

立法會
Legislative Council

LC Paper No. CB(2) 2522/99-00
(These minutes have been seen by
the Administration and cleared
with the Chairman)

Ref : CB2/BC/29/98

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

**Minutes of meeting
held on Friday, 28 April 2000 at 12:45 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Hon CHENG Kai-nam, JP

Members absent : Hon Mrs Selina CHOW LIANG Shuk-ye, 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

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

Ms Carmen CHU
Senior Government Counsel

Mr Carmel CHOW
Principal Investigator
Independent Commission Against Corruption

Mr SHAM Ka-fai
Acting Chief Investigator
Independent Commission Against Corruption

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

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Meeting with the Administration
(LC Paper No. CB(2) 1742/99-00(01) and (02))

Justifications and rationale for ICAC officers to take non-intimate samples

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

2. Mr CHENG Kai-nam asked about the extent to which ICAC required the assistance of the Police in its operations. PI/ICAC said that ICAC had prosecuted 19 defendants for drug-related offences in the past five years. It had sought the assistance of the Police, such as in the taking of a sample from under the fingernail of a suspect, on a number of occasions. It had also worked closely with the Police in the investigation of a number of non-drug related cases.

3. The Chairman said that as ICAC usually carried out investigations upon the receipt of a complaint, the need of ICAC officers to take non-intimate samples seemed to be very marginal. He added that DNA information usually served as corroborative evidence only in corruption-related cases.

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4. PI/ICAC said that where a suspect denied his presence at a crime scene, DNA information could assist in proving the presence of the suspect at the scene. He said that in drug-related offences and cases in which there was exchange of bribe money, DNA information might be the major evidence.

5. PI/ICAC said that while ICAC could seek the assistance of the Police in the investigation of offences, he could not rule out the possibility that a superintendent of the Police might in some cases take the view that there were insufficient grounds to take a sample from a suspect. As some corruption offences involved police officers, it was sometimes inappropriate to provide too much information about a case to the Police.

6. The Chairman said that ICAC should not carry out investigation into non-corruption related offences. While he did not see any need for ICAC officers to take non-intimate samples from suspects for DNA analysis, he had no strong views on the power of ICAC officers to take non-intimate samples. Mr Albert HO considered that ICAC might sometimes need to exercise the power of police officers in the investigation of corruption-related offences involving police officers.

7. Members agreed that ICAC should be given the power to take non-intimate samples from suspects.

The Administration's response (II) to outstanding issues raised at previous meetings

8. At the invitation of the Chairman, Principal Assistant Secretary for Security E (PAS(S)E) took members through the Administration's response to issues raised at previous meetings.

Dental impression

9. The Chairman asked about the uniqueness of a dental impression. PAS(S)E responded that according to the letter from the Forensic Odontology Group, the combination of status position and alignment of the 32 teeth of a person was astronomical. The Chairman said that statistics on the uniqueness of a dental impression might give a clearer indication of the uniqueness.

10. Referring to paragraph 3 of the letter of the Forensic Odontology Group, Mr CHENG Kai-nam asked why dental records were obtained from dentists for forensic analysis. He asked whether this would be in contravention of the principle of protection of personal data. PAS(S)E explained that the use of dental impression was quoted in the letter for explaining the uniqueness of a dental impression. Senior Chemist (Biochemical Sciences B) (SC(BSB)) added that as a dental impression could be obtained directly from a suspect, reference to the dental record of a person would not be necessary.

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11. In response to the Chairman, SC(BSB) said that there were no plans to establish a database of dental impressions.

Use of the voluntary system for the taking of samples

12. Regarding the Innocence Project in the United States (US) as referred to in paragraph 5(b) of the Administration's paper, PAS(S)E informed members that the Innocence Project sought to provide a channel for persons who had been wrongly convicted to volunteer their samples to prove their innocence. SC(BSB) added that the Innocence Project was established in US to provide an opportunity for convicted persons to seek for a review of their cases. As at June 1999, 61 convicted persons, among which were a few persons sentenced to death, had successfully proved their innocence under the Project. If necessary, she could provide members with the web site address of the Innocence Project. Chief Superintendent of Police (Crime Support) (CSP(CS)) said that the proposed section 59F of PFO, which provided for the volunteering of non-intimate sample, would ensure the conviction of the right person. It would lessen the chance of a wrongful conviction. The Chairman said that the LegCo Panel on Security might discuss the need for such a project in Hong Kong.

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13. Mr Albert HO said that there were recently reports about citizens in a small town of Australia volunteering their samples for DNA analysis to assist the investigation of a rape case. He requested the Administration to provide members with the relevant newspaper cuttings. The Chairman asked whether the practice as adopted in the small town of Australia, which might create social pressure for residents to volunteer their samples, would be applied in Hong Kong. PAS(S)E said that there was no question of forcing anyone to volunteer his sample in Hong Kong. The practice adopted in the small town of Australia was not applicable to a place like Hong Kong with dense population and high mobility.

14. Mr CHENG Kai-nam considered that it was inappropriate to prohibit the volunteering of samples merely for the concern that some people might be pressured to volunteer a sample. He maintained the view as expressed at previous meetings that a person should not be deprived of the right to volunteer his samples for proving his innocence.

15. Referring to paragraph 5(d) of the Administration's paper, the Chairman asked whether a forensic comparison between DNA traces found at a crime scene and the DNA information of laboratory officer or law enforcement officer who had attended the crime scene for elimination purpose could not be performed without the provisions for the volunteering of a sample for DNA analysis. Senior Government Counsel said that the Bill did not prohibit such forensic comparison. However, the DNA information of volunteered samples could not be stored in the DNA database without the proposed section 59F of PFO.

16. The Chairman said that as Miss Emily LAU had expressed strong views on the

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issue, discussion on the issue might be re-opened at the next meeting when Miss LAU was present.

Probability of persons having previous conviction of lesser crimes to commit serious crimes

17. Mr Albert HO asked whether it was permissible under the Bill to use information in the DNA database to carry out a research similar to the one as referred to in paragraph 10(b) of the Administration's paper. The Chairman said that such a research would not require the use of information in the DNA database, as the information in criminal records would already be adequate for such a research.

18. The Chairman asked about the estimated number of convicted persons whose DNA information would be stored in the DNA database in a year. He also asked about the proportion of imprisoned persons among persons convicted of serious arrestable offences in a year. PAS(S)E said that only DNA information of persons convicted of serious arrestable offences would be stored in the DNA database.

19. Mr Albert HO said that consideration might be given to defining serious arrestable offence as one heard at courts at district level or above. The Chairman considered that such a classification might not be objective.

20. The Chairman said that the sentence of a convicted person, which reflected the judgment of the court, should be used in determining whether the DNA information of a person should be stored in the DNA database. He added that a large proportion of burglary cases were shoplifting cases where the convicted person was fined but not imprisoned. He expressed concern about the possibility of social control with the taking of too many samples. He said that the Police should rely on other evidence rather than "cold hits" in the detection of crime.

21. PAS(S)E responded that burglary was a serious offence. As factors such as family circumstances and health condition were taken into consideration by the court in the determination of sentence, the actual sentence might not reflect the seriousness of an offence. She estimated that DNA samples would be taken from a few thousand convicted persons in a year. She stressed that studies showed that a substantial portion of offenders had previous conviction records of lesser crimes.

22. CSP(CS) said that the Bill would only involve the addition of a marker to criminal records to indicate whether there was DNA information of the person concerned in the DNA database. He said that very few people were imprisoned each year for indecent assault and unlawful sexual intercourse with females aged under 16. In 1999, only 10 out of 71 persons arrested for rape had no record of previous conviction, and only 220 out of 714 persons arrested in the same year for indecent assault had no previous conviction record.

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23. The Chairman reiterated that the sentence of a convicted person should be used in determining whether the DNA information of a person should be stored in the DNA database.

II. Date of next meeting

24. Members agreed that two further meetings be scheduled for 15 May 2000 at 10:45 am and 22 May 2000 at 10:45 am to continue discussion with the Administration.

25. There being no other business, the meeting ended at 2:25 pm.

Legislative Council Secretariat
8 July 2000