

Removal of LUI Kwan-chung and CHAN Fung on 21 July 1999

The Incident

Mr. LUI Kwan-chung and Mr. CHAN Fung, born in the Mainland and aged 20 and 21 respectively, were arrested by the police in the area of Clear Water Bay Country Club at 0845 hours on **17 July 1999**. Police descriptions of their appearance were that they were wearing wet clothes and mud-stained shoes. Both admitted to the police that they had departed the Mainland in the early hours of 17 July, travelled by vessel, and landed in Hong Kong unlawfully at 0600 hours on the same day. Both told the police that they came to Hong Kong to claim right of abode. LUI was transferred to the Victoria Immigration Centre (VIC) on **19 July**, and CHAN on **20 July**.

2. At VIC, LUI claimed in writing that his date of illegal entry was 9 July, and that he had applied for legal aid on 14 July. During a subsequent interview in the presence of a Hoklo interpreter on 20 July, LUI verbally reverted to his original statement that the date of his illegal entry was 17 July, i.e. the date of his arrest, and that the signature on the legal aid application form was not his.

3. At VIC, CHAN also admitted that the date of his illegal entry was 17 July. He further admitted that someone else had applied for legal aid on his behalf on 9 July.

4. **On 21 July**, the sequence of events was as follows :

1015 hours	VIC staff informed the Legal Aid Department (LAD) of the intended removal of LUI and CHAN
1115 hours	VIC staff informed LAD that the removal of LUI and CHAN from VIC would commence at 1300 hours
1245 hours	LAD representatives interviewed LUI and CHAN at VIC
1330 hours	LUI and CHAN removed from VIC and conveyed to the border
1430 hours	LAD requested ImmD to defer repatriation pending consideration of issuance of legal aid

certificate for application to the Court for leave for Judicial Review. ImmD advised LAD that repatriation would go ahead

1503 hours LUI and CHAN were handed over to Mainland authorities via San Uk Ling Clearance Centre at the border and LAD was informed of this immediately

1506 hours Documents were received at VIC from LAD by fax showing that Emergency Aid Certificates were issued to LUI and CHAN and that their assigned solicitors would apply to Court for an injunction

It was subsequently learnt that the solicitors appeared before the Court around 1520 – 1530 hours, and that an injunction against LUI and CHAN was obtained.

5. The hearing in respect of LUI and CHAN was held before Mr Justice Stock on 25 August. The Judge ordered that, amongst other things, the injunction granted on 21 July be discharged.

Policy and Practice on the Removal of Illegal Immigrants

6. Illegal entry into Hong Kong is an offence under S.38 of the Immigration Ordinance (the Ordinance) Cap.115. Illegal immigrants are liable to removal. There are provisions under S.26 and S.32 of the Ordinance for illegal immigrants to be detained in connection with their removal.

7. Since the abolition of the ‘touch base’ policy in October 1980, the Government’s policy on illegal immigrants has been, and continues to be, repatriation in accordance with established procedures. This policy is the same before and after the reunification. It is established practice that application for legal aid does not constitute a reason for a scheduled removal to be suspended.

Legal Aid Applicants and ROA Claimants around the time of the Incident

8. During the few days before 17 July 1999¹, a huge number of legal

¹ The Director of Immigration published in the Gazette the new procedures for application of Certificate of Entitlement on 17 July 1999.

aid applicants (reportedly 8,500) were said to have approached LAD to request assistance in connection with their ROA claims. During the subsequent handling of about 4,400 claimants' cases, particulars of the applicants made available to the Immigration Department showed that about 1,400 applicants had no entry record into Hong Kong. This means they might have already entered into Hong Kong illegally; or that their applications might have been made in their absence, following which they would seek to enter Hong Kong either legally or through clandestine means. Mr LUI Kwan-chung and Mr CHAN Fung were amongst those who admitted that legal aid applications had been filed on their behalf before their arrival in Hong Kong.

9. Between 27 June and 17 July, a record 510 illegal immigrants surrendered themselves to the Immigration Department to claim right of abode. This compared with 86 illegal immigrants reporting to the Department between 29 January and 26 June. After a series of well published removal actions, the number of illegal immigrants surrendered to the Immigration Department significantly reduced. Further details and relevant figures are attached.

Compliance with Assurance Given to Legislative Council in 1997

10. On 25 June 1997, the then Attorney General introduced the Supreme Court (Amendment) Bill 1997 into the Legislative Council. In his speech, he assured the LegCo that "once an application of habeas corpus has been made and solicitors are acting for the applicant, the applicant will not be removed from the jurisdiction without prior notification to the solicitors". This assurance has been more than fully complied with in the present case. In the morning of 21 July 1999, the staff of the VIC informed LAD of the removal of LUI and CHAN scheduled for the same afternoon. The Immigration Department did more than what the terms of the assurance required, in that they took the initiative to notify LAD notwithstanding that at that time legal aid had not been granted, and no legal representative had been assigned to take up the case.

Security Bureau
September 1999

Annex**Number of illegal immigrants claiming right of abode
who surrendered to the Immigration Department**

<u>Period</u>		<u>Number</u>
29 January ^{Note 1}	- 26 June 1999 ^{Note 2}	86 (0.6) *
27 June	- 17 July 1999 ^{Note 3}	510 (24.3)
18 July	- 28 September 1999	60 (0.82)

Note 1 : The date the Court of Final Appeal gave judgment on two right of abode cases.

Note 2 : The date the Standing Committee of the National People's Congress gave interpretation of the relevant provisions of the Basic Law.

Note 3 : The date the Director of Immigration published the new application procedures for the Certificate of Entitlement Scheme.

* The bracketed figures denote daily average.

Remarks : Between 29 January 1999 (when the CFA delivered its judgment on the ROA cases) and 21 July 1999, some 4,200 persons (including overstayers and illegal immigrants) had surrendered to and registered with the ImmD. In early July, a legal firm applied to court for leave for judicial review on behalf of 4,393 claimants. More claimants continued to rush in. The number of persons coming to Hong Kong through various means to claim ROA reached an alarming level.