

立法會
Legislative Council

LC Paper No. CB(2)220/11-12
(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE

Panel on Security

Minutes of meeting
held on Tuesday, 12 April 2011, at 4:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon James TO Kun-sun (Chairman)
Hon LAU Kong-wah, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon Margaret NG
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon WONG Kwok-kin, BBS
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
- Members absent** : Hon CHEUNG Man-kwong
Hon Timothy FOK Tsun-ting, GBS, JP
Hon CHAN Hak-kan
Hon IP Kwok-him, GBS, JP

Public Officers : Item IV
attending

The Administration

Mr LAI Tung-kwok, SBS, IDSM, JP
Under Secretary for Security

Mr CHOW Wing-hang
Principal Assistant Secretary for Security

Mr LEUNG Kwok-hung
Assistant Director
(Enforcement and Torture Claim Assessment)
Immigration Department

Item V

The Administration

Mr LAI Tung-kwok, SBS, IDSM, JP
Under Secretary for Security

Mrs Millie NG
Principal Assistant Secretary for Security

Mr YU Mun-sang
Chief Superintendent Crime Wing Headquarters
Hong Kong Police Force

Mr TANG Ping-keung
Senior Superintendent Crime Wing Headquarters
Hong Kong Police Force

Attendance : Item IV
by invitation

Duty Lawyer Service

Ms Grace WONG

Hong Kong Bar Association

Mr Kumar RAMANATHAN, SC

Mr P Y LO

The Law Society of Hong Kong

Mr Lester HUANG
Chairman

Mr Mark DALY

Society for Community Organization

Ms Annie LIN
Community Organizer

Mr Richard TSOI
Community Organizer

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Ms Connie FUNG
Senior Assistant Legal Adviser 1

Mr Ian CHOW
Senior Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1452/10-11)

The minutes of the meeting held on 10 February 2011 were confirmed.

II. Information papers issued since the last meeting
(LC Paper No. CB(2)1314/10-11(01))

2. Members noted that a letter from Cathay Pacific Airways Flight Attendants Union on Outbound Travel Alert and other issues relating to the recent nuclear power plant incident in Japan had been issued since the last meeting. The Chairman suggested and members agreed that the Administration should be requested to provide a response to the issues raised in the letter.

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III. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)1454/10-11(01) and (02))

List of outstanding items for discussion

3. In connection with the item on election-related corruption reports in the list of outstanding items for discussion, members agreed that issues relating to practical electoral arrangements were being followed up by the Panel on Constitutional Affairs.

List of follow-up actions

4. Members agreed that the Department of Justice should be requested to provide a response in relation to the powers of the Independent Commission Against Corruption to search for and seize journalistic material under item 2 in the list of follow-up actions.

Regular meeting in May 2011

5. Members agreed that the following items would be discussed at the next regular meeting to be held on Tuesday, 3 May 2011, at 2:30 pm -

- (a) construction of a Secondary Boundary Fence arising from the reduced coverage of the Frontier Closed Area – Phase 2;
- (b) establishing a sexual conviction record check mechanism for child-related work; and
- (c) rules and directions for the questioning of suspects and the taking of statements : caution statement.

IV. Torture claim screening system : current practice and legislative proposal

(LC Paper Nos. CB(2)1454/10-11(03) to (04), CB(2)1497/10-11(01) to (02), CB(2)1517/10-11(01), LS47/10-11 and IN09/10-11)

6. Under Secretary for Security ("US for S") briefed members on the progress of the administrative scheme to screen torture claims, details of which were set out in the Administration's paper.

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7. US for S informed members that after the enactment in 2009 of the Immigration (Amendment) Ordinance 2009 which specified that it was a criminal offence for illegal immigrants ("IIs") to take up employment -

- (a) the number of new torture claims received had dropped by 44% from a monthly average of 270 in 2009 to 150 in 2010;
- (b) the number of torture claims withdrawn had risen from a monthly average of 85 in 2009 to 100 in 2010; and
- (c) the number of non-ethnic Chinese IIs intercepted had dropped by 73%, from a monthly average of 110 in 2009 to 30 in 2010.

8. Principal Assistant Secretary for Security ("PAS(S)) briefed members on the key legislative proposals to underpin the screening mechanism for determining torture claims, as detailed in the Administration's paper.

Presentation of views by deputations

*Hong Kong Bar Association and the Law Society of Hong Kong
(LC Paper No. CB(2)1497/09-10(01))*

9. Mr Kumar RAMANATHAN and Mr Lester HUANG presented the views of the Hong Kong Bar Association ("the Bar") and the Law Society of Hong Kong ("the Law Society") as set out in the joint submission. They considered that the Administration should introduce a coherent and comprehensive system for contemporaneous assessment of both torture claims made under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") and claims for refugee status under the 1951 United Nations Convention relating to the Status of Refugees ("the Refugee Convention").

Society for Community Organization

10. Ms Annie LIN presented the views of the Society for Community Organization ("SoCO") and called for the Administration to set up a single screening mechanism for both asylum seekers and torture claimants.

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Duty Lawyer Service

11. Ms Grace WONG presented the submission of the Duty Lawyer Service ("DLS") and informed members that under the enhanced screening mechanism which commenced on 24 December 2009, publicly-funded legal assistance was provided to claimants through a pilot scheme under DLS by 269 duty lawyers under the duty roster. Among these 269 duty lawyers, 72.5% possessed at least six years' experience, 55.6% possessed at least 10 years' experience and one possessed 38 years' experience. She informed members that the handling of 475 cases had been completed. DLS estimated that about 2 500 cases could be handled in a year and 3 562 or 53% of all outstanding cases would be handled by December 2012.

Discussion

12. Noting from the Administration's paper that no torture claim had so far been substantiated and the Administration had reached an agreement with DLS to continue the pilot scheme for another two years, Dr Margaret NG asked whether the Administration had conducted any review on the pilot scheme. Noting from the joint submission of the Law Society and the Bar that barristers could be accompanied by non-qualified staff when they attended a screening interview of the Immigration Department ("ImmD") whereas solicitors of DLS were not allowed to do so, Dr NG queried why there was such a difference.

13. PAS(S) responded that the substantive interview was a fact finding exercise and a forum for clarifying issues pertaining to the claim including those which might arise in the interview itself. The role of the duty lawyer included ensuring that the claimant understood the interview process and had the opportunity to provide all relevant information. A duty lawyer could be accompanied by a local trainee solicitor or pupil barrister at the screening interview. Where a duty lawyer requested the assistance of a person without any legal qualification at the screening interview, ImmD would consider the request having regard to the circumstances of the case concerned.

14. PAS(S) supplemented that in the previous year, 98% of claimants received legal assistance provided by duty lawyers under DLS. The remaining claimants either appointed their own legal representatives or chose not to receive any legal assistance. On average, ImmD was able to

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determine a torture claim after one to two interviewing sessions, compared to six to seven sessions in the past. The target of processing 400 claims in the first year of operation of the scheme was met. Duty lawyers had also represented claimants who lodged petition against ImmD's decision. The pilot scheme had a positive impact on the screening mechanism and the Administration had reached an agreement with DLS to continue the scheme for another two years until December 2012.

15. Mr Lester HUANG said that the interviewing protocol was a non-statutory and administrative one with no legal effect. He opined that the refusal to allow duty lawyers who were solicitors to attend the interview with a team member was unrealistic and unreasonable. The presence of a team member, such as a member of a non-government organization, was crucial to the claimant in the explanation of his case to ImmD officers. Mr HUANG expressed dissatisfaction that the Law Society and the Bar ("the Joint Profession") were not consulted on the extension of the pilot scheme with DLS for another two years.

16. Ms Grace WONG said that DLS had informed the Joint Profession in a previous correspondence about the extension of the scheme. DLS did not see the need for the presence of a duty lawyer's team member at the screening interview since the claimant had to answer a number of personal questions. This was the practice adopted in the United Kingdom and Switzerland. In case a duty lawyer was unable to handle a case, DLS would assign that case to another duty lawyer not from the same legal firm.

17. Mr Paul TSE enquired whether there had been any case where a team member accompanying a duty lawyer was expelled for obstructing the conduct of the interview. US for S replied in the negative. He said that ImmD would consider allowing a duty lawyer's team member to attend the interview on a case-by-case basis.

18. Dr Margaret NG and Mr LEUNG Kwok-hung queried whether DLS would appoint another duty lawyer, if a duty lawyer originally appointed insisted to bring a team member to attend the screening interview. Dr NG considered that a duty lawyer should act in the best interests of the claimant.

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19. Ms Grace WONG responded that duty lawyers appointed by DLS were acting in the best interests of the claimants. The role of DLS was to monitor the progress of handling of the cases. She stressed that DLS was neutral on the question of whether a duty lawyer should be allowed to bring along a team member when attending the screening interview. DLS would leave that decision to the duty lawyer to negotiate with ImmD regarding whether he was allowed to bring an assistant to the interview.

20. Noting that the Joint Profession and SoCO had suggested that a coherent and comprehensive system should be set up for contemporaneous assessment of both torture claims and claims for refugee status under the Refugee Convention, Ms Emily LAU asked whether the Administration would consider the suggestion.

21. US for S responded that the Refugee Convention was not applicable to Hong Kong. The relative economic prosperity of Hong Kong in the region and its liberal visa regime made the territory vulnerable to possible abuse if the Refugee Convention was to be extended to Hong Kong. Hence, the Administration had a firm policy of not granting asylum and would not set up a single screening mechanism for both asylum seekers and torture claimants. There were currently around 6 700 outstanding torture claims and 500 outstanding asylum cases. The Administration would transfer a claimant's information to the United Nations High Commissioner for Refugees for refugee status determination, if so requested, after processing his torture claim.

22. Ms Emily LAU expressed concern about the arrangement for medical practitioners to conduct medical examinations for torture claimants. She asked whether ImmD was involved in the selection of medical practitioners to conduct medical examinations.

23. PAS(S) responded that senior forensic pathologists with at least five years' experience were responsible for conducting medical examinations on torture claimants. In the event that a torture claimant or DLS was not satisfied, with concrete evidence, with a medical examination report, re-examination by another forensic pathologist could be arranged. In general, ImmD officers would not be present during a medical examination. However, there were cases where an ImmD officer was present, at the request of the forensic pathologist and with the consent of the torture claimant concerned, as a witness at the medical examination.

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24. The Chairman asked whether ImmD was involved in the selection of a forensic pathologist to conduct medical examinations for a torture claimant. Assistant Director (Enforcement and Torture Claim Assessment), ImmD ("AD of ImmD") advised that forensic pathologists were provided by the Department of Health and ImmD was not involved in the selection of forensic pathologists to conduct medical examinations for torture claimants. The Chairman said that the Department of Health would be requested to provide a response on whether the Security Bureau or ImmD played any role in the selection of medical doctors to conduct the medical examination.

25. Noting from the Administration's paper that it would set up a statutory Torture Claims Appeal Board ("the Board") comprising members who had the necessary legal background, Dr PAN Pey-chyou asked whether members of the public and those from religious and cultural sectors would be appointed to the Board.

26. US for S explained that the Administration would appoint retired judges and legal professionals to the Board to ensure that the appeals were processed with "a high degree of fairness" as requested by the Court of Final Appeal and their legal experiences were essential when there were disputes regarding matters of fact. The Administration would consider appointing members of different backgrounds to the Board.

27. Noting from paragraph 9 of the Administration's paper that a torture claimant would not be treated as ordinarily resident in Hong Kong during any time he remained in Hong Kong as a claimant, Dr PAN Pey-chyou said that torture claimants should not be allowed to take up employment in Hong Kong. He asked whether the Administration would consider allowing torture claimants to participate in volunteer work and attend religious activities.

28. PAS(S) responded that claimants were allowed to participate in religious activities. They could also participate in volunteer programmes organized by non-government organizations and religious groups. Where a claim was substantiated, the Administration would consider whether the claimant should be allowed to take up employment in Hong Kong on a case-by-case basis.

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29. Dr PAN Pey-chyou asked whether psychiatric examination would be conducted where necessary by psychiatrists. PAS(S) advised that psychiatric examination would be arranged upon referral of the Department of Health.

30. Mr Paul TSE enquired about the timetable for enacting legislation of the screening mechanism. He asked whether torture claims would be screened on a "first-come-first-served" basis.

31. PAS(S) advised that the Administration planned to introduce the relevant Bill for a statutory torture claim screening mechanism into the Legislative Council in 2011. AD of ImmD advised that the Administration would have regard to local experience and the experience of other common law jurisdictions when determining the order of screening of torture claims. He informed members that in the United Kingdom, there were different time limits for persons who had also applied for asylum in another country, claimants who were unaccompanied minors, nationals from countries generally regarded as safe from torture and cases which could be decided quickly. AD of ImmD added that priority was currently given to the screening of torture claims from unaccompanied minors, persons aged under 18, persons who claimed to be victims of violence, detainees or persons involved in criminal offence proceedings, persons posing threat to the community and persons whose claims had been pending for a long period of time. He stressed that the screening of torture claims on a first-come-first-served basis might give new claimants the false impression that they would be able to stay in Hong Kong for a long period of time.

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32. Ms Audrey EU expressed concern over the welfare of minor torture claimants and enquired about their number, age and length of stay in Hong Kong. She also enquired whether they were given the opportunity to receive education in Hong Kong.

33. PAS(S) responded that the Administration fully observed the Convention on the Rights of the Child and would consider the education needs of claimants who were minors. AD of ImmD added that pamphlets on education arrangements were provided to claimants who were minors.

34. Referring to paragraphs 5 and 6 of the Administration's paper, the Deputy Chairman said that if some 400 out of about 6 700 outstanding claims had been processed and the Administration aimed to process 1 000 claims annually, it would take at least six years to process all existing claims. He asked how the Administration would tackle the situation.

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35. US for S responded that the situation had been improving, as reflected in the following statistics -

- (a) the number of new torture claims received had dropped by 44% from a monthly average of 270 in 2009 to 150 in 2010;
- (b) the number of torture claims withdrawn had risen from a monthly average of 85 in 2009 to 100 in 2010;
- (c) the number of non-ethnic Chinese IIs intercepted had dropped by 73% from 2009 to 2010; and
- (d) ImmD was currently able to determine a torture claim after one to two interviewing sessions, whereas seven to eight sessions were needed in the past.

36. Noting that some torture claimants were IIs who entered Hong Kong from the Mainland and lodged refugee or CAT claims after their arrival in Hong Kong, the Deputy Chairman asked whether the Administration had explored with the Mainland authorities whether these IIs could be sent back to the Mainland, which was the place of their first landing, such that their refugee or CAT claims could be processed by the Mainland. US for S responded that discussion on the issue was ongoing.

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37. The Deputy Chairman requested the Administration to provide information on the number of non-ethnic Chinese IIs from the Mainland and the number of those who were repatriated to the Mainland.

38. AD of ImmD advised that a majority of non-ethnic Chinese IIs entered Hong Kong from the Mainland and the number was decreasing.

39. Noting from paragraphs 14 and 15 of the Administration's paper that claimants had to provide grounds and available supporting documents to support their claims within a prescribed time frame which would be provided for under subsidiary legislation, the Chairman said that the prescribed timeframe should be provided for under the principal legislation rather than in subsidiary legislation. US for S agreed to consider the suggestion.

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40. The Chairman said that the Administration should provide a paper setting out the Administration's detailed proposals on the statutory torture claim screening mechanism. Members would then decide whether the Administration's legislative proposal should be further discussed.

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(Members agreed to extend the meeting to 7:00 pm.)

V. Manpower situation in respect of crime officers of the Hong Kong Police Force

(LC Paper Nos. CB(2)1454/10-11(05) to (06) and CB(2)1517/10-11(02))

41. US for S and Chief Superintendent, Crime Wing Headquarters, Hong Kong Police Force ("CSP") briefed members on the manpower situation of crime officers of the Hong Kong Police Force ("the Force") as set out in the Administration's papers entitled "Manpower Situation in respect of Crime Officers of the Hong Kong Police Force" and "Manpower Situation in respect of Crime Officers of the Hong Kong Police Force - Supplementary Information".

42. The Chairman sought information about the details of the recommendation regarding introduction of a mentorship programme for crime officers. CSP responded that the major targets of the programme would be recruit constables who were about to complete basic training and were identified as potential criminal investigators. The mentors would mainly be sergeants and station sergeants from criminal investigation units.

43. Dr LAM Tai-fai expressed concern that while it was stated in the Administration's paper entitled "Manpower Situation in respect of Crime Officers of the Hong Kong Police Force" that the vacancy rate of crime officers was less than 1%, there were media reports that the morale of crime officers was low and many of them had made request for transfer to other divisions of the Force. Dr LAM asked whether the morale among crime officers was low and whether this had affected the crime detection rate.

44. CSP responded that reports about many crime officers' request for transfer were unfounded. However, the number of Police officers who applied to be crime officers had dropped since around 2006. The Force had been closely monitoring the situation and had established the "Criminal Investigation Unit" referred to in paragraph 8 of the Administration's paper entitled "Manpower Situation in respect of Crime Officers of the Hong Kong Police Force" to relieve the workload of crime officers. CSP added that the crime rate had remained steady over the past few years.

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45. Dr LAM Tai-fai and Ms Cyd HO expressed concern about how the recommendation regarding improving compensation for overtime work referred to in paragraph 8 of the Administration's paper entitled "Manpower Situation in respect of Crime Officers of the Hong Kong Police Force - Supplementary Information" would be implemented.

46. CSP responded that the improvement to compensation for overtime work included increasing the relevant budget from \$15 million to \$30 million for the next financial year. Relief teams would be set up in every Police district to perform the duties of officers of District Investigation Teams on vacation leave. The Chairman requested the Administration to provide information on the accumulated overtime of Police officers of different ranks and the resources needed for compensation of such accumulated overtime.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(2)2247/10-11(01).)

47. Dr LAM Tai-fai enquired about the progress of the study on job-related allowance as referred to in paragraph 16 of the Administration's paper entitled "Manpower Situation in respect of Crime Officers of the Hong Kong Police Force - Supplementary Information". CSP said that the Force would study the job-related allowance concerning criminal investigation duties and seek additional funding, if necessary. He added that the study would take some time to complete.

48. Dr LAM Tai-fai asked how the Force would strengthen overseas training for crime officers. CSP advised that additional resources would be allocated for crime officers to undergo overseas crime investigation training courses in South-east Asian countries and the Mainland.

49. The Chairman requested the Administration to provide an estimate of the expenditure required to implement the 14 recommendations of the Force Study Team.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(2)2247/10-11(01).)

50. Noting from paragraph 12 of the Administration's paper entitled "Manpower Situation in respect of Crime Officers of the Hong Kong Police Force - Supplementary Information" that the Force would conduct further research into the recommendations in relation to recognition of professional status, building a professional image, enhancing transport

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arrangements and job-related allowance, the Chairman said that the recommendations should be implemented as soon as possible. Priority should be given to the recommendations regarding enhancing transport arrangements and job-related allowance.

51. Regarding the enhancement of transport arrangements, CSP said that one vehicle was allocated to each Criminal Investigation Team and this was adequate for normal crime investigation work. The problem of inadequate vehicle arose when a team had to carry out a number of tasks at the same time. Consideration was being given to allowing such crime officers to use taxi or other means of transport.

52. The Chairman requested the Administration to arrange a closed-door briefing for the Panel to better understand the details of the recommendations of the Force Study Team.

(Post-meeting note: The Panel received a closed-door briefing by the Administration on 29 June 2011.)

53. The meeting ended at 7:06 pm.

Council Business Division 2
Legislative Council Secretariat
3 November 2011