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Panel on Security

**Background brief prepared by Legislative Council Secretariat
for the meeting on 5 July 2005**

**Issue of Hong Kong residents detained in the Mainland
and the notification mechanism between
Mainland Public Security Authorities and the Police**

Purpose

This paper summarises the discussions so far held by the Panel on Security on the issue of Hong Kong residents detained in the Mainland and the notification mechanism between the Mainland Public Security Authorities and the Police (the notification mechanism).

Background

2. The issue of Hong Kong residents detained in the Mainland was first raised at the House Committee meeting on 30 April 1999 following press reports of Hong Kong residents being detained in the Mainland. A special meeting was subsequently held on 28 May 1999 to discuss the issue. At the meeting, the Administration informed members that it was studying various measures to broaden the scope of assistance to Hong Kong residents detained in the Mainland, including –

- (a) the establishment of a notification system;
- (b) paying visits to Hong Kong residents under detention or in prison;
- (c) the establishment of a direct complaint channel for Hong Kong residents;
and

(d) the transfer of sentenced persons with the Mainland.

3. The issue had since been followed up by the Panel on Security. The details of the deliberations of the Panel on Security are set out in paragraphs 6 to 29 below.

Scope of the notification mechanism

4. For members' easy reference, the notification mechanism, which came into operation on 1 January 2001, covered only cases of unnatural deaths of Hong Kong residents in the Mainland and cases where the following five criminal compulsory measures, as provided for under the Criminal Procedure Law of the People's Republic of China, were taken by the Mainland Public Security and customs authorities –

- (a) summons for questioning;
- (b) putting on bail;
- (c) residence under surveillance;
- (d) detention; and
- (e) arrest.

5. On 1 June 2003, the scope of the notification mechanism was extended to cases handled by the People's Procuratorates and the Ministry of State Security of the Mainland.

Deliberations of the Panel on Security

Assistance to Hong Kong residents detained in the Mainland

Meeting of Panel on Security on 23 September 1999

6. At the meeting of the Panel on Security on 23 September 1999, the Administration briefed members on the progress of the proposed measures to provide assistance to Hong Kong residents detained in the Mainland. The Administration informed members that –

- (a) at the meeting between the Hong Kong and Macau Affairs Office (HKMAO) and the Office of the Government of the Hong Kong Special Administrative Region (HKSAR) in Beijing (the Beijing Office) on 10 September 1999, HKMAO informed the HKSAR officials that the Mainland authorities had agreed in principle that a notification system on Hong Kong residents arrested, detained or imprisoned in the Mainland should be established;

- (b) under the Mainland laws, the HKSAR Government had no legal right to demand access to or communicate with a Hong Kong resident detained in the Mainland. Nevertheless, it had proposed to Mainland authorities that, in view of the close ties between the Mainland and the HKSAR, HKSAR Government officials should be allowed to visit Hong Kong residents under detention or in prison. Mainland authorities had indicated willingness to consider whether and how they could exercise flexibility and were looking into the principles involved which hopefully would lead to a viable working arrangement to facilitate such visits in future;
- (c) the Supreme People's Procuratorate had agreed that a bilingual booklet, based on a pamphlet published by the Procuratorate in Guangdong, should be produced as a joint venture between them and the HKSAR Government. It should significantly enhance Hong Kong residents' understanding of the Mainland's legal and judicial process and complaint channels. It was hoped that the booklet would be finalised by the end of the year; and
- (d) the Administration planned to initiate discussions on the transfer of sentenced persons with the relevant Mainland authorities soon as part of its programme on mutual legal assistance in the area of criminal justice.

7. Regarding some members' enquiry about the role of the Beijing Office upon the establishment of the notification mechanism, the Administration advised that the Beijing Office was the Administration's major contact point in the Mainland. Hence, the relevant Mainland authorities might inform the detainees' families direct or through the Beijing Office. However, assistance would only be rendered to the detainees or their family members at their request because some detainees might not want the Government to intervene.

8. Some members asked how the Administration, under the proposed notification system, could ensure that the relevant Mainland authorities at the provincial and municipal levels would inform the HKSAR Government or the Beijing Office of the essential details of detention cases involving Hong Kong residents.

9. The Administration advised the Panel that it was one of the problems to be resolved by the Mainland authorities. It would take some time for the relevant Mainland authorities throughout the country to become familiarised with the operation of the notification system, given the vast size of the country.

10. Regarding visits to Hong Kong residents under detention or in prison, some members considered that, as officials of Embassies in the Mainland could visit their respective residents who were detained or imprisoned in the Mainland, the Administration should make every effort to ascertain the right to access to or communicate with a Hong Kong resident detained in the Mainland instead of relying on the flexibility exercised by the Mainland authorities.

11. The Administration advised members that according to the Vienna Convention on Diplomatic Relations as well as the bilateral agreement between a foreign country and the Mainland, officials of the Embassy concerned could visit their residents who were detained in the Mainland. However, the role of the Beijing Office could not be compared with that of an Embassy.

Meeting of the Panel on Security on 8 July 2003

12. The assistance to Hong Kong residents detained in the Mainland was further discussed at the meeting of the Panel on Security on 8 July 2003.

13. Some members expressed concern about cases with no response from the Mainland. These members asked whether the Administration would consider resolving these cases through higher level contacts.

14. The Administration stressed that it was important to resolve problems through the existing established mechanism to ensure a fair and consistent approach was adopted to deal with all cases of detention. The Administration assured members that both the Beijing Office and the Security Bureau (SB) would continue pursuing no response cases and where situation warranted, SB would raise the matter with the Mainland authorities concerned through the established mechanism.

15. Some members enquired whether the Administration would take any follow-up action, in the event that the Administration had detected some irregular practices by the Mainland authorities, for instance, if it was suspected that a civil dispute was prosecuted as a criminal offence by the Mainland authorities, or no charges had been instituted against a Hong Kong resident but he was put under surveillance for several months.

16. The Administration advised members that upon the receipt of a request for assistance from the detainee or his family, the Administration would interview the family members to get a thorough understanding of the case. Where irregularities had been detected, the Administration would raise the concerns to the Mainland authorities, subject to the consent of the family members concerned. In their replies, the Mainland authorities would normally refer to the relevant provisions in the Mainland law to explain what had happened and why charges had been laid against the detainee.

17. Some members asked whether the Administration would consider providing legal aid assistance through a non-government organisation, to a detainee in the Mainland who lacked financial means.

18. The Administration responded that there was at present no plan to change the existing policy of providing legal aid to cases taking place in Hong Kong only. The rights of a detainee were protected in accordance with the relevant laws in the Mainland. According to the Administration's understanding, if a detainee could not afford to hire a lawyer to defend him, the Mainland courts might designate a lawyer to

provide legal aid to defend the detainee concerned. The Administration would also provide information on Mainland law societies to the family of the detainee, if such assistance was required.

Meeting of the Panel on Security on 7 June 2005

19. At its meeting on 7 June 2005, the Panel on Security discussed with the Administration the assistance provided to Hong Kong residents detained in the Mainland.

20. Members were very concerned about the assistance provided to detainees in the Mainland and their family members. Members asked whether the Administration would proactively follow up the cases, and what actions the Administration would undertake if the relevant law enforcement authorities had not acted in accordance with Mainland laws or regulations. Members also asked how the Administration would safeguard the legal rights of Hong Kong residents being detained in the Mainland. They considered that cases of detention of Hong Kong residents in the Mainland should be dealt with in a fair and just manner, and as expeditiously as possible.

21. The Administration responded that it attached great importance to the legal rights of Hong Kong residents detained in the Mainland. However, under the “one country, two systems” principle, the Administration should not interfere with law enforcement and the judicial process in the Mainland. Upon the request of the detainee or his family members, the Administration would render practical assistance to them in accordance with the existing mechanism. The Administration would convey the requests or appeals of family members, including any suspected breach of rules or procedures, to the relevant Mainland authorities through the established channel. Through its liaison network at both the central and provincial levels, the Office of the HKSAR Government in Beijing would take appropriate follow-up actions where necessary to keep track of the response of the relevant Mainland authorities. Latest information received from the Mainland authorities through the Beijing Office would be conveyed to the family members concerned. The Administration assured members that it would closely monitor the progress of each and every case, and would make every effort to assist.

22. The Administration also advised the Panel that the rights and obligations of persons suspected to have committed a criminal offence in the Mainland were provided in the Criminal Procedure Law. Under the Criminal Procedure Law, the law enforcement authorities were required to inform the family of the detainee or the unit to which he belonged of the reasons for the detention and the place of detention within 24 hours, unless it is not feasible to do so or such notification would affect investigation. To enhance public understanding of criminal legal proceedings in the Mainland, booklets on the Criminal Procedure Law as well as on Mainland criminal law and regulations relating to arrest and detention had been published.

23. Members asked whether the family members concerned or the HKSAR

Government officials could visit the detainee in the Mainland. Some members pointed out that officials of Embassies in the Mainland could visit their respective residents who were detained or imprisoned in the Mainland.

24. The Administration responded that visit by family members to the detainee could be allowed, if consent was given by the relevant Mainland authorities. A number of requests from the families of detainees had been referred to the relevant Mainland authorities and visits had been allowed in some cases. The Administration informed the Panel that it had raised with the Mainland authorities on whether the HKSAR Government officials could visit Hong Kong residents under detention, but no positive response had been received. The Mainland side had indicated that the role of the Beijing Office could not be compared with that of an Embassy.

25. Members urged the Administration to discuss with the Mainland authorities with a view to reaching a consensus on allowing the HKSAR Government officials to visit detainees in the Mainland. The Administration undertook to raise the matter with the Mainland authorities again.

Establishment of a reciprocal notification mechanism between Mainland Public Security Authorities and the Hong Kong Police

Meeting of Panel on Security on 24 October 2000

26. At the meeting of the Panel on Security on 24 October 2000, the Administration briefed members on the detailed arrangements for the establishment of a reciprocal notification mechanism between the Mainland Public Security Authorities and the Hong Kong Police in respect of residents of the other side who had been detained, arrested or died of unnatural deaths. The Administration informed members that the notification mechanism would commence operation on 1 January 2001.

27. Regarding the question of whether families of Hong Kong residents detained in the Mainland could be allowed to visit detainees, the Administration advised that under the Mainland laws, families of detainees had no right to visit the detainees. However, detainees in the Mainland had the right to meet their lawyers. Communication with, visits to and the supply of medication by family members to the detainee could be allowed, if consent was given by the relevant Public Security authorities. A number of requests from the families of detainees for visits had been referred to the relevant Mainland authorities and visits had been allowed in some cases.

28. Some members expressed concern that there had been many cases where Hong Kong residents were unlawfully detained by Mainland authorities and their families in Hong Kong were required to pay a certain sum of money before the detained persons could be released.

29. The Administration advised the Panel that there was established mechanism for

lodging complaints against Mainland authorities. The families of detainees could lodge complaints against the relevant Mainland authorities for unlawful detention. The names and telephone numbers of the Mainland authorities to which such complaints should be lodged were contained in a booklet produced jointly by the HKSAR Government and the Supreme People's Procuratorate in the Mainland. Besides directly lodging complaints to these authorities, families of detainees could forward their complaints to the Immigration Department, which would refer it to the relevant Mainland authorities responsible for handling such complaints.

Meeting of Panel on Security on 3 May 2001

30. At the meeting of the Panel on Security on 3 May 2001, members further discussed assistance to Hong Kong residents detained in the Mainland and the notification mechanism. The Administration informed members that -

- (a) the notification mechanism was implemented through an administrative arrangement under the principle of mutual respect and mutual non-intervention;
- (b) the scope of notification covered only cases where the five criminal compulsory measures, as provided for under the Criminal Procedure Law of the People's Republic of China, were taken by the Mainland Public Security and customs authorities, and cases involving the unnatural deaths of Hong Kong residents in the Mainland;
- (c) according to Mainland Laws, the five types of compulsory measures which could be taken by the public security authorities were summons for questioning, putting on bail, residence under surveillance, detention and arrest;
- (d) in the preceding four months, the average notification time was about three weeks. The Administration had looked into reports that some detention cases had not been notified and confirmed that notification had been given in all detention cases, although notification was late in two or three cases; and
- (e) the rights and obligations of persons suspected to have committed a criminal offence were provided in Mainland Laws. The law enforcement authorities were required to inform the family of the detainee or the organisation/unit to which he or she belonged of the reasons for and the place of detention within 24 hours, unless it was not feasible to do so or such notification would affect investigation. A suspect being detained had the right to meet his or her legal representative.

31. Regarding the scope of notification, the Administration informed members that -

- (a) matters which the Mainland Notification Unit should notify the Hong Kong Notification Unit included the imposition of criminal compulsory measures on Hong Kong residents by the public security authorities and the Mainland customs authorities, and the unnatural deaths of Hong Kong residents in the Mainland; and
- (b) matters which the Hong Kong Notification Unit should notify their Mainland counterpart included criminal prosecutions instituted by the Hong Kong Police Force, the Customs and Excise Department and the Immigration Department against Mainland residents, and the unnatural deaths of Mainland residents in Hong Kong.

32. Some members considered that the coverage of the notification mechanism should not be confined to certain Mainland authorities. A member asked why matters under the jurisdiction of State Security organs were not covered by the mechanism.

33. The Administration advised that the situation in the Mainland was complicated in that the Mainland had a vast geographical area and the authorities empowered to detain or arrest persons in the Mainland were not confined to the authorities mentioned. Under the Mainland laws, there were also administrative regulations, usually approved by the State Council, which permitted the relevant authorities to detain persons in breach of the administrative regulations. Whether the mechanism should be expanded to cover other authorities would have to be considered having regard to whether there was such a need and the operational characteristics of different authorities in the Mainland. Nevertheless, the Administration would raise the matter with the relevant Mainland authorities.

34. Some members suggested that the Administration should consider including in the notification mechanism all compulsory measures that could be taken by Public Security authorities under the laws or administrative guidelines.

35. The Administration responded that the suggestion would be considered having regard to the laws and administrative guidelines of the Mainland and whether there was such a need.

Extension of the scope of the notification mechanism

36. In an information paper dated 31 May 2003 for the Panel on Security, the Administration advised the Panel that, with the agreement of the Mainland authorities, the scope of the notification mechanism would be extended to include cases handled by the People's Procuratorates and the Ministry of State Security of the Mainland with effect from 1 June 2003. A notification made by the Mainland Notification Unit to the Hong Kong Notification Unit should include personal particulars of the detainee, information on the date of detention, suspected offence, the type of compulsory measure taken, the place where the compulsory measure is taken; the enforcement agency, the officer-in-charge of the case and the name, address and telephone number of family member of the detainee.

Implementation of the notification mechanism

37. The notification mechanism was further discussed by the Panel on Security on 7 June 2005.

38. Members expressed concern about the length of time that the Mainland authorities took before notifying the Hong Kong side of cases of detention of Hong Kong residents.

39. The Administration informed members that under the notification mechanism with the Mainland authorities, notification would be made as soon as practicable. In most cases, the Mainland Notification Unit would be able to notify the Hong Kong Notification Unit, i.e. the Police, within 10 days of detention. In some cases, the notification time had exceeded three months, having regard to the vast geographical size of the Mainland. The Police would inform the family members concerned as soon as possible after a notification had been received from the Mainland authorities. The Administration would discuss with the Mainland authorities how the notification time could be further shortened.

Related information

40. A number of questions relating to the notification mechanism and assistance to Hong Kong residents detained in the Mainland were raised by Members at the Council meetings on 25 April 2001, 21 November 2001, 25 February 2004 and 23 June 2004. A list of these questions is in the **Appendix**.

Relevant papers

41. For details of the discussions, members may wish to refer to the following documents -

Minutes

- (a) Minutes of meeting of Panel on Security held on 23 September 1999 (LC Paper No. CB(2)727/98-99);
- (b) Minutes of meeting of Panel on Security held on 24 October 2000 (LC Paper No. CB(2)391/00-01);
- (c) Minutes of meeting of Panel on Security held on 3 May 2001 (LC Paper No. CB(2)2001/00-01);
- (d) Minutes of meeting of Panel on Security held on 8 July 2003 (LC Paper No. CB(2)2996/02-03);

Papers

- (a) Administration's paper for meeting of Panel on Security on 23 September 1999 (LC Paper No. CB(2)2799/98-99(03));
- (b) Administration's paper for meeting of Panel on Security on 24 October 2000 (LC Paper No. CB(2)86/00-01(02));
- (c) Administration's paper for meeting of Panel on Security on 3 May 2001 (LC Paper No. CB(2)1399/00-01(05));
- (d) Administration's paper dated 31 May 2003 regarding the latest development on the notification mechanism for the Panel on Security (LC Paper No. CB(2)2300/02-03(01));
- (e) Administration's paper for meeting of Panel on Security on 8 July 2003 (LC Paper No. CB(2)2677/00-01(04)); and
- (f) Administration's paper for meeting of the Panel on Security on 7 June 2005 (LC Paper No. CB(2)1784/04-05(01)).

42. The above papers are available on the website of the Legislative Council (<http://www.legco.gov.hk>).

Council Business Division 2
Legislative Council Secretariat
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**Council questions raised by Members relating to
Hong Kong residents detained in the Mainland
and the notification mechanism**

Council meeting on 25 April 2001

At the Council meeting on 25 April 2001, Hon Audrey EU asked a written question on the imposition of criminal compulsory measures on Hong Kong residents in the Mainland. The question and the reply are available at <http://www.legco.gov.hk/yr00-01/english/counmtg/hansard/010425fe.pdf>.

Council meeting on 21 November 2001

2. At the Council meeting on 21 November 2001, Hon WONG Sing-chi asked a written question on the support services to young Hong Kong people allegedly in breach of Mainland laws. The question and the reply are available at <http://www.legco.gov.hk/yr01-02/english/counmtg/hansard/cm1121ti-translate-e.pdf>.

Council meeting on 25 February 2004

3. At the Council meeting on 25 February 2004 April 2005, Hon CHAN Kam-lam asked a written question on the notification mechanism. The question and the reply are available at <http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm0225ti-translate-e.pdf>.

Council meeting on 23 June 2004

4. At the Council meeting on 23 June 2004, Hon LAU Kong-wah asked an oral question on Hong Kong residents detained, extorted or kidnapped in the Mainland. The question and the reply are available at <http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm0623ti-translate-e.pdf>.