

立法會
Legislative Council

Ref : CB2/PL/SE/1

LC Paper No. CB(2) 612/03-04

(These minutes have been seen
by the Administration)

Panel on Security

**Minutes of meeting held on Thursday, 13 November 2003
at 2:30 pm in the Chamber of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon WONG Yung-kan (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members attending** : Hon LEE Cheuk-yan
Hon CHAN Kwok-keung, JP
Hon LEUNG Yiu-chung
Hon LEUNG Fu-wah, MH, JP
- Members absent** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Michael MAK Kwok-fung
Hon IP Kwok-him, JP
- Public Officers attending** : Item III
Mr Charles WONG
Acting Deputy Secretary for Security 2

Mr Michael Reid SCOTT
Senior Assistant Solicitor General

Ms Diana LAM
Senior Government Counsel

Miss Ida LEE
Assistant Secretary for Security

Item IV

Mr Michael WONG
Deputy Secretary for Security 3

Miss Winnie M W WONG
Acting Principal Assistant Secretary for Security

Mr H K TSOI
Assistant Director of Immigration

Item V

Mr Michael WONG
Deputy Secretary for Security 3

Miss Winnie M W WONG
Acting Principal Assistant Secretary for Security

Mr Ellis CHAN
Assistant Secretary for Security

Mr David CHIU
Assistant Director of Immigration

Mr M K FOK
Assistant Commissioner of Police (Operations)

Mrs Jenny CHAN
Assistant Commissioner of Labour

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in : Mr Raymond LAM

attendance Senior Assistant Secretary (2)5

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I. Confirmation of minutes of previous meeting and matters arising
(LC Paper No. CB(2)79/03-04)

The minutes of the meeting held on 9 October 2003 were confirmed.

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)271/03-04(01) and (02))

2. Members agreed that the following items be discussed at the next meeting to be held on 11 December 2003 at 2:30 pm -

- (a) Trial in the Mainland of serious crimes committed in Hong Kong;
- (b) Police cooperation between the Hong Kong Special Administrative Region and the Mainland and follow-up on allegations of Mainland public security officials exercising jurisdiction in Hong Kong - the case of SU Zhi-yi and the case of CHAN Tsz-cheung; and
- (c) Provision of medical services to inmates in penal institutions.

3. Members also agreed that members of the Panel on Administration of Justice and Legal Services be invited to join the discussion of the item referred to in paragraph 2(a) above.

(Post-meeting note : The meeting was subsequently rescheduled for 4 December 2003 at 2:30 pm as the Chairman would be out of town on 11 December 2003.)

4. Members agreed that the Administration be requested to provide a paper on the progress of establishment of an agreement with the Mainland on the transfer of sentenced persons before deciding whether the subject matter should be discussed at the meeting in January 2004.

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III. Criminal Procedure (Amendment) Bill (LC Paper No. CB(2)271/03-04(03))

5. At the invitation of the Chairman, Acting Deputy Secretary for Security 2 (DS for S2 (Atg)) briefed Members on the legislative proposals to amend the Criminal Procedure Ordinance (CPO) to provide for a revised scheme for determination of minimum terms of imprisonment to be served by certain prisoners affected by a judgment of the Court of First Instance (CFI) in September 2002.

6. Mr LEUNG Yiu-chung said that when the Long Term Prison Sentences Review Bill was examined in 1997, many prisoners had expressed concern about indeterminate sentences. The European Court of Human Rights had pointed out that imposing an indeterminate sentence on a person was inhumane. It had also pointed out in relation to a case in the United Kingdom (UK) that a minimum term of imprisonment should be treated with flexibility and the term of imprisonment should be regularly reviewed. He asked whether the Administration would consider introducing a tariff period to replace the minimum term of sentence adopted in Hong Kong.

7. Senior Assistant Solicitor General (SASG) responded that to his knowledge, the view of the European Court of Human Rights was given in relation to a UK case where the Home Secretary had intervened to increase the minimum term initially set down by the judge. Senior Government Counsel (SGC) added that in the judgment delivered by CFI on 14 August 2003 in the case of *Lai Hung Wai v Superintendent of Stanley Prison*, the judge acknowledged the difference between the system in UK, which adopted a tariff period, and the Hong Kong system which adopted a minimum term. The judge also took the view that the Hong Kong system was not in contravention of human rights. The Chairman requested the Administration to provide Members with a copy of the judgment.

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8. Mr LEUNG Yiu-chung reiterated that a minimum term of imprisonment should be replaced by a tariff period as adopted in UK. DS for S2 (Atg) responded that the prisoners concerned had been convicted and sentenced to indeterminate sentences by the court. It would not be appropriate to ask the court to impose determinate sentences in substitution for indeterminate sentences. He added that minimum term was only one of the factors considered by the Long Term Prison Sentences Review Board (LTPSRB) in deciding whether or not to make a recommendation for a determinate sentence.

9. Miss Margaret NG asked whether a prisoner could be released before the end of a minimum term.

10. SASG responded that under section 16 of the Long-term Prison

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Sentences Review Ordinance (Cap. 524), a prisoner could petition the Chief Executive (CE) for early release before the end of a minimum term. CE could then refer the matter to LTPSRB for a recommendation. Thus, there was scope for early release before the end of a minimum term. He added that even in the UK system, a prisoner might not be released after the tariff period applicable to him.

11. Miss Margaret NG asked whether a prisoner would be released after serving a minimum term. She considered that a date by which a prisoner would be released should be specified.

12. DS for S2 (Atg) responded that the prisoners serving indeterminate sentences might not be released at the end of a minimum term. He said that the sentences of prisoners who were serving discretionary life sentences or mandatory life sentences would be periodically reviewed by LRPSRB.

13. The Chairman asked whether at present, an indeterminate sentence could be imposed on a person. DS for S2 (Atg) responded that it was possible to impose an indeterminate sentence and after amendments were made to CPO on 30 June 1997, the judge must specify the minimum term that the person must serve when imposing a discretionary life sentence on a person.

14. Mr Albert HO said that an indeterminate sentence was no different from a life sentence for a juvenile prisoner. Mr Andrew WONG considered that an indeterminate sentence was even worse than a life sentence.

15. Mr LEUNG Yiu-chung expressed concern that when reviewing the sentence of a prisoner, LTPSRB could not order the early release of a prisoner before any minimum term applicable to the prisoner.

16. SASG responded that under section 15(1)(a)(ii) of the Long-term Prison Sentences Review Ordinance, LTPSRB was able, when reviewing the sentence of a prisoner, to recommend that the CE should substitute a determinate sentence for a prisoner's indeterminate sentence. He added that a prisoner could seek judicial review if the CE refused to implement the LTPSRB's recommendation.

17. The Chairman asked whether a maximum sentence could be specified in addition to an indeterminate sentence. SGC responded that indeterminate sentences were specified in cases where a trial judge could not determine, at the time of imposing the sentence, a specific term of imprisonment while the prisoner needed to serve before he should be released from prison. The question of whether a prisoner could be released after serving his minimum term would be considered by LTPSRB when it conducted a review of the prisoner's sentence, having regard to a number of factors including whether the prisoner would pose a threat to the safety of the community. If the bill were to specify a

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deadline for the release of such a prisoner, it might be difficult and in conflict with the spirit of an indeterminate sentence already imposed on the prisoner by the trial judge.

18. Miss Margaret NG considered that a maximum term after which a prisoner would be released should be specified. Her view was echoed by Mr Andrew WONG. Mr Albert HO said that it would be unfair to withhold the release of a prisoner merely for the reason that the prisoner would pose a threat to the community. Mr LEUNG Yiu-chung considered that a tariff period should be adopted in place of a minimum term.

19. The Chairman concluded that as many Members had expressed reservations about the policy aspects of issues arising from the Administration's legislative proposals, the Panel might consider holding a special meeting or form a subcommittee to further discuss the issues. DS for S2 (Atg) suggested that the introduction of the bill into the Legislative Council (LegCo) and the discussion of the issues raised by the Panel could proceed in parallel.

20. The Chairman said that while it was up to the Administration to decide whether to introduce the bill into LegCo, it should be noted that a majority of Members present were not in support of the introduction of the bill.

IV. Application for Hong Kong permanent resident status by non-Chinese nationals

(LC Paper Nos. CB(2)3011/02-03(01) and CB(2)3076/02-03(01))

21. At the invitation of the Chairman, Deputy Secretary for Security 3 (DS for S3) briefed Members on the revised procedures applicable to the verification of non-Chinese nationals as Hong Kong permanent residents. He informed Members that between 16 June 2003 and the end of October 2003, 7 672 applications from non-Chinese nationals for permanent resident status had been processed. Among these, 112 applications had been refused, among which only two were refused on the ground of failure to meet the permanent residence requirement and the seven-year residence requirement.

22. Ms Audrey EU requested the Administration to provide Members with the new application form and leaflets, if any, explaining the new procedures for members of the public. She also requested the Administration to provide Members with its guidelines, if any, on the processing of such applications by non-Chinese nationals. Mr Andrew WONG requested the Administration to also provide Members with the old application form and the old guidelines.

23. Assistant Director of Immigration (AD of Imm) responded that there were internal guidelines on the processing of applications. Each application was considered having regard to all the circumstances of the particular case

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rather than any single factor. He added that while there were no leaflets specific to the new procedures, there was a booklet providing general information on right of abode. He undertook to provide Members with the new application form, the booklet on right of abode and the internal guidelines. DS for S3 added that the Administration would provide a table setting out the difference between the old and new forms.

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24. Ms Audrey EU asked whether residence in other place was also a factor considered by the Immigration Department (ImmD). AD of Imm responded that such a factor would be taken into consideration by ImmD. DS for S3 added that an applicant was required to declare that Hong Kong was his or her only place of permanent residence.

25. Miss Margaret NG said that many non-Chinese nationals were concerned that as they had another place of permanent residence besides Hong Kong, they would not be able to satisfy the requirement for the Hong Kong permanent resident status. DS for S3 responded that all the circumstances of a case, instead of any single factor, were considered in each case. Since the introduction of the new procedures, the number of applications that had been rejected because of failure to meet the place of permanent residence requirement had been very low.

26. Referring to paragraphs 64 and 66 of the Court of Final Appeal (CFA) judgment of 11 February 2003 on *Prem Singh v. Director of Immigration*, Miss Margaret NG questioned whether the case would make the requirement of taking Hong Kong as the only place of residence binding on future cases. She added that the term "settled" did not contain the meaning of taking Hong Kong as the only place of residence. DS for S3 responded that legal advice had confirmed that the new procedures adopted by the Administration were legitimate and reasonable. He undertook to seek legal advice on whether the requirement of taking Hong Kong as the only place of residence was binding on future cases.

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27. Mr Andrew WONG asked whether an applicant could submit his application outside Hong Kong. DS for S3 noted that one mode of submission of application was by post but undertook to further check.

(*Post-meeting Note* : For the purpose of verification of the eligibility of an applicant for permanent identity card, an administrative arrangement has been made whereby an applicant is required to be legally staying in Hong Kong when making the application.)

28. Mr Albert HO said that although a number of Vietnamese refugees and migrants were granted residence in Hong Kong in 2000, many of them had arrived in Hong Kong in the 1980s and had no chance of living overseas since 1995 or so. He asked whether these refugees could be waived from the

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requirement of seven-years' permanent residence in Hong Kong since 2000. DS for S3 responded that any non-Chinese national who wished to acquire permanent resident status in Hong Kong had to satisfy the requirement of taking Hong Kong as the only place of permanent residence as well as the seven-year permanent residence requirement. Mr HO asked whether these refugees could be regarded as having ordinarily resided in Hong Kong since 1994 or 1995, as they had no hope of residing overseas since then. DS for S3 undertook to seek legal advice and provide a response. Mr HO said that he would discuss the cases with the Administration after the meeting.

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29. Ms Audrey EU said that she was the legal representative of the appellant in the case of *Prem Singh v. Director of Immigration*. She said that whether the appellant took Hong Kong as his only place of permanent residence was not an issue in the case. There was also no debate in the case on the meaning of the term "settled" which could be found in the Immigration Ordinance.

30. Miss Margaret NG said that it could be noted from paragraphs 64 and 66 of the CFA judgment that as the appellant claimed that he had taken Hong Kong as his only place of permanent residence, he was required to provide evidence to substantiate such a claim. It did not imply that every applicant had to prove having taken Hong Kong as his only place of permanent residence. The Chairman requested the Administration to provide a written response.

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V. Measures to combat illegal employment

(LC Paper Nos. CB(2)271/03-04(04), (05), (06) and (07) and LC Paper No. FS05/03-04)

31. At the invitation of the Chairman, DS for S3 briefed Members on the Administration's paper on measures to combat illegal employment.

32. Mr LEE Cheuk-yan said that the problem of illegal employment was very serious, especially in restaurants, premises under decoration and the retail sector. He pointed out that -

- (a) a number of illegal workers had entered Hong Kong with a Two-way Permit or a business visit endorsement; and
- (b) the relatively small number of arrest, prosecution and conviction of employers as indicated in page 3 of the Annex to the Administration's paper reflected that the existing measures failed to have a deterrent effect on employers.

Mr LEE added that there should be a more detailed breakdown in the statistics on employers arrested, prosecuted and convicted for employing illegal workers.

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33. DS for S3 responded that the Administration was concerned about illegal workers entering Hong Kong with a Two-way Permit or a business visit endorsement. He said that out of 5.6 million Mainlanders who entered Hong Kong in the first nine months of this year, about 2.2 million had entered with a business visit endorsement. Thus, the problem of illegal workers entering Hong Kong with a business visit endorsement was not serious. He said that ImmD was examining the possibility of introducing a photograph recognition system in which the photographs of offenders could be used for spotting repeat offenders seeking to enter Hong Kong again on false identities.

34. Assistant Director of Immigration (AD of Imm) said that the Administration had held many discussions with Mainland authorities and launched many operations to combat illegal employment. He considered that a direct comparison of the number of employers arrested and the number of illegal workers arrested might not be appropriate. The number of employers arrested might be lower than the number of illegal workers arrested because an employer might employ a large number of illegal workers, as was the case in a recent operation where an employer was involved in the employment of some 40 illegal workers. There might also be cases where employers were not aware that their employees had used forged documents of identity.

35. Mr LEE Cheuk-yan said that to his knowledge, the Administration had launched a number of operations in early 2003 and refused the entry of more than ten thousand Mainlanders suspected to be illegal workers. He asked why such operation could not be continued throughout the year.

36. DS for S3 responded that in launching any operation, the Administration had to avoid causing unnecessary or disproportionate inconvenience to the public. He stressed that different operations were launched from time to time by the Administration to combat illegal employment. The Administration also maintained close liaison and exchanged intelligence with Mainland authorities to tackle the problem at source.

37. The Chairman asked whether the Administration had considered introducing legislative amendments to address the problem of illegal employment.

38. AD of Imm responded that problems were mainly practical ones encountered in enforcement. For example, a visitor from the Mainland found wandering nearby the kitchen of a restaurant could not be conclusively said to be an illegal worker of the restaurant and hence held the owner of the restaurant liable.

39. Mr WONG Yung-kan asked about the follow-up actions taken by ImmD upon receiving complaints about suspected cases of illegal employment. He also asked about the progress of liaison with Mainland authorities on measures

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and operations to combat illegal employment.

40. DS for S3 responded that upon receiving complaints about a suspected case of illegal employment, immediate steps were taken to determine the priority for dealing with the case. He said that a complainant might not recognise that actions were being taken, especially when covert operations were launched. In some cases, investigation revealed that the suspected persons were actually not illegal workers.

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41. DS for S3 said that close liaison was maintained with Mainland authorities and operations were launched to combat illegal employment. He undertook to examine whether information or statistics on such operations could be provided to Members.

42. Mr WONG Yung-kan asked whether the fingerprints of illegal workers could be taken to facilitate preventing their future entry into Hong Kong. DS for S3 responded that in view of the large number of passenger crossing the checkpoints each day, it might not be viable to take the fingerprint of each passenger. He said that ImmD was examining the possibility of introducing a photograph recognition system in which photographs of offenders could be used for spotting repeat offenders seeking to enter Hong Kong on false identities.

43. Mr LAU Kong-wah said that a 61% increase in the number of illegal workers arrested for the first nine months of 2003 over the corresponding period in the previous year was unacceptable. He asked about the measures adopted by Mainland authorities to address the problem. Referring to a recent incident in late September where a number of illegal workers were found living in a factory in To Kwa Wan, he asked whether the Inter-departmental Taskforce against illegal employment could effectively curb illegal employment.

44. AD of Imm responded that to his knowledge, Mainland authorities had tightened the scrutiny of applications from Mainlanders to enter Hong Kong. However, he was not in a position to explain or disclose the measures adopted by Mainland authorities. The Chairman said that a closed meeting could be held, if necessary, to discuss such measures.

45. Regarding the Inter-departmental Task Force against Mainland visitors involving in illegal activities, Assistant Commissioner of Police (Operations) informed Members that the Task Force, which was established in April 2003, has endorsed a three-level approach strategy in addressing the issue. Level 1 – to liaise with Mainland authorities on imposing an effective and stringent application process for Two Way Permits and passports; Level 2 – to have an effective screening at all immigration control points; and Level 3 – to enhance co-ordination amongst various departments with a view to taking more effective action against Mainlanders working illegally or engaging in other unlawful activities in Hong Kong. It facilitated regular exchange of information

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amongst the departments and reviewed as well as coordinated the enforcement work of different departments. It also adopted proactive and preemptive strategies to identify black spots of illegal employment so as to combat the problem more effectively. The Task Force was chaired by the Deputy Commissioner of Police (Operations) and comprised members from a number of government departments.

46. The Chairman asked whether the Administration had information on the provinces where arrested illegal workers came from.

47. DS for S3 responded that although the Administration possessed raw data on arrested illegal workers from the Mainland, it was not in a position to provide a statistical breakdown on their origin according to Mainland provinces or cities because -

- (a) it might affect future operations against illegal employment; and
- (b) it might result in visitors from some provinces or cities being inappropriately labelled and stigmatized.

48. The Chairman expressed deep dissatisfaction that he was given to know that the Administration did not have such information, however, the Administration actually possessed such information. He also expressed dissatisfaction that the Administration had stated in page 4 of the Annex to its paper that statistics kept by ImmD could not be broken down to show the province from that the overstayers came from. He said that the Panel might consider holding a meeting to discuss the issue again.

49. There being no other business, the meeting ended at 5:15 pm.

Council Business Division 2
Legislative Council Secretariat
10 December 2003