

立法會
Legislative Council

Ref : CB2/PL/SE/1

LC Paper No. CB(2)880/06-07
(These minutes have been
seen by the Administration)

Panel on Security

**Minutes of meeting held on Tuesday, 5 December 2006, at 2:30 pm
in Conference Room A of the Legislative Council Building**

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

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon CHIM Pui-chung

Public Officers attending : Item IV
Miss Shirley YUNG
Assistant Director of Administration

Mr Ian McWALTERS
Deputy Director of Public Prosecutions
Department of Justice

Mr John HUNTER
Deputy Principal Government Counsel (Treaties & Law)
Department of Justice

Ms Manda CHAN
Principal Assistant Secretary for Security A

Mr Hubert LAW
Assistant Secretary for Security

Item V

Mr LO Ying-ki, Alan
Principal Assistant Secretary for Security C

Mr SIN Yat-kin
Assistant Commissioner (Operations)
Correctional Services Department

Mr AU-YEUNG Ho-lok, Luke
Assistant Commissioner (Excise and Operation Support)
Customs and Excise Department

Mr MAK Hoi-wan, Walter
Acting Staff Officer (Legislation, Orders and Procedures)
Customs and Excise Department

Mr CHAN Kwok-ki
Assistant Director (Enforcement and Litigation)
Immigration Department

Mr Blaine Stewart HOGGARD
Assistant Commissioner of Police (Support)

Mr Patrick D G HODSON
Acting Chief Superintendent of Police (Support Branch)

Item VI

Mrs Apollonia LIU
Principal Assistant Secretary for Security E

Mr MA Wai-luk

Chief Superintendent (Crime Headquarters) (Crime Wing)
Hong Kong Police Force

Mr Hubert LAW
Assistant Secretary for Security

**Attendance by
invitation**

Item V

Society for Community Organization

Ms Annie LIN
Community Organizer

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

**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

Miss Helen DIN
Legislative Assistant (2) 1

Action

I. Confirmation of minutes of previous meeting
(LC Paper Nos. CB(2)500/06-07 and CB(2)502/06-07)

The minutes of the special meeting held on 18 October 2006 and the meeting held on 7 November 2006 were confirmed.

II. Information papers issued since the last meeting
(LC Paper Nos. CB(2)448/06-07(01) and CB(2)509/06-07(01))

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

Action

- (a) Referral from Duty Roster Members on the mechanism for enforcement of Rule 63(1)(b) and Rule 68B of the Prison Rules (Cap. 234A); and
- (b) Administration's paper on its improvement works to old Police stations.

3. Ms Emily LAU said that the paper provided by the Administration on the improvement works to Police stations was mainly focused on areas in Police stations that were frequently used by the public. She suggested that the Administration should be requested to provide information on the progress of improvement works to working areas in old Police stations and the Police's plan for such improvement works. Members agreed.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)499/06-07(01) and (02))

4. Members agreed that the item "Crime situation in 2006" would be discussed at the next meeting to be held on 25 January 2007 at 10:45 am.

5. Members also agreed that the following items would be discussed at the regular meeting to be held on 6 February 2007 at 2:30 pm -

- (a) Legislative proposals to implement the obligations on extradition and mutual legal assistance under the International Convention for the Suppression of the Financing of Terrorism;
- (b) Proposed implementation of an Integrated Licensing, Fire Safety and Prosecution System in the Fire Services Department; and
- (c) The latest drug abuse situation and anti-drug strategies.

6. Members also agreed that a visit would be made to the Chi Ma Wan Correctional Institution and Chi Sun Correctional Institution in the morning of 19 January 2007.

IV. Proposed legislation to implement the United Nations Convention Against Corruption in Hong Kong and related matters
(LC Paper No. CB(2)2577/05-06(03))

7. Assistant Director of Administration and Principal Assistant Secretary for Security A (PAS(S)A) briefed Members on the legislative proposals to implement the requirements of confiscation, extradition and mutual legal assistance in criminal matters (MLA) under the United Nations Convention Against Corruption (UNCAC) in Hong Kong.

Action

8. Referring to paragraph 6 of the Administration's paper, the Deputy Chairman asked why offences of "accepting" bribes as defined under sections 4(2), 5(2), 6(2) and 9(1) of the Prevention of Bribery Ordinance (Cap. 201) had not been included in Schedule 2 to the Organized and Serious Crimes Ordinance (OSCO) (Cap. 455).

9. Deputy Director of Public Prosecutions responded that the Department of Justice had looked into the issue, but had not been able to identify the reasons.

10. Referring to paragraph 9 of the Administration's paper, the Deputy Chairman asked why the Fugitive Offenders Ordinance (FOO) (Cap. 503) and the Mutual Legal Assistance in Criminal Matters Ordinance (MLAO) (Cap. 525) had not dealt with the requirements in Articles 14, 16 and 18 of the United Nations Convention Against Transnational Organized Crime (UNTOC). Ms Margaret NG asked the Administration to explain the effect of the proposed legislative amendments.

11. PAS(S)A responded that the FOO and MLAO could already enable Hong Kong to surrender fugitive offenders and provide mutual legal assistance (MLA) in respect of offences under UNTOC to jurisdictions with which Hong Kong had concluded bilateral surrender of fugitive offenders (SFO) and MLA agreements. In addition, MLAO permitted MLA to be provided on the basis of reciprocity. After the enactment of the proposed subsidiary legislation, FOO and MLAO would enable Hong Kong to respond to requests made by State Parties to UNCAC and UNTOC. Ms Margaret NG requested the Administration to provide information on jurisdictions with which Hong Kong had entered into bilateral SFO or MLA agreements, and State Parties to UNCAC and UNTOC with which Hong Kong had not entered into such bilateral agreements. The Chairman asked the Administration to provide such information before the relevant subsidiary legislation was introduced into the Legislative Council.

Admin

12. The Deputy Chairman said that some countries with which Hong Kong had not entered into such bilateral agreements might be those where the legal systems and values were different from those in Hong Kong. He asked whether Hong Kong would be forced, after the enactment of the proposed subsidiary legislation, to surrender fugitive offenders or provide MLA to such countries even though Hong Kong considered it inappropriate to do so.

13. Deputy Principal Government Counsel (Treaties & Law) (DPGC) responded that Hong Kong had an obligation under UNCAC and UNTOC to surrender fugitive offenders or provide MLA to a State Party to UNCAC and UNTOC, unless there were grounds for refusal under FOO or MLAO. PAS(S)A added that Articles 44(1) and 46(1) of UNCAC provided that SFO and MLA requests should be dealt with in accordance with the domestic legislation of the requested party. The existing safeguards provided under FOO and MLAO would be unaffected by the proposed legislative amendments.

Action

14. Mr Albert HO said that, to his knowledge, a fugitive offender would be surrendered only where the double criminality requirement was satisfied. He asked whether this had posed barriers for Hong Kong in requesting surrender of fugitive offenders from other jurisdictions.

15. DPGC responded that under UNCAC, the offence for which extradition was sought had to be punishable under the domestic legislation of both the requesting party and the requested party. As for MLA, the double criminality requirement had already been incorporated in MLAO.

16. Mr Albert HO asked about the number of countries which had entered into MLA agreements and SFO agreements with Hong Kong. PAS(S)A responded that Hong Kong had entered into MLA agreements with 21 countries and SFO agreements with 16 countries.

17. Mr Albert HO asked whether Hong Kong had experienced any problem in the past in respect of SFO relating to corruption offences, given that there were differences between the corruption offences in local legislation and those of many other jurisdictions.

18. PAS(S)A responded that Hong Kong had not experienced any problem in the past in respect of SFO requests involving corruption-related offences with countries with which Hong Kong had entered into SFO agreements.

19. Mr Albert HO asked about the number of corruption offence-related SFO requests made by Hong Kong in the past and the number of requests acceded to. PAS(S)A undertook to provide a written response.

Admin

V. Fourth and Fifth Reports of the People's Republic of China under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Part Two : Hong Kong Special Administrative Region

(LC Paper Nos. CB(2)496/06-07(01) and CB(2)487/06-07(01))

20. Principal Assistant Secretary for Security C (PAS(S)C) briefed Members on the paper provided by the Administration.

21. Ms Annie LIN presented the views of the Society for Community Organization (SOCO) as detailed in its submission and highlighted the following points -

(a) the time taken for determination of refugee status and torture claims was currently lengthy and should be shortened;

(b) legal aid should be provided to asylum seekers and torture claimants; and

Action

- (c) asylum seekers should not be treated as overseas visitors who took up illegal employment in Hong Kong.

22. Mr LAW Yuk-kai presented the views of the Hong Kong Human Rights Monitor (HKHRM) as detailed in the submission tabled at the meeting.

(Post-meeting note : The revised version of the submission tabled at the meeting was circulated to members vide LC Paper No. CB(2)582/06-07 on 7 December 2006.)

Admin 23. Ms Emily LAU requested the Administration to provide a written response to the issues raised in the submissions from SOCO and HKHRM.

24. Dr Fernando CHEUNG expressed concern that some asylum seekers had been detained for a long time. He asked whether there was a ceiling to the length of such detention. He also asked about the number of asylum seekers and torture claimants under detention.

25. Assistant Director of Immigration (Enforcement and Litigation) (AD of Imm) responded that no person would be detained and prosecuted merely because of lodging a refugee status claim or torture claim. Detention would be made only if the person concerned had breached the laws of Hong Kong, such as overstaying. An asylum seeker would not normally be repatriated until his claim had been determined by the United Nations High Commissioner for Refugees (UNHCR). Where an asylum seeker was granted a refugee status by UNHCR, repatriation of the person concerned would be deferred until arrangements had been made by UNHCR for him to settle in another country.

26. AD of Imm said that asylum seekers and torture claimants in detention might be granted release on recognizance on the merit of individual cases, having regard to -

- (a) whether the person concerned constituted a security risk to the community;
- (b) whether there was any risk of the person absconding and (re)offending; and
- (c) whether removal was not going to be possible within a reasonable time.

27. AD of Imm informed Members that about three-quarters of some 500 outstanding asylum seekers and torture claimants had been granted release on recognizance. He said that information provided by UNHCR suggested that, in comparison with other countries, there was a more widespread abuse of refugee status and torture claims in Hong Kong.

28. Dr Fernando CHEUNG expressed concern that torture claimants could be

Action

indefinitely detained. He requested the Administration to provide information on the offences committed by detained asylum seekers and torture claimants and the length of period, especially the longest period, for which such persons had been detained. He also requested the Administration to provide information on the number of persons granted refugee status and the number of such persons who had settled overseas among the cases referred to in paragraph 13 of the Administration's paper.

Admin 29. AD of Imm agreed to provide the requested information. He said that most torture claimants had been detained for less than three months. So far, there had not been any successful claim among the torture claim cases.

30. AD of Imm stressed that the Administration aimed to provide assistance to those in need while preventing abuse of the existing mechanism. It could be noted that 94% of torture claimants did not made any claim until after having arrived in Hong Kong for an average of 18.4 months. Most of such claimants lodged a refugee status claim only when they were repatriated or arrested for undertaking illegal employment or committing other criminal offences in Hong Kong. Over 70% of the claimants first lodged a refugee status claim with UNHCR and subsequently lodged a torture claim after an average of 10.7 months. He said that the detention of each torture claimant was reviewed from time to time. Release on recognizance was considered having

Admin regard to the factors referred to in paragraph 26 above. The Chairman requested the Administration to provide information about the situation of abuse of the existing mechanism by torture claimants.

31. Mr LEUNG Kwok-hung said that all asylum seekers should first be granted asylum before their breach of local laws were dealt with. PAS(S)C responded that this would open the existing mechanism to abuse.

32. Ms Emily LAU asked whether the "circumstances brought to the attention of the Committee justifying such prosecutions" in paragraph 9 of the Administration's paper referred to the case of *HKSAR v Chuen Lai-sze and three others*.

33. PAS(S)C responded that the United Nations Committee Against Torture (the UN Committee) had not referred to any particular case in its concluding observations and recommendations in 2000. He stressed that the Administration would not tolerate any torture in Hong Kong. There was so far no prosecution under the Crimes (Torture) Ordinance (Cap. 427).

34. Referring to the extract from the judgment delivered in *HKSAR v Chuen Lai-sze and three others*, Mr LAW Yuk-kai said that prosecution should have been made under the Crimes (Torture) Ordinance in respect of the acts referred to in the extract.

Admin 35. Ms Emily LAU requested the Administration to provide a response on whether the Police officers concerned should have been prosecuted under the Crimes (Torture)

Action

Ordinance in *HKSAR v Chuen Lai-sze and three others*. Mr Albert HO requested the Administration to inform the Panel of any follow-up actions taken by the Police in view of the case.

36. The Deputy Chairman said that the case reflected that the Complaints Against Police Office should be made independent. His view was shared by Mr LEUNG Kwok-hung. PAS(S)C responded that the Administration had consulted the Panel on its proposal to turn the Independent Police Complaints Council into a statutory body.

SALAI 37. Ms Emily LAU requested the Legal Service Division to provide legal opinion on the issues raised by HKHRM in connection with the case of *HKSAR v Chuen Lai-sze and three others*.

38. Referring to paragraph 13 of the Administration's paper, Ms Emily LAU said that a proper regime should be established for handling torture claims. Appeals relating to torture claims should not be determined by the Secretary for Security, but by an independent committee or the court. Her view was shared by Mr LEUNG Kwok-hung.

39. AD of Imm responded that a torture claimant aggrieved of the determination of the Director of Immigration could lodge an appeal to the Chief Executive, who had delegated the authority for considering such an appeal to the Secretary for Security. A torture claimant aggrieved of the determination in an appeal could seek judicial review. He said that about 10 appeals had so far been lodged by torture claimants and no judicial review had been sought among the cases where determination had been given by the Secretary for Security.

40. Ms Emily LAU said that assistance should be provided to torture claimants released on recognizance. Dr Fernando CHEUNG said that the assistance provided to torture claimants released on recognizance was inadequate. In this connection, he had received complaints from at least two torture claimants released on recognizance that they had not received any assistance more than four months after seeking assistance from the Social Welfare Department.

41. AD of Imm responded that basic in-kind assistance was provided by non-government organisations to torture claimants in need. He suggested Dr Fernando CHEUNG provide the Administration with further information about the cases for follow-up.

42. The Deputy Chairman said that the Administration should reconsider whether there was a need to provide the defence of "lawful authority, justification or excuse" to a person charged with torture under the Crimes (Torture) Ordinance, given that the defence was too broad.

43. PAS(S)C responded that the reasonable use of force to restrain a violent suspect or

Action

prisoner was only one of the examples indicating the need for the defence. The definition of "torture" as defined in the Crimes (Torture) Ordinance was consistent with the requirements under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). He stressed that any "lawful authority, justification or excuse" had to be consistent with the laws of Hong Kong. He said that the second report of the HKSAR under CAT had been submitted to the UN Committee and the Administration would examine any recommendations and conclusions of the UN Committee, when available, on the second report of the HKSAR under CAT.

44. The Deputy Chairman said that legal advice on prosecution in respect of torture should be made by an independent lawyer instead of the Department of Justice. PAS(S)C undertook to convey the suggestion to the Department of Justice, which was responsible for prosecution matters.

Admin

45. Mr Albert HO asked whether every person had the absolute right of not being subject to acts of torture and other cruel, inhuman or degrading treatment or punishment.

46. PAS(S)C responded that Article 2 of CAT provided that each State Party to CAT should adopt effective measures to prevent acts of torture. Even a state of war or a threat of war, political instability or any other public emergency could not be invoked as a justification of torture. However, paragraph 1 of Article 1 of CAT provided that "It does not include pain or suffering arising from, inherent in or incidental to lawful sanctions."

47. Mr Albert HO said that a person's right of not being subject to acts of torture and other cruel, inhuman or degrading treatment or punishment should be an absolute one. No exception to CAT should be created by legislative means. Lawful sanctions should be subject to CAT. His view was shared by Mr LEUNG Kwok-hung. Mr HO requested the Administration to provide a written response from a legal point of view on the issue. He also requested the Administration to provide statistics on deaths in official custody. He queried why such statistics, which were included in the previous report of the HKSAR under CAT, were not included in the last report.

Admin

48. Mr LAW Yuk-kai said that, according to a judgment delivered by the European Court of Human Rights, every person had an absolute right of not being subject to acts of torture and other cruel, inhuman or degrading treatment or punishment.

49. Dr Fernando CHEUNG asked whether the staff of the Immigration Department (ImmD) who dealt with torture claims had received relevant training.

50. AD of Imm responded that experienced staff of ImmD were deployed for dealing with torture claims. Specialist from UNHCR had been invited to deliver lectures on torture claims. Some officers of ImmD had undergone overseas training in handling torture claims. Dr Fernando CHEUNG requested the Administration to

Action

Admin provide information about the percentage of ImmD staff who had undergone training in handling torture claims.

51. Dr Fernando CHEUNG asked why torture claimants were interviewed by the staff of ImmD without any legal representative or lawyer.

52. AD of Imm responded that the interviews were conducted for the purpose of gathering facts about the torture claimants and did not involve any legal procedures. Legal aid would be provided when the torture claimants appeared before the court.

53. Ms Emily LAU suggested that the subject should be further discussed by the Panel in the future.

VI. Measures adopted by the Police in combating street deception
(LC Paper No. CB(2)499/06-07(04))

54. Referring to the Annex to the Administration's paper, Mr CHEUNG Man-kwong asked about the detection rate of the respective types of cases and the sentence imposed in convicted cases. He also asked about the number of cases where Mainlanders were found involved in the commission of the crime.

55. Chief Superintendent (Crime Headquarters) (Crime Wing) (CSP) responded that the arrested persons were prosecuted for fraud and the sentence imposed was about two to four years' imprisonment, although the maximum sentence for the offence was 14 years' imprisonment. The Police noted that a majority of the persons who committed such crimes were Mainland visitors. He said that information about Mainland visitors convicted of crime in Hong Kong and intelligence about Mainland persons involved in criminal activities were provided to the Mainland public security authorities.

56. Mr LEUNG Kwok-hung asked whether there were established channels for regular exchange of intelligence with the Mainland to combat street deception.

57. CSP responded that issues concerning criminal activities which were of mutual concern were raised at meetings of the Guangdong Hong Kong Macau Tripartite Criminal Investigation Department Heads Conference held at six-month intervals. Intelligence was exchanged at the forum, and where necessary, additional meetings were held on criminal activities of mutual concern.

58. Mr LEUNG Kwok-hung asked about the number of meetings held with the Mainland and Macau criminal investigation authorities to discuss street deception. CSP responded that statistics were not kept on the number of such meetings.

59. Mr CHEUNG Man-kwong asked whether the sentencing provisions under OSCO

Action

had been invoked for prosecuting "spiritual blessing" cases so that a heavier sentence would be imposed on the convicted persons. Given the prevalence of such cases, he considered that sentencing provisions under OSCO should particularly be invoked for such cases.

60. CSP responded that, depending on the seriousness and prevalence of the crime involved, application was made under OSCO as far as possible in street deception cases to impose a heavier sentence. He said that the Police attached great importance to "spiritual blessing" cases and had put much effort in combating such crime in the past few years. Besides intelligence-led operations, much publicity had been launched through the media and at places frequently visited by the elderly, such as parks, elderly homes and elderly day care centres, to enhance the awareness and alertness of the elderly. Banks had been encouraged to contact the Police, if they came across elderly customers withdrawing unusually large sums of money.

61. Miss CHOY So-yuk said that the Police should step up patrol to combat street deception. She pointed out that there were many recent cases of deception in the Mainland where the victims were intoxicated. She asked whether information on such crime could be obtained from the Mainland public security authorities so that the public could be alerted to such crime.

62. CSP responded that combating street deception was one of the operational targets of the Commissioner of Police in 2006. He said that intelligence on syndicates involved in such crime and their pattern of crime was regularly exchanged with the Mainland public security authorities.

63. The Chairman expressed concern that there was a recent street deception case in Shatin where a woman had been deceived \$1 million. He asked whether the bank had asked the woman about the purpose of cash withdrawal in the case concerned and whether the bank had notified the Police about the withdrawal.

64. CSP responded that while he had no information on hand about the specific case, he noted that some culprits had instructed the victim how enquiries from the bank should be answered.

65. The Chairman asked about the criteria adopted by banks in determining whether the Police should be notified of the withdrawal of a large sum of money from a bank account.

66. CSP responded that while the Police had relevant arrangements in place with the banks, he was not in a position to disclose further details for operational reasons.

67. The meeting ended at 4:55 pm.

Action

Council Business Division 2
Legislative Council Secretariat
17 January 2007