

EXTRACT

立法會

Legislative Council

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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 : Item III
attending**

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 attendance : Mr Raymond LAM
Senior Assistant Secretary (2)5

Action

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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.

Action

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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.

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 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

Action

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 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.

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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.

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Council Business Division 2
Legislative Council Secretariat
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