

立法會
Legislative Council

Ref : CB2/PL/SE/1

LC Paper No. CB(2)455/05-06
(These minutes have been seen
by the Administration)

Panel on Security

**Minutes of meeting held on Tuesday, 5 July 2005
at 2:30 pm in the Chamber of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Daniel LAM Wai-keung, BBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, JP
Hon CHOY So-yuk, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung

Members attending : Hon Emily LAU Wai-hing, JP
Hon WONG Kwok-hing, MH
Hon Ronny TONG Ka-wah, SC

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP

Public Officers attending : Item IV

Mr Ambrose S K LEE
Secretary for Security

Mr Michael WONG
Deputy Secretary for Security 3

Mr Johann WONG
Administrative Assistant to Secretary for Security

Item V

Mr Ambrose S K LEE
Secretary for Security

Miss CHEUNG Siu-hing
Deputy Secretary for Security 1

Mr John READING
Deputy Director of Public Prosecutions
Department of Justice

Mr Philip WONG
Assistant Commissioner of Police (Crime) (Acting)

Mr Johann C Y WONG
Administrative Assistant to Secretary for Security

Item VI

Mr Michael WONG
Deputy Secretary for Security 3

Mr Steve L C TSE
Assistant Secretary for Security C3

Mr Eric K K CHAN
Acting Assistant Director of Immigration (Enforcement and
Liaison)

Mrs W Y DO PANG
Assistant Commissioner of Labour (Policy Support and Strategic
Planning)

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

Ms Alice CHEUNG
Legislative Assistant (2) 1

Action

I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)2117/04-05)

The minutes of the meeting held on 3 May 2005 were confirmed.

II. Information papers issued since the last meeting
(LC Paper Nos. CB(2)1876/04-05(01), CB(2)1990/04-05, CB(2)1993/04-05,
CB(2)2025/04-05(01), CB(2)2092/04-05(01) and CB(2)2124/04-05(01))

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

- (a) paper provided by the Administration on the trafficking of persons for sexual exploitation;
- (b) referral from the meeting between Legislative Council Members and Sai Kung District Council members on 7 April 2005 regarding the merging of Tseung Kwan O and Sai Kung Police Divisions into a Police District;
- (c) referral from the Complaints Division regarding a submission from the Parent's Association for the Implementation of Right of Abode of Mainland Children;
- (d) Administration's response on the suspension from duty of an officer of the Auxiliary Medical Service;
- (e) letter dated 23 June 2005 from the Chairman suggesting the inclusion of "Policy on the admission of refugees" in the list of outstanding items for discussion by the Panel; and
- (f) paper provided by the Administration on its proposals to revise the fees and charges for services under the purview of the Security Bureau which did not directly affect people's livelihood or general business activities.

3. Members agreed that the following be included in the list of outstanding items for discussion by the Panel –

Action

- (a) issues relating to the merging of Tseung Kwan O and Sai Kung Police Divisions into a Police District;
- (b) policy on the admission of refugees; and
- (c) provision of emergency ambulance service, which was discussed at the Panel meeting on 7 June 2005.

4. Regarding the Administration's paper on its proposals to revise the fees and charges for services under the purview of the Security Bureau which did not directly affect people's livelihood or general business activities, Mr LAU Kong-wah said that some of the fee items covered in the paper should be discussed by the Panel. Members agreed that the views of members would be sought on the fee items to be discussed by the Panel in October 2005.

(Post-meeting note : A paper seeking the views of members on the fee items to be discussed was issued vide LC Paper No. CB(2)2209/04-05 on 8 July 2005. A list of the items suggested by members for discussion in the new session was issued vide LC Paper No. CB(2)2352/04-05 on 21 July 2005.)

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)2116/04-05(01) and (02))

5. Members agreed that no regular meeting of the Panel would be held before the next legislative session commenced in October 2005.

IV. Notification mechanism between the Mainland authorities and the Hong Kong Special Administrative Region Government and assistance to Hong Kong residents detained in the Mainland
(LC Paper Nos. CB(2)1784/04-05(01), CB(2)2116/04-05(03) and (04))

6. Secretary for Security (S for S) briefed Members on the progress on the case of CHING Cheong as follows –

- (a) after the Panel meeting held on 7 June 2005, the Administration had conveyed the motion passed by members on the case of CHING Cheong, the concerns of members as well as the appeals and concerns of the Mr CHING's family to the Mainland authorities; and
- (b) the Mainland authorities had replied that the matter would be dealt with in a fair and just manner in accordance with Mainland laws and the rights of Mr CHING under the Constitution of the People's Republic of China would be safeguarded.

7. Ms Emily LAU expressed disappointment that there was no progress on the

Action

case of CHING Cheong after the Panel meeting held on 7 June 2005 and the Administration had not responded to Members' request for disclosure of more information about the case at a closed meeting. She queried whether Mr CHING's family did not wish the Panel to follow up the case even at a closed meeting. She also asked about the Mainland laws under which Mr CHING was detained and whether Mr CHING's family or his lawyer had been allowed to visit Mr CHING.

8. S for S responded that the request of Mr CHING's family to visit Mr CHING had been conveyed to the Mainland authorities. Although there had been some progress, he was not in a position to disclose further information about the case. He said that the disclosure of information about the case involved the privacy of the detainee concerned, regardless of whether such disclosure was made at an open or closed meeting. After the Panel meeting on 7 June 2005, the Administration had contacted the family of Mr CHING and noted that they considered it not appropriate to discuss the case at an open or closed meeting at this stage.

9. Mr CHEUNG Man-kwong said that it had been 72 days since residence under surveillance was imposed on Mr CHING. Although S for S had maintained that he was not in a position to disclose information the case, the Chief Executive (CE) had disclosed some information about the case at the CE's Question and Answer Session on 27 June 2005. He asked about the stage at which legal proceedings in respect of the case, if any, had reached. Referring to CE's remark that the truth might come out very soon, he asked whether CE meant that Mr CHING would be released shortly, put on trial or released after trial.

10. S for S responded that CE had only meant that the Mainland authorities would deal with the case in accordance with the laws in the Mainland very soon. He stressed that the Administration was very concerned about the case. The Security Bureau had conveyed to the Mainland authorities the request of Mr CHING's family for visiting and delivering drugs to Mr CHING.

11. Ms Margaret NG said that many Members were concerned about the case because a Hong Kong resident might incidentally breach the laws in the Mainland. However, the Administration had not provided the brief facts of the case and advised when the matter would be dealt with openly. She asked whether the Administration had reflected the concerns of Hong Kong people to the Mainland authorities. She also asked about the Mainland laws under which Mr CHING was detained and why Mr CHING was not allowed to engage a lawyer. She queried what the Administration had done to facilitate the Mainland authorities to allow family members and lawyers to visit Mr CHING.

12. S for S responded that the Administration was fully aware of the concerns of Members. He said that Mr CHING's family had been notified of the Mainland laws under which the Mr CHING was detained. However, the Administration was not in a position to disclose such information to Members without the prior consent of Mr CHING's family. He added that the Administration had conveyed to Mainland

Action

authorities the request of Mr CHING's family for engagement of a lawyer. Under the Mainland laws, a detainee could engage a lawyer, if consent was given by the relevant investigating authority.

13. Ms Margaret NG said that it was a practice of the Police to disclose brief facts about cases of arrest. She queried why the Administration had not done so in the case.

14. S for S responded that it was not the Police's usual practice to disclose facts which could be related to a specific individual unless charges had already been laid against that person.

15. Mr LAU Kong-wah said that the families of detainees were most concerned whether they could visit the detainees. To his knowledge, some families had been allowed to visit detainees in the past. He asked about the criteria adopted by the Mainland authorities in determining whether family members would be allowed to visit detainees.

16. Deputy Secretary for Security 3 (DS for S3) responded that under the Regulations on Houses of Detention in the Mainland, close relatives could visit a detainee, if consent was given by the relevant investigating authority and the relevant public security authority.

Admin

17. Mr LAU Kong-wah considered that the Administration should find out the criteria adopted by the Mainland authorities in determining whether visits by family members to detainees were allowed. S for S agreed to examine whether such information was available.

18. Mr LAU Kong-wah asked why officials of the Hong Kong Special Administrative Region (HKSAR) Government were not allowed to visit Hong Kong residents detained in the Mainland.

Admin

19. S for S responded that the Administration had raised the matter with Mainland authorities, which had replied that the role of the Office of the HKSAR Government in Beijing (the Beijing Office) could not be compared with that of an Embassy. The Mainland authorities had stated that as Hong Kong residents were Chinese citizens, allowing the HKSAR Government officials to visit Hong Kong residents might give rise to the question of whether officials of other provinces should also be allowed to visit detainees from their provinces. Nevertheless, the Administration would raise the matter again with the Mainland authorities.

20. Ms Audrey EU expressed concern that the Mainland side had not given a positive response on the suggestion of allowing the HKSAR Government officials to visit Hong Kong residents detained in the Mainland. She asked whether it was due to the rank of the officials with whom the matter was raised.

Action

21. S for S said that the response from the Mainland side was given through the Hong Kong and Macao Affairs Office of the State Council. The rank of the Mainland official with whom the matter was raised was not a key factor. The Mainland authorities were of the view that there was no legal basis for allowing the HKSAR Government officials to visit Hong Kong residents detained in the Mainland and the role of the Beijing Office was not the same as that of an Embassy.

Admin

22. Ms Audrey EU considered that CE should make every effort to seek a positive response from the Mainland side on the matter. S for S agreed to convey Ms EU's view to CE. He said that the Administration would raise with the Mainland authorities again the suggestion of allowing family members and the HKSAR Government officials to visit detainees.

23. Mr Ronnie TONG said that what Members requested the Administration to disclose was not personal data of Mr CHING but only brief facts of the case. He asked about the Mainland authorities which had imposed the criminal compulsory measure on Mr CHING and the legal basis for taking such an action. He also asked whether legal proceedings had commenced and what the Administration had done in the case.

24. S for S responded that the Administration was very concerned about the case, and had made every effort to assist the family of Mr CHING. The relevant notification document containing details about the criminal compulsory measure imposed on Mr CHING had been delivered to the family concerned. However, he was not in a position to disclose further information without the consent of the family concerned.

25. The Chairman asked whether the family of Mr CHING had given consent for the Administration to disclose their wish to visit and deliver drugs to Mr CHING.

26. S for S responded that the Administration had disclosed such information in view of the fact that the family of Mr CHING had disclosed such information to the public. He said that after the Panel meeting held on 7 June 2005, the Administration had consulted the family of Mr CHING on some Members' suggestion that the case be discussed at a closed meeting. The feedback obtained by the Administration had been that it was inappropriate to discuss the case at a meeting at this stage, regardless of whether it was an open or closed meeting.

27. Mr Howard YOUNG asked about the difference between residence under surveillance and administrative detention. He also asked whether they fell within the scope of the notification mechanism. DS for S3 responded that while residence under surveillance was one of the five criminal compulsory measures covered by the notification mechanism, administrative detention was not. He said that the maximum period for which residence under surveillance could be imposed was six months, while administrative detention would usually last for just a couple of weeks, if not shorter.

Action

28. Ms Audrey EU asked whether the Administration was satisfied with the notification mechanism.

29. S for S responded that the notification mechanism had generally operated smoothly since its introduction some four years ago and the time taken for notification had been shortened. He said that there was further room for shortening the time taken for notification.

30. Mr Albert HO expressed concern that the arrest of Mr CHING might be related to his profession. He asked whether the Administration had looked into the case and sought independent legal advice on whether the case was dealt with in accordance with Mainland laws. He considered that the Administration should request the Mainland authorities to provide the brief facts of the case.

31. S for S responded that in the case concerned, the Ministry of Foreign Affairs had stated that Mr CHING's arrest was not related to his profession. In this connection, the Administration had noted that there had been very few cases in recent years where journalists were detained in the Mainland. He stressed that the Administration would not interfere with law enforcement and judicial process in the Mainland. Nevertheless, any notification received from Mainland authorities would be delivered to the family concerned. If there were complaints from the family concerned about suspected breach of rules or procedures by the Mainland authorities, the Administration would convey the complaint or appeal of the family to the monitoring authorities in the Mainland. If a Hong Kong resident was detained in the Mainland for breach of laws and his family considered that the detention had exceeded the maximum detention period permitted under Mainland laws, the Administration would reflect the matter to the relevant Mainland authorities.

32. Miss CHOY So-yuk asked whether family members were allowed to visit detainees on whom one of the five criminal compulsory measures covered by the notification mechanism was imposed.

33. DS for S3 responded that visits by family members to detainees required consent of the relevant Mainland authorities. A number of such visits had been allowed in the past. According to experience, one of the factors considered by Mainland authorities was whether allowing such visits would prejudice investigation.

34. Miss CHOY So-yuk said that the suggestion of allowing family members to visit Hong Kong residents detained in the Mainland had been raised at the meeting of the Panel on Security on 23 September 1999. She queried why there was no progress on the matter. S for S agreed to follow up the matter and provide a response.

35. Miss CHOY So-yuk asked whether the booklet referred to in paragraph 6(c) of the background brief prepared by the Legislative Council Secretariat had been

Admin

Action

issued by the Administration in bilingual form. DS for S3 responded that the Security Bureau had, with the assistance of the Supreme People's Procuratorate, published a booklet entitled "內地刑事訴訟簡介" in March 2000. He undertook to provide the Panel with a copy of the booklet and confirm whether an English version of the booklet had been published.

Admin

36. Miss CHOY So-yuk said that there were reports about some Hong Kong residents being detained in the Mainland for the purpose of assisting in investigations conducted by disciplinary committees in the Mainland. Such detention sometimes lasted for an indefinite period and visits by the family of the detainee were not allowed. S for S responded that the cases might be related to investigation into the corruption of some Mainland officials. He invited Miss CHOY to refer the cases to the Administration for follow-up. The Chairman requested the Administration to verify the matter with the disciplinary committees in the Mainland and advise the Panel of any response received.

Admin

37. The Chairman said that the Panel would discuss the subject matter again, if necessary.

V. Issues relating to allegation of Mainland public security officials taking enforcement actions in Hong Kong
(LC Paper Nos. CB(2)1628/04-05(01), CB(2)2116/04-05(05) and (06))

38. S for S briefed Members on the Administration's response to issues raised by members at the Panel meeting on 1 March 2005. Deputy Director of Public Prosecutions briefed Members' on the Department of Justice's decision of not instituting prosecution against the seven persons arrested in the case of 16 June 2004.

39. The Chairman asked whether the Administration had written to the Mainland authorities conveying Members' concerns and seeking a reply on the punishment, if any, imposed on the public security official who brought a pair of handcuffs to Hong Kong. S for S responded that the Administration had written to the Mainland authorities concerned and a reply was still awaited. The Chairman requested the Administration to follow up the matter.

Admin

40. Referring to paragraph 8 of the Administration's paper, Ms Emily LAU queried why the Guangdong Provincial Public Security Department (GDPSD) had not replied to the Police's letters of October 2004.

41. Assistant Commissioner of Police (Crime) (Acting) responded that one of the two letters sought to inform GDPSD that the seven persons would not be prosecuted. The other letter sought to inform GDPSD that although there was insufficient evidence to institute prosecution, the conduct of the seven persons concerned had caused wide public concern in Hong Kong. Both letters involved conveying of facts and a reply was not needed.

Action

42. Ms Emily LAU asked whether the Administration had conveyed to the Mainland authorities the view that Mainland public security officials should not take law enforcement actions in Hong Kong.

43. S for S responded that there was a clear understanding between the Hong Kong Police and the Ministry of Public Security that under no circumstances should police officers of one jurisdiction take enforcement actions in the territory of the other jurisdiction. The Director General of GDPD had also assured him in a telephone conversation that Mainland law enforcement officers were strictly prohibited from taking enforcement actions in Hong Kong.

44. S for S stressed that the Administration was very concerned about the case. The Police had conducted detailed investigations of the case concerned and the Department of Justice had given its independent advice. He said that law enforcement could involve arrest, detention, use of force and use of pistols, which were already governed by existing local legislation. Such actions could only be taken by law enforcement officers of Hong Kong. Any other person taking such actions would be in breach of the law.

45. Referring to the Administration's view that there was no need for the cooperation mechanism between the police authorities of Hong Kong and the Mainland to be extended to cover state security officials, Mr LEUNG Kwok-hung asked whether investigations conducted by state security officials in Hong Kong did not involve any criminal matter. He asked what the Administration would do, if he was tracked by state security officials in Hong Kong. S for S responded that if Mr LEUNG was tracked by other persons, he should report the matter to the Police. He stressed that law enforcement officers of other jurisdictions were not allowed to take any enforcement actions in Hong Kong.

46. Referring to paragraph 9 of the Administration's paper, the Chairman asked about the basis on which the Administration took the view that state security officials were not involved in criminal investigations. S for S responded that it was based on the views and understanding of the Administration.

47. The Chairman said that according to an article published in a weekly magazine, the case of 16 June 2004 arose from disputes between the victim in the case and officials of the Fujian Province. According to the article, the Fujian authorities had paid about one million dollars to public security officials of Guangdong Province for undertaking the required task. He asked whether the Administration had sought information from the Fujian Provincial Public Security Department in the investigation of the case.

48. S for S said that the Police had requested GDPD to verify the identity of the seven persons. GDPD had replied that the seven arrested persons were from Shenzhen. Two of them were public security officials and the other five were

Action

employees of a car rental company in Shenzhen. The Police had no reason to doubt about the information provided by GDPD.

49. The Chairman said that according to a statement taken from the victim concerned on 25 June 2004, the victim had indicated that he was aware that the Fujian authorities wished to kidnap him. He asked whether the Police would reconsider seeking information on the case from the Fujian authorities. He queried whether investigation of the case had been blocked by some senior officials. S for S responded that the Police had conducted detailed investigation into the case concerned. The findings in respect of the identities of the arrested persons were consistent with the information provided by GDPD. Nevertheless, he would discuss with the Commissioner of Police whether there was a need to seek information from the Fujian authorities.

Admin

50. The Chairman said that he could only conclude for the time being that the Administration and the Police had not tried their best to investigate into the case concerned. He queried whether some officials at certain levels had intervened to produce the present results.

51. S for S disagreed. He said that the Police had done their best to investigate into the case and provided the findings to the Department of Justice for advice on whether there was sufficient evidence to institute prosecution.

52. Referring to paragraph 9 of the Administration's paper, Ms Emily LAU asked whether the Administration would consider cooperating with state security officials in investigations, if request was made by the Mainland side.

53. S for S responded that cooperation between the police authorities of Hong Kong and the Mainland were carried out in accordance with the established mechanism. The Administration had also cooperated with the law enforcement agencies of other jurisdictions in combating crime. Such cooperation was made on the basis of mutual respect for the laws and jurisdiction of both sides. Whether cooperation would be made with state security officials in investigations would be considered when such a request was received.

54. The Chairman asked whether there had been any cooperation between the Administration and state security officials. S for S responded that there had been exchange of information on terrorist activities.

VI. Policy governing the employment of foreign domestic helpers (LC Paper Nos. CB(2)1769/04-05(01) and CB(2)2116/04-05(07))

55. DS for S3 briefed Members on the policy governing the employment of foreign domestic helpers (FDHs).

Action

56. Mr WONG Kwok-hing asked about the number of FDHs allowed to perform driving duties incidental to and arising from domestic duties. He also asked about the number of FDHs arrested for undertaking illegal employment, the number of employers convicted for aiding and abetting such FDHs and the sentences imposed.

Admin

57. DS for S3 undertook to provide a written response. He said that among some 180 000 FDHs in Hong Kong, about 2 000 were allowed to perform driving duties incidental to and arising from domestic duties.

58. Mr WONG Kwok-hing said that many local drivers found it difficult to find a job. He asked about the criteria adopted by the Administration in determining whether to allow an FDH to perform driving duties incidental to and arising from domestic duties.

59. DS for S3 responded that in allowing an FDH to perform driving duties, the following conditions would apply –

- (a) the vehicle should be a family saloon car or mini-van of no more than eight seats; and
- (b) the vehicle should be registered under the name of the employer or his/her spouse. Where it was under the name of a company, the company should certify that the vehicle was provided for the personal and family use of the employer concerned.

Admin

60. The Chairman requested the Administration to provide a written response on the criteria adopted in assessing such applications.

61. Mr WONG Kwok-hing said that the Administration should not only act on complaints in its enforcement against FDHs undertaking illegal employment.

62. DS for S3 responded that besides carrying out investigation upon receipt of complaints, the Administration frequently took proactive actions to combat such activities. He informed Members that 83, 72 and 110 FDHs had been prosecuted in 2002, 2003 and 2004 respectively for undertaking illegal employment. In 2005, about 60 FDHs had so far been prosecuted for undertaking illegal employment.

63. Assistant Commissioner of Labour (Policy Support and Strategic Planning) said that joint operations were frequently conducted by the Labour Department, the Police and the Immigration Department to combat illegal employment. She informed Members that operations had been launched in places where persons believed to be FDHs were working in the past. However, subsequent investigation revealed that the persons concerned were not FDHs and were entitled to work in Hong Kong.

64. Mr Albert HO asked whether an employer would be in breach of the law and

Action

prosecuted, if he asked an FDH to perform domestic work at another residence during the period when refurbishment was being carried out on his residence.

65. DS for S3 responded that an FDH should only perform domestic duties at her employer's residence, for example, an FDH was not allowed to look after the old parents of an employer, if the elderly parents were not living with the employer. Whether prosecution would be instituted in a particular case would depend on the advice of the Department of Justice in the case concerned. An employer whose residence was under refurbishment should seek permission from ImmD before requiring his FDH to work at another location during the refurbishment period.

Admin

66. Mr Albert HO asked whether an FDH was allowed to look after the employer's parent in hospital, if the parent was living with the employer before admission into hospital. DS for S3 responded that it would depend on the circumstances of the case concerned. The Chairman requested the Administration to consider giving short-term permission to allow an FDH to perform such work.

67. Mr LEUNG Kwok-hung asked about the number of joint operations launched to combat illegal employment, the number of personnel deployed in such operations and the average number of complaints against FDHs performing domestic duties for other employers. He considered that heavier sentences should be imposed on the employers concerned but not FDHs.

Admin

68. DS for S3 agreed to provide the information requested by Mr LEUNG Kwok-hung. He said that joint operations were frequently launched to combat illegal employment. However, it was usually difficult to gather evidence on FDHs undertaking illegal employment.

69. The Chairman asked whether an employer could bring his or her FDH to assist in cooking during a party held in a friend's residence. DS for S3 responded that although there had not been any prosecution in respect of such cases, it would be advisable to ask the FDH to perform the cooking at the employer's residence before bringing the cooked food to the party.

70. There being no further business, the meeting ended at 5:10 pm.