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Legislative Council

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the Administration)

Panel on Welfare Services

Subcommittee on Strategy and Measures to Tackle Family Violence

Minutes of the 18th meeting
held on Friday, 7 December 2007, at 8:30 am
in Conference Room A of the Legislative Council Building

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

Members absent : Hon Albert HO Chun-yan
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LEUNG Kwok-hung

Public Officers attending : Item II
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 (Crime Support) (Crime Wing)
Hong Kong Police Force

Mr John READING
Deputy Director of Public Prosecutions
Department of Justice

Miss Agnes CHAN
Senior Government Counsel
Department of Justice

Deputations : Item II
by invitation

The Against Elderly Abuse of Hong Kong

Ms Kennex YUE
Chief Executive Director

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

Ms CHUNG Yuen-yi
Co-ordinator

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

Mr LEUNG Kin-hung
Chairman

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

Caritas-Hong Kong Family Service

Ms LAM Yee-wan
Supervisor

Miss HO Yee-ching
Crisis Care Worker

Harmony House

Ms Heidi IP
Supervisor

Ms Dorothy WONG
Social Worker

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

Ms LIU Ngan-fung
Chairperson

Man
Member

Association Concerning Sexual Violence Against Women

Ms TAN Kong-sau
Counsellor

Association for Concern for Legal Rights of Victims of
Domestic Violence

Ms NG Wai-ching
Chairperson

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

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

Ms Maisie LAM
Council Secretary (2) 2

Ms Sandy HAU
Legislative Assistant (2) 5

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I. Election of Chairman

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

2. Hon CHAN Yuen-han was elected Chairman of the Subcommittee.

II. Further discussion on prosecution of abusers

[LC Paper Nos CB(2)2777/06-07(01) and (02), CB(2)2810/06-07(01) to (06), CB(2)37/07-08(01), CB(2)526/07-08(01) and (03), and CB(2)560/07-08(01)]

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

- (a) The Against Elderly Abuse of Hong Kong
[LC Paper No. CB(2)2810/06-07(01)];
- (b) Hong Kong Women's Coalition on Equal Opportunities
[LC Paper No. CB(2)2810/06-07(02)];
- (c) Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch
[LC Paper No. CB(2)2810/06-07(03)];
- (d) Caritas-Hong Kong Family Service
[LC Paper Nos. CB(2)2810/06-07(05) and CB(2)526/07-08(03)];
- (e) Harmony House
[LC Paper No. CB(2)2810/06-07(06)];
- (f) Hong Kong Association for the Survivors of Women Abuse (Kwan Fook);
- (g) Association Concerning Sexual Violence Against Women
[LC Paper Nos. CB(2)2810/06-07(04) and CB(2)560/07-08(01)]; and
- (h) Association for Concern for Legal Rights of Victims of Domestic Violence
[LC Paper No. CB(2)37/07-08(01)].

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Responses from the Administration

4. Chief Superintendent of Police (Crime Support) said that -
- (a) prosecution action would be taken against the abusers depending on the circumstances of each individual case and subject to the availability of sufficient evidence such as the victims' and witnesses' testimony, medical reports and other circumstantial evidence, regardless of whether the crimes committed by the abusers occurred in a domestic or non-domestic context;
 - (b) bind over orders were not made as an alternative to prosecution to preserve family unity. A bind over order would be considered as an alternative to prosecution if there was no reasonable prospect of prosecution or conviction, such as if the victim withdrew support for the prosecution or, in particular, if the case was minor with no physical injury involved, the use of violence was minimal, the accused was remorseful and the parties were reconciled etc.;
 - (c) bind over orders were effective in achieving preventive justice, as evidenced by the low relapse rates, i.e. 1.1% in 2005 and 5.8% in the first six months of 2006;
 - (d) it would not be possible for the Police to respond immediately to any one-sided allegations raised at the meeting and deputations were welcomed to provide him with details of any domestic violence cases which were suspected to be mishandled for enquiry and follow-up; and
 - (e) aggrieved victims were also welcomed to make use of the established mechanism by reporting any suspected mishandling of domestic violence cases to the Complaints Against Police Office for thorough investigations.
5. Deputy Director of Public Prosecutions (DDPP) said that -
- (a) the general prosecution policy set out in "The Statement of Prosecution Policy and Practice" applied to all criminal offences, regardless of whether the crimes were committed in a domestic setting or in the street. The prosecution policy for domestic violence was particularly set out in "Domestic Violence: The Policy for Cases involving Domestic Violence" published in 2006;
 - (b) in deciding whether to prosecute a crime case, the prosecutor must consider two issues. First, whether there was evidence sufficient to

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provide a reasonable prospect of conviction. Second, whether it was in the public interest for a prosecution to be pursued;

- (c) prosecution against the abuser might still be pursued against the wishes of the victim if the violence was so serious, or the previous history showed such a real and continuing danger to the victim or the children or other person. If the prosecutor concluded that the case should continue and that it was necessary to rely on the victim's evidence to prove the case, it had to be decided -
 - (i) whether an application could be made to use the victim's statement in evidence without the victim to testify, under section 65B of the Criminal Procedure Ordinance (Cap. 221). It should however be noted that in order to use this provision, the defendant had to agree to the admission of the victim's statement as evidence in court;
 - (ii) whether the prosecution could proceed by enabling the victim to give evidence by way of a video link outside the courtroom; and
 - (iii) whether the victim should be compelled to give evidence in person in court. It should however be pointed out that although the victim was compellable to testify against the abuser under section 57 of Cap. 221, the victim had a right to request the court to exempt him/her from testifying under section 57A of Cap. 221; and
- (d) notwithstanding (c) above, prosecution against the abuser might be instituted if there was other sufficient evidence to proceed. The safety of the victim and any children would be considered. Relevant factors included the seriousness of the offence, the victim's injuries (whether physical or psychological), the chances of the accused offending again, whether the accused planned the attack, if the accused used a weapon, the making of the threats before or after the attack, if there were any children living in the household, the continuing threat to the health and safety of the victim or anyone else who was, or might become, involved, the current state of the victim's relationship with the accused, the history of the relationship and the accused's criminal history, particularly any previous violence.

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Discussion

Evidence-gathering by the Police

6. Dr Fernando CHEUNG said that the fact that only a small percentage of domestic violence cases were dealt with by way of prosecutions was a testament that evidence gathering by the Police was far from thorough, particularly in cases of assaults or wounding occurred in a domestic context where both parties claimed self-defence with no other witnesses, and that domestic violence cases were often treated as mere family disputes. In the light of this, Dr CHEUNG said that consideration should be given to the following suggestions made by the Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch in its submission [LC Paper No. CB(2)2810/06-07(03)] -

- (a) the Police should take the abuser to the Police station to obtain a cautioned statement, if the abuser admitted in sound mind at the scene the use of violence against the victim;
- (b) the Police should video-tape the scene and arrange for the victim to undergo a medical check, if the victim refused to give evidence to testify against the abuser at the scene; and
- (c) more time, say, four weeks, should be allowed for the victim to consider bringing a criminal complaint against the abuser. In the meantime, social workers should be arranged to provide advice and support to the victim on giving evidence to testify against the abuser.

7. Chief Superintendent of Police (Crime Support) disagreed that Police had not been thorough in gathering evidence of domestic violence incidents. Some of the above suggestions, e.g. obtaining cautioned statement from the abuser regardless of any confession and arranging medical check for victim etc., were in fact standard requirements conducted in accordance with established procedures. Notwithstanding such, there would always be room for improvement. Chief Superintendent of Police (Crime Support) further said that he would be happy to convene a meeting to brief Members and deputations on Police investigations of domestic violence

8. DDPP advised that to facilitate prosecutors in deciding whether or not to institute prosecution against the abuser, DoJ was considering a scheme to allow prosecutors to interview witnesses to seek clarification of evidence given, as had been done in Australia and recently implemented in the United Kingdom (UK) on a pilot basis. Views of the Hong Kong Bar Association and the Law Society Hong Kong would be sought on this judicial initiative.

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9. Ms LI Fung-ying expressed concern that application of the prosecution policy relating to domestic violence was inconsistent due to different interpretations of individual prosecutors, and urged that this be rectified.

10. DDPP responded that all decisions made by junior prosecutors on whether or not to pursue prosecution on a crime case, including a case involving domestic violence, were subject to a review by a senior prosecutor at the directorate level. DDPP further said that regardless of the severity of the injury caused to the victim, prosecution would most certainly be taken against the abuser if the victim agreed to stand trial to testify against the abuser either at court or via a live television link. It was only when the victim refused to testify against the abuser during trial, despite already given written statement, and when there was no other sufficient evidence, would the case be discontinued. DDPP also said that in deciding whether or not to take a plea from the abuser for a lesser charge, the prosecution would seek the views of the victim, but would not treat these views as determinative.

11. Ms LI Fung-ying queried whether a review by a senior prosecutor at the directorate level would ensure correct application of the prosecution policy relating to domestic violence, as the review was essentially based on the views of the junior prosecutor.

12. DDPP responded that the senior prosecutor would not make the decision on whether or not to prosecute an abuser without first studying all the evidence gathered.

Assisting victims of domestic violence

13. Notwithstanding the measures implemented by DoJ to facilitate fast-tracking of cases involving vulnerable witnesses as set out in paragraph 15 of LC Paper No. CB(2)2777/06-07(01), the clustering and fast-tracking of domestic violence cases being considered by the Judiciary, the witness support programme jointly set up by the Social Welfare Department (SWD) and the Police, the explanation to the victims of their rights and duties as set out in the Victims of Crime Charter by the Police, the dissemination of the leaflet explaining the rights of victims in relation to Police investigation at the Police station and the development of peer support programme by SWD, Dr Fernando CHEUNG remained of the view that a person with legal knowledge should be arranged to help the victims throughout the whole criminal justice process from giving evidence to the Police at the outset to testifying against the abusers at court.

14. Ms NG Wai-ching from the Association for Concern for Legal Rights of Victims of Domestic Violence hoped that consideration could be taken to providing victims with a legal advocate as practised in UK.

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15. Principal Assistant Secretary for Labour and Welfare (Welfare)2 (PAS/LW(Welfare)2) said that she would follow up with SWD on ways to further strengthen assistance and support to victims of domestic violence undergoing court proceedings against the abusers. PAS/LW(Welfare)2 further said that the Administration was well aware of the latest witness support programme in the UK and would consider applying such initiatives in Hong Kong where feasible and suitable.

16. Ms LIU Ngan-fung from Kwan Fook asked whether DoJ would take into account information provided by non-governmental organisations (NGOs) on the family circumstances of the victims, in deciding whether to prosecute a case involving domestic violence.

17. DDPP responded that DoJ relied only on evidence of the case gathered by the Police and the sufficiency of it, in deciding whether to prosecute a case involving domestic violence.

18. Dr Fernando CHEUNG asked why DoJ would not consider the views of NGOs about the family circumstances of the victims, but would otherwise if the same was provided by the Family and Child Protective Services Units of SWD.

19. DDPP responded that information on the family circumstances of the victims from SWD or from NGOs would only become a relevant consideration in deciding whether or not to discontinue a case or take a plea for a lesser charge. DDPP further said that in most domestic violence cases, no social welfare report on the family background of the victim was required. Usually, some background information on the victim and the victim's family would be provided in the victim's own statement and also in the covering report prepared by the Police.

20. Dr Fernando CHEUNG asked whether the Police would accept information from NGOs concerning the family circumstances of the victims, in deciding whether to initiate prosecution action against the abuser.

21. Chief Superintendent of Police (Crime Support) responded that background information and evidence were two different things. In deciding whether to prosecute a case involving domestic violence, availability of sufficient evidence of the offence against the accused, such as the victims' and witnesses' testimony, medical reports and other circumstantial evidence, was paramount.

22. Ms Heidi IP from Harmony House said that it was regrettable that the Police only confined evidence to the facts directly related to the crime and disregarded relevant issues, such as the behaviour pattern of the abuser, the context under which violence was used on the victim, and the effect of domestic violence

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on the family members of the victim, in deciding initiating prosecution action against the abuser.

23. PAS/LW(Welfare)2 responded that prosecution decisions should be taken with fairness and impartiality across the board, regardless of whether the allegation involving domestic violence or any other criminal offence. However, in view of the distinct nature of domestic violence cases, prosecutors were required to act in accordance with "The Policy for Prosecuting Cases involving Domestic Violence", in addition to "The Statement of Prosecution and Practice".

24. Referring to paragraph 15 of "The Policy for Prosecuting Cases involving Domestic Violence" which provided, inter alia, that "The prosecutor should obtain information about the family circumstances and the likely effect of a prosecution on the members of the family", Dr Fernando CHEUNG urged that it should be made a standing practice for DoJ to require a detailed report from SWD's social workers on the family circumstances of the victim and the likely effect of a prosecution on the members of the family of the victim in all cases involving domestic violence in deciding whether or not to prosecute. DDPP agreed to consider the suggestion and he would take that aboard and discuss the suggestion within DoJ.

25. Ms NG Wai-ching from the Association for Concern for Legal Rights of Victims of Domestic Violence said that it should be made mandatory for SWD to arrange social workers to help victims better prepare for the trial and the related court proceedings and to accompany the victims during court proceedings to reduce their fear and anxiety when giving evidence in court. PAS/LW(Welfare)2 responded that this should best be left to the professional judgement of social workers.

26. In closing, the Chairman urged the Administration to consider the views of members and deputations with regard to strengthening legal support to victims of domestic violence to better prepare them for undergoing court proceedings against the abusers and taking into account reports by professional social workers on the family circumstances of the victims and the likely effect of a prosecution on the family members of the victims when deciding whether or not to initiate prosecution action against the abusers.

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

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

27. Due to time constraint, members agreed to defer the discussion of this item to the next meeting.

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28. There being no other business, the meeting ended at 10:40 am.

Council Business Division 2
Legislative Council Secretariat
20 March 2008

**Proceedings of the meeting of
Subcommittee on Strategy and Measures to Tackle Family Violence
on Friday, 7 December 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000235	Dr Fernando CHEUNG Miss CHAN Yuen-han	Election of Chairman	
000236 - 000433	Chairman	Opening remarks	
000434 - 001019	Admin	Briefing by the Administration on LC Paper No. CB(2)526/07-08(01) illustrating the application of the principles set out in paragraphs 29 to 32 of "The Policy for Prosecuting Cases involving Domestic Violence" and setting out its response to the proposal of initiating prosecution action against a suspect who had a previous history of domestic violence unless the suspect could prove otherwise	
001020 - 001105	Chairman	Inviting deputations to give further views on prosecution of abusers	
001106 - 001419	The Against Elderly Abuse of Hong Kong	Presentation of views [LC Paper No. CB(2)2810/06-07(01)]	
001420 - 001732	Hong Kong Women's Coalition on Equal Opportunities - Anti Domestic Violence Programme	Presentation of views [LC Paper No. CB(2)2810/06-07(02)]	
001733 - 001742	Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch	Presentation of views [LC Paper No. CB(2)2810/06-07(03)]	
001743 - 002055	Caritas Hong Kong - Family Service	Presentation of views [LC Paper Nos. CB(2)2810/06-07(05) and CB(2)526/07-08(03)]	
002056 - 002337	Harmony House	Presentation of views [LC Paper No. CB(2)2810/06-07(06)]	
002338 - 002708	Association Concerning Sexual Violence Against Women	Presentation of views [LC Paper Nos. CB(2)2810/06-07(04) and CB(2)560/07-08(01)]	
002709 - 003318	Association for Concern for Legal Rights of Victims of Domestic Violence	Presentation of views [LC Paper No. CB(2)37/07-08(01)]	
003319 - 003955	Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)	Presentation of views	

Time marker	Speaker	Subject	Action required
003956 - 005141	Chairman Admin	Responses by the Police and the Department of Justice (DoJ) to the views expressed by deputations	
005142 - 011102	Dr Fernando CHEUNG Chairman Admin	Evidence-gathering by the Police	
011103 - 011819	Chairman Ms LI Fung-ying Admin	Application of the prosecution policy relating to domestic violence by individual prosecutors	
011820 - 012015	Chairman Admin	Allowing prosecutors to interview witnesses, other than expert witnesses	
012016 - 013254	Dr Fernando CHEUNG Admin Chairman	Arranging a person with legal knowledge to provide support and guidance to the victim in testifying against the abuser	
013255 - 013848	Kwan Fook Admin	DoJ should take into account information provided by non-governmental organisations (NGOs) on the family circumstances of the victims, in deciding whether to prosecute a case involving domestic violence	
013849 - 014333	Chairman Kwan Fook SALA1	Unlike the Labour Tribunal which might allow an office bearer of a registered trade union or an association of employers who had been authorised in writing by a claimant or defendant to represent the party in the hearings, no one except the victim could give evidence against the abuser at court	
014334 - 014744	Association for Concern for Legal Rights of Victims of Domestic Violence Admin	Consideration should be given to adopting the legal advocate scheme as practised in the United Kingdom (UK) in Hong Kong	
014745 - 015311	Dr Fernando CHEUNG Admin	Use of information about the family circumstances of the victim in the charging policy in cases involving domestic violence	
015312 - 015837	Harmony House Admin	Relevant issues, such as the behaviour pattern of the abuser, the context under which violence was used on the victim, and the effect of domestic violence on the members of the family, should also be taken into account in deciding initiating prosecution action against the abuser	
015838 - 020022	Association for Concern for Legal Rights of Victims of Domestic Violence Admin	Reiterated that the legal advocate scheme adopted in UK should be implemented in Hong Kong	
020023 - 020436	Dr Fernando CHEUNG Admin	DoJ was requested to consider the suggestion that it should be made a standing practice for DoJ to require a detailed report from SWD's social workers on the family circumstances of the victim and the likely effect of a prosecution on the members of the family of the victim in all cases involving domestic violence in deciding whether or not to prosecute	

Time marker	Speaker	Subject	Action required
020437 - 020824	Chairman	Concluding remarks	
020825 - 021044	Chairman	Arrangements for the next meeting	

Council Business Division 2
Legislative Council Secretariat
20 March 2008