

立法會
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LC Paper No. CB(2) 2996/02-03

(These minutes have been seen
by the Administration)

Panel on Security

**Minutes of meeting held on Thursday, 8 July 2003
at 2:30 pm in Conference Room A of the Legislative Council Building**

Members present : Hon LAU Kong-wah, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Howard YOUNG, SBS, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Michael MAK Kwok-fung
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon CHEUNG Man-kwong
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan

Public Officers attending : Items IV and V

Ms Linda K P SO
Principal Assistant Secretary for Security

Mr C T IP
Assistant Secretary for Security

Mr TSOI Hon-kuen
Assistant Director (Personal Documentation)
Immigration Department

Mr SHAM Hi-keung
Principal Immigration Officer (Documents)
Immigration Department

Item VI

Mr David WONG
Deputy Secretary for Security (Acting)

Mr Samson CHAN
Assistant Commissioner (Rehabilitation)
Correctional Services Department

Mr CHEUNG Hing-wah
Assistant Director (Youth and Corrections)
Social Welfare Department

Attendance : Society of Community Organization
by invitation

Mr NG Wai-tung
Community Organizer

Mr CHAN Wai-lun
Placement Worker

Mr YIU Ting-hong
Community Organizer

Six Ex-offenders

The Society of Rehabilitation and Crime Prevention, Hong Kong

Mr Simon CHAN Fu-sai
Rehabilitation Services Officer

Mr Andy NG Wang-tsang
Support Services Officer

Mr Sam TO Kwok-sum
Employment Development Officer

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

Staff in : Mrs Eleanor CHOW
attendance : Senior Assistant Secretary (2) 4

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I. Confirmation of minutes of previous meeting and matters arising
(LC Paper No. CB(2)2676/02-03)

The minutes of the meeting held on 5 June 2003 were confirmed.

II. Information paper issued since the last meeting
(LC Paper Nos. CB(2)2410/02-03(01) and CB(2)2596/02-03(01))

2. Members noted the paper provided by the Administration on the "Proposed deletion of six posts of Chief Superintendent of Police in the Hong Kong Police Force" (LC Paper No. CB(2)2410/02-03(01)).

3. Referring to the complaint case lodged by a Mr LAU in LC Paper No. CB(2)2596/02-03(01), Ms Audrey EU expressed concern about the general practice adopted by the Police in treating children who were temporarily detained in a police station. In her view, there should be guidelines to protect the rights of children under detention, such as the provision of food during detention. As the Police had advised that there was no such guideline, she invited members' views on how to take the matter forward. After discussion, members agreed that the Administration should be requested to provide -

- (a) information on the arrangements adopted by the Police for handling children under temporary detention; and
- (b) a brief account on the handling of Mr LAU's children, the problems identified in the case and how to rectify the problems to prevent recurrence.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)2677/02-03(01) and (02))

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

5. Members agreed that no further meetings would be held in the current session.

6. Mr James TO said that some serious crimes such as burglary, kidnap and homicide were committed in Hong Kong but the trials took place in the Mainland. As this involved the question of judicial jurisdiction and the collection of evidence by the Hong Kong and Mainland law enforcement authorities, he proposed that the item be included in the list of outstanding issue and discussed at a future joint meeting with the Panel on Administration of Justice and Legal Services.

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IV. Operational arrangements in respect of loss of permanent resident status under paragraph 7 of Schedule 1 to the Immigration Ordinance
(LC Paper No. CB(2)2677/02-03(03))

7. Members noted that paragraph 7 of Schedule 1 to the Immigration Ordinance (Cap. 115) (IO) provided that a permanent resident falling within paragraph 2(d) or (e) of Schedule 1 lost his permanent resident status if he had been absent from Hong Kong for a continuous period of not less than 36 months since he had ceased to have ordinarily resided in Hong Kong; and that a permanent resident falling within paragraph 2(f) lost his permanent resident status if he had been absent from Hong Kong for a continuous period of not less than 36 months after he had obtained the right of abode in any place other than Hong Kong and had ceased to have ordinarily resided in Hong Kong.

8. Principal Assistant Secretary for Security (PAS for S) briefed members on the operational arrangements on verification of Hong Kong permanent resident status as set out in the paper. She made it clear that the Government did not conduct regular checks on which and how many permanent residents might have lost their permanent resident status under the conditions specified in paragraph 7 of Schedule 1 to IO. Such a check would only take place when a situation arose which obliged the Administration to verify a person's permanent resident status, such as when a person applied for a facility and the person's permanent resident status was relevant to the determination of that application.

9. Miss Margaret NG asked whether the Government would verify the permanent resident status of individuals during the identity (ID) card replacement exercise. Assistant Director (Personal Documentation) Immigration Department (AD/ImmD) replied in the negative. He explained that the ID card replacement exercise involved the exchange of the existing ID card with the new smart ID card only. The Immigration Department (ImmD) would verify the information contained in the ID card against those in the database to ensure consistency. As specified in the application form, applicants for new ID card were required to report any change of identity status to ImmD. ImmD would not initiate any checking on the permanent resident status of a person unless the situation warranted.

10. Miss Margaret NG pointed out that the general public might not fully understand the concept of "ordinarily resided" as specified in paragraph 7 of Schedule 1 to IO. A person seeking clarification from ImmD might find that his permanent resident status had in fact changed but he had not reported it to the Government. Miss NG enquired whether the person concerned had committed an offence under the circumstance. AD/ImmD responded that a person who had doubts in his identity status should seek assistance from ImmD. Miss NG found it ironic that a person who sought clarification from ImmD might result in the loss of his permanent resident status while a person who took no action would continue to enjoy the permanent resident status, even though he should have lost it. The Chairman asked whether such a problem was encountered in the previous card replacement exercise. AD/ImmD replied that since the concept of right of abode was not yet in place in the ID card

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replacement exercise in 1987, such problem did not arise.

11. Mr James TO recalled that at a meeting of the Bills Committee on Chemical Weapons (Convention) Bill, members had asked whether a mechanism was in place to allow people to surrender their permanent resident status on a voluntarily basis, instead of through the conditions specified in paragraph 7 of Schedule 1 to IO. He pointed out that some people who were permanent residents of both Taiwan and Hong Kong might wish to give up their permanent resident status of Hong Kong for certain reasons. PAS for S affirmed that there was no mechanism for a person to choose whether or when to relinquish his permanent resident status under the law. Mr TO requested the Administration to reconsider the need for establishing such a mechanism.

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12. Pointing out that many civil servants had retired overseas, Mr James TO asked whether the Administration would verify their permanent resident status with a view to implementing changes to the policy relating to pension. He also asked how many cases were referred by other government departments to ImmD for status checking.

13. PAS for S said that pension policy was under the purview of the Civil Service Bureau (CSB). As far as the Security Bureau (SB) was concerned, it would provide assistance to government departments which had difficulty in understanding the definition of permanent resident. She was aware that to comply with the requirement of Article 99 of the Basic Law regarding public servants, CSB had issued an internal circular in 1998 advising government departments of the definition of permanent resident and other related matters.

14. AD/ImmD reiterated that the Administration would not take the initiative to check whether individual permanent residents of HKSAR had lost his permanent resident status unless a situation arose which obliged the Administration to verify a person's permanent status. An example was where a bureau or department needed to ascertain whether an applicant for a civil service post was a Hong Kong permanent resident. Since 2001, there were only eight referral cases from other government departments and the majority were related to recruitment of civil servants.

15. Miss Margaret NG said that the status of a permanent resident was not too permanent given that he would lose his status under the conditions specified in paragraph 7 of Schedule 1 to IO. She asked how many former permanent resident had re-applied for permanent resident status after they had ordinarily resided in Hong Kong for another seven years. AD/ImmD responded that there was no such application so far. He pointed out that a former permanent resident who had lost that status under Schedule 1 still had the right to land, to work and to stay in Hong Kong. In this connection, his life was not much affected as a result of the change of status.

16. Miss Margaret NG expressed concern that a person losing his permanent resident status might be deprived of certain entitlements and rights. PAS for S said that the eligibility of many public welfare and services such as Comprehensive Social Security Assistance (CSSA), education, was based on requirements on length of residence in Hong Kong rather than the permanent resident status. At the request of

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Miss NG, PAS for S undertook to provide a list of entitlements and rights which would be affected should a person lose his permanent resident status.

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17. Noting that Article 101 of the Basic Law provided that the Government of the HKSAR might employ British and other foreign nationals previously serving in the public service in Hong Kong, or those holding permanent identity cards of the HKSAR, to serve as public servants in government departments at all levels, Mr James TO enquired about the definition of "previously serving in the public service". Mr TO also asked whether a former civil service servant who emigrated overseas fell under that category. PAS for S undertook to seek clarification from CSB.

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V. Issues relating to Hong Kong residents detained in the Mainland
(LC Paper Nos. CB(2)2677/02-03(04)& (05))

18. The Chairman said that the Society for Community Organization (SOCO) had referred a case to this Panel concerning the detention of a Hong Kong resident in the Mainland, which was tabled at the meeting. PAS for S said that to respect the privacy rights of the detainee and the family concerned, it was not appropriate to discuss individual cases at an open meeting. At the request of the Chairman, the Administration undertook to follow up the case and inform the Panel of the progress.

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(Post-meeting note : SOCO's letter was issued to members on 9 July 2003 vide LC Paper No. CB(2) 2808/02-03. The Administration's response to the case was issued to members on 21 July 2003 vide LC Paper No. CB(2)2874/02-03.)

19. At the invitation of the Chairman, PAS for S briefed members on the arrangements for visiting Hong Kong residents released on bail pending trial and receiving treatment in hospitals in the Mainland, and on the response rate to enquiries relating to request for assistance cases as set out in LC Paper No. CB(2)2677/02-03(04).

20. Mr James TO said that the Administration, having handled so many cases involving Hong Kong residents being detained in the Mainland, should have acquired and developed certain skills to ensure high and prompt response made by the Mainland authorities to enquires in relation to such cases. He asked about the strategies adopted so that Hong Kong residents could be rest assured that the Administration was providing reasonable and effective assistance to detainees and their families.

21. PAS for S said that the Administration attached great importance to each and every request for assistance from the detainees or their families. The Administration had been taking proactive follow-up actions and was in close liaison with the relevant Mainland authorities in this respect through the Beijing Office. The usual procedures adopted were as follows -

- (a) upon receipt of a request for assistance from a detainee or his family, ImmD would interview the family members to get a thorough

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understanding of their concern and the nature of the case concerned;

- (b) any request or appeal from the detainee or his family would be referred to the relevant Mainland authorities and where necessary, the Government would escalate the case to higher authorities, say, from local to provincial level;
- (c) the Beijing Office would take appropriate follow-up actions where necessary to keep track of the response of the relevant Mainland authorities;
- (d) the detainee and his family would be kept informed of the latest information received from the Mainland authorities. Further referrals would be made to the Mainland authorities if necessary; and
- (e) SB would oversee and closely monitor the progress on the referrals made to the Mainland authorities until the case was closed.

22. PAS for S said that the response from the Mainland authorities had showed improvement after the reciprocal notification mechanism between the Mainland and the Hong Kong Police Force commenced operation in 2001. Between 1 July 1997 and 15 June 2003, the Mainland authorities had responded to 40% of the cases referred. Among these, 70% were received after the implementation of the reciprocal notification mechanism. The response rate for the first six months of 2003 was 76%.

23. Mr James TO expressed concern about cases with no response from the Mainland. Although the HKSAR Government should not interfere with the jurisdiction of the Mainland authorities, he opined that it should at least show concern about these cases. In this connection, Mr TO asked whether the Administration would consider resolving these cases through higher level contacts.

24. PAS for S stressed that it was important to resolve problems through the existing established mechanism to ensure a fair and consistent approach was adopted to deal with all cases of detention. She assured members that both the Beijing Office and SB would continue pursuing no response cases and where situation warranted, SB would raise the matter with the Mainland authorities concerned through the established mechanism.

25. The Chairman asked how the response rate was calculated and about the criteria for closing a file. PAS for S explained that acknowledgement of receipt of a referral case did not amount to a response from the Mainland authorities. A response from the Mainland authorities must contain material information relevant to enquiry on the case. In principle, a file would be closed if the Mainland authorities had provided answers to the questions raised and the detainee and the family concerned were satisfied with the answers. A case would remain open if the family concerned required further assistance from the Administration. Between 1 July 1997 and 15 June 2003, requests for assistance involving 415 Hong Kong residents had been

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received by the Administration. Among these, 193 of the residents had returned to Hong Kong, while some requests had been withdrawn. 204 requests involving 207 Hong Kong residents remained outstanding.

26. Mr Albert HO said that the reciprocal notification mechanism had proved to be effective in that the families concerned were better informed of the situation of the detainees. He noted that the reciprocal notification mechanism was operated on the basis of mutual respect for the laws of both parties. Mr HO enquired whether the Administration would take any follow-up action, in the event that the Administration had detected some irregular practices by the Mainland authorities, for instance, if it was suspected that a civil dispute was prosecuted as a criminal offence by the Mainland authorities, or no charges had been instituted against a Hong Kong resident but he was put under surveillance for several months.

27. PAS for S reiterated that upon the receipt of a request for assistance from the detainee or his family, the Administration would interview the family members to get a thorough understanding of the case. Where necessary, ImmD would provide information on ordinances pertaining to the offence, and contact address and telephone number of law societies in the Mainland as published in 《全國律協、各省、自治區、直轄市等律師協會通訊錄》 to the family members concerned so that they could consider the need to seek legal advice. Where irregularities had been detected, the Administration would raise the concerns to the Mainland authorities, subject to the consent of the family members concerned. In their replies, the Mainland authorities would normally refer to the relevant provisions in the Mainland law to explain what had happened and why charges had been laid against the detainee.

28. Referring to paragraph 3 of the Administration's paper, Ms Audrey EU enquired about the definition of "appropriate and feasible assistance" offered to detainees and the demarcation under which the assistance rendered was regarded as "interference" with the jurisdiction of the Mainland authorities.

29. PAS for S explained that the HKSAR Government was very concerned about safeguarding the legal rights of Hong Kong residents being detained in the Mainland, but any assistance rendered to detainees and their families should not prejudice the "one country, two systems" principle. She cited for example a case of "appropriate and feasible assistance" rendered by the HKSAR Government. Some families concerned would like the Government to investigate into detention cases, particularly on whether a detainee had been charged unlawfully by the Mainland authorities. Nevertheless, the HKSAR Government should not interfere into the jurisdiction of the Mainland authorities, just as the Mainland authorities would not interfere into that of the HKSAR. In such cases, the HKSAR Government would relay the families' appeals and concerns to the Mainland authorities, and monitor progress of the cases closely.

30. Ms Audrey EU said that she was given to understand that detention cases referred by the Hong Kong deputies to the National People's Congress and representatives of Hong Kong members of the National Committee of the Chinese

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People's Political Consultative Conference would receive a quicker response from the Mainland authorities. She asked whether this was the case. PAS for S said that she was not in a position to comment on the response time of the referrals made by members of the two bodies. As far as notifications made by the Mainland authorities under the reciprocal notification mechanism were concerned, 57% and 76% of the cases were notified by the Mainland authorities within 14 working days in 2002 and 2003 respectively.

31. Mr James TO said that the Administration should have gained some valuable experience after handling over 400 requests of assistance. It might have even identified areas of improvement on the mechanism operated by the Mainland authorities. In this connection, he asked whether the Administration would relay to the Mainland authorities suggestions to improve their operation with a view to enhancing closer co-operation and relation between the two sides. PAS for S said that the principle behind the notification system was for the two sides to exchange information and to make enquiry on the agreed scope of notification while not interfering with each other's jurisdiction. In the course of making enquiries, the Administration would bring to the Mainland authorities' attention areas of concerns relevant to the cases.

32. Mr James TO asked whether the Administration would consider setting up legal aid through a non-government organization (NGO) for the purpose of providing legal assistance to a detainee in the Mainland who lacked financial means. PAS for S said that the matter was outside the purview of SB. As far as she knew, there was no plan to change the existing policy of providing legal aid to cases taking place in Hong Kong only. The concern raised by Mr TO involved financial matters. PAS for S added that the rights of a detainee were protected in accordance with the relevant laws in the Mainland. According to Government's understanding, if a detainee could not afford to hire a lawyer to defend him, the Mainland courts might designate a lawyer to provide legal aid to defend the detainee concerned. The Administration would also provide information on Mainland law societies to the family of the detainee if such assistance was required.

VI. Employment service support and financial assistance provided to adult rehabilitated offenders

(LC Paper No. CB(2)2677/02-03(06) - (08) and 2778/02-03(01))

33. The Chairman welcomed rehabilitated offenders, representatives of SOCO and the Society of Rehabilitation and Crime Prevention, Hong Kong (SRACP) to attend the meeting. SOCO and SRACP presented their views and proposals as set out in their papers (LC Paper Nos. 2677/02-03(07) & 2778/02-03(01), and 2677/02-03(08) respectively). The rehabilitated offenders present at the meeting gave their views as follows -

- (a) Ex-offenders were discriminated against when seeking employment. Even the job application form GF340 for civil service contained

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disclosure requirement which was discriminatory;

- (b) Those who had served long-term prison sentence found it particularly difficult to find a job. There was a need to help these rehabilitated offenders to re-integrate into the society;
- (c) A CSSA recipient with criminal records received only \$53 a day. He could not afford to enroll in training courses to enrich himself, nor was he able to pay for licence fees such as driving licence and construction industry safety training certificate (commonly known as green card) required of by the jobs concerned. The Administration should consider exempting him from these charges; and
- (d) The Government should spend more to develop useful courses for rehabilitated offenders rather than constructing a prison complex. Some training courses offered by the Correctional Services Department (CSD) did not help rehabilitated offenders find a job, for instance, the making of rubbish bins.

34. Deputy Secretary for Security (Acting) (DS for S), Assistant Commissioner (Rehabilitation) Correctional Services Department (AC/CSD) and Assistant Director (Youth and Corrections) Social Welfare Department (AD/SWD) responded to the views of SOCO as detailed in LC Paper No. CB(2) 2677/02-03(06). Their responses to the views of rehabilitated offenders were highlighted below -

- (a) Regarding possible discrimination faced by discharged prisoners, the Administration would continue with its sustained public education efforts to promote acceptance of rehabilitated offenders by the community at large as well as employers both in the public and private sectors;
- (b) The Government was an equal opportunity employer. CSB was now consulting government departments which used GF340 as the job application form with a view to examining the feasibility of deleting the disclosure requirement in the application form for civil service jobs. The Administration would report to the Panel the outcome of the consultation in due course;
- (c) Exempting licence and course fees were outside the purview of Social Welfare Department (SWD). However, SWD had recently secured \$200 million from the Lotteries Fund and the Hong Kong Jockey Club Charities Trust to commission NGOs to launch Intensive Employment Assistance Projects for four years. There were altogether 78 proposals which aimed to provide adequate services and intensive employment assistance to the employable CSSA recipients and those "near CSSA" customers from the socially disadvantaged groups (including rehabilitated offenders) to remove their work barriers, enhance their

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employability and go back to work;

- (d) There was a need for building a 7 220-place prison complex as persistent prison overcrowding and archaic facilities had presented CSD with many operational and security problems, including the lack of space and modern facilities for the provision of general and vocational counselling services and vocational training courses to inmates; and
- (e) The process of manufacturing a product sought to provide basic training to inmates to help them develop a good learning attitude and work habit. Through the training, they were exposed to different levels of work and hopefully, this would improve their prospects of re-employment upon release.

35. Mr James TO appreciated that in the past four years, the Administration had taken proactive measures to render assistance to rehabilitated offenders. He, however, was not satisfied with the responses given by the Administration in the paper. He pointed out that both SOCO and SRACP had expressed specific concerns and made specific proposals in their submissions, but the Administration had only responded with general answers. He opined that the Administration should at least explain its position on some of the issues. If certain proposals were considered infeasible, the Administration should state the reasons. At the request of the Chairman, the Administration undertook to provide specific answers in writing to the outstanding points raised by SOCO and SRACP.

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(Post-meeting note : The Administration clarified that it only received SRACP's submission (LC Paper No. CB(2) 2677/02-03(08)) in the morning of 8 July 2003 and SOCO's submission (LC Paper No. CB(2)2677/02-03(07)) on 4 July 2003. The Administration's paper (LC Paper No. CB(2)2677/02-03(06)) was in response to SOCO's 2003 survey report on employment of rehabilitated offenders (attached to LC Paper No. CB(2)2677/02-03(07)).

36. Mr Albert HO concurred with the deputations that building a prison complex was unwise and that the Administration should use the resources to enhance counselling and training to inmates instead. Among the measures to help inmates re-integrate into the society, none was more effective than the Government and employers taking the lead to employ rehabilitated offenders. He noted that some countries would initiate affirmative action programme to help inmates re-integrate into the society after release. In response, DS for S explained that as an employer, the Government upheld the principle of equal opportunity. In this connection, it would not discriminate against an ex-offender for a civil service job. It was always the practice of the Government to select the most suitable person for a job taking into account his qualification and experience. Factors such as sex, age, physical condition of a person were not a matter of concern.

37. Mr Albert HO clarified that he was not concerned about equal opportunity employment. He said that given that ex-offenders were in a disadvantaged position

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when seeking employment, the Administration should consider taking affirmative action such as allocating certain portion of jobs in the civil service to be filled by rehabilitated offenders. If rehabilitated offenders were not given job opportunities, they would have difficulty to re-integrate into the society. They would lose self-esteem and relapse into their previous way of living. Mr HO pointed out that this was a vicious circle and the Administration should take action to inhibit the chain reaction. He requested the Administration to consider his proposal and respond in writing.

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38. Mr Michael MAK urged that inmates should be given sufficient and appropriate training while in prison. He pointed out that some employers might doubt about the skills and ability of rehabilitated offenders and therefore rejected their job applications. In this connection, he asked whether the Administration had conducted any survey on employers to understand their concerns. Mr MAK also expressed concern that inmates who were imprisoned for a long period of time would be institutionalized and would lose their identity. They would lose self-confidence and found it difficult to re-integrate into the society. He urged that the prison environment be improved.

39. DS for S said that paragraphs 17 to 19 of LC Paper No. CB(2) 2677/02-03(06) set out the work and vocational training provided to prisoners by CSD. AC/CSD cited for example that CSD had worked closely with the Construction Industry Training Authority to develop courses to help inmates obtain skills accreditation. For the past three years, more than 100 inmates had obtained green cards before their release. AC/CSD also explained that given the overcrowding situation in prison, the effect of institutionalization on inmates was inevitable. Without an effective institutional system, it would be difficult to manage the inmates, let alone providing rehabilitating services. Nevertheless, CSD saw the need to make things more personal, to help inmates to adapt to their new life after release.

40. Mrs Salina CHOW asked about the number of ex-offenders who had become civil servants. DS for S said that he understood from CSB that the Government did not discriminate against ex-offenders when recruiting staff and therefore it did not keep statistics on the number of such persons hired. A representative of SOCO said that it was ironic that the Administration had a record on the number of handicaps employed as civil servants but was unable to provide figures on the number of civil servants who were ex-offenders. Members requested the Administration to provide a written reply.

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41. There being no other business, the meeting ended at 4:43 pm.