

立法會
Legislative Council

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Administration)

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Panel on Security

Subcommittee on Police's Handling of Searches of Detainees

Minutes of meeting
held on Wednesday, 16 July 2008, at 9:00 am
in the Chamber of the Legislative Council Building

- Members present** : Hon James TO Kun-sun (Chairman)
Hon Margaret NG
Hon Audrey EU Yuet-mee, SC, JP
Hon LEUNG Kwok-hung
- Member attending** : Hon Ronny TONG Ka-wah, SC
- Member absent** : Hon WONG Yung-kan, SBS, JP
- Public Officers attending** : Mrs Apollonia LIU
Principal Assistant Secretary for Security
- Mr Kennon TAM
Assistant Secretary for Security
- Mr YU Mun-wah
Acting Assistant Commissioner of Police (Support)
- Mr Charles Geoffrey ALISON
Senior Superintendent of Police (Support Branch)
(Support Wing)

Mr TSANG Fan-kwok
Senior Inspector of Police (General) 4 (Support Branch)

Attendance : Hong Kong Human Rights Monitor
by invitation

Mr LAW Yuk-kai
Director

Justice and Peace Commission of the Hong Kong
Catholic Diocese

Miss Jackie HUNG
Project Officer

Civil Human Rights Front

Miss CHUNG Sze-wan
Representative

Migrant Support Network

Miss YIM Yuet-ngor
Staff

Miss LEE Yuk-lan
Staff

JJJ Association

Miss YIP Yee-chun
Staff

Zi Teng

Miss LAM Yee-ling
Staff

Miss Bonnie LAM
Staff

Hong Kong Christian Institute

Mr Jason TOO
Acting Director

Mr Patrick CHO
Project Intern

The Association for the Advancement of Feminism

Miss AU Mei-po
Organizer

Action for REACH OUT

Miss CHAN Man-wai
Programme Officer

A Group of Citizens Who Concern About the Democratize
of Town Planning, But Unjustifiably Detained, Molested and
Suppressed by the Police

Mr WONG Ho-yin
Representative

Midnight Blue

Mr LI CHUN-wai
Project Co-ordinator

Civil Right Action Group

Mr Dominic FOK Wai-pong
Member

Hong Kong Domestic Workers General Union

Ms TSE Sheung-chun
Chairman

Miss FUNG Ka-yan
Director

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Miss Josephine SO
Senior Council Secretary (2) 5

Miss Helen DIN
Legislative Assistant (2) 1

Ms Camy YOONG
Clerical Assistant (2) 1

I. Meeting with deputations and the Administration

(LC Paper Nos. CB(2)2612/07-08(01), CB(2)2619/07-08(01), and CB(2)2627/07-08(01) to (08))

The Subcommittee deliberated (index of proceedings attached at Annex).

2. The Subcommittee received views from the following organizations -

- (a) Hong Kong Human Rights Monitor;
- (b) Justice and Peace Commission of the Hong Kong Catholic Diocese;
- (c) Civil Human Rights Front;
- (d) Migrant Support Network;
- (e) JJJ Association;
- (f) Zi Teng;
- (g) Hong Kong Christian Institute;
- (h) The Association for the Advancement of Feminism;
- (i) Action for REACH OUT;
- (j) A Group of Citizens Who Concern About the Democratize of Town Planning, But Unjustifiably Detained, Molted and Suppressed by the Police;
- (k) Midnight Blue;
- (l) Civil Right Action Group; and
- (m) Hong Kong Domestic Workers General Union.

3. The representative of Action for REACH OUT was requested to provide the hyperlinks for the webpages whereon procedures adopted for strip search in the United States were posted.

4. The Subcommittee requested the Administration -

- (a) to explore the use of infra-red equipment in assisting the conduct of searches of detainees;
- (b) to consider defining "persons detained in police custody" more clearly;
- (c) to explain the common law on which the Commissioner of Police's decision to search all persons to be detained in police custody was based, and whether a Duty Officer should adopt the "reasonable suspicion" test in deciding whether to conduct a search;
- (d) to consider requiring that a search involving complete removal of clothing should be conducted in the presence of a lawyer, Justice of the Peace, family member of the detainee, clergyman, or a senior ranking Police officer, if the detainee so preferred;
- (e) to consider the suggestion that the process of a search involving complete removal of clothing should be video-recorded, if the detainee so requested;
- (f) to advise whether the Police had ever required detainees to adopt certain insulting or degrading postures or perform unnecessary acts during searches, and explain whether such requirements would contravene the new arrangements;
- (g) to explain whether it was in breach of the Police's guidelines to lift up the clothing of a crime victim and take photographs of his/her body;
- (h) to provide the Police's training materials regarding the procedures for the search of a detainee;
- (i) to consider adopting additional procedures for handling the search of detainees who require special care (e.g. minors, mentally disabled, transsexuals);
- (j) to explain the punishment for violation of the requirements in the Police General Order/Force Procedures Manual/Guidelines on the Searching of Detained Persons;

- (k) to consider revising the third sentence in paragraph 18 of the Guidelines on the Searching of Detained Persons along the lines that a detainee who had any objection to the search might raise his objection and concerns to the Duty Officer, who should record such objection and concerns in the Custody Search Form;
 - (l) to revise the Custody Search Form to clarify that detainees were invited and not requested to sign on the Form;
 - (m) to consider organizing exchange sessions between the Police officers and human rights concern groups/Legislative Council Members to enhance officers' awareness of human rights concerns;
 - (n) to consider uploading the Police's guidelines and procedures on the search of detainees onto the Police's website for access by members of the public;
 - (o) to consider the suggestion that the authorizing officer for searches involving complete removal of clothing should not be a DO but a more senior ranking Police officer/most senior ranking officer in a Police station;
 - (p) to provide information on the workload of a DO; and
 - (q) to advise whether a Police officer who was the subject of a complaint could be promoted during the period of investigation.
5. The meeting ended at 12:45 pm.

**Proceedings of meeting of the
Subcommittee on Police's Handling of Searches of Detainees
on Wednesday, 16 July 2008, at 9:00 am
in the Chamber of the Legislative Council Building**

| Time Marker | Speaker(s) | Subject(s) | Action Required |
|--------------------|--|---|------------------------|
| 000905 - 001353 | Chairman | Opening remarks | |
| 001354 - 001937 | Representative of Justice and Peace Commission of the Hong Kong Catholic Diocese | Presentation of views (LC Paper No. CB(2)2627/07-08(02)) | |
| 001938 - 002419 | Representative of Civil Human Rights Front | Presentation of views (LC Paper No. CB(2)2627/07-08(03)) | |
| 002420 - 002935 | Representative of Hong Kong Human Rights Monitor | Presentation of views (LC Paper No. CB(2)2627/07-08(01)) | |
| 002936 - 003548 | Representative of The Association for the Advancement of Feminism | <p>Presentation of views -</p> <p>(a) whether the provisions in the Police General Orders (PGO), the Force Procedures Manual (FPM) and Guidelines on the Searching of Detained Persons (the Guidelines) relating to the handling of searches of detainees had been drawn up having regard to international human rights treaties. The Police should conduct a full review on such provisions; and</p> <p>(b) how to eliminate sexual harassment during the Police's searches on women involving the removal of clothing</p> | |
| 003549 - 003854 | Representatives of Migrant Support Network | Presentation of views (LC Paper No. CB(2)2627/07-08(04)) | |

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| 003855 - 003938 | Representative of JJJ Association | <p>Presentation of views (LC Paper No. CB(2)2627/07-08(04))</p> <p>Necessity of conducting repeated rounds of searches on a detainee</p> | |
| 003939 - 004419 | Representatives of Zi Teng | <p>Presentation of views (LC Paper No. CB(2)2627/07-08(04))</p> <p>(a) whether it was in breach of the Police's guidelines to request a victim of crime to lift up his/her clothes and to have photographs of his/her body taken during the investigation;</p> <p>(b) the Police officer conducting the search should explain to the person to be searched the reason(s) for conducting the search before the search was to be conducted;</p> <p>(c) it should not be mandatory for a person being searched to sign on the Custody Search Form; and</p> <p>(d) a detainee should have the rights to raise his/her objection to the reasons for and/or the scope of search when being so informed by the Duty Officer (DO)</p> | |
| 004420 - 004836 | Representative of Hong Kong Christian Institute | Presentation of views (LC Paper No. CB(2)2619/07-08(01)) | |
| 004837 - 005543 | Representative of Action for REACH OUT | <p>Presentation of views (LC Paper Nos. CB(2)2627/07-08(05) & (06))</p> <p>Possibility of using infra-red equipment in the conduct of search on a detainee</p> | |

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| 005544 - 010205 | Representative of A Group of Citizens Who Concern About the Democratize of Town Planning, But Unjustifiably Detained, Molted and Suppressed by the Police | <p>Presentation of views (LC Paper No. CB(2)2612/07-08(01))</p> <p>(a) the term "detained person" should be clearly defined;</p> <p>(b) the Police should include typical search procedures in the Guidelines,</p> <p>(c) the Police should confirm whether detainees would be required to adopt certain insulting or degrading postures or perform unnecessary acts during the searches;</p> <p>(d) the Police should allow a third party (e.g. lawyer, Justice of the Peace, family member of the detainee) to be present during the conduct of pre-detention searches;</p> <p>(e) the Police should confirm and enter into the Force's Communal Information System (CIS) whether a decision to conduct strip search on a particular detainee was based on "reasonable suspicion"; and</p> <p>(f) the authorizing officer for searches involving complete removal of clothing should not be a Duty Officer but a more senior ranking Police officer/the most senior ranking officer in a Police station</p> | |
| 010206 - 010730 | Representative of Midnight Blue | Presentation of views (LC Paper No. CB(2)2627/07-08(07)) | |
| 010731 - 011954 | Representative of Civil Right Action Group Chairman Hon Margaret NG | <p>Presentation of views -</p> <p>(a) the definition of "detained persons"; and</p> | |

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| | | (b) with the advancement of technology, the Police should explore the feasibility of deploying devices to assist the Police officers in detecting any article kept by a person to be detained without complete removal of clothing | |
| 011955 - 012714 | Representative of Hong Kong Domestic Workers General Union | Presentation of views (LC Paper No. CB(2)2627/07-08(08)) | |
| 012715 - 013147 | Chairman SALA1 | <p>Sections 46 and 50(6) of the Police Force Ordinance (Cap. 232) -</p> <p>(a) whether it was lawful for the Police to search all persons to be detained in Police custody without the requirement of reasonable suspicion; and</p> <p>(b) whether the provisions in the revised PGO were consistent with section 50(6) of Cap. 232</p> | |
| 013148 - 013659 | Admin Chairman SALA1 | <p>Applicability of section 50(6) of the Police Force Ordinance</p> <p>The Commissioner of Police's decision to search all persons to be detained in Police custody was based on the common law</p> <p>Concern about the requirement provided under section 46 of Cap. 232 that any orders made under this section should be called "police general orders" and should not be inconsistent with Cap. 232 or any regulations under section 45</p> <p>Legal opinion on whether it was lawful under the common law</p> | |

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| | | for the Police to search all persons to be detained in Police custody without the requirement of reasonable suspicion | |
| 013700 - 015857 | Admin Chairman Hon Margaret NG | <p>The Administration's response to deputations' views -</p> <ul style="list-style-type: none"> (a) the new arrangements reflected the statutory functions which Police officers should discharge and the need to ensure the safety of the detained persons and others; (b) officers were reminded that they should conduct every search with proper regard to the reasonable privacy and dignity of the detained person; (c) a clear delineation was made between searches of different degree of intrusiveness i.e. non-removal of clothing, removal of clothing or removal of underwear. The scope of each search was case specific and should be no more than what was rational and proportionate under the prevailing circumstances; (d) the revised PGO 49-04 stated clearly that searches of detained persons were never to be used as a punitive measure, and a search involving removal of underwear should not be conducted routinely, but only in circumstances with strong justifications; (e) the new arrangements provided appropriate safeguards in respect of the | |

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| | | <p>requirements to respect the rights of the detained persons and to prevent arbitrary searches. Among others, the officer conducting the search was required to explain to the detained person the reason(s) for and the scope of the search to be carried out, before the search was to be conducted. The detained person should be informed that he might raise any concern(s) about the search to the DO who would duly document these concerns in CIS and reconsider the scope of the search. The DO's decision, together with his reasoning and/or any other actions taken, would be conveyed to the detained person and recorded in the CIS record for that detained person;</p> <p>(f) Police officers were required to record the reasons for temporary removal of a detainee from a Temporary Holding Area (THA) or detention cell under the detained person movement record in the Force's CIS. This provided a strong safeguard against possible abuse of the movement procedure by, say, moving a detained person in and out of the THA or cell purely to increase the number of searches to be conducted on the person;</p> <p>(g) the general requirements on how searches on detainees should be conducted were stipulated in the revised PGO 49-04;</p> | |

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| | | <p>(h) 120 hand-held metal detectors had been procured by the Police for assisting Police officers in conducting searches on detainees;</p> <p>(i) parties who felt aggrieved by any Police action might make a formal complaint; they were encouraged to provide detailed information to the Police so that the Police could follow up their cases accordingly; and</p> <p>(j) the new arrangements had already taken effect from 1 July 2008. The Police had briefed all frontline officers responsible for searches on detained persons on the revised procedures to ensure their familiarity and compliance with the new arrangements</p> | |
| 015858 - 021810 | <p>Hon Margaret NG Representative of Zi Teng Representative of Migrant Support Network Chairman Representative of A Group of Citizens Who Concern About the Democratize of Town Planning, But Unjustifiably Detained, Molested and Suppressed by the Police Representative of Hong Kong Human Rights Monitor</p> | <p>Expressed concern that the revisions made to PGO and FPM and the new Guidelines had provided the Police with wider powers of search which were open to abuse</p> <p>Safeguards to prevent possible abuse</p> <p>Suggested that any party who felt aggrieved by any Police action should consider suing the Police</p> <p>Difficulties in taking legal action against the Police</p> | |
| 021811 - 022844 | <p>Hon Ronny TONG Chairman</p> | <p>Constitutional obligations of Police officers under the Basic Law (BL), the Hong Kong Bill of Rights and international human rights treaties to respect the inherent dignity of the</p> | |

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| | | <p>persons to be searched Expressed view that a search involving complete removal of clothing should be conducted only when it was inevitable and strictly necessary</p> <p>Agreed that any party who felt aggrieved by any Police action should consider taking legal action against the Police</p> <p>Free legal assistance provided by the Bar Association</p> | |
| 022845 - 023343 | Hon Margaret NG Chairman Admin | <p>Measures taken by the Police to enhance officers' awareness of human rights concerns</p> <p>Suggested that exchange sessions be arranged between the Police officers and the human rights concern groups/Legislative Council Members, with a view to enhancing the officers' awareness of human concerns</p> | |
| 023344 - 025520 | Hon LEUNG Kwok-hung Chairman Admin | <p>Articles 28 and 39 of BL</p> <p>Allegations about Police's abuse of power in the Lee Tung Street case</p> <p>Supported that the process of a search involving complete removal of clothing be video-taped upon the request of the person being searched</p> <p>Reiterated request raised at the meeting on 14 July 2008 regarding the provision of information on the workload of a DO</p> <p>Whether a Police officer who was subject to complaint case could be promoted during the period of investigation</p> | |

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| | | Whether the Police would allow a third party, e.g. lawyer, to be present during the conduct of pre-detention searches | |
| 025521 - 030454 | Chairman Admin Hon Margaret NG Hon LEUNG Kwok-hung | Clarification on whether requiring a person being searched to perform "squat jump(鴨仔跳)" was in breach of the Police's guidelines on the search of detainees | |
| 030455 - 030954 | Chairman Admin Hon LEUNG Kwok-hung Hon Margaret NG Representative of Action for REACH OUT | Whether searches would be conducted on victims Query about the propriety of requiring a detainee to perform certain acts during the search Webpages whereon procedures adopted for strip search in the United States were posted Inclusion of typical search procedures in the Guidelines | Representative of Action for REACH OUT to provide the hyperlinks for the webpages |
| 030955 - 031412 | Chairman Admin | Whether the detained person would be informed of the DO's intent to search prior to the conducting of the search, and whether the detained person would be invited to raise his concern(s)/objection to the reason(s) for and/or the scope of the search when being so informed by the DO Suggested to modify the third sentence in paragraph 18 of the Guidelines to explicitly allow the detainee to spell out his reason(s) for objection | |
| 031413 - 031507 | Hon Margaret NG Chairman | Recommended that the issues raised by the Subcommittee be followed up by the Panel on Security in the next term | |
| 031508 - 033808 | Chairman Representative of Hong | Reiterated various concerns previously expressed during the | |

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| | <p>Kong Human Rights Monitor</p> <p>Representative of Justice and Peace Commission of the Hong Kong Catholic Diocese</p> <p>Representative of Action for REACH OUT</p> <p>Representative of A Group of Citizens Who Concern About the Democratize of Town Planning, But Unjustifiably Detained, Molested and Suppressed by the Police</p> <p>Representative of Midnight Blue</p> <p>Representative of Civil Human Rights Front</p> <p>Representative of Zi Teng</p> <p>Hon Margaret NG Admin</p> <p>Hon LEUNG Kwok-hung</p> <p>Representative of Civil Right Action Group</p> <p>Representative of Hong Kong Domestic Workers General Union</p> | <p>meeting, including -</p> <p>(a) abuse of power by Police officers;</p> <p>(b) the search procedures, particularly searches involving complete removal of clothing, should be explained in a more detailed way in PGO, FPM and the Guidelines;</p> <p>(c) the Police's guidelines and procedures for conducting searches on persons detained in Police custody should be uploaded onto the Police's website for access by members of the public;</p> <p>(d) allowing the process of the searches on detainees to be video-taped, if so requested by the detainee;</p> <p>(e) allowing a third party to be present during the conducting of pre-detention searches;</p> <p>(f) whether recurrent or blatant disregard of PGO or FPM would render an officer liable to disciplinary actions;</p> <p>(g) the authorizing officer should be required to record on the Custody Search Form more detailed justifications for conducting a search, in particular if the search involved removal of underwear;</p> <p>(h) additional procedures or measures should be adopted when conducting searches on detainees who required special care or attention,</p> | |

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| | | <p>such as minors, the mentally disabled or transsexuals;</p> <p>(i) definition of "detained in Police custody";</p> <p>(j) whether the "reasonable suspicion" test had to be applied in deciding whether to conduct a search;</p> <p>(k) whether it was in breach of the Police's guidelines to request a victim of crime to lift up his/her clothes and to have photographs of his/her body taken during the investigation;</p> <p>(l) whether a detainee could be required to adopt certain postures or perform certain acts during a search; and</p> <p>(m) whether it was mandatory for a detainee to sign on the Custody Search Form, and how the Police would resolve the detainee's disagreement with the DO's decision on searches</p> <p>Requested that the Police should suspend the operation of FPM 49-04(07) and para. 23 of the Guidelines until the legal position of the provisions was clear</p> | |
| 033809 - 034051 | Chairman | Requested that the Administration should provide response to the various issues raised by the Subcommittee and deputations | Admin to provide response to various issues raised by the Subcommittee and deputations |
| 034052 - 034140 | Hon LEUNG Kwok-hung Chairman | Suggested that the Administration should consider increasing public awareness of the procedures relating to the Police's handling of searches of | |

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| | | detainees through broadcasting in the "Police Magazine" programme | |
| 034141 - 034529 | Chairman Admin Hon LEUNG Kwok-hung | Clarification on detainees' rights in voicing objection to the reasons for and/or the scope of the search | |
| 034530 - 034601 | Chairman | Closing remarks | |

Council Business Division 2
Legislative Council Secretariat
19 September 2008