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by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 28 May 2013, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Hon Dennis KWOK (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Hon CHAN Kin-por, BBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Michael TIEN Puk-sun, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Dr Hon Kenneth CHAN Ka-lok
Hon Alice MAK Mei-kuen, JP
Dr Hon KWOK Ka-ki
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, JP
Hon TANG Ka-piu
Dr Hon Anne CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen

Action

Members attending : Hon CHAN Yuen-han, SBS, JP
Hon KWOK Wai-keung
Dr Hon Helena WONG Pik-wan

Members absent : Hon Abraham SHEK Lai-him, SBS, JP
Hon Steven HO Chun-yin
Hon Kenneth LEUNG

Public Officers attending : Item III

Mr Rimsky YUEN, SC, JP
Secretary for Justice

Mr Frank POON, JP
Solicitor General
Department of Justice

Mr Llewellyn MUI
Senior Assistant Solicitor General
Department of Justice

Mr Clifford TAVARES
Senior Assistant Law Officer (Civil Law)
Department of Justice

Mr LAI Tung-kwok, SBS, IDSM, JP
Secretary for Security

Mr Erick TSANG
Assistant Director (Control)
Immigration Department

Item IV

Mrs Millie NG
Principal Assistant Secretary for Security (E)

Mr Matthew HEMMINGS
Chief Superintendent of Police (Crime Support)
(Crime Wing)
Hong Kong Police Force

Action

Ms Winnie TANG
Chief Inspector of Police (Child Protection Policy Unit)
(Crime Wing)
Hong Kong Police Force

Mr Wesley WONG, SC
Deputy Director of Public Prosecutions (I)
Department of Justice

Mr NG Sek-hon
Deputy Judiciary Administrator (Operations)

Mr FUNG Man-chung
Assistant Director of Social Welfare (Family & Child
Welfare)
Social Welfare Department

Attendance by : Item III
invitation

Hong Kong Bar Association

Mr P Y LO

The Law Society of Hong Kong

Mr Charles CHAU
Council Member and Member of the Law Society's
Constitutional Affairs and Human Rights Committee

Ms Joyce WONG
Director of Practitioners Affairs

Item IV

Hong Kong Bar Association

Mr Andrew BRUCE, SC

Mr Selwyn YU, SC

Hong Kong Committee on Children's Rights

Mrs Priscilla LUI
Vice-Chairman

Action

Against Child Abuse

Dr Jessica HO
Director

Association Concerning Sexual Violence Against Women

Ms Linda WONG
Executive Director

Mr John FU Chi-yung
Researcher

Rainlily

Ms Tiffany NG
Service in charge

OIWA Limited

Ms YU Lai-fan
Vice Chairman

Clerk in attendance : Miss Mary SO
Chief Council Secretary (4)2

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Cindy CHAN
Senior Council Secretary (4)2

Ms Rebecca LEE
Council Secretary (4)2

Ms Mandy WAN
Administrative Assistant (4)1

Action

I. Information paper(s) issued since the last meeting

Members noted that the information papers had been issued since the last meeting –

LC Paper No. CB(4)639/12-13(01) -- Letter from Hon Dennis KWOK dated 7 May 2013 requesting to invite organizations to give views on the issue of "Future development of legal aid in Hong Kong"

LC Paper No. CB(4)670/12-13(01) Letter from Hon LEUNG Kwok-hung and Hon WONG Yuk-man dated 22 May 2013 requesting to discuss the issue of "Handling of cases by Court Masters"

II. Date of next meeting and items for discussion

[LC Paper Nos. CB(4) 679/12-13(01) and (02)]

2. Members agreed to discuss the following items as proposed by the Administration at the next regular meeting scheduled for 25 June 2013 at 4:30 pm –

(a) Implementation of the recommendations made by the Law Reform Commission; and

(b) Establishment of an independent legal aid authority.

3. The Chairman said that at the request of Mr Dennis KWOK dated 7 May 2013, deputations would be invited to give views on the issue of "Establishment of an independent legal aid authority".

4. The Chairman referred members to a letter dated 22 May 2013 jointly signed by Mr WONG Yuk-man and Mr LEUNG Kwok-hung requesting to discuss the issue of "Handling of cases by Court Masters". She said that Mr LEUNG Kwok-hung had requested to issue to members the complaint letter of the respective case and the response from the Judiciary for the purpose of facilitating members' understanding of the issue.

Action

5. At the invitation of the Chairman, Assistant Legal Adviser 2 ("ALA2") drew members' attention to the following:

- (a) in line with the previous practice of the Panel, members might wish to cite related cases for the purpose of illustrating a particular issue in the course of deliberating a policy area;
- (b) the item of "Judicial manpower situation at various levels of court and long court waiting times" had been included in the Panel's list of outstanding items for discussion, under which the Panel would discuss judicial manpower situation and related issues;
- (c) whenever an information paper was issued to members of the Panel, the same would be made accessible to public and posted on the Legislative Council's website. In this regard, due care would be exercised to ensure that there was no libel, nor infringement of personal data privacy; and
- (d) no information pertaining to individual cases would be disclosed to a third party without prior consent of all parties involved.

6. The Chairman said that she decided not to accede to the request of Mr LEUNG Kwok-hung for issuing the relevant papers to members, having regard to the considerations set out in paragraph 5 above. Members however noted that Mr LEUNG proceeded to issue to them the relevant papers at the meeting today.

7. Accordingly, the Chairman let Mr LEUNG Kwok-hung refer members to the relevant papers he distributed at the meeting. To his understanding, it contravened the established practice of the Judiciary for Masters to handle court cases. Noting that the case at issue suggested non-compliance by the Judiciary with the established practice in the administration of justice, he dissented to the proposal that the issue be dealt with under the item of "Judicial manpower situation at various levels of court and long court waiting times".

8. Mr WONG Yuk-man said that having interviewed the complainant referred by the Public Complaints Office and studied the relevant responses from the Secretary for Justice and the Judiciary, he was convinced that the case at issue suggested a contravention with the established practice of the Judiciary. In his view, although the judicial independence was to be respected at all times, the Judiciary should not be beyond the reach of criticism. In the absence of a system for members of the public to seek and obtain a remedy against the

Action

Judiciary through formal institutions of justice, it would be rebuttable as to whether the case at issue reflected an isolated case or not. To uphold the principle of access to justice, he considered it necessary for the Panel to look into the issue from a policy perspective.

9. Mr Ronny TONG said that he understood that the Judiciary had put in place a mechanism for persons aggrieved by the conduct of judicial officers to lodge complaints with the Judiciary. If, in the opinion of the Court Leader concerned, individual complaints warranted further investigation, the Court Leader concerned or the Chief Justice was vested with the responsibility and authority to handle the complaints. Mr TONG considered that as the case at issue was related to a complaint against the conduct of a judicial officer, it was more appropriate for the Public Complaints Office to refer the case to the Judiciary.

10. Responding to Dr Anne CHIANG's enquiry, the Chairman said that the complaint case had been brought to the attention of the Judiciary by the Public Complaints Office and the relevant information had been sought.

11. Mr Dennis KWOK said that it was within the ambit of the Panel to look into the mechanism for the Judiciary to handle complaints against judicial conduct. However, if individuals were to lodge a complaint against the conduct of a judge, the complaint should be referred to and handled by the Judiciary. Noting that the Panel would discuss the item of "Judicial manpower situation at various levels of court and long court waiting times" in the near future, he considered it an opportune time for the Panel to receive a briefing by the Judiciary on "Mechanism for handling complaints against judicial conduct". Mr TANG Ka-piu shared a similar view.

12. Mr Albert HO concurred with Mr Dennis KWOK that it was appropriate for the Panel to look into the mechanism for the Judiciary to handle complaints against judicial conduct. While respecting the principle of judicial independence, Mr HO said that a Member was at liberty to write to the Chief Justice on issues arising from individual complaints against the decision made by or the conduct of a judge, and requested a reasonable response from the Judiciary.

13. Mr Martin LIAO enquired that:

- (a) after the discussion of the item "Mechanism for handling complaints against judicial conduct", how the Panel was to proceed with its recommendations for the Judiciary;

Action

- (b) whether the Legislative Council was vested with the responsibility and function to monitor the work of the Judiciary; and if so;
- (c) under which provision(s) of the Basic Law, the Legislative Council was empowered to perform its role mentioned in (b) above.

14. ALA2 responded that the Panel had in the past discussed and expressed views on issues related to judicial service pay adjustment, judicial manpower, and relocation of the Court of Final Appeal, with due regard to the principle of separation of powers.

15. The Chairman concluded that the item of "Mechanism for handling complaints against judicial conduct" be included in the agenda for the Panel's regular meeting in July 2013 and that the Judiciary be invited to give a briefing on this item. Members agreed.

16. The Chairman proposed to re-schedule the July meeting from Tuesday, 23 July 2013 to Thursday, 11 July 2013, at 4:30 pm to facilitate attendance of members at the meeting. She instructed the clerk to issue a circular on the re-scheduling of the July meeting and inform members of the arrangement in due course.

17. Ms Emily LAU suggested that the Panel should follow up with the Administration the issue of "Extending the applicability of the Ordinances of the Hong Kong Special Administrative Region ("HKSAR") to the offices set up by the Central People's Government ("CPG") in the HKSAR" as the issue had been included in the Panel's list of items for discussion since 2001. The Chairman agreed to liaise with the Administration.

III. Right of abode issues of children born in Hong Kong to Mainland parents both of whom are not Hong Kong permanent residents

[LC Paper Nos. CB(4) 670/12-13(02), CB(4) 679/12-13(03) and (04) and CB(4) 695/12-13(01)]

Briefing by the Administration

18. At the invitation of the Chairman, Secretary for Justice ("SJ") briefed members on the Government's position in respect of the right of abode issues of children born in Hong Kong to Mainland parents both of whom are not Hong Kong permanent residents ("Type II children"), details of which were set out in the Department of Justice ("DoJ")'s paper [LC Paper No. CB(4)679/12-13(01)]. Secretary for Security ("SS") highlighted the various administrative measures

Action

taken by the Government with a view to tackling the increasing number of Type II children, and the progress made.

Views of the two legal professional bodies

19. Mr P Y LO of the Hong Kong Bar Association ("Bar Association") referred members to the statement of the Bar Association issued on 25 March 2013 [LC Paper No. CB(4)695/12-13(01)] after the conclusion of the foreign domestic helpers case, *Vallejos Evangeline Banao & Another v The Commissioner of Registration & Another* (FACV Nos. 19 & 20 of 2012, 25 March 2013) ("the Vallejos case"). As set out in the aforesaid statement, the Bar Association observed that the Court of Final Appeal ("CFA") had reached its view on the interpretation of Article 24(2)(1) of the Basic Law ("BL24(2)(1)") in the adjudication of *Chong Fung Yuen* (2001) 4 HKCFAR 211 ("Chong Fung Yuen case"), and the interpretation of BL24(2)(4) in the Vallejos case. According to SJ, DoJ would continue its study and research on other legal options with a view to tackling the issues arising from Type II children. In this connection, the Bar Association reiterated what it had submitted to the Panel as to the factors that should be taken into account when such legal options were considered. In particular, for the Government to seek to request the State Council to propose to the Standing Committee of the National People's Congress ("NPCSC") for an interpretation of BL24(2)(1) and BL24(2)(4) as a means to resolve the right of abode issues of Type II children, it was likely to have the judgments handed down by the CFA in Chong Fung Yuen case and the Vallejos case overruled, hence having a detrimental impact on the rule of law in Hong Kong.

20. Mr Charles CHAU of the Law Society of Hong Kong ("Law Society") presented the views of the Law Society in respect of the right of abode issues of children born in Hong Kong to Mainland parents both of whom are not Hong Kong permanent residents, details of which were set out in its submission [LC Paper No. CB(4)670/12-13(02)]. The Law Society's stance was that given the judgment handed down by the CFA in Chong Fung Yuen case, any attempt to resolve the issues arising from Type II children by way of seeking from the NPCSC an interpretation of BL24(2)(1) would undermine the independence of the Judiciary and the rule of law in Hong Kong.

Discussion

21. Mr Dennis KWOK enquired what legal options were being considered by the Government, and whether seeking from the NPCSC an interpretation of the relevant provisions of the Basic Law was one of the legal options referred to in paragraph 13 of the DoJ's paper.

Action

22. SJ did not consider it appropriate to make public the various legal options under consideration at this stage, having regard to the fact that any premature disclosure of the legal options to the public would run the risk of lowering the effectiveness of these options. On the question of seeking an interpretation of the Basic Law from the NPCSC, he said that the Government fully appreciated the community's concerns associated with this option and had not proceeded to seek an interpretation of the Basic Law from the NPCSC ever since the CFA handed down its judgment in Chong Fung Yuen case. The Government would continue to monitor the situation closely, as the administrative measures had been effective to contain the problem of Type II children. SJ explained that the Government invited the CFA to consider making a judicial reference under BL158(3) in the Vallejos case since an interpretation under BL158(3) is a legally legitimate route within the legal system of Hong Kong.

23. Responding to Mr Michael TIEN's enquiry, SJ explained that when the Chief Executive ("CE") announced the commencement of the zero delivery quota policy from 2013, CE made a remark that there would be no guarantee of permanent residency for Type II children, noting that the Government was in the process of studying various legal options to resolve the right of abode issue of Type II children. As a responsible government, the Administration would continue to tackle the problem in strict compliance with Hong Kong law including the judgments previously rendered by the Judiciary.

24. Regarding the effectiveness of the zero delivery quota policy, Mr Michael TIEN asked about the number of Type II children born in Hong Kong since the commencement of the policy, and the number of these children who were entitled to permanent residency of Hong Kong.

25. SS responded that from January to April 2013, 73 non-booked deliveries were made by Mainland women who gate-crashed at the Accident and Emergency Departments of public hospitals for deliveries. SJ advised that these 73 children were entitled to permanent residency of Hong Kong.

26. Mr Albert HO noted that as a political entity, the NPCSC authorized the courts of Hong Kong to interpret on their own, in adjudicating cases, the provisions of the Basic Law which are within the limits of the autonomy of the Hong Kong Special Administrative Region ("HKSAR"). Despite the fact that the Vallejos case did not concern external affairs nor relationship between the Central Authorities and the HKSAR, and every interpretation of the Basic Law from the NPCSC was binding on the courts of Hong Kong in the discharge of its function, the Government still sought to make a judicial reference under BL158(3) for the case. Members of the public and the legal professional bodies

Action

were much aggrieved in that the courts of Hong Kong were deprived of their judicial power as enshrined in the Basic Law. Mr HO expressed disappointment that there was a lack of transparency when the Government made the judicial reference to the CFA in the Vallejos case.

27. SJ did not subscribe to the view that the issues arising from the Vallejos case were merely internal affairs, having regard to the fact that one of the two questions identified by the Government for a reference under BL158(3) was "whether the statement contained in the penultimate paragraph of the interpretation made by the NPCSC in 1999 on BL22(4) and BL24(2)(3) is or constitutes part of an interpretation with the meaning of BL158(1)". He noted that the CFA did not suggest that these questions were not appropriate questions for making a reference under BL158(3). Whether such a reference should be made is a decision which only the CFA could determine. He added that the CFA in the Vallejos case held that the classification condition was satisfied because BL158 is a provision that concerns the relationship between the Central Authorities and the HKSAR. Given the CFA's conclusion on the true construction of BL24(2)(4), the CFA found that a reference to the NPCSC was unnecessary. SJ further referred to paragraph 111 of the CFA judgment where the Court acknowledged that the Government addressed the Court on the above basis and agreed that the Government's approach on the matter is "plainly the right approach".

28. To tackle the problem arising from Type II children in the long run, Mr Albert HO asked whether consideration could be given to amending the relevant provisions of the Basic Law, and what stance did the Government take at this stage. In response, SJ advised that the Basic Law was a constitutional document and any attempt to amend the provisions of the Basic Law should not be made lightly.

29. Mr WONG Yuk-man believed that the power to enact the law should be vested in the legislature of a jurisdiction while the power to interpret any provisions of the law should be vested in the judiciary. In his view, the co-existence of both BL158(1) and BL158(3) was to provide for a compromise in that the courts of Hong Kong were empowered to interpret other provisions of the Basic Law in adjudicating cases, albeit the courts were to seek an interpretation of the relevant provisions from the NPCSC through the CFA if the courts, in adjudicating cases, needed to interpret the provisions concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the HKSAR. To him, the request of the Government for the CFA to make a reference under BL158(3) in the Vallejos case was simply a blunder.

Action

30. Ms Emily LAU observed that as evident in the Vallejos case, any attempt to seek an interpretation of the Basic Law from the NPCSC would be detrimental to the public confidence in the judicial independence. She hoped that the Government would profit by the experience when it considered various legal options to tackle the Type II children problem. On the other hand, she urged that the Government should not retreat from the responsibility to explain to the Central Authorities and should actively explore the possibility of amending the relevant provisions of the Basic Law with a view to resolving the right of abode issue of Type II children.

31. In response, SJ advised that in recognition of the wide public concern over the Government seeking an interpretation of the Basic Law from the NPCSC, the Government would explore the feasibility of resolving the right of abode issue of Type II children within the legal system of Hong Kong. SJ stressed that seeking an interpretation of the Basic Law from the NPCSC would always be considered as the very last resort.

32. Mr TAM Yiu-chung noted that BL158(1) clearly provides that the ultimate power to interpret the Basic Law is vested in the NPCSC. Moreover, as shown in all the previous cases, the Central People's Government and the HKSAR Government always exercised great care when there was a need for the NPCSC to interpret the provisions of the Basic Law. In his view, all the interpretations of the Basic Law by the NPCSC rendered previously were absolutely necessary and helped to enhance the understanding of the relevant provisions by members of the public. In this regard, Mr TAM said that he did not have any difficulty with the Government seeking an interpretation of the Basic Law from NPCSC insofar as the specified conditions were satisfied. Mr TAM was however concerned that the administrative measures might not be able to contain the problem of Type II children in the long run. He urged the Government to come up with other measures that were effective enough to eradicate the problem. In addition, he enquired about the number of cases of Mainland pregnant women ("MPW") seeking entry into Hong Kong through bogus marriage with Hong Kong residents over the years, and the measures that had been or would be put in place to tackle the problem. In reply, SS undertook to provide the information after the meeting.

33. Mr LEUNG Kwok-hung opined that it was not appropriate for the Government which held a view on the interpretation of the Basic Law to let go its responsibility to tackle the matter, but to wait until a court case arose and in the capacity of a party to litigation, to request the Judiciary to make a judicial reference under BL158(3). On the question of how to tackle the right of abode issue of Type II children, Mr LEUNG was confident that the problem of Type II

Action

children could be resolved within the Hong Kong legal system without the need for seeking an interpretation of the Basic Law from the NPCSC.

34. SJ clarified that a BL158 interpretation, whether under BL158(1) or BL158(3), is made under the constitutional authority of the Basic Law. He explained that BL158 clearly provides that the ultimate power to interpret the Basic Law was vested in the NPCSC, while Hong Kong courts might on their own interpret provisions of the Basic Law in adjudicating cases. In this regard, he disagreed that the exercising of the power by the Hong Kong courts in making the judicial reference under BL158(3) would undermine the rule of law in Hong Kong. In response to members' concern over the Government seeking an interpretation of the Basic Law from the NPCSC, SJ advised that if members had studied the CFA's judgment in the Vallejos case, they would note that the CFA had clearly explained the constitutional jurisdiction for a BL158 interpretation.

35. Mr CHUNG Kwok-pan questioned the need for the Government withholding information on the various legal options under its consideration. He expressed concern that if the administrative measures eventually failed to contain the problem of Type II children and the adoption of a particular legal option became imperative, there might not be enough time for consulting the public or the Legislative Council.

36. SJ said that the DoJ and the Security Bureau would continue to monitor the situation closely and take timely action as and when necessary.

37. Mr Ronny TONG stressed that the functions of the office of SJ should not be confined to the provision of legal advice to the Chief Executive, or even assistance to the Administration in accomplishing a particular political objective. Most importantly, the functions of the office of SJ should include the defense of the judicial independence and the rule of law in Hong Kong. He was disappointed that in the Vallejos case, SJ came up with a request to the CFA for making a judicial reference under BL158(3), having regard to the fact that the Hong Kong courts should exercise judicial power independently, free from any interference.

38. SJ disagreed that the Government requesting the CFA to make a judicial reference under BL158(3) should be taken as a failure to perform the functions of the office of SJ in defending the independence of the Judiciary and the rule of law in Hong Kong. He said the Government had never tried to manipulate the Vallejos case for political purposes and doubted the basis for suggesting otherwise. He expressed regret for what Mr Ronny TONG had said at the meeting today.

Action

39. While noting that the number of MPW gate-crashing at the Accident & Emergency Departments of public hospitals had dropped substantially through various administrative measures, Ms CHAN Yuen-han said that there was grave concern among members of the public that the MPW continued to seek to bypass the existing measures in order to acquire Hong Kong permanent resident status for their children. She asked whether any other measures, such as stepping up of immigration controls upon entry, would be taken to eradicate the problem; and if so, what were these measures.

40. Responding to the public concern, SJ advised that consideration was given to any other means, administrative or legal, to tackle the problem of Type II children insofar as these means complied with the laws and were effective.

41. Mr Paul TSE said that he did not understand why the Government's request for the CFA to make a judicial reference under BL158(3) would be viewed as an affront to the rule of law, provided that due consideration had been given to each and every possible options allowed under the laws. He further said that the question of whether to invoke the BL158 option to resolve the problem of Type II children was essentially a political decision, and SJ would therefore need to take into account not only legal considerations but also political considerations in deciding the way forward. Recognizing that the MPW would seek to bypass the administrative measures to gate-crash at the Accident and Emergency Departments for deliveries, Mr TSE enquired about the circumstances under which a decision would be made for seeking an interpretation of the Basic Law.

42. SJ responded that the Government was conducting on-going assessment and studying the pros and cons of each legal option, the legal and policy implications as well as litigation risks involved in each option.

43. Mr CHAN Kam-lam observed that the educational, health and welfare needs of Type II children imposed tremendous pressure on the local resources on all fronts and would likely aggravate in the near future. He considered that there was an imminent need to resolve the right of abode issue of Type II children. In his view, if administrative measures were proved to be ineffective to contain the problem in the long run, the Government should not retreat from seeking an interpretation of the Basic Law as provided for under BL158.

44. The Chairman enquired about the various means of entering Hong Kong by MPW to circumvent the zero delivery quota policy, and the number of MPW involved since the implementation of the policy from 2013 for obstetric services.

Action

45. In response, SS said that the MPW might enter Hong Kong at an early stage of pregnancy, overstay in Hong Kong and then gate-crash at the Accident & Emergency Departments for deliveries. MPW in some of the cases even presented forged document upon entry. He undertook to provide further information after the meeting.

Conclusion

46. The Chairman concluded that the Administration was requested to provide the following information:

- (a) the number of cases of Mainland pregnant women ("MPW") seeking entry into Hong Kong through bogus marriage with Hong Kong residents over the years, and the measures that had been or would be put in place to tackle the problem; and
- (b) the types of means of entering Hong Kong by MPW to circumvent the policy and the number of MPW involved since the implementation of the zero delivery quota policy from 2013 for obstetric services, and the measures that had been or would be put in place to tackle the problem.

IV. Handling of sexual offences cases

[LC Paper Nos. CB(4) 439/12-13(01) and (02), CB(4) 478/12-13(01) and CB(4) 679/12-13(05)]

Welcoming remarks by the Chairman

47. The Chairman welcomed representatives of the Security Bureau, DoJ, the Judiciary, the Social Welfare Department, the Hong Kong Police Force ("the Police") and deputations to the meeting. She said that written submissions from deputations received before the meeting had been circulated to members.

Presentation by deputations

The Hong Kong Committee on Children's Rights

(LC Paper No. CB(4)695/12-13(02) -- Submission (*Chinese version only*))

48. Mrs Priscilla LUI of the Hong Kong Committee on Children's Rights presented the views of her organization as detailed in its submission. She proposed that the scope of the child fatality review conducted by the Child Fatality Review Panel should be expanded to cover those cases of sexual assault

Action

to facilitate the identification of the trend and causes of sexual assault against children, formulation of preventive measures and provision of support service.

Against Child Abuse

(LC Paper No. CB(4)713/12-13(01) -- Submission (*Chinese version only*))

49. Dr Jessica HO of the Against Child Abuse presented the views of her organization as detailed in its submission.

Association Concerning Sexual Violence Against Women

(LC Paper No. CB(4)695/12-13(03) -- Submission (*Chinese version only*))

50. Ms Linda WONG and Mr John FU Chi-yung of Association Concerning Sexual Violence Against Women presented the views of their organization as detailed in its submission. Mr FU elaborated on the rationale for unconditional provision of screen for victims/witnesses of sexual offences cases in judicial proceedings, and the practices of the same in selected overseas common law jurisdictions.

Rainlily

(LC Paper No. CB(4)713/12-13(02) -- Submission (*Chinese version only*))

51. Ms Tiffany NG of Rainlily presented the views of her organization as detailed in its submission.

OIWA Limited

52. Ms YU Lai-fan of OIWA Limited expressed concern about the understanding of victims of sexual offences cases of their rights, and the availability of any complaint mechanism if victims felt that they were unfairly treated or embarrassed by law enforcement officers in the process of investigation. She was also concerned about the protection of the privacy of victims of sexual offences cases.

53. Members noted the written submissions from the following organizations/individuals –

- (a) Dr Monit CHEUNG, Graduate College of Social Work of the University of Houston
(LC Paper No. CB(4)679/12-13(06) – Submission (*English version only*))
- (b) Association for Concern for Legal Rights of Victims of Domestic

Action

Violence

(LC Paper No. CB(4)713/12-13(03) – Submission (*Chinese version only*))

Presentation by the Administration

54. At the invitation of the Chairman, Principal Assistant Secretary for Security ("PASS") advised that the Police treated all sexual offence cases seriously and with sensitivity, and strived to avoid adding trauma to victims in the process of investigation. The Police had put in place various measures to protect the victims when they investigated sexual violence cases. As regards the Sexual Conviction Record Check Scheme introduced in December 2011, the Security Bureau had completed a review on its operation and would report the findings of the review to the Panel on Security at the meeting on 4 June 2013.

55. Chief Superintendent of Police (Crime Support) (Crime Wing) ("CSP(CS)") and Chief Inspector of Police (Child Protection Policy Unit) (Crime Wing) briefed members on the various measures put in place by the Police in the handling of sexual offence cases, details of which were set out in the Administration's paper [LC Paper No. CB(4)439/12-13(02)].

56. Deputy Director of Public Prosecutions (I) ("DDPP(I)") briefed members on the existing measures by the Prosecutions Division of the Department of Justice in handling victims in sexual offence cases, details of which were set out in the Administration's paper [LC Paper No. CB(4)478/12-13(01)].

57. Responding to the view of deputations, Assistant Director of Social Welfare (Family & Child Welfare) ("ADSW(FCW)") advised that the Child Fatality Review Panel conducted its review on child fatality with the following five objectives:

- (a) to examine the practice and service issues in relation to the child death cases under review;
- (b) to identify and share good practice and lessons learnt for service improvement;
- (c) to keep in view the implementation of recommendations made after review for service enhancement;
- (d) to identify patterns and trends in relation to the reviewed child death cases for formulation of preventive strategies; and

Action

- (e) to promote inter-sectoral collaboration and inter-disciplinary co-operation for prevention of occurrence of avoidable child death cases.

The scope of the review included all cases with children aged under 18 died on or after 1 January 2008 reported to the Coroner with all criminal and judicial processes completed so as to avoid prejudicing such processes. ADSW(FCW) said that if the review was to include those cases of sexual assault, concerns were raised as to the protection of the privacy of victims who were still alive and prejudice of the legal proceedings. Taking into account all the concerns, the relevant stakeholders had yet to reach a consensus about whether sexual assault cases should be included.

58. Deputy Judiciary Administrator (Operations) briefed members on the measures that were available for adoption by the court during judicial proceedings where protection of the victims or witnesses of sexual offence cases was required, details of which were set out in the Administration's paper [LC Paper No. CB(4)679/12-13(05)].

Presentation by the legal professional body

59. Mr Andrew BRUCE of the Bar Association said that in terms of the protection of victims of sexual offence cases, Hong Kong had the most modern provisions some twenty years ago and should make continual improvements in line with the practices of overseas common law jurisdictions. With respect to the disclosure of victims' previous sexual experience in the cross examination of witnesses, he noted that restrictions could be placed in the criminal justice process to avoid unjustifiably intrusive or aggressive questions. Nonetheless, he pointed out that the right to a fair trial should never be impaired by these restrictions, albeit the rights of young children, the rights of liberty and security of a person were to be respected. Mr BRUCE added that there was room for improvement during the pre-trial review. Specifically, the Prosecutions Division could proactively seek to apply for the provision of screen to shield the victim at trial, and other necessary provisions for the purpose of protecting the privacy of the victim.

Discussion

60. Dr Helena WONG queried whether, by adopting the one-stop service model, the Police had been able to expedite the process of investigation and the provision of the necessary support service to victims of sexual offence cases. She also questioned why the victims would not be provided with screen at trial

Action

unconditionally, without the need for making an application with the judge. Ms Cyd HO shared similar view.

61. Dr Elizabeth QUAT said that she did not understand why victims of sexual offence cases had to request for a screen at trial, while the Police was responsible for providing the relevant information to the judge through the Prosecutions Division. She was of a strong view that the provision of screen to shield victims of sexual offence cases at trial should be made a standard provision. Dr QUAT enquired about the operation of the one-stop service model and the number of frontline police officers who had received training on dealing with victims of sexual offence cases. CSP(CS) explained that the purpose of one-stop service was to reduce the trauma of victims caused by investigation as much as possible and officers were trained to handle sexual offence victims so as to reduce the traumatizing effects.

62. DDPP(I) said that in terms of the application procedure, the Police was responsible for gathering the necessary information for reference of the Prosecutions Division and the Prosecutions Division was responsible for preparing the application to be submitted to the judge before the trial. According to the law, the decision as to whether a screen should be provided for a particular witness in a case rested with the judge.

63. Noting that there would be a pre-trial review for all major trials of criminal offences, Ms Emily LAU expressed concern whether victims of sexual offence cases were given a fair treatment if they were only informed of the result of their applications for the provision of screen on the day of the trial. Ms Cyd HO shared similar view. To ascertain how often victims of sexual offence cases were provided with screen at trial, Ms HO asked about the number of applications for the provision of screen at trial in the past five years, and the number of applications being approved.

64. Mr Paul TSE noted that to avoid repetitive taking of witness' statement, the Independent Commission Against Corruption arranged for video recording when taking statement of the witnesses. He asked whether consideration could be given to adopting the same arrangement for taking the statement of victims of sexual offence cases.

65. CSP(CS) said that for victims under 17 years old or mentally incapacitated persons, their statement were video recorded for presentation in court. He further said that only under special circumstances, the Police or the relevant professionals would have to seek further information from the victims when some crucial information was missing from the previous statement taken of them.

Action

66. Mr Paul TSE disagreed that a victim of sexual offence cases had to render proofs of being a vulnerable witness. He urged the DoJ to review the relevant provisions in the law. He enquired whether consideration could be given to adopting a checklist for the Prosecutions Division to ensure that particular questions were deliberately asked during the pre-trial review of the cases.

67. Mr Dennis KWOK shared similar view. He urged the Prosecutions Division to take a more proactive approach when reviewing the needs of victims of sexual offence cases before the trial, having regard to the procedural fairness and quality of the victims' testimony.

68. Noting members' concern over the protection of victims of sexual offence cases, DDPP(I) agreed to take a more proactive approach in considering and preparing for the application for the provision of screen at trial for such victims.

69. Noting the suggestion of some deputations for lifting the minimum age of criminal responsibility, the Chairman asked about the stance of the Administration in this regard.

70. PASS advised that following the publication of the Law Reform Commission ("LRC")'s report on "The Age of Criminal Responsibility in Hong Kong" in 2000 recommending the minimum age of criminal responsibility be raised from seven to ten years of age, the Juvenile Offenders (Amendment) Ordinance 2003 was passed by the Legislative Council on 12 March 2003 to implement the LRC's recommendation. The Administration took the view that fixing the minimum age of criminal responsibility as 10 was appropriate and had no plans to make change. In respect of a child aged between 10 and 14, the separate rebuttable presumption of *doli incapax* continued to apply, which meant that the prosecution must prove beyond reasonable doubt that the boy knew his actions were seriously wrong, rather than merely naughty or mischievous.

Conclusion

71. The Chairman concluded that the Administration should take into account the views expressed by members and the deputations at the meeting today. She requested the Police to submit further information on the operation of the one-stop service model. The Administration undertook to provide the information after the meeting.

(Post-meeting note: The response from the SS was issued to members on 18 July 2013 vide LC Paper No. CB(4)896/12-13(01).)

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V. Any other business

72. There being no other business, the meeting ended at 7:30 pm.

Council Business Division 4
Legislative Council Secretariat
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