

立法會
Legislative Council

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LC Paper No. CB(2) 1650/03-04

(These minutes have been seen
by the Administration)

Panel on Security

**Minutes of meeting held on Thursday, 12 February 2004
at 2:30 pm in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon WONG Yung-kan (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHEUNG Man-kwong
Hon Andrew WONG Wang-fat, 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

Members attending : Hon LEUNG Yiu-chung
Hon Miriam LAU Kin-ye, JP

Members absent : Dr Hon LUI Ming-wah, JP
Hon Howard YOUNG, SBS, JP

Public Officers attending : Item IV

Mr Stanley YING
Permanent Secretary for Security

Mrs Jennie CHOK
Deputy Secretary for Security

Mr Michael Reid SCOTT
Senior Assistant Solicitor General

Ms Diana LAM
Senior Government Counsel

Ms Ida LEE
Assistant Secretary for Security

Item V

Ms Winnie NG
Principal Assistant Secretary for
Security (E)

Miss Angela LEE
Assistant Secretary for Security (E)

Ms Katherine TSANG
Chief Executive Officer (Security and
Guarding Services)
Security Bureau

Mr Roger WONG
Superintendent (Licensing)
Hong Kong Police Force

Item VI

Ms Winnie NG
Principal Assistant Secretary for
Security (E)

Miss Angela LEE
Assistant Secretary for Security (E)

Mr Victor LO
Assistant Commissioner of Police (Crime)
Hong Kong Police Force

Mr Philip WONG
Chief Superintendent (Crime Headquarters)
(Crime Wing)
Hong Kong Police Force

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

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

Mr Raymond LAM
Senior Council Secretary (2)5

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I. Matters arising
(LC Paper No. CB(2)1233/03-04(01))

Members noted that the Administration had provided a paper on the financial proposal of "Computer Systems for the Immigration Department at the New Control Point for the Hong Kong-Shenzhen Western Corridor". No member suggested discussing the subject matter at a Panel meeting.

II. Information papers issued since the last meeting
(LC Paper Nos. CB(2)1067/03-04(01), CB(2)1068/03-04(01) and CB(2)1121/03-04)

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

- (a) Paper provided by the Administration on the policy on application for unconditional stay;
- (b) Summary of meeting between a deputation and Duty Roster Members on abuse of powers by Police officers on sex workers; and
- (c) Paper provided by the Administration on the interdiction of Police officers.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1229/03-04(01) and (02))

3. Members agreed that the following items would be discussed at the next meeting to be held on 11 March 2004 at 2:30 pm -

- (a) Implementation of Phase III of the Updated Information Systems Strategy for the Immigration Department;

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- (b) Follow-up on issues relating to right of abode in the Hong Kong Special Administrative Region under Article 24(2)(3) of the Basic Law; and
- (c) Mechanism for review of the List of Recordable Offences and disclosure of such review by the Police.

(Post-meeting note : The meeting was subsequently rescheduled for 16 March 2004 at 10:45 am as the Chairman would be out of town on 11 March 2004.)

4. Miss Margaret NG undertook to provide members with background information on the item referred to in paragraph 3(b) above. The Chairman asked members to provide questions, if any, on the item to the Clerk, who would forward them to the Administration.

5. Members agreed that the Panel meeting originally scheduled for 1 April 2004 be re-scheduled to Friday, 2 April 2004 at 4:30 pm to give way to a special meeting of the Finance Committee to be held in the afternoon of 1 April 2004.

6. Members also agreed that the Administration be requested to provide a paper on the summary of views received on the proposals in the Law Reform Commission's report entitled "The Regulation of Debt Collection Practices" since its release in July 2002 and the Administration's way forward in respect of the proposals in the report.

IV. Legislative proposals to amend the Criminal Procedure Ordinance (Cap. 221)

(LC Paper Nos. CB(2)1229/03-04(03) and (04))

7. Members noted a submission, which was tabled at the meeting, from the relative of a victim of crime.

(Post-meeting note : The submission tabled at the meeting was circulated vide LC Paper No. CB(2)1334/03-04 on 13 February 2004.)

8. At the invitation of the Chairman, Permanent Secretary for Security (PS for S) briefed Members on the Administration's revised proposals to amend the Criminal Procedure Ordinance (CPO) (Cap. 221).

9. Miss Margaret NG said that the proposals in the Administration's paper had addressed most of her concerns. Referring to paragraph 5 of the Administration's paper, she suggested that there should be rules or guidelines providing for the early release of a prisoner and information relating to the provision of such early release could be made available to prisoners.

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Adm

10. PS for S responded that matters relating to early release were determined by the Long-term Prison Sentences Review Board (LTPSRB), which was an independent statutory body. He undertook to refer Miss Margaret NG's suggestion to LTPSRB. He added that to his knowledge, after 30 June 1997 LTPSRB had decided to convert the indeterminate sentences into determinate sentences for three "young murderers" and as a result the prisoners' imprisonment was on average about 12 months longer than their minimum terms of imprisonment. Miss NG requested the Administration to inform Members of LTPSRB's response when the relevant legislative proposal was introduced into the Legislative Council.

11. Referring to paragraph 3 of the Administration's paper, Mr LEUNG Yiu-chung asked how discretion was to be exercised by a judge and how consent was to be given by a prisoner.

12. PS for S responded that under the Administration's proposal, consent would have to be given by a prisoner before a judge of the Court of First Instance (CFI) exercised his discretion and decided whether to give a determinate sentence or a minimum term of imprisonment.

13. Mr LEUNG Yiu-chung said that under the Administration's proposal, a CFI judge might still impose a minimum term of imprisonment. He considered that all prisoners should be given a determinate sentence.

14. PS for S said that, as explained in paragraphs 4 to 8 of Appendix C of the Administration's paper, indeterminate sentences were necessary and justified.

15. Mr LEUNG Yiu-chung said that imposing a minimum term of imprisonment was inconsistent with the views of the European Court of Human Rights (the European Court), which had made the following comments in relation to a case in the United Kingdom (UK) -

- (a) a minimum term of imprisonment should be determined by an independent judicial body to safeguard the interest of prisoners;
- (b) the tariff period adopted in UK should be regarded as the ceiling rather than the lower limit of an imprisonment term; and
- (c) a tariff period should be determined by court.

16. PS for S responded that LTPSRB was an independent and professional body. In response to Mr LEUNG's points about the UK system, PS for S referred Members to paragraph 15 of Appendix C of the Administration's paper and pointed out that the average time served by UK prisoners after sentence had in fact been longer than the average minimum term. UK had in 2002 replaced

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the term “tariff” by “minimum term” given that the term “tariff” had been commonly misunderstood to mean a maximum sentence. The fact was that even where a prisoner had served his tariff period, whether the prisoner should be released would be considered by the Parole Board having regard to whether the prisoner would pose a threat to the safety of the community.

17. Senior Government Counsel (SGC) added that in the UK case concerned, the European Court took the view that imposing an indeterminate sentence on a young offender did not contravene human rights. A similar view was also taken by the House of Lords of UK on 25 November 2002. She added that in UK an indeterminate sentence comprised two parts. The first part was punitive in nature, while the second part involved the continued detention of a prisoner for the protection of the public. The United Nations Human Rights Committee (UNHRC) had taken the view in December 2003 that the second part of an indeterminate sentence was not in contravention of human rights so long as the individual prisoner’s case was regularly reviewed by an independent body and the decision of the independent body was subject to judicial review. The Chairman requested the Administration to provide Members with the relevant opinions of UNHRC.

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18. The Chairman considered that the court might impose a longer term of imprisonment, if it was forced to impose a determinate sentence in cases where it was unable to do so.

19. Referring to paragraph 3 of the Administration's paper, Ms Audrey EU asked how consent was to be given by a prisoner. She also asked whether similar arrangements would be made available to those prisoners who were affected by the September 2002 court judgment and were serving discretionary life sentences referred to in paragraph 5 of the Administration's paper.

20. PS for S responded that with the consent of a prisoner, the CFI judge would determine whether a determinate sentence should be imposed. Where a determinate sentence should not be imposed, CFI would impose a minimum term of imprisonment. He said that the Security Bureau (SB) was still discussing the implementation details with the Department of Justice and, if necessary, the Judiciary. Regarding the prisoners referred to in paragraph 5 of the Administration's paper, the court had already exercised the discretion when it decided on indeterminate sentence for the prisoners. Thus, the Administration's proposal would not apply to the prisoners concerned.

21. Ms Audrey EU said that she had recently requested PS for S to convey to LTPSRB her view that there should be transparency in the reviews conducted by LTPSRB on the sentences of prisoners. PS for S responded that the Administration had conveyed the view to LTPSRB.

22. Mr IP Kwok-him said that a balance should be struck between the

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interest of a prisoner and the feelings of the relatives of the victim concerned. He expressed reservations that the Administration's proposal would be no different from overturning a previous sentence and imposing a new sentence. He expressed concern that the Administration's proposal might trigger off other prisoners' requests for overturning the original sentence and imposing a new one.

23. PS for S responded that in accordance with the proposed arrangement, the court might or might not give a determinate sentence. The Administration's proposal would merely provide the court with the discretion of imposing a determinate sentence or a minimum term of imprisonment. This option was available under existing legislation to a "young murderer" convicted today. The Administration considered its proposal fair to prisoners as well as the relatives of victims.

24. Senior Assistant Solicitor General said that some prisoners might wish to have the opportunity of being given a determinate sentence. The Administration's proposal would provide the court with the option of imposing a determinate sentence. SGC added that Article 12 of the Hong Kong Bill of Rights provided that "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under Hong Kong or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby." As one of the prisoners affected by the present proposal to amend the Criminal Procedure Ordinance had lodged an application for leave to appeal against his sentence out of time and relied on Article 12 of the Hong Kong Bill of Rights as one of his grounds of appeal, she was not in a position to provide a detailed response.

25. Mr IP Kwok-him asked about the difference between a determinate sentence and a minimum term of imprisonment. PS for S responded that it might not be possible or appropriate to compare the length of determinate sentences and minimum terms.

26. Mr Albert HO asked whether the court could currently order that a person be detained at Executive discretion.

27. PS for S responded that convicted persons were no longer sentenced to detention at Executive discretion.

28. Mr Albert HO asked about the difference between LTPSRB and the Parole Board in UK. SGC responded that LTPSRB was analogous to the Parole Board in UK. In the judgment on the case of *Lai Hung Wai v Superintendent of Stanley Prison*, it was stated that LTPSRB was an independent and professional body.

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29. Mr Albert HO said that some prisoners might seek the issue of a writ of *habeas corpus* on the ground that the minimum term determined by the Chief Executive (CE) was invalid. He asked whether such invalidity had created pressure on LTPSRB to order the early release of the prisoners concerned.

30. PS for S responded that the case of *Lai Hung Wai v Superintendent of Stanley Prison* was an example. As for early release mentioned in paragraph 7 of the Administration's paper for the meeting on 13 November 2003, LTPSRB could not under the law order the conditional release of a prisoner before the expiry of his minimum term. Since the minimum terms determined by CE were invalid, LTPSRB might order the early release of the prisoners concerned.

31. Mr Albert HO asked whether the early release of prisoners could be recommended by LTPSRB and determined by court. PS for S responded that LTPSRB was an independent statutory body that made professional decision on early releases. The Administration considered that the existing mechanism for early release of prisoners was appropriate.

32. Miss Margaret NG said that the major issue was that certain provisions in CPO were inconsistent with the Basic Law and thus had to be amended. It was not a matter of balance between the benefits of prisoners and the feelings of relatives of victims. It was also not a matter of whether human right was contravened, as consistency with human rights was a requirement regardless of the type and length of sentence imposed. Where the court could not impose a determinate sentence, a discretionary sentence would have to be imposed. It would be imposing a restriction on the court, if a determinate sentence was made mandatory. She considered that it was more important for LTPSRB to maintain transparency and consistency in its work to ensure fairness.

33. Referring to paragraph 3 of the Administration's paper, the Chairman asked whether a prisoner's performance inside penal institutions was taken into consideration when determining the sentence to be imposed. He also asked whether a prisoner could choose to be given a determinate sentence at a later stage.

34. PS for S responded that it was established law that individual circumstances were factors considered by the court in the determination of the sentence. As to whether the prisoners should be given the option to choose the timing for the court to exercise the discretion of giving a determinate sentence instead of a minimum term, PS for S said that the Administration preferred to tackle the one-off problem of the 25 prisoners in question as early as possible, and in one go.

V. Proposed amendments to the criteria for issuing Security Personnel

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Permits

(LC Paper No. CB(2)1229/03-04(05))

35. Ms Miriam LAU declared that she was the Chairman of the Security and Guarding Services Industry Authority (SGSIA).

36. At the invitation of the Chairman, Principal Assistant Secretary for Security (E) (PAS(S)E) briefed Members on the proposals of SGSIA to amend the existing criteria for issuing a security personnel permit.

37. Members did not raise any queries on the proposals in the Administration's paper.

VI. Monitoring of expenditure on "Reward and Special Services" of the Hong Kong Police Force

(LC Paper No. CB(2)1229/03-04(06))

38. At the invitation of the Chairman, PAS(S)E briefed Members on the ambit of the expenditure sub-head "Rewards and Special Services" (R&SS) of the Police and the mechanism for monitoring R&SS expenditure.

39. Mr LAU Kong-wah asked about the procedures, instructions and regulations referred to in paragraphs 3 and 4 of the Administration's paper. He also asked about the upper limit of expenditure that could be approved by a designated officer.

40. PAS(S)E responded that there were different requirements under the existing mechanism for monitoring R&SS expenditure, including those set by the Secretary for Financial Services and the Treasury, and by the Internal Audit Division of the Police. Internal guidelines had been drawn up in respect of these requirements.

41. Mr LAU Kong-wah asked about the "value for money" standard referred to in paragraph 4 of the Administration's paper and whether all R&SS expenditure met the standard.

42. Assistant Commissioner of Police (Crime) (ACP(C)) responded that in assessing whether an expenditure met the "value for money" standard, the factors considered included whether the expenditure was necessary and appropriate, and whether there was any waste of public money. As the subject matter was of a confidential nature, he was not in a position to disclose further details. He said that non-compliance with regulation had not been identified in surprise inspections.

43. Mr LAU Kong-wah asked about the number of audit inspections

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conducted in a year by the Audit Commission and the findings of such inspections.

44. ACP(C) responded that audit inspections were conducted at least once a year by the Audit Commission. Although the Audit Commission had sought clarifications on the justifications for some expenditure and made comments on the timing of seeking approval in some applications, it had not identified any particular problem.

45. Mr Andrew WONG asked whether R&SS expenditure could be subdivided into expenditure covering rewards and informer fees and expenditure covering the procurement and maintenance of equipment and other operational expenses for use of a confidential nature.

46. PAS(S)E responded that the R&SS sub-head covered expenditures involving Police operations of a confidential nature. Disclosing too much detail of the expenditure might expose the Police's strategies, details and law enforcement power. This might affect the Police's capability to fight crime and hence was not in the public interest. ACP(C) added that disclosing details of the expenditure might give offenders an opportunity to acquire, by analysing the distribution of relevant expenditure, information about the strategies, focuses and resource allocation of the Police, thereby affecting the operations of the Police in combating crime.

47. Miss Margaret NG questioned whether special services of the Police were beneficial to an open and accountable society. She considered that R&SS should be monitored by an independent committee. She said that the work of the Military Intelligence 5 in UK was monitored by a committee and its powers were set out in legislation. The Chairman added that the former Secretary for Security (S for S) had undertaken to conduct a review on R&SS. He was disappointed that the Administration had only stated in its paper that it would consider publishing annual figures on R&SS expenses on the web site of the Police.

48. PAS(S)E responded that, as undertaken by the former S for S, the Administration was conducting a review on R&SS together with the review of the Interception of Communications Ordinance (ICO). The review of ICO was more complicated than expected and hence was still ongoing. As numerous amendments had been made to overseas legislation relating to interception of communications after the terrorist attacks in the United States on 11 September 2001, more time was needed for studying these amendments. Priority had also been given to other work of SB in the past few years. She said that the Administration had explained in its paper the mechanism for monitoring R&SS expenditure and its plan to publish annual figures on R&SS expenses on the web site of the Police.

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49. The Chairman and Miss Margaret NG considered that the Administration had only provided very limited information in its paper. The Chairman considered that the Administration was rapid in seeking additional power but slow in introducing measures to monitor its work. He said that the former Special Branch was financed under the R&SS sub-head in the colonial times. Thus, he was concerned that that R&SS expenditure might be used for gathering intelligence relating to political parties. He added that as the Independent Commission Against Corruption was monitored by the Operations Review Committee, an independent committee should be established to monitor R&SS. He added that there could be a close relationship between interception of communications and legislation implementing Article 23 of the Basic Law.

50. PAS(S)E stressed that all operations of the Police had to be done in accordance with the law.

51. The Chairman asked whether there was ongoing disbursement under the R&SS sub-head to public officers.

52. ACP(C) responded that as crimes were increasingly organised, there was a need for covert operations. The disclosure of information relating to such would give offenders an opportunity to analyse the distribution of expenditure and deduce information about the focuses and strategies of the Police.

53. Mr Andrew WONG asked whether undercover officers were civil servants. He also asked whether the salary of these persons were paid from the Treasury or under the R&SS sub-head.

54. ACP(C) responded that expenditures relating to undercover officers, who were Police officers, were confidential and thus he was not in a position to disclose details.

55. Mr IP Kwok-him said that he had met some former undercover Police officers and noted that they had devoted a lot in covert operations. He considered that there was a need for R&SS expenditure.

56. The Chairman asked whether SB had access to information about R&SS.

57. PAS(S)E responded that close partnership and efficient communication had always been maintained between SB and the Police. As the controlling officer of the R&SS sub-head and in accordance with the Public Finance Ordinance, the Commissioner of Police was responsible for the management and operation of funds under the R&SS sub-head. As explained in the Administration's paper, R&SS expenditures were monitored through stringent internal procedures and independent inspections by the Audit Commission.

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58. The Chairman asked whether value for money audits had been conducted by the Audit Commission on R&SS expenditure.

59. ACP(C) responded that audit inspections by the Audit Commission had covered the accounts, vouchers and whether the "value for money" standard was met. The Chairman asked the Clerk to write to the Director of Audit seeking clarification on whether the Audit Commission had conducted value for money audit on R&SS expenditure.

Clerk

(Post-meeting note : The reply from the Director of Audit was issued to members vide LC Paper No. CB(2)1618/03-04 on 8 March 2004.)

60. The Chairman asked about the timetable for the Administration's review of ICO and the time spent so far by the Administration on the review.

61. PAS(S)E responded that the Administration had been reviewing ICO since 1997. An inter-departmental working group chaired by S for S was set up in late 1999 to review the subject of regulating the interception of communications. The Administration had not set a timetable for the review.

62. The Chairman suggested that the progress on the Administration's review of ICO be discussed at a future Panel meeting.

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

Council Business Division 2
Legislative Council Secretariat
11 March 2004