

立法會
Legislative Council

LC Paper No. CB(2)1031/07-08
(These minutes have been seen
the Administration)

Ref : CB2/PL/SE/1

Panel on Security

Minutes of meeting
held on Tuesday, 4 December 2007, at 2:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon LAU Kong-wah, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
- Member attending** : Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon Daniel LAM Wai-keung, SBS, JP
Hon CHIM Pui-chung
- Public Officers attending** : Item IV
Mrs Apollonia LIU
Principal Assistant Secretary for Security

Miss Linda LEUNG
Assistant Secretary for Security

Mr Blaine Stewart HOGGARD
Assistant Commissioner of Police

Mr Patrick D. G. HODSON
Senior Superintendent of Police (Support Branch)
(Support Wing)

Mr Eddy SIT
Senior Inspector (Gen)1 (Support Branch)

Attendance : Item IV
by invitation

Civil Human Rights Front

Miss LOH Yuen-ching

Zi Teng

Miss CHUNG Sze-wan
Representative

Miss YIM Yuet-ngor
Representative

A Group of Citizens Who Concern About the
Democratize of Town Planning, But Unjustifiably
Detained, Molested and Suppressed by the Police

Mr WONG Ho-yin

Miss SIN Wai-fong

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Mr KWOK Hiu-chung
Education Officer

The Association for the Advancement of Feminism

Ms Mabel AU Mei-po
Organizer

Hong Kong Christian Institute

Mr FAN Lap-hin
Project Secretary

JJJ Association

Miss LAM Yee-ling
Representative

Ms YIP Yee-chun
Representative

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

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Raymond LAM
Senior Council Secretary (2) 5

Miss Helen DIN
Legislative Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)452/07-08)

The minutes of the special meeting held on 30 October 2007 was confirmed.

II. Information papers issued since the last meeting

2. Members noted that no information papers had been issued since the last meeting.

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III. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)451/07-08(01) and (02))

3. Members agreed that the following items would be discussed at the next meeting to be held on 8 January 2008 at 10:45 am -

- (a) Legislative proposal to implement the obligations on extradition under the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia;
- (b) Replacement of a Crash Fire Tender in the Airport Fire Contingent; and
- (c) Police's handling of reports or complaints about press articles.

(Post-meeting note : Members subsequently agreed at the special meeting on 6 December 2007 that the item "Review Report on the Use of Handguns in the Hong Kong Police Force" deferred from the meeting on 4 December 2007 would also be discussed at the meeting on 8 January 2008 and the meeting time would be extended to end at 1:30 pm. Regarding the item "Replacement of a Crash Fire Tender in the Airport Fire Contingent" proposed by the Administration, members agreed that the Administration should be requested to provide an information paper on the item before a decision was made on whether the item should be discussed by the Panel.)

IV. Police's practices regarding handling of searches of detainees

(LC Paper Nos. CB(2)451/07-08(03), CB(2)167/07-08(03) and LS22/07-08)

4. Members noted the Administration's response to issues raised in the submission from Zi Teng, which was tabled at the meeting.

(Post-meeting note : The paper tabled at the meeting was circulated to members vide LC Paper No. CB(2)508/07-08 on 5 December 2007.)

5. Senior Assistant Legal Adviser 1 (SALA1) briefed Members on the Legal Service Division's paper, which was prepared in response to members' request at the special meeting on 30 October 2007, on the issue of *sub judice*.

6. The Chairman reminded all parties of the following -

- (a) views expressed should not refer to cases pending in court; and

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- (b) deputations attending the meeting were not covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) when addressing the Panel.

7. Mr LEUNG Kwok-hung said that among 15 persons arrested in the Lee Tung Street case, the Department of Justice (DoJ) had decided not to lay charges against two of the persons. He asked whether reference could be made to the case of these two persons. He considered that the advice given by DoJ was after all the advice of the Government's counsel only.

8. SALA1 responded that although he did not have any information on hand about these two persons, they might have been handled by the Police in the same manner as the other 13 persons on whom charges had been laid, and a discussion on what happened to them could touch on facts of the case pending in court.

9. The Deputy Chairman asked whether caution statements were involved in the Lee Tung Street case.

10. Principal Assistant Secretary for Security (PAS(S)) responded that caution statements were not involved in the Lee Tung Street case. Hence, according to DoJ, one of the possibilities mentioned in paragraph 6 of the paper prepared by the Legal Service Division, i.e. that the manner in which the accused persons were handled in the police station might be raised by the defence to challenge the admissibility of the caution statements, was not expected to arise in the pending trial.

11. Mr Albert HO said that there were past examples where cases of wide public concern but pending in court were discussed by the Panel. As the Panel's discussion was focused on the policy aspects of the Police's power in conducting searches on detainees, the question of discussions prejudicing the trial of the case concerned should not arise.

12. Mr Ronny TONG said that many people had misunderstood the concepts of perverting the course of justice, contempt of the court and the *sub judice* rule. He said that in the case of *Sunday Times v United Kingdom*, the European Court of Human Rights had pointed out that the discussion of issues of wide public concern in the community was a fundamental human right which should not be prohibited merely because there was a pending case. The issue of *sub judice* should not arise in such discussion. He added that the wrong application of provisions in the Rules of Procedure was unconstitutional.

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13. The Chairman said that whether issues concerning matters pending in court should be discussed in the Legislative Council (LegCo) might be referred to the Committee on Rules of Procedure, if necessary.

Views of deputations

Civil Human Rights Front

14. Miss LOH Yuen-ching presented the views of Civil Human Rights Front as detailed in its submission tabled at the meeting. She said that LegCo should establish a committee to investigate into the allegations about Police's abuse of power in the Lee Tung Street case.

(Post-meeting note : The submission was circulated to members vide LC Paper No. CB(2)508/07-08 on 5 December 2007.)

Zi Teng

(LC Paper No. CB(2)449/07-08(01))

15. Miss CHUNG Sze-wan and Miss YIM Yuet Ngor presented the views of Zi Teng as detailed in its submission.

*A Group of Citizens Who Concern about the Democratize of Town Planning, but Unjustifiably Detained, Molted and Suppressed by the Police
(LC Paper No. CB(2)451/07-08(05))*

16. Miss SIN Wai-fong and Mr WONG Ho-yin presented the views of A Group of Citizens Who Concern about the Democratize of Town Planning, but Unjustifiably Detained, Molted and Suppressed by the Police as detailed in its submission and the supplementary table tabled at the meeting. Miss SIN said that LegCo should establish a committee to investigate into the allegations about Police's abuse of power in the Lee Tung Street case.

(Post-meeting note : The supplementary table was circulated to members vide LC Paper No. CB(2)508/07-08 on 5 December 2007.)

Hong Kong Human Rights Monitor

17. Mr LAW Yuk-kai presented the views of Hong Kong Human Rights Monitor, as detailed in its submission tabled at the meeting.

(Post-meeting note : The submission tabled at the meeting was circulated to members vide LC Paper No. CB(2)508/07-08 on 5 December 2007.)

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*The Association for the Advancement of Feminism
(LC Paper No. CB(2)451/07-08(08))*

18. Ms Mabel AU presented the views of the Association for the Advancement of Feminism as detailed in its submission. She said that LegCo should establish a committee to investigate into the allegations about Police's abuse of power in the Lee Tung Street case.

Hong Kong Christian Institute

19. Mr FAN Lap-hin presented the views of the Hong Kong Christian Institute as detailed in its submission tabled at the meeting. He said that LegCo should establish a committee to investigate into the allegations about Police's abuse of power in the Lee Tung Street case.

(*Post-meeting note* : The submission was circulated to members vide LC Paper No. CB(2)508/07-08 on 5 December 2007.)

JJJ Association

(LC Paper No. CB(2)474/07-08(02))

20. Ms YIP Yee-chun and Miss LAM Yee-ling presented the views of JJJ Association as detailed in its submission.

Discussion

21. Mr Albert HO expressed deep concern about allegations about the Police's abuse of power when conducting searches of detainees. He asked about the number of complaints where strip searches were conducted by the Police in the past three years and the outcome of the complaints.

22. Assistant Commissioner of Police (ACP) responded that six and eight complaints of searches involving removal of clothing worn next to the skin had been received in 2005 and 2006 respectively. 12 complaints of such a nature had so far been received in 2007. Upon review by the Independent Police Complaints Council (IPCC), none of the above complaints were substantiated.

23. Mr Albert HO asked whether the cases were not substantiated because no strip searches had been conducted or because the searches had been conducted in compliance with the Police's relevant guidelines.

24. ACP responded that he did not have detailed information on hand about the cases. As a general rule, Police officers who did not comply with the Police guidelines when discharging their duties could be subject to disciplinary actions or criminal sanctions.

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25. Ms Margaret NG said that the Administration should provide a response to the allegations made by the deputations. She asked whether the Police had examined whether there were other ways of searching in which the dignity of the persons being searched were better respected.

26. ACP responded that he was not in a position to advise whether complaints relating to the deputations' allegations had been lodged with the Complaints Against Police Office (CAPO). If a complaint had been lodged with CAPO, investigation would have commenced and the results would be reviewed by IPCC.

27. Ms Margaret NG said that the Administration should provide information on whether the Police had carried out the alleged searches referred to by the deputations and statistics on strip search. The Chairman requested the Administration to provide information on -

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- (a) the details of the 26 complaint cases concerning the conduct of body searches by Police officers involving the removal of clothing worn next to the skin that had been received by the CAPO in the past three years;
- (b) the alleged cases of abuse of power and inappropriate handling of complaints referred to by the deputations; and
- (c) the number of searches involving the removal of clothing worn next to the skin conducted by the Police in the previous year.

28. ACP said that, without the relevant case reference numbers, it would not be possible to identify the number of searches involving the removal of clothing worn next to the skin conducted by the Police in the previous year, given that about a million reports were involved in a year and the technical design of the Police's Communal Information System (CIS) rendered the compilation of such statistics impossible. PAS(S) suggested that the attending deputations provide the Administration with more details about the cases they referred to (such as the case reference numbers) so as to facilitate the retrieval of information about the cases. The Chairman invited the deputations to provide such information, if any, to the LegCo Secretariat for onward transmission to the Administration.

29. Mr CHEUNG Man-kwong queried why strip searches were conducted on persons arrested in the Lee Tung Street case and why some of them had been searched twice. He queried whether the Police believed that these persons

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- (a) possessed any weapon with which they might injure themselves or others;

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- (b) wished to escape from detention; or
- (c) possessed any article, such as drugs, with which they could commit a further crime.

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30. Referring to some 200 detainees who were not granted bail on 5 October 2007, Mr CHEUNG Man-kwong requested the Administration to provide information on the number of persons who had been searches involving the removal of clothing worn next to the skin and the reasons for conducting such a type of search. The Chairman also requested the Administration to provide information on the offences involved in such cases.

31. Mr Ronny TONG said that the Civic Party was very concerned about the cases referred to by the deputations. He suggested that the persons involved in the Lee Tung Street case could seek assistance from the Civil Party or the Legal Aid Department to take legal actions against the Police and claim for damages.

32. Mr Ronny TONG said that Article 28 of the Basic Law (BL28) prohibited arbitrary or unlawful search of the body of any resident. Article 3 of the Hong Kong Bill of Rights provided that no one should be subject to torture or to cruel, inhuman or degrading treatment or punishment. Article 6 of the Hong Kong Bill of Rights provided that all persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person. He considered that what the Police had done in the cases referred to by the deputations were in contravention of BL28 and Articles 3 and 6 of the Hong Kong Bill of Rights. He asked whether the Police had issued guidelines setting out the constitutional obligations of Police officers under these articles.

33. ACP responded that the Police General Orders (PGO) had been drawn up having regard to the provisions in BL, Hong Kong Bill of Rights and international human rights treaties. As requested at the last Panel meeting, extracts from the relevant provisions of PGO and the Force Procedures Manual (FPM) on the Police's practices relating to the handling of searches of detainees had been set out in Annex C to the Administration's paper for the meeting.

34. Mr Ronny TONG considered that the guidelines in Annex C to the Administration's paper had not set out the constitutional obligations under the articles referred to in paragraph 32 above. PAS(S) stressed that when exercising their power, all Police officers had to comply with the legal requirements which included the constitutional freedom and rights guaranteed for every individuals. During their training, all Police officers had also been reminded that the power of Police officers to search detainees had to be exercised with due regard to proportionality and necessity. Police officers who

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did not comply with the Police's guidelines when exercising such power were liable to disciplinary action and criminal sanction.

35. The Deputy Chairman considered that the Police had deliberately humiliated the demonstrators involved in the Lee Tung Street case. He said that the provisions in PGO and FPM relating to the handling of searches of detainees had not been drafted in such a way that struck an appropriate balance between law enforcement and the protection of human rights. The Police should conduct a full review on such provisions. He was of the view that the provisions in PGO and FPM should be revised to require searches involving the removal of clothing next to the skin to be conducted only where there was reasonable suspicion and the proportionality test was applied. The reasons for conducting such a search should be explained to the persons being searched and recorded.

36. ACP responded that there was a requirement under section 54 of the Police Force Ordinance (Cap. 232) for reasonable suspicion of a person's involvement in crime before a search was conducted. However, there was no legal requirement for informing the person concerned of the reasons for such a search. Nevertheless, guidelines had been laid down for Police officers to inform the persons being searched the reasons for such a search. ACP added that there was no requirement for reasonable suspicion in respect of the search of detained persons under Order 49-04 of PGO, which was applicable to the searching of detained persons. Rather, the search of a person prior to his detention in a Temporary Holding Area or cell block sought to execute the Police's duty of care towards persons detained in Police custody. Such search was conducted to satisfy the Duty Officer that the detained person was not in possession of -

- (a) any weapon with which he might injure himself or others or any implement with which he might effect an escape;
- (b) evidence which was material to the offence with which he was charged; and
- (c) any article with which he could commit a further crime, such as malicious damage to property or consumption or distribution of dangerous drugs.

37. The Deputy Chairman said that if there was no requirement for reasonable suspicion for the search of a person prior to detention, such a search could be open to abuse. He reiterated that the Police should conduct a full review on the provisions in PGO and FPM relating to the handling of searches of detainees involving the removal of clothing next to the skin.

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38. Ms Emily LAU informed the attending deputations that the Bills Committee on the Independent Police Complaints Council Bill would hold a meeting on 6 December 2007 to receive the views of the public on the Bill and they were welcome to submit views to the Bill Committee.

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39. Referring to the submission from deputations, Ms Emily LAU requested the Administration to provide information on the progress of the complaint to the CAPO made by Miss LEE Yuen-yee's family and the incident concerning the use of the Temporary Holding Area in Tsim Sha Tsui Police Station on 14 June 2005.

40. Ms Emily LAU expressed concern that CIS could not facilitate the compilation of statistics on searches involving the removal of clothing next to the skin. She urged all persons on whom the Police had conducted strip searches to provide their case reference numbers to the LegCo Secretariat.

41. In response to Mr LEUNG Kwok-hung's question about the offences suspected to have been committed by the 155 persons who had been arrested but granted bail on 5 October 2007, ACP tabled for members' information a list of 31 offences. He explained that 155 arrested persons were suspected to have committed one or more of the offences in the list.

(Post-meeting note : The list of offences tabled at the meeting was circulated to members vide LC Paper No. CB(2)508/07-08 on 5 December 2007.)

42. Referring to the list of offences tabled at the meeting, Mr LEUNG Kwok-hung expressed grave concern that the demonstrators arrested in the Lee Tung Street case had not been granted bail on 5 October 2007, whereas persons involved in serious offences such as arson had been granted bail on the same day. He queried why the list of offences tabled at the meeting had not been included in the Administration's paper for the meeting, although the verbatim record of the special meeting held on 30 October 2007 indicated that he had requested such information.

43. PAS(S) responded that the information provided in the Administration's paper was prepared in accordance with the list of requested information set out in the letter from the LegCo Secretariat after the last Panel meeting.

44. Ms Emily LAU said that LegCo should investigate into the allegations of the attending deputations and draw up recommendations, if necessary, on the guidelines for Police officers in conducting strip search of detainees. Mr Albert HO proposed that a subcommittee on the Police's handling of searches of detainees should be formed under the Panel. The Deputy Chairman, Ms Emily LAU and Mr LEUNG Kwok-hung supported the forming of such a subcommittee. Mr WONG Yung-kan however considered that whether the

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proposed subcommittee should be formed should be considered after the information to be provided by the Administration was received.

45. As there were divergent views among members on Mr Albert HO's proposal, a vote was taken. Six members voted in favour of the proposal while four members voted against. Members noted that the House Committee would be invited to consider at its meeting on 14 December 2007 whether the subcommittee should be activated.

46. The Chairman said that a visit should be arranged for members to better understand the Police's searches of detainees, including how the record of searches involving the removal of clothing worn next to the skin was made in actual circumstances.

V. Review Report on the Use of Handguns in the Hong Kong Police Force

47. Owing to time constraint, members agreed that the item would be deferred to a future meeting.

48. The meeting ended at 4:35 pm.

Council Business Division 2
Legislative Council Secretariat
11 February 2008