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Paper for the Panel on Security

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

Purpose

This paper reports on the deliberations of the Subcommittee on Police's Handling of Sex Workers and Searches of Detainees (the Subcommittee).

Background

Police's handling of searches of detainees

2. On 5 October 2007, the Police arrested a group of 15 protesters who attempted to stop the demolition work at Lee Tung Street in Wan Chai. It was alleged that the Police had conducted searches on the protesters involving the complete removal of clothing unnecessarily and in an inappropriate manner when the latter were detained in the police station, after the departure of their lawyers. Arising from the allegations made by some of the arrestees, the Panel on Security discussed the practices of the Police in conducting searches of detainees at its meetings on 30 October and 4 December 2007. Having regard to the comments made by members at those meetings, the Police undertook to review its practices and procedures regarding custody search in two stages.

3. At the Panel meeting on 4 March 2008, the Administration briefed the Panel on the results of stage one of the Police's review. Taking into account the views expressed by members at the meeting, the Police formulated new arrangements for the handling of searches of detainees and implemented them from 1 July 2008. The new arrangements seek to provide better safeguards in respect of the requirements to respect the rights of the detainees, and to prevent arbitrary or unnecessary searches. They also stipulate clearly, among other things, that a search involving the removal of underwear should not be conducted routinely but only in circumstances with strong justifications. Examples of the new

arrangements include -

- (a) introduction of new guidelines on the searching of detainees as well as substantive amendments to the Police General Orders (PGO) and Force Procedures Manual (FPM);
- (b) clear delineation on scope of searches into three levels, i.e. non-removal of clothing (Level I), removal of clothing (Level II) and removal of underwear (Level III);
- (c) introduction of the Custody Search Form (Pol. 1123) (the Form) for serving to a detainee prior to search. The Form sets out the rights and entitlements of the persons to be searched, reason(s) of search, factor(s) considered and scope of search;
- (d) requirement for recording details of the search into the Police's Communal Information System (CIS); and
- (e) requirement for police officers to have due regard to the privacy and dignity of the detainee concerned when conducting searches involving the removal of clothing. For instance, the responsible officer should not require a detainee to remove all of his clothes at the same time, the officer should complete the search as quickly as practicable and allow the detainee to put on his clothing as soon as the search is completed, and the search should be conducted in an area not in view of persons other than the searching officer, witnessing officer and the supervisory officer.

4. In July 2008, the Subcommittee on Police's Handling of Searches of Detainees (the former Subcommittee) formed under the Panel on Security discussed the Police's new procedures regarding the handling of searches of detainees. The former Subcommittee held three meetings, at which members made a number of comments and suggestions regarding the Police's new arrangements for the handling of searches of detainees. The Police undertook to consider a number of the former 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.

Police's handling of sex workers

5. Under the existing laws, the act of prostitution itself is not illegal. According to the Administration, the major objective of Police's enforcement action is to combat other activities that are connected with it, including harbouring or exercising control over a woman for the purposes of prostitution, keeping a vice

establishment or permitting or tolerating premises or vessels that one owns or rents to be used for prostitution. The Police's anti-vice operations are directed at persons controlling vice activities and operating vice establishments, rather than the sex workers unless the latter are involved in illegal activities. In taking enforcement actions against the above offences, it is necessary for the Police to demonstrate that sexual services are being offered, payment for those services has been made and the relevant persons are controlling the women for the purpose of prostitution. According to the Administration, evidence collection is extremely difficult as vice operators resort to various means to avoid prosecution actions and persons receiving sexual services very seldom come forward to provide the necessary evidence. The Administration thus considers it necessary for the Police to conduct covert operations to gather sufficient evidence for prosecution purpose.

The Subcommittee

6. At its meeting on 27 October 2008, the Panel agreed to form a subcommittee to further study issues relating to the Police's practices in handling searches of detainees and enforcement in respect of vice activities impacting on sex workers. The terms of reference and the membership of the Subcommittee are in **Appendices I and II** respectively.

7. Under the chairmanship of Hon James TO, the Subcommittee held eight meetings with the Administration. The Subcommittee also received submissions from four sex worker concern groups. The Subcommittee conducted a visit to inspect Police detention facilities, and observed the conduct of custody search and the Police's procedures for the inputting of records related to such a search in the CIS. The Subcommittee received a closed-door briefing by the Police on their undercover operations against vice activities and the findings of the Police's internal review on the handling of searches of arrestees in the Lee Tung Street incident. The Subcommittee also perused the Police's report on its internal review regarding the searches of arrestees in the Lee Tung Street incident at another closed-door session organized by the Police.

Deliberations of the Subcommittee

Police's handling of searches of detainees

Criteria for conducting searches involving full removal of underwear on detainees

8. Some members consider that the Police should establish reasonable suspicion before conducting a search on any detainee. The scope of search should be no more than what is rational and proportionate. Some members consider that a right balance should be struck between the protection of human rights and the

Police's discharge of its statutory functions and fulfilment of its duty of care to all persons detained in custody.

9. The Administration has advised that the Police conducts searches on detainees to discharge its statutory functions and to fulfil the Police's duty of care to persons detained in custody. The scope of a search is determined by a Duty Officer (DO) on a case-by-case basis having regard to the prevailing circumstances. The DO concerned has to justify the scope of the search he authorized. The Police has promulgated detailed guidelines on how custody searches should be conducted. The Police does not conduct Level III searches on detainees, i.e. searches involving removal of underwear, unless justified specifically. Each of such searches must be proportionate to the prevailing circumstances, and is subject to close supervision by supervisory officers. All searches conducted on detainees, regardless of the scope of search, will be recorded in CIS.

10. The Administration has stressed that the Commissioner of Police will not condone any police officers conducting searches on detainees involving full removal of underwear routinely. Searches involving complete removal of clothing should only be conducted in circumstances with strong justifications. It is stated in the revised PGO that custody searches are never to be used as a punitive measure. Where clothing, including underwear, is to be removed in a search, officers would not require a detainee to remove all of his clothes at the same time. A person whose clothing above the waist has been removed should be allowed to put the clothing back before removing clothing below the waist.

Statistics on Police's searches on detainees

11. To facilitate members' future monitoring of the Police's searches on detainees, the Subcommittee has requested the Administration to subdivide Level III searches into those involving full removal of underwear and partial removal of underwear. In response to the request of the Subcommittee, the Police has since 1 January 2009 started to maintain separate statistics for the following subcategories of Level III searches conducted on detainees -

- (a) looking into underwear;
- (b) partial removal of underwear; and
- (c) full removal of underwear.

12. The Subcommittee has noted that the numbers of Level III(c) searches on detainees, i.e. searches involving full removal of underwear, in the first five months of 2009 were 370, 346, 154, 109 and 28 respectively. The figures for June,

July, August and September 2009 were 29, 34, 38, and 15 respectively. Of these, 24, 30, 31 and 11 were drug-related.

13. At the request of the Subcommittee, the Administration has agreed to provide the Panel on Security with statistics on Level III(c) searches conducted on detainees involving full removal of underwear and the nature of offences involved on a quarterly basis.

Rank of officers who may authorize a search involving removal of underwear

14. Some members are concerned that there is too much discretion on the part of the DO in determining the scope of search to be conducted on a detainee. They are concerned about the possibility of abuse of power by the DO. They have suggested that a higher ranking police officer or the most senior ranking officer in a police station, rather than the DO, should be responsible for authorizing any search involving full removal of underwear so as to enhance accountability and public confidence in the mechanism.

15. The Administration has pointed out that individuals may come into police custody throughout the day. As a general principle, all persons arrested by the Police must be processed quickly and should not be held in police custody for longer than is necessary. Moreover, to ensure the proper fulfilment of the Police's duty of care to detainees and to ensure the safety of others who may come into contact with them, there is an operational need for detainees to be searched promptly, especially if the persons concerned may be in possession of an article that can be used as a weapon. As the DO is available in the police station round the clock and in view of his professional capability and experience, it is appropriate for him to decide on the scope of the search of a detainee. The alternative of assigning an officer other than the DO, who may not be readily available, could lead to considerable delays in conducting the searches and hence create unacceptable risks. The immediate supervisor of the DO, who is usually at Senior Inspector rank, is required to review all cases recorded into CIS twice per shift to ensure that they are appropriately dealt with, including the compliance of searches on detainees with the Police's guidelines. The Administration considers that such arrangements have provided appropriate safeguards to prevent arbitrary searches on detainees and to ensure that police officers handling such searches respect the rights and dignity of the detainees.

16. The Administration has stressed that the DO is the most senior officer stationed in a police station round the clock to take charge of the report room, and is specifically authorized by the Commissioner of Police to be in charge of any person taken into the custody of the Police. In particular, he would have served in report rooms previously with functional experience in handling and processing detainees. He would also have received specialized training in report room procedures and handling detainees. The higher ranking officers in a police station

may not be readily available during their duty hours due to other official commitments, such as engaging in other operations or attending meetings. With considerable relevant working experience and training, the DO is well equipped to make professional assessment on the scope of searches on detainees.

17. Some members have urged the Administration to put in place an independent mechanism for monitoring searches involving full removal of underwear. They consider that the Independent Police Complaints Council (IPCC) should conduct, on a random basis, reviews on the compliance by police officers with the Police's guidelines in cases of search involving full removal of underwear.

18. The Administration has advised that the statutory function of IPCC is to observe, monitor and review the handling and investigation of reportable complaints by the Police, including any complaints about searches of detainees. IPCC does not have the function or power to carry out, for instance, a review on the compliance with search procedures by police officers. Notwithstanding that, the Police will inform IPCC of any revisions of or updates to the guidelines on searches of detainees, and will continue to improve the handling of searches of detainees, taking into account IPCC's views and suggestions.

19. Some members remain of the view that the authorizing officer for searches involving full removal of underwear should not be the DO but a higher ranking officer or the most senior ranking officer in a police station.

20. After considering members' views, the Administration has informed the Subcommittee that 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 of all detainees in the police stations concerned, have been required to personally review all Level III(c) custody searches recorded in CIS in the stations under their charge. They will take appropriate corrective action if any Level III(c) custody search conducted is found without proper justification. Work has also been done to further enhance supervisory control by adding an automatic function in 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.

Custody Search Form

21. The Subcommittee notes that the Form is served by the Police from 1 July 2008 onwards on a detainee prior to the conduct of a search. Having regard to the views of the former Subcommittee, the Police introduced a revised Custody Search Form (the revised Form) on 1 January 2009. The revised Form sets out for the detainee's information the key legal provisions concerning the rights of a detainee

in respect of custody search, and the arrangements applicable to a detainee with special needs or who is a vulnerable person. For each search, the revised Form records the specific factors considered by the DO in deciding the scope of search in addition to the actual scope of search authorized. The revised Form also makes it a requirement for the DO to record the details of any concerns and objections raised by a detainee to the search. Such search record is fully reflected in the Custody Search Record in CIS. The revised Form is available in eighteen languages.

22. Some members consider that the custody search records in CIS should contain the same information as that contained in the revised Form. The Administration has advised that the custody search information contained in the revised Form is fully recorded in CIS, which was enhanced in January 2009 to improve record-keeping of custody searches. As opposed to the previous free text format, the enhanced CIS has structured fields, including "Reason(s) for Search" and "Factor(s) Considered", for a DO to record his decision on the scope of a search on a detainee, and specific areas where the DO needs to provide elaboration.

23. Some members consider that the Police should provide in the revised Form a checklist of items which a detainee is allowed to retain while in police custody, and record the reasons for removing any of those items from the detainee.

24. The Administration has explained that the revised Form provides 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. Any detainee who wishes to retain any personal item while in police custody may make a request to the DO, who will consider the request on a case-by-case basis.

Removal of the requirement to conduct mandatory repeated custody searches upon a detainee's return to a temporary holding area (THA) or cell

25. Some members have queried the need for the Police to search a detainee again prior to his return to a THA or detention cell. They are of the view that if a detainee has been searched before detention in a THA or detention cell and is under police custody during the time when he is taken outside the THA or detention cell, there should not be a need to search the detainee again upon his return to the THA or detention cell.

26. The Administration has advised that in the light of the comments made by the Subcommittee, the Police has reviewed the need to search a detainee every time the detainee returns to a THA or cell. The Police has concluded that if a detainee has already been searched immediately before he is put in a THA or cell, the DO could be allowed to decide, having regard to all the relevant circumstances such as probability of harm and gravity of the potential injury, whether a further

custody search should be conducted on a detainee every time he re-enters a THA or detention cell after temporary removal from such facility. This arrangement has been implemented from 19 April 2009 onwards.

Use of equipment to assist police officers in the conduct of searches

27. Members take the view that the full removal of underwear during the custody search of a detainee should be minimized. They suggest that the Police should explore the possibility of acquisition of equipment to assist police officers in the conduct of custody searches, with a view to minimizing the need for searches involving full removal of underwear and providing better protection for the privacy, human rights and dignity of detainees.

28. The Administration has informed the Subcommittee that the Police has conducted a study on the use of various technology-based search equipment (TBSE) in conducting custody searches, including digital radiographic (X-ray) body scanner, X-ray backscatter scanner, millimeter wave scanner, walk-through metal detector and handheld metal detector/gloves. The findings of the study are in **Appendix III**. The Police also conducted a trial scheme on the use of handheld metal detectors in all custody searches during the period from 1 October 2008 to 31 December 2008. Having reviewed the trial results, the Police has concluded that although handheld metal detectors are unable to detect non-metallic objects and thus have limitations, the use of such detectors allows speedy detection of items such as knives and blades which may likely be used by detainees to harm themselves, other people with whom they have contact and the searching officer. Moreover, with pre-screening using a metal detector, a police officer can have a better assessment of the scope of the subsequent custody search that he is required to conduct on the detainee, and to do that more efficiently as he can focus on non-metallic items. The Police has therefore decided to continue using handheld metal detectors prior to every custody search with effect from 1 January 2009.

29. As metal detectors are unable to detect non-metallic objects, members have requested the Police to further examine the possibility of using equipment and devices other than handheld metal detectors to assist police officers in the conduct of searches of detainees. Noting that the Correctional Services Department (CSD) is exploring the use of equipment to assist in the search of prisoners, members have requested the Administration to further explore the possibility of procuring equipment such as millimeter wave scanners to assist the Police in the searches of detainees. Members are concerned whether cost is a major concern in the procurement of equipment to assist police officers in the searches of detainees.

30. The Administration has advised that the Police has all along been maintaining close liaison with CSD, so as to coordinate the efforts of the two law enforcement agencies (LEAs) in the search for suitable equipment for conducting body searches. The Police has been actively exploring the use of advanced

technology and devices to assist police officers in the conduct of custody searches, with a view to minimizing the need for searches involving a higher level of intrusiveness. However, the Police has not yet identified any equipment, the technical capability of which could meet the operational requirement to detect all sorts of items/articles concealed in the body, along with other relevant considerations such as costs and practicability, to obviate the need for a physical search.

31. The Administration has informed the Subcommittee that to discharge the Police's duty of care to the detainees and to ensure the safety of others who might come into contact with the detainees, any TBSE considered for conducting custody search should have the capability to detect small objects, weapons and hard objects, especially sharp objects that can cause an injury. In order to explore the availability of TBSE which may assist in the detection of non-metallic objects prior to custody searches, the Police attended live demonstrations of X-ray body scanners and millimetre wave body scanners in Singapore and the United Kingdom in May and June 2009 respectively. The Police also attended two demonstrations of the X-ray body scanner in Hong Kong in October 2009.

32. The Administration has advised that the demonstrations and observations showed that both types of equipment failed to meet the essential requirements regarding accuracy or detection capability. In addition, the Administration is concerned about the possible harmful impact caused by the X-ray technology to the health of detainees and police officers, as well as the privacy concerns arising from such images which instantly reveal to the searching officers the body figures and any surgical / medical equipment placed in the human body of the person being searched. Thus, the Administration does not consider it suitable to adopt X-ray scanners or millimetre wave scanners in custody searches conducted by the Police. As regards the walk-through metal detector, the Administration notes that its function is similar to that of a handheld metal detector but its performance is less accurate than the latter. The Administration does not see the need to require pre-screening by a walk-through metal detector in the setting of a police station.

33. The Administration has also advised that the Police's research reveals that there is currently no TBSE readily available in the market that is able to fully satisfy the Police's requirements to the extent of and obviating the need for a physical search altogether. Handheld metal detector is the most practical TBSE available and the Police will continue to use it prior to conducting a custody search. At the request of the Subcommittee, the Police has undertaken to continue to monitor technological developments and liaise with other LEAs and overseas police forces with a view to exploring other TBSE that can be used in custody searches.

Other improvement measures regarding the searches of detainees

34. The Subcommittee has been informed by the Administration that in addition to the measures referred to in the preceding paragraphs, the Police has implemented a number of improvement measures after the Police's completion of the stage two review of its practices and procedures regarding custody searches. A list of these measures is in **Appendix IV**.

Review on the handling of searches conducted on the arrestees involved in the Lee Tung Street incident

35. The Police has conducted an internal review on the handling of searches conducted on the arrestees involved in the Lee Tung Street incident during their detention at the North Point Police Station. On 12 May 2009, the Police briefed members on the findings of the internal review at a closed-door briefing. Members also perused the report on the Police's internal review on the searches of arrestees in the Lee Tung Street incident at another closed-door session organized by the Police on 2 September 2009. Members were informed that the internal review conducted by the Police found that the custody searches were carried out to ensure that the Police could fulfil the duty of care to persons detained in custody and ensure the safety of others who might come into contact with the detainees. It was concluded in the review that actions taken by the police officers involved in the handling of the arrestees were in line with the procedures in place at that time.

36. The Administration has informed the Subcommittee that, notwithstanding the results of the internal review on the Lee Tung Street incident, the Police has reviewed its procedures for handling searches of detainees and has introduced improvement measures to better protect the human rights of detainees in police custody. Specifically, the Police has introduced new guidelines on custody search after the review to facilitate consistent considerations and procedures in conducting searches of detainees. The new procedures stipulate clearly that a custody search involving removal of underwear should not be conducted routinely but only in circumstances with strong justifications. All police officers must adhere strictly to the requirements of the Police in carrying out their constabulary duties and non-compliance with such requirements is subject to disciplinary actions.

37. The Administration has stressed that multiple safeguards have been built into the Police's new arrangements for the handling of searches of detainees to prevent any possible abuse during a custody search. Among others, the rights of a detainee in respect of custody search are stated clearly in the revised Form. Before a custody search is carried out, the detainee should be informed of his right to raise any concerns or objections regarding the custody search to the DO, who would in turn document the concerns in CIS and reconsider the scope of search. The DO's decision, together with his reasoning and any other actions taken, would be conveyed to the detainee and recorded in CIS. Any detainee aggrieved by the

custody search could lodge a complaint with the Complaints Against Police Office (CAPO).

38. The Administration has stressed that it has implemented a number of measures to provide better safeguards in respect of the requirements to respect the rights of the detainees and to prevent arbitrary searches, including the arrangements referred to in paragraph 3 and -

- (a) making custody searches subject to close supervision by supervisory officers and further enhancement of the supervisory control;
- (b) removal of the requirement for conducting mandatory repeated custody searches upon a detainee's return to the detention facilities;
- (c) introduction of handheld metal detectors to assist police officers in the conduct of searches; and
- (d) implementing other improvement measures suggested by the former Subcommittee to enhance the relevant PGO and the Form.

Police's handling of sex workers

Objective and need for undercover anti-vice operations

39. The Subcommittee has noted that undercover operations are launched by the Police against vice activities. Some members have queried the need for police officers to undertake undercover anti-vice operations. They have asked whether the Police could launch anti-vice operations without deploying undercover officers. They have sought statistics on the Police's enforcement actions against vice activities.

40. The Administration has explained that under the existing laws, the act of prostitution itself is not illegal. The various prostitution-related offences provided under Part XII of the Crimes Ordinance (Cap. 200) seek to prevent the exploitation of others for the purposes of prostitution, combat organized prostitution activities and lessen the nuisance to members of the public that vice activities may cause. The major objectives of the Police's undercover anti-vice operations are preventing the exploitation of others for the purpose of prostitution and combating organized prostitution activities. The Police received 610, 953 and 115 complaints respectively in 2007, 2008 and the first two months of 2009 about prostitution activities causing nuisance to the neighbourhood. The Police has launched a total of 13 350 enforcement actions against vice activities in 2008. Of these, 1 186 undercover operations were launched for the purpose of investigating prostitution-related offences and 868 of these operations had led to arrest of persons engaging in vice activities. Among these 868 undercover operations, 312

cases were related to organized prostitution activities. As at the end of March 2009, 301 out of these 312 cases had resulted in successful prosecutions.

41. The Administration has stressed that anti-vice operations of the Police are targeted at persons controlling sex workers and operating vice establishments, which often involve more serious offences related to organized crime groups or triads. There is a practical need to conduct undercover operations in order to bring these criminals engaged in vice activities to justice.

42. Some members have requested the Administration to consider employing other means of enforcement, such as interception of communications or covert surveillance, to combat vice activities.

43. The Administration has advised that in combating vice activities, the Police will decide on the most appropriate or practical investigative tools on a case-by-case basis, having regard to the specific circumstances of the case and subject to the necessity and proportionality tests. Interception or covert surveillance operations would only be conducted in respect of serious crimes, and the tests of proportionality and necessity must be met.

Police's guidelines on undercover anti-vice operations

44. Members are very concerned about the conduct of undercover police officers in undercover anti-vice operations. Some members have expressed concern about the psychological condition and integrity of police officers undertaking undercover operations.

45. The Administration has advised that the internal guidelines governing anti-vice operations, which have been revised and implemented in late 2007, reinforce the key principle that in the process of gathering evidence, police officers undertaking undercover operations are not allowed to receive oral sex or sexual intercourse service offered by sex workers. Officers should not have body contact with sex workers if the latter are found to be under the age of 16. A summary of the Police's guidelines on undercover anti-vice operations is in **Appendix V**.

Monitoring of officers engaged in undercover anti-vice operations

46. Some members have expressed concern about the possible abuse of power of undercover police officers in anti-vice operations. They have requested the Administration to consider further tightening control over officers undertaking undercover operations against vice activities, such as establishing an in-house monitoring mechanism, and to consider ways to better monitor the conduct of undercover operations.

47. The Administration has advised that there is already an effective mechanism for monitoring undercover officers engaged in undercover anti-vice operations. On the rare occasions where it is anticipated that some form of body contact is genuinely necessary to achieve the objective of an anti-vice operation and to maintain the cover of the operation, the extent and form of sexual service are restricted to that as required by operational need, and are determined by the officer-in-charge of the operation. In particular, sexual intercourse and oral sex are strictly prohibited and body contact is allowed only when it is genuinely necessary for achieving the objective of the operation, and once the objective is achieved the body contact should cease. The officer-in-charge of an operation will brief the undercover officer in detail before each operation, including specific instructions regarding the permitted extent of body contact, if any. The undercover officer must keep a detailed record of the operation for inspection by his supervisory officers. If prosecution is eventually instituted following the operation, the undercover officer will be cross-examined in court. There is also further supervisory control at the more senior levels of the Police. The Administration considers that the existing monitoring arrangement already provides effective checks and balances.

48. The Administration has stressed that the Police is fully committed to upholding a high standard of conduct and discipline among all officers. CAPO handles reports or complaints in a prudent and impartial manner. Substantiated complaint cases would result in disciplinary actions.

49. Some members have expressed concern about sex workers being unwilling to lodge complaints against police officers owing to a lack of confidence in the existing system for complaint against the Police. Some members have requested the Administration to consider enhancing the existing police complaint system, with a view to ensuring the confidentiality of complaints from sex workers and preventing possible tipping off of officers who are the subject of complaint. They consider that the Police should give greater assurance to sex workers that their complaints, if lodged, would be kept in confidence and handled by a designated police officer in an impartial, equitable and proper manner. They consider that the Police should establish a complaint mechanism independent of CAPO for sex workers to seek redress against police officers.

50. The Administration has stressed that the Police is committed to ensuring that all complaints against their officers are handled in confidence and in a fair and impartial manner. Tipping off of officers who are the subjects of complaint is strictly prohibited by PGO. Officers in breach of the orders would be subject to disciplinary action and, if there is sufficient evidence, to criminal charges of "perverting the course of justice", "assisting offender" or "concealing offence". Investigation could only be carried out where the person aggrieved by any Police action is willing to lodge a complaint and to provide the necessary information.

CAPO has committed to follow up on the sex workers' complaints with necessary information available.

51. The Administration has also advised that the Police attaches great emphasis on the proper conduct of police officers. The Police management would not condone abuses, if any, committed by police officers during undercover anti-vice operations. The Police has all along been liaising with the sex workers and their concern groups to enhance communication. For instance, the Police and CAPO have conducted a special meeting with sex workers concern groups and sex workers to discuss the police complaints handling system including measures to safeguard the complainants' rights.

52. The Subcommittee notes that some sex worker concern groups have requested meeting with IPCC on a regular basis to reflect their concerns about the handling of complaints by CAPO. In response, the Administration has advised that IPCC has tentatively scheduled to receive the views of the sex worker concern groups in early December 2009. Noting that the Administration will report to the Panel on Security the operation of IPCC one year after the latter became a statutory body on 1 June 2009, the Subcommittee recommends that the statutory IPCC's monitoring of the work of CAPO in handling complaints from sex workers be followed up by the Panel on Security when it discusses the operation of the statutory IPCC at a special meeting to be held in or around July 2010.

53. Some members have asked whether off-duty police officers are allowed to visit one sex worker apartments and patronize services from sex workers within or outside the district to which an officer is posted. The Administration has advised that while there is no specific police order restricting officers from visiting one sex worker apartments while off duty, PGO prohibit officers from associating with criminal and undesirable characters and require officers to abstain from any activity which is likely to interfere with the impartial discharge of duties, or which is likely to give rise to the impression among members of the public that it may so interfere. Where the circumstances suggest that the police orders or other internal instructions have been contravened or an officer's conduct has brought the Police into disrepute, disciplinary actions would be taken against the officer concerned.

54. Some members have queried the need for police officers undertaking undercover operations to receive masturbation service and to complete the whole process for the purpose of gathering evidence. The Administration has advised that where it is anticipated that the undercover officer may have to receive masturbation service in order to achieve the objective of the operation, prior approval must be obtained from an officer at Senior Superintendent rank.

55. Some members have requested the Administration to consider providing statistics on cases in which police officers are authorized to receive masturbation

service during undercover operations against vice activities to the Panel on Security on a regular basis.

56. The Administration has advised that in order to protect the confidentiality of undercover operations, the Police will only be able to provide such information as and when required with a 12-month gap after the operations have been completed. During the three months from July to September 2008, there was only one occasion on which a police officer was given approval by his senior to receive masturbation service, as a form of limited sexual service, for the purpose of an undercover operation against vice activities. In the event, the police officer completed the operation without actually receiving any masturbation service. The Administration has stressed that the stringent approval procedures ensure that only on very few but justified occasions where the particular circumstances of the case so require would approval be given for a police officer to have sexual contact with the sex workers during an undercover operation.

One sex worker apartments

57. Under the existing laws, the operation of one sex worker apartment is not illegal. There were 1 750 one sex worker apartments in Hong Kong as of March 2009. Some members have expressed concern about possible abuse of power by police officers in the course of taking enforcement actions against sex workers working in one sex worker apartments. Members have queried the purpose of visits by police officers to one sex worker apartments.

58. The Administration has stressed that the Police's anti-vice operations are directed at persons controlling vice activities and operating vice establishments, rather than the sex workers unless the latter are involved in illegal activities. Officers belonging to the Police's divisional-based Designated Task Force visit one sex worker apartments within their respective divisions for crime prevention purpose. During such visits, officers of the Task Force pass on crime prevention information to sex workers and collect feedback from them, if any, on crimes and suspected criminal activities (in particular those targeting sex workers). The frequency of such visits depends on the crime situation of individual divisions. In addition, when a serious crime believed to be targeting sex workers has occurred, officers of the Task Force will immediately visit the one sex worker apartments in their respective divisions to disseminate timely information to the sex workers and to collect crime information. Apart from these crime prevention visits, the Police does not normally visit one sex worker apartments unless there are reports or information indicating crime on these premises. In such circumstances, the Police's crime investigation units or uniformed officers will visit the one sex worker apartments to conduct investigation. The Police has an established system for maintaining communications with sex worker groups to understand their concerns. It has all along been liaising with sex worker concern groups to enhance communication. The Police would not take enforcement action against sex

workers unless they are involved in organized prostitution activities, or they are visitors or underage persons. This message has been clearly conveyed to sex workers concern groups during their meetings with the Police.

59. Some members have proposed the establishment of a licensing or registration system to regulate vice activities and one sex worker apartments so as to minimize the need for enforcement actions against sex workers who are not controlled by organized crime groups. The Administration has advised that with a licensing or registration system, the Administration would have a duty to conduct random, if not regular, inspections to ensure that the licensing or registration requirements are met, and hence would not minimize the need to visit one sex worker apartments. In comparison, the current approach of conducting enforcement actions only on a targeted basis would be a preferable arrangement.

Overseas practice regarding the investigation of offences relating to vice activities

60. Members have sought information on overseas practice regarding the investigation of offences relating to vice activities, including whether their police officers undertaking undercover operations are allowed to receive masturbation or other sexual services offered by sex workers.

61. The Administration has informed members that in Japan, Korea and Chicago, both prostitution and the use of prostitution services are illegal. Given the fundamental principle that law enforcement officers should not contravene the law in the course of their investigation into unlawful activities, it is understandable why undercover operations are not conducted in Japan to combat vice activities and why sexual contact with sex workers is not allowed in undercover anti-vice operations in Korea and Chicago. In Montreal and British Columbia, Canada, as well as South Australia, prostitution is legal. In the case of Montreal, having regard to the elements of crime that need to be proved by the prosecution before the court, such as organized and large-scale prostitution activities, there could be an operational need for an undercover agent to pose as a customer until he has collected sufficient evidence to secure successful prosecution against the suspected offenders. In South Australia, due to the relatively low level of seriousness of vice-related offences normally tackled by undercover operations, physical contact with sex workers is not allowed during such operations. Similarly, in British Columbia of Canada, the vice-related offences normally tackled by undercover operations are only summary conviction offences and body contact is not allowed in undercover anti-vice operations.

62. The Administration has stressed that there are considerable differences across jurisdictions in their anti-vice legislation, the modus operandi of vice establishments and sex workers, and the enforcement practices and strategies. Due to differences in circumstances, the enforcement approach and priorities of LEAs in different jurisdictions in relation to vice activities are not directly comparable.

Therefore, information on enforcement practices in overseas jurisdictions gathered would at best serve as a reference rather than as models on which the operations of the Police should base.

Follow-up action by the Administration

63. The Administration has undertaken to provide the Panel on Security with statistics on Level III(c) searches involving full removal of underwear conducted on detainees and the nature of the offences involved on a quarterly basis (paragraph 13 refers).

Recommendation

64. The Subcommittee recommends that the statutory IPCC's monitoring of the work of CAPO in handling complaints from sex workers be followed up by the Panel on Security at a special meeting to be held in or around July 2010 (paragraph 52 refers).

Advice Sought

65. Members are invited to note the work of the Subcommittee.

Panel on Security

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

Terms of reference

To study the following issues and to make recommendations to the Panel where necessary -

- (a) Police practices in handling searches of detainees; and
- (b) Police enforcement measures in respect of vice activities impacting on sex workers.

Panel on Security

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

Membership list

Chairman	Hon James TO Kun-sun
Members	Hon Albert HO Chun-yan Dr Hon Philip WONG Yu-hong, GBS Hon WONG Yung-kan, SBS, JP Hon LAU Kong-wah, JP Hon Emily LAU Wai-hing, JP Hon Abraham SHEK Lai-him, SBS, JP (up to 14 October 2009) Hon Audrey EU Yuet-mee, SC, JP Hon WONG Kwok-kin, BBS Hon WONG Yuk-man
	(Total : 10 Members)
Clerk	Mr Raymond LAM
Legal advisers	Mr LEE Yu-sung (up to 18 June 2009) Ms Connie FUNG (from 19 June 2009) Mr YICK Wing-kin (up to 11 October 2009) Mr Bonny LOO (from 2 November 2009)
Date	3 November 2009

Summary of Study on the Use of TBSE for Custody Searches

Instrument Features	Digital Radiographic (X-ray) Body Scanner	X-ray Backscatter Scanner	Millimetre Wave Body Scanner	Walk-through Metal Detector	Handheld Metal Detector / Gloves
Technology	Low dose X-ray	Low dose X-ray	Millimetre-wave technology	Pulse Induction	Very low frequency or frequency oscillations
X-Ray Dose per Inspection	< 4.5 µSv	< 100 µSv	N/A	N/A	N/A
Image Generating System	X-Ray converter with high resolution semiconductor detector lines	X-Ray converter with high resolution semiconductor detector lines	Using flat panel reflect array direct millimetre wave energy to and from a person to generate an image	N/A	N/A
Detection Capability	Metallic and non-metallic objects up to American Wire Gauge ^{Note} (AWG) 38	Metallic and non-metallic objects up to AWG 38	Ceramics, metals, liquids, explosives, wood, plastics & narcotics	Metal only	Metal only
Image Display	Black and white, colour overlay	High-resolution colour monitor	Image is displayed on a single portrait monitor	N/A	N/A
Inspection Time	< 7 seconds	< 7 seconds	Real time images, allow pause, review and resume.	15 milliseconds	About 2 minutes
Accuracy	High accuracy – penetrate into human body; cannot clearly identify low density objects	Penetrate clothes; cannot clearly identify low density objects	Penetrate clothes; but difficult to detect small articles	Subject to the size of the metal	Pick up paper clips, razors and coins
Estimated Unit Cost (HKD)	\$2.5M	\$1.6M	\$1.6M	\$30,000 - \$80,000	Handheld metal detector: \$500-\$1,000 Metal detector gloves: \$3,000
Legal Requirement	Regulated by the Radiation Ordinance, Cap. 303	Regulated by the Radiation Ordinance, Cap. 303	Nil	Nil	Nil
Examples of Locations of Application	Mines and airports	Mines and airports	Airports	Airports and detention facilities	Airports and detention facilities

Note : “American Wire Gauge” a standardized system for the diameters of round electrically conducting wires. Increasing gauge numbers give decreasing wire diameters.

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".

**Summary of the Police's Guidelines on
Undercover Anti-vice Operations¹**

Policy

Every effort will be made to reduce illegal vice activities and to prosecute or otherwise counteract organisations and persons profiting from organised prostitution and hard-core pornography. Particular attention will be paid to the exploitation of juveniles and young persons involved in prostitution.

Undercover anti-vice operations

Identification of suitable undercover operatives

2. Police officers may act as undercover operatives in anti-vice operations for the purpose of evidence collection in order to enhance the chance of successful prosecution. Supervisory officers should adhere to the following principles when selecting undercover operatives :

- (a) must be a volunteer;
- (b) preferably be unattached; and
- (c) able to work under pressure.

3. Supervisory officers must be satisfied that the officer fully understands that his duty cannot exceed the boundary of the law when carrying out undercover operations, and that the officer fully understands the risks posed to him.

Control over extent of body contact

4. In collecting evidence of illegal vice activities, where for evidential / operational reasons the circumstances necessitate that an operative receives some form of sexual service in order to maintain his cover, the operative may need to have body contact with the sex worker.

5. However, the integrity and personal safety of the officers involved must be accorded the highest priority. It is emphasised that

¹ The summary is based on the Police's guidelines promulgated in October 2007 on undercover anti-vice operations. Operational strategy and tactics employed by the Police in anti-vice operations are excluded to avoid compromising the Police's operational effectiveness.

sexual intercourse, oral sex and any forms of body contact with girls under 16 years of age, are strictly forbidden in all circumstances. In respect of other body contact, the following guidelines apply :

- (a) The contact is genuinely necessary in order to achieve the objective of the operation. Once the objective is achieved, the body contact should cease. The undercover operative will have to justify his action if he allows any sexual contact to take place before initiating arrest action;
- (b) Body contact may be required in some long-term operations, but such operations are limited in number and will therefore form exceptions rather than the rule; and
- (c) Where it is anticipated that the receipt of masturbation service is genuinely necessary to achieve the objective of the operation, the operative must obtain approval from a Senior Superintendent of Police (SSP) before the operation.

Pre-operation briefings

6. Inspectorate officer in charge of the operation must personally brief the undercover operative on the plan and objective of the operation, and supervisory officer at Chief Inspector (CIP) rank have to ensure that the guidelines on undercover anti-vice operations are fully understood and complied with. These guidelines have been incorporated into a briefing form. The officer-in-charge of an undercover operation must ensure that a briefing form is completed before each operation. These forms will be retained on a classified file register for supervisory inspection.

Supervision²

7. It is essential that the officer-in-charge of an undercover operation closely supervises the undercover operative. He should properly record all communications with the undercover operative in respect of the operation. The anti-vice operative must also keep a similar record of such communications.

² Undercover anti-vice operations are subject to general supervisory control (e.g. on recording, reporting and checking) applicable to police operations in general. In addition, undercover anti-vice operations are also subject to supervisory control set out below which is specific to such operations.

8. The supervisory officer at CIP rank of the officer-in-charge of the undercover operation will, as frequently as practicable, attend police agent briefings held before operations to ensure that such briefings take place in the manner prescribed. They are also required to check all briefing forms once a month and record such checks in the file register inspection sheet. Furthermore, they should conduct random interviews with the operatives to ensure that the pre-operation briefings were properly given and fully understood.

9. District Deputy Commanders (DDC) (or equivalent at SSP rank) are required to hold regular tasking meetings, at least once a month, with their District Operations Officer or equivalent at CIP rank and officers-in-charge of undercover anti-vice operations to brief them on District enforcement priorities, targets, trends and other matters that may be of importance. Any irregularities noted during inspections of the briefing forms should be reported by the respective CIP and examined at the meetings.

10. DDC must ensure that operational guidelines are strictly observed by the operatives and the officers-in-charge of undercover anti-vice operations.