

香港警察總部
香港軍器廠街



HONG KONG POLICE
HEADQUARTERS
CRIME WING HEADQUARTERS
ARSENAL HOUSE WEST WING
ARSENAL STREET
HONG KONG

本署檔號 *OUR REF.:* (2) in LM(1/2010) in CID/CON 5/50/1

來函檔號 *YOUR REF.:* CB(2)1365/09-10

電話 *TELEPHONE:* (852)2860 8181

內線 *EXTENSION:*

TELEX No.: 63367 HX

圖文傳真 *FAX NO.:* (852)2527 6687

27 May 2010

Mr. Raymond Lam
Clerk to Panel on Security
Legislative Council
3rd Floor, Citibank Tower
3 Garden Road
Central
Hong Kong

Dear Mr. Lam,

Panel on Security
Follow up to the Panel Meeting on 27 January 2010

At the meeting of the Security Panel held on 27 January 2010, Members were briefed on the crime situation in Hong Kong. Arising from the discussion, Members requested for information on the following issues –

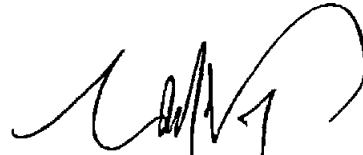
- (a) a written response, together with illustrative examples, on whether the penalties imposed had adequate deterrent effect against rapists who raped young victims under 16 years old and the Force's view on whether rape victims were unwilling to report to the Police, which resulted in the number of reported and recorded cases far below the actual number; and

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- (b) a written response on how the Force classified and compiled the crime statistics and how cases currently excluded from the CP's report, including the taking up of unauthorized work or the involvement in prostitution activities by Mainland visitors, were categorized.

Our responses in respect of items (a) and (b) are at Annexes A and B respectively.

Yours faithfully,



(YU Mun-sang)

for Commissioner of Police

c.c. : Secretary for Security (Attn: Ms Linda LEUNG)

**The Sentencing and Reporting of Rape Cases
Involving Victims under the age of 16**

Introduction

This Brief serves as a reply to questions raised by the Hon CHEUNG Man-kwong, Legislative Councillor, in respect of the sentencing and reporting of rape cases involving victims under 16.

Punishment

2. Irrespective of the victim's age, rape is a serious crime which carries a maximum penalty of life imprisonment upon conviction as specified under the Crimes Ordinance, Cap. 200, Laws of Hong Kong. Depending on the circumstances of any particular case, the Judge passes his/her sentence as he/she deems fit; however, the Court takes a very clear stance when passing sentencing on a rape case. In 2009, in the judgments on various High Court cases¹, the Court explicitly stated that rape, especially one involving a victim under 16, is a serious crime for which punishment must have a sufficient deterrent effect on anyone defying the law. Also, the punishment itself must not only clearly show the public detestation against such behaviour but duly reflect the grievance of the victim and her family.

3. Besides, the Police take a serious view on the judgments regarding such crime. The existing mechanism is that the Police will examine the sentence passed by the court. In case the sentence is considered not reflecting the gravity of the crime, the Police will report to the Director of Prosecutions for the consideration of lodging an appeal or review.

¹ HCCC 68/2009, HCCC 371/2009 and HCCC 390/2009

Reporting

4. Based on past experience that instead of instantly reporting to the Police, victims of rape cases, particularly minors, who do not know what to do after the incidents, would normally seek help from relatives, friends or social workers. In this connection, the Police have been actively engaged in various publicity and education activities explaining to the public the Police procedures of handling sexual crimes that involve minors. Target groups include social workers, non-governmental organizations, teachers, medical practitioners, court prosecutors, students, residents of public housing estates and other members of the community, etc, with a view to enhancing public awareness and understanding of related procedures and encouraging the public to report crime.

5. In addition, the Police have devised clear internal guidelines and formulated related training to assist frontline officers in handling sexual abuse cases and to ensure that victims are provided with support services, where appropriate. Victims of crime are also given a booklet on "The Victims of Crime Charter" and/or a leaflet on "The Rights of Victims and Witnesses of Crime" prepared by the Department of Justice and the Police respectively. These documents are designed to explain to the witnesses and/or victims their rights in the course of enquiries. If they are required to testify in court, the Police will provide them with a leaflet of "Witness in Court".

6. If the victim is a minor or mentally incapacitated, the Police will apply to the court to let the victim to give evidence by live Television Link. Necessary arrangements for a Support Person² will also be made. With a view to reducing any victimized child's anxiety, a video recorded interview will be conducted in a "Vulnerable Witness Interview Suite" specially designed for such purpose.

7. Police officers will exercise due care and sympathy when handling victims, taking all necessary measures to protect their privacy. Should any citizen's welfare needs be noted by the Police whilst discharging constabulary duties, with the consent of either the said citizen concerned or his/her legitimate guardian, the Police will refer him/her to

the Social Welfare Department (SWD) for follow-up.

Conclusion

8. To conclude, the current legislation as well as court punishment have adequate deterrent effects on rape cases involving victims under the age of 16. Also, the Police have been actively engaged in various publicity and educational activities, with a view to enhancing public awareness of sexual abuse offences and encouraging the public to report crime. The Police have clear internal guidelines and related training. There is established protocol between the Police and the SWD for making referrals to ensure victims of sexual crimes are provided with timely support and assistance.

Hong Kong Police Force
May 2010

² "Witness Support Programme" implemented in November 1996 is managed by the Social Welfare Department. Under the programme, arrangements will be made by the Department for trained volunteers or family aides to act as children or mentally incapacitated persons' Support Persons. The responsibilities of a Support Person are: (a) to explain to the witness the court procedures and the role she will play, and help the witness prepare before the trial; (b) to accompany the witness for the pre-trial visit to Court; (c) to accompany the witness to testify by live television link in Court; and (d) to inform the witness of the trial result.

Police Crime Classification

Background

In the Panel on Security special meeting in Legco on 27 January 2010, the Honourable Mr. Paul TSE Wai-chun raised questions on the way in which the police classify crime.

Purpose

2. This paper is written to explicate how crime is classified internally within the police force. Such classification is for statistical analysis of trends, deployment of resources and setting priorities.

The Police Practice

3. The police are duty bound by Section 10(b) of the Police Force Ordinance, Cap. 232, to take lawful measures for preventing and detecting offences that are punishable by law.

4. Under the Hong Kong statutes, there are many thousands of offences created under different Ordinances. In order to assess trends and patterns, and to optimize the allocation of resources and ensure effective investigation, the Force has drawn up a list of offences to be classified as “crime”, taking the following factors into consideration:

- a) The seriousness of the offence;
- b) The risk to life and property of the public;
- c) The wilful nature of the illegal act (e.g. offences with premeditation or requisite mens rea);
- d) Whether the investigation requires more expertise or resources; and
- e) Whether the offence is of significant public concern.

5. There are Force procedures governing what offences are to be classified as “crime” and investigated by what units within the Force. For now, there are 423 offence headings that satisfy the classification criteria of crime. They are categorized into 64 groups covering in general, offences against person, property, and social order.

6. Identifying and selecting a representative sample of offences to classify as crime for police statistical and deployment purposes is a general practice adopted by law enforcement agencies (LEAs) around the world. Such classification allows the LEAs to effectively allocate their resources and assign the most appropriate officers to handle the investigation. It allows trends and patterns to be identified for attention to be drawn and priorities set.

7. The classification process does not affect the legal and judicial administration of justice as offences, whether classified by police as crime or not, will all be processed in the criminal courts.

8. The following are some examples of offences that are not classified by the police as crime:

- a) hawking offences;
- b) breach of licence conditions;
- c) begging;
- d) making noise at night;
- e) minor traffic offences; and
- f) breach of conditions of stay.

9. Changes to the list of offences classified as “crime” will be done sparingly because frequent addition or deletion will distort the overall figure and cause serious problems to comparison between periods, rendering identification of trends or patterns unreliable. However, minor adjustment to the list of the current 423 offence headings may be made such as when new offences are enacted by legislation or old offences repealed. For example, the new offence of “Serious Vilification” under the Race Discrimination Ordinance Cap.602, was added to the list in August 2009.

10. The classification of offences into crime under specific headings ensures that exact statistical records of each type of incident are kept. These records enable Force management to allocate resources effectively to deal with the prevalence of such offences and work out appropriate enforcement policies and tactics. They are made available to the public for reference purposes, such as during the Force mid-year and annual review of crime situation.

Summary

11. The practice of classifying representative offences into “crime” for an LEA’s statistical and policing purposes is not new and is practised by most LEAs around the world. Such practice allows identification of trends and patterns, effective deployment of resources and setting priorities appropriately. The Hong Kong Police has been adopting this practice for a very long time. At present, there are 423 such offence headings in the list. Whether an offence is classified as “crime” or not, the matter will be dealt with by the police and the charges processed in court.

Hong Kong Police Force
May 2010