

立法會
Legislative Council

Ref : CB2/PL/SE/1

LC Paper No. CB(2)1241/05-06
(These minutes have been seen
by the Administration)

Panel on Security

**Minutes of meeting held on Tuesday, 3 January 2006
at 2:30 pm 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, SBS, JP
Hon Margaret NG
Hon WONG Yung-kan, 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

Members absent : Hon Daniel LAM Wai-keung, BBS, JP (Deputy Chairman)
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon Howard YOUNG, SBS, JP
Hon CHIM Pui-chung

Public Officers attending : Item IV

Mr Stanley YING
Permanent Secretary for Security

Ms Carol YUEN
Deputy Secretary for Security

Mr Charles WONG
Principal Assistant Secretary for Security

Ms Fiona SO
Secretary, Long-term Prison Sentences Review Board

Item V

Mr Stanley YING
Permanent Secretary for Security

Miss Rosalind CHEUNG
Assistant Secretary for Security

Mr Patrick CHEUNG
Senior Assistant Director of Public Prosecutions
Department of Justice

Item VI

Miss S H CHEUNG
Deputy Secretary for Security

Ms Manda CHAN
Principal Assistant Secretary for Security

Miss Jane LEE
Assistant Secretary for Security

Ms Amelia LUK
Deputy Law Officer (Mutual Legal Assistance)
Department of Justice

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

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

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

Mr Raymond LAM
Senior Council Secretary (2) 5

Ms Alice CHEUNG
Legislative Assistant (2) 1

Action

I. Confirmation of minutes of previous meetings

(LC Paper Nos. CB(2)755/05-06 and CB(2)757/05-06)

The minutes of the meeting held on 1 November 2005 and the special meeting held on 19 October 2005 were confirmed.

II. Information papers issued since the last meeting

(LC Paper Nos. CB(2)553/05-06(01), CB(2)750/05-06(01) and CB(2)751/05-06(01))

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

- (a) a reply dated 28 November 2005 from the Secretary for Security to the Joint Committee for the Abolition of Death Penalty;
- (b) a referral from Duty Roster Members regarding the mechanism for custody of inmates in penal institutions and the Administration's response to issues raised by Duty Roster Members; and
- (c) information provided by the Administration on the progress of review of the suspicious transaction reporting requirements under section 12 of the United Nations (Anti-terrorism Measures) Ordinance, the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance.

3. Regarding the paper referred to in paragraph 2(c) above, Ms Margaret NG suggested that the Administration should be requested to provide information on the timetable for its review of suspicious transaction reporting requirements, including when the review would be completed, when public consultation on the relevant legislative proposal would be conducted, when the Panel would be reported on the results of the consultation exercise and when legislative proposals would be introduced into the Legislative Council. Members agreed.

III. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)754/05-06(01) and (02))

4. Members agreed that the following items would be discussed at the next meeting to be held on 7 February 2006 and the meeting time would be extended to start at 2:00 pm and end at 5:00 pm –

- (a) Security arrangements for the Sixth Ministerial Conference of the World

Action

Trade Organization held in Hong Kong from 13 to 18 December 2005;
and

(b) Interception of communications and covert surveillance.

5. The Chairman reminded members that a special meeting had been scheduled for 24 January 2006 at 10:45 am to receive a briefing by the Commissioner of Police on the crime situation in 2005.

IV. Operation of the Long Term Prison Sentences Review Board

(LC Paper No. CB(2)754/05-06(03))

6. Permanent Secretary for Security (PS for S) briefed members on the composition, principal function, review procedures, and the principles and factors considered in reviews conducted by the Long Term Prison Sentences Review Board (LTPSRB).

7. Referring to paragraph 6 of the Administration's paper, Ms Audrey EU asked about the types of persons who could represent a prisoner to appear before LTPSRB to make oral representations in relation to the prisoner's sentence review. She also asked about the circumstances under which –

(a) a prisoner or his representative would be allowed to appear before LTPSRB to make oral representations in relation to the prisoner's sentence review; and

(b) LTPSRB would initiate to interview prisoners whose sentences were due for review.

8. PS for S responded that a prisoner or his representative would be allowed to appear before LTPSRB to make oral representations in relation to the prisoner's sentence review, if requested by the prisoner and agreed by LTPSRB. He understood that given the diversity in individuals' situations, it would be difficult to set out the various circumstances under which such reviews would be undertaken.

9. The Chairman asked about the number of cases where a prisoner or his representative had been allowed to appear before LTPSRB to make oral representations in relation to the prisoner's sentence review.

10. Secretary, Long-term Prison Sentences Review Board (S/LTPSRB) responded that about 20 requests for such oral representations had been received since the establishment of LTPSRB some eight years ago. However, LTPSRB did not consider oral representations necessary in any of the cases. PS for S said that LTPSRB considered that in these cases, the written information provided was already

Action

sufficient and thus oral representations were not necessary.

11. Referring to Annex B to the Administration's paper, Ms Audrey EU asked about the meaning of "the prisoner has not been completely rehabilitated". She said that the Administration should explain with examples when a prisoner would be considered as not completely rehabilitated.

12. PS for S responded that given the diversity of individuals' situations, it was difficult to set out the different circumstances where the prisoner had not been completely rehabilitated. Such a matter would be assessed by LTPSRB, the members of which came from various relevant fields. All relevant information, including that provided by the Correctional Services Department (CSD), would be taken into account when such an assessment was made.

13. PS for S said that subsequent to relevant discussions at past Panel meetings, he had discussed with the President of the LTPSRB, who had been minded to enhance the transparency of the LTPSRB's work. LTPSRB had taken steps to increase its transparency. LTPSRB had set up a working group to identify measures for improving the sentence review process and enhancing LTPSRB's operation. Video link facilitates had been installed in the LTPSRB Secretariat and connected to correctional institutions equipped with such facilitates. Prisoners were informed of the reasons for the decision made in a review so that they could work on areas requiring improvement. Reports on the LTPSRB's work, which were not regularly published in the past, would be published at least once every two years. He added that the President of LTPSRB had indicated that he was willing to consider measures to improve the transparency and other aspects of LTPSRB.

14. Referring to paragraph 4 of the Administration's paper, the Chairman asked about the time taken for LTPSRB to review about 120 cases at a meeting.

15. S/LTPSRB responded that LTPSRB had taken about two to three hours to review such cases at a meeting. PS for S said that in analysing LTPSRB's workload, it was relevant that many of the cases reviewed were old cases which had undergone regular reviews for some time. Some other cases were new cases where there was not a pressing need for review. All information relevant to the reviews was provided to members of LTPSRB before the meetings, enabling LTPSRB members to examine the information before the meeting.

16. Ms Margaret NG said that according to LTPSRB's reports for 1997-2000 and 2000-2004, LTPSRB had only ordered the conditional release of a prisoner serving mandatory life sentence. Apart from that, there had not been any release arising from the reviews conducted by LTPSRB. She expressed concern that the reasons for the decisions made in the reviews were not disclosed. She considered that the mechanism for review of sentences should be improved. She pointed out that the Court of First Instance had stated in the case of *Yau Kwong Man v. Long-term Prison*

Action

Sentences Review Board that after a person had served his minimum sentence, continuous detention of the person had to be justified. She asked whether LTPSRB had, in view of the judgment, conducted any review of the existing mechanism.

17. PS for S responded that LTPSRB had made recommendations to the Chief Executive for substituting determinate sentences for indeterminate sentences for 41 prisoners in the past few years. Among these, two prisoners had been released conditionally under supervision. He added that LTPSRB had studied the judgment delivered by the court in the case of *Yau Kwong Man v. Long-term Prison Sentences Review Board*, which was related to prisoners detained at Executive discretion and as the ruling judge stated, the ruling concerned such prisoners. The cases reviewed by LTPSRB could be classified into the following categories –

- (a) prisoners detained at Executive discretion;
- (b) prisoners with determinate sentences of 10 years or more;
- (c) prisoners with mandatory life sentences; and
- (d) prisoners with discretionary life sentences.

18. Ms Margaret NG asked whether all applications from the following categories of prisoners for review of their sentences had been turned down without any reason given by LTPSRB –

- (a) prisoners who had served their minimum sentences; and
- (b) prisoners with long-term sentences of 10 years or more.

19. PS for S responded that under the Long-term Prison Sentences Review Ordinance (Cap. 524), LTPSRB had to review the sentences of prisoners at regular intervals and it was not necessary for prisoners to apply for review. Among the 41 cases where indeterminate sentences had been converted to determinate ones, two of the prisoners had been released conditionally under supervision.

20. Miss CHOY So-yuk said that a mechanism for review of sentences should provide prisoners with an opportunity for remission of sentence or release. She considered that clear and measurable criteria should be laid down for remission of sentence or release, so that a prisoner would be aware of what he should do in order to be eligible for sentence review.

Adm

21. PS for S undertook to convey to LTPSRB the above suggestion. In this connection, he pointed out that there was no information indicating that such criteria had been adopted by parole boards in other jurisdictions. He added that the parole boards in other jurisdictions were mainly involved in the conditional release of

Action

prisoners, whereas LTPSRB was involved in the substitution of an indeterminate sentence with a determinate sentence and the remission of sentences.

22. Miss CHOY So-yuk asked whether any recommendation of the LTPSRB Secretariat on the remission of sentence or release of a prisoner had been turned down by LTPSRB. She also asked how the reports of prisoners were compiled.

23. S/LTPSRB responded that the LTPSRB Secretariat did not make any recommendation on the remission of sentence or release of a prisoner. Reports on the prisoners under review were prepared respectively by the CSD, the Police, the Social Welfare Department and the Judiciary. Where necessary, a report on the psychological and/or mental condition of a prisoner would also be provided to LTPSRB for consideration.

24. The Chairman asked whether the Police's report only covered information on the prisoner before conviction. S/LTPSRB replied in the affirmative.

Adm

25. Miss CHOY So-yuk asked whether LTPSRB's decisions on sentence reviews were taken by a majority vote. The Chairman requested the Administration to provide information regarding whether there were dissenting views when decisions were taken by LTPSRB in sentence reviews and whether LTPSRB had put any decision on sentence reviews to vote in the past five years.

26. Mr Albert HO expressed concern that LTPSRB had to review about 120 cases within a three-hour meeting. He queried whether there was sufficient time for a thorough review of all cases and whether prisoners were given a fair opportunity for review of their sentences. He also queried whether some cases were reviewed merely to satisfy review requirements in legislation. He said that prisoners should be informed in writing of the results with reasons. He added that some prisoners seemed to be not aware that they had the right to make oral representations before LTPSRB. Mr LEUNG Kwok-hung also queried how LTPSRB could manage to review about 120 cases within a three-hour meeting.

Adm

27. PS for S responded that reviews on the sentences of different categories of prisoners were conducted in accordance with the requirements in legislation by LTPSRB. For example, the sentence of a prisoner with ten years' sentence or longer had to be reviewed five years after the commencement of the sentence and once every two years thereafter. Judicial review could be sought on the decisions of LTPSRB. He undertook to provide members with more information on how LTPSRB handled its caseload.

Adm

28. Mr Albert HO asked whether a review report was prepared for each prisoner under review. S/LTPSRB replied in the affirmative. Mr Albert HO asked whether the review reports of prisoners were prepared by the respective CSD officers responsible for custody of the prisoners or prepared centrally by a designated officer.

Action

PS for S undertook to provide a written response.

29. Dr LUI Ming-wah said that the scheme for review of prison sentences seemed not to be promoted among prisoners. The fact that only two prisoners had so far been released after reviews reflected that the penal policy might be in need of review. The Chairman asked whether the small number of releases after sentence reviews reflected that the rehabilitation of offenders was not effective.

30. PS for S responded that the LTPSRB only dealt with some of the prison inmates, and it was inappropriate to assess the effectiveness of rehabilitation of all prison inmates in Hong Kong solely on the basis of the release of prisoners convicted of serious offences and serving long-term sentences.

31. PS for S responded that, before meetings were held by LTPSRB, prisoners were informed of the reviews and the legislation regarding representations before LTPSRB. Reviews conducted by LTPSRB in the past had resulted in the indeterminate sentences of 41 prisoners replaced by determinate sentences. Among these, two prisoners had been released conditionally under supervision. The majority of the remaining prisoners had completed serving their sentences and left the penal institutions. He stressed that as intended by the legislation, the composition of LTPSRB had been carefully determined to ensure that the members were specialised in different streams. He said that LTPSRB's work was focused on cases where long-term sentences were imposed for serious offences. Short-term prison sentences were reviewed under a separate scheme.

32. Dr LUI Ming-wah said that although heavier sentences should be imposed on persons convicted of murder, there might not be a need for lengthy detention of prisoners convicted of other offences. He asked whether sentence reviews were conducted having regard to the nature of the offence for which the prisoner had been convicted.

33. PS for S responded that the sentences of convicted persons were determined by the court. The principal function of LTPSRB was to conduct regular reviews of the sentences of prisoners serving indeterminate sentences and long sentences of 10 years or more.

34. Mr Albert HO suggested that the Panel should pay a visit to LTPSRB to better understand its sentence reviews. His view was shared by the Chairman, Dr LUI Ming-wah and Mr LEUNG Kwok-hung.

35. Mr LEUNG Kwok-hung asked whether the minutes of meetings of LTPSRB could be made available, with personal data excised, for inspection by members of the public. He asked why the tenure of Dr SHUM Ping-shiu and Mr HO King-man, who were appointed as members of LTPSRB from 1 October 1997, had exceeded the normal maximum tenure of six years for membership of statutory bodies.

Action

Adm 36. PS for S undertook to convey to LTPSRB the views of members and their wish to pay a visit to better understand the sentence reviews of LTPSRB. He pointed out that the President of LTPSRB had indicated that he was willing to consider measures to improve the transparency and other aspects of LTPSRB. He added that although the tenure of a member of a statutory body would not normally exceed six years, there might be circumstances which warranted the extension of the tenure of some members.

V. Rules and directions for the questioning of suspects and the taking of statements : Caution Statement

(LC Paper No. CB(2)754/05-06(04))

37. PS for S briefed members on the Administration's position regarding suggestions to amend the caution administered by law enforcement agencies when interviewing a suspect.

38. Referring to paragraph 3 of the Administration's paper, the Chairman said that the current caution only spelt out a person's right to silence in an indirect manner. He considered that the caution should be amended to spell out directly a person's right to silence. His view was shared by Mr LEUNG Kwok-hung.

39. PS for S said that the current caution, which was promulgated in Hong Kong in 1992, originated from the English version which was formulated and approved in the United Kingdom (UK) in 1912 and reissued in the UK in 1978. In Hong Kong, although the caution had featured in court cases, including cases before the Court of Final Appeal in 2004 and 2005, no judge had made any adverse comment on the caution.

40. Mr Albert HO considered that although no judge had made any adverse comment on the current caution, it did not mean that the caution could not be improved. He considered that the caution adopted in Canada was more preferable. The Chairman said that the Administration should consider adding the sentence "You have the right to remain silent" to the beginning of the caution.

41. Ms Margaret NG said that a suspect's right to silence should be spelt out in a direct manner. She considered that how a caution was interpreted by a suspect depended partially on the wording used in the caution and the tone with which a Police officer read out the caution to a suspect. She considered that the major issue was whether the Police respected human rights and whether suspects were aware of their rights.

42. PS for S said that the current caution was deeply noted in common law and had been in use for many years, was simple and easy to understand. In considering any

Adm

Action

changes, the Administration should be cautious and think through possible implications. In this spirit, he agreed to consider adding the sentence “You have the right to remain silent” to the beginning of the caution.

43. Mr Albert HO asked how the current caution was conveyed to Putonghua-speaking suspects. PS for S responded that meaning of the current caution was explained to such suspects.

VI. Police cooperation on exchange of information in the detection of crime

(LC Paper Nos. CB(2)1607/04-05(01), CB(2)1702/04-05(01) and CB(2)754/05-06 (05))

44. Deputy Secretary for Security (DS for S) briefed members on the exchange of information between the Police and its counterparts in other jurisdictions to facilitate detection of crime.

45. The Chairman asked whether information obtained in the enforcement of compulsory or statutory processes and stored in Police’s criminal intelligence computer system would be provided to police authorities in other jurisdictions.

46. DS for S responded that at common law, the Police might exchange information with its counterparts in other jurisdictions. However, materials which had been acquired by compulsory or statutory processes for domestic purposes would generally not be transmitted to other jurisdictions. It could be noted from the judgment in the case of *Attorney General v. Ocean Timber Transportation Ltd.* that the Police could provide, in accordance with the Police’s guidelines on the release of information to the relevant agencies of other jurisdictions, information derived from the analysis of such materials and other intelligence to the police counterparts in other jurisdictions for the detection of crime. Deputy Law Officer (Mutual Legal Assistance) added that it was the Interpol’s general practice to exchange information within the Interpol network for the detection of crime. Such exchange of intelligence was bound by the fundamental principles of Interpol in international police cooperation and information exchange.

47. The Chairman expressed concern that although materials acquired by compulsory means could not be transmitted to other jurisdictions, such materials could be transformed into analysed information and transmitted to other jurisdictions. He considered that this might create a loophole for law enforcement agencies in other jurisdictions to obtain personal information for purposes other than the detection of crime.

48. DS for S responded that, before the Police released information to the relevant agencies of other jurisdictions, the Police had to be satisfied that –

Action

- (a) such release of information was made in compliance with local legislation, including the Personal Data (Privacy) Ordinance (PD(P)O) (Cap.486);
- (b) the agency to which such information was released was an accredited agency of Interpol members jurisdictions; and
- (c) the request for such information was related to police duties.

49. The Chairman considered that the threshold for the release of personal information under PD(P)O was very low. He said that the Administration should examine the practices in other jurisdictions and enact legislation governing the provision of information to law enforcement agencies in other jurisdictions.

50. DS for S responded that although the court had ruled in the case of *Attorney General v. Ocean Timber Transportation Ltd.* that materials acquired by compulsory or statutory processes for domestic purposes should not be provided to other jurisdictions, the judge had pointed out that the Police had a duty to exchange information with the law enforcement agencies in other jurisdictions, provided there was no statutory limitation on the use of such information, for the purpose of combating crime.

51. Senior Assistant Legal Adviser 1 pointed out that the judge's remarks that the Police might share documents which belonged to them with other police forces in *Attorney General v. Ocean Timber Transportation Ltd.* was only obiter. In that case the court actually held that the Police could not share the documents concerned with the Fiji police on the ground that the search warrant was to enable the Police to investigate offences in Hong Kong, sharing with the Fiji police was a purpose other than that for which the documents were seized and threatened the possessory rights of the company. However, the case did not deal with the point whether the Police could share information that it had analysed basing on content of seized documents.

52. The Chairman said that the Administration should consider enacting legislation governing the provision of information derived from materials obtained by compulsory or statutory processes for domestic purposes.

53. DS for S responded that materials acquired by compulsory or statutory processes for domestic purposes would generally not be transmitted to other jurisdictions. Where a request for information was made by a foreign law enforcement agency with a view to adducing evidence for prosecution purpose, the request would be dealt with in accordance with the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525). However, it could be noted from paragraphs 4 and 5 of the Administration's paper that case law indicated that police authorities had the power or indeed the duty to exchange information with their counterparts in other jurisdictions. In Hong Kong, the provision of information to

Action

other jurisdictions had to be made in compliance with local legislation and the Police's internal guidelines. Where the Police was in doubt, the advice of the Department of Justice would be sought.

Adm

54. The Chairman requested the Administration to provide past cases, with personal data excised in the information provided, where the Police released information to its counterparts in other jurisdictions for the detection of crime. DS for S agreed to consider whether such information could be provided.

55. Mr LEUNG Kwok-hung said that the Mainland state security authority might, in the investigation of whether he was involved in subversion, request a Mainland public security authority to obtain his personal information from the Police. He asked how the Police would deal with such a request.

Adm

56. DS for S responded that the Police would have to examine whether the request was related to police duties and would have to be considered in Hong Kong's legal context. Chief Superintendent (Crime), Hong Kong Police Force said that the information exchange framework of Interpol did not cover the detection of crime related to political, military, religious and racial matters. The Chairman requested the Administration to provide information on whether subversion was among the list of crimes excluded from the information exchange framework of Interpol.

57. The meeting ended at 4:55 pm.

Council Business Division 2
Legislative Council Secretariat
27 February 2006