

For discussion

Legislative Council Panel on Security

**Subcommittee on Police's Handling of Sex Workers
and Searches of Detainees**

**Report on Stage Two of the Review
on the Police's Practices regarding the Search of Detainees**

PURPOSE

This paper reports on the outcome of stage two of the review conducted by the Police on the practices regarding the search of persons in police custody.

BACKGROUND

2. Arising from the allegations made by some of the detainees involved in the Lee Tung Street case that the Police had unnecessarily conducted searches on them involving the removal of clothing worn next to the skin during their detention, the Legislative Council Panel on Security discussed the practices of the Police regarding the search of detainees at its meetings on 30 October and 4 December 2007. Having regard to the comments raised by Members at those meetings, the Police undertook a review of their practices and procedures regarding custody search in two stages. We presented the report on stage one of the review to the Panel on Security on 4 March 2008. Taking account of Members' comments, the Police formulated new arrangements for the handling of searches of detainees and implemented them from 1 July 2008. The new guidelines seek to provide better safeguards in respect of the requirements to respect the rights of the detainees, and to prevent arbitrary or unnecessary searches. The new procedures also clearly stipulate, among other things, that a search involving the removal of underwear should not be conducted routinely but only in circumstances with strong justifications.

3. In July 2008, the Subcommittee on Police's Handling of Searches of Detainees (the July Subcommittee) set up under the Panel on Security discussed the Police's new procedures regarding the handling of searches of detainees. The Subcommittee held three meetings, at which Members made a number of comments and suggestions regarding the Police's new

search procedures. The Police undertook to consider a number of the July Subcommittee's comments and suggestions in their stage two review, which involved consideration of the need for any additional improvement measures regarding the handling of searches of detainees upon the conclusion of the legal proceedings in respect of the Lee Tung Street case.

Further improvement measures implemented so far

4. The Police management has been monitoring the operation of the procedures for custody searches closely to ensure their effective implementation. Taking account of practical experience gained from the initial stage of implementation of the new search procedures, the Police have introduced further improvement measures. For instance, the Police improved the Communal Information System (CIS) as well as the custody search form (Pol. 1123) in early 2009 with a view to further enhancing the standard of custody search records made by frontline police officers and facilitating the retrieval of statistics on custody searches. We have explained our new measures in our letters to the Clerk to the Subcommittee of 31 December 2008 and 24 January 2009. The Police have also introduced two additional key improvement measures recently as set out in paragraphs 5 and 6 below.

(a) Remove the requirement for conducting mandatory repeated custody searches every time a detainee returns to a temporary holding area (THA) or cell

5. In the light of the comments made by this Subcommittee at its meeting held on 9 December 2008, the Police have reviewed the need to search a detainee every time he returns to a THA or cell. While under a duty of care towards a detainee, the Police have concluded that as the detainee has already been searched immediately before he is put in a THA or cell, the Duty Officer could be allowed to decide, having regard to all the relevant circumstances (e.g., probability of harm, gravity of the potential injury, etc.), whether a further custody search should be conducted on a detainee every time he re-enters a THA or cell (after temporary removal from such facility). This arrangement was implemented from 19 April 2009, and Police General Order (PGO) 49-04(11) was amended to reflect this.

(b) Enhance the supervision of custody searches, in particular searches involving full removal of underwear (i.e. Level III(c) searches)

6. Paragraph 21-50 of the Force Procedures Manual (FPM) on the "Use of the CIS Supervisory Functions Program" requires supervisors of

Duty Officers to review all cases entered by the latter in the CIS during every shift to ensure proper discharge of the Duty Officers' responsibilities. Such supervisory inspection covers the CIS records of all custody searches so as to ensure that all searches conducted are justified. With effect from 19 April 2009, all Assistant Divisional Commanders (Operations), in the capacity of reviewing officers of the circumstances surrounding the detention or continued detention (as applicable) of all detainees in the police stations concerned, are required to personally review all Level III(c) custody searches recorded in the CIS in the stations under their charge. They will take appropriate corrective action if any custody search conducted is found to be without proper justification. Work is also in hand to further enhance supervisory control by adding an automatic function in the CIS to bring all Level III(c) custody searches conducted to the attention of the Operation Support Sub-unit Commander and the Assistant Divisional Commander (Operations) concerned for review.

7. Since 1 January 2009, the Police have also implemented a number of improvement measures¹ suggested by the July Subcommittee. A list of these measures is at **Annex A**. We have reported some of these measures to this Subcommittee at the meetings on 4 February 2009 and 31 March 2009, while others have taken effect from 19 April 2009.

Further improvement measures under consideration

8. In addition to the above-mentioned improvement measures, the Police are giving active consideration to a few other measures proposed by the July Subcommittee, the latest position of which is set out at **Annex B**. These measures require more detailed examination and/or entail further amendments to the relevant PGO and FPM. The Police expect to come to a view on these proposed measures in the fourth quarter of 2009.

WAY FORWARD

9. The Police have since 1 July 2008 introduced substantial enhancement to their practices and procedures for handling searches of detainees. Subject to any further views or suggestions that Members may have regarding the matter, we will, upon the completion of the Police's consideration of the remaining proposed improvement measures as set out in paragraph 8 above for implementation in the longer term, report to the Panel on Security. The Police will also, as undertaken, provide the Panel on Security with the number of Level III(c) custody searches conducted on

¹ Some of these measures were implemented in the context of the improvements to the CIS and Pol. 1123 mentioned in paragraph 4 above.

detainees involving full removal of underwear and the nature of offences suspected to have been committed by the detainees concerned on an annual basis.

**Security Bureau
Hong Kong Police Force**

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The Police's handling of searches on detainees : implementation of improvement measures suggested by the July Subcommittee

Suggestion 1: To consider suitable improvements to the “Custody Search Form” (Pol. 1123) to make it clear that it concerns mainly the rights of detainees regarding a search and the detailed arrangements of the search, and to remind the detainees to refer to Pol. 153 in respect of their other rights during their detention

Measure implemented: The Police have added a paragraph on “Your Rights in respect of Custody Search” in the revised Pol. 1123 introduced on 1 January 2009 to remind detainees that the form concerns their rights in respect of custody searches. At the same time, the Police continue to serve the Pol. 153 to remind detainees of their other rights during detention. We reported this new measure at the Subcommittee meeting held on 4 February 2009.

Suggestion 2: To consider further fine-tuning the procedure, the Guidelines on the Searching of Detained Persons (Guidelines) and/or the “Custody Search Form” (Pol. 1123) to give a clearer indication that searches involving removal of underwear should only be conducted in very restrictive circumstances

Measure implemented: The PGO already states that “Searches of detained persons are never to be used as a punitive measure. In particular, a search involving the removal of underwear should not be conducted routinely but only in circumstances with strong justification” (PGO 49-04, paragraph 10). It is also made clear in the Guidelines that “(a) search involving the removal of a person’s underwear and exposure of a person’s private parts is embarrassing and is a serious interference with a person’s privacy and dignity” (paragraph 2 of the Guidelines). As a further enhancement measure, the revised Pol. 1123 introduced on 1 January 2009 requires the Duty Officer to record the factors that he has considered when deciding the scope of a custody search (see suggestion 5 below) while mandating the Duty Officer to specify in the form the sub-category for any

Level III custody search conducted. Moreover, the CIS has been enhanced to provide structured fields (including “Reason(s) for Search” and “Factor(s) considered”, together with free text areas) for the Duty Officer to record his decision on the scope of a search on a detainee, and specific areas where the Duty Officer needs to provide elaboration. These serve to remind the Duty Officer to exercise due care before deciding to conduct a Level III custody search and to ensure that every such search is properly justified. We reported this measure at the Subcommittee meeting held on 4 February 2009.

Suggestion 3: To better reflect detainees’ rights in voicing objection to the reasons for and/or the scope of the search when being so informed by the Duty Officers

Measure implemented: The Police have inserted a paragraph in the revised Pol. 1123 introduced on 1 January 2009 to inform a detainee in police custody of his rights to voice concerns/objections, if any, regarding a custody search conducted on him. We reported this new measure at the Subcommittee meeting on 4 February 2009.

Suggestion 4: To clarify that the detainees are invited, not requested, to sign on Pol. 1123 (i.e. that the signing of the form is not mandatory)

Measure implemented: The Police have amended paragraph 15 of the revised Pol. 1123 with effect from 1 January 2009 to clarify this. We reported this new measure at the Subcommittee meeting held on 4 February 2009.

Suggestion 5: To require the authorizing officer to record on Pol. 1123 more detailed justifications for conducting a search involving removal of underwear

Measure implemented: A section on “Factor(s) Considered” has been included in the revised Pol. 1123 to facilitate the Duty Officers to provide more information on the considerations underpinning a decision on the scope of a custody search. In addition, the Duty Officers are required to record any concerns or objections raised by the

detainee, including those concerning the scope of a search conducted on him, in the revised Pol. 1123 and the CIS. Based on the concern or objection raised, the Duty Officer will re-consider his decision and record his response in the CIS. These new initiatives were implemented on 1 January 2009. We reported this new measure at the Subcommittee meeting held on 4 February 2009.

Suggestion 6: For record keeping purpose, requiring officers to record further breakdown for custody searches involving removal of underwear: (1) total removal of top (but not bottom); (2) total removal of bottom (but not top); (3) total removal of top and bottom

Measure implemented: The Police have sub-categorized custody searches involving removal of underwear (i.e. Level III searches) into sub-category (a) “looking into underwear”, sub-category (b) “partial removal of underwear” and sub-category (c) “full removal of underwear” with effect from 1 January 2009. Frontline officers are required to specify, in respect of any Level III search conducted on a detainee, the sub-category involved in the revised Pol. 1123 and the CIS. We reported this new measure in our letter to the Clerk to the Subcommittee of 31 December 2008.

Suggestion 7: To spell out explicitly in the FPM (paragraphs 49-04(8) to (11)) the handling arrangements as set out in paragraph 14 of Annex B of the Administration’s letter of 17 July 2008, i.e. that any request from a detainee for the retention of a certain item of clothing or article is to be considered by the Duty Officer on a case-by-case basis, and under no circumstances should a detainee be allowed to carry any hard or sharp object in the cell for safety reason

Measure implemented: Paragraph 11 of the revised Pol. 1123 and paragraph 49-04(8) of the FPM already state that a detainee is allowed to retain essential clothing, spectacles, hearing aid, head-dress required by faith or custom, and copies of statements in paper form made by the detainee in custody unless the detainee has self-harm or suicidal

tendency. If the detainee wishes to retain any personal item while in police custody, he may make a request to the Duty Officer. The Duty Officer will consider the request on a case-by-case basis. In accordance with current police procedures, any items removed from a detainee must be recorded in the CIS. A report will be generated for the detainee to acknowledge the items that have been removed from him. We reported this measure at the meeting held on 31 March 2009.

Suggestion 8: To clarify whether searches must be immediately conducted upon arrest

Measure implemented: The Police have confirmed that from an operational perspective, the need to conduct searches immediately upon arrest exists in some, but not all, cases. Moreover, if the arrestees have been searched immediately upon arrest, further searches may not be necessary on the person's return to a police station. Hence, paragraph 3 of FPM 49-04, which previously provided for compulsory searches upon arrest and on return to a police station, was deleted in April 2009.

Suggestion 9: To define more clearly what "reasonable privacy" means

Measure implemented: PGO 49-04(8)(d) was amended in April 2009 to specify that custody searches will be conducted "only in an area offering privacy".

The Police's handling of searches on detainees :
suggested improvement measures under consideration

Suggestion 1: **To explore the use of infra-red equipment in assisting the conduct of custody searches**

Latest position: As reported to the Subcommittee in our letter of 25 March 2009, the Police had conducted a research to identify suitable technical aids that could be used in conducting custody searches. Search equipment covered by the research included digital radiographic (X-ray) scanner, X-ray backscatter scanner, millimetre wave scanner, walk-through metal detector and handheld metal detector/gloves. Taking into account the outcome of a trial scheme conducted from 1 October 2008 to 31 December 2008 as well as the cost and practicality considerations, the Police decided to apply a handheld metal detector to a detainee as a standard step prior to every custody search with effect from 1 January 2009.

As observed from the trial scheme, the use of handheld metal detectors cannot completely obviate the need for a physical search of a detainee, where the circumstances so justify, in order to locate items of evidential value or items that can be used for self-harm. The Police are now examining the technical capability of the millimeter wave scanner and similar equipment, along with other relevant considerations (such as costs and practicability) with a view to assessing the feasibility of deploying such equipment for custody search in order to minimize the need for physical searches involving a higher level of intrusiveness.

Suggestion 2: **To allow the process of the custody searches to be video-taped if the detainee so requests**

Latest position: This suggestion was made by the July Committee to protect a detainee being searched from possible excesses in the Police's handling of the search. Since 1 July 2008, the Police have introduced substantial improvements to the practices and procedures for the

search of detainees, especially in terms of better protection of privacy, stricter requirements regarding record keeping on the reasons for and the scope of custody search, as well as enhanced supervisory control. Moreover, the revised Pol. 1123 now reflects the detainee's right in voicing his concerns/objections (if any) regarding the searches and clearer procedures have been laid down regarding the handling of such concerns/objections by the Duty Officer. We believe that much of the concern underlying the original suggestion has been addressed. The Police will, nevertheless, further consider the suggestion along with the formulation of standardized custody search procedures and the study on the feasibility of deploying millimeter wave scanner and similar equipment for conducting custody searches.

- Suggestion 3:**
- **To include typical custody search procedures in the Guidelines**
 - **To spell out explicitly in the PGO and FPM that any request for a detainee to perform a specific act or to adopt a certain posture during a custody search must be subject to the necessity and proportionality tests, and that the Duty Officer must justify his decision and record the act required (with justification) in the CIS**
 - **To spell out clearly that only persons whose presence is necessary for conducting a search and allowing to be present during a search**

Latest position : The Police are formulating a set of “Standardized Search Procedures” for conducting different types of custody search¹. There will be step-by-step procedures to be taken by the searching officer and the corresponding actions required of a person subject to a

¹ The different types are custody search are :
Level I : Non-removal of clothing
Level II : Removal of clothing
Level III(a) : Removal of underwear – looking into underwear
Level III(b) : Removal of underwear – partial removal of underwear
Level III(c) : Removal of underwear – full removal of underwear

custody search. Due regard to the detainee's dignity and privacy will be emphasized in the standardized custody search procedures. Duty Officers will be required to record any departure from the standardized search procedures, once promulgated, in the CIS. Corresponding amendments will be made to the PGO/FPM/Guidelines accordingly. In this process, the necessary differentiation in treatment between male and female detainees, as well as further assurance of privacy during a search, will be taken into account.

The Police have been briefing their officers on the conduct of searches to familiarize them with the relevant principles and procedures contained in the PGO, FPM and Guidelines as well as the procedural steps in conducting a search, with emphasis on the requirements to respect the right and privacy of the person concerned and to prevent arbitrary searches. In support of the introduction of the standardized custody search procedures, the Police are in parallel devising a new Training Day Package to further enhance officers' awareness of human rights issues. Topics including human rights issues, handling of detainee with special needs and standardized custody search procedures, etc. will be included in the Package.

Suggestion 4: To modify the wording of paragraph 11(b) of FPM 49-04 to make it non-discriminatory against detainees of a particular gender

Latest position: This recommendation will be taken forward in the context of the amendments to the PGO/FPM mentioned in suggestion 3 above.

Suggestion 5: To introduce additional procedures or measures when conducting searches on those classes of detainees who require special care or attention (for example, minors, mentally disabled, transsexuals)

Latest position : The Police are formulating additional guidelines on the procedures for handling detainees with special needs, including :

- (a) persons under the age of 16;
- (b) persons who are or suspected to be mentally incapacitated;
- (c) persons with physical disabilities;
- (d) persons with physical communication difficulties, e.g. visually impaired or unable to read/hear;
- (e) transsexuals and transvestites; and
- (f) other persons who may require special attention.

The additional guidelines will be made public when available.

Suggestion 6: To include in the revised PGO/FPM references to the relevant provisions of the Basic Law and international conventions regarding the protection of human rights in respect of detainees

Latest position: The above-mentioned legal provisions have already been incorporated into paragraph 1 of the revised Pol. 1123. The Police will further consider incorporating details of Article 28 of the Basic Law and Article 10(1) and Article 17 of the International Covenant on Civil and Political Rights into the PGO/FPM and the Training Day Package (please also see suggestion 3 above), as appropriate.

Suggestion 7: To spell out explicitly in the PGO and FPM that Police officers should keep accurate record of all custody searches

Latest position: The existing PGO 49-04 (3) and (7) and the Guidelines already require the Duty Officer, the searching officer and the witnessing officer to maintain records of a search. Police officers are naturally expected to keep such records accurately. That said, the Police will further consider any necessary revision to the PGO/FPM (in the context of suggestion 3 above) to set out explicitly that all records of custody searches are accurately maintained.

Suggestion 8: To define more clearly what “detained in police custody” means

Latest position: The Police’s current thinking is to define “Person in Police Custody” as “any person in the custody of the Commissioner (of Police) commencing from the time a person is arrested until the time of release or delivery into jail custody by a court” whereas “Detained Person” refers specifically to a person being detained or to be detained in a police detention facility. This will be taken forward in the next revision of the PGO and FPM (as set out in suggestion 3 above).

Suggestion 9: To arrange exchange sessions between the Police officers and the Legislative Council members, with a view to enhancing the officers’ awareness of human rights concerns

Latest position: The Police will take into account the views expressed by Members of the Subcommittee in the course of their consideration of additional improvement measures for conducting custody search. Further views from Members in this regard are always welcome.

Suggestion 10: To provide more information to the public on the procedures in conducting a custody search

Latest position: Chapter 49 of PGO on “Persons Detained in Police Custody”, including the section on custody searches, has been uploaded onto the Hong Kong Police Force homepage for public access (under “General Enquiries” section on www.police.gov.hk). Additional information on how a custody search is conducted will be made available to the public when the standardized custody search procedures have been drawn up.