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15 July 2009

Mr Raymond Lam
Clerk to Security Panel
Legislative Council
3rd Floor, Citibank Tower
3 Garden Road
Hong Kong

Dear Mr Lam,

Panel on Security

Follow up to the Panel Meeting on 3 February 2009

At the meeting of the Panel on Security held on 3 February 2009, arising from the discussion on agenda item IV: Concluding observation 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, Members requested the Administration to provide some statistics and supplementary information on a number of issues. The requested information is set out below.

(a) Participants of public meetings or public processions arrested for assaulting police officers

(i) *guidelines by the Department of Justice (DoJ) regarding the application of section 63 of the Police Force Ordinance (Cap. 232) and section 36 of the Offences Against the Person Ordinance (Cap. 212) in prosecutions against assaulting police officers*

2. When considering whether prosecution should be instituted under section 63 of Cap. 232 or section 36 of Cap. 212 against an individual for assaulting a police officer, DoJ will follow the charging practice and procedure laid down in "The Statement of Prosecution Policy and Practice" published by the Department. The Statement stipulates, in particular, that there must be available admissible evidence which supports all the ingredients of the offence charged. DoJ will decide on the charge having regard to all relevant considerations, including the principle that the charges laid should adequately reflect the gravity of the accused's conduct. Where the evidence discloses an offence against several different laws, DoJ will exercise care in deciding on a charge or charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will provide the court with an appropriate basis for sentence. Relevant extracts of the above-mentioned Statement are at **the Annex**.

3. In assessing the gravity of the accused's conduct, DoJ will take into consideration the circumstances in which the assault is committed, including whether injuries have been sustained, whether there is pre-meditation, the manner of the assault, the conduct leading up to the assault, and whether the assailant has previous records of violence, etc.

(ii) *criteria adopted by the Police for determining whether an offender should be prosecuted in accordance with Cap. 212 or Cap. 232*

4. If any person is suspected to have assaulted a police officer in a public meeting or public procession, the Police formation concerned will seek legal advice on whether prosecution should be instituted based on the circumstances of the case and the evidence in hand. DoJ will adopt the criteria set out in paragraphs 2 and 3 above when considering independently whether to initiate prosecution in the case concerned, and if so, the offence for which the person concerned should be prosecuted.

(iii) number of prosecutions instituted in the past five years by the Police under Cap. 212 in respect of participants of public meetings or processions for assaulting police officers and the Police's consideration for charging persons for assaulting police officers

5. Section 36 of Cap. 212 stipulates that any person who assaults any person with intent to commit an arrestable offence; or assaults, resists or wilfully obstructs any police officer in the due execution of his duty or any person acting in aid of such officer; or assaults any person with intent to resist or prevent the lawful apprehension or detention of himself or of any other person for any offence shall be guilty of an offence. The Police will initiate arrest action on the basis of sufficiency of evidence to prove that a person has assaulted, resisted or wilfully obstructed a police officer in execution of his duty and the seriousness of his act. As set out in paragraph 4 above, the Police formation concerned will seek legal advice on whether prosecution should be instituted based on the circumstances of the case and the evidence in hand. A total of 22 participants of public meetings or public processions held in the five years from 2004 to 2008 were charged under section 36 of Cap. 212 for assaulting police officers.

(b) Period of retention of Custody Search Form (Pol. 1123)

6. Following consideration of Members' suggestion to extend the retention period for copies of the Custody Search Form (Pol. 1123) which have been served on the detainees, the Police will extend the retention period from two years to six years with effect from October 2009.

7. I should be grateful if you would bring the above to the attention of Members.

Yours sincerely,



(Mrs Mille Ng)

for Secretary for Security

c.c ACP(Support) (Mr Austin Kerrigan)

13.1 There must be available admissible evidence which supports all the ingredients of the offence charged. The prosecutor will exercise his or her discretion on the choice of charge on the basis of the following principles :

- a. Every effort should be made to keep the number of charges as low as possible. A multiplicity of charges imposes an unnecessary burden on the administration of the courts as well as upon the prosecution, and often tends to obscure the essential features of the case. Where the evidence discloses a large number of offences of a similar nature, the use of specimen charges should always be considered. Consideration should be given to inviting the court, if the accused agrees, to take outstanding offences into account for the purposes of sentencing. Where numerous different types of offence are disclosed, the ability to present the case in a clear, simple manner should remain a key objective;
- b. The charges laid should adequately reflect the gravity of the accused's conduct. In the ordinary course the charge or charges laid or proceeded with will be the most serious disclosed by the evidence. Nevertheless, when account is taken of such matters as the strength of the available evidence, and the probable lines of defence to a particular charge, it may be appropriate to lay or proceed with a charge which is not the most serious revealed by the evidence;
- c. In many cases the evidence will disclose an offence against several different laws. Care must therefore be taken to choose a charge or charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will provide the court with an appropriate basis for sentence.