

# 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 2005-06 session of the Legislative Council. It will be tabled at the meeting of the Council on 5 July 2006 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 2005-06 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**

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

4. The Sixth Ministerial Conference (MC6) of the World Trade Organization was held in Hong Kong from 13 to 18 December 2005 at the Hong Kong Convention and Exhibition Centre. There were 10 313

participants for MC6, including 5 786 delegates, 2 931 press and 1 596 non-government organisation representatives. The Panel discussed with the Administration the review of the security arrangements for MC6.

5. The Administration informed the Panel that in the course of MC6, arrangements were made for the facilitation and policing of some 105 separate demonstration activities. Only eight of them, which occurred on 13, 14, 16 and 17 December 2005, involved an element of public disorder or violence. The Police had discharged six super sock rounds, 34 CS grenades (tear gas) and 738 canisters of pepper spray. A total of 515 Police officers had used batons during the conference period.

6. Some members commended the Police for playing a key role in facilitating MC6 to be held successfully in Hong Kong. Some other members expressed concern that some 1 000 people were arrested in the course of demonstration on 17 and 18 December 2005, while two protestors were prosecuted for unlawful assembly and one for unauthorised gathering. These members were also concerned about the allegations against the Police for ill-treating detained persons and depriving these persons of basic rights according to international human rights standards. For instance, arrested persons had to ride or wait in vehicles for more than eight hours. Some detainees complained of being slapped by Police officers, and strip-searched. There was no provision for detainees to contact lawyers.

7. The Administration admitted that the provision of 20 interpreters was insufficient. There was difficulty in hiring more interpreters, though assistance from the Korean Consulate had been sought. The Administration also advised the Panel that complaints lodged were being investigated by the Complaints Against Police Office. The Police welcomed persons who had been ill-treated to lodge their complaints. The Police was conducting a comprehensive review of the operations during MC6, and the review would be completed in about two months' time.

8. Some members urged the Administration to appoint independent persons to conduct a thorough inquiry into the Police's actions during MC6 in order to enhance public confidence.

#### Interception of communications and covert surveillance

##### *The Law Enforcement (Covert Surveillance Procedures) Order*

9. On 30 July 2005, the Chief Executive (CE) made the Law Enforcement (Covert Surveillance Procedures) Order under Article 48(4) of the Basic Law to regulate covert surveillance activities undertaken by law enforcement agencies. The Order was published in the Gazette on 5 August 2005 and came into

operation on the following day. The Panel held two special meetings to discuss the Order with the Administration.

10. Members had raised various concerns and queries about the Order. Some members considered that there was a need for CE to make the Order. Some other members, however, questioned whether the Order was constitutional and lawful. These members also questioned why the Order, which was not legislation, could constitute legal procedures for the purposes of Article 30 of the Basic Law.

11. Some members expressed concern whether covert surveillance activities conducted before the issuance of the Order complied with the requirements under Article 30. These members were also concerned that the Order would allow law enforcement officers to abuse their powers and infringe upon the freedom and privacy of communication of citizens. Members considered that an effective monitoring mechanism should be put in place.

12. The Administration responded that the Order was issued by CE under Article 48(4) of the Basic Law. Article 30 provided that “the relevant authorities may inspect communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences”. However, it did not require such procedures to be prescribed by law. Legal advice obtained indicated that the requirement regarding the legal procedures under Article 30 could be met through the issuance of the Order made by CE in accordance with Article 48(4).

13. The Administration assured members that the issuance of the Order was only an interim measure. The Administration planned to introduce the legislative proposals in the first half of the 2005-2006 session.

*Court of First Instance judgment on 9 February 2006*

14. The Panel noted that on 9 February 2006, the Court of First Instance delivered its judgment on a judicial review in respect of the validity of existing legislative and administrative framework authorising and regulating secret monitoring. In its judgment, the Court, among others –

- (a) declared that the Order was lawfully made, but as an administrative order, it was not capable of constituting a set of “legal procedures” for the purposes of Article 30; and
- (b) declared that section 33 of the Telecommunications Ordinance was inconsistent with Article 30 and Article 39 of the Basic Law.

The Court ordered that the effect of the declaration made would be suspended

for a period of six months, i.e. the Order and section 33 of the Telecommunications Ordinance were valid and of legal effect for six months from the date of the order, notwithstanding the judgment of the Court.

*The proposed legislative framework regulating interception of communications and surveillance*

15. The Panel held a series of meetings in February and March 2006 to discuss with the Administration the legislative proposals regulating the conduct of interception of communications and covert surveillance by law enforcement agencies.

16. Some members expressed concern how the proposed two-tier authorisation system of “more intrusive” and “less intrusive” covert surveillance would work, and how the two types of operations would be differentiated. These members opposed the proposal that a panel of three to six judges authorising interception of communication and the “more intrusive” covert surveillance operations should be appointed by CE. They also opposed the integrity check to be conducted on panel judges prior to their appointment. Some members expressed concern about the resource implications on the Judiciary, and had asked the Administration to provide past statistics on interception of communications and covert surveillance conducted by law enforcement agencies.

17. Some members queried why a person whose communication sent to or by him had been intercepted by law enforcement agencies or he himself was the subject of covert surveillance operation was not notified after such activities had discontinued. These members also queried how the person could lodge complaint when he was not informed of such activities. They considered that in cases of interception or covert surveillance mistakenly conducted, the persons concerned should be notified.

18. Some members suggested that there should be penalty provisions for non-compliance with any code of practice made under the proposed legislation. They also suggested that a committee should be established as an independent oversight authority to keep under review law enforcement agencies’ compliance with the provisions of the legislation and any code of practice made under the legislation, instead of appointing a judge as the Commissioner on Interception of Communications and Covert Surveillance (the Commissioner).

19. A member suggested that the “less intrusive” covert surveillance activities should also be authorised by judges. Another member considered that some highly intrusive covert surveillance, such as the use of bugging device to pick up conversations, should require a higher threshold as in the case of interception of communications which might only be used in the

investigation of offences punishable with a maximum imprisonment of not less than seven years.

20. The Administration informed members that in drawing up the proposals, reference had been made to similar legislation in Australia, Canada and the United Kingdom (UK). Regarding the appointment of judges, the Administration explained that prior to making the appointments, CE would ask the Chief Justice (CJ) for recommendations. The term of appointment would be fixed at three years, and it was proposed that CE would only revoke an appointment on the recommendation of CJ. As regards the integrity check on panel judges, it was a standard procedure for public officers handling sensitive information prior to their appointment.

21. The Administration advised the Panel that any breach by law enforcement officers under the legislation would be subject to disciplinary action, and this would be stipulated in the code of practice. Any officer who deliberately conducted operations without due authorisation might also commit the common law offence of misconduct in public office. In addition, any non-compliance would be subject to the scrutiny of the Commissioner, who would report such cases of irregularities to the heads of departments and to CE. Statistics on such cases would also be provided to CE in the Commissioner's annual report, which would be tabled in the Legislative Council.

22. Regarding the notification requirement, the Administration advised the Panel that the proposal of not notifying the targets of operations was in line with the analysis and recommendations of the Law Reform Commission (LRC) report on the interception of communications published in 1996, as well as the practice in UK and Australia. This was because threats being targeted by interception of communications or covert surveillance might continue for a long time after the operations. Notification to the individuals affected after the operation had ceased could still compromise the long-term purpose that originally necessitated the surveillance. Such notification might reveal the modus operandi and fields of operation of law enforcement agencies and their agents, and undermine the effectiveness of law enforcement. Nevertheless, the Administration would discuss with law enforcement agencies again the views expressed by members.

23. On the suggestion of establishing a committee as the oversight body, the Administration pointed out that the proposal to appoint a single person as a statutory authority was a common practice in Hong Kong and overseas. The proposal to appoint a Commissioner was also in line with the recommendation of the 1996 LRC report.

24. As regards the threshold for covert surveillance, the Administration explained that interception was considered to be a highly intrusive investigative

technique and therefore a high threshold was necessary. On the other hand, there was a wide spectrum of covert surveillance operations with varying degree of intrusiveness. Since surveillance operations could be more specific in terms of location, timing and event, the intrusiveness in terms of collateral intrusion to innocent party could be much lower. It would be reasonable to include a wider spectrum of crimes against which the investigative technique of covert surveillance might be used, where justified.

#### Operation of the Long Term Prison Sentences Review Board

25. The Panel was briefed on the composition, principle function, review procedures, and the principles and factors considered in reviews conducted by the Long Term Prison Sentences Review Board (the Review Board).

26. Members asked about the types of persons who could represent a prisoner to appear before the Review Board to make oral representations in relation to the prisoner's sentence review. Members pointed out that according to the Review Board's reports for 1997-2000 and 2000-2004, the Review Board 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 the Review Board. Members expressed concern that reasons for the decision made in the reviews were not disclosed, and considered that the mechanism for review of sentences should be improved.

27. Members also expressed concern that the Review Board had to review about 120 cases within a three-hour meeting. Members 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.

28. The Administration explained that a prisoner might, with the consent of the Review Board, appear before the Board either personally or through a representative to make oral representations in relation to the prisoner's sentence review. Should there be such requests by prisoners, the Review Board would assess the merits and need on a case-by-case basis. In the circumstances so warranted, the Review Board might, with the consent of the prisoner, initiate to interview certain prisoners when their sentences were due for review. After the review, prisoners were informed in writing of the results with reasons. The Administration informed members that the Review Board had made recommendations to CE 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.

29. On how the Review Board handled its caseload, the Administration explained that about three weeks before a meeting, the Board Secretariat would

provide members of the Review Board with discussion papers for the meeting, including a summary of each prisoner's case setting out his offence together with related court documents, institutional performance, progress of rehabilitation, opinions of clinical psychologists or psychiatrists, if any, and written representations, etc. This allowed adequate time for members of the Review Board to study the cases due for review and prepare for the meeting, thus facilitating consideration of the cases at the meeting.

30. The Administration agreed to convey to the Review Board the views of members concerning the review of prisoners' sentences.

Issues arising from the shooting incident involving Police officers in Tsim Sha Tsui on 17 March 2006

31. The shooting incident involving Police officers in Tsim Sha Tsui on 17 March 2006, resulting in death of two Police officers and injury of one Police officer had given rise to wide public concern. The Panel held a special meeting to discuss the issues arising from the shooting incident.

32. The Panel was informed that so far, the investigation had suggested that the suspect, who died in the shooting incident, was involved in the incident and the deaths of LEUNG shing-yan, a Police officer, and a security guard in a bank robbery in 2001 (the two Cases). There should be sufficient evidence to charge the suspect on all three had he been alive. The Panel was also informed that the Police had submitted to the Coroner a preliminary report, and whether the Coroner would hold a death inquest relating to the shooting incident was under consideration.

33. Some members expressed concern whether the investigation into the incident would be conducted in a fair and just manner, given that there were a number of doubts in the shooting incident and multiple deaths were involved in the incident and the two Cases. Members pointed out that under the Coroners Ordinance, a coroner might investigate a reportable death. Where a person died whilst in the custody of a Police officer, or during the course of a Police officer's discharge of his duty, a coroner might request the Commissioner of Police to take such measures as were necessary to ensure that the investigation into the death was conducted independently and impartially. However, as coroners did not have independent investigation power and the investigation would be conducted by the Police, these members suggested that an independent committee of inquiry should be appointed to investigate the incident in order to ensure that an independent and impartial investigation would be done.

34. The Administration responded that it was not appropriate to appoint an independent committee of inquiry at this stage, given that death inquests might

be held. The Administration informed members that the Police was closely advised by a counsel, independent from the Police, specialising in death inquests in carrying out its investigation into the incident, and would continue to ensure that the investigation was conducted thoroughly and impartially. The Police would submit its final report to the Coroner when the investigation was completed.

#### Quality Migrants Admission Scheme

35. The Panel was briefed on the proposed Quality Migrants Admission Scheme under which talented people would be allowed to take up residence in Hong Kong without having to secure a local job offer first.

36. Some members expressed support for the introduction of the proposed Scheme. Some other members, however, expressed concern about the implications of the proposed Scheme on local employment. These members queried how the Administration could ensure that the proposed Scheme would not affect the employment opportunities of local people, and how the Administration could prevent possible abuse of the Scheme. They considered that representatives of the labour sector should be appointed to the selection committee.

37. The Administration responded that there was a need to bring in talented people from outside Hong Kong to meet the manpower needs of the local economy and to enhance Hong Kong's competitiveness in the global market. The quota for the proposed Scheme was only 1 000 per year. Experience indicated that an average of about 1.5 new jobs had been created per entrant under the Admission Scheme for Mainland Talents and Professionals. Hence, the Administration believed that the proposed Scheme should create more employment opportunities for local people.

38. Regarding the prevention of possible abuse of the proposed Scheme, the Administration explained that minimum requirements had been drawn up and a point system had been established. Selection of entrants would be made by a selection committee comprising members from various sectors of the community. The Administration stressed that the Immigration Department possessed substantial experience in vetting the qualifications of applicants. Although the admission of professionals was more prone to abuse, so far, the Administration had not received any complaint about abuse of the scheme.

39. As regards the composition of the selection committee, the Administration stated that it kept an open mind and would consider the views of members.



Leakage on the Internet of personal data held by the Independent Police Complaints Council

40. Leakage on the Internet of personal data held by the Independent Police Complaints Council (IPCC) had attracted wide public concern. The Panel held a special meeting in May 2006 to discuss the report of IPCC on the leakage incident.

41. Members pointed out that IPCC was not a statutory body, and the staff of its Secretariat were civil servants deployed by the Civil Service Bureau. Furthermore, the terms of reference of IPCC did not include resolving issues of an administrative nature. Members asked whether the Government would provide support to IPCC to help resolve the matter, or take over the remedial work. Some members urged the Administration to expedite the introduction of legislation to establish IPCC as a statutory body.

42. Some other members urged the Administration to appoint an independent committee of inquiry to investigate the incident in order to restore public confidence in IPCC.

43. Members queried why the identity of Ms X, a staff of the IPCC Secretariat responsible for handing over the confidential personal data in the form of a disc to the system maintenance subcontractor, was not disclosed in the report.

44. The Chairman of IPCC explained that Ms X was a civil servant and according to the Civil Service Regulations, her identity should not be disclosed. As there might be investigation into whether any civil servants involved have misconducted themselves in relation to the administration and operation of the system maintenance in question, it was inappropriate to make statements which might prejudice her.

45. The Chairman of IPCC informed the Panel that IPCC had set up two subcommittees headed respectively by himself and Mr Alan LEONG, the Vice-Chairman of IPCC, to meet with the persons affected by the leakage. IPCC members would devote time and effort to handle the various issues arising from the leakage incident. He hoped that the Government would directly involve itself in the remedial actions, as IPCC was not in a position to accede to certain requests, such as change of identity card number.

46. The Administration advised the Panel that it attached utmost importance to respecting the independence of IPCC while seeking to ensure that IPCC was given all the support that it required to discharge its duties. Shortly after the discovery of the incident, the Administration had deployed additional temporary staff to the IPCC Secretariat to strengthen the

administrative support to IPCC in taking follow-up actions. The Administration would continue to seek to provide additional staff to IPCC Secretariat where necessary.

47. The Administration stated that it fully recognised the time and contribution of IPCC members to the work of IPCC as a public service. The Administration therefore considered that they should not be held financially liable for their work for IPCC. Nor should they be unnecessarily encumbered with handling claims arising from the performance of their public service. Since the incident, the Administration had arranged for and funded IPCC to obtain legal advice on matters of legal concern. In addition, the Administration would take over all legal proceedings against IPCC members and the IPCC Secretary, with the Department of Justice conducting the proceedings in the name of IPCC members or the IPCC Secretary, as the case might be. In the case of proceedings or claims brought against third parties, the Department of Justice would handle such claims on behalf of IPCC members and the IPCC Secretary. The Administration would remain in close liaison with IPCC and stood ready to provide other kinds of support to IPCC in dealing with the incident as appropriate.

48. The Administration took the view that as the Office of the Privacy Commissioner for Personal Data was conducting an investigation into the incident under the Personal Data (Privacy) Ordinance, there was no such a need to appoint an independent committee of inquiry at this stage.

49. The Panel was briefed on the legislative proposals to establish IPCC as a statutory body in June 2006.

50. Some members considered that employees of the IPCC Secretariat and its Legal Adviser should be recruited outside the civil service to enhance public confidence of an independent IPCC. These members also expressed concern about the increase in workload of IPCC members and their legal liabilities in cases of compensation claim after IPCC had become a statutory body. Some other members considered that IPCC should be empowered to conduct independent investigations, and to determine whether the complaints would substantiate.

#### Other issues

51. The Panel had also discussed other issues with the Administration. They included the long-term prison development, rules and directions for the questioning of suspects and the taking of statements, Police cooperation on the exchange of information in the detective of crime, and Police's undercover operations against vice activities.

52. The Panel was also briefed on a number of legislative and financial proposals. They included the revision of certain fees and charges for services not directly affecting people's livelihood, redevelopment of Lo Wu Correctional Institution, proposed Customs Headquarters Building, Junior Police Officers' Married Quarters in Tuen Mun, Fire Services Department Diving Training Centre, and legislative proposals for the implementation of co-location arrangement.

#### Meetings held

53. Between October 2005 and June 2006, the Panel held a total of 16 meetings. The Panel also held a joint meeting with the Panel on Administration of Justice and Legal Services to discuss the staffing implication of the implementation of the Administration's legislative framework concerning interception of communications and covert surveillance.

Council Business Division 2  
Legislative Council Secretariat  
28 June 2006

**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 2005-2006 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, SBS, 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, JP  
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** 13 October 2005