

立法會
Legislative Council

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LC Paper No. CB(2)956/03-04

(These minutes have been
seen by the Administration)

Panel on Security

**Minutes of meeting held on Thursday, 4 December 2003
at 2:30 pm in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHEUNG Man-kwong
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, 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

Member attending : Dr Hon LO Wing-lok, JP

Members absent : Hon WONG Yung-kan (Deputy Chairman)
Hon Margaret NG
Hon Andrew WONG Wang-fat, JP

Public Officers attending : Item IV

Mrs Margaret CHAN
Deputy Secretary for Security 1 (Acting)

Mr LO Yik-kee
Assistant Commissioner of Police (Crime)

Ms Angelina KWAN
Assistant Secretary for Security

Mr Wilson FOK
Chief Inspector of Police (Liaison Bureau)

Item V

Mrs Margaret CHAN
Deputy Secretary for Security 1 (Acting)

Mr LO Yik-kee
Assistant Commissioner of Police (Crime)

Ms Angelina KWAN
Assistant Secretary for Security

Mr Wilson FOK
Chief Inspector of Police (Liaison Bureau)

Item VI

Mrs Jennie CHOK
Deputy Secretary for Security 2

Mr Charles WONG
Principal Assistant Secretary for Security

Mr Dicky CHAN
Assistant Commissioner of Correctional Services
(Operations)

Mr Erick FUNG
Superintendent of Correctional Services
(Nursing and Health Services)
Correctional Services Department

Dr CHAN Wai-man
Assistant Director (Personal Health Services)

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

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Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Raymond LAM
Senior Assistant Secretary (2)5

I. Matters arising

(LC Paper No. CB(2)488/03-04(01))

1.1 Members noted that in response to members' request at the last meeting held on 13 November 2003, the Administration had provided a paper on the progress of discussion with the Mainland on the arrangements for transfer of sentenced persons.

II. Information papers issued since the last meeting

(LC Paper Nos. CB(2)365/03-04(01) and CB(2)449/03-04(01))

2. Members noted that the following information papers had been issued since the last meeting -

- (a) Preliminary Report on Government Flying Service Helicopter Accident; and
- (b) International Civil Aviation Organization Model Legislation on Unruly Passengers.

III. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)490/03-04(01) and (02))

3. Members agreed that the following items would be discussed at the next meeting to be held on 8 January 2004 at 2:30 pm -

- (a) Monitoring of Police officers associated with triad and undesirable elements and communication between the Police and the Independent Commission Against Corruption over allegations of corruption involving such elements; and
- (b) Establishment of Tseung Kwan O Police District

4. Members also agreed that a joint meeting would be held with the Panel on Health Services on 8 January 2004 from 4:30 pm to 5:30 pm to discuss the

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progress of implementation of recommendations made in the Report of the Special Task Group set up in relation to the death of an inmate in Siu Lam Psychiatric Centre in November 2001.

5. In addition, members agreed that the item on guidelines and procedures for disposal of computers in use by the Police would be deleted from the list of outstanding items for discussion.

IV. Trial in the Mainland of serious crimes committed in Hong Kong
(LC Paper Nos. CB(2)490/03-04(03), CB(2)2325/02-03(01) and CB(2)492/03-04(01))

6. At the invitation of the Chairman, Deputy Secretary for Security 1 (Acting) (DS for S1(Atg)) briefed Members on the Administration's paper relating to the trial in the Mainland of a diamond robbery case which occurred in Hong Kong on 17 July 2002.

7. The Chairman said that to his knowledge, there was a practice in the past that persons who had committed robberies in Hong Kong were, if arrested in the Mainland, returned to Hong Kong through an informal channel. He expressed concern that if suspects involved in a robbery which occurred in Hong Kong could be tried in the Mainland, any person could report a robbery in the Mainland. The Mainland court concerned could then try the case on the ground that the preparatory acts took place in the Mainland, sentence the convicted persons and confiscate the crime proceeds.

8. Mr Howard YOUNG asked whether the Hong Kong residents who were tried in the Mainland in the diamond robbery case were persons wanted by the Hong Kong Police.

9. Assistant Commissioner of Police (Crime) (ACP(C)) responded that before notification by the Mainland, the Police was not aware that four Hong Kong residents were involved in the diamond robbery case. Thus, the Police had not applied for warrants of arrest in respect of these persons.

10. Mr Howard YOUNG asked whether the Mainland side had notified the Hong Kong side about the arrest of the four Hong Kong residents in accordance with the established notification mechanism.

11. ACP(C) responded that the Mainland side had notified the Hong Kong Police of the arrest of one of the four Hong Kong residents. He added that since the Police had sought the assistance of the Mainland authorities in the investigation of the case, it had come to the knowledge in the course of communication that four Hong Kong residents were arrested in connection with

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the case. Mr Howard YOUNG said that the Administration should have followed up with the Mainland why it had not notified the Hong Kong side of the arrest of the other three Hong Kong residents.

12. Ms Audrey EU asked whether robberies committed by both Hong Kong residents and Mainlanders would be tried by a court in the place where the suspects were arrested. She also asked whether Hong Kong could request the trial of arrested persons in a Hong Kong court and whether the Secretary for Justice had discussed with the Mainland matters relating to judicial jurisdiction. She considered that when an agreement was reached with the Mainland on such matters, the Panel should consider holding a joint meeting with the Panel on Administration of Justice and Legal Services to discuss the agreement. The Administration should also brief members on its initial views before an agreement was reached. She said that even before an agreement was reached with the Mainland, both sides should at least agree on some arrangements or practices for dealing with such matters.

13. DS for S1(Atg) responded that enquiries raised by Members over the diamond robbery case highlighted the situation where both the Mainland side and Hong Kong side had jurisdiction over a criminal case and such questions as conflicts over jurisdiction or which side should have priority claim to exercise jurisdiction arose. Such matters should be dealt with under a formal arrangement to be established with the Mainland side which should set out the guiding principles or criteria for dealing with circumstances of concurrent jurisdiction.

14. The Chairman said that the progress of the establishment of a rendition agreement would be discussed in the future. Referring to paragraphs 4 and 5 of the Administrations paper, he asked whether the Administration had, after notification by the Guangdong Public Security Bureau (GDPSB) of the arrest of four Hong Kong residents involved in the case, requested the Mainland side to return the four persons to Hong Kong for trial.

15. ACP(C) responded that the Police was not aware that any Hong Kong residents were involved in the robbery until notification about the arrest was received from the Mainland authorities. As there was no evidence available in Hong Kong which pointed to their involvement in the robbery, there was no prima facie case for the Police to seek return of the Hong Kong residents involved.

16. Ms Audrey EU asked whether the Hong Kong Police and the Mainland side had established any practice for dealing with the return of Hong Kong residents for trial by Hong Kong courts. She also asked how the crime proceeds would be dealt with and whether the stolen property would be returned to the victims in Hong Kong.

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17. DS for S1(Atg) responded that there was an administrative arrangement whereby the Mainland would return to Hong Kong those Hong Kong residents who escaped to the Mainland after committing crimes solely in Hong Kong, if they had also committed crimes in the Mainland, they would be returned after relevant criminal proceedings in the Mainland had been completed and the sentences had been served. In the diamond robbery case, it could be noted from the judgment handed down by the Maoming Intermediate People's Court (MIPC) that as the preparatory acts took place in Maoming, in particular it was the place where the first defendant approached the two Mainland co-defendants to take part in the crime and discussed the mode of execution, MIPC had confirmed that it had jurisdiction over the case.

18. ACP(C) added that the Police had made an enquiry with the Mainland side, which replied that the crime proceeds and stolen property seized in the Mainland would be returned to the victims after all judicial procedures in the Mainland on the case were concluded.

19. Mr LAU Kong-wah asked whether the Police had provided information on the two Mainlanders suspected to be involved in the robbery to the Mainland side and requested transferring them to Hong Kong after their arrest in the Mainland. He also asked about the amount of evidence required for the trial in the Mainland of a Mainlander involved in the commission of a crime in Hong Kong.

20. DS for S1(Atg) responded that the Administration had not requested the return of Mainland suspects to Hong Kong in the past. She considered that before a rendition agreement was reached with the Mainland side, the Administration was not in a position to request the transfer of Mainland suspects to Hong Kong. It was also not in a position to advise on the amount of evidence required for the trial in the Mainland of a Mainlander involved in the commission of crime in Hong Kong. She pointed out that if Hong Kong could make requests for the transfer of Mainland suspects to Hong Kong, Hong Kong should be prepared to reciprocate to a request from the Mainland side for the transfer of Hong Kong suspects to the Mainland. ACP(C) added that there was insufficient evidence in Hong Kong at that time for instituting prosecution against the two Mainlanders.

21. Mr CHEUNG Man-kwong asked whether the Administration had, when notified by the Mainland side of the arrest of four Hong Kong residents, tried to obtain more information about the crime which the four persons had committed and asked the Mainland side about the role of the four persons in the robbery, before taking a position on whether the four Hong Kong residents should be tried in Hong Kong or in the Mainland. The Chairman asked whether the Police had, upon notification by the Mainland side, requested

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interviewing the four arrested Hong Kong residents.

22. ACP(C) responded that the Police had tried to obtain more information from the Mainland side about the arrest of the four Hong Kong residents. However, the information provided had been incomplete. The Mainland side subsequently sought more information from the Police and informed the Police that they were about to institute prosecution against the arrested persons. He said that the Police would examine what could be done when similar situations arose in the future.

23. Mr CHEUNG Man-kwong said that upon notification by the Mainland side of the arrest of Hong Kong residents, the Administration should have followed up the matter proactively and sought more information before deciding on its position in respect of the matter. He said that it could be noted from the diamond robbery case that the penalty levels in the Mainland and Hong Kong were different. DS for S1 (Atg) noted the views of Mr CHEUNG.

24. Mr CHEUNG Man-kwong considered that if persons suspected to be involved in a crime were to be tried in the place where the main part of the crime was committed, many jurisdictional problems might have been resolved. DS for S1 (Atg) assured Members that the Administration would take into account Mr CHEUNG's suggestion as well as such relevant factors as the nature of the crime, the people against whom the crime was directed, the availability and location of the evidence etc. in its discussions with the Mainland authorities.

25. Mr Albert HO asked about the definition of cross-border crime. He asked whether a Hong Kong resident who planned in Hong Kong through the internet to commit a crime in the Mainland but was never physically present in the Mainland would be liable to arrest by Mainland authorities. He also asked whether the Administration had, in cases where both the Mainland and Hong Kong courts had jurisdiction, liaised with the Mainland authorities to arrange for cases where there were sufficient evidence available in Hong Kong to be tried by Hong Kong courts.

26. DS for S1 (Atg) responded that the Administration was not in a position to reply to a hypothetical situation or to interpret how certain Mainland laws would be applied in the Mainland, which was a matter within the jurisdiction of Mainland courts. She said that the Mainland side could also make a reciprocal request for arranging cases where there was sufficient evidence available in the Mainland to be tried in the Mainland. The Administration considered that matters of concurrent jurisdiction should be dealt with in accordance with a formal rendition agreement to be established with the Mainland.

27. Mr Albert HO asked whether the Administration would, in some extreme cases, raise the matter with the Mainland authorities. DS for S1 (Atg) replied

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that the Administration would seek clarification where required. At the request of Mr HO, DS for S1 (Atg) undertook to provide a response on whether a Hong Kong resident who planned in Hong Kong through the internet to commit a crime in the Mainland but was never physically present in the Mainland would be liable to arrest by Mainland authorities.

28. Mr Albert HO asked about the procedures for the victim of the robbery to apply for the return of the stolen diamonds recovered in Hong Kong. DS for S1 (Atg) responded that there was no stolen diamond recovered in Hong Kong in the case concerned.

29. The Chairman asked whether the Administration had sought clarification from the Mainland regarding circumstances under which Mainland courts would exercise their jurisdiction.

30. DS for S1 (Atg) responded that she recalled that at the Council meeting on 18 November 1998, the Secretary for Justice (S for J) had, in her reply to an oral question on the trial of crimes committed in Hong Kong, stated that Mainland judicial organs exercised their jurisdiction on the ground that certain crimes were committed in the Mainland, not because the Hong Kong Special Administrative Region was a part of the People's Republic of China. It seemed from the reply given by S for J that consultations had been made with the Mainland authorities concerned.

31. The Chairman expressed dissatisfaction that the Administration considered that such matters could be dealt with only after a formal agreement had been reached with the Mainland and that any arrangement had to be established on a reciprocal basis. He considered that even before a formal agreement was reached with the Mainland, the Secretary for Security, S for J or the Chief Executive should try his or her best to establish with the Mainland an administrative arrangement for the return of persons who had committed crimes in Hong Kong and escaped to the Mainland, failing which he or she would not be qualified for his or her post. The Chairman considered that under the "one country, two systems" principle, the Central People's Government would not allow a provincial or municipal court to put a Hong Kong resident who had committed the main part of an offence in Hong Kong on trial merely because some of the preparatory acts took place in the Mainland. To safeguard Hong Kong's judicial jurisdiction, the matter should be escalated to more senior authorities in the Mainland, if necessary. He said that if Article 6 of the Criminal law was to be interpreted in such a way, any person could bribe a Mainland authority to arrest and put a person on trial and confiscate all assets of the person. He asked the Administration to provide a paper on the establishment of such a non-reciprocal administrative arrangement with the Mainland and the progress of establishing a rendition agreement with the Mainland in a few months' time.

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32. DS for S1 (Atg) responded that she did not consider that Article 6 of the Criminal Law could be so interpreted. She undertook to consider Members' view that before a formal rendition agreement was reached with the Mainland, the Administration should try its best to establish with the Mainland an administrative arrangement for the return of Hong Kong residents for trial in Hong Kong without imposing an obligation on Hong Kong's part to reciprocate, as proposed by Members.

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33. Mr LAU Kong-wah requested the Administration to provide information on the number of other cases where both the Mainland and Hong Kong courts had jurisdiction. The Chairman requested the Administration to provide brief accounts of the cases, with the relevant personal particulars withheld where necessary.

V. Police cooperation between the Hong Kong Special Administrative Region and the Mainland and follow-up on allegations of Mainland public security officials exercising jurisdiction on Hong Kong - the case of SU Zhi-yi and the case of CHAN Tsz-cheung
(LC Paper Nos. CB(2)490/03-04(04) and (05))

The case of CHAN Tsz-cheung and related issues

34. At the invitation of the Chairman, DS for S 1 (Atg) briefed Members on the Administration's paper regarding the case of SU Zhi-yi and the case of CHAN Tsz-cheung.

35. Mr CHEUNG Man-kwong said that he had received many complaints about suspected fraud cases which involved the detention of Hong Kong businessmen. In many of the cases, the Mainland public security officials concerned had stated that the Hong Kong businessmen concerned could be released, if a certain amount of money was paid. He pointed out that in the case of CHAN Tsz-cheung, the daughter of CHAN Tsz-cheung had complained that a Mainland public security official had given her three letters informing her that her father would be released upon the payment of an amount of \$14 million. Mr CHEUNG asked whether Mainland public security officials were allowed to do so. The Chairman added that there was a possibility of impersonation of public security officials, in which case the acts would amount to blackmail. He asked whether there was a mechanism to verify the identities of such persons.

36. DS for S1 (Atg) responded that the Administration was following up the case of CHAN Tsz-cheung. It had, through the Office of the Government of the Hong Kong Special Administrative Region in Beijing, sought information on the case from the relevant Mainland procuratorate, which had advised that

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CHAN Tsz-cheung was arrested in the Mainland in October 2001 for involvement in a suspected fraud case. Judicial procedures had commenced on the case and the lawyer of CHAN Tsz-cheung had been informed of the developments. The Mainland side had also notified the Hong Kong side through the established notification mechanism. She said that if there were allegations that a Hong Kong resident was arrested by Mainland public security officials and was advised that he would be released upon payment of a certain sum of money, the Administration would first look into the matter to identify the facts.

37. Mr Albert HO said that the former Secretary for Security had stated that if Mainland authorities did not act in accordance with Mainland laws, the Administration would raise the matter with the Mainland authorities. He expressed concern whether such a statement was still valid.

The case of SU Zhi-yi

38. The Chairman recalled that in the case of SU Zhi-yi, a reporter of the South China Morning Post had reported that in the trial at first instance, the prosecution had stated that the search in SU Zhi-yi's residence in Hong Kong had been videotaped. He requested the Administration to check whether such a statement was made by the prosecution at that time. DS for S1(Atg) undertook to trace the report and provide a response.

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VI. Provision of medical services to inmates in penal institutions (LC Paper No. CB(2)490/03-04(06))

39. Mr MAK Kwok-fung asked whether the Correctional Services Department (CSD) had considered employing their own medical officers for penal institutions, instead of relying on the Department of Health (DH) to provide medical services. He also asked about the criteria for referral of an inmate to a hospital for treatment and the security arrangements during the transfer of such inmates to hospitals.

40. Assistant Commissioner of Correctional Services (Operations) (ACCS(O)) responded that Medical and Health Officers (M&HOs) were provided by DH on a rotation basis. This would offer the advantage of having medical officers with diversified experience instead of only with experience confined to penal institutions. He said that a medical officer would determine whether a patient should be hospitalised in the prison's hospital according to his professional judgement. There were also custodial wards in the Queen Elizabeth Hospital and Queen Mary Hospital for hospitalisation of inmates. Assistant Director of Health added that medical specialists from the Hospital Authority and DH visited penal institutions on a regular basis to provide

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consultation and treatment for inmates. Whether an inmate should be referred to a hospital for further treatment would depend on the medical condition of the inmate concerned.

41. Mr Albert HO asked about the doctor-to-inmate ratio for penal institutions in Hong Kong. Deputy Secretary for Security 2 responded that the total penal population was in the region of 12 000 inmates. The deployment of 17 doctors was adequate to cope with existing workload. The manpower provision was reviewed from time to time. Dr LO Wing-lok said that with 17 M&HOs serving a penal population of 12 000, the doctor-to-inmate ratio in penal institutions was close to the corresponding ratio of 1.4 doctors per 1000 persons for the entire population in Hong Kong.

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42. Mr Albert HO expressed concern about a recent Coroner's Court inquest into the death of a female inmate of Tai Lam Centre for Women. He asked about the average time needed for transferring an inmate under critical conditions to a hospital. ACCS(O) responded that inmates under critical conditions were transferred to hospitals as soon as possible. The Chairman requested the Administration to provide members with the relevant transcript of the Coroner's Court.

43. Mr Albert HO said that some inmates had complained of a long waiting time for specialist treatment.

44. ACCS(O) responded that the waiting time for medical treatment in penal institutions should not be longer than that in public hospitals. M&HOs were required to attend to sick prisoners both in the morning and in the afternoon on a daily basis. Prisoners who were very sick were given priority in treatment. M&HOs also performed on-call duties on a rotation basis after office hours. He added that medical specialists visited penal institutions on a regular basis. A number of penal institutions had their own dental clinics. Where an inmate needed specialist treatment in an outside hospital, he would be treated by the outside hospital in the same way as other members of the public.

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45. The Chairman requested the Administration to provide a comparison of the doctor-to-inmate ratio and the corresponding ratio outside penal institutions. He also requested the Administration to provide a comparison of the waiting time for specialist treatment provided by public hospitals and the corresponding waiting time for specialist treatment of inmates in public hospitals. He said that the subject matter might be discussed again in the future, if necessary.

46. There being no other business, the meeting ended at 4:45 pm.

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Council Business Division 2
Legislative Council Secretariat
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