

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

Panel on Security

**Minutes of special meeting held on Wednesday, 19 January 2005
at 9:30 am in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung

Member attending : Hon Albert Jinghan CHENG

Members absent : Hon Daniel LAM Wai-keung, BBS, JP (Deputy Chairman)
Dr Hon LUI Ming-wah, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon CHOY So-yuk

Public Officers attending : Item I
Mr Ambrose LEE
Secretary for Security

Mr Stanley YING
Permanent Secretary for Security

Miss S H CHEUNG
Deputy Secretary for Security

Mrs Jennie CHOK
Deputy Secretary for Security

Mr Michael WONG
Deputy Secretary for Security

Mrs Rosanna URE
Commissioner for Narcotics

Mr Johann WONG
Administrative Assistant to Secretary for Security

Item II

Mr Raymond WONG Hung-chiu
Commissioner, ICAC

Mr Daniel LI Ming-chak, IDS
Head of Operations, ICAC

Mr Thomas CHAN Chi-sun, IDS
Director of Corruption Prevention, ICAC

Mrs Erika HUI LAM Yin-ming
Director of Community Relations, ICAC

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

Staff in attendance : Mr Raymond LAM
Senior Council Secretary (2) 5

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I. Briefing by the Secretary for Security on the Chief Executive's Policy Address 2005

(LC Paper Nos. CB(2)654/04-05(01) to (04))

At the invitation of the Chairman, Secretary for Security (S for S) briefed Members on the policy initiatives relating to the security portfolio in the 2005 Policy Agenda. Regarding assistance to Hong Kong people affected by tsunamis, he informed Members that there were still about 30 Hong Kong residents reported to have lost contact with their families in Hong Kong. The Administration had been rendering assistance to victims and affected families. It would review the provision of assistance to Hong Kong residents affected by disasters outside Hong Kong.

Implementation of Article 23 of the Basic Law

2. Ms Audrey EU asked about the Administration's progress of work in respect of the implementation of Article 23 of the Basic Law (BL23).

3. S for S responded that an internal working group was collating information and analysing the views received so far on the implementation of BL23. He said that there was a constitutional duty for the Hong Kong Special Administrative Region (HKSAR) to implement BL23. However, the Administration would not proceed with the legislative process until the community had reached a basic consensus on the issue. He added that the Administration had accorded priority to other more pressing work and there was no pre-determined timetable for the legislative exercise.

Issues relating to Mainland women giving birth in Hong Kong

4. Mr LAU Kong-wah expressed concern that according to the paper provided by the Administration on Mainland women giving birth in Hong Kong, there was a sharp increase in the number of cases where both parents of the babies born to Mainland women in Hong Kong were not Hong Kong residents. He said that a number of these Mainland women had not settled their hospital fees after giving birth in Hong Kong. This had created a heavy burden on the medical system in Hong Kong. He asked whether the Administration had discussed with the Mainland authorities the measures which might be adopted, such as restricting the issue of exit permits to such persons, to address the problem.

5. S for S responded that the Administration was concerned about the problem. After the Court of Final Appeal (CFA) delivered its judgment on the case of CHONG Fung-yuen on 20 July 2001, the Administration had anticipated that such a problem would arise. At that time, the Administration had discussed with the Mainland authorities the measures to address the problem. The Mainland authorities subsequently prohibited the visits of pregnant Mainland women to Hong Kong. However, the measure was discontinued when the Mainland authorities found that they could not refuse an exit permit application from a Mainland woman solely on the

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ground that she was pregnant. In practice, it was also difficult for officers at control points to determine whether a woman was pregnant.

6. S for S informed Members that for the first 11 months of 2004, about 72% of the fathers of babies born to Mainland women in Hong Kong were Hong Kong residents. The major problem associated with Mainland women giving birth in Hong Kong was that many of them did not settle their hospital fees. The Administration was examining measures to require such Mainland women to settle all payment before discharged from hospitals. He said that the Administration would further discuss the problem with the Mainland authorities. However, any measure to be introduced had to be reasonable and lawful.

7. The Chairman asked whether the Administration had any plans to amend BL to address the problem of Mainland women giving birth in Hong Kong. S for S responded that the Administration had no plan to do so.

Biometric Hong Kong Special Administrative Region passport

8. Mr Howard YOUNG asked whether a HKSAR passport would be replaced by a new one when renewed. S for S replied in the affirmative.

9. Mr Howard YOUNG said that many countries required that the validity period of a visitor's passport should not be less than six months. As the first batch of the HKSAR passports would expire by June 2007, he asked whether the timing for the introduction of the biometric passport could be advanced.

10. S for S responded that the introduction of the biometric HKSAR passport involved preparation and tendering work and time was needed for seeking approval from the Finance Committee. Thus, the entire process would take some time to complete. Nevertheless, the Administration would try its best to expedite the introduction of the biometric HKSAR passport.

Opening up the Frontier Closed Area

11. Mr WONG Yung-kan asked whether Administration had any plans to open up the Frontier Closed Area (FCA).

12. S for S responded that the Administration had reviewed the coverage of FCA and considered that there was scope for reducing the coverage of FCA from the security point of view. The Administration was conducting an internal review on the implications of opening up FCA, including those relating to planning, land use, transport and environmental impact. Upon the completion of the internal review, its results would be announced.

13. Mr WONG Yung-kan asked about the timetable for completion of the internal

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review. S for S responded that although there was not a timetable for completion of the internal review, the Administration hoped to complete the review as soon as possible.

Right of abode

14. Miss Margaret NG said that the number of Mainland persons who claimed right of abode under BL24(2)(3) and had been issued One-way Permit (OWP) to settle in Hong Kong was less than expected. Many ROA claimants who were still in Hong Kong had to take care of their parents in Hong Kong. In view of these and the ageing of the population, she asked whether the Administration would review its policy in respect of ROA claimants. She also asked whether the Administration would examine the arrangements for ROA claimants who had returned to the Mainland to come and settle in Hong Kong in an orderly manner.

15. S for S responded that Hong Kong had been facing problems related to ROA for some time in the past. The legal issues relating to ROA claims had been clarified. There were only a small number of ROA claimants still remaining in Hong Kong. He said that the Director of Immigration (D of Imm) had already examined whether there were cases where discretion should be exercised under the Immigration Ordinance (Cap. 115) (IO) to allow the ROA claimants concerned to stay in Hong Kong on exceptional humanitarian or compassionate grounds.

16. S for S informed Members that under the present OWP scheme, some adult children born to Hong Kong parents in the Mainland were not eligible to apply for settlement in Hong Kong. The Administration had raised with the Mainland authorities the possibility of creating another channel under the OWP Scheme for such adult Mainland children who had a genuine need to come and settle in Hong Kong. So far, the Administration had not received a positive response, as the Mainland authorities were concerned that such persons might be vast in number.

17. Miss Margaret NG pointed out that although CFA had delivered its judgment on ROA cases, D of Imm's discretion under IO was broad and not confined to humanitarian ground. She considered that all remaining ROA claimants should be allowed to stay in Hong Kong to take care of their parents. She said that the Administration was unfair in allowing Mainland women to give birth in Hong Kong but not allowing ROA claimants to remain in Hong Kong. She asked about the estimated number of adult children born to Hong Kong parents in the Mainland.

18. S for S responded that allowing all remaining ROA claimants to stay in Hong Kong would amount to overturning CFA's judgment. Many of such adult Mainland children had their own families in the Mainland. They would be separated from their families in the Mainland, if they were allowed to stay in Hong Kong. He pointed out that the discretion under IO could only be exercised by D of Imm. However, D of Imm had a responsibility to exercise it with caution to maintain effective immigration control and avoid creating any policy that was open to abuse.

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He said that the number of adult children born to Hong Kong parents in the Mainland was large. However, the Mainland authorities did not have an estimate of the number of such persons.

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19. The Chairman said that S for S should have the authority to formulate immigration policy in respect of ROA claimants for enforcement by D of Imm. S for S responded that immigration policy was formulated by the Chief Executive (CE) in Council. The Chairman requested the Administration to provide a paper explaining, from a legal point of view, the relationship between immigration policy and D of Imm's discretion under IO to allow a person to stay in Hong Kong.

Land use of penal sites and treatment of inmates

20. Mr CHIM Pui-chung asked whether the Administration had considered releasing the sites presently occupied by penal institutions for other development.

21. S for S responded that the Administration had previously planned to co-locate existing penal institutions to address overcrowding in penal institutions and release existing penal sites for other development. However, the plan was subsequently shelved in view of strong public objection. The Administration was exploring alternative development plans, including the redevelopment of existing penal institutions. He pointed out that existing penal institutions could be relocated only if alternative sites were available.

22. Mr CHIM Pui-chung said that there were differences in the meals provided for inmates of different races/nationalities in penal institutions. To his knowledge, the cost for a Chinese meal was \$12, whereas the cost for a Western meal was \$18.

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23. S for S responded that there was equal treatment of inmates of different races/nationalities in penal institutions. Different meals were provided in view of the different habitual diets of people of different races. The Chairman considered that inmates of different races should be treated equally. He requested the Administration to provide a paper on the differences in the meals provided for inmates of different races/nationalities in penal institutions.

Allegations of Mainland public security officials taking enforcement actions in Hong Kong

24. Mr Albert HO asked whether the existing immigration policy could effectively prevent Mainland public security officials from taking law enforcement action in Hong Kong. Regarding a case in 2004 where Mainland public security officials were alleged to have taken law enforcement action in Hong Kong, he asked whether the Administration had taken up the matter with the relevant Mainland authorities. He also asked whether the Administration had any plans to enact legislation to prevent such incidents.

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25. S for S responded that he was very concerned about the case and had raised the matter with the Director General of Guangdong Provincial Public Security Department (GDPSD), who had replied that no public security official had taken enforcement actions in Hong Kong. In the case concerned, the two Mainland public security officials among the seven persons arrested had claimed that the purpose of their visit to Hong Kong was sightseeing and shopping. The Administration had sought legal advice from the Department of Justice, which had advised that there was insufficient evidence to institute prosecution against the arrested persons.

26. Mr Albert HO said that the Administration should not have just noted the reply of the Director General of GDPSD. He pointed out that Mainland public security officials taking enforcement actions on their own in Hong Kong were in breach of the agreement between the Police and Mainland authorities. He asked whether the Administration had requested the Mainland authorities to investigate the case and provide a reply.

27. S for S responded that the Police had requested the Mainland public security authorities to investigate the case. The reply obtained was that –

- (a) no Mainland public security official had taken enforcement actions in Hong Kong in the case concerned; and
- (b) one of the Mainland public security officials concerned had inadvertently brought a pair of handcuffs to Hong Kong.

28. Mr Albert HO asked why the arrested Mainland persons were released on bail, although most Mainland residents who visited Hong Kong with Two-way Permits were not allowed to do so. He questioned why the possession of handcuff did not amount to the offence of possession of offensive weapon. He said that many people considered that the decision of not instituting prosecution against the arrested persons was a political one.

29. S for S responded that the Police would not allow an arrested person to be released on bail, if investigation revealed sufficient evidence for instituting prosecution against the arrested person or when there was a likelihood that the arrested person might escape when released on bail. In the case concerned, the seven arrested persons were released on bail in accordance with established procedures pending investigation of the case. He said that the Police had to carry out a thorough investigation into the case before seeking legal advice on whether prosecution should be instituted.

II. Briefing by the Commissioner, Independent Commission Against

Corruption on the Chief Executive's Policy Address 2005
(LC Paper No. CB(2)654/04-05(05))

30. At the invitation of the Chairman, Commissioner, Independent Commission Against Corruption (C/ICAC) briefed Members on the policy initiatives of the Independent Commission Against Corruption (ICAC) in the year ahead.

Issues relating to “collusion between business and the Government” and transfer of benefits

31. Mr CHEUNG Man-kwong said that CE had stated that he was resolutely against “collusion between business and the Government” and would strictly enforce its monitoring systems to eliminate any transfer of benefits. He asked whether ICAC would adopt a proactive role to examine whether there were loopholes in the West Kowloon Cultural Development Project, the disposal of flats built under the Hunghom Peninsula Private Sector Participation Scheme, the Cyberport Project and the post-retirement employment of a senior civil servant.

32. C/ICAC responded that the daily work of ICAC covered the review of mechanisms and procedures to ensure that they were fair and transparent to prevent conflict of interests. If there were complaints about any public officer accepting advantages, ICAC would conduct investigation in accordance with the law. Regarding the West Kowloon Cultural Development Project, the Corruption Prevention Department of ICAC had been invited in late 2003 to examine whether the screening process and procedures were fair and open. It had made recommendations on the screening process and procedures, organised briefings on the prevention of corruption in 2004 and served as observers in the screening process. ICAC would also contribute to the Civil Service Bureau’s review of the post-retirement employment of civil servants. Regarding the Cyberport Project and the disposal of flats built under the Hunghom Peninsula Private Sector Participation Scheme, ICAC had not been invited to examine the relevant process and procedures.

33. Mr CHEUNG Man-kwong said that ICAC should investigate the four cases thoroughly, including investigating whether the retired civil servant concerned had contravened requirements on post-retirement employment, and report to the Legislative Council and CE.

34. C/ICAC responded that ICAC would conduct investigation into complaints about corruption or illegal acts of civil servants. However, he was not in a position to comment on individual cases. Regarding the post-retirement employment of civil servants, ICAC had indicated its wish to take part in the review of the relevant procedures. He said that the suggestion of a review on the tendering procedures for public works would be referred to the Corruption Prevention Advisory Committee of ICAC for consideration.

35. Director of Corruption Prevention, ICAC (DCP/ICAC) said that the major

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concern regarding the disposal of flats built under the Hunghom Peninsula Private Sector participation Scheme was the assessment of the regrant premium. The general process and procedures in respect of assessment of premium had been reviewed by the Corruption Prevention Department of ICAC in 2004 and ICAC would provide its reviews to the Administration. He added that the Cyberport Project had been awarded a few years ago and he noted that the Administration had adopted a different approach in recent projects, such as the West Kowloon Cultural Development Project. The Chairman considered that ICAC should examine the process for awarding the Cyberport Project.

36. Mr LAU Kong-wah said that if Mr CHEUNG Man-kwong was aware of any transfer of benefits, he should lodge a complaint with ICAC. ICAC should also invite Mr CHEUNG to provide more information in relation to his allegations.

37. Mr Albert HO said that existing legislation could not prevent “collusion between business and the Government”. For example, a civil servant might introduce certain policy favourable to a business group with the understanding that he would receive favourable treatment by the business group after his retirement.

Corruption complaints relating to building management

38. Referring to paragraph 9 the paper provided by ICAC, Mr LAU Kong-wah expressed concern that 41% of the complaints concerning the private sector were related to building management. He asked about the breakdown in respect of complaints relating to building management. He said that there could be corruption in the awarding of tenders by owners’ corporations (OCs).

39. C/ICAC responded that the large number of complaints relating to building management might be due to a number of reasons, including the ageing of buildings, the increased number of repair orders issued by the Building Department, the increased competition between contractors due to the downturn in the construction industry in the past few years, suspicions arising from a lack of transparency in the tendering process and OC members’ lack of knowledge about building management. He said that only a small number of cases ended up with prosecutions after investigation. However, ICAC had noted in the previous year that some people had tried to control OC’s award of repair works contracts. To address problems relating to corruption in building management, ICAC had formed a task force comprising representatives from the Operations Department, Corruption Prevention Department and the Community Relations Department of ICAC. The ICAC would –

- (a) organise talks, seminars and workshops to enhance the knowledge of OC members about the law and building management;
- (b) issue corruption prevention guidebooks on contract management for OCs; and

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(c) conduct some 700 visits to OCs in the forthcoming year.

40. C/ICAC added that to his knowledge, the Home Affairs Bureau intended to submit legislative proposals in the current year to strengthen the legal framework for building management.

41. Head of Operations, ICAC (H/OPS/ICAC) informed Members that complaints relating to building management were mainly related to corruption in building management and corruption in the tendering of repair works. Investigation revealed that a majority of the complaints relating to building management arose from poor quality of building management. Increase repair works had resulted in increased corruption among the staff of property management companies, the staff of architectural firms and key persons of OCs. Manpower had already been redeployed to address the problem.

Anti-corruption work regarding the private sector

42. Mr CHIM Pui-chung asked whether ICAC would consider revising the word “政” in its Chinese name to “正” to reflect its work against corruption in the private sector.

43. C/ICAC responded that ICAC was set up to tackle corruption in both the public and private sectors, and that its powers had been set out clearly in the Prevention of Bribery Ordinance (PBO) (Cap. 201). He saw no reason to change the Chinese name of the Commission. The Chairman said that ICAC might wish to look into the background regarding why the word “政” was used in its Chinese name.

44. Mr CHIM Pui-chung asked whether ICAC’s investigations regarding corruption in the private sector overlapped with the work of the Commercial Crime Bureau of the Police.

45. C/ICAC responded that upon the receipt of a complaint, ICAC would meet with the complainant and conduct a preliminary assessment on whether there was any element of corruption in the case concerned. Where it was found that a case involved no element of corruption, it would be immediately referred to the relevant government department, including the Police, for follow-up. He stressed that every case under investigation by ICAC originated from complaints alleging corruption. There was no question of ICAC investigating cases outside its jurisdiction.

Search of journalistic material in a number of media organisations in 2004

46. Mr CHIM Pui-chung questioned whether ICAC was really impartial, as it had always claimed so, in its search of journalistic material in a number of media organisations in 2004.

47. C/ICAC responded that ICAC had always been impartial in its work. ICAC

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carried out a search on some media organisations in 2004 because the media organisations, editorial staff and journalists concerned were suspected to have breached section 17(1) of the Witness Protection Ordinance (Cap. 564).

Declaration of interests by principal officials and members of the Executive Council

48. Regarding declaration of interests by principal officials under the Accountability System, Mr Albert HO considered that blind trusts for principal officials were preferred to family trusts as a measure for preventing possible conflict of interest. He asked whether declaration of interests by members of the Executive Council would be made public after a certain period of time. C/ICAC undertook to look into the issues. Mr Albert HO requested ICAC to provide a written response.

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Extension of the scope of the Prevention of Bribery Ordinance to cover the Chief Executive

49. Mr Albert HO asked whether the scope of PBO would be extended to cover CE.

50. C/ICAC responded that to his knowledge, CE had no objection to the suggestion, which was being followed up by the Administration. He said that ICAC was in support of the proposed extension.

51. There being no further business, the meeting ended at 11:35 am.