

立法會
Legislative Council

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**Report of the Panel on Security
for submission to the Legislative Council**

Purpose

This report gives an account of the work of the Panel on Security during the 2000-01 session of the Legislative Council. It will be tabled at the meeting of the Council on 4 July 2001 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

The Panel

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000 for the purpose of monitoring and examining Government policies and issues of public concern relating to security, public order, corruption-related matters and nationality and immigration matters. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 12 members in the 2000-01 session. Hon LAU Kong-wah and Hon James TO Kun-sun were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

Major Work

Hong Kong residents detained in the Mainland and the reciprocal notification mechanism between the Mainland Public Security Authorities and the Hong Kong Police

4. In the wake of the reported detention of Hong Kong residents in the Mainland by the Mainland authorities, the Panel discussed the operation of the reciprocal notification mechanism between the Mainland Public Security

authorities and the Hong Kong Police Force, and the assistance provided by the Hong Kong Special Administrative Region (HKSAR) Government to Hong Kong residents detained in the Mainland and their family members.

5. The Panel noted that matters which the Mainland Notification Unit should notify the Hong Kong Notification Unit, i.e. the Hong Kong Police, covered cases where criminal compulsory measures were taken by the Mainland Public Securities authorities and the Mainland customs authorities, and the unnatural deaths of Hong Kong residents in the Mainland. While members considered that the reciprocal notification mechanism was useful, some members expressed concern about the inadequate coverage of the notification mechanism as revealed by some recent detention cases. These members were of the view that the notification mechanism should be extended to cover matters under the jurisdiction of other authorities, such as the State security organs.

6. The Administration explained that the reciprocal notification mechanism, which became operative on 1 January 2001, was an administrative arrangement implemented on the basis of mutual respect for the relevant laws of both sides. Other authorities were not covered because there was not such a need when the mechanism was established. Whether the mechanism should be extended to cover other authorities would have to be considered having regard to whether there was such a need and the operational characteristics of the relevant authorities in the Mainland. The Administration pointed out that the authorities in the Mainland empowered to detain or arrest people were not confined to the Public Security authorities, the customs authorities and State security organs. Under the Mainland laws, there were also administrative regulations, usually approved by the State Council, which permitted the relevant authorities to detain people who were in breach of the administrative regulations.

7. The Panel was assured that the Administration attached great importance to each and every request for assistance from Hong Kong residents detained in the Mainland or from their family members. The Administration would expeditiously refer any requests or appeals from family members of the detained Hong Kong residents to the relevant Mainland authorities, closely monitor the development of each and every case and take further follow-up actions as and when necessary. The Administration would also take appropriate follow-up actions if the family members concerned approach the Government for assistance, even if the cases were outside the scope of the notification mechanism.

The proposed new identity card and its new computer supporting system

8. The Panel discussed the proposed new identity (ID) card to be introduced in early 2003. Some members expressed reservations about the need for the introduction of a smart ID card with multiple applications capacity. They were concerned that the right of individuals to preserve the privacy of

their personal data would be infringed if personal data not required for the purposes of Registration of Persons Ordinance were stored in the new ID card. They were particularly concerned about whether steps would be taken to prevent possible abuse of personal data by the Administration. They were also concerned about whether there would be sufficient security measures in place to protect the card holders' data privacy. They were of the view that the new ID card should be used for the Immigration Department's core business only. They also considered that the necessary legislative amendments should be introduced before seeking funding for the project.

9. Some other members, while expressing support for the proposed smart ID card, stressed that sufficient security measures should be put in place to protect the card holders' data privacy.

10. The Administration explained that with the exception of a driving licence, a card holder would have the choice of whether non-immigration related applications should be included in the new ID card. The Administration assured members that a package of measures would be adopted to protect data privacy. Only essential immigration-related data would be stored in the proposed smart ID card. More sensitive data would be kept at the back-end computer system. In the case of thumbprints, only the template would be stored in the smart card which could not be used to reconstruct the original thumbprint. The Administration also assured members that the Personal Data (Privacy) Ordinance applied to the Government and personal data would only be released according to the law. The Administration pointed out that there were precedents where funding was sought prior to the introduction of the legal framework, and the necessary legislative amendments would be introduced in parallel with the development of the new computer system.

Regulation of public meetings and public processions under the Public Order Ordinance

11. The Panel held a series of meetings to gauge public views on the regulation of public meetings and public processions under the Public Order Ordinance (POO) and also to discuss with the Administration the enforcement and review of the POO.

12. Some members and some deputations criticised that the existing legislation was too harsh. They considered that the requirement of giving seven days' notice was unnecessary and out of step with other modern societies. They were of the view that the Police power of prohibition and the system of notice of no objection denied the rights of the public to hold public processions or public meetings and contravene the Basic Law and the International Covenant on Civil and Political Rights.

13. Some members and deputations also criticised the heavy custodial penalty imposed on both the organiser and participants of an unauthorised

assembly. They urged that the notification period should be shortened, the system of notice of no objection should be abolished, and the penalty provisions should be amended so that failure to comply with the notification requirement would not be a criminal offence.

14. Some members and some deputations, on the other hand, considered that no amendment should be made to the POO. They were of the view that the seven days' notice requirement was reasonable and necessary to allow the Police to make the necessary preparation for such activities. They also considered that there was a need to strike a balance between safeguarding the right of an individual to demonstrate and protecting the interests of the community at large.

15. The Administration explained that the seven-day advance notice was necessary because the Police needed time to make preparation so as to ensure that the events were carried out in a peaceful and orderly manner and disruptions were kept to the minimum. The Administration informed members that some 6 500 public processions and meetings were held between 1 July 1997 and 31 August 2000. The Police only raised objections to two public processions and three public meetings, all for the reasons that the size, timing or location of the public procession or meeting would cause serious traffic congestion or hindrance of public order and safety. In the view of the Administration, the system of notice of no objection did not deny the rights of the public to hold public meetings and processions.

16. The Administration advised that the penalty provisions, which were enacted in 1967, reflected the consensus of the community at that time. So far, there had not been any suggestion that they should be amended until very recently. The Administration also advised that a person would not be prosecuted merely because of his failure to comply with the notification requirement. Only persons who knowingly participated in an unauthorised assembly without lawful authority or reasonable excuse would be guilty of an offence under the POO. In the view of the Administration, the criminal sanction was necessary and reasonable to uphold the integrity of the notification system.

Enforcement of the Societies Ordinance

17. In view of the remarks made by the Secretary for Security that the Government would keep a close watch on the activities of Falun Gong members, the Panel discussed the enforcement of the Societies Ordinance.

18. Some members queried the legal basis for Government to closely monitor the activities of Falun Gong members. Pointing out that the organisation of Falun Gong was outlawed in the Mainland and its activities banned, they queried whether Government was under pressure to keep in view the activities of Falun Gong members. They also questioned whether it was

within Government's jurisdiction to monitor people's thoughts and beliefs. In addition, they queried whether any high profile and well-organised group or association would be subject to close monitoring by Government, if its activities were spearheaded at the Central Government.

19. The Administration explained to members that the HKSAR was a free and open society where freedom of association and assembly was guaranteed under Article 27 of the Basic Law. Falun Gong members were expected to operate within the law and Government would deal with their activities in accordance with the law.

20. The Administration told members that Falun Dafa was not an ordinary organisation, but one which was very organised and well-financed. It had adopted a higher profile recently and its activities were spearheading at the Central Government. The Administration considered that the organisation was a heretical sect and had "superstitious" characteristics, and since the organisation had strong influence on its members, Falun Gong members might hurt themselves by blindly following irrational behaviour. Although the organisation had not committed any unlawful act, its activities had given rise to public concern. There was therefore a need for Government to keep a close eye on its activities to prevent any possible threat to public safety and public order.

21. The Panel was assured that under the principle of "one country, two systems", legislation and resolutions passed in the Mainland had no effect in Hong Kong. The HKSAR Government would act according to the laws of Hong Kong.

Police co-operation between the HKSAR and the Mainland and allegation of Mainland Public Security officials exercising jurisdiction in Hong Kong

22. Upon the Panel's request, the Administration briefed the Panel on the findings of an investigation by the Police of a case where it was alleged that Mainland Public Security officials had crossed the boundary to exercise jurisdiction in Hong Kong in 1995.

23. The Panel was informed that the Police had found that there was insufficient evidence to substantiate that any Mainland Public Security officials had exercised jurisdiction in Hong Kong. The Panel was assured that police co-operation between Hong Kong and the Mainland had been and would continue to be conducted in accordance with established procedures. Under no circumstances could police officers take enforcement actions on his own in the territory of another jurisdiction. The Panel was also informed that the Mainland authorities had reassured the HKSAR Government that they respected the jurisdiction of the HKSAR and strictly prohibited Mainland law enforcement personnel from coming to Hong Kong to undertake any law enforcement actions.

24. Some members expressed doubt about the findings of the Police on the allegation. They pointed out that the assurance of the Mainland authorities would become meaningless if the Police did not even take the initiative to thoroughly investigate into the allegation. The Panel urged the Government to further investigate into the allegation and submit a comprehensive investigation report to the Panel.

Paramedic ambulance service

25. One of major concern of the Panel was the provision of adequate paramedic ambulance service. The Panel noted that an independent consultant would be engaged to examine the implications and resource requirements for providing paramedic care on all ambulances and to develop a detailed implementation plan. Pointing out that there had been an upsurge in demand for paramedic ambulance service and a pressing need for providing adequate paramedic service, the Panel urged the Administration to expedite the proposed four-year timeframe to extend the paramedic ambulance service to all ambulances.

26. The Administration informed members that to achieve full provision of paramedic ambulance service, around 550 additional ambulance supervisors had to be trained and qualified as Emergency Medical Assistant II. In the Administration's initial assessment, it would take a minimum of three years to effect full provision of paramedic ambulance service on all ambulances, without compromising the efficiency and performance of emergency ambulance service. The Administration assured the Panel that it would consider how best the implementation period could be shortened in the light of the consultant's findings. In the interim, the Administration would continue to train up qualified ambulance supervisors and extend paramedic ambulance service to 80 ambulances and 20 motorcycles in day shift and 40 ambulances in night shift by the end of 2001.

Prison development plan

27. The Panel was briefed on the long-term prison development plan to address the current problems of archaic facilities and inadequate penal places and to meet the forecast growth in penal population. Members were generally concerned about the security of a large prison complex, and most members expressed reservations about the proposal of constructing a large prison complex for accommodating a penal population of 15 000. Members pointed out that a large prison complex might create difficulties in managing the complex. In the event of a riot, the situation might quickly become uncontrollable, thus resulting in a disaster. Moreover, the maintenance cost for such a complex would be very high.

28. Some members expressed concern that a large prison complex might

have an adverse psychological impact on inmates, especially young offenders and those convicted of minor offences. Some members also expressed doubt about the accuracy of the Administration's projection that some 3 800 additional penal places would need to be provided by 2024. Noting that some 25% of inmates were Mainland residents, they considered that there might be a substantial drop in the number of Mainland inmates when an agreement on the transfer of sentenced persons was reached with the Mainland. A member pointed out that according to the experience in the United States, more violent incidents were found in a large prison complex. The percentage of inmates who served sentence again within two years in the large prison complex was as high as 70%. Most members considered that four to five medium-sized penal complexes would provide flexibility in that construction could be adjusted or even stopped in accordance with changes in the demand for penal places. The Panel requested the Administration to consider the views of members in its long-term plan for prison development.

Security arrangements for the FORTUNE Global Forum and Police's strategy in maintaining public order in demonstrations

29. Some members criticised the Police for using excessive force in the handling and arrest of protesters during the incidents of confrontation between protesters and Police officers when the FORTUNE Global Forum was held in Hong Kong. They also criticised the Police for using stringent measures against protesters when there was no indication that the protesters would use violence. They considered that with the remote "demonstration areas", the rights of protesters to express their views freely were hampered. They also questioned whether the Administration was under pressure to refuse the entry applications from over 100 persons.

30. Some members shared the view of the Administration that tight security measures were necessary in order to ensure that the Forum proceeded smoothly, protect the personal safety of the participants, and facilitate protesters to conduct demonstrations peacefully and lawfully.

31. The Administration stressed that the Forum was assessed to be a high-risk event. The Police must provide a level of security that was commensurate with the perceived threat. The security arrangements were in line with international practice and essential to protecting the safety of the Forum participants.

32. In facilitating peaceful public meetings and processions, the Police sought to strike a balance between the rights of individuals to express their views freely and the need to ensure that no danger or undue inconvenience was caused to others. Although most demonstrations were held peacefully during the Forum, certain groups chose not to co-operate with the Police and deliberately refused to follow well-intended advice and lawful instructions. In the view of the Administration, the Police used the minimum force necessary to

achieve its objectives.

33. Regarding the refusal of entry of over 100 persons, the Administration explained that the Director of Immigration had wide discretion in determining immigration matters. In considering an application for entry into Hong Kong, the Director would have regard to, among other things, public interest. The Administration considered that the refusal of entry of these persons was in the interest of the public.

Other issues

34. The Panel had also discussed a wide range of other issues with the Administration. They included the progress of establishing an arrangement with the Mainland on surrender of fugitive offenders; improvement measures on procedures for handling suspected cases of forged travel documents; Report on the incident of YU Man-hon; the Admission of Mainland Professional Scheme; visa-free access to the European Union for HKSAR passport holders; management improvement measures for the Hei Ling Chau Addiction Treatment Centre; measures to ease passenger congestion at border control points; and the Report of the Inter-departmental Working Group on Computer Related Crime.

35. The Panel was also briefed on a number of legislative and financial proposals. They included proposed amendments to the Fire Services Ordinance and its subsidiary legislation; and proposed amendments to the Massage Establishments Ordinance.

36. Between October 2000 and June 2001, the Panel held a total of 23 meetings. The Panel also conducted four visits.

Council Business Division 2
Legislative Council Secretariat
15 June 2001

Legislative Council

Panel on Security

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to security, public order, public safety, corruption-related matters and nationality and immigration matters.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or as raised by the Panel itself.

**Legislative Council
Panel on Security**

Membership list

Chairman Hon LAU Kong-wah

Deputy Chairman Hon James TO Kun-sun

Members Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHEUNG Man-kwong
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon WONG Sing-chi
Hon IP Kwok-him, JP

(Total : 12 Members)

Clerk Mrs Sharon TONG LEE Yin-ping

Legal Adviser Mr Jimmy MA
Mr KAU Kin-wah

Date 10 October 2000