

# 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 2013-2014 session of the Legislative Council ("LegCo"). It will be tabled at the Council meeting of 2 July 2014 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

#### **The Panel**

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000, 9 October 2002, 11 July 2007 and 2 July 2008 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 29 members in the 2013-2014 session, with Hon IP Kwok-him and Hon James TO elected as its Chairman and Deputy Chairman respectively. The membership list of the Panel is in **Appendix II**.

#### **Major work**

##### Maintaining public order

*Police's handling of abusive or uncooperative behaviour of members of the public*

4. The Police's handling of public order events and maintenance of law and order continued to be the main focus of the Panel during the current session.

Members were seriously concerned that there had been increasing confrontation and swearing between members of the public and the Police during some public meetings and public processions. Noting that the Police had issued a set of guidelines in March 2014 to advise police officers on how to handle abusive behaviour directed at them by members of the public, the Panel followed up with the Administration on the subject.

5. Some members had reservations about the need to issue the guidelines. There were suggestions that the Administration should disclose the guidelines such that the public would have a better understanding of what constituted abusive behaviour. The Administration stressed that the guidelines were formulated on the basis of existing legal framework, which did not involve enactment of any new offences or expand the power of the Police, and it was not appropriate to disclose the guidelines as they related to the Police's operational details.

6. Some members were however concerned that the guidelines would, on the contrary, encourage abusive behaviour of members of the public if such acts did not constitute an offence under the existing legislation. In these members' view, abusive behaviour against police officers was no different from contempt of the rule of law, and should not be tolerated. They urged the Administration to actively consider enacting legislation against insulting police officers.

#### *Use of body worn video camera*

7. Following the completion of the first stage of field trial of the use of body worn video camera ("BWVCs") by the Police in September 2013, the Administration reported to the Panel on the positive results of the field trial and its plan to launch the second stage field trial in the second quarter of 2014 to record incidents with law and order implications.

8. While some members considered it fair to both demonstrators and the Police with the use of BWVCs as it recorded the event factually, some other members expressed concern that the recording would be made on subjective judgement of police officers and thus susceptible to abuse and unfair practice. There was a view that the Police should issue and make accessible to the public the guidelines on the use of such video-recording devices as well as the access to and destruction of the captured footage. The Administration advised that although it was not appropriate to make public the internal operational guidelines, the Police's webpage on BWVCs had highlighted the rights of members of the public to request access to their own personal data kept by the Police under the Personal Data (Privacy) Ordinance (Cap. 486).

9. The Panel also reviewed the use of BWVCs. The Panel noted that during the first phase field trial, BWVCs had been used in 25 incidents, 13 of which the persons involved turned calm and restrained when being video-filmed. The footage had been retained for investigation and court proceedings in the other 12 incidents. No footage so captured had been presented as evidence in court because the accused had either pleaded guilty or agreed to be bound over in the cases concerned. Members were advised that BWVCs could only be used in confrontational scenarios and incidents during which a breach of peace had occurred or was likely to occur. Any use of BWVCs should be reported and would be reviewed by the supervisor concerned. The Police would delete footage relating to an incident in which there was no investigation after 31 days from the date it was made, unless with the permission of a Senior Superintendent of Police under special circumstances, such as anticipated future investigation. Only captured footage relating to an incident where there was an investigation would be treated as case exhibit and be retained for investigation and court proceedings.

*Police's handling of serious assault and wounding cases*

10. In the light of wide public concern about the serious assault on the person-in-charge of a media organization in February 2014, the Panel discussed with the Administration the Police's handling of serious assault and wounding cases, and the investigation progress of the case.

11. Members expressed grave concern that the acts of violence targeted at journalists and media organizations had been increasing. Some members were very concerned that many cases of assaults against members of the media had not been detected and stressed the need for the Administration to safeguard the personal safety of journalists and members of the media industry, and to bring the assailants to justice. The Administration assured members that the Police accorded equal importance to all cases under investigation. In addition to searching for witnesses and collecting exhibits, the Police would conduct in-depth investigations into various aspects of the case like the motive and the modus operandi. Members were also advised that the detection of such cases was often influenced by various external factors, including the mode of operation of assailants, the availability of witnesses, and whether the victims could clearly recognize the assailants at the moment when the crime took place.

*Engaging district community in crime prevention*

12. Members welcomed the Police's taking of a more active role in examining the use of social media to expand their existing public communication channels. Members considered that maintaining an effective

communication and good relationship between the Police and the public was vital to preventing and combating crime. They suggested that the Police should actively make use of the web-based and social media platforms to encourage the public to make greater use of police information, so as to further enhance communication between the Police and the public.

### Anti-drug work

#### *Drug situation*

13. The Panel continued to monitor closely the overall drug situation in Hong Kong and the Administration's anti-drug work. Members noted with concern that although the number of drug abusers had been decreasing, there was a growing problem of hidden drug abuse of synthetic drugs. As prolonged psychotropic substance abuse would give rise to serious and irreversible harm to health and thus increase the need for more resources for medical treatment of drug abusers, members stressed the importance of early identification of drug abuse. The Administration was urged to critically analyse the latest statistics and trend of drug abuse in drawing up appropriate measures to tackle the drug abuse problem.

#### *RESCUE Drug Testing Scheme*

14. Following the launch of a four-month public consultation exercise on RESCUE Drug Testing Scheme ("RDT") by Action Committee Against Narcotics ("ACAN") in September 2013, the Panel met with Chairman of ACAN and Chairmen of two subcommittees of ACAN as well as the Administration to exchange views on the proposed RDT. Members noted that under the proposed RDT, when there were reasonable grounds based on strong circumstantial conditions to suspect that a person had taken dangerous drug, law enforcement officers would require that person to undergo a drug test. Where applicable, those who were identified as having taken drugs would be referred to counselling and treatment programmes. The Panel held another meeting to receive views from professional organizations on the proposed RDT.

15. Some members expressed support for the proposed RDT and agreed with the views of some psychiatrists and medical practitioners that an RDT scheme would provide an extra entry point of intervention before the drug had inflicted irreversible damage on the body of drug abusers, hence reducing the long-term medical and social cost associated with disability arising from drug abuse. Some other members, however, objected to the mandatory approach of RDT which, they considered, would result in more cases of hidden drug abuse. They also shared the views of some deputations that the proposal would cause

infringement on the privacy and human rights of individuals. As law enforcement officers would be empowered under the proposed drug testing procedures to require a person to undergo drug testing, these members worried that the power of the police might be expanded unnecessarily resulting in possible abuses.

16. Members noted the explanation of ACAN that in light of the sensitive issues involved, they had made reference to the provisions against drug driving under the Road Traffic Ordinance (Cap. 374) when drawing up the proposed scheme and a high threshold was proposed to trigger the need to undergo a drug test. The proposed drug test under RDT would be applied only when both of the following conditions were met -

- (a) the persons' physical state, behaviour and belongings showed signs of drug use; and
- (b) the presence of substances suspected to be dangerous drugs in the near vicinity.

Members were advised that only trained and authorised law enforcement officers would be allowed to conduct drug tests under RDT.

17. According to ACAN, it would consider views on the proposed RDT collected during the first stage public consultation exercise. If there was a consensus that RDT should be pursued in principle, details for the mechanism of referral and follow-up would be worked out for a second-stage public consultation exercise to be conducted in 2014. The Administration would provide the Panel with an update on RDT at its meeting to be held in July 2014.

#### *Related legislative proposal*

18. The Panel was consulted on the Administration's proposal to amend the schedules to the Dangerous Drugs Ordinance (Cap. 134) and the Control of Chemicals Ordinance (Cap. 145) to bring new drugs under the control of these two Ordinances. Whilst expressing support, members requested the Administration to monitor closely the local drug abuse trend and the worldwide developments, with a view to bringing new drugs under legislative control in a timely manner.

#### Implementation of the Mutual Case Assistance Scheme

19. The Panel had followed up with the Independent Commission Against Corruption ("ICAC") the effectiveness of the Mutual Case Assistance ("MCA")

Scheme in rendering mutual assistance in cross-boundary corruption cases, having regard to an absence of extradition agreement among Hong Kong, the Mainland and Macao. In view of the increasing contacts and exchanges between enterprises in Hong Kong and the Mainland, members called on ICAC to adopt measures to combat cross-boundary corruption related to the fund-raising activities of Mainland-funded list companies in Hong Kong.

20. ICAC advised that although there was no reciprocal enforcement on the extradition of suspects between Hong Kong and the Mainland and Macao, under the MCA Scheme, the requesting party could seek assistance in the interviewing of witnesses and gathering of evidence in the other party's jurisdiction in respect of corruption investigations. The cooperation proved to be effective and contributed to the successful outcome of investigation. ICAC stressed that it would carry out investigation in accordance with the law, regardless of the background of the subject, and take follow-up actions if there was a breach of the laws of Hong Kong.

#### Follow-up on the Manila hostage incident

21. Following its focus discussion in the Fourth LegCo on the Administration's follow-up work on the Manila hostage-taking incident that occurred on 23 August 2010 involving a tour group from Hong Kong, the Panel received a briefing by the Administration on the resolution of the incident. Members were pleased to note that the Hong Kong Special Administrative Region ("HKSAR") Government and the Philippine Government and the victims and bereaved families of the tragedy had reached a consensus on the resolution of the four demands made by the victims and their families on apology, compensation, sanctions against responsible officials and individuals, and tourist safety.

22. Some members considered that the Administration should put in place a mechanism to monitor the implementation of improvement measures made by the Philippine Government and to handle similar incidents expeditiously by the Government and the Central Government in future. The Administration advised that the Philippine Government had undertaken to report on the progress of implementation of the measures, and officials of the HKSAR Government would be invited to visit the Philippines and inspect the progress of implementation. The Administration would monitor the implementation of the measures on its own as well as through the Chinese Embassy in the Philippines. Members were assured that since reunification, the HKSAR Government and the Central Government had been working closely to provide expeditious assistance to Hong Kong residents in distress abroad.

23. Noting the revision of the Outbound Travel Alert ("OTA") for the Philippines from Black to Amber immediately after the announcement of the resolution of the incident, some members expressed concern that whether the decision was made on political rather than tourist safety considerations. These members queried why the Administration did not observe the implementation of the improvement measures for some period of time before revising the OTA level for the Philippines to Amber. They stressed that the determination of OTA level should be based on scientific and objective criteria. According to the Administration, the revision of OTA was determined in accordance with the established mechanism. The OTA level for the Philippines was revised to Amber after having regard to the measures implemented by the Philippine Government to improve tourist safety and the travel advisories of the Ministry of Foreign Affairs as well as those of other countries.

#### Interception of communications and surveillance

24. The Panel was briefed on the results of the Administration's study of matters raised in the Commissioner on Interception of Communications and Surveillance ("the Commissioner")'s annual report to the Chief Executive, as required under the Interception of Communications and Surveillance Ordinance (Cap. 589) ("ICSO").

25. Members expressed concern about the effectiveness of the safeguards under the ICSO regime to prevent abuse of power by Law Enforcement Agencies ("LEAs") in respect of cases involving legal professional privilege ("LPP") and journalist materials. According to the Administration, LEAs were required to notify the Commissioner of operations that were likely involved LPP information and/or contents of journalist materials. Whenever there were any subsequent changes which might affect the assessment, the LEA concerned had to notify the panel judge, who would determine whether the prescribed authorization should continue or whether any condition needed to be imposed. Where there were cases of non-compliance or irregularity, follow-up actions were taken by LEAs having regard to the Commissioner's advice and recommendations.

26. Another major concern of the Panel was about the recommendation of the former Commissioner made in April 2009 for empowering him and staff designated by him to listen to and examine products of interception and covert surveillance which had not yet been adopted by the Administration. Most members shared the view of the former Commissioner that the provision of power for the Commissioner to listen to and examine intercept and surveillance products would serve as a strong deterrent against malpractice or concealment. They considered that the Commissioner should be expressly empowered under

the legislation to listen to intercept products in order to effectively monitor the compliance of LEAs with the requirements of ICSO. These members had strongly urged for early introduction of the relevant legislative amendments.

27. According to the Administration, it had already issued drafting instructions regarding legislative amendments to give effect to the former Commissioner's recommendations and would communicate with the incumbent Commissioner and panel judges where necessary in the process. The Administration planned to introduce the legislative amendments to ICSO into LegCo within 2014.

#### Implementation of the unified screening mechanism

28. Following the implementation of the unified screening mechanism ("USM") for determining non-refoulement claims which commenced operation on 3 March 2014, the Panel received an update from the Administration on the subject.

29. Some members shared the views expressed by the Hong Kong Bar Association and The Law Society of Hong Kong in their joint submission that there was an urgent need for a review of the procedures of USM. They pointed out that the information and guidelines provided to USM claimants was inadequate and not user-friendly. These members also expressed concern about the transparency of the screening process. The Administration advised that the procedures of USM followed those of the statutory torture claim screening mechanism, the relevant guidelines had been adapted only where necessary. The Duty Lawyer Service would provide legal assistance and translation and interpretation service to the claimants throughout the screening process. Members were assured that the Immigration Department ("ImmD") must screen claims under procedures that met the high standards of fairness required by the law. On the transparency issue, the Administration advised that it must observe strict confidentiality requirements in handling non-refoulement claims. Publication of decisions on the claims infringed privacy of the claimants, and might potentially put the claimants or their families in the risk state concerned in grave danger.

30. Some members noted with concern that only 22 claims had been substantiated since the implementation of the enhanced mechanism in December 2009. They were concerned that the lengthy time needed for processing non-refoulement claims had given rise to illegal employment of USM claimants and security problems. Pointing out that the USM claimants received publicly-funded legal assistance and humanitarian assistance, these members were concerned about the financial burden on the Government. They



asked the Administration to be mindful of expediting the processing of non-refoulement claims.

### Marriage registration by post-operative transsexual persons

31. The Panel was consulted on the Administration's proposal to amend the Marriage Ordinance (Cap. 181) ("MO") to implement the order made by the Court of Final Appeal ("CFA") in the case of *W v Registrar of Marriages* (FACV 4/2012) concerning marriage registration by post-operative transsexual persons in Hong Kong.

32. Members were advised that in order to obviate the need for transsexual persons who had undergone full sex reassignment surgery ("SRS") and had the sex entry on his or her Hong Kong identity card changed to present the relevant birth certificate at the point of marriage registration, the Administration intended to introduce legislative amendments to MO to provide expressly that the sex of any party to a marriage as stated at the time of the marriage in his or her personal identification document would be prima facie evidence of the sex of that party.

33. Whilst raising no objection to the legislative proposal, some members expressed concern that the scope of the legislative proposal was very narrow as it was confined to persons who had gone through full SRS. These members pointed out that CFA had also made some comments in the relevant judgment on problems faced by transsexuals in other areas of law and treatment of persons who had not undertaken any SRS or had not fully completed SRS in these areas, including drawing the line as to who would qualify as "a woman" or as "a man" for marriage and other purposes, and the impact of a legally recognized gender change in all legal contexts. The members cautioned that there might be challenges in court relating to persons who had not undertaken any SRS or had not fully completed SRS. The Administration advised that it had decided to set up a high level inter-departmental working group, to be chaired by the Secretary for Justice with members comprising representatives of relevant bureaux and other appropriate members such as members of the legal profession, to undertake a detailed study on gender recognition, taking into account CFA's views that consideration should be given to enacting legislation to deal with various issues relating to gender recognition, and to strike a balance between the rights of transsexual persons and the rights of other affected persons in doing so. It was expected that the working group would be set up in the first quarter of 2014.

34. The Marriage (Amendment) Bill 2014 was introduced into LegCo on 19 March 2014 and was under the scrutiny of a Bills Committee.

## Immigration arrangements for entry of Mainland residents

### *Entry of Mainland residents for family reunion*

35. The Administration reported to the Panel on the latest position regarding the issue of One-way Permits ("OWPs") for Mainland residents to come to Hong Kong for family reunion and the arrangements for Mainland residents who wished to visit relatives in Hong Kong through the application for Exit Entry Permits (commonly known as Two-way Permits) with endorsements for "visiting relatives" in Hong Kong.

36. There was a broad consensus among members that reunion of family members should be a priority area in the population policy. While some members welcomed the extension of the OWP Scheme to Mainland "overage children" of Hong Kong residents since 1 April 2011, they considered that the Administration should pursue the suggestion of including Mainland single mothers with minor children in Hong Kong under the OWP Scheme. The Administration advised that Mainland single parents were outside the categories of eligible persons under the OWP Scheme. Nonetheless, the Administration had conveyed to and discussed with the Mainland authorities to consider allocating the unused quota of OWPs for these Mainland single mothers. According to the Administration, the Mainland authorities had responded positively by exercising discretion and issuing OWPs or one-year multiple exit endorsement for visiting relatives to some applications from Mainland single mothers with minor children in Hong Kong.

37. Pointing out that there was no ground to refuse the entry of Mainland residents on the strength of OWPs, members urged the Administration to carry out an analysis of the profile of OWP holders to facilitate manpower planning and to project the demand for various support services.

### *Introduction of a new card-type electronic Exit-entry Permit for Travelling to and from Hong Kong and Macao ("EPP")*

38. In the light of the impending introduction of a new card-type e-EPP by the Mainland authorities for Mainland residents in the Guangdong Province travelling to and from Hong Kong, the Panel was briefed on the immigration clearance arrangements for holders of e-EPP. Members noted that the total movement of Mainland visitors using the Automated Passenger Clearance System ("e-Channels") was estimated to increase to about 23.5 million by 2014. Given that the new e-EPP holders would be able to use e-Channels for immigration clearance without enrolment, some members expressed concern

how the immigration staff could exercise effective immigration control if the immigration clearance time for a visitor was reduced.

39. According to the Administration, the monitoring of visitors was not confined to the time when a visitor was at a traditional immigration counter or an e-Channel, but throughout the time when the visitors were inside a control point. It was also the international trend to focus on high risk and suspicious visitors. If the e-EPP card could not be authenticated through designated security servers, the holder would not be able to pass through the immigration point via the e-Channel and immigration officers would examine the holder manually. The Administration stressed that it would closely monitor passenger growth and travel patterns with a view to maintaining effective immigration control and ensuring that immigration clearance was conducted in an orderly fashion.

#### Enhancement initiatives in penal institutions

40. The Panel was briefed on the various measures taken by the Correctional Services Department ("CSD") to improve the daily operations of penal institutions. Members put forward a number of views and suggestions for the consideration of the Administration, including the full deployment of X-ray body scanners in place of the manual rectal search at all reception centres and expansion of the Waste No Food Scheme to encourage the reduction of food waste in penal institutions. The Administration affirmed that CSD would continue to review and refine various development projects and improvement measures as appropriate.

41. The Panel had also been consulted on the Administration's proposal to replace and enhance the close-circuit television systems at the Stanley Prison. Whilst indicating support, members stressed the importance to ensure that the design of these facilities should be able to meet the nowadays security requirements. With the support of the Panel, the relevant funding proposal had been approved by the Finance Committee.

#### Other issues

42. During the current legislative session, the Panel was consulted on the following financial and staffing proposals before their submission to the Establishment Subcommittee, Public Works Subcommittee and Finance Committee -

- (a) Proposal for the creation of a Chief Superintendent of Police post for the Cyber Security and Technology Crime Bureau;

- (b) Proposal for the construction of departmental quarters for customs officer grade officers at Yau Yue Wan Village Road, Tseung Kwan O;
- (c) Proposal for the replacement of the radio communications systems of the Operations Department of the Independent Commission Against Corruption;
- (d) Proposal for the procurement of Ground Receiving Station of the Medium Earth Orbit Search and Rescue Satellite System for the Hong Kong Maritime Rescue Coordination Centre by the Marine Department;
- (e) Proposal for the replacement of a Crash Fire Tender for the Airport Fire Contingent;
- (f) Proposal for the replacement of 18 Police Launches; and
- (g) Proposal to write off a judgment debt.

Meetings held and visits conducted

43. From October 2013 to June 2014, the Panel held a total of 11 meetings and conducted two visits to the Stanley Prison and the Lok Ma Chau Spur Line Control Point respectively. The Panel has scheduled another meeting in July 2014.

Council Business Division 2  
Legislative Council Secretariat  
2 July 2014

**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, nationality and immigration.
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 2013-2014 session**

<b>Chairman</b>	Hon IP Kwok-him, GBS, JP
<b>Deputy Chairman</b>	Hon James TO Kun-sun
<b>Members</b>	Hon CHAN Kam-lam, SBS, JP Hon Emily LAU Wai-hing, JP Hon Cyd HO Sau-lan, JP Dr Hon LAM Tai-fai, SBS, JP Hon CHAN Kin-por, BBS, JP Hon WONG Kwok-kin, SBS Hon Paul TSE Wai-chun, JP Hon Alan LEONG Kah-kit, SC Hon LEUNG Kwok-hung Hon WONG Yuk-man Hon Claudia MO 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 Charles Peter MOK, JP Hon CHAN Chi-chuen Dr Hon Kenneth CHAN Ka-lok Hon LEUNG Che-cheung, BBS, MH, JP Hon Kenneth LEUNG Hon KWOK Wai-keung Hon Dennis KWOK Hon Christopher CHEUNG Wah-fung, SBS, JP Dr Hon Elizabeth QUAT, JP Hon CHUNG Kwok-pan Hon Christopher CHUNG Shu-kun, BBS, MH, JP  (Total : 29 members)
<b>Clerk</b>	Miss Betty MA
<b>Legal adviser</b>	Mr Bonny LOO
<b>Date</b>	2 July 2014