

立法會
Legislative Council

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LC Paper No. CB(2)2256/03-04

(These minutes have been seen by the
Administration)

Panel on Security

**Minutes of meeting held on Tuesday, 16 March 2004
at 10:45 am 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 Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHEUNG Man-kwong
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon WONG Yung-kan (Deputy Chairman)
Hon Michael MAK Kwok-fung

Public Officers attending : Item IV

Mr Michael WONG
Deputy Secretary for Security

Mr Alan CHU
Principal Assistant Secretary for Security

Mr Raymond WONG, IMSM
Assistant Director (Information Systems)
Immigration Department

Mr CHEUNG Chin-hung
Principal Immigration Officer (Information Systems)
Development
Immigration Department

Mr Albert LAI
Chief Systems Manager (Technology Services)
Immigration Department

Item V

Mr Michael WONG
Deputy Secretary for Security

Ms Linda K P SO
Principal Assistant Secretary for Security

Miss Winnie M W WONG
Assistant Secretary for Security

Mr Simon PEH
Assistant Director of Immigration

Mr Alvin LI
Assistant Commissioner for Census and Statistics (Social)

Attendance by invitation : Parent's Association for the Implementation of Right of Abode of Mainland Children

Mr CHOW Kwok-fai

Ms NGAN Siu-lai

單親無証媽媽互助組

Ms CHEUNG Wun-kiu

中港分隔家庭組

Mr NG

Mr LAM

爭取居港權家長協會

Ms YUNG King-lan

Mr FAN Kai-sau

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

Staff in attendance : Mr Raymond LAM
Senior Council Secretary (2)5

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1650/03-04)

The minutes of the meeting held on 12 February 2004 were confirmed.

II. Information papers issued since the last meeting
(LC Paper Nos. CB(2)1481/03-04(01), CB(2)1362/03-04(01),
CB(2)1379/03-04(01), CB(2)1380/03-04(01), CB(2)1447/03-04(01) & (02),
CB(2)1503/03-04(01) and CB(2)1710/03-04(01))

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

- (a) Paper provided by the Administration on measures adopted by the Customs and Excise Department in combating illicit cigarette activities, statistics on the illicit cigarettes seized and the number of persons arrested/convicted for involvement in illicit cigarette activities in the past five years;
- (b) A complaint letter dated 31 January 2004 from a group of investigators of the Independent Commission Against Corruption (ICAC);
- (c) ICAC's response to allegations made in the complaint letter from a group of investigators;
- (d) Two submissions on the proposals to amend the Criminal Procedure Ordinance - determination of minimum terms of imprisonment;

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- (e) A submission from 單親無証媽媽互助組; and
 - (f) Paper provided by the Administration on the regulation of debt collection practices.
3. Members noted that the Administration had provided a paper on the construction of Kowloon Tong Fire Station-cum-Ambulance Depot with Kowloon Fire Command Headquarters at Baptist University Road, Kowloon Tong. Members did not suggest discussing the subject matter at a Panel meeting.
4. Regarding the response of ICAC to allegations made in the complaint letter from a group of investigators, the Chairman said that he would draw up a list of questions with the Clerk to seek further information from ICAC.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1649/03-04(01) and (02))

5. Members agreed that the following items would be discussed at the next meeting to be held on 2 April 2004 at 4:30 pm -
- (a) Expansion of Customs and Immigration Facilities at Shataukok Control Point;
 - (b) Progress of review of the Interception of Communications Ordinance; and
 - (c) The Law Reform Commission report on "The Regulation of Debt Collection Practices" - way forward.

IV. Implementation of Phase III of the Updated Information Systems Strategy for the Immigration Department
(LC Paper No. CB(2)1649/03-04(03))

6. At the invitation of the Chairman, Deputy Secretary for Security (DS for S) and Principal Immigration Officer (Information Systems) Development briefed members on the progress of implementation of Phases I and II of the Updated Information Systems Strategy (ISS-2) for the Immigration Department (ImmD) and the plan for implementing Phase III of ISS-2.
7. Mr Howard YOUNG said that ImmD should update its systems to keep up with the private sector. He asked whether measures would be adopted to prevent loss of data arising from failure of the new system. Assistant Director of Immigration (Information Systems) (AD of Imm) responded that the new system would feature duplex servers and a resilience centre located on the other side of the

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harbour. The network would be carefully designed to ensure system security and data integrity.

8. Referring to paragraph 9(c) of the Administration's paper, Mr Howard YOUNG asked how the repair and maintenance cost of the new system compared with that of the existing system.

9. AD of Imm responded that the annual recurrent cost for the existing system was around \$20 million, comprising about \$7 million for hardware maintenance and repair as well as about \$12 million for consumables and others. The annual recurrent cost for the new system would be around \$40 million, including \$16 million for hardware/software maintenance and repair as well as some \$5 million for communication lines. He added that the recurrent expenses for the new system would be absorbed within ImmD.

10. Dr LUI Ming-wah said that ImmD should computerise its systems. He asked whether there were different levels of restrictions on access of the personnel of ImmD to the electronic records. He also asked whether members of the public would directly benefit from the savings arising from the implementation of ISS-2.

11. AD of Imm responded that there would be restrictions on access to the computer system and electronic records according to the nature of work of the respective posts. He said that the Administration would examine the savings achievable from the implementation of the projects. Before completion of the tendering exercise and implementation of the system, the costs for the services supported by the systems were unknown.

12. Miss Margaret NG said that according to her experience, many records of ImmD relating to right of abode (ROA) could not be found. She asked whether the new system would bring about improvement in the storage of records. She said that there were a number of cases where a ROA claimant maintained that he or she had made a claim for ROA, but ImmD maintained that there was not such a record. She considered it a waste of taxpayer's money to have to bring such matters to court for decision.

13. AD of Imm responded that under the new system, records would be stored in the form of electronic images to facilitate retrieval. Under the Personal Data (Privacy) Ordinance (Cap. 486), applicants as a data subject would be entitled to request access to their own personal data maintained by the system.

14. Miss Margaret NG asked how ImmD would ensure that records, such as claim of ROA, would not be lost. She asked whether a case number would be assigned to each application.

15. AD of Imm responded that it was a practice of ImmD to assign a reference number to each application. In the detailed design of the new system, ImmD would

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consider whether a check-list of documents collected from an applicant could be produced by the system for the reference of the applicant.

16. Dr LUI Ming-wah considered that an applicant should be provided, on payment of certain fees, with a copy of the document collected by ImmD.

17. Mr Andrew WONG said that besides acknowledging receipt of a document, ImmD should also confirm that the document received had been stored in its electronic system.

18. AD of Imm responded that all documents collected from an applicant would be converted into digital format and stored in the new system, and ImmD would acknowledge receipt of the documents. After an application had been processed, the applicant would be notified of the decision and necessary information would be retained in the system. He said that the new system could incorporate the function of acknowledging receipt of document submitted, if necessary.

19. Miss Margaret NG asked whether an applicant could submit an application for ROA by electronic means and whether ImmD would respond to such an application.

20. DS for S responded that it was difficult to provide a simple answer on what constituted a valid ROA claim. Between 1999 and 10 January 2002, the Court of Final Appeal (CFA) had made a number of rulings on matters relating to ROA, including what constituted a valid ROA claim. He said that ImmD would answer all enquiries made through electronic mail.

21. The Chairman asked about the time period for which an incoming electronic mail would be retained by ImmD.

22. AD of Imm responded that there were different retention period requirements for different types of applications. Those related to ROA were permanently kept by ImmD.

23. Mr Andrew WONG asked whether enquiries related to ROA would also be permanently kept by ImmD.

24. Miss Margaret NG said that under the Administration's concession policy on ROA, an ROA claim to the Director of Immigration (D of Imm) must be one of which D of Imm had a record. She asked what would be accepted as a ROA claim of which D of Imm had a record.

25. DS for S responded that reference should be made to CFA's judgment regarding what constituted a valid ROA claim. Regarding whether an electronic record fell within the meaning of a record, reference should be made to the

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provisions in relevant local legislation. He stressed that ImmD would act in accordance with the law.

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26. The Chairman requested the Administration to provide a written response on the circumstances under which an incoming electronic mail would be permanently stored in the new system of ImmD, its legal status under local legislation, and whether it fell within the meaning of a record of ImmD in ROA claims.

27. Mr Howard YOUNG considered it costly to provide an applicant with copies of all documents which had been stored into the electronic system of ImmD. He said that consideration could be given to providing applicants with a copy only upon payment of a certain fee by the applicant. He considered that information in the new system should be permanently kept, if there was sufficient memory space.

28. Mr Andrew WONG said that upon receipt of an application, regardless of whether in a printed or electronic form, an application number should immediately be assigned. The Chairman added that ImmD should also indicate whether the materials received constituted a valid application.

29. DS for S responded that the proper application form should be used in the submission of an application, although there were situations where there was not a suitable application form. He said that the Administration would pay attention to the views expressed by members in the system design.

Adm

30. The Chairman requested the Administration to provide a paper on the criteria for classifying an electronic mail as an enquiry or an application and how applications not submitted with the use of suitable forms would be dealt with.

31. Miss Margaret NG asked whether the new system could accommodate the registration of all Mainland persons with ROA in Hong Kong under Article 24(2)(3) of the Basic Law (BL24(2)(3)).

32. DS for S responded that there was no provision for such a task in the design of the new system. Technical feasibility would, in any event, not alter the fact that the Administration had no plan to conduct such kinds of registration. AD of Imm said that additional memory and software would be needed, even if such a registration were to be carried out with the new system.

V. 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
(LC Paper Nos. CB(2)1367/03-04(01), (02) and (03))

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33. Members noted a submission from the Justice and Peace Commission of the Hong Kong Catholic Diocese which was tabled at the meeting.

(*Post-meeting note* : The submission tabled at the meeting was circulated to members vide LC Paper No. CB(2)1731/03-04 on 17 March 2004.)

Administration's paper relating to right of abode
(LC Paper No. CB(2)1649/03-04(04))

34. At the invitation of the Chairman, DS for S briefed members on the paper provided by the Administration on right of abode and informed members that -

- (a) the judgment delivered on 10 January 2002 by CFA had formed a firm legal basis for dealing with ROA issues. The CFA had directed the parties concerned to consult together for the purposes of drawing up and submitting to CFA for approval a draft of formal orders to be made by CFA for disposing appeals of individual applicants in accordance with the judgment in respect of each of the representative applicants and of each applicant represented by them; and
- (b) as at 10 March 2004, sealed orders had been made by CFA on the cases of 5 116 applicants. Among these, 179 cases were allowed, 418 withdrawn and 4 320 dismissed. The remaining 199 cases were awaiting decision/hearing by the court.

Meeting with representatives of the Parent's Association for the Implementation of Right of Abode of Mainland Children
(LC Paper No. CB(2) 1649/03-04(05))

35. Mr CHOW Kwok-fai presented the views as detailed in the submission from the Parent's Association for the Implementation of Right of Abode of Mainland Children. He said that although the Administration required that an ROA claim must be one of which D of Imm had a record, there was no mechanism or form for making a ROA claim.

Meeting with representative of "單親無証媽媽互助組"
(LC Paper No. CB(2) 1698/03-04(01))

36. Ms CHEUNG Wun-kiu presented the views as detailed in the submission from "單親無証媽媽互助組".

Meeting with representatives of "中港分隔家庭組"
(LC Paper No. CB(2) 1718/03-04(01))

37. Mr NG and Mr LAM presented the views as detailed in the submission from

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"中港分隔家庭組".

Meeting with representatives of "爭取居港權家長協會"
(LC Paper No. CB(2) 1725/03-04(01))

38. Ms YUNG King-lan and Mr FAN Kai-sau presented the views as detailed in the submission from "爭取居港權家長協會". Mr FAN questioned the reliability of the estimate in 1999 by the Census and Statistics Department (C&SD) that before the interpretation of the Standing Committee of the National People's Congress on 26 June 1999 (NPCSC's interpretation), there were 505 000 Mainland children born out of registered marriage who had ROA in Hong Kong.

Deliberations

39. Mr Howard YOUNG considered that the parties concerned should act in accordance with the judgment delivered by CFA on 10 January 2002. Regarding ROA claimants born within wedlock to Hong Kong permanent residents, he asked whether D of Imm could exercise his discretion under the Immigration Ordinance (IO) to allow those who had returned to the Mainland to stay in Hong Kong after passing specified genetic tests.

40. DS for S responded that D of Imm would only exercise discretion under IO to allow a person to stay in Hong Kong in cases with exceptional humanitarian or compassionate grounds. He stressed that conveying wrong message about the discretion of D of Imm might result in an influx of large numbers of ROA claimants to Hong Kong. He informed members that between 1999 and 2002, D of Imm had exercised his discretion to allow about 200 Mainlanders to stay in Hong Kong on compassionate grounds. In 2003, D of Imm had exercised his discretion to allow more than 155 Mainlanders to stay in Hong Kong, among which 46 were ROA claimants. He said that around 10 January 2002, there were over 9 000 ROA claimants with no right to stay in Hong Kong. The number of such ROA claimants had now dropped to about 600. He urged ROA claimants who had overstayed to return to the Mainland.

41. DS for S said that the ROA in different places of the world were governed by the relevant legislation of the respective places. In Hong Kong, ROA was determined by the relevant provisions in BL24 and IO. He added that besides claiming ROA under BL24(2)(3), Mainlanders could also apply for coming to Hong Kong under other categories of eligible persons under the One-way Permit (OWP) Scheme.

42. Miss Margaret NG said that the Administration should look at the ROA issue from a humanitarian perspective. Many ROA issues arose from the estimate of 1.67 million Mainlanders with ROA in Hong Kong in 1999. She pointed out that there were reports that as C&SD had originally estimated the number of Mainlanders with an ordinary statistical method and found that the figure was too low, it had

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adopted a method for dealing with sensitive information and arrived at the estimate of 1.67 million Mainlanders. She questioned the accuracy of the estimate of 1.67 million and the estimated number of Mainland persons born out of registered marriage. She considered that the Administration should provide revised estimates or at least update its estimates and revise its policy having regard to the revised estimates.

43. Assistant Commissioner for Census and Statistics (Social) (ACC&S) responded that C&SD placed great emphasis on whether the design and implementation of the survey were sound. It had conducted a Special Topic Enquiry through the General Household Survey, which had a track record of having a high response rate and reliable results, to estimate the number of Mainland children of Hong Kong residents. Having regard to the sensitivity of the information on children born out of registered marriage to be collected, C&SD had examined different methods before coming to the considered view that the "Randomised Response Technique" (RRT) had to be used. It had tested its survey method and had decided to collect the sensitive information from 10 000 sampled households using RRT. Nevertheless, the Direct Questioning Method (DQM) was used in parallel and applied to another 10 000 sampled households. Both samples were obtained in accordance with random sampling methods. The estimate based on data collected using DQM was found to be just under 30 000. It was observed by interviewers both at the testing stage and during the actual survey that in administering DQM, many respondents felt uneasy and embarrassed. This casted severe doubt on the reliability of the data obtained from DQM. The statistics compiled from the RRT, which was a well-established methodology for collecting sensitive information, were considered more reliable and were finally used. He added that the figure of 1.67 million was the interim estimate and the final estimate was 1.6 million. The interim estimate of 520 000 children born out of registered marriage had also been revised to 505 000. Miss Margaret NG requested the Administration to set out such information in writing.

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44. DS for S said that the figure of 1.67 million was the estimate before NPCSC's interpretation. The estimated number of eligible first generation children in line with the interpretation was about 270 000, among which 100 000 were persons born within registered marriage and 170 000 born outside registered marriage. So far, about 140 000 Mainland persons with ROA under BL24(2)(3) had come to Hong Kong under the OWP Scheme. In addition, another 13 000 of such persons had come to Hong Kong under other categories under the OWP Scheme.

45. DS for S further said that there was no need to update the estimates and doing such an update would convey the wrong message that there was a change in the Administration's policy. He stressed that the Administration's policy was to adhere to the relevant provisions in BL, on which NPCSC had made an interpretation which had been accepted by CFA. According to the interpretation, persons of Chinese nationality born outside Hong Kong to a parent who was a Hong

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Kong permanent resident at the time of the person's birth had ROA in Hong Kong. He considered that the daily quota of 60 such persons under the OWP Scheme was adequate.

46. Miss Margaret NG said that it was vital for estimates of C&SD to be professional and accurate, as it had a direct impact on the Administration's policy. She questioned whether there were many Mainland persons born out of registered marriage. She considered that persons born within *de facto* marriage should not feel embarrassed when direct questions were asked. She asked how the estimate of 1.67 million was revised to about 270 000 after NPCSC's interpretation.

47. Miss Margaret NG and Mr CHEUNG Man-kwong considered that the Administration had exaggerated the number of Mainland persons with ROA under BL24(2)(3) before seeking NPCSC's interpretation, and had subsequently reduced the number substantially after interpretation was made by NPCSC and when there were challenges against the accuracy of its estimates. They said that the Administration should verify the accuracy of the estimate of 1.67 million and re-estimate the number of Mainland persons with ROA in Hong Kong.

48. ACC&S responded that as questions related to children born out of registered marriage involved a high degree of sensitivity, the respondents felt uneasy and were therefore reluctant to tell the truth during direct questioning. The estimate of 30 000 persons based on data collected using DQM was considered to be unreliable. Thus, the estimate from the RRT, which was a well-established and internationally accepted method for collecting sensitive data, was considered more reliable and was used. He said that all relevant technical details had been presented in the Special Topics Report No. 22 issued by C&SD in July 1999.

49. ACC&S explained that children born out of registered marriage included not only those born to "mistresses", as many people had thought, but also those born to "de facto" marriages and other relationships including co-habitation, and given the situation over the last thirty to forty years, many persons had come to Hong Kong on their own, leaving their partners and children behind. Regarding how the estimate of 270 000 eligible children was arrived at, he explained that as RRT could not provide information on the characteristics of Mainland persons born out of registered marriage, C&SD had assumed that the proportion of eligible persons among children born out of registered marriage was the same as that found among children born within registered marriage. On this basis, the figure was estimated to be around 170 000. This, together with 97 000 Mainland persons born within registered marriage to a parent who was a Hong Kong permanent resident at the time of the person's birth, gave a total of about 270 000. This had been explained in the Special Topics Report No. 22 issued by C&SD in July 1999. Miss Margaret NG requested the Administration to provide the information in writing.

Adm

50. ACC&S further said that C&SD had discussed with academics specialised in statistics of the University of Hong Kong, the Chinese University of Hong Kong, the

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Hong Kong University of Science and Technology and the City University of Hong Kong. They considered that the statistical method adopted was appropriate. He said that different people might have different views about whether the estimates were accurate. He stressed that as the design and implementation of the survey were sound, the estimates were in order.

51. DS for S pointed out that the number of eligible persons had dropped to about 270 000 in line with NPCSC's interpretation. At that time, survey data indicated that the propensity for Mainland children born within registered marriage to come to Hong Kong was about 80%. So far, about 150 000 of such Mainland persons had come to Hong Kong. He stressed that the figures were estimates of the situation as at the time of the study. The figures had changed since more eligible Mainland persons were born after 1999. The Administration considered that the existing mechanism could allow Mainland persons with ROA under BL24(2)(3) to come to Hong Kong within a reasonable time.

52. The Chairman asked whether the actual number of Mainland persons with ROA in Hong Kong under BL24(2)(3) who had come to Hong Kong could be used to assess the accuracy of the estimates in 1999.

Adm 53. The Chairman requested C&SD to provide a paper on the information required for assessing the accuracy of the estimates in 1999 of Mainland persons with ROA in Hong Kong. He said that C&SD should set out its arguments, if it was not possible to assess the accuracy of its estimates. ACC&S agreed to do so.

Adm 54. Mr LAU Kong-wah said that the Administration's paper was not comprehensive enough. He requested the Administration to provide a more comprehensive paper explaining how the estimates in 1999 were arrived at, how the estimates had changed after NPCSC's interpretation, the latest situation and an assessment of the future situation. Regarding Mainland children who had submitted an application for OWP but were ineligible because of the age limit at the time and had passed the new age limit of 18 when the new measure was introduced, he asked whether the Administration had raised the problem faced by such persons with the Mainland authorities.

Adm 55. DS for S responded that in November 2001, the Mainland authorities had relaxed the age limit under the OWP Scheme for Mainland children with no one else to depend on in the Mainland from 14 to 18. Under the new measure, an accepted application would remain valid even when the age of the applicant subsequently passed the stipulated age limit. The Administration had raised with the Mainland authorities the possibility of creating another channel under the OWP Scheme for adult Mainlanders with a genuine need to come and settle in Hong Kong. So far, it had not received a response. At the request of Mr LAU Kong-wah, DS for S agreed to raise with the Mainland authorities the possibility of allowing Mainland children who had a record of their OWP application and had, following the submission of that application, passed the new age limit of 18 before introduction of

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the new measure to come to Hong Kong.

56. Mr CHOW Kwok-fai hoped that D of Imm would be sympathetic to ROA claimants and exercise his discretion under IO to allow ROA claimants to stay in Hong Kong. Ms YUNG King-ian added that ImmD should clarify the number of Mainland persons who had lodged ROA claims after the judgment delivered by CFA on 29 January 1999. As there was no mechanism for lodging a ROA claim, she considered it unfair to dismiss an ROA claim on the ground that an ROA claim had not been made to D of Imm whilst the appellant concerned was in Hong Kong between 1 July 1997 and 29 January 1999.

57. DS for S responded that whether a person had ROA in Hong Kong would be determined in line with the NPCSC interpretation as implemented in relevant local legislation. He said that CFA had delivered its judgment in respect of about 4 900 appeal cases. The remaining number of appeals to be dealt with by CFA was about 190. He stressed that there would be no amnesty for ROA claimants.

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58. Miss Margaret NG requested the Administration to provide members with all past information relevant to the Administration's estimates.

VI. Mechanism for review of the List of Recordable Offences and disclosure of such review by the Police

(LC Paper No. CB(2)1649/03-04(06))

59. In view of the time constraint, members agreed that discussion of the item would be deferred to the next meeting to be held on 2 April 2004. The Chairman said that the ending time of the next meeting would be extended to allow time for discussion of the deferred item.

60. There being no other business, the meeting ended at 1:15 pm.

Council Business Division 2
Legislative Council Secretariat
5 May 2004