

立法會
Legislative Council

LC Paper No. CB(2) 2635/01-02

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by the Administration)

Ref : CB2/PL/SE/1

LegCo Panel on Security

Minutes of meeting
held on Thursday, 6 June 2002 at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon James TO Kun-sun (Chairman)
Hon LAU Kong-wah (Deputy Chairman)
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 IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP

Member absent : Hon WONG Yung-kan

Public Officers attending : Item IV
Miss Eliza YAU
Principal Assistant Secretary for Security E

Mr Victor LO
Chief Superintendent of Police (Crime)
Hong Kong Police Force

Item V

Mr Timothy TONG, JP
Deputy Secretary for Security 1

Miss Eliza YAU
Principal Assistant Secretary for Security E

Ms CHANG King-yiu, JP
Deputy Director of Administration 1
Administration Wing

Mr TANG King-shing
Director of Operations
Hong Kong Police Force

Mr LEE Wai-lam
Chief Superintendent of Police
Hong Kong Police Force

Item VI

Mr Michael WONG
Deputy Secretary for Security 3

Ms Linda SO
Principal Assistant Secretary for Security C

Mr K C CHOW
Assistant Director of Immigration

Mr Wesley WONG
Senior Government Counsel

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

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Matters arising

(LC Paper No. CB(2) 2096/01-02(01))

List of follow-up actions required of the Administration

Members noted the list of follow-up actions required of the Administration.

II. Date of next meeting and items for discussion

(LC Paper No. CB(2) 2096/01-02(02))

2. Members agreed to discuss the following items at the next regular meeting to be held on Thursday, 4 July 2002 at 2:30 pm -

- (a) The proposed Independent Police Complaints Council Bill : briefing on results of public consultation;
- (b) Hong Kong Special Administrative Region Identity Card Project - Second Privacy Impact Assessment Report and update on non-immigration applications for incorporation into the smart identity card; and
- (c) Co-location of immigration and customs facilities at boundary control points.

Follow-up to special meeting on 10 May 2002

3. The Chairman said that at the special meeting held on 10 May 2002 to discuss issues relating to the incident on 25 April 2002 where Police took action to stop the public meeting being staged in Chater Garden and media reporters were handcuffed, some Members suggested that a Panel meeting should be held to receive the views of the public on the subject. He invited members' views on the suggestion. Members agreed that the suggested meeting would not be held.

Follow-up to special meeting on 24 May 2002

4. The Chairman said that issues arising from the public statements made by the Police and the Independent Commission Against Corruption (ICAC) over the recent arrest of three Police officers by the ICAC were discussed at the special meeting on 24 May 2002. At the meeting, discussions on individual cases which were not yet concluded were stopped in view that it was inappropriate to discuss the cases at an open meeting. He invited members' views on whether the matter should be followed up.

5. Miss Margaret NG declared that she was a member of the Operations Review

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Committee of the ICAC. She said that the Police's statement that the ICAC should not issue statements carrying unconfirmed allegations was a serious accusation, causing the public to question the power of the ICAC. She considered that the matter should be followed up by the Panel and at an open meeting.

6. The Deputy Chairman stated that while the matter should be followed up, it was not an appropriate time to discuss the case concerned because it was still under development. He said that the Panel might consider discussing the guidelines on the release of news information by law enforcement agencies and the views of the Department of Justice (D of J) on the guidelines.

7. While expressing support for discussing the matter, Mrs Selina CHOW said that it was not an appropriate time to discuss the case concerned because it was under development. She added that as reference would inevitably be made in the discussion to the cases concerned, it was more appropriate for the discussion to be held at a closed meeting.

8. While expressing reservation about holding closed meetings, Ms Audrey EU said that it was inappropriate to discuss any case under development. She considered that the guidelines on the release of news information by law enforcement agencies should be followed up.

9. Mr IP Kwok-him considered that the Panel should avoid holding closed meetings as far as possible. He added that it was inappropriate for the Panel to discuss cases which might be brought before the court. Mr Ambrose LAU shared the view that it was inappropriate to discuss cases which might be brought before the court.

10. The Chairman concluded that as there was not a consensus view among members, no meeting would be held on the matter for the time being. Members agreed that the Administration should be requested to provide the following information on the release of news information by law enforcement agencies -

- (a) The guidelines adopted by various law enforcement agencies and the ICAC on the release of news information; and
- (b) The progress of any recent review on the release of news information by law enforcement agencies and the ICAC, and the advice, if any, provided by D of J.

Establishment of Tseung Kwan O Police District

11. Members noted that the subject of "Establishment of Tseung Kwan O Police District" was discussed at a meeting between Legislative Council Members and Sai Kung District Council members on 14 March 2002 and referred to the Panel for follow-up. Members noted that the subject had been included in the list of issues to

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be considered by the Panel at the request of the Deputy Chairman.

III. Draft report of the Panel on Security for submission to the Legislative Council

(LC Paper No. CB(2) 2096/01-02(03))

12. Members endorsed the Panel's draft report which gave an account of the work of the Panel during the 2001-02 legislative session. Members also agreed that the report would be revised to incorporate major issues discussed at this meeting. They noted that the report would be tabled at the Legislative Council meeting on 3 July 2002.

IV. Review of the Police's Video Interview Scheme

(LC Paper Nos. CB(2) 2083/01-02(01) and CB(2) 2096/01-02(04))

13. At the invitation of the Chairman, Principal Assistant Secretary for Security E and Chief Superintendent of Police (Crime) (CSP(C)) briefed members on the result of the Police's review of the Video Interview Scheme, as detailed in the paper provided by the Administration. CSP(C) informed members of the following -

- (a) The number of suspects on whom video-recorded interviews were conducted had increased from 1 677 persons in 1999 to 2 763 persons in 2001, representing an increase of 64%;
- (b) To cope with the increase in the number of video-recorded interviews, the number of Police officers trained in conducting video-recorded interviews had increased from 260 in 1999 to more than 4 200 in 2001, representing nearly 100% of detective personnel who were required to deal with suspect interview in the Police. The Police had also incorporated such training into the standard training course for detective personnel; and
- (c) A survey conducted in 1996-97 revealed that among video-recorded interviews where the suspect concerned admitted to the charges, 32% were challenged in court in 1996. The percentage decreased to 26% in 1997, 26% in 1999 and 15% in 2000.

14. Ms Audrey EU asked about the average waiting time and maximum waiting time before a video-recorded interview was conducted on a suspect. She also asked whether video-recorded interviews had been conducted on all cases expected to be tried in a District Court or the Court of First Instance. Referring to paragraph 12 of the Administration's paper, she asked about the reasons for the court's rejection of some video recordings. She added that the Administration should provide statistics on cases where interviews with suspects were not video-recorded to facilitate

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comparison between video-recorded interviews and non-video recorded interviews.

15. CSP(C) responded that he did not have information on the average waiting time for suspects awaiting video-recorded interviews. However, the waiting time usually varied from one case to another. Regarding the survey referred to in paragraph 12 of the Administration's paper, he informed members that the survey was conducted on 650 Police officers involved in conducting video-recorded interviews. It could be noted that among more than 1 200 video-recorded interviews conducted by these Police officers in 1999, there were 392 interviews where the suspects admitted to the charges, among which 290 video recorded interviews were admitted by the court without challenge. In 2000, there were 381 interviews where the suspects admitted to the charges, among which 325 video-recorded interviews were admitted by the court without challenge. However, non-video recorded interviews were not studied in the survey.

16. CSP(C) further informed members that the survey conducted by the Administration in 1996-97 in respect of non-video recorded interviews revealed that there were 909 interviews in 1996 where the arrested persons admitted to the charges. Among these, 545 interviews or 60% were challenged by the defendants and 421 were admitted after challenge. In 1997, there were 1 111 interviews where the arrested persons admitted to the charges. Among these, 611 interviews or 55% were challenged by the defendants and 452 were admitted after challenge.

17. In response to Mrs Selina CHOW's question about the new criteria for conducting video-recorded interviews, CSP(C) explained that under the existing criteria, video-recorded interviews were conducted in serious cases where the venue of trial might reasonably be expected to be either District Court or the Court of First Instance. Under the new criteria, video-recorded interviews would be extended to cases reasonably expected to be tried in magistracies under the circumstances set out in Annex A to the Administration's paper.

18. Mrs Selina CHOW asked whether the number of video-recorded interviews referred to in paragraph 10 of the Administration's paper covered all cases satisfying the existing criteria. She enquired about the respective percentage of cases where interviews were video-recorded and non-video recorded at the request of the suspect. She also asked about the anticipated increase in the number of video-recorded interviews resulting from the implementation of the new criteria and how the discretion under the new criteria would be exercised.

19. CSP(C) responded that the number of video-recorded interviews referred to in paragraph 10 of the Administration's paper covered all cases satisfying the existing criteria. He explained that under the existing criteria, video-recorded interviews would be conducted in cases where the venue of trial might reasonably be expected to be either District Court or Court of First Instance. Under the new criteria, video-recorded interviews would be extended to cases reasonably expected to be tried in magistracies. An interview would be video-recorded at the request of the suspect, but

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not video-recorded if the suspect so requested. While the number of video-recorded interviews was expected to increase with the implementation of the new criteria, it was difficult to estimate the increase in the number of video-recorded interviews. In exercising the discretion under the new criteria, one of the considerations was whether the video recording of an interview would assist in the prosecution of the suspect.

20. Mr Ambrose LAU asked about the Police's plan in respect of the wider use of video-recorded interviews, and whether additional manpower and facilities would be needed for the implementation of the new criteria.

21. CSP(C) responded that there had been wider use of video-recorded interviews since 1999 and the Police intended to relax the criteria for conducting video-recorded interviews. He said that the number of trained officers and video-interview rooms (VIRs) had been increased since 1999 and the existing manpower and facilities were sufficient for implementing the new criteria.

22. The Deputy Chairman said that while the Administration had stated in its paper for the Panel meeting on 21 July 1999 that the Judiciary, D of J, The Law Society of Hong Kong (the Law Society) and the Hong Kong Bar Association (the Bar Association) would be consulted on the wider use of video-recorded interviews, the Administration had only mentioned in its paper for this meeting that the courts and D of J were generally in support of the VIR scheme. He asked whether the Law Society and the Bar Association had been consulted on the wider use of video-recorded interviews.

23. CSP(C) responded that the Law Society and the Bar Association were being consulted and their replies were awaited. He added that the Police, the Law Society, the Bar Association and the D of J were represented in the Criminal Court User Committee, which had recently discussed the subject of transcription of video recordings.

24. The Deputy Chairman asked about the measures in place to inform a suspect of his or her right to request video recording an interview. CSP(C) responded that the Police intended to make it a standard procedure to ask a suspect whether he or she requested the interview to be video-recorded.

25. Dr LUI Ming-wah said that it could be noted from the statistics in paragraph 10 of the Administration's paper that a VIR was on average utilised less than once per day. This reflected that Police officers were reluctant to conduct video-recorded interviews. He considered that video-recorded interviews should be conducted for all persons arrested for crimes.

26. CSP(C) responded that Police officers were not reluctant to conduct video-recorded interviews. He said that it might not be appropriate to assess the usage of VIRs with an average utilisation rate because the distribution of arrested persons was uneven both in terms of the time of arrest and the number of persons arrested at one

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time. Although more than 95% of the detective personnel who were required to deal with suspect interview had received relevant training in conducting video-recorded interviews, extending such interviews to all persons arrested for crimes might necessitate the movement of suspects from one Police station to another where the VIR was not in use. This would result in prolonged detention of suspects pending the availability of VIRs and a reduction in the number of Police officers deployed on the streets. He added that 65% of video-recorded interviews were not presented before the court and therefore resources were wasted. Dr LUI Ming-wah said that whether an interview should be video-recorded should not be based on whether the video recording would be used in the prosecution process.

27. Referring to paragraph 10 of the Administration's paper, Miss Margaret NG asked about the number of interviews conducted without video recording in 1999, 2000 and 2001. She also asked whether a video-recorded interview was conducted when a suspect admitted to the charge.

28. CSP(C) responded that no study was made on the number of interviews conducted without video recording in 1999, 2000 and 2001. However, a survey conducted in 1996-97 indicated that there were 193 video-recorded interviews and 1576 non-video recorded interviews in 1996, and 320 video-recorded interviews and 1760 non-video recorded interviews in 1997. He added that an interview was video-recorded if the existing criteria in Annex A to the Administration's paper were satisfied.

29. Miss Margaret NG requested the Administration to provide more information to facilitate members' comparison of video-recorded and non-video recorded interviews. The Chairman requested the Administration to provide all relevant information available to facilitate a comparison by the Research and Library Services Division of the Legislative Council Secretariat. He also suggested that members could forward any further questions on the subject in writing to the Secretariat for onward submission to the Administration.

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V. Issues relating to Designated Public Activity Areas (LC Paper Nos. CB(2) 2096/01-02(05) and (06))

30. At the invitation of the Chairman, Deputy Secretary for Security 1 (DS for S1) briefed members on the Administration's paper on issues relating to Designated Public Activity Areas (DPAAs).

31. Mr Howard YOUNG asked whether the number of participants of a public meeting was a key factor in the determination of whether to allow a public meeting outside the Main Wing of the Central Government Offices (CGO). He also asked whether the Administration would have regard to the decision of the Appeal Board on Public Meetings and Processions (the Appeal Board) as referred to in paragraph 8 of the Administration's paper and allow similar public meetings to be held outside the

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Main Wing of the CGO in the future.

32. DS for S1 responded that the number of participants was one of the many factors considered in deciding whether to allow a public meeting to be held outside the Main Wing of CGO. All notifications for public meetings outside CGO were considered on a case-by-case basis having regard to the circumstances and threat assessment, including the nature and objectives of the activity, the sentiments and number of participants, the proposed time and location, and similar activities in the vicinity. He said that even where the number of participants was small, a public meeting could be disallowed if the circumstances and track record of participants indicated a threat to public safety. He added that the difference in the Appeal Board's recent rulings on two apparently similar appeals indicated that each case had to be examined having regard to the circumstances.

33. Mr Albert HO said that the decision of the Appeal Board on 21 May 2002 indicated that it did not consider the threat of the public meeting-cum-procession on 26 May 2002 to be as high as that assessed by the Police. He added that past records did not indicate that right of abode (ROA) claimants would pose any threat to public safety. He said that no public meeting had been allowed outside the Main Wing of CGO since the judgment delivered by the Court of Final Appeal (CFA) on 10 January 2002. He asked whether the Administration would, in view of the decision of the Appeal Board on 21 May 2002, examine future notifications for holding public meetings outside the Main Wing of CGO on a case-by-case basis and allow the holding of such public meetings as far as possible.

34. DS for S1 responded that all notifications for public meetings had been and would continue to be considered on a case-by-case basis, having regard to the factors referred to in paragraph 32 above, the prevailing threat assessment and the Appeal Board's recent rulings. He added that under section 11 of the Public Order Ordinance (Cap. 245), conditions could be imposed by the Commissioner of Police on any public meeting where he considered it necessary in the interests of national security, public safety, public order (*ordre public*) or the protection of the rights and freedoms of others. He said that the Administration Wing and the Police would continue to monitor the situation closely and review the security arrangement outside the CGO regularly. He informed members that most participants were satisfied with the designation of the parking space between the West Gate of CGO and the CFA as a DPAA.

35. In response to Ms Audrey EU's question about the interim measure referred to in paragraph 5 of the Administration's paper, DS for S1 said that following the judgment delivered by the CFA on 10 January 2002, security at the Government Secretariat was enhanced in view of the concern that some ROA claimants might mix into the participants of a public meeting and slip into the Government Secretariat. Where assessment revealed such a threat, a public meeting outside the Main Wing of CGO would unlikely be allowed.

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36. Ms Audrey EU said that if all notifications for public meetings were considered on a case-by-case basis, there should in fact be no interim measure. The Chairman said that the measure was interim in the sense that it might be no longer necessary if the review referred to in paragraph 7 of the Administration's paper indicated that the ROA issue was over.

(As the Chairman was engaged in some urgent business, the Deputy Chairman took the chair from 4:15 pm onwards.)

VI. Issues relating to the judgment of the Court of Final Appeal delivered on 10 January 2002 in respect of appeal cases concerning the right of abode in the Hong Kong Special Administrative Region
(LC Paper Nos. CB(2) 2096/01-02(07) and (08))

37. At the invitation of the Deputy Chairman, Deputy Secretary for Security 3 (DS for S3) briefed members on the latest developments in respect of issues relating to the judgment of the CFA delivered on 10 January 2002 in respect of appeal cases concerning ROA in the Hong Kong Special Administrative Region (HKSAR). He informed members that -

- (a) Between 1 April and 5 June 2002, 555 ROA claimants had been repatriated;
- (b) The number of ROA claimants repatriated had increased from a daily average of four claimants in the first four weeks of April to the current daily average of 13 claimants. The maximum number of claimants repatriated on a day was 28; and
- (c) Among some 4 100 ROA claimants still remaining in Hong Kong, only about 1 600 were involved in litigation. Apart from ROA claimants allowed to stay in Hong Kong under the discretion exercised by the Director of Immigration (D of Imm) under the Immigration Ordinance (Cap. 115) (IO), all ROA claimants with no right to remain in Hong Kong should return to the Mainland.

38. Mr Albert HO asked about the number of ROA claimants who had been allowed to stay in Hong Kong under the discretion exercised by D of Imm under IO. DS for S3 responded that since the beginning of the year, D of Imm had exercised his discretion under IO to allow 57 Mainland residents to stay in Hong Kong on compassionate grounds, among whom seven were ROA claimants. He stressed that studying or receiving medical treatment in Hong Kong did not on their own constitute sufficient grounds for D of Imm to exercise his discretion.

39. Mr Albert HO hoped that minimum force would be used in the repatriation of

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ROA claimants with no right to remain in Hong Kong and minimum disturbance would be caused to their family members. He asked whether there had been use of force in the repatriation of ROA claimants.

40. DS for S3 responded that among three house arrest operations conducted by the Immigration Department (ImmD) with the support of the Police, officers of ImmD had entered 55 residential premises and apprehended illegal immigrants and overstayers. During the first two house arrest operations, the officers had to break into two residential premises as the persons inside refused to open their doors despite repeated persuasion. However, there was no vigorous resistance after the officers entered the premises and hence there was no need to use handcuffs during the arrests. He added that there was no need to break into any residential premises in the third house arrest operation. Assistant Director of Immigration (AD of Imm) added that unnecessary force would not be used in the repatriation of illegal immigrants and overstayers.

41. Mr Albert HO said that there were recent reports that a Mainland child studying in Hong Kong was repatriated. He asked why the student was not allowed to continue his studies in Hong Kong until the end of the school term.

42. DS for S3 responded that the claimant concerned was not under the age of 18, but aged 20. When requested by officers of ImmD to return to the Mainland, the claimant had not made any request for deferring repatriation until the end of the school term. He informed members that as claimants without ROA in Hong Kong were repatriated by batches, it was very unlikely that ROA claimant aged under 18 would be repatriated before the end of the school term.

43. Mr Albert HO said that there were also reports that an elderly ROA claimant who was repatriated was not allowed to change his clothes before leaving his residence. AD of Imm responded that he did not have information on hand about individual cases. However, sufficient time was generally allowed for a claimant to gather his or her clothes and belongings before leaving. However, there were some claimants who deliberately delayed repatriation by various means. The Deputy Chairman requested the Administration to provide information on the case after the meeting.

(Post-meeting note : The Immigration Department has made inquiries about the allegation. According to record, three rounds of operations were conducted prior to the meeting. A total of 26 ROA claimants were arrested. They were aged between 21 and 42. All were given time to change their clothes or to collect their belongings before leaving their residence. The reports referred to were unsubstantiated.)

44. Ms Audrey EU expressed appreciation that D of Imm had exercised his discretion under IO to allow a number of children adopted in the Mainland to stay in Hong Kong. Regarding the 311 cases as referred to in paragraph 3 of the Administration's paper, she asked why the cases had taken a long time to process.

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She also asked about the time when the processing of the cases was expected to be completed.

45. DS for S3 responded that the 311 cases referred to in paragraph 3 of the Administration's paper were those where the Government and the applicants' solicitors could not reach a consensus on the draft of formal orders to be submitted for the CFA's approval. To his knowledge, CFA would seek to settle the cases on paper. CFA intended to hold hearings on cases which could not be settled on paper in July 2002. Among the 150 appeal cases which were allowed by the CFA, ImmD was verifying the information for the cases concerned and had issued identity cards to about 40 persons. He said that although CFA had delivered its judgment in respect of appeal cases concerning ROA on 10 January 2002, the decisions in respect of these cases were made between 25 March and 27 April 2002. ImmD would expedite the verification of information for the remaining cases.

46. Referring to paragraph 6 of the Administration's paper, Ms Audrey EU asked about the age distribution of Mainland children who were still remaining in Hong Kong. She expressed concern whether there were cases where the applications became invalid when the children concerned passed the age limit of 18.

47. DS for S3 responded that 287 ROA claimants under 18 were still remaining in Hong Kong, among whom 165 were 10 years of age or below and 122 were aged between 11 and under 18. He added that the Mainland authorities had recently confirmed that for eligible Mainland children who had submitted applications under the One-way Permit scheme, their applications would remain valid even when they passed the age of 18. In response to Mr Andrew WONG's question about whether the new measure would be applicable to new applications only, DS for S3 said that the measure did not have any retrospective effect. He undertook to provide a written response after the meeting.

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48. The meeting ended at 4:35 pm.