attend anti-violence programme approved by the Director of Social Welfare.

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4. Miss CHAN Yuen-han, Mr LEUNG Kwok-hung and Mr LEE Cheuk-yan echoed deputations' concern about the low prosecution rate in cases involving domestic violence, the reasons of which lay in the Police and DoJ not exhausting all avenues to gather evidence against the abusers of domestic violence for the purpose of prosecution and the lack of support provided to victims during the criminal judicial process.

Responses from the Administration

5. Deputy Director of Public Prosecutions (DDPP) said that -

- (a) it would be rare for the public interest not to require a prosecution in a case of domestic violence if there was sufficient evidence to provide a reasonable prospect of conviction and the victim was willing to give evidence;
- (b) domestic violence often occurred in private. The victim might be the only witness who could testify the commission of the offence, which the accused might deny. Unless the accused admitted the offence and plead guilty, the victim would in all likelihood be required to testify at court. But the prosecutor would actively consider what other evidence might be available. It was not to be assumed that bringing the victim to court to testify was the only way to prove a case;
- (c) a bind over order might be appropriate as an alternative to prosecution if the case was minor, the parties were reconciled, there was no history of violence and there was a concern over a future breach of the peace. A bind over order might also be sought if the victim withdrew support for the prosecution, and the prosecution decided to discontinue the case. Even then, the prosecutor should only seek such an order if there was still sufficient evidence to substantiate the complaint. In some instances, an accused might offer to be bound over on condition that the charge(s) was/were dropped. The prosecutor would approach any such proposal with great caution. It would only be accepted after a careful consideration of the possible consequences and whether it would be in the public interests to do so. To dispose of the case in this way was not likely to be in the public interests in cases involving serious violence. Ultimately, it would be for the court, not the prosecution or the defence, to decide if a bind over order was appropriate in the case presented before it;

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- (d) there were separate rooms at all courts for witnesses to stay while waiting for their turn to appear at court. If the court was satisfied that the victim was a "witness in fear", application under section 79B (giving evidence by live television link) and section 79C (video recorded evidence) of the Criminal Procedure Ordinance (Cap. 221) to testify against the abuser could also be made; and
 - (e) Hong Kong being a common law jurisdiction, it was not feasible for the prosecutor to engage in the investigation of a case, as suggested in paragraph 3(c) above. Should the prosecutor need more information in deciding whether to prosecute a case, request to the Police for conducting further investigation would be made. Where necessary, prosecutor might also approach the concerned social worker for any relevant information to assist him/her in the decision-making process.
6. Principal Assistant Secretary for Labour and Welfare (Welfare)2 (PAS/LW(Welfare)2) said that -
- (a) various witness support services were provided to the victims undergoing court proceedings by the Police and SWD. The Police would explain to the victims about the investigation progress and court procedures, while SWD would provide supportive services including counselling, court visit, escort by social worker during trial, etc. To strengthen support services for victims of domestic violence, SWD had in May 2007 published a new information kit to help victims understand their rights, the protection and remedies afforded by law, as well as the support services provided by the Government. The information kit had been widely distributed through SWD offices, non-governmental organisations, the Police, 18 District Offices, etc. SWD would also strengthen its support for victims attending court proceedings;
 - (b) the Administration did not see the case for setting up multi-disciplinary teams to handle prosecution of abusers in cases involving domestic violence as mentioned in paragraph 3(c) above, as the "Procedural Guidelines for Handling Battered Spouse Cases", which applied to all concerned professionals, already set out the roles of various parties, such as the Police, prosecutors and social workers etc. in case handling and management;
 - (c) to strengthen communication amongst the Police, the SWD and local NGO service units and to discuss measures to enhance the

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collaboration in handling domestic violence cases including high-risk cases, 13 District Liaison Groups on Family Violence had been set up by SWD since March 2005; and

- (d) social workers provided a wide range of support services to victims of domestic violence including counselling, housing assistance, financial assistance and making referrals to other service units as necessary. A 24-hour Direct Referral Line had also been established with SWD for the Police to seek urgent professional advice and/or support services from the SWD outreaching team so as to provide timely assistance to victims of domestic violence and their children who required immediate crisis intervention.

Discussion

7. The Chairman pointed out that the fact that the prosecution rate of abusers was on the low side was a testament that collaboration amongst all concerned professionals, in particular the Police, prosecutors and social workers, in the handling of domestic violence cases needed to be strengthened.

8. Mr Alan LEONG said that to realise "zero tolerance" policy and having regard to the difficulties of initiating prosecution under the existing charging policy when domestic violence often occurred in private, consideration should be given to initiating prosecution action against the accused who had previous history of domestic violence unless he/she could prove otherwise. DDPP said that introducing a reverse onus provision would have human rights implications. PAS/LW(Welfare)2 noted that the proposal would be contrary to the prevailing legal principle that the defendant in a criminal proceeding would be assumed innocence and the onus to prove guilt should rest with the prosecution. But in view of Mr LEONG, she undertook to give further thoughts to the suggestion and revert to the Subcommittee. Mr LEONG further requested DoJ to provide examples of previous application of paragraphs 29-32 of "The Policy for Prosecuting Cases involving Domestic Violence". DDPP undertook to provide the information in writing.

II. Review of the improvement measures on handling domestic violence by the Police

[LC Paper No. CB(2)2777/06-07(03)]

9. Due to time constraint, the Chairman suggested and members agreed to defer the discussion of this item to the next meeting.

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10. There being no other business, the meeting ended at 6:35 pm.

Council Business Division 2
Legislative Council Secretariat
22 November 2007

**Proceedings of the meeting of
Subcommittee on Strategy and Measures to Tackle Family Violence
on Monday, 8 October 2007, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000622	Chairman	Opening remarks	
000623 - 001059	Admin	Briefing on the Administration's supplementary paper elaborating the prosecution policy of the Department of Justice (DoJ) for cases involving domestic violence [LC Paper No. CB(2)2777/06-07(01)]	
001100 - 001617	The Against Elderly Abuse of Hong Kong	Presentation of views [LC Paper No. CB(2)2810/06-07(01)]	
001618 - 002140	Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch	Presentation of views [LC Paper No. CB(2) 2810/06-07(03)]	
002141 - 002711	Hong Kong Women's Coalition on Equal Opportunities - Anti Domestic Violence Programme	Presentation of views [LC Paper No. CB(2) 2810/06-07(02)]	
002712 - 003157	Association Concerning Sexual Violence Against Women	Presentation of views [LC Paper No. CB(2) 2810/06-07(04)]	
003158 - 003256	Caritas Hong Kong - Family Service	Presentation of views [LC Paper No. CB(2) 2810/06-07(05)]	
003257 - 003704	Harmony House	Presentation of views [LC Paper No. CB(2) 2810/06-07(06)]	
003705 - 004219	Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)	Presentation of views	
004220 - 004806	Hong Kong Council of Social Service	Presentation of views [LC Paper No. CB(2) 2810/06-07(07)]	
004807 - 005343	Association for Concern for Legal Rights of Victims of Domestic Violence	Presentation of views [LC Paper No. CB(2) 37/07-08(01)]	
005344 - 010130	Chairman Admin	The Administration and DoJ's responses to the views expressed by deputations	

Time marker	Speaker	Subject	Action required
010131 - 010802	Miss CHAN Yuen-han Admin Chairman	Reasons of the low prosecution rate lay in the Police and DoJ not exhausting all avenues to gather evidence against the abusers of domestic violence for the purpose of prosecution	
010803 - 011456	Mr LEUNG Kwok-hung Admin Chairman	Urged the Administration to provide adequate support to victims of domestic violence to testify against their abusers in court and require bind over subjects in domestic violence-related crime cases to attend anti-violence programme approved by the Director of Social Welfare	
011457 - 013115	Mr LEE Cheuk-yan Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch Admin Chairman	Setting up multi-disciplinary teams involving the Police, DoJ and the Social Welfare Department to handle prosecution of abusers in cases of domestic violence Role of social workers in rendering support to victims of domestic violence and providing information to the prosecutors or police officers about the family circumstances of the victims	
013116 - 013257	Chairman	The need to strengthen the collaboration amongst all concerned professionals, in particular the Police, prosecutors and social workers, in the handling of domestic violence cases	
013258 - 014814	Mr Alan LEONG Admin Chairman	The Administration was requested to give further thoughts to and revert to the Subcommittee on the suggestion that prosecution action should be initiated against the accused who had previous history of domestic violence unless he/she could prove otherwise DoJ was requested to provide information on examples of previous application of paragraphs 29-32 of "The Policy for Prosecuting Cases involving Domestic Violence"	✓ (Admin to revert to the Subcommittee) ✓ (DoJ to provide)
014815 - 015218	Chairman	Concluding remarks	