

立法會
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**Bills Committee on
Dangerous Drugs, Independent Commission Against Corruption
and Police Force (Amendment) Bill 1999**

**Minutes of meeting
held on Monday, 28 February 2000 at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHENG Kai-nam, JP
Hon Emily LAU Wai-hing, JP

Public Officers attending : Miss Eliza YAU
Principal Assistant Secretary for Security E

Miss Angela LEE
Assistant Secretary for Security E

Mr J M H BICKNELL
Chief Superintendent of Police, Crime Support
Hong Kong Police Force

Mr YU Koon-hing
Group Head (Drug Investigation)
Customs Drug Investigation Bureau

Mr Carmel CHOW
Principal Investigator
Independent Commission Against Corruption

Mr CHO Chi-kong
Chief Investigator
Independent Commission Against Corruption

Dr LAW Man-ye, Betty
Senior Chemist (Biochemical Sciences B)

Ms Carmen CHU
Senior Government Counsel

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

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

Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Meeting with the Administration

(LC Paper No. CB(2) 1000/99-00(01), LegCo Brief Ref SBCR 11/2801/88 (98)
Pt. 22)

At the invitation of the Chairman, Principal Investigator of the Independent Commission Against Corruption (PI/ICAC) briefed members on the need of ICAC officers to take non-intimate samples.

2. Miss Emily LAU said that the scope of power of ICAC officers to take non-intimate samples from suspects might be too wide.

3. PI/ICAC responded that a corruption offence was very often intertwined with other types of serious offences, particularly organized crime. In the past few years, ICAC had come across a few hundred cases which required investigation into non-corruption related offences in the course of investigation into corruption offences. In the previous year, it had also investigated into ten drug-related corruption cases.

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4. Mrs Selina CHOW said that it might be inappropriate to confine the power of taking non-intimate samples to the Police, as some corruption offences were related to the Police. Referring to paragraph 8 of the Administration's paper, she asked how ICAC would ensure that its power to take non-intimate samples would not be abused.

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5. PI/ICAC said that under the proposed mechanism, an investigating officer who considered it necessary to take a non-intimate sample from a detainee would submit a written report with full justification through his Chief Investigator to his PI for approval. If the PI decided that there were sufficient grounds to take the sample, he would sign the authorization. He added that a similar mechanism was adopted by ICAC in respect of search warrants. Mr CHENG Kai-nam said that the Administration should provide members with the internal regulations of ICAC for governing the exercise of power to take non-intimate samples.

6. The Chairman said that the examples quoted in paragraph 7 of the Administration's paper failed to convince him of the need for DNA evidence in ICAC's investigations. He asked about the number of cases requiring the analysis of saliva and whether there were other examples where forensic analysis was required. He added that the scope of power of Customs and Excise officers was much narrower in that it was confined to the taking of urine samples from suspects in the investigation of drug-related offences.

7. PI/ICAC said that where there was an exchange of bribe money between a witness and a suspect, DNA information derived from the suspect's saliva traced from the envelope containing the money could help to establish the suspect's connection with the payment. The analysis of hair samples left at a crime scene might help to establish the presence of a person at a crime scene. The Chairman said that it might not be sufficient to establish the relationship between a suspect and bribe money even if fingerprints of the suspect were found on the bribe money.

8. Referring to paragraph 6 of the Administration's paper, Mr CHENG Kai-nam asked about the current scope of ICAC's power to take samples from suspects for forensic analysis other than DNA analysis. PI/ICAC responded that the existing power of ICAC in the taking of samples from suspects for forensic analysis was basically similar to that of the Police. However, ICAC did not have the power to obtain fingernail clippings from a suspect and therefore it had to seek the assistance of the Police to obtain such a sample.

9. Mr Albert HO considered that the application of saliva analysis was very limited, as many people did not use saliva to seal an envelope. He asked about the number of corruption cases related to organized and serious crime. The Chairman said that there was a general concern in the community that ICAC had investigated into too many non-corruption related offences. He said that ICAC should focus its work on corruption offences.

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10. PI/ICAC said that ICAC had always focussed its investigation on corruption offences. However, many corruption offences were often intertwined with organized and serious crime. If a non-corruption criminal report was received, it would be referred to the police for investigation. If investigation into a corruption complaint revealed no evidence of corruption, but disclosed other offences, the ICAC might continue with the investigation. He assured members that ICAC would not initiate investigation into non-corruption related offences. Investigations were initiated upon the receipt of complaints relating to corruption.

11. The Chairman asked about the use of DNA analysis in the examination of forged documents. He also asked about the power of ICAC in the taking of fingerprints. PI/ICAC responded that although ICAC was empowered to obtain fingerprints from suspects, the fingerprints thus obtained had to be referred to the Police for comparison against its database. He added that DNA analysis had to be carried out by the Government Laboratory.

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12. Miss Emily LAU said that after listening to the views presented at the meeting, she was not convinced about ICAC's need to take non-intimate samples from suspects. She requested the Administration to provide a more detailed paper on why ICAC needed such a power.

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13. Referring to the LegCo Brief, Miss Emily LAU expressed concern that the Administration had not adopted the suggestions of an inter-departmental working group to study the Law Reform Commission's "Report on Arrest" (the Working Group) and the Privacy Commissioner for Personal Data's (Privacy Commissioner's) suggestion that non-consensual taking of non-intimate samples should require prior judicial authorization. Miss LAU requested the Administration to provide members with the Privacy Commissioner's views on the Bill. The Chairman added that the Bills Committee should also write to the Privacy Commissioner to seek his views on the Bill.

14. Referring to a submission from the Hong Kong Human Rights Monitor tabled at the meeting, Miss Emily LAU said that it was inappropriate to classify a buccal swab as a non-intimate sample. She said that the taking of a buccal swab was similar to a search into a person's premises and thus the taking of a buccal swab should not be classified as non-intimate.

(Post-meeting note : The submission of the Hong Kong Human Rights Monitor tabled at the meeting was subsequently circulated to members vide LC Paper No. CB(2) 1229/99-00 on 29 February 2000.)

15. Principal Assistant Secretary for Security E (PAS(S)E) responded that the Bill had incorporated appropriate checks and balances in the taking of samples. Samples would be taken from suspects for DNA analysis only if authorized by a Police officer at the rank of Superintendent or above who had reasonable grounds to suspect a

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person's involvement in a serious arrestable offence. It was also a requirement for the taking of a sample that the Police officer should have reasonable grounds to believe that the sample would tend to confirm or disprove the suspect's involvement in the crime. She said that the intrusiveness of taking a buccal swab from a suspect was low. It was therefore inappropriate to compare it to a search into a person's premises. After considering the current workload of the judiciary, the Administration had come to the proposal that the taking of non-intimate samples would not require the approval of the court.

16. In response to Miss Emily LAU's question about whether the court refused to handle judicial authorization for the taking of non-intimate samples, PAS(S)E said that no refusal was made by the court. The court only advised that their workload had already been very heavy when the Administration informed them of its projection of a few thousand cases per year.

17. The Chairman asked about the estimated number of cases involving the taking of samples which required authorization by a Police officer at the rank of Superintendent or above. PAS(S)E said that the estimate was a few thousand cases per year. Chief Superintendent of Police (Crime Support) (CSP(CS)) added that the Administration was looking towards the implementation of the proposal on the basis of resources available in the Police and the Government Laboratory. Samples would initially be taken from persons involved in robberies and persons who committed serious sexual offences. The estimated total number of these persons would be about 4 000 to 5 000 per year. The Chairman questioned why samples had to be taken from such a large number of persons, as the total number of cases of crime was about 18 000 per year. Mr Albert HO considered that the taking of urine samples from a suspect was sometimes less intrusive than the taking of a buccal swab from a suspect.

18. Senior Assistant Legal Adviser (SALA) said that the degree of intrusiveness depended on how a buccal swab was taken. If a suspect was cooperative, the taking of buccal swab should be very easy. If the suspect refused to cooperate, the Bill had provided for the use of reasonable force to take a non-intimate sample from the suspect. He added that under the Bill, the taking of a non-intimate sample from a suspect would not require judicial authorization. Judicial authorization would only be required for the taking of intimate samples from a suspect.

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19. Miss Emily LAU said that the Administration should provide information about overseas legislation and practices in the taking of samples from the human rights angle. It should reconsider the suggestions of the Privacy Commissioner and the Working Group. She said that the taking of a sample from a person should not be regarded as non-intimate if force was required in the process. Senior Chemist (Biochemical Sciences B) (SC(BSB)) said that only a limited amount of force would be needed for the taking of non-intimate sample from a person who refused to give consent. CSP(CS) added that the Police had not experienced difficulty in obtaining fingerprints from suspects in the past 25 years. No person had refused to allow the Police to

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obtain their fingerprints after the Police explained that it had the legal authority to do so.

20. Miss Emily LAU said that judicial authorization should be required for the taking of both intimate and non-intimate samples. The Chairman said that if judicial authorization was required for the taking of both intimate and non-intimate samples, the number of persons from whom samples were taken would not be as many as 4 000 to 5 000 per year. As it would be necessary to explain to the court the need for the taking of sample and answer any query arising therefrom, the number of samples taken would probably decrease to a thousand or even less. PAS(S)E considered that there should not be a drop in the number of samples taken merely because of the requirement of judicial authorization. SC(BSB) said that if judicial authorization was required for the taking of samples from persons who refused to give consent, a substantial delay might result in the taking of samples, thus allowing time for some important evidence to be destroyed. A minute blood drop or clothing fibre trapped under the nail of a suspect might have been washed away by the time judicial authorization was granted.

21. CSP(CS) said that the total number of cases of crime per year was about 40 000 per year. The taking of samples from about 4 000 to 5 000 persons was therefore a reasonable estimate. He added that if a Superintendent of Police was not at work, there were arrangements for the Superintendent to give verbal authority followed by written approval at a later time. Requiring judicial authorization for the taking of intimate and non-intimate samples would create excessive burden on the court. He said that the taking of a buccal swab was non-intrusive and was being widely adopted in other jurisdictions. He added that the saliva spat out from a person from whom a buccal swab was to be taken might not necessarily contain the cells required, which were found on the inside of a person's mouth. Miss Emily LAU requested the Administration to provide a detailed breakdown of the number and nature of cases involving serious arrestable offence in the last two years.

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22. CSP(CS) said that 40 422 and 4 745 persons were arrested by the Police in 1998 and 1999 respectively. Among these, about 29 000 persons were involved in serious arrestable offence in a year. The estimated number of 4 000 to 5 000 was a rough estimate. A buccal swab would not be taken from all persons suspected of committing a serious arrestable offence. The taking of a sample from a suspect required the authorizing officer to have reasonable grounds for suspecting the involvement of the person in a serious arrestable offence, and for believing that the sample would tend to confirm or disprove the involvement of that person. Appropriate checks and balances had been built into the system.

23. The Chairman said that with seven to eight magistracies in Hong Kong, each magistracy would on average be required to deal with three to four judicial authorization per day. This should not create too much burden on them. PAS(S)E said that the Administration's major consideration was the degree of intrusiveness in

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the taking of samples. The taking of intimate samples required the consent of the suspect besides judicial authorization.

24. CSP(CS) said that the proposed arrangement would enable repeated offenders to be identified easily. He added that the DNA information of a suspect would be destroyed if he was acquitted. It would be stored in the DNA database only if the suspect was convicted of serious arrestable offence. Overseas experience indicated that the database of repeated offenders grew very slowly.

25. Mr Albert HO expressed reservations about the view that persons who committed lesser offences had a tendency to commit more serious offences. He expressed concern about the possibility of use of DNA information for genetic engineering. He considered that the scope of serious arrestable offence in the Bill, which included any offence for which a person might under or by virtue of any law be sentenced to imprisonment for a term of not less than five years, was too wide and should be narrowed down. The Chairman said that it would be questionable whether the DNA profile of a person convicted of stealing a chocolate bar from a supermarket and fined for \$500 should be kept in the database. He said that consideration should be given to keeping the DNA information of a person only if he was sentenced to imprisonment for a certain period of time or more. Referring to proposed section 59C(2) of the Police Force Ordinance (Cap. 232), CSP(CS) said that a non-intimate sample could be taken from a person only if the authorizing officer had reasonable grounds -

- (a) for suspecting the involvement of the person in a serious arrestable offence; and
- (b) for believing that the sample would tend to confirm or disprove the involvement of that person in the offence.

26. CSP(CS) said that the storing of DNA information of persons convicted of serious arrestable offence would make it unnecessary for samples to be obtained from these persons for DNA analysis if they were arrested again. The DNA information stored in the database would also be used in disproving a suspect's involvement in a case.

27. The Chairman reiterated that DNA information should not be obtained from a person convicted of stealing a chocolate bar and fined for \$500. He requested the Administration to reconsider drawing a proper line in requiring the taking of a buccal swab from a person convicted of a serious arrestable offence after the commencement of the Bill and the storing of such data in the DNA database to be set up. He was inclined to a more stringent requirement in obtaining sample from a person at the initial stage. A relaxation of the requirement could be considered at a later stage, if necessary. PAS(S)E agreed to look into the issue.

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28. In response to Miss Emily LAU, SC(BSB) said that the DNA information of a sample obtained from a crime scene would be compared against those in the DNA database. She added that the DNA database would only contain the criminal record number of the samples. It would not contain information on personal particulars of the persons from whom the samples were taken. PAS(S)E said that the comparison of DNA information of a sample obtained from a crime scene against those in the DNA database had proved to be useful in many overseas countries.

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29. Miss Emily LAU asked whether the relevant groups and organizations concerning the welfare of prisoners and ex-prisoners had been consulted on the Bill, and if so, the details of their views. PAS(S)E agreed to look into the issue and provide a response.

II. Date of next meeting

30. Members agreed that the next meeting be scheduled for 8 March 2000 at 10:45 am to continue discussion with the Administration.

31. There being no other business, the meeting ended at 12:30 pm.

Legislative Council Secretariat
14 June 2000