

立法會 *Legislative Council*

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Report of the Panel on Security for submission to the Legislative Council

Purpose

This report gives an account of the work of the Panel on Security during the 2004-05 session of the Legislative Council. It will be tabled at the meeting of the Council on 6 July 2005 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

The Panel

2. The Panel was formed by resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000 and 9 October 2002 for the purpose of monitoring and examining Government policies and issues of public concern relating to security, public order, corruption-related matters and nationality and immigration matters. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 15 members in the 2004-05 session. Hon James TO Kun-sun and Hon Daniel LAM Wai-keung were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

Major Work

Allegations of Mainland public security officials taking enforcement actions in Hong Kong

4. The Panel was concerned about allegations that Mainland public security officials had taken enforcement actions in Hong Kong, arising from a case in which seven Mainlanders were suspected of having committed criminal

offences in Hong Kong.

5. The Panel was informed that after completing investigation, the Police consulted the Department of Justice (D of J) on the sufficiency of evidence to support criminal proceedings against the seven arrested persons. D of J advised that there was insufficient evidence to justify bringing a prosecution against any of the seven persons.

6. Some members queried why prosecution was not instituted against the seven persons, and whether evidence for bringing prosecution against these persons was indeed insufficient. These members considered that the information provided so far by the Administration could not convince the public of its decision not to institute prosecution against the seven arrested persons. They were of the view that the Administration's refusal to disclose further information about the case might give the public the impression that the Administration was shielding the arrested persons from prosecution.

7. The Administration responded that there was no question of shielding the arrested persons. The Police had followed all the necessary procedures and conducted a thorough investigation before referring all relevant information to D of J for independent advice on the sufficiency of evidence to support criminal proceedings against the seven persons. The Administration stressed that before and after the reunification, the police authorities of Hong Kong and the Mainland had cooperated in accordance with Interpol practice. To ensure consistent implementation, the basis and mode of operation were further regulated through regular high level meetings between the police authorities of both sides. Under no circumstances could police officers of one jurisdiction take enforcement actions in the other jurisdiction.

8. The Panel requested the Administration to write to the Mainland authorities conveying members' concern.

Immigration policy and procedures in respect of applications for visit visas/entry permits

9. The Panel discussed the Government's immigration policy and procedures in respect of applications for visit visas/entry permits. Some members queried why the visa application of Mr MA Ying-jeou, Mayor of Taipei, who planned to visit Hong Kong to deliver lectures and attend a seminar in January 2005, was refused. These members pointed out that under Article 154 of the Basic Law (BL154), the Government of the Hong Kong Special Administrative Region (HKSAR) could apply immigration controls on entry into, stay in and departure from the HKSAR by persons from foreign states and regions.

10. Some other members pointed that it was the international practice for an immigration authority not to give reasons for the refusal of an application for entry.

11. The Administration responded that in considering an application, the Director of Immigration (D of Imm) would take into account all relevant factors and circumstances before making a decision. In particular, D of Imm would consider whether allowing the entry of the person concerned was in the public interest. The refusal of an application from an applicant on a particular occasion did not preclude favourable consideration of a future application by the same applicant.

12. The Administration also explained that in 1995, the former Vice Premier, Mr Qian Qi-chen, announced the seven guiding principles for dealing with matters between the HKSAR and Taiwan. These seven guiding principles were the policy direction that the HKSAR Government must adhere to.

13. Some members queried whether the seven guiding principles could override the provisions in BL154. These members were concerned about the jurisdiction of the HKSAR in dealing with immigration control matters.

14. The Administration responded that there was no conflict between the seven guiding principles and BL154. Whether or not an application for an entry visa would be approved was the jurisdiction of D of Imm. In processing an application, D of Imm had to act in accordance with the law. He would also have regard to the seven guiding principles when considering an application for an entry visa from a government official of Taiwan where an official contact was involved. Mr MA's application had to be handled with care, given his official position.

Powers of the Independent Commission Against Corruption in the search and seizure of journalistic material

15. The raiding by the Independent Commission Against Corruption (ICAC) the offices of several newspaper organisations in July 2004 with search warrants issued by the court had attracted wide public concern. The Panel held discussions with the Administration on ICAC's power to search for and seize journalistic material.

16. The Panel noted that the judicial authority to seek access to journalistic material for criminal investigation purposes was governed by Part XII of the Interpretation and General Clauses Ordinance (IGCO) and in particular sections 84 and 85. Some members expressed concern whether ICAC had abused its powers to search for and seize journalistic materials. These members queried why ICAC had applied to the court directly for search warrants under section 85 of IGCO, instead of applying for production orders under section 84 of

IGCO. These members were of the view that an application for a search warrant should be made only when the production order was not complied with. They were concerned that if the law enforcement agencies readily applied for warrants to search media organisations in executing law enforcement work, the freedom of the press might be undermined.

17. Some members considered that ICAC should lodge an appeal to the Court of Final Appeal (CFA) to clarify the legal issues involved in the case concerned, as the views of the Court of Appeal in this case were not legally binding and considered as *obiter*.

18. The Commissioner of ICAC assured the Panel that ICAC attached great importance to press freedom. However, the circumstances of the ICAC's investigation were unusual, and focused upon very serious alleged offences involving a number of individuals. The Commissioner of ICAC informed the Panel that the submission of an application for a search warrant had to be approved by the Head of Operations, who was also the Deputy Commissioner, before the application was submitted to court. This was to ensure that the decisions were made at a high level, and that the grounds for taking this course of action were thoroughly considered and fully justified.

19. The Commissioner of ICAC also stressed that there was no question of ICAC abusing its powers under Part XII of IGCO. Stringent requirements must be fulfilled before the court could issue a search warrant. ICAC had fully explained to the court the justifications for its application for the search warrants concerned. ICAC considered that as the Court of Appeal had clarified the law on search and seizure of journalistic materials and there was not sufficient legal basis for lodging an appeal in respect of the case, ICAC had decided not to appeal to CFA.

20. Some members were of the view that the provisions in IGCO on search and seizure of journalistic material should be reviewed to better protect press freedom. A subcommittee was formed to review the statutory provisions on search and seizure of journalistic material.

Measures to combat illegal employment

21. Upon the Panel's request, the Administration briefed the Panel on its measures to combat illegal employment.

22. The Panel noted that the number of illegal workers arrested in the first ten months of 2004 stood at 4 575, or an increase of about 3.6% over the corresponding period in the previous year. Of them, about 94% were visitors from the Mainland. Members urged the Administration to identify the provinces and cities where large numbers of Mainland visitors were arrested for taking up illegal work in Hong Kong, and tackle the problem at source.

23. Members pointed out that the problem of illegal employment was very serious in the construction and decoration works sectors, and queried whether the measures taken by the Administration were effective in combating the problem. Members also queried whether sentences imposed on employers of illegal workers had sufficient deterrent effect.

24. The Administration responded that it had maintained close liaison and exchanged intelligence with the Mainland authorities to tackle the problem at source. Particulars of Mainland visitors found or suspected of having worked illegally in Hong Kong were passed to the Mainland authorities so that their subsequent applications to visit Hong Kong could be subject to closer scrutiny. Where the situation warrants, Mainland authorities might reject an application for a period of two to five years.

25. The Administration advised that an Inter-departmental Task Force was formed in April 2003 to devise specific strategies, coordinate joint operations among various departments and enhance the gathering and exchange of intelligence. A series of operations to crackdown on illegal workers engaging in interior renovation and building maintenance works as well as on their employers had been conducted since mid-January 2004. The Administration had also issued to the property management sector guidelines on how to prevent illegal workers from taking up decoration works in housing estates.

26. Regarding the sentencing of employers of illegal workers, the Administration informed the Panel that in September 2004, the Court of Appeal laid down a sentencing guideline which prescribed that, in the absence of any aggravating or mitigating circumstances, a first time offender who employed one illegal worker should be sentenced to three months' immediate custodial sentence.

27. Members urged the Administration to step up publicity efforts on the immediate imprisonment of employers of illegal workers.

28. Members noted that in tendering for services, government departments had adopted an assessment scheme under which one of the criteria was whether the employers had any past recorded of hiring illegal workers. Some members queried why a tender offer would not be considered only when the tenderer had had three or more convictions relating to illegal employment offences during the 12-month period prior to the tender closing date. These members were of the view an employer who had been convicted of employing illegal workers should not be allowed to bid for any government contracts. They urged that a tender should not be considered once the tenderer had any such conviction within the 12-month period prior to the tender closing date.

29. The Administration advised that the Security Bureau was consulting other bureaux and departments on the feasibility of incorporating suitable provisions in the licensing conditions of different government licences to deter illegal employment.

Security arrangements for the Sixth Ministerial Conference of the World Trade Organization

30. The Sixth Ministerial Conference (MC6) of the World Trade Organization would be held in Hong Kong from 13 to 18 December 2005 at the Hong Kong Convention and Exhibition Centre. It was anticipated that there would be some 11 000 participants for MC6, including 6 000 delegates, 3 000 press and 2 000 non-government organisation (NGO) representatives. The Panel was briefed on the security arrangements for MC6.

31. Members queried the threat assessment of the event. Members were concerned about the Police's capability to cope with the threats, in particular the threat of terrorist attack. Members also asked how the public, especially shop owners and residents in the vicinity of the venue for MC6, would be informed of the special traffic and security arrangements to be introduced during the event.

32. Some members queried the principle adopted for designating "demonstration areas". These members considered that the rights of protesters to express their views freely would be hampered, if the "demonstration areas" were not within sight of their targets attending MC6.

33. The Administration responded that current assessment indicated a low risk of terrorist attack during the event. However, assessment indicated that there would be a high risk of public order being disrupted by rigorous or even violent protests. The Police had set up nine working groups to look into various aspects, viz. security, public order, traffic management, public relations and publicity, command and control, tactics and training, logistics, information technology and communications, as well as manpower and procurement.

34. Given the scale and nature of MC6, the Police would draw on relevant overseas experience and prepare for all possible contingencies. It would formulate a comprehensive manpower deployment plan to cater not only for the MC6 commitments, but also to maintain the general watch and ward coverage. To ensure maximum availability of manpower, a number of resources management measures would be enforced, including the leave restriction for all frontline officers immediately before and during the MC6 period.

35. The Administration also informed the Panel that it would consult the relevant District Councils and take into account their views in drawing up the specific arrangements. Briefings on MC6 would be conducted for the

businesses, building management companies, etc. in the neighbourhood of the event venue. In addition, the Administration would liaise with the operators of various important facilities/services and invite them to formulate plans in the light of MC6. Whatever special arrangements were decided, the Administration would ensure that they would be disseminated to the public in a timely manner, so as to engender understanding and cooperation by the affected entities and persons.

36. In identifying suitable sites for demonstrations, the Police would strike a balance between the rights of individuals to express their views freely and the need to ensure public safety. The Administration would maintain a dialogue with NGOs and other concerned groups, both local and overseas, in the run-up to and during MC6, with a view to facilitating their freedom of expression and conduct of orderly and peaceful demonstration activities.

Employment service support for rehabilitated offenders

37. The Panel discussed the employment support services provided to rehabilitated offenders, and the criteria for them to be issued Security Personnel Permits (SPPs).

38. The Panel noted the various support services in relation to the employment of rehabilitated offenders provided by the Correctional Services Department, other government departments and NGOs. Members urged the Administration to organise market-oriented training courses for prisoners, so as to equip them with the skills required by the market for seeking employment after release.

39. Some members expressed concern about the requirement of disclosing criminal records in government post application form and in the private sector. They were of the view that for the purpose of privacy, employers should not require job applicants to disclose whether they had criminal convictions. A member suggested that applicants for some posts in government departments should not be required to indicate in the application form whether they had criminal convictions.

40. The Administration responded that it was Government policy that civil servants should have a high standard of integrity. As part of the recruitment procedures, the recruiting department/grade would arrange integrity check for candidates whom they initially considered to be suitable for appointment. The Administration had, since January 2004, deleted the requirement for applicants to disclose their criminal records, if any, in the application form (G.F. 340). For non-civil service contract posts, it would be up to individual departments to decide whether integrity check should be conducted having regard to the job nature and the department's operational requirements. The Administration stressed that an applicant would not be declined of a job merely because of his

criminal record.

41. Some members had asked the Administration to consider that for an SPP applicant who was convicted of minor offences and sentenced for a short period of time, the requirement of not normally granting an SPP if the applicant was within three year of release from a term of imprisonment would not apply. Another member, however, was of the view that the requirement was lenient compared with other jurisdictions, such as Australia, British Columbia of Canada and New Zealand, where the relevant authority would not grant a permit for security work if the applicant was within 10 years of release from imprisonment.

42. The Administration explained that the Security and Guarding Services Industry Authority (the Authority) considered that all security personnel were placed in a position of trust. They were relied upon to discharge the important functions of safeguarding lives and properties of others, and to prevent or detect occurrence of any offence. In the course of their work, they might also have access to sensitive information about their clients. The public generally expected the security personnel to have a high standard of personal integrity and credibility.

43. The Administration further explained that under the existing legislation, an SPP applicant must satisfy specific requirements on age, physical fitness to perform the job, good character and proficiency in security work. When considering whether a person satisfied the “good character” requirement, the Commissioner of Police would consider the nature of any criminal offence committed by the applicant. The “good character” criterion had been implemented since April 2003, having regard to the results of the Authority’s comprehensive review of the policy governing the issue of SPPs to persons with criminal convictions in 2001. During the review, the Authority had taken special caution in striking a balance between the need to ensure only fit and proper persons were serving within the security industry and the need to rehabilitate persons concerned.

Reciprocal notification mechanism with the Mainland authorities and assistance provided to Hong Kong residents detained in the Mainland

44. Arising from the detention of Mr CHING Cheong in the Mainland, the Panel discussed with the Administration the notification mechanism between the Mainland authorities and the HKSAR Government, and the assistance provided to Hong Kong residents detained in the Mainland.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. The Panel 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.

51. Members were concerned about the length of time that the Mainland authorities took before notifying the Hong Kong side of cases of detention of Hong Kong residents.

52. 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.

Other issues

53. The Panel had also discussed other issues with the Administration. They included the progress of implementation of automatic passenger clearance and automated vehicle clearance at boundary control points, crime situation in 2004, provision of ambulance emergency service, and contingency plan for emergency response outside the HKSAR.

54. The Panel was also briefed on a number of legislative and financial proposals. They included the legislative proposal to enable the transfer of sentenced persons between the HKSAR and the Macau Special Administrative Region, proposed amendments to the Aviation Security Ordinance to enable the HKSAR Government to strengthen control over unruly or disruptive behaviour committed by passengers on board civil aircraft, proposal to allow non-permanent residents and frequent visitors to opt for self-service immigration clearance by automated mean, funding proposals for Computer Assisted Palmprint and Fingerprint Identification System as well as the Versatile Maritime Policing Response System.

55. Between October 2004 and June 2005, the Panel held a total of 12 meetings. The Panel also conducted two visits.

Council Business Division 2
Legislative Council Secretariat
27 June 2005

**Legislative Council
Panel on Security**

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to security, public order, public safety, corruption-related matters and nationality and immigration matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Legislative Council
Panel on Security**

Membership list for 2004-2005 session

Chairman Hon James TO Kun-sun

Deputy Chairman Hon Daniel LAM Wai-keung, BBS, JP

Members Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, JP
Hon CHOY So-yuk
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung

(Total : 15 Members)

Clerk Mrs Sharon TONG LEE Yin-ping

Legal adviser Mr LEE Yu-sung

Date 12 October 2004