

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1288/08-09  
(These minutes have been seen  
by the Administration)

Ref : CB2/PL/SE

**Panel on Security**

**Minutes of meeting**  
**held on Tuesday, 3 February 2009, at 2:00 pm**  
**in the Chamber of the Legislative Council Building**

- Members present** : Hon LAU Kong-wah, JP (Chairman)  
Hon James TO Kun-sun (Deputy Chairman)  
Hon Albert HO Chun-yan  
Dr Hon Margaret NG  
Hon CHEUNG Man-kwong  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Emily LAU Wai-hing, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon LEUNG Kwok-hung  
Hon CHIM Pui-chung  
Hon WONG Kwok-kin, BBS  
Hon WONG Yuk-man  
Hon IP Kwok-him, GBS, JP
- Member attending** : Hon Cyd HO Sau-lan
- Members absent** : Hon WONG Yung-kan, SBS, JP  
Hon LAU Wong-fat, GBM, GBS, JP  
Hon CHAN Hak-kan
- Public Officers attending** : Item IV  
Mr NGAI Wing-chit  
Deputy Secretary for Security (3)

Mrs Apollonia LIU  
Principal Assistant Secretary for Security (E)

Mr CHOW Wing-hang  
Principal Assistant Secretary for Security (D)

Mr Hubert LAW  
Principal Assistant Secretary (Constitutional &  
Mainland Affairs) 5

Mr David CHIU, IDSM  
Deputy Director of Immigration

Mr Austin KERRIGAN  
Assistant Commissioner of Police (Support)

Mr Matthew Darron LINDSAY  
Superintendent of Police (General) (Support Branch)

Item V

Mr David LAU  
Principal Assistant Secretary for Security (A)

Mr CHOW Kwong, CDSM, CMSM  
Assistant Commissioner (Boundary and Ports)  
Customs and Excise Department

Mr LIU Hon-chun  
Group Head (Ports Control)  
Customs and Excise Department

Mr WONG Wai-man  
Electronics & Data Communication Manager  
Electrical & Mechanical Services Department

Item VI

Mr David WONG  
Principal Assistant Secretary for Security  
(Narcotics) Special Duties

Mr Y K TAM, CMSM  
Assistant Commissioner (Intelligence and Investigation)  
Customs and Excise Department

Mr John LEE  
Acting Head of Customs Drug Investigation Bureau  
Customs and Excise Department

Mr CHOY Chun-po  
Inspector, Technical Support Team of Customs Drug  
Investigation Bureau  
Customs and Excise Department

Item VII

Mr Paul CHENG  
Principal Assistant Secretary for Security (B)

Mr LAI Man-hin  
Chief Fire Officer (Licensing & Certification Command)  
Fire Services Department

**Attendance** : Item IV  
**by invitation**

Hong Kong Bar Association

Mr P Y LO  
Counsel Member

Equal Opportunities Commission

Mr CHU Chung-man  
Head, Policy and Research

JJJ Association

Miss Lily MA  
Project Officer

Miss LAM Po-yee  
Project Officer

Migrant Support Network

Miss NG Ngar-shan  
Project Officer

Miss LEE Yuk-lan  
Project Officer

Society for Community Organization

Mr TSOI Yiu-cheong  
Member

Mr WONG Chi-yuen  
Member

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai  
Director

Mr KWOK Hiu-chung  
Education Officer

Zi Teng

Miss LAM Yee-ling  
Project Officer

Miss LEUNG Yuet-kwan  
Project Officer

People Planning in Action

Mr WONG Ho-yin  
Member

Individual

Mr Mark DALY  
Human Rights Lawyer

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

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

Mr YICK Wing-kin  
Assistant Legal Adviser 8

Miss Josephine SO  
Senior Council Secretary (2) 1

Ms Camy YOONG  
Clerical Assistant (2) 1

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**I. Confirmation of minutes of previous meeting**

(LC Paper No. CB(2)738/08-09)

The minutes of the meeting held on 2 December 2008 were confirmed.

**II. Information papers issued since the last meeting**

(LC Paper Nos. CB(2)633/08-09(01) and CB(2)745/08-09(01))

2. Members noted that the following papers had been issued since the last meeting -

- (a) Press release issued by the Administration regarding the establishment of the statutory Independent Police Complaints Council on 1 April 2009; and
- (b) Administration's paper on the regulation of indoor fireworks displays in Hong Kong.

**III. Date of next meeting and items for discussion**

(LC Paper Nos. CB(2)737/08-09(01) & (02))

3. Members agreed that the following items would be discussed at the next regular meeting to be held on 3 March 2009 at 2:30 pm -

- (a) Immigration convenience measures for Hong Kong and Macao residents travelling between the two places;
- (b) Replacement of radio communications system of the Fire Services Department;
- (c) Replacement of five fire appliances of the Fire Services Department; and
- (d) Measures adopted by the Police to combat street deception.

4. Regarding the item referred to in paragraph 3(a) above, Ms Emily LAU expressed concern over a recent incident where a Legislative Council (LegCo) Member was refused entry into Macao. She hoped that the Administration would brief members on measures adopted by the Government to facilitate the entry of Hong Kong residents to Macao. Mr CHEUNG Man-kwong said that government officials of the Macao Special Administrative Region (MSAR) and

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members of the Legislative Assembly of MSAR should be invited to attend the meeting on 3 March 2009.

*(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, the agenda item on "Immigration convenience measures for Hong Kong and Macao residents travelling between the two places" was deferred to a future meeting and replaced by "Results of study of matters raised in the Annual Report 2007 to the Chief Executive by the Commissioner on Interception of Communications and Surveillance". The meeting on 3 March 2009 would be held from 2:30 pm to 5:00 pm to allow sufficient time for discussion of the agenda items.)*

Installation of closed circuit television cameras in public places

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5. Ms Emily LAU expressed concern about the recent proposal of the Yau Tsim Mong District Council (YTMDC) to install closed circuit television (CCTV) cameras in Mong Kok pedestrian precinct, especially the privacy implications of such installation. The Chairman suggested and members agreed that the Administration should be requested to provide information on the existing policy towards the installation of CCTVs in public places and details of the proposal put forward by YTMDC.

**IV. Concluding observations of the Committee Against Torture on the second periodic report of the Hong Kong Special Administrative Region under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

(LC Paper Nos. CB(2)737/08-09(03) to (13), CB(2)170/08-09(01), CB(2)747/08-09(01) and CB(2)129/08-09(09) and CB(2)772-08-09(01))

6. The Chairman reminded the deputations/individuals attending the meeting that they were not covered by the protection under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) when addressing the Panel. At the invitation of the Chairman, nine deputations/individuals presented their views on the subject.

Views of deputations/individuals

*Hong Kong Bar Association*

*(LC Paper Nos. CB(2)170/08-09(01) & CB(2)747/08-09(01))*

7. Mr P Y LO presented the views of the Hong Kong Bar Association (the Bar Association) on the Police's practices in handling searches of detainees, as detailed in its position paper. The Bar Association suggested that it was worth exploring the feasibility of providing a person in Police custody who was to be

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subject to a search requiring removal of underwear with an internal review mechanism. The review should be conducted by an officer of at least chief inspector or superintendent rank not related to the investigation or performance of Police function that led to the detention of that person.

8. Referring to the Court of Final Appeal's judgment in the case of *Secretary for Security v Sakthivel Prabakar*, Mr LO presented the views of the Bar Association regarding the existing administrative procedures for assessing torture claims, as set out in another paper provided by the Hong Kong Bar Association (LC Paper No. CB(2)747/08-09(01)).

*Equal Opportunities Commission*  
(LC Paper No. CB(2)129/08-09(09))

9. Mr CHU Chung-man recapitulated the views of the Equal Opportunities Commission (EOC) as detailed in its submission presented for discussion at the Panel meeting held on 27 October 2008. He said that EOC shared the public concern regarding the Police's guidelines/policies governing Police officers undertaking undercover operations and handling of searches of detainees. EOC took the view that as a long term measure to address the problem, the Administration should appoint an independent body to investigate into complaints against members of law enforcement agencies (LEAs) for abuse of power or misconduct.

*JJJ Association*  
(LC Paper No. CB(2)737/08-09(07))

10. Miss Lily MA and Miss LAM Po-yee presented the views of JJJ Association as detailed in the joint submission of JJJ Association and Zi Teng. They also expressed concern about the safety of sex workers working in "one sex worker apartments".

*Migrant Support Network*  
(LC Paper No. CB(2)737/08-09(08))

11. Miss NG Ngar-shan presented the views of Migrant Support Network as detailed in its submission.

*Society for Community Organization*  
(LC Paper No. CB(2)737/08-09(09))

12. Mr TSOI Yiu-cheong and Mr WONG Chi-yuen presented the views of Society for Community Organization as detailed in its submission.

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*Hong Kong Human Rights Monitor*  
(LC Paper No. CB(2)737/08-09(10))

13. Mr LAW Yuk-kai presented the views of Hong Kong Human Rights Monitor as detailed in its submission.

*Zi Teng*  
(LC Paper No. CB(2)737/08-09(07))

14. Miss LEUNG Yuet-kwan and Miss LAM Yee-ling presented the views of Zi Teng as detailed in the joint submission of JJJ Association and Zi Teng. They in particular expressed concern about the slow progress of the Complaints Against Police Office (CAPO) in the investigation of complaints against Police officers. Citing the case of Ms LI Yuen-ye, they expressed dissatisfaction that CAPO had not completed the investigation and made available the investigation report although it had received the complaint for more than three years. They also said that according to the results of a survey Zi Teng made against seven overseas jurisdictions, Police officers were strictly prohibited from receiving sexual services. They held the view that the Police should make reference to international practices and revise its internal guidelines governing anti-vice operations. The revised guidelines should reinforce the key principle that in the process of gathering evidence, Police officers undertaking undercover operations were not allowed to receive sexual services of any kind.

*People Planning in Action*  
(LC Paper No. CB(2)737/08-09(11))

15. Mr WONG Ho-yin presented the views of People Planning in Action as detailed in its submission. He also asked about the development in respect of the Police's investigation into the allegations about abuse of power on the part of Police officers in the Lee Tung Street case.

*Mr Mark DALY*  
(LC Paper Nos. CB(2)737/08-09(12) & CB(2)772-08-09(01))

16. Mr Mark DALY presented his views as set out in his submissions. He considered that the Government of the Hong Kong Special Administrative Region (HKSAR) should respond favourably to the recommendations of the United Nations Committee Against Torture (the CAT Committee) to put in place comprehensive legislation for the determination of refugee status and torture claims.

Administration's response to views/concerns of deputations/individuals

17. Deputy Secretary for Security (3) (DS(S)3) made the following points -

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- (a) the second periodic report of HKSAR under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was considered by the CAT Committee at its hearing held in Geneva in November 2008. Before the hearing, issues in the report relevant to the work of the Security Bureau were discussed at the meeting of the Panel on Security held on 27 October 2008. The CAT Committee had issued its concluding observations on the HKSAR's second report in December 2008. The CAT Committee expressed appreciation of the initiatives which HKSAR had taken for the implementation of the Convention;
- (b) the CAT Committee recommended that the HKSAR Government should incorporate the provisions contained in Article 3 of CAT under the Crimes (Torture) Ordinance (Cap. 427) and consider adopting a legal regime on asylum with a view to establishing a comprehensive and effective procedure to examine thoroughly the merits of each individual case when determining the applicability of its obligations under Article 3 of CAT. The Administration was considering the CAT Committee's recommendations to put in place a legislative regime for handling torture claimants and to cover the non-refoulement principle under Article 3 of CAT. The Administration would consult the Panel when it came up with a clear proposal;
- (c) the Administration was committed to fulfilling its obligation under CAT not to remove a person to another place where there were substantial grounds for believing that he would be in danger of being subjected to torture. The Administration had been continuously reviewing the procedures for assessing torture claims made under CAT to enhance its effectiveness and to meet a high standard of procedural fairness. It would conduct research on the effectiveness of similar arrangements in other jurisdictions, and consider whether and how these arrangements should be applied locally; and
- (d) the Administration noted the concerns raised by the Panel on Administration of Justice and Legal Services regarding claimants' right to legal representation and access to legal aid. Under the existing legal aid policy, no one with reasonable grounds for taking or defending a legal action in the Hong Kong courts should be prevented from doing so because of the lack of means. Legal aid service was granted for legal representation in civil and criminal proceedings in the courts of Hong Kong, in accordance with the Legal Aid Ordinance (Cap. 91) and the Legal Aid in Criminal Cases Rules. Legal aid was available to asylum seekers

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and torture claimants who satisfied the relevant criteria, namely the means test and the merits tests, in relation to the above proceedings. On 5 December 2008, the Court of First Instance (CFI) handed down judgment on six applications for judicial review from persons who had lodged torture claims in Hong Kong. CFI would have a further hearing on 12 February 2009 on, among others, the declarations and orders to be made. As a decision on torture claim was subject to judicial review, legal aid was available for such proceedings subject to the relevant criteria being met.

18. Principal Assistant Secretary for Security (E) (PAS(S)E) said that -
- (a) the Police management would not condone abuses, if any, committed by Police officers during anti-vice undercover operations. All Police officers participating in such undercover operations were required to comply with the Police's guidelines designed for this purpose. All undercover officers were subject to close supervision by the officers-in-charge of the operations;
  - (b) the aim of the Police's anti-vice undercover operations was evidence gathering. The guidelines drawn up for such operations covered the scope and extent of the evidence to be gathered, and the extent of body contact with sex workers that was allowed. The guidelines, revised and implemented in late 2007, reinforced the key principle that in the process of gathering evidence, Police officers undertaking undercover operations were not allowed to receive oral sex or sexual intercourse service offered by sex workers. If it was essential for the Police officer concerned to receive some form of sexual service in order to maintain his cover, the extent of such service should be restricted to that as required by operational needs;
  - (c) the Police attached great emphasis on the proper conduct of Police officers. Any person who felt aggrieved by Police actions, including anti-vice operations or body searches conducted on detainees, could lodge a formal complaint. The Administration urged the parties concerned to provide detailed information on alleged misconduct or abuse of power by Police officers so that necessary investigations could be carried out. All complaints against members of the Police Force would be thoroughly investigated. If any allegations of abuse of authority were substantiated, the Police officer concerned would be subject to disciplinary action;

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- (d) all complaints against the Police were handled and investigated by CAPO, and the results of CAPO's investigations were subject to the monitoring and scrutiny of the Independent Police Complaints Council (IPCC). With the enactment of the IPCC Ordinance in July 2008, the two-tier police complaint system had been codified and IPCC would be turned into a statutory body. The IPCC Ordinance set out clearly the functions, powers and operation of IPCC in monitoring CAPO's investigation of police complaints and imposed a statutory duty on the Police to comply with the requests of IPCC, thus enhancing the transparency of the system. All members of IPCC were non-officials appointed from a wide cross-section of the community. The Administration had given notice for IPCC to commence operation as a statutory body on 1 April 2009;

*(Post meeting note: Subsequent to the meeting, the Administration published a notice in the Gazette on 27 February 2009 to repeal the original commencement notice. A new commencement notice was published in the Gazette on 13 March 2009 to appoint 1 June 2009 as the new commencement date of the IPCC Ordinance.)*

- (e) in view of the concerns of sex workers regarding their safety following recent murder cases targeting at sex workers, the Police had taken the initiative to enhance communication with sex worker groups to disseminate crime-related information in a timely manner so that sex workers could be more vigilant in safeguarding their personal safety; and
- (f) CAPO had completed the investigation into the complaint lodged by the family of Ms LI Yuen-yee against a member of the Police Force. IPCC had endorsed the investigation report in October 2008.

19. Regarding the Police's practices in the handling of searches of detainees, Assistant Commissioner of Police (Support) (ACP(SUP)) made the following response -

- (a) at common law, the Police had a duty to take all reasonable measures to ensure that detainees did not escape or assist others to do so, did not injure themselves or others, did not destroy or dispose of evidence, and did not commit further crime;
- (b) there were previous cases that detainees would cause harm to themselves and others using tools such as string, scissors, folded knives and cigarette lighter. The Police conducted searches on

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detainees to discharge its statutory functions and to fulfill its duty of care to persons detained in custody;

- (c) the Commissioner of Police would not condone any Police officers routinely conducting searches on detainees involving complete removal of clothing. Searches involving complete removal of clothing should only be conducted in circumstances with strong justifications. The scope of each search was case specific and determined having regard to the prevailing circumstances;
- (d) the Police had reviewed and revised the provisions in the Police General Orders and the Force Procedures Manual with a view to improving the arrangements for the handling of searches of detainees. Multiple safeguards had been built into the new guidelines and improved procedures to prevent any possible abuse. The new arrangements had struck an appropriate balance between law enforcement and the protection of human rights; and
- (e) the new guidelines required that accurate records be kept in the Police's Communal Information System to record the search conducted on a particular detainee and the scope of the search. The officer conducting the search would be required to explain to the detainee the reasons for and the scope of the search before the search was conducted, and the Duty Officer should ensure that the purposefully designed Custody Search Form (Pol. 1123) would be served on the detainee, with the contents explained to the detainee. The form set out clearly the reasons for and the scope of the search in question, the searching procedures, and the rights and entitlements of the person to be searched.

Discussion

20. The Deputy Chairman and Ms Cyd HO noticed that the Police could initiate prosecution against persons who participated in public order events and arrested for assaulting Police officers engaged in public duty by applying the relevant provisions in the Offences Against the Person Ordinance (Cap. 212) or the Police Force Ordinance (Cap. 232). They said that a person convicted of such an offence under Cap. 212 would be liable to a heavier penalty as compared to Cap. 232. While the former could lead to imprisonment, the latter might only result in a fine. The Deputy Chairman enquired whether the Police had internal guidelines setting out the circumstances whereby offenders should be charged for assault on Police officers, and whether the Department of Justice (DoJ) had any prosecution policy on whether an offender should be prosecuted in accordance with the Offences Against the Person Ordinance or the Police Force Ordinance.

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21. ACP(SUP) responded that DoJ had issued a prosecution statement policy which was open and subject to public scrutiny. He said that the circumstances in which members of the public would be charged by the Police for the offence of assaulting Police officers varied from case to case. The Police would seek advice from DoJ on the appropriateness of applying the two Ordinances mentioned in paragraph 20 above, where necessary.

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22. The Deputy Chairman requested the Administration to provide the Panel with a detailed response on issues he had raised, together with the guidelines issued by DoJ on the application of the Offences Against the Person Ordinance or the Police Force Ordinance in prosecutions against assaulting Police officers. Ms Cyd HO also requested the Administration to provide the number of prosecutions instituted in the past five years by the Police under Cap. 212.

23. Noting that the Police's internal guidelines governing anti-vice operations had been revised in late 2007 to reinforce the key principle that in the process of gathering evidence, Police officers undertaking undercover operations were not allowed to receive oral sex or sexual intercourse service offered by sex workers, Mr Albert HO took the view that the crux of the problem was with the conduct of the Police officers rather than the guidelines per se. He hoped that EOC could provide further views on the subject from the perspective of whether the Police had abuse its power, in the light of the allegations received about Police officers receiving free sexual services during undercover operations. He said that the Subcommittee on Police's Handling of Sex Workers and Searches of Detainees would appreciate EOC's views and suggestions on the subject.

24. Mr Albert HO shared the views and concerns of Mr Mark DALY that a legal regime on asylum should be put in place and a fair and efficient refugee status determination procedure should be established. He enquired whether the Administration had any specific plan in this regard.

25. In response, DS(S)3 advised that HKSAR had all along adopted a firm policy of not granting asylum and did not have any obligation to admit individuals seeking refugee status under the 1951 United Nations Convention relating to the Status of Refugees. Claims for refugee status lodged in Hong Kong were dealt with by the United Nations High Commissioner for Refugees (UNHCR). The Immigration Department (ImmD) maintained close liaison with UNHCR Hong Kong Sub-office to ensure persons whose claims for refugee status had been denied and who had no permission to remain in Hong Kong left the territory in accordance with the law. The Government however had put in place administrative procedures for assessing torture claims made under CAT. A torture claimant who had failed to establish his claim would be removed from Hong Kong in accordance with the laws. For a torture claimant who had established his claim, he would not be removed to the country where there were substantial grounds for believing that he would be in danger of

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being subjected to torture. Decisions relating to removal of torture claimants were subject to the appeal or review mechanism established by law, such as the Immigration Tribunal, and judicial review proceedings. DS(S)3 said that as he had advised earlier, the Administration was considering the CAT Committee's recommendations to put in place a legislative regime for handling torture claimants and to cover the non-refoulement principle under Article 3 of CAT. The Administration would conduct research on the effectiveness of similar arrangements in other jurisdictions, and consider whether and how HKSAR might apply such arrangements locally.

26. Dr Margaret NG expressed disappointment with the Administration's response. She said that the HKSAR Government should seriously consider the CAT Committee's recommendation to seek extension of the 1951 Refugee Convention to Hong Kong. Noting from the submission of Mr Mark DALY that there existed a number of procedural problems with ImmD's screening of torture claims under CAT, Dr NG called on the Administration to speed up the study regarding the implementation of a legislative regime for handling torture claims. She also asked about the Administration's timetable for introducing the relevant bill.

27. DS(S)3 responded that the Administration planned to provide a framework on the subject matter for consideration by LegCo by the end of 2009.

28. Responding to Ms Audrey EU's enquiry, Mr Mark DALY said that to his knowledge, some 3 000 to 4 000 persons had lodged torture claims. Among them, about 1 500 were known to have lodged refugee claims. He pointed out that given the similarity in the nature of the mechanisms for determining refugee status and torture claims, the HKSAR Government should consider the CAT Committee's recommendations to put in place a legal regime with comprehensive and effective procedures for determining refugee status and assessing torture claims made under CAT. A decision on refugee status should be made based on the same interview process as how it was done in other developed jurisdictions.

29. Ms Audrey EU questioned whether it was due to resource constraints that the Administration decided not to seek extension of the 1951 Refugee Convention to Hong Kong and put in place any mechanism for granting asylum.

30. DS(S)3 reiterated that HKSAR had all along adopted a firm policy of not granting asylum. While the Administration would continue with its endeavours to implement CAT which presented a fast growing commitment to Hong Kong, it had no plan to seek extension of the Refugee Convention to Hong Kong. The Administration had taken into account the overall government policies, including the existing immigration policy, in taking this decision. DS(S)3 advised that as explained earlier, claims for refugee status

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were dealt with by UNHCR, which had put in place mechanisms for determining refugee status. Asylum seekers screened as refugees would be arranged for resettlement overseas by UNHCR.

31. Ms Emily LAU noted from the Administration's paper that the HKSAR Government was requested to provide by 21 November 2009 its formal response to the recommendations made by the CAT Committee as contained in paragraphs 7, 10 and 12 of the Concluding Observations. She considered that public consultation should be conducted before the Administration finalized its response. DS(S)3 noted the suggestion.

32. Ms Emily LAU reiterated her concern about the complaints against Police officers receiving free sexual services during undercover operations. She noted from the submission of Zi Teng that according to the results of a survey it conducted on seven overseas jurisdictions, Police officers were strictly prohibited from receiving sexual services. She asked whether the Administration had studied the practice of other countries in this respect and whether any jurisdictions allowed their police officers undertaking undercover operations to receive sexual services offered by sex workers.

33. PAS(S)E responded that the Administration was collecting information from overseas jurisdictions on their practices in respect of anti-vice undercover operations. It would revert to the Subcommittee on Police's Handling of Sex Workers and Searches of Detainees once it was in a position to do so.

34. Ms Cyd HO suggested that the retention period for copies of the purposefully designed Custody Search Form (Pol. 1123) which had been served on the detainees should be extended from two years to six years, so as to keep in line with the time limit for aggrieved persons to seek civil remedy.

35. ACP(SUP) responded that the Administration had an open mind and would consider Ms HO's suggestion during the stage two review of procedures for searches of detainees.

36. Mr LEUNG Kwok-hung was concerned about police misconduct. He said that in the case where a Police officer was accused of raping a young woman inside a Police station, there was sufficient evidence indicating police misconduct which justified thorough investigation. Citing the Lee Tung Street case, he said that it was obvious that the Police had abused its power. He pointed out that the Police had arrested a few hundred people on the same day as the group of protesters who attempted to stop the demolition work at Lee Tung Street. At the end, those who were suspected of more serious offences such as arson, assault and claiming to be a member of triad society were granted bail. However, the protesters who were accused of the relatively lesser offence of obstruction of a public place were refused bail. He considered the decisions regarding the granting of bail arbitrary, and questioned the fairness and credibility of the decisions made by the Police.

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37. In response, PAS(S)E made the following points -

- (a) Police officers would determine whether a defendant was to be admitted to bail in accordance with established guidelines, having regard to a number of factors and the circumstances of the case concerned; the same arrangement applied to the prosecution of persons arrested in the Lee Tung Street case as in other cases of arrest involving obstructing Police officers engaged in public duty in public order events;
- (b) in deciding whether to prosecute, the prosecutor would consider whether the evidence was sufficient to justify the institution or continuation of proceedings;
- (c) the Administration was aware of the wide public concern regarding a recent alleged rape case which occurred in a Police station and involved a serving Police officer. The Force did not condone such behaviour by any of its officers and had taken prompt action in the criminal investigation, arrest and subsequent prosecution in respect of the incident. After the initial court hearing on 27 November 2008, the case was adjourned until 24 February 2009. The Force would take forward this case in a serious, professional and impartial manner; and
- (d) the Force was fully committed to upholding a high standard of conduct and discipline among all officers, and had put in place a well-established and effective system to deal with any breach of discipline.

38. Responding to Ms Emily LAU's enquiry about the complaint case concerning Ms LI Yuen-yee, PAS(S)E advised that CAPO had completed the investigation into the complaint lodged by the family of Ms LI, and IPCC had endorsed the investigation report in October 2008. The report concluded that the complaint was unsubstantiated.

*(Members agreed that the meeting should be extended to end at 5:00 pm.)*

39. Ms Cyd HO, Mr WONG Yuk-man and Mr CHEUNG Man-kwong considered the conclusion regarding the case of Ms LI Yuen-yee far from satisfactory. Mr CHEUNG said that he had learned from the representatives of Zi Teng that the family of Ms LI had not been informed of the outcome of the investigation. He criticized the Police for its failure to provide the LI's family with a formal reply.

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40. PAS(S)E said that to her knowledge, CAPO should have informed Ms LI's family at the first instance after the investigation result was endorsed by IPCC.

*(Post-meeting note: At the meeting of the Subcommittee on Police's Handling of Sex Workers and Searches of Detainees held on 4 February 2009, Mr LEUNG Kwok-hung clarified that the family members of Ms LI Yuen-yee had received CAPO's notification of the investigation findings in respect of their complaint against a member of the Police Force. The notification was issued in December 2008.)*

41. Mr WONG Yuk-man expressed strong dissatisfaction with the Administration's response to Members' questions. He recalled that he had requested the Administration to provide information on a number of issues relating to the Police's undercover operations against vice activities and the handling of searches of detainees by the Police. He said that despite the information and assurance provided by the Administration, he remained unconvinced of the need to allow Police officers undertaking enforcement actions to receive sexual services, while such practice was specifically prohibited in other countries.

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42. Mr CHEUNG Man-kwong and the Deputy Chairman requested the Administration to provide the Panel with the Police's investigation report in respect of the complaint case concerning Ms LI Yuen-yee, together with the findings of the Coroner's Inquest held into the death of Ms LI.

**V. Procurement of one mobile X-ray vehicle scanning system by the Customs and Excise Department**

(LC Paper Nos. CB(2) CB(2)736/08-09(01) and CB(2)737/08-09(14))

43. Principal Assistant Secretary for Security (A) briefed Members on the Administration's proposal to procure a Mobile X-ray Vehicle Scanning System (MXRVSS) for use by the Customs and Excise Department (C&ED) to conduct cargo examination at the River Trade Terminal in Tuen Mun, as detailed in the Administration's paper.

44. Noting that with the aid of MXRVSS, the inspection time for each container would be substantially reduced from two to three hours to less than 30 minutes, the Deputy Chairman asked whether C&ED had any plans to increase the number of containers inspected.

45. Assistant Commissioner (Boundary and Ports), C&ED responded that the procurement of MXRVSS for use at the River Trade Terminal would significantly enhance the efficiency and effectiveness of customs cargo inspection conducted at the Terminal. As the inspection time for each

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container would be substantially reduced, the capacity of customs cargo inspection at the River Trade Terminal would correspondingly increase from six to 24 containers per day. Moreover, by analyzing the radiographic images and radiation readings captured by MXRVSS, customs officers could readily identify suspected irregularities. More accurate risk assessments would enhance customs officers' judgment in deciding whether physical examination of cargo contents was needed, thereby enhancing the department's capability of detecting contraband good.

46. Noting that some \$2 million and \$5 million of the total estimated non-recurrent cost for procuring the proposed MXRVSS had been earmarked respectively for contingency and payment to the Electrical and Mechanical Services Trading Fund (EMSTF) under the Electrical and Mechanical Services Department (EMSD), Mr IP Kwok-him enquired about the use of the funds allocated.

47. Electronics & Data Communication Manager, EMSD advised that the contingency was to account for exchange rate variation, additional works and other incidentals. The contingency would only be used if it was necessary for the completion of the project. EMSD would be responsible for the overall project management and hence a charge in the form of a payment to EMSTF had to be levied to recover the resources to be spent on the project, which included activities such as system design, tender preparation and invitation, tender evaluation, negotiation and award of contract, system implementation and monitoring. Electronics & Data Communication Manager, EMSD emphasized that the payment was comparable to the market rate.

48. Mr IP Kwok-him expressed support for the Administration's proposal and requested C&ED to make the best use of the new facility.

49. Members noted that the Administration would submit the proposal to the Finance Committee for funding approval in April 2009 with a view to commissioning the new facility at the River Trade Terminal by September 2011.

**VI. Replacement of radio communications system for the Customs Drug Investigation Bureau of the Customs and Excise Department**

(LC Paper Nos. CB(2)737/08-09(15) & (16))

50. Principal Assistant Secretary for Security (Narcotics) Special Duties briefed Members on the Administration's proposal to replace the existing analogue radio communications system of the Customs Drug Investigation Bureau (CDIB) of C&ED with a new integrated radio system, as detailed in the Administration's paper.

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51. The Deputy Chairman noted the benefits of acquiring the proposed integrated radio system. He agreed that CDIB should have its own radio communications system, independent from those operated by other LEAs to ensure the confidentiality of CDIB's enforcement operations since it was a dedicated formation in C&ED specialized in investigation to combat serious crimes in relation to dangerous drugs. He expressed concern about the high capital cost of \$52 million for the proposed project and enquired whether the new integrated radio system for CDIB could be built on the existing dedicated communications systems operated by other LEAs, such as the Crime Wing of the Police. He considered that the Administration should make use of the communications infrastructure already available within the Government to develop the new system for CDIB.

52. Assistant Commissioner (Intelligence and Investigation), C&ED responded that in drawing up the proposal for CDIB to replace its analogue radio communications system, the Administration had carefully considered the possibility of making use of the Unified Digital Communications Platform (UDCP) built on the Third Generation Command and Control Communications System of the Police. The idea was however dropped on grounds of security and operational needs. The Police's system could not meet the operational needs of CDIB as UDCP, being a generic platform open to general use by a large number of users of the Police, C&ED and other government departments, could not offer the level of security, the capability of rapid and reliable response, and fast information transmission required by the nature of the work of CDIB. He further explained that the existing radio communications system operated by the Crime Wing of the Police was also considered not a suitable option because of the different technology adopted at the time of construction of the system some years ago, which would not be able to provide the same level of service standard as the proposed system to meet the present day operational requirements of CDIB. CDIB would need its own replacement system as proposed in the paper.

53. The Deputy Chairman took the view that the Administration could employ a more secure encryption technology to protect the confidentiality of information during the transmission. He said that the Administration should seriously consider making use of the communications infrastructure already available within the Government to develop the new system for CDIB. He requested the Administration to provide detailed information explaining why the proposed integrated radio system for CDIB could not be built on the existing dedicated communications systems operated by other LEAs.

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**VII. Delegation of authority for the issuance of Fire Hazard Abatement Notice**

(LC Paper Nos. CB(2)737/08-09(17)& (18))

54. The Deputy Chairman said that despite the legal advice as referred to in paragraphs 7 and 8 of the Administration's paper, he remained worried as to whether the fire hazard abatement notices (FHANs) issued between 1 January 2004 and 1 January 2009 were valid and able to withstand a challenge in court. He considered that the updating work for the Fire Services Department General Orders (FSDGO) and the Command Procedural Instructions (CPIs) should be done timely and frequently. He asked about the existing practice of the Fire Services Department (FSD) in updating these documents, how frequent FSD updated its guidelines and internal instructions which provided detailed rules and procedures for the daily operations, and whether the latest updating exercise was thorough and comprehensive to reflect all amendments that had been made to existing legislation under FSD's purview.

55. Chief Fire Officer (Licensing & Certification Command) (CFO) responded that FSD had sought DoJ's advice on the validity of FHANs issued between 1 January 2004 and 1 January 2009, during which time FSDGO made reference to a repealed provision (i.e. section 9(1)(a) of the Fire Services Ordinance (Cap. 95) (FSO)). According to the legal advice, all FHANs issued during the relevant period (with a total of 20 023 FHANs) were valid. FSD accepted that for good administration, FSDGO should be updated as timely as practicable. CFO further advised that in the recent updating exercise, FSD had completed all the necessary amendments to the relevant sections of FSDGO and other internal instructions, guidelines, etc relating to the delegation of power for the issuance of FHANs. In order to avoid the recurrence of a similar situation in future, FSD had set up an Inter-Command Working Group, which will meet regularly to monitor closely the amendment and updating of FSDGO, and to ensure that future amendments were made in a timely manner. CFO said that all chapters in FSDGO and CPIs on the delegation of power by the Director of Fire Services (DFS) in the enforcement of the legal provisions had been reviewed. The Inter-Command Working Group would keep updating other chapters which were not related to the delegation of powers by DFS in FSDGO and CPIs. It was the intention of FSD that where legal provisions were amended, reference in FSDGO to the legal provisions would be updated at the same time as the commencement of the amended legal provisions.

56. Mr CHEUNG Man-kwong held the view that where legal provisions were amended, reference in FSDGO and CPIs to the legal provisions should be updated at the same time as the commencement of the amended legal provisions. He said that the incident whereby FSD had issued 20 023 FHANs which made reference to a repealed legislative provision had given him an impression that FSD had taken the updating work too casually. He asked about the reason for the mistake.

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57. In response, CFO and Principal Assistant Secretary for Security (B) made the following points -

- (a) the abatement of fire hazards and prevention of their recurrence were previously provided for under sections 9 and 9A to 9D of FSO. Regarding the delegation of power for the issuance of FHANs, FSDGO and the Department's other internal instructions, guidelines, etc had made reference to section 9(1)(a);
- (b) in 2003, for ease of reference in taking enforcement action and to facilitate future updating of procedures, sections 9 and 9A to 9D of FSO were repealed by the Fire Services (Amendment) Ordinance 2003 and re-enacted in the Fire Services (Fire Hazard Abatement) Regulation (Cap 95F) (the Regulation);
- (c) in view of the commencement of operation of the Regulation on 1 January 2004, FSD accorded high priority to amend CPIs and all other internal instructions and guidelines which provided detailed rules and procedures for the daily operations in December 2003 so as to update the relevant statutory references therein, including the reference to section 3 of the Regulation as the provision under which FHANs were issued;
- (d) FSD had also planned for the updating work for FSDGO which set out the delegation of authority to issue a FHAN. Draft amendments to the relevant sections of FSDGO were prepared in December 2003, and were finally effected on 2 January 2009;
- (e) FSD shared members' views that it was not an ideal arrangement to have carried out and completed the updating work for CPIs and FSDGO at different points of time. FSD accepted that for good administration, FSDGO and CPIs should be updated as timely as practicable. Where legal provisions were amended, reference in FSDGO and CPIs to the legal provisions should be updated at the same time as the commencement of the amended legal provisions; and
- (f) despite the legislative amendments in 2004, FHANs issued between 1 January 2004 and 1 January 2009 were valid, as DFS had always intended that the delegation made before the legislative amendments would remain the same after the amendments, and such intention had always been clear to officers in FSD.

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58. There being no other business, the meeting ended at 5:00 pm.

Council Business Division 2  
Legislative Council Secretariat  
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