

立法會
Legislative Council

LC Paper No. CB(2)1811/12-13
(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE

Panel on Security

Minutes of meeting
held on Tuesday, 2 July 2013, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, SBS, JP
Hon CHAN Hak-kan, JP
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Michael TIEN Puk-sun, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon Frankie YICK Chi-ming
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Dr Hon Elizabeth QUAT, JP
Hon CHUNG Kwok-pan

Members attending : Hon LEE Cheuk-yan
Hon Ronny TONG Ka-wah, SC
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Gary FAN Kwok-wai
Hon SIN Chung-kai, SBS, JP
Dr Hon CHIANG Lai-wan, JP

Members absent : Hon Albert HO Chun-yan
Hon LAU Wong-fat, GBM, GBS, JP

Public Officers attending : Item II

Mr Lai Tung-kwok, SBS, IDSM, JP
Secretary for Security

Mr Billy WOO
Principal Assistant Secretary for Security D

Mr William FUNG Pak-ho
Assistant Director
(Enforcement and Torture Claim Assessment)
Immigration Department

Item III

Mr Lai Tung-kwok, SBS, IDSM, JP
Secretary for Security

Ms Carol YIP Man-kuen, JP
Deputy Secretary for Security

Mrs Millie NG KIANG Mei-nei
Principal Assistant Secretary for Security E

Ms Alice YEUNG Lai-shan
Assistant Secretary for Security

Mr Godfrey KAN Ka-fai
Senior Assistant Solicitor General,
Legal Policy Division
Department of Justice

Item IV

Mr John LEE Ka-chiu, PDSM, PMSM, JP
Under Secretary for Security

Mrs Millie NG KIANG Mei-nei
Principal Assistant Secretary for Security E

Mr David Michael Cartwright
Regional Commander (Kowloon East)
Hong Kong Police Force

Mr Abraham CHENG Kwok-hung
Chief Superintendent of Police
(Planning and Development Branch)

Ms Janet ONG Peck-san
Superintendent of Police
(Planning and Development Branch)

Mr YIU Wai-keung
Chief Project Manager
Architectural Services Department

Item V

Mr John LEE Ka-chiu, PDSM, PMSM, JP
Under Secretary for Security

Mrs Millie NG KIANG Mei-nei
Principal Assistant Secretary for Security E

Ms Winnie CHIU Wai-yin
Assistant Commissioner of Police (Support)

Mr Thomas WONG Kin-yee
Superintendent (Licensing)
Hong Kong Police Force

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 11

Mr Raymond LAM
Senior Council Secretary (2) 7

Ms Mina CHAN
Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

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I. Information paper(s) issued since the last meeting

(LC Paper Nos. CB(2)1303/12-13(01), CB(2)1381/12-13(01), CB(2)1382/12-13(01) and CB(2)1462/12-13(01))

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

- (a) Administration's response to questions raised in a letter from Mr James TO regarding the expenditure of disciplined services on overseas duty visits, official entertainment and souvenirs;
- (b) referral from the Public Complaints Office regarding separate confinement in Hong Kong;
- (c) letter dated 13 June 2013 from Mr James TO regarding the Police's handling of cases relating to political violence; and
- (d) joint letter dated 14 June 2013 from Mr CHAN Kam-lam and Dr CHIANG Lai-wan regarding the Police's handling of cases relating to child abuse.

2. The Chairman informed Members that the Administration had been requested to provide a written response to the questions raised in the letter from Mr James TO as referred to in paragraph 1(c) above. The Administration would also be requested to provide a response to the issues raised in the joint letter from Mr CHAN Kam-lam and Dr CHIANG Lai-wan as referred to in paragraph 1(d) above.

3. Mr WONG Yuk-man expressed concern about the handling of anonymous complaints by the Fire Services Department and said that he had written a joint letter on the subject with Mr LEUNG Kwok-hung to the Chairman. The Chairman pointed out that the joint letter, which had just been received, would be circulated to members and forwarded to the Administration for a response. Mr CHAN Kam-lam said that he had registered a Question on the issue concerned for a Council meeting in July 2013.

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II. Screening of Non-refoulement Claims

(LC Paper Nos. CB(2)1465/12-13(01) and (02))

4. The Chairman informed Members that the item was originally deferred to a future meeting, but subsequently included in the agenda for the meeting in response to a joint letter relating to the subject from Mr James TO, Mr Albert HO, Ms Emily LAU, Ms Cyd HO, Mr Alan LEONG and Mr Dennis KWOK.

5. Secretary for Security ("S for S") briefed Members on the Administration's plan to introduce a unified screening mechanism for non-refoulement claims ("USM"), as detailed in the paper provided by the Administration.

6. Members noted the background brief entitled "Torture claim screening" prepared by the Legislative Council ("LegCo") Secretariat.

7. Members noted a submission from Society for Community Organization, which was tabled at the meeting.

(Post-meeting note: The submission tabled at the meeting was circulated to members vide LC Paper No. CB(2)1518/12-13 on 3 July 2013.)

Notification of torture claimants about the unified screening mechanism

8. Mr Dennis KWOK noted that more than 4 000 torture claims had been received by the Immigration Department ("ImmD") in the past three years, among which about 1 000 had been withdrawn by the claimants. He expressed concern how the Administration would apply USM to some 3 000 claims which were being processed or awaiting processing. He asked whether the Administration would also process claims lodged by such persons under Article 3 of the Hong Kong Bill of Rights ("BOR Article 3 claims") for torture or cruel, inhuman or degrading treatment or punishment or persecution claims with reference to Article 33 of the 1951 Convention Relating to the Status of Refugees ("the Refugee Convention").

9. S for S responded that ImmD would inform the torture claimants concerned of the arrangement under USM. Any person who wished to lodge a BOR Article 3 claim or a persecution claim should signify to ImmD in writing.

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Training for lawyers on the unified screening mechanism

10. Mr Dennis KWOK considered that the existing four-day training programme for duty lawyers on claims under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was inadequate. The Administration should strengthen its training for duty lawyers, especially on USM.

11. Mr WONG Yuk-man said that duty lawyers should be provided with the necessary training on USM.

12. S for S responded that the Administration agreed with the view that duty lawyers should be provided with training as regards BOR Article 3 / persecution claims. Principal Assistant Secretary for Security D ("PAS(S)D") responded that the Administration had commenced discussions with the Duty Lawyer Service ("DLS") regarding such training for duty lawyers. It was expected that suitable arrangements would be made by DLS.

Statistics on different types of non-refoulement claims and the annual expenditure incurred by the Administration

13. Dr CHIANG Lai-wan expressed concern that the introduction of USM might attract more non-refoulement claims. She sought information on the respective number of persons who lodged torture, BOR Article 3 and persecution claims, the respective length of stay in Hong Kong of such claimants, and the annual expenditure incurred by the Administration in the provision of publicly-funded legal assistance and humanitarian assistance to such claimants.

14. Assistant Director (Enforcement and Torture Claim Assessment), Immigration Department ("AD of Imm") responded that there were currently 3 912 outstanding torture claims and there was no information regarding the number of BOR Article 3 and persecution claims since the screening mechanism for these two claims was not yet in place. It normally took ImmD about one to two month on average to complete processing a claim upon receipt of a completed torture claim form with necessary information provided.

15. S for S said that to his knowledge, there were currently 1 200 outstanding asylum claims lodged with the United Nations High Commissioner for Refugees ("UNHCR"). However, there was no readily available information on the number among these who had also lodged

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non-refoulement claims. He added that the annual expenditure on legal assistance for torture claimants was about \$90 million and that on humanitarian assistance was about \$203 million. Together with the annual expenditure incurred in the provision of manpower for handling such claims, including staff of ImmD, the Department of Justice and the Torture Claims Appeal Board, these added up to about \$450 million.

Party responsible for processing persecution claims

16. Mr WONG Yuk-man said that he had no objection to the proposed USM, if it would not affect the protection enjoyed by claimants. He asked whether BOR Article 3 and persecution claims would be processed under USM by the Administration or UNHCR. He considered that the processing of persecution claims was different from the other two kinds of claims. The Administration should examine the relationship of the three types of non-refoulement claims and provide the Panel with information on the details of USM.

17. S for S responded that asylum claims lodged under the 1951 Refugee Convention were currently processed by UNHCR. Persecution claims drawing reference to the same Convention would be processed by the Administration after USM was implemented. The Administration would examine the relationship of the three types of non-refoulement claims.

Statutory mechanism for processing claims lodged under Article 3 of the Hong Kong Bill of Rights and persecution claims

18. The Deputy Chairman asked whether the Administration had any plans to establish statutory mechanisms to process BOR Article 3 claims and persecution claims. He considered that uncertainty might arise if some types of non-refoulement claims were processed under a statutory mechanism, while other types of non-refoulement claims were processed under administrative mechanisms.

19. S for S responded that it was the Administration's intention to process torture claims under a statutory mechanism, whereas BOR Article 3 claims and persecution claims would be processed under an administrative mechanism in tandem. He stressed that the administrative mechanism would be much in line with the existing statutory torture claim screening mechanism.

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20. The Deputy Chairman asked whether there were any drawbacks for establishing statutory mechanisms for the screening of BOR Article 3 claims and persecution claims. S for S responded that the Administration considered it more appropriate to accumulate more experience in the screening of such cases before considering the way forward. He said that the court had spelt out its views on the criteria for screening of BOR Article 3 cases and time was needed for the Administration to examine whether there were problems in implementation.

21. Ms Emily LAU considered that the Refugee Convention should be extended to Hong Kong. She expressed concern about the judgment of the Court of Final Appeal ("CFA") in *C & Ors v. Director of Immigration* (FACV 18-20/2011) and queried why the Administration had no plans to process BOR Article 3 claims and persecution claims under a statutory mechanism. She asked whether the Administration would establish statutory mechanisms to process such claims, if the court so requested.

22. S for S responded that the Administration had always acted in compliance with the judgment of the court. CFA ruled in *C & Ors v. Director of Immigration* (FACV 18-20/2011) that, as long as D of Imm maintained the prevailing practice of having regard to a claimed fear of persecution as a relevant humanitarian consideration, he was required to independently determine whether the claimed fear of persecution was well-founded, before executing one's removal or deportation to another country. The judgment had no conflict with the Administration's established position that the Refugee Convention did not apply to Hong Kong.

23. Mr LEUNG Kwok-hung asked whether the Administration was required by CFA to determine independently whether a claimed fear of persecution was well-founded for persecution claims which had been found substantiated by UNHCR.

24. S for S responded that ImmD was required to determine persecution claims lodged by persons whose asylum claim was found not substantiated by UNHCR.

Time needed for processing non-refoulement claims

25. Mr WONG Kwok-kin expressed concern about the illegal employment and security problems arising from the lengthy time needed for processing non-refoulement claims. He asked about the approximate time taken between the lodging and determination of a claim and whether the time taken would be shortened after implementation of USM.

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26. S for S responded that a torture claimant must return the completed torture claim form with all supporting documents to an immigration officer within 28 days. The time taken between the lodging and determination of a claim varied from one case to another. In cases where the claimant lodged an appeal or applied for a judicial review, the time taken would even be longer.

27. AD of Imm added that ImmD had encountered difficulties in the processing some torture claims in the past, including the claimant's failure to attend a briefing session for commencement of the screening process, failure to contact his lawyer to give instruction for submission of torture claim form and supportive documents, absence without reasonable excuse from an interview scheduled by an immigration officer, request for cancellation of interview scheduled by an immigration officer for health reasons and failure, without reasonable excuse, to attend subsequent interviews, and failure to provide supplementary information after extension of the deadline for submission. The implementation of USM would enable claims to be processed in a reasonable, fair and efficient manner.

Verification of information provided by claimants

28. Mr CHAN Kam-lam asked whether the Administration would take steps to verify information provided by claimants regarding the situation in their countries.

29. S for S responded that regardless of the country from which a claimant came, the Administration would determine the claim with high standards of fairness as required by the CFA in *Sakthevel Prabakar v. Secretary for Security* ((2004) 7 HKCFAR 187). If there were claims that a certain incident had occurred in a country, the Administration would examine relevant information in the public domain and reports of reputable institutions, such as UNHCR as well as non-governmental organizations ("NGOs"). However, the Administration could not write to the country concerned to verify the facts. He added that such country information would also be examined by the Torture Claims Appeal Board, if an appeal was lodged by a claimant. In a judicial review, the court would also consider whether ImmD had examined such information.

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Resettlement of successful claimants in a third country

30. Referring to successful torture claims, Mr CHUNG Kwok-pan asked whether there were arrangements for the torture claimant to resettle in a third country. He also asked whether it was difficult in practice for a successful claimant to seek resettlement in a third country.

31. S for S responded that even if a claimant succeeded in his non-refoulement claim, he might still be removed to a third country subject to that country's agreement to admit the person. If no country was willing to accept the claimant, the claimant would remain in Hong Kong temporarily. He said that the Administration would regularly review substantiated claims to examine whether the condition in the country concerned had since changed. It was generally difficult for a substantiated claimant or refugee to seek resettlement in a third country.

Effect of torture claim on a surrender order for fugitive offenders

32. Dr Priscilla LEUNG said that the SNOWDEN incident revealed that much personal information in Hong Kong had been intercepted by the United States. She noted that Hong Kong had enacted the Mutual Legal Assistance in Criminal Matters (United States of America) Order (Cap. 525F) and Fugitive Offenders (United States of America) Order (Cap. 503F). Noting that under the Fugitive Offenders Ordinance (Cap. 503) ("FOO"), a person should not be surrendered if it appeared to an appropriate authority that the offence in respect of which the surrender was sought was an offence of a political character, she asked whether the offence for which the surrender of Mr Edward SNOWDEN was sought was of a political character.

33. S for S responded that he was not in a position to comment on individual cases. Under the Immigration Ordinance (Cap. 115) ("IO"), if a person whose surrender was requested in surrender proceeding lodged a torture claim, a surrender order would be suspended until the torture claim had been determined. He stressed that Mr Edward SNOWDEN had left Hong Kong on his own accord as a normal passenger using normal and lawful channels for a third country.

34. Dr Priscilla LEUNG asked whether there had been any request for surrender of fugitive offender where the offence concerned was of a political character. S for S responded that there had not been such cases in the past.

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35. Dr LAM Tai-fai asked whether Mr Edward SNOWDEN had sufficient grounds to lodge a non-refoulement claim, if he was still in Hong Kong.

36. S for S responded that while he was not in a position to comment on individual cases, a foreigner might lodge a non-refoulement claim only if he was subject or liable to removal from Hong Kong to another country, if the person had, for example, overstayed.

37. Mr LEUNG Kwok-hung asked whether Mr Edward SNOWDEN could raise objection to being surrendered, if a surrender order was served on him. He also asked whether the Chief Executive had discretion to order no surrender.

38. S for S responded that he was not in a position to comment on individual cases. He said that any person on whom a surrender order was served could raise objection to the court and all the procedural safeguards had been set out clearly in FOO.

39. Mr Michael TIEN asked whether death sentence fell within the meaning of torture or cruel treatment. S for S responded that an order for surrender might not be made under FOO if the offence concerned was punishable with death, unless the requesting party gave an assurance which satisfied the Chief Executive that the death sentence would not be imposed or carried out.

40. In response to Mr Michael TIEN's question on the removal of persons to countries which had not entered into any surrender of fugitive offender agreement with Hong Kong, S for S explained that if an overstayer lodged a BOR Article 3 claim before being repatriated, his claim would be determined in accordance with the criteria laid down by CFA in *Ubamaka Edward Wilson v. Secretary for Security* (FACV 15/2011).

Criteria for the processing of non-refoulement claims

41. Mr Frankie YICK expressed concern that many claimants had lodged a torture claim merely for the purpose of undertaking illegal employment in Hong Kong. He noted that the number of torture claims had decreased in the past three years whereas the number of claimants removed had increased. He asked whether there had been any change in the criteria adopted by the Administration in the processing of such

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claims. He expressed concern whether UNHCR had assisted in the removal of unsuccessful claimants and whether there were adequate resources to effect such removal.

42. S for S responded that the number of claimants who opted for voluntary repatriation had increased since the IO was amended in 2009 to prohibit torture claimants from taking employment. AD of Imm added that ImmD had all along adopted the same criteria and considered the views of the court in the processing of such claims.

Provision of humanitarian assistance to non-refoulement claimants

43. Dr LAM Tai-fai expressed concern about the possibility of non-refoulement claimants committing crime when awaiting determination of their claims in Hong Kong, given that they were not allowed to take employment in Hong Kong and there were reports that they were only provided \$12 per day.

44. PAS(S)D responded that non-refoulement claimants were illegal immigrants or overstayers and such persons were not allowed to take employment in Hong Kong. He pointed out that the Social Welfare Department ("SWD"), in collaboration with a NGO and, offered in-kind humanitarian assistance to torture and asylum claimants on a case-by-case basis, covering temporary accommodation, food, clothing and other basic necessities. To his knowledge, the value of the food assistance alone was more than \$1,000 per month. The assistance level was subject to periodic review by SWD.

Adoption of a pragmatic approach in the handling of non-refoulement claims

45. Mr Paul TSE said that the Administration should adopt a more pragmatic approach in the handling of non-refoulement claims to prevent abuse. It should take proactive steps to investigate into claims about torture or persecution in the countries concerned. ImmD should also tighten immigration control on the entry of visitors from countries where a number of their residents had lodged non-refoulement claims in Hong Kong. He added that consideration might be given to allowing non-refoulement claimants to undertake employment in Hong Kong for a fixed term of three years without extension.

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46. S for S responded that ImmD was responsible for assessing claims, having regard to relevant country information. He said that some claimants had entered Hong Kong illegally and some claimants were foreign domestic helpers previously employed in Hong Kong, hence the tightening of immigration control on visitors might not be effective. He stressed that it was inappropriate from immigration control perspective to allow claimants to take employment for three years, as this would mean that all visitors would be allowed to work in Hong Kong for a period of three years. The abuse of non-refoulement claim was a problem encountered by many countries. The Administration had to uphold the rule of law in the processing of non-refoulement claims.

Invitation of written views from the public on the unified screening mechanism

47. Mr Dennis KWOK considered that a meeting of the Panel should be held to receive the views of deputations on the screening of non-refoulement claims. His view was shared by Ms Emily LAU. The Chairman suggested that the written views of the public on USM would be invited by posting an invitation notice on the LegCo website. Written submissions received would be circulated to members. Subject to members' views on the submissions, the Chairman would consider whether it was necessary to hold a meeting to receive the views of the public on the issues concerned. Members agreed.

III. Review of the Interception of Communications and Surveillance Ordinance

(LC Paper Nos. CB(2)1465/12-13(03) and (04))

48. S for S briefed Members on the progress of review on the Interception of Communications and Surveillance Ordinance (Cap. 589) ("ICSO") and the Administration's legislative proposals, as detailed in the paper provided by the Administration.

49. Members noted the background brief entitled "Review of the Interception of Communications and Surveillance Ordinance" prepared by the LegCo Secretariat.

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Scope of the Administration's review

50. The Deputy Chairman said that the Administration's review of ICSO was not a comprehensive one, as it only covered the recommendations and views of the Commissioner on Interception of Communications and Surveillance ("the Commissioner") but did not cover those of other persons. He said that the recent disclosure by Mr Edward SNOWDEN revealed that communications in many European countries were intercepted by the United States. He considered that existing legislation was inadequate in tackling such a problem and there was a need for a comprehensive review of ICSO and other relevant local legislation such as those on telecommunications to ensure that the scope of such legislation would be expanded to have extraterritorial effect to target particularly individuals or commercial entities or contractors which conducted computer hacking or interception of communications from overseas. In addition, he recalled having moved a large number of Committee Stage amendments during the enactment of ICSO but such proposals had not been accepted. These included the proposal on criminalization of unauthorized interception of communications by law enforcement officers. Having said that, he considered that the Administration should proceed with the amendment exercise quickly to implement the checking proposal for the Commissioner in order to enhance the deterrent effect. He would continue to follow up on other proposals in the Panel.

51. S for S responded that the purpose of ICSO was to empower law enforcement agencies ("LEAs") to undertake lawful covert operations to combat serious crimes for protecting public security. Law enforcement under ICSO is confined to Hong Kong only. The issues raised by the Deputy Chairman relating to the regulation of interception of communication and surveillance by the non-government sector were outside the purview of ICSO and should be dealt with separately. These issues were addressed in the Administration's reply to relevant Questions raised at the previous and the coming Council meetings. Regarding penalty on unauthorized interception of communications by law enforcement officers, he said that besides administrative punishment, unauthorized interception of communications might amount to misconduct in public office.

52. Ms Cyd HO considered that ICSO had been enacted in haste and it could not provide sufficient protection for privacy of individuals. She expressed concern whether the Administration had consulted human rights groups, internet service providers and media workers on its review of ICSO.

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53. S for S responded that ICSO regulated the interception of communications and surveillance by LEAs. He said that the former Commissioner had examined the existing regime in depth before coming up with his recommendations.

Power of the Commissioner to check and listen to interception products

54. Referring to paragraph 11 of the Administration's paper, Mr Michael TIEN said that the proposed power of the Commissioner to check and listen to intercept products should be exercised prudently to protect privacy. He expressed concern about the number and ranking of staff who would assist the Commissioner to perform such tasks.

55. S for S responded that the Administration was aware of the need for such power to be exercised prudently. He said that the Administration would discuss with the Commissioner about the number and ranking of such staff. To his knowledge, those who assisted the Commissioner to perform his monitoring role were of a very senior rank.

Authorization of interception of communications

56. Mr SIN Chung-kai said that the interception of communications by the United States National Security Agency was subject to the Foreign Intelligence Surveillance Act and required authorization by the court, although it turned out recently that more than 99% of the applications had been authorized by the court. He expressed concern that the interception of communications did not require authorization by the court in Hong Kong.

57. S for S responded that before LEAs in Hong Kong carried out any interception of communications or covert surveillance operations, they were required to obtain an authorization from an authorizing authority, which was a panel judge for interception of communications and more intrusive covert surveillance operations. Deputy Secretary for Security added that panel judges were judges of the High Court. Regarding the conditions for authorization, she said that ICSO required that the purpose of operation must be confined to the prevention or detection of serious crimes or the protection of public security. The tests of necessity and proportionality had to be met. The interception of communications and covert surveillance by LEAs was monitored by the Commissioner who had to submit annual reports to the Chief Executive.

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Interception of communications and surveillance by the non-government sector

58. Mr Ronny TONG said that while Article 30 of the Basic Law ("BL30") provided that "the freedom and privacy of communication of Hong Kong residents shall be protected by law", ICSO only regulated the interception of communications and surveillance conducted by LEAs. Referring to the Administration's reply to an oral question on information security raised by a Member at the Council meeting of 26 June 2013, he said that sections 24 and 27 of the Telecommunications Ordinance (Cap. 106) were far from adequate for the protection of members of the public from interception of communications by the non-government sector. He considered that ICSO should be extended to cover interception of communications by non-government sector and such acts should be criminalized.

59. Mr LEUNG Kwok-hung shared the view that unauthorized interception of communications by law enforcement officers should be criminalized. He considered that ICSO should be extended to cover the interception of communications by the non-government sector and persons in other jurisdictions.

60. S for S responded that the interception of communications by non-government sector was outside the scope of ICSO. In this connection, he pointed out that relevant policy bureaux would consider whether there was a need to strengthen protection in addition to the existing legal framework, taking into account other policy considerations such as safeguarding freedom of the press. He said that there were diverse views in the community on the Consultation Paper on Stalking issued by the Constitutional and Mainland Affairs Bureau. Mr Ronny TONG considered that the interception of communications by non-government sector was not acceptable even if it was carried out by members of the press.

61. Mr Paul TSE welcomed the Administration's proposals. He said that while BL30 provided that the freedom and privacy of communication of Hong Kong residents should be protected by law, ICSO only regulated the interception of communications and surveillance by designated LEAs. He expressed concern that the SNOWDEN incident revealed that the Hong Kong Internet Exchange of the Chinese University of Hong Kong was even not aware of the interception or hacking that had occurred. He considered that the Administration should take steps to prevent intrusion into the privacy of communication of Hong Kong residents by persons not regulated by ICSO, especially those in other jurisdictions.

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62. S for S responded that the Administration had always sought to enhance information security. ICSO regulated the interception of communications and surveillance by designated LEAs. The issues relating to the interception of communications by the non-government sector were being examined by relevant policy bureaux.

Penalty for unauthorized interception of communications by law enforcement officers

63. Mr WONG Yuk-man considered that ICSO should be amended to impose penalty for unauthorized interception of communications by law enforcement officers and criminalize such acts. He queried whether there was any local legislation regulating acts of interception of communications by the government of the United States.

64. S for S responded that all law enforcement officers were aware of the requirements in ICSO and the consequences of contravention of the provisions in ICSO. He said that after having regard to the views of the former Commissioner, LEAs would consult the Commissioner on the disciplinary actions before actions were taken against the officers whenever the LEA concerned identified a need to do so. He added that the scope of misconduct in public office had been clarified in a case by CFA and the penalty for such an offence was adequate.

65. Mr LEUNG Kwok-hung expressed concern that communications intercepted by LEAs might be disclosed to the media. He also expressed concern that there had been reports about LEAs intercepting the communications of a lawyer's office.

66. S for S stressed that there was no question of disclosure of interception product by LEAs. He pointed out that section 31 of ICSO prohibited the interception of communications of a lawyer's office.

Invitation of written views from the public on the Administration's proposals

67. Ms Cyd HO said that the Panel should consider holding a meeting to receive the views of the public on the review of ICSO. The Chairman said that the written views of the public on the Administration's proposals to amend ICSO would be invited by posting an invitation notice on the LegCo website. Written submissions received would be circulated to members. Subject to members' views on the submissions, the Chairman would consider whether it was necessary to hold a meeting to receive the views of the public on the issues concerned.

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IV. Resources proposals relating to the upgrading of the Tseung Kwan O Police Division to a Police District - creation of a permanent Chief Superintendent of Police post and the construction of Kowloon East Regional Headquarters and Operational Base cum Ngau Tau Kok Divisional Police Station (LC Paper Nos. CB(2)1465/12-13(05) and (06))

68. The Chairman drew members' attention to Rule 83A of the Rules of Procedure concerning personal pecuniary interest to be disclosed.

69. Under Secretary for Security ("US for S") briefed Members on the Administration's proposals regarding the creation of a permanent Chief Superintendent of Police post and the construction of Kowloon East ("KE") Regional Headquarters and Operational Base cum Ngau Tau Kok Divisional Police Station, as detailed in the paper provided by the Administration.

70. Members noted the background brief entitled "Upgrading of Tseung Kwan O Police Division to a police district" prepared by the LegCo Secretariat.

Manpower of the Tseung Kwan O Police Division before its upgrading to a police district

71. Dr Elizabeth QUAT expressed support for the Administration's proposals. She asked whether the Administration had any plans to increase the manpower of the Tseung Kwan O Police Division ("TKO Division") in the interim before it was upgraded to a police district in 2015. She said that as TKO residents were mainly clustered in shopping centres in the area and the streets were comparatively quiet at night, the Police should strengthen patrol on streets in the area at night.

72. US for S responded that the manpower of TKO Division had already been increased by stages from 180 to 219, 295 and the current level of 334. Apart from the manpower of the TKO Division, the Police had been meeting its operational needs through internal redeployment of police officers of KE Region, which had a total of some 3 600 police officers. He informed Members that the Police had strengthened patrol in TKO during the evening and midnight. A hotline had been set up for the reporting of triad activities in TKO and triad-related intelligence gathering work had been strengthened.

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Police-to-population ratio after the upgrading exercise

73. Mr Gary FAN expressed support for the Administration's proposal. Noting that the police-to-population ratio for TKO Division was about one to 1 600 whereas the overall ratio for the entire territory of Hong Kong was about one to 250, he asked whether the Administration would revise the ratio to an appropriate level after the upgrading of TKO Division to a police district.

74. US for S responded that the police-to-population ratio was dependent upon a number of factors, including whether the area was mainly residential or commercial in nature and prevailing infrastructural development. He said that TKO had a population similar to that of Wong Tai Sin. The Wong Tai Sin Police District had a manpower establishment of about 600 and the TKO Police District would initially have a manpower establishment of more than 300. One of the major tasks of the district commander of TKO Police District would be a study of the manpower requirements and boundary realignment of TKO Police District.

75. Noting that the outline zoning plan for Tiu Keng Leng included a police station, Mr Gary FAN asked whether a police station would still be constructed in Tiu Keng Leng after the upgrading exercise. US for S responded that there was no plan to construct a police station in Tiu Keng Leng after the upgrading exercise.

Whether the upgrading exercise would be associated by a corresponding reduction in the manpower establishment of other police districts in the same police region

76. Mr Paul TSE asked whether the upgrading exercise would be associated by a corresponding reduction in the manpower establishment of any other police districts of the same police region. US for S responded that whilst the upgrading exercise would involve an increase in manpower, there would not be reduction in the manpower establishment of other police districts in the same police region as a result of the upgrading.

77. The Chairman concluded that members in general supported the Administration's submission of its proposal to create a permanent Chief Superintendent of Police post to the Establishment Subcommittee and its proposal to construct Kowloon East Regional Headquarters and Operational Base cum Ngau Tau Kok Divisional Police Station to the Public Works Subcommittee.

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[To allow sufficient time for discussion, the Chairman directed that the meeting be extended for 15 minutes.]

V. Police's handling of cases in relation to public order events
(LC Paper Nos. CB(2)1460/12-13(01) and (02))

78. US for S briefed Members on the Police's handling of public order events and related cases, as detailed in the paper provided by the Administration. He said that the Police's handling of cases in relation to public order events had been set out in the Administration's reply to a Question raised at the Council meeting of 22 May 2013.

79. Members noted the background brief entitled "Police's handling of public meetings and public processions" prepared by the LegCo Secretariat.

Whether the east-bound lanes outside a department store in Causeway Bay should be opened to demonstrators

80. Referring to a public procession held on the previous day, Mr LEE Cheuk-yan expressed concern that the Police had not acceded to his request to open up the east-bound lanes outside a department store in Causeway Bay to demonstrators, although it was very crowded at that section of the road. He queried why all the lanes at that section of the road could not be opened to demonstrators at the beginning of the public procession.

81. The Deputy Chairman considered that the Police should clarify whether it had agreed in advance with the organizer of public procession regarding whether the section of the road in Causeway Bay would be opened to demonstrators.

82. US for S responded that the Police had held a number of meetings and carried out on-site visits with the organizers regarding the public procession route. It was agreed and also stated in the letter of no objection concerned that the east-bound lanes would be reserved for emergency vehicle access.

Action

Police's handling of cases of assault in Mong Kok Pedestrian Precinct

83. Mr LEE Cheuk-yan expressed concern that there had been three cases in June 2013 where persons assaulted at the same location in Mong Kok Pedestrian Precinct were charged of fighting. He asked whether the Police would pay particular attention to monitor the situation in Mong Kok Pedestrian Precinct.

84. US for S stressed that the Police had always acted in a fair and impartial manner in handling requests for assistance. Whether charges would be laid against a person in a particular case would depend on its evidence and nature.

Police's arrests of persons and prosecution in relation to public order events

85. Mr Dennis KWOK noted that according to the Police's internal guidelines, the advice of the Department of Justice ("DoJ") would be sought if the Police intended to institute prosecution against any person arrested in public order events. He asked whether there was any requirement on the timeframe for seeking DoJ's advice and instituting prosecution. He expressed concern about a case where arrest was not made until some two years after DoJ had given advice to prosecute. The Deputy Chairman queried why a long time was taken for the Police to arrest the person concerned.

86. Mr LEUNG Kwok-hung considered that the incident reflected that the Police had initially decided not to institute prosecution against the person concerned but subsequently decided to prosecute her.

87. US for S responded that while the Administration's policy was to seek DoJ's advice and institute prosecution as soon as possible, the actual time taken depended on the circumstances of the case concerned and varied from one case to another. In the case concerned, DoJ advised the Police to prosecute nine persons among the demonstrators arrested for blocking the road on 2 July 2012. The Police established contact with seven of these persons soon afterwards but the two others refused to cooperate with the Police. One of these two persons was arrested and prosecuted after four months' time. For the remaining person, the Police had tried to contact her by telephone a number of times and paid visits to a number of related addresses before arresting and prosecuting her. He stressed that there was no difference in the police attitude in handling the nine persons concerned.

Action

88. Mr Paul TSE said that the Administration should, without prejudicing the trial by the court, disclose the difficulties encountered in contacting the person concerned and the circumstances of the case, such as the complications arising from her work in a solicitor firm and media reporting work, to alleviate concerns about political consideration in the arrest and prosecution process.

89. US for S responded that although he was not in a position to disclose details of the case concerned, there was no political consideration in the arrest or prosecution of the person concerned. The Police had attempted to contact the person concerned by telephone for over 20 times and paid many visits to a number of her related addresses.

Estimates of the number of participants of a public procession

90. Mr CHAN Kam-lam said that although the right of the public to hold public meetings and public processions was protected under BL, such a right should be exercised in compliance with the laws of Hong Kong and without infringing the rights of others. He expressed concern that there were discrepancies in the estimated number of participants who took part in the public procession held on 1 July 2013, with some 66 000, 100 000 and 430 000 estimated by the Police, academics and the organizer respectively. He asked whether the Police had allowed sufficient margin in the estimation of the number of participants so that sufficient police manpower would be deployed to handle the public procession.

91. US for S responded that the Police's estimation of the number of participants in a public procession was mainly for internal reference and was intended for facilitating manpower deployment, crowd safety management and traffic management when the public procession was held. While he would not comment on the figure estimated by the organizer of the public procession, he noted that there was not a substantial difference between Police's figure and those estimated by academic institutions. Members of the public could make their own judgement in this regard.

92. The Chairman said that the subject might be followed up at a future meeting, if necessary.

Action

93. There being no other business, the meeting ended at 5:43 pm.

Council Business Division 2
Legislative Council Secretariat
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