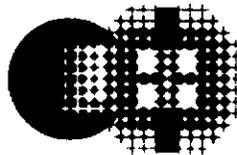


INVESTIGATION REPORT

PROCEDURES FOR HANDLING TRAVELLERS SUSPECTED OF USING FALSE OR OTHERWISE SUSPECT TRAVEL DOCUMENTS

June 2001



Office of The Ombudsman

Hong Kong

CONTENTS

Legend of Abbreviations

<i>Chapter</i>		<i>Pages</i>
1	Introduction	1-3
2	Procedures for Handling Travellers Suspected of Using False or Otherwise Suspect Travel Documents	4-19
3	Concern of the Community	20-23
4	Case Studies	24-29
5	Recent Improvement Measures	30-34
6	Observations and Opinions	35-41
7	Recommendations	42-46
8	Final Remarks	47-53

Annexes

Executive Summary

Legend of Abbreviations

Basic Guidelines	Basic Guidelines for Part-time Interpreters
C & ED	Customs and Excise Department
CIO	Chief Immigration Officer
DIR	Draft Investigation Report
D of J	Department of Justice
EDISON	Electronic Documentation of Information System on Networks
Govt Lab	Government Laboratory
HKSAR	Hong Kong Government or The Government of the Hong Kong Special Administrative Region
Government	
HKPF	Hong Kong Police Force
ICAC	Independent Commission Against Corruption
Imm D	Immigration Department
IO	Immigration Officer
ISSO	Immigration Service Standing Order
JPs	Justices of the Peace
Jud	Judiciary
LEGCO	Legislative Council
MEAO	Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR
MTKDC	Ma Tau Kok Detention Centre
PRC	People's Republic of China
QDX	Questioned Document Examination System
SB	Security Bureau
SIO	Senior Immigration Officer
The Airport	Hong Kong International Airport
The Rules	Rules and Directions for the questioning of suspects and taking of statements
This Office	The Office of The Ombudsman
VRI	Video Recording Interview

1

INTRODUCTION

BACKGROUND

1.1 In February 2000, the Office of The Ombudsman (this Office) noted prominent media coverage on the treatment of travellers entering or transiting through Hong Kong using false or otherwise suspect travel documents. This aroused serious public concern about the relevant procedures of the Immigration Department (Imm D) in handling such cases.

1.2 In exercise of the authority vested in her under Section 7(1)(a)(ii) of The Ombudsman Ordinance, The Ombudsman informed the Director of Immigration on 15 February 2000 of her decision to conduct a direct investigation into the procedures for handling travellers suspected of using false or otherwise suspect travel documents.

PURPOSE OF THE INVESTIGATION

- 1.3 The purpose of the direct investigation is to -
- (a) conduct an overview study of the Imm D's procedures for handling travellers suspected of using false or otherwise suspect travel documents in breach of the Immigration Ordinance;
 - (b) assess the overall fairness of the content and

implementation of these procedures; and

- (c) examine whether and how these procedures can be improved.

AMBIT OF THE INVESTIGATION

1.4 The ambit of the investigation includes looking into -

- (a) the department's role and responsibility in immigration control and related functions;
- (b) departmental guidelines and procedures for handling travellers suspected of using false or otherwise suspect travel documents in breach of the Immigration Ordinance, and the implementation of these guidelines and procedures;
- (c) the monitoring and control mechanism to ensure compliance with the departmental guidelines and procedures;
- (d) the adequacy and effectiveness of the mechanism and the departmental guidelines for their intended purposes; and
- (e) the overall fairness of the content and implementation of the department's guidelines and procedures.

THE INVESTIGATION

1.5 In the course of investigation, this Office scrutinised relevant papers, case files, publications and statistical data of Imm D. Investigation Officers of this

Office also visited some immigration control points, including the Hong Kong International Airport (the Airport), the Lo Wu Control Point, and the China Ferry Terminal. Representatives of Imm D and the Investigation Officers of this Office held many discussions throughout the investigation period. This Office invited members of the public through press release to offer their comments and suggestions on the subject matter during the period from 29 February 2000 to 29 March 2000; but received none.

INVESTIGATION REPORT

1.6 A Draft Investigation Report (DIR) was sent on 22 May 2001 to Imm D, Security Bureau (SB), Government Laboratory (Govt Lab) and Judiciary (Jud) for comments. The comments were received on 5 June 2001, 6 June 2001, 1 June 2001 and 31 May 2001 respectively. This final report was issued on 26 June 2001.

2

PROCEDURES FOR HANDLING TRAVELLERS SUSPECTED OF USING FALSE OR OTHERWISE SUSPECT TRAVEL DOCUMENTS

THE LEGAL FRAMEWORK

The Immigration Ordinance

2.1 Section 42 (2) (c) of the Immigration Ordinance (Cap. 115), states that any person who has in his possession -

- (a) any forged, false or unlawfully obtained or altered travel document,; or
- (b) any forged, false or unlawfully altered document whatsoever intended for use for the purposes of this Ordinance,

shall be guilty of an offence.

2.2 Section 2 of the Immigration Ordinance states that "a travel document means a passport furnished with a photograph of the holder, or some other document establishing to the satisfaction of an immigration officer or immigration assistant the identity and nationality, domicile or place of permanent residence of the holder".

2.3 A travel document might be deemed to be forged if it was wholly (complete counterfeit) or partially forged (e.g. photograph or page substituted). A travel document might be deemed to be unlawfully obtained if any person made a false statement or representation for the purposes of or in connection with an application for the issue or renewal of the same, even though it was issued by the relevant competent authority.

ROLE AND RESPONSIBILITIES OF DEPARTMENTS AND BUREAU

Role of Security Bureau

2.4 SB has policy responsibility for immigration matters. Specifically, it develops and maintains appropriate policies governing entry into and exit from Hong Kong; and ensures a framework of efficient procedures for pre-entry controls and control at points of entry and exit by land, sea and air.

2.5 On the subject of questioning suspects and taking statements, the Secretary for Security promulgated in the Government Gazette in October 1992 the "Rules and Directions for the questioning of suspects and the taking of statements" (the Rules) for observance by law enforcement officers in the Hong Kong Police Force (HKPF), the Customs and Excise Department (C & ED), Imm D and the Independent Commission Against Corruption (ICAC). In September 1998, Imm D issued a booklet on the Rules and distributed it to all immigration service staff in February 1999. The 7 rules and 8 directions contained in the Rules are summarised at **Annex 1**.

Role of Imm D

2.6 As far as immigration control is concerned, the role and responsibilities of Imm D are to facilitate the mobility of tourists, business visitors and Hong Kong residents, to

deny entry of undesirables and to prevent wanted criminals from departure. Imm D has been focusing its attention and efforts on combating the increasing trend in the use of forged travel documents for the purposes of illegal migration, crime or terrorism.

Role of Government Laboratory

2.7 The role of Govt Lab is to provide a full range of analytical, investigatory and advisory services to facilitate government departments' discharge of their responsibilities for law and order, public health and safety, environmental protection, government revenue and consumer protection. On cases involving false or otherwise suspect travel documents, the role of the Questioned Documents Section of Govt Lab is to provide a comprehensive service in the examination of "counterfeiting and forgery" to law enforcement departments (including Imm D); and to aim at achieving unbiased and accurate results supplemented with expert opinion on their significance. Forensic scientists from the Govt Lab sometimes attend Court as expert witnesses to give oral testimony and be cross-examined by counsel on the forensic examination results.

2.8 The performance target for handling normal and non-express counterfeit/forgery cases by the Questioned Documents Section is to complete 80% of the cases in 33 working days. As there is a time constraint on the custody of travellers in Hong Kong suspected of possessing forged travel documents, the Questioned Documents Section has introduced an express service since 1995 for examination of questioned documents, with a performance pledge of completing 99% of the express cases within one working day. Imm D submitted 42, 16, 7 and 838 express cases to the Questioned Documents Section for examination in 1997, 1998, 1999 and 2000 respectively.

DEPARTMENTAL GUIDELINES AND PROCEDURES

2.9 According to Imm D, the departmental guidelines and procedures for handling travellers suspected of using false or forged travel documents are provided in Item 209.5 of the Immigration Service Standing Order (ISSO) and Investigation Sub-divisional Instruction No. 2/95. Imm D also requires its staff to follow the relevant stipulated procedures and guidelines in the arrest, detention, investigation and interview of suspects. The procedures and guidelines include -

- (a) ISSOs;
- (b) the Rules promulgated by Secretary for Security in October 1992; and
- (c) Investigation Divisional Instructions.

Handling of Forged Travel Documents

2.10 Item 209.5 of the ISSO describes the procedures on the handling of forged documents. It stresses that the number of officers handling a forged travel document should be restricted to a minimum so as to refute any possible later claim in court proceedings that the document was valid upon seizure but was subsequently falsified by officer(s) holding it for examination purposes.

2.11 Investigation Sub-divisional Instruction No. 2/95 on exhibit sealing for submission to Govt Lab describes the procedures on the sealing of exhibits (including suspected forged travel documents, identity cards, seals and dies) for submission to Govt Lab for forensic examination.

Examination of Forged Documents

2.12 Imm D informed Investigation Officers of this

Office during site inspections conducted in June 2000 that, when counter staff at immigration control points encountered suspect travel documents at the preliminary examination stage, he would notify the channel supervisor. The channel supervisor would undertake a secondary examination of the suspected documents. If it were a prima facie case of forged documents, investigation staff of Imm D would take over the case from then on.

2.13 Imm D uses sophisticated equipment in detecting forgeries. This includes the Electronic Documentation of Information System on Networks (EDISON), which is a computerised retrieval system with a large collection of colour images of genuine travel document specimens. Imm D also maintains a Questioned Document Examination System (QDX), used for the immediate detection of forgeries and doubtful documents. Moreover, Imm D is equipped with Video Spectral Comparators. In addition, Imm D maintains contact with foreign consulates in Hong Kong for exchange of information on forged travel documents and verification of travel documents issued by related countries.

2.14 When a suspected forged travel document is referred, investigation staff of Imm D would examine the document to ascertain whether or not it is forged. Examination would be done visually or with the aid of technical devices, such as EDISON and QDX. This Office noted that, before 22 February 2000, not all suspected forged documents were submitted for forensic examination. Charges would be laid on the basis of circumstantial evidence if this was considered sufficient. Assumption was prevalent in cases where the forged features were obvious or similar to the intelligence/information supplied by the issuing authority and/or where the suspect admitted to the offence under caution. Imm D had adopted this practice all along, and this seemed to have been accepted by the court.

Interview and Taking Statements under the Rules

2.15 The main object of the Rules governing the questioning of suspects and statement taking is to ensure that oral replies and written statements provided by a suspect have been given voluntarily. The Rules are administrative in nature. They provide that every person at any stage of an investigation should be able to communicate and consult privately with a solicitor or barrister. The Rules preclude visual surveillance, which is deemed to compromise privacy. Compliance with the Rules by immigration officers^{Note} is mandatory.

2.16 Item 218.1 of the ISSO stipulates, inter alia, that at the conclusion of each interview, the person in custody should be allowed to read the record of interview and invited to sign his name on it. Or, at the request of the interviewee, the interviewing officer would read the record of interview to him and invite him to sign on it. All persons present should also countersign the record of interview. Where there was delay in providing to the person in custody a copy of the cautioned statement or record of interview under the Rules, the authorising officer should record in his notebook the reasons for such delay.

Video-Tape Recording Interviews

2.17 According to Imm D, its headquarters has two video recording interview rooms, which have been in use since July 1998. Besides, the video recording interview facilities at the Airport and in the Task Force office have been put into operation since December 2000. Interview of suspects in District Court cases and cases involving syndicated crimes are normally recorded on video. All other interviews are recorded in writing. Since March 2000, Imm D has encouraged

^{Note} Small letters for this term are used when applied generally (i.e. immigration officer may include Immigration Officer and Immigration Assistant). When it refers to Immigration Officer by grade and rank, capital letters are used.

its staff to fully utilise the available video recording facilities to conduct interviews and extend their use to various categories of interviewees, not just those connected with syndicated crimes or District Court cases. Instructions on video recording of interviews are contained in the "Instruction Manual for Tape Recording Interviews with Suspects" compiled and promulgated by the Imm D in May 1998.

Treatment of Suspects

2.18 Under Item 218.5 of the ISSO, when a counter officer obtains evidence at the immigration clearance counter at immigration control points that an offence has been committed (e.g. the passenger confesses that his travel document is forged), he would pass the case to the channel supervisor. The channel supervisor would caution the passenger and conduct a "Record of Interview" on the passenger. Before investigators from the Investigation Division arrive to take over the case, proper records are kept of the passenger's movements and the immigration officer's actions on the passenger for the purpose of refuting any possible allegations of inducement or oppression.

2.19 When a counter officer refers a case to a channel supervisor on mere suspicion but without evidence of any offence, the channel supervisor would conduct a secondary examination. As soon as he has the evidence, he should caution the passenger and conduct the "Record of Interview" on the passenger.

2.20 Under Item 218.6 of the ISSO, passengers under prolonged secondary examination and those refused permission to land should be adequately attended to and their personal needs should be looked after as far as possible.

Arrest and Detention

2.21 Under Section 56(1A)(b) of the Immigration

Ordinance, an immigration officer is empowered to arrest and detain any person whom he has reason to suspect of having committed an offence under the Ordinance. Item 218.2 of the ISSO states that, when an arrest is to be made, the procedures under the Rules should be closely followed. In addition, the arresting officer is required to record in writing in his official notebook any words spoken in reply and to have them countersigned by the person arrested. In so far as possible, arrests should be made quietly and without force. The arresting officer should search the person arrested as soon as possible, because he might carry property which could later become evidence. The arresting officer should immediately record in his official notebook the results of the search. Once an arrest is made, the suspect should be delivered as soon as possible to the Investigation Division of Imm D.

Facilities Available

2.22 Direction 8 of the Rules deals with facilities provided to persons under custody, the salient points of which are at **Annex 2**. A bilingual "Notice to Persons in Custody (or present with the Imm D and under investigation)" at **Annex 3** details the rights as contained in Direction 8 and is displayed in all immigration cell blocks and interview rooms. This notice is also given to, and receipt acknowledged by, the person in custody to inform him of his rights.

2.23 Furthermore, Immigration Service (Treatment of Detained Persons) Order, subsidiary legislation of the Immigration Service Ordinance (Cap. 331), stipulates the treatment of detained persons including, but not limited to, the above aspects. Item 218.7 of the ISSO also covers similar aspects.

Legal Advice

2.24 The person in custody would be allowed to have a solicitor or barrister present to advise him at any interview

between that person and an immigration officer. However, when the person in custody does not wish to consult with a solicitor or barrister instructed by a third party, he should so confirm in the presence of an independent immigration officer unconnected with the investigation.

Consular Assistance

2.25 Investigation Divisional Instruction No. 10/98 on consular assistance for foreign nationals arrested /detained/imprisoned in Hong Kong stipulates, inter alia, that under bilateral agreements between the Central People's Government, either specifically in respect of the Hong Kong Special Administrative Region (HKSAR) or for the application to the whole of China (including HKSAR) with the Government of the United Kingdom, USA and Canada, the HKSAR Government is obliged to inform the respective consulate within a specific time of the detention or arrest of their nationals (regardless whether or not they have made such a request). Investigation Divisional Instruction No. 2/2000 on consular assistance for foreign nationals arrested/detained /imprisoned in Hong Kong further spells out that, under Article 36 of Vienna Convention on Consular Relations, a person in custody may request to have communication with or to inform without delay the consular post of his country of his arrest, custody, detention or imprisonment. Imm D has an obligation to inform the person in custody of his rights in this respect. A "Notice to Non-Chinese Citizens in Custody", at **Annex 4**, should be served on all non-Chinese citizens under Imm D's custody or detention.

Meals

2.26 The treatment of detainees includes the provision of meals to them. Persons in custody would be provided with inexpensive meals. And, Imm D would entertain reasonable requests for additional breakfast/meal from the detainees. The Investigation Divisional Instruction No. 15/98 on

treatment to detainees and claim for reimbursement of expenses stipulates the provision of inexpensive meals to detainees and claim for reimbursement from the immigration officer in charge of the case.

Release

2.27 Item 218.8 of the ISSO also provides that, upon the release of a detainee, the duty immigration officer responsible for the release would return all the properties, other than those which have been seized as court exhibits, belonging to the person against his acknowledgement of receipt. If the person is observed to be in good physical condition and has made no complaint of any illness or injury, the duty officer would ask him to confirm in writing that he has no cause for complaint.

Interpretation Service

2.28 Direction 6 of the Rules on taking statements in languages other than English is summarised at **Annex 5**. This requires the responsible interviewing officer to verbally inform the suspect of his right to choose the dialect or language for the interview before hiring an interpreter.

2.29 Interpreters engaged by the government departments have to be registered with the Court Interpreters Office of Jud, which is responsible for maintaining Registered Lists of Interpreters by language of proficiency. The lists would be updated at six-monthly intervals. Foreign language interpreters should possess a recognised university degree or an equivalent academic qualification. Interpreters for Chinese dialects should possess a high school certificate. Allowance would be made for those languages and dialects with little supply of interpreters in Hong Kong. All applicants to be interpreters are subject to language/dialect proficiency oral and/or written tests and passing the security check by HKPF before they could be registered. Imm D would

report to the Court Interpreters Office in case of the unsatisfactory performance of any interpreter. Registered interpreters are obliged to observe the "Basic Guidelines for Part-time Interpreters" (Basic Guidelines) issued by Jud.

2.30 Following the recommendations made in the ICAC Assignment Report on Employment of Part-time Interpreters in December 1996, Imm D issued in July 1999 an Investigation Divisional Instruction No. 6/99 on the Employment of Part-time Interpreters. Imm D also issued an Immigration Department Circular No. 14/2000 on Hiring of Part-time (Non-government) Interpreters in May 2000.

Treatment of Minors and Disabled Persons

2.31 Direction 5 of the Rules governs the treatment of children and young persons, and the note to Direction 6 covers the treatment of disabled persons. These are summarised at **Annex 6**.

2.32 Investigation Divisional Instruction No. 12/98 on the transfer of persons detained under the Immigration Ordinance states, among other things, that a decision to detain a minor at a place other than those mentioned in Schedule 2 of the Immigration (Places of Detention) Order should only be made under exceptional circumstances having regard to safety, family unity and other considerations in the best interest of the minor. The Rules make no mention of the treatment of young persons between the ages of 16 and 18.

2.33 Investigation Divisional Instruction No. 1/94 on mentally handicapped and mentally ill witnesses and defendants lays down special prosecution referral arrangements for investigators and prosecutors of Imm D to follow.

Prosecution of Suspects

2.34 Investigation and prosecution of suspects are the responsibility of the Investigation Sub-division and Prosecution Sub-division respectively. Depending on the nature of the cases, prosecution is done either by prosecuting officers of Imm D, or by government counsel from the Department of Justice (D of J) or counsel-on-fiat briefed by D of J. Government counsel or counsel-on-fiat normally handle trial cases for the higher courts or magistracy cases that are complicated or involve arguments on points of law.

2.35 Imm D's prosecuting officers receive training mainly from D of J. Their training includes court prosecutor course and immigration prosecutor course with duration ranging from 11 days to 9 months. Immigration prosecutors have to act according to the "Prosecution Policy - Guidance to Government Counsel" and "Prosecution Manual" issued by D of J.

MONITORING AND CONTROL MECHANISM

Monitoring by Section Head / Duty Senior Immigration Officer / Management Audit Division

2.36 In general, the section head at Chief Immigration Officer (CIO) rank is responsible for ensuring that his staff comply with guidelines and procedures in dealing with suspected immigration offenders. He is assisted by a sub-section head at Senior Immigration Officer (SIO) rank, who oversees the whole investigation process. Any irregularity or misconduct detected will be brought up for action. Section head will conduct spot checks during the investigation process or monitor from the records on files subsequently.

2.37 Item 218.6 of the ISSO specifies the role of a duty SIO to ensure that passengers under examination or detention

are properly looked after.

2.38 In addition to functions performed by the duty SIO, Imm D has tasked its Management Audit Division to conduct surprise checks on the 19 immigration control points and sections/offices at five-monthly intervals.

Monitoring Interviews through Video Tape Recording

2.39 According to Imm D, video-taping interviews with suspects aims to provide accurate and reliable records of such interviews. Overall, it makes the interview process transparent and facilitates the monitoring and control of interviews. Video-taping interviews improve the quality of evidence presented to the courts, by providing courts with an objective means of resolving disputes on the admissibility of the evidence from interviews with suspects in such cases. Also, a copy of the video tape recording interview with a suspect would be given to the suspect or his legal representative.

Custody Officer and Review Officer System

2.40 Investigation Divisional Instruction No. 7/98 covers the appointment of custody officers and review officers to avoid the abuse of power by immigration officers. Details of the Custody Officer and Review Officer System are summarised at **Annex 7**.

Complaint Handling Mechanism

2.41 Item 218.9 of the ISSO deals with allegations of assault or physical abuse against immigration officers. Any complaint of assault or physical abuse lodged by a person under detention against an immigration officer would be immediately reported to the division head. Unless directed otherwise, the section head would conduct an initial investigation expeditiously and impartially. If there is prima facie

evidence that a criminal offence had been committed by an officer, the case would be reported to HKPF immediately. During police investigations, immigration officers should not conduct further enquiries about the complaint of assault or physical abuse lodged by a person. Unless other law enforcement agencies or The Ombudsman raise an objection, action on the case itself would not be suspended as a result of the complaint. If a complaint involves no prima facie evidence of criminality that warrants a report to HKPF, the case would be brought to the attention of more senior officers and would be further investigated by an independent party under the direction of a directorate officer. The same procedures would apply to a complaint of assault against immigration officers received not on the spot but after the event.

Complaint Monitoring

2.42 The Management Audit Division monitors all complaints. A Complaints Review Working Party headed by an Assistant Director with members from the Management Audit Division holds monthly meetings to review and analyse all investigated complaints, with a view to making recommendations on appropriate follow-up actions.

RELEVANT STATISTICS

General Statistics

2.43 The relevant statistics on the prosecution and conviction of offenders in breach of the Immigration Ordinance and other related Ordinances from 1997 to 2000 are at **Annex 8**. It shows that the number of prosecution and conviction of offenders has increased over the period from 1997 to 1999 while both figures had levelled off by 10% in 2000.

2.44 Statistics on the number of forged travel documents detected from 1997 to 2000, broken down by location, are at **Annex 9**. They indicate that the number of forged travel documents detected in 1998 and 1999 had remained high with a slight decrease in 2000. The Airport has held the highest number of cases among other immigration control points over the years.

2.45 The relevant statistics on forged travel document offenders prosecuted from 1997 to 2000 are at **Annex 10**. The number of persons charged and convicted grew from 1997 to 1999 but there was a drop of some 20% for both figures in 2000. A detailed breakdown of forged travel document cases for 1999 and 2000 is at **Annex 11**. It is noted that in 1999, of the total 1,405 cases where the accused pleaded guilty as charged, 40% were prosecuted mainly on reliance on the suspects' own admission statements and Imm D's examination of the suspected forged travel documents without resorting further to forensic examination. From 22 February 2000 onwards, Imm D stipulated that before laying a forgery related charge, case officers should send all suspected travel documents to Govt Lab for express examination. It is noted that in 2000, most of those 1,110 cases where the accused pleaded guilty as charged, the accused had made admission statement and the cases were supported by additional evidence such as forensic examination and verification with consulates.

Statistics of Complaints to Imm D on handling of Forged Documents Cases

2.46 In the four-year period from 1997 to 2000, Imm D received a total of 24 complaints on the handling of forged document cases, as follows -

Nature of Complaints	1997	1998	1999	2000
	No. of Cases	No. of Cases	No. of Cases	No. of Cases
Allegation of maltreatment	1	6	1	1
Allegation of assault including impolite manner	3	1	2	2
Allegation of abuse of power including unlawful detention	1	0	0	1
Allegation on unfair decision	0	1	0	0
Allegation of damage of passport	0	1	0	0
Failure to respond to complainant's request	0	0	1	0
On procedures including prolonged clearance	0	0	1	1
Total:	5	9	5	5

2.47 According to Imm D, for those 19 complaints cases received from 1997 to 1999, apart from one justified case of failure to respond to the complainant's request promptly, the rest of the cases was found unjustified. The Complaints Review Working Party had reviewed these complaint cases and upheld the findings. However, review of 4 of the 5 complaints received in 2000 was still pending even though the ISSO stipulated that the Complaints Review Working Party was to hold monthly meetings to review all complaints received during the preceding months.

Statistics to this Office on handling of Forged Documents Cases

2.48 During the period from 1997 to 2000, this Office received 3 complaints on this matter and these cases were included in the statistics of Imm D.

3

CONCERN OF THE COMMUNITY

GENERAL

3.1 From February to March 2000 and in July 2000, extensive media coverage was given to the "wrongful imprisonment" of a teenager who had been prosecuted and convicted of possession of a forged travel document. Public outcry was aroused on the procedures of Imm D for handling cases of suspected use of false or otherwise suspect travel documents. During a special meeting of the Legislative Council (LegCo) Panel on Security held in early February 2000, LegCo Members also expressed concern and called for a review of the procedures.

ISSUES OF CONCERN

3.2 The case attracted a great deal of public comments which were given extensive media coverage. The gist of such comments is outlined below.

Interview Process

Treatment of Minors

3.3 Investigation and interview of the minor for alleged immigration offences called into question whether the law enforcement department should have sought to protect the minor's rights by allowing a family member or an independent third party to be present when the minor was being interviewed.

Video-taping Interviews

3.4 The incident prompted a suggestion that Imm D should video-tape the interview process. The LegCo Panel also considered that priority should be given to installing video-taping facilities in interview rooms of Imm D at the Airport and other immigration control points, where incidents of forged travel document cases were highest.

Interpretation Service

3.5 Imm D enlisted a part-time interpreter as the minor concerned spoke another Chinese (Fuzhou) dialect. It was later found that the same part-time interpreter was used in both the Imm D's investigation and the subsequent court hearing of the same case, thereby violating the Basic Guidelines for such part-time interpreters.

Examination and Verification of Travel Documents

Forensic Examination of Forged Documents

3.6 On the issue of forensic examination, LegCo Members took the view that prosecution should not rely solely on the admission statement of a suspect. Instead, all suspected forged travel documents should be subjected to forensic examination.

Exchange of Information with Issuing Authority

3.7 A LegCo Member was also reported to have proposed that Imm D should verify with the passport issuing authority on discovery of forged passports. This would help strengthen exchange of information between Hong Kong and passport issuing countries.

Monitoring Mechanism and Control Measures

Independent Complaint Mechanism

3.8 A human rights group criticised that formal complaints against Imm D were only subject to internal investigation and reviewed by a Complaints Review Working Party headed by an Assistant Director. The group cast doubt on whether such system could reveal the truth and whether immigration officers who behaved improperly would be punished.

Surprise Visits

3.9 To ensure that suspects would be properly interviewed, LegCo Members suggested that surprise inspection should be made by officers from other teams or units. Knowing that Justices of the Peace (JPs) could pay regular visits to Ma Tau Kok Detention Centre (MTKDC) under section 18 of Immigration Service (Treatment of Detained Persons) Order of the Immigration Service Ordinance (Cap. 331), LegCo Members further suggested that the Administration should consider allowing JPs to conduct surprise inspection visits to detention rooms at the Airport.

Legal Training of Imm D Staff

3.10 Some comments focused on the non-legal background of Imm D prosecutors. To improve the standard of the prosecution's case, various suggestions were made including

enhancing the training for Imm D staff in legal and judicial processes and letting legal practitioners take up the prosecution of immigration cases.

COMMENTS AND SUGGESTIONS FROM MEMBERS OF THE PUBLIC DURING THE PUBLIC CONSULTATION PERIOD

3.11 This Office received no submissions from members of the public during the public consultation period from 29 February 2000 to 29 March 2000.

4

CASE STUDIES

GENERAL

4.1 In the course of investigation, this Office studied 11 cases of Imm D. These cases have been selected on the following profile and criteria -

- (a) recent cases that had occurred in the past two years (i.e. from 1999 to 2000);
- (b) majority of the cases should be selected from the Airport, where the highest number of forgery-related cases had been recorded;
- (c) the suspects were prosecuted; and
- (d) with reference to the outcome of prosecution, half of the selected cases should have resulted in convictions and the other half acquittals.

Based on the study of the 11 forgery-related cases, this Office has identified the following key areas of concern.

KEY AREAS OF CONCERN

Compliance with guidelines and procedures

Compilation of Cautioned Statements

4.2 According to Rules II, III(c) and Direction 2 of the Rules, and Item 218.1 of the ISSO, persons present during the taking of the cautioned statement should be recorded and they are required to countersign in the statement. However, this Office noted that this requirement had not been complied with in two of the cases studied.

4.3 In one of those cases, the immigration officer responsible for taking a cautioned statement testified in court that his supervisor had sat next to him during the interview process to confirm the questions he put to the suspect. However, this fact was not recorded in the cautioned statement. In the same case, it transpired that the cautioned statement was taken without the assistance of an interpreter, even though the immigration officer admitted that he could only understand 70% of the defendant's Chiu Chow dialect. This case resulted in an acquittal after trial.

4.4 Rule II of the Rules also required immigration officers to keep a contemporaneous record of the time and place at which any questioning or statement-taking began and ended. One case revealed that the time entered on the record of interview was inconsistent with the starting time of the interview; and another two entries of time had subsequently been amended. In addition, the interpreter revealed during the cross-examination in the court that the immigration officer who took the statement did not record the real name of the interviewee, which was a piece of important information conveyed by the interviewee to the interpreter.

Provision of "Notice to Persons in Custody" to a suspect

4.5 In accordance with the Rules, a copy of the "Notice to Persons in Custody" should be handed to a person in custody to inform him of his rights. The person should be asked to acknowledge receipt of the notice. However, one case established that the immigration officer did not serve the "Notice to Persons in Custody" on the defendant, with the excuse that he had told the defendant those rights according to the notice affixed on the notice board. However, the immigration officer made no entry on the record of interview to indicate that this had been done.

Interview Process

Presence of Independent Witnesses during Interviews

4.6 According to Imm D, the presence of independent witness was not required during the interview except for certain categories of persons listed in the Rules (such as children or mentally handicapped persons). However, the presence of legal representatives would be allowed and the interpreter might also be present if required. The study of the 11 cases showed that in ten cases, the interviewing officer conducted the interview alone with the suspect, and where necessary, with the assistance of an interpreter.

Treatment of Minors

4.7 Direction 5 of the Rules only stipulated the presence of a guardian for minors under the age of 16 during interview, but there was no mention of the treatment of teenagers between the ages of 16 to 18. In one case studied by this Office, a 17-year-old suspect was intercepted. No guardian was present during interviews with immigration officers. This subject was subsequently prosecuted by Imm D.

Tape Recording Interviews

4.8 According to Imm D, all interviews were recorded in writing except for a few categories of cases, which would be video recorded (para. 2.17). The interviews of suspects in ten out of the 11 cases studied by this Office were recorded in writing.

Provision of Interpretation Service

Professionalism of Part-time Interpreters

4.9 Registered part-time interpreters have to abide by the Basic Guidelines issued by the Court Interpreters Office of the Judiciary (para. 2.29). In one case, the interpreter told the court that he had to interpret for many clients who were being interviewed in an interview room at the same time. This required him to move from one table to another. The interpreter also confessed that he had not stayed with the suspect throughout the interview process. This interpreter was also challenged on the discrepancy in his witness statements regarding the dialects used. In his first witness statement, the interpreter said that the interview was conducted in the Hoklo dialect. In his second witness statement, he changed the dialect used to Chiu Chow. This Office notes that the Prosecution Sub-division of Imm D remarked in the trial report that the interpreter had been perfunctory in giving witness statements and evidence in court. His evidence was considered unsatisfactory in the trial.

4.10 Imm D did not report this incident to the Court Interpreters Office and explained that this was because there was no evidence to show that the interpreter had violated the Basic Guidelines. As there was no evidence of doubt on the interpreter's professionalism and integrity, Imm D considered it more appropriate to monitor the interpreter's future performance with a view to reporting to the Court Interpreters Office should he make no improvement.

Interpretation conducted in another language other than the one stated in the Cautioned Statement

4.11 In another case, this Office noted that although the interview was recorded in the Urdu language, the dialogue spoken between the interpreter and the interviewee during the interview was actually Punjabi. The interpreter explained that the interviewee could not fully understand Urdu.

Conflict of Interest

4.12 Under the Basic Guidelines, a conflict of interest would arise if an interpreter had professionally been involved in a case prior to its trial before a court. This Office noticed that in one case, the same interpreter was engaged during both the investigation stage and during the court proceedings. This was in clear contravention of the provisions in the Basic Guidelines, which sought to prevent possible conflict of interest on the part of registered interpreters.

Verification of the Authenticity of Travel Documents

Forensic Examination of the Suspected Passport

4.13 This Office noted that, until end February/early March 2000, Imm D had no standard practice to forward suspect passports to Govt Lab for verification before pressing forgery-related charges. In one particular case, Imm D only asked Govt Lab to verify the authenticity of the passport when the defendant made an appeal and D of J directed that a forensic examination be carried out immediately. On this issue, this Office noted that the Questioned Documents Section of Govt Lab had since 1995 introduced an express service for

examination of questioned documents, to provide government departments with examination results on the same day in 99% of the cases (para. 2.8).

Verification of Travel Documents with the Issuing Authority

4.14 Prior to prosecution of the suspect, it would be essential to verify the authenticity of a travel document with the relevant issuing authority and to establish whether it had been unlawfully obtained. This Office noted that in one case, Imm D had laid charges against a traveller on the basis of his own admission for using an unlawfully obtained passport. Imm D admitted that it had difficulties in seeking assistance from the issuing authority of countries which had no consulate office in China or HKSAR. In that particular case, 3½ months after the traveller was charged, Imm D managed to obtain verification of the suspect travel document through the assistance of the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR (MFAO).

5

RECENT IMPROVEMENT MEASURES

GENERAL

5.1 In the wake of publicity surrounding the allegedly wrongful imprisonment case, Imm D introduced as from February 2000 a number of measures to improve the investigation and prosecution of travellers suspected of using false or otherwise suspect travel documents.

IMM D'S IMPROVEMENT MEASURES

Forensic Examination of Travel Documents

5.2 According to Imm D, prior to February 2000, most prosecutions involving forged travel documents proceeded on the basis of the suspects' admission under caution and relevant circumstantial evidence. The department only made use of Govt Lab's express service on ad hoc basis when the falsity of the document in question was in doubt.

5.3 To strengthen the weight of evidence in cases where the suspect was likely to be charged with forgery, Imm D issued in March 2000 an Investigation Divisional Instruction No. 4/2000 stipulating that before laying a forgery-related

charge, case officers should send all suspected travel documents to Govt Lab for express examination. Normally Govt Lab could provide a report and the examination results within two to three hours of a case forwarded through the express service.

5.4 According to Govt Lab, there had been a sharp increase in the number of cases submitted by Imm D for document examination through express service since February 2000. The number of cases received during the period between January and December 2000 from Imm D is listed below -

<i>Month</i>	<i>Number of Cases Examined</i>
<i>January</i>	2
<i>February</i>	31
<i>March</i>	77
<i>April</i>	75
<i>May</i>	110
<i>June</i>	115
<i>July</i>	65
<i>August</i>	51
<i>September</i>	94
<i>October</i>	57
<i>November</i>	75
<i>December</i>	86
<i>Total:</i>	838

5.5 According to Govt Lab, the number of cases requested by Imm D for express service in the year of 2000 had sharply increased to 838. Govt Lab informed this Office in June 2000 that the express service had been extended to beyond normal office hours to cope with the increase in workload. Two Forensic Analysts were recruited by the end of 2000. They had completed their training and were examining and reporting on cases for express service along with three chemists and three document examiners in the Questioned Documents Section.

Interview Process

Safeguard of Minors

5.6 To safeguard the interests of minor defendants, immigration officers had, since February 2000, taken steps

to advise any suspect under the age of 18 that he/she had the right to make telephone calls to his/her relatives. The suspect would be asked to reply in writing whether he/she needed to do so and to sign to acknowledge that he/she had been so advised.

Provision of Video Tape Recording Facilities

5.7 To enhance the admissibility of evidence given during the questioning of suspects, Imm D expedited the provision of video tape recording facilities at the Airport and in the new Task Force office. Imm D was also actively identifying suitable sites for installing video tape recording facilities at the Lo Wu control point. For other urban control points such as the Macau Terminal and China Ferry Terminal, immigration officers could make use of the video recording facilities at the Immigration Headquarters in Wanchai or its Task Force office in Ma Tau Kok. Besides, Imm D was actively pursuing additional video recording interview facilities for installation at new locations / sites. Furthermore, Imm D indicated that video tape recording facilities would be included in all new control points being planned. Since March 2000, Imm D has encouraged its staff to fully utilise the available video recording interview facilities to conduct interviews and extend its use to various categories of interviewees.

Interpretation Service since February 2000

5.8 Jud confirmed that, from traceable records available, there was only one case in which the same interpreter had been employed during both the investigation stage and in court proceedings. To avoid an interpreter's independence being questioned as a result of his being involved professionally in a case before it came before the court, Imm D has instructed its prosecution officers to notify the Court Clerk the name of the interpreter hired in each case and also to state the name of the interpreter in the summary

of facts of the case.

5.9 In March 2000, the Court Interpreters Office of Jud issued a directive to remind all registered interpreters of the requirement to comply with para. 12 of Part 1 of the Basic Guidelines on conflict of interest, which is reproduced below -

"A part-time interpreter must inform the Court Interpreters Office or the Court as soon as practicable when an actual conflict of interest or the appearance of a conflict of interest arises. Any condition which may infringe upon the objectivity of the interpreter, or affect his professional independence constitutes a conflict of interest. It shall be assumed that a conflict of interest exists when any of the following instances arises -

- (a) The interpreter is acquainted with a witness or a party to the proceedings.*
- (b) The interpreter has, in any way, an interest in the outcome of the case.*
- (c) The interpreter has professionally involved in the case before it came before the court for hearing."*

5.10 The above directive also requires a registered interpreter to keep a record of cases where he/she had been asked to act as interpreter during the investigation stage. The Jud incorporated such requirement into its revised Basic Guidelines sent to all registered part-time interpreters in December 2000.

5.11 During the period from 1998 to 2000, Imm D reported one case to the Court Interpreters Office in which a registered interpreter was regarded as having breached the Basic Guidelines. Given the fact that 10,374 forgery travel documents cases were handled during the same period, over 90%

of which needed the enlistment of interpretation service, Imm D considered the interpretation service provided by the Court Interpreters Office to be effective and satisfactory. On the hiring of interpreters, Imm D issued in May 2000 the Immigration Department Circular No. 14/2000 on Hiring of Part-time (Non-Government) Interpreters, essentially to cover the selection of part-time interpreters and the reporting of their unsatisfactory performance to the Court Interpreters Office (see **Annex 12**).

Monitoring and Control Measures Tightened

5.12 Immigration officers are required to inform all detainees under immigration custody of their rights as soon as practicable. In particular, the case officer would serve the "Notice to Persons in Custody" to detainees listing all their rights and they would be asked to acknowledge receipt.

5.13 To ensure compliance and to enhance supervisory efficiency, Imm D has made it a requirement, with effect from February 2000, for an independent officer of the rank of Immigration Officer (IO) or above to serve the "Notice to Persons in Custody" and the "Note to be signed by an interviewee after interview" (also known as "Declaration of no loss or complaint") to interviewees.

6

OBSERVATIONS AND OPINIONS

GENERAL

6.1 The guidelines and procedures of handling travellers suspected of using false or otherwise suspect travel documents are mainly contained in Imm D's ISSOs and its various departmental circulars and divisional instructions. In conducting interviews with and taking statements from suspects, Imm D follows the Rules issued by Secretary for Security (see para. 2.5 above). This Office notes that, following the allegedly wrongful imprisonment incident, Imm D has introduced some improvement measures since February 2000 as outlined in Chapter 5. However, this Office considers that Imm D should do more in some areas to improve its handling of forged travel documents and the related matters.

INTERVIEW PROCESS

The Presence of Independent Witness in Interviews

6.2 This Office notes that the presence of an independent witness has not been required during the interview except for some categories of persons listed in the Rules such

as children or mentally handicapped persons (para. 4.6). Where only the interviewing officer and the suspect are present at an interview, and particularly if the process is not video-taped, this often gives grounds for challenging the voluntary nature of the statements given. This inevitably lengthens the estimated duration of the trial.

6.3 Having a duty SIO to monitor the investigation process and to ensure that passengers under examination or detention are properly looked after (paragraphs 2.36 and 2.37) is well intentioned, but we doubt that this spot-checking measure alone is adequate or effective in overcoming the perceived problem. This Office believes that the presence of an independent witness, such as an immigration officer unconnected with the case, during the interview process could avoid a rebuttal of allegations of coercion in respect of statements taken from persons in custody. However, having regard to the large number of cases involved, this Office considers that it would be more practicable if Imm D video-taped the interviews of all the suspected cases.

Video Tape Recording Interview

6.4 This Office believes that video-taping interviews would be an effective means to enhance the transparency and procedural fairness of the interview process. Observers can see from the suspect's demeanour and form their own view of the voluntary nature or otherwise of the statements provided and judge for themselves the quality of the interview conducted. This Office notes that interview of suspects in District Court cases and cases involving syndicated crimes are normally recorded on video-tapes (para. 2.17). This Office also notes that since March 2000, Imm D has encouraged its staff to fully utilise the available video recording interview facilities to conduct interviews and extend their use to various categories of interviewees, not just those connected with syndicated crimes or District Court cases. This Office considers that in due course, such interviewing

facilities should be extended to all cases. Meanwhile, practicality dictates that a phased approach be adopted with priority being accorded to installing video tape recording facilities at control points with a high volume of cases involving forged travel documents.

Treatment of Young Persons between 16 and 18

6.5 This Office observes that there is a gap in the Rules about the treatment of teenagers between the ages of 16 and 18 (para. 4.7). This Office notes that, since February 2000, Imm D has introduced the measure of advising a teenager in custody his right to make telephone calls to his relatives (para. 5.6). However, we are of the view that this measure alone could not adequately address the concern of possible exploitation of the rights of young persons. To safeguard their rights, this Office shares the view that young persons in custody should be interviewed in the presence of their relatives not being a party to the offence or an independent third party (para. 3.3).

INTERPRETATION SERVICE

6.6 Imm D had acted on the recommendations of the 1996 ICAC Report on Employment of Part-time Interpreters, through issuing an Investigation Division Instruction on the employment of part-time interpreters in July 1999 and a Departmental Circular on the hiring of part-time (non-government) interpreters in May 2000 (para. 2.30). However, this Office observes that there was no mention in the divisional instruction/departmental circular about detailed guidelines and procedures to report the unsatisfactory performance or attendance of a registered interpreter to the Court Interpreters Office of the Jud.

6.7 To this end, Imm D should liaise with the Court Interpreters Office to formulate guidelines and procedures

for the reporting and feedback on the unsatisfactory performance of registered interpreters. As an example, it is arguable whether satisfactory service had been provided by an interpreter where he recorded the interview in one language but in actual fact he interpreted for a suspect in a different language/dialect during the interview (para. 4.11). To ensure the provision of quality interpretation service, this Office considers that Imm D should consider putting in place detailed guidelines and procedures on reporting and giving feedback on performance especially if unsatisfactory of part-time interpreters to the Court Interpreters Office.

EXAMINATION AND VERIFICATION OF TRAVEL DOCUMENTS

6.8 This Office observes that, as from February 2000, Imm D has passed all suspected forged travel documents for forensic examination before laying a forgery-related charge (para. 5.3). However, forensic examination does not help cases involving unlawfully obtained travel documents. Verification of the latter type of cases could only be facilitated by closer liaison and co-operation with relevant issuing authorities/organisations. We recognize the difficulties Imm D would experience in cases involving countries with no consulate office in HKSAR (para. 4.14). It is important that Imm D should seek to establish working level contacts with issuing authorities for the exchange of technical assistance on the examination and verification of travel documents obtained through unlawful means.

MONITORING MECHANISM AND CONTROL MEASURES

Complaint Handling Mechanism

6.9 This Office observes that the Complaints Review Working Party headed by Imm D staff has been in place to review all investigated complaints (para. 2.42); and notes the

criticism raised by a human rights group on whether the truth could be established and whether those immigration officers who behaved improperly could be punished under this system (para. 3.8).

6.10 This Office is of the view that Imm D should explore the feasibility of making the complaint handling mechanism more transparent by incorporating independent persons into the Complaints Review Working Party to scrutinise all the investigated complaints.

Surprise Visits

6.11 This Office notes that Imm D has established internal monitoring and control mechanisms including the Management Audit Division to conduct surprise checks on the control points and sections/offices regularly (para. 2.38), the Custody Officer and Review Officer System to avoid possible abuse of power by immigration officers (para. 2.40).

6.12 To enhance the effectiveness of the monitoring and control mechanism and to ensure fair treatment to persons in custody, Imm D should consider the feasibility of arranging for JPs to conduct surprise visits to the detention facilities at those control points where forgery cases are frequently detected.

STAFF TRAINING

6.13 The cases studied by this Office have revealed varying degrees of non-compliance by immigration officers of the guidelines and procedures in handling forged travel document cases, e.g.-

- (a) The suspect was not interviewed in accordance with Direction 2 of the Rules, which stipulates that all immigration officers present should sign the record

of interview (para. 4.3).

- (b) The "Notice to Persons in Custody" was not served on the defendant in accordance with Direction 8 of the Rules (para. 4.5).
- (c) Breaching of Direction 6 of the Rules when the investigation officer who could not fully understand the defendant's dialect failed to arrange for the attendance of an interpreter (para. 4.3).
- (d) Inaccurate or incomplete entries of material facts in a cautioned statement (para. 4.4), in breach of Rule V of the Rules, which stipulates that the record should accurately reflect the total of what occurred during the interview.

6.14 To address the above issues, this Office considers that Imm D should step up training for its investigation and prosecution staff to enhance their knowledge and skills in handling forgery cases. If such investigated cases eventually end in prosecution, the quality of the investigation and related documentation would have a direct and significant impact on the outcome of the trial. Imm D should therefore remind its staff regularly of the importance of compliance with guidelines and procedures at all times in handling forgery-related matters.

DOCUMENTATION REVIEW AND UPDATE

6.15 Apart from enhancing the professionalism of immigration officers by sharpening their knowledge, skills and competence in handling forgery-related issues, this Office believes that it is also important to ensure timely updating of the guidelines to reflect the changing modus operandi of offenders. With changing technology and improved

communication, one has to accept that trafficking in forged or other illegally obtained travel documents is now a fact of life for all immigration authorities. In all probability, traffickers, particularly those operating in syndicates, would be quicker to spot and exploit operational loopholes than immigration authorities in plugging them. This Office therefore recommends that Imm D should regularly review and update guidelines and procedures to ensure that they are as updated and comprehensive as possible.

7

RECOMMENDATIONS

GENERAL

7.1 Under the provisions of Section 42(2)(c) of the Immigration Ordinance, Cap. 115, any person who has in his possession any forged, false or unlawfully obtained or altered document shall be guilty of an offence. As far as immigration control is concerned, the role and responsibilities of Imm D are to facilitate the mobility of tourists, business visitors and Hong Kong residents, to deny entry of undesirables and to prevent wanted criminals from departure. As stated in Chapter 2, Imm D has been focusing its attention and efforts on combating the increasing trend in the use of forged travel documents, either for illegal migration, crime or terrorism. Over the past years, Imm D has established its guidelines and procedures in handling forged travel documents and travellers suspected of using forged travel documents.

7.2 Following an incident of allegedly wrongful imprisonment, this Office notes that Imm D had introduced a number of measures to improve the investigation and prosecution process of travellers suspected of using false or otherwise suspect travel documents. The measures implemented by Imm D since February 2000 are outlined in Chapter 5 above.

7.3 However, The Ombudsman has identified the following areas where further improvements should be made -

- (a) To prevent the voluntary nature of suspects' statements being challenged, the process of interview statement-taking should be more transparent, better administered and more closely monitored.
- (b) To ensure quality interpretation services, appropriate guidelines and procedures should be formulated for the effective reporting and feedback on unsatisfactory performance of registered part-time interpreters to the Court Interpreters Office of Jud.
- (c) As regards examination of travel documents especially those suspected of being unlawfully obtained, Imm D should step up liaison and contact with the issuing authorities and relevant organisations for speedier verification.
- (d) To enhance transparency and objectivity in handling complaints against abuse of power by immigration officers, there is a need to strengthen the mechanism for monitoring and control in handling complaints and to ensure compliance with guidelines and procedures.
- (e) To ensure compliance by immigration officers of guidelines and procedures when handling travellers suspected of using forged travel documents, there is a need to enhance training to improve staff's knowledge, skills and competence for handling forgery-related matters.

RECOMMENDATIONS

7.4 Based on the observations and opinions in Chapter

6, The Ombudsman has made the following ten recommendations for consideration by Imm D to improve its overall operation in handling travellers suspected of using false travel documents and the associated forgery-related matters -

(a) **Interview Process**

- i) To ensure fairness and transparency in the interview process and to enhance admissibility of statements in court proceedings, Imm D should consider -
 - (a) extending the use of video-tape recording interviews to all cases, over and above the current practice of limiting such use to District Court cases and cases involving syndicated crime of serious and complicated nature (para. 6.4); and
 - (b) continuing to pursue the installation of video tape recording facilities at the relevant control points with priority accorded to those having a high volume of cases of forged travel documents. (para. 6.4)
- ii) To safeguard the rights of young persons particularly those aged between 16 to 18 years old, Imm D should consider arranging for the interviews with these young persons to be conducted in the presence of an appropriate independent witness such as a relative or an airline staff unconnected with the investigation. (paras. 3.3, 4.7, 6.5)

(b) **Interpretation Service**

iii) To improve the provision of quality interpretation service, Imm D should consider, in consultation with the Jud, formulating guidelines and procedures for effective reporting and feedback to the Court Interpreters Office on the unsatisfactory performance of registered interpreters. (paras. 6.6 to 6.7)

(c) **Examination and Verification of Travel Documents**

iv) To facilitate prosecution of forgery-related cases, Imm D should -

(a) continue sending suspected forged travel documents to Govt Lab for forensic examination (para. 6.8); and

(b) strengthen the liaison and co-operation with relevant issuing authorities/organisations including consulate offices in HKSAR on the examination and verification of travel documents obtained through unlawful means. (paras. 2.13, 6.8)

(d) **Monitoring Mechanism and Control Measures**

v) To enhance transparency and objectivity in handling complaints against abuse of power by immigration officers, Imm D should consider including independent persons in its Complaints Review Working Party to scrutinise all investigated complaints. (paras. 6.9 to 6.10)

- vi) To strengthen independent monitoring and control particularly in ensuring fair treatment to persons in custody, Imm D should consider the feasibility of arranging for surprise visits by Justices of Peace to the detention facilities at those control points with a high volume of forgery cases detected. (paras. 3.9, 6.12)
- vii) To improve monitoring and supervision of staff, Imm D should consider devising a comprehensive monitoring mechanism for compliance of guidelines and procedures by its staff involved in handling forgery cases. (paras. 6.13 to 6.14)

(e) **Training and Documentation**

- viii) To enhance the knowledge and skills of the staff concerned for the proper handling of forgery cases in compliance with guidelines and procedures, Imm D should provide more training to its investigation and prosecution staff on a regular basis; and to organise workshops, seminars and briefings for them upon formulation of new guidelines and procedures. (para. 6.14)
- ix) To remind staff of the need to comply with guidelines and procedures, Imm D should circulate and re-circulate the relevant circulars and notices at regular intervals. (para. 6.14)
- x) To ensure that guidelines and procedures are adequate and effective, Imm D should review and update regularly its guidelines and procedures, to take into account the

changing operating modes of illegal
practices. (para. 6.15)

8

FINAL REMARKS

COMMENTS FROM IMM D

8.1 Imm D accepts The Ombudsman's recommendations to improve the overall operation in the handling of travellers suspected of using false travel documents and the associated forgery-related matters as set out in Chapter 7. In response, Imm D has given the following comments on the implicit recommendations -

(a) **Interview Process**

- (i) Imm D has already encouraged its staff to extend the use of video recording interview (VRI) facilities to various categories of interviewees since March 2000, provided that the interviewees agree that interviews be so conducted and that such facilities are available. Imm D will explore new sites to set up further VRI facilities.
- (ii) Imm D is required to and will follow the current provisions as stipulated in the Rules, to which the other law enforcement agencies are likewise obliged to adhere, unless and until there is further directive from Secretary for Security.

(b) **Interpretation Service**

(iii) Imm D will proceed with the recommendation soonest.

(c) **Examination and Verification of Travel Documents**

(iv) Imm D will continue sending suspected forged travel documents to Govt Lab for forensic examination and making the best use of its express service. Also, Imm D has been maintaining good relationship with the authorities concerned and will explore further liaison contacts as far as practicable on the examination and verification of travel documents obtained through unlawful means.

(d) **Monitoring Mechanism and Control Measures**

(v) The Complaints Review Working Party, headed by an Assistant Director and comprising members from the Management Audit Division, is independent from all other operation sections in Imm D. The department will explore the feasibility of incorporating independent persons in the Complaints Review Working Party to scrutinise all investigated complaints. Further, complaints against the Immigration Service can also be made to other external bodies, such as the Chief Executive's Office, the Office of The Ombudsman, ICAC and the LegCo Secretariat.

(vi) The Airport is the control point at which the highest numbers of forgery cases are

detected. However, forgery offenders encountered at the Airport are not normally detained in the Airport Detention Quarters, which caters mostly for passengers refused permission to land in Hong Kong. Forgery offenders are under detention in the office areas at the Airport whilst under investigation, the process of which should not be interrupted. They will then be transferred to the MTKDC pending laying of charge and appearance in court. The MTKDC has been included in the visit programme of JPs. Imm D will consider arranging visits to the Airport Detention Quarters if the concern is over passengers refused permission to land.

(vii) Imm D will consider introducing enhancement measures to improve monitoring and supervision of staff.

(e) **Training and Documentation**

(viii) Imm D has stepped up training for its investigators.

(ix) Imm D will issue notices periodically to remind its staff to make reference to the ISSOs and to comply with guidelines and procedures.

(x) Review and updating of guidelines and procedures are ongoing processes in the Imm D.

8.2 As regards the investigation report, Imm D has proposed textual amendments to paragraphs 2.12 to 2.14, 2.17,

2.34, 3.1, 4.2 to 4.5, 4.10, 5.1, 5.7, 6.1, 6.4 and 7.2 of the investigation report. Except for the suggested amendments to paragraphs 3.1 and 4.4, all other amendments proposed have been incorporated. Para.3.1 refers to media coverage and this Office has accordingly signified quotation from reports where appropriate. Also, Imm D has proposed to delete the last sentence of paragraph 4.4. This Office has carefully considered the request and decided to modify the sentence.

8.3 Lastly, Imm D wishes to make known its views on the following aspects -

(a) **Complaints Review Working Party** (para. 2.47): The four complaints received in 2000 and still pending review by the Complaints Review Working Party were found unsubstantiated or unjustified after thorough investigations by the divisional or sub-divisional heads concerned and reply letters sent to the complainants. Imm D explained that the Complaints Review Working Party holds monthly meetings to scrutinise all complaints handled by divisions /sub-divisions and aims at reviewing all complaints as soon as possible. However, the time for review depends on various factors. Further, priority is given to those complaints found substantiated so that appropriate actions can be taken. Unsubstantiated complaints will be reviewed according to the date of receipt of the complaint.

(b) **Verification of travel documents** (para. 6.8): Imm D supplements that it has always endeavoured to improve liaison and co-operation with relevant issuing authorities /organisations. However, Imm D has been facing some difficulties, since regardless whether countries concerned have

consular or representative offices in HKSAR, verification still needs to be ultimately referred to the home governments. The timing for the verification result is beyond the control of the local consular or representative offices.

COMMENTS FROM SB

8.4 SB finds all the recommendations set out in Chapter 7 acceptable. SB will also consider the recommendation in para. 7.4(a)(ii) on arranging for the interviews with young persons to be conducted in the presence of an appropriate independent witness.

COMMENTS FROM GOVT LAB AND JUD

8.5 Apart from a few textual amendments, which have been incorporated, Govt Lab has no other comments.

8.6 Jud has proposed a few textual amendments, which have been incorporated. Also, Jud has proposed to delete a sentence in paragraph 6.7. This Office has carefully considered the proposal and decided to retain the sentence with appropriate modification. Jud also wishes to modify a rule in the booklet issued by the Immigration Service Training School in respect of Direction 6 of the Rules. This Office considers that Jud should raise this with the concerned department direct.

FINAL REMARKS FROM THE OMBUDSMAN

8.7 The focus of this investigation is to examine, inter alia, the procedures and monitoring mechanism of Imm D in handling travellers suspected of using false or

otherwise suspect travel documents. The Ombudsman is pleased to note that Imm D has accepted all ten recommendations set out in Chapter 7 and will implement them as soon as practicable.

8.8 As regards the recommendation in para. 7.4(a)(ii) on arranging for the interviews with young persons to be conducted in the presence of an appropriate independent witness, The Ombudsman notes that Imm D is required to and will follow the current provisions as stipulated in the Rules unless and until there is further directive from Secretary for Security. The Ombudsman is pleased that Secretary for Security has agreed to consider this recommendation and looks forward to early implementation.

8.9 On the examination and verification of travel documents in paragraphs 6.8 and 7.4(c)(iv), The Ombudsman notes that "doubtful" travel documents still need to be ultimately referred back to the home governments and the timing for the verification result is beyond the control of the local consular or representative offices. Nonetheless, The Ombudsman notes that Imm D has been actively pursuing improvements in liaison and co-operation with relevant issuing authorities / organisations and will explore further liaison contacts to facilitate and to speed up the process.

8.10 In respect of monitoring mechanism and control measures, The Ombudsman notes the many factors affecting the time for review of investigated complaints by the Complaints Review Working Party. Nevertheless, The Ombudsman considers that Imm D should adhere as far as possible to the prevailing ISSO stipulation that the Complaints Review Working Party is to hold monthly meetings to review all complaints received during the preceding months. As regards the recommendation in para. 7.4(d)(v), The Ombudsman notes that Imm D will explore the feasibility of incorporating independent persons in the Complaints Review Working Party

to scrutinise all investigated complaints.

8.11 On the recommendation in para. 7.4(d)(vi), The Ombudsman considers that, having regard to its operation and in particular the investigation process of forgery offenders, Imm D should as far as possible arrange for JP visits to detention facilities including that at the Airport.

8.12 The Ombudsman asks to be informed by Imm D of progress on the implementation of the ten recommendations, and any major changes in the policy or practice on the subject matter.

8.13 Lastly, The Ombudsman expresses appreciation for the co-operation and assistance rendered by Imm D and other offices concerned throughout this investigation.

---- End ----

Office of The Ombudsman
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ANNEXES

Annex	Title	Paragraph No.
1	Rules and Directions for the questioning of suspects and taking of statements, summarised from the booklet issued by the Immigration Service Training School	2.5
2	Salient points of Direction 8 of the Rules	2.22
3	Notice to Persons in Custody (or present with the Imm D and under investigation)	2.22
4	Notice to Non-Chinese Citizens in Custody	2.25
5	Salient points of Direction 6 of the Rules	2.28
6	Salient points of Direction 5 and note to Direction 6 of the Rules	2.31
7	Custody officer and review officer system	2.40
8	A list of the statistics on the prosecution and conviction of offenders in breach of the Immigration Ordinance and other related Ordinances from 1997 to 2000	2.43
9	A list of the statistics of number of forged travel documents detected from 1997 to 2000, breaking down by location	2.44
10	A list of statistics of forged travel document offenders prosecuted from 1997 to 2000	2.45
11	A detailed breakdown of forged travel document cases in 1999 and 2000	2.45
12	Immigration Department Circular No. 14/2000 on Hiring of Part-time (Non-government) Interpreters	5.11

**Salient points of the Rules and Directions
for the Questioning of Suspects and
the Taking of Statements (the Rules) summarised from
the booklet issued by the Immigration Service Training School
in September 1998**

Rules

Rule I

Under Rule I of the Rules, when an immigration officer tries to discover whether an offence has been committed, he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. In other words, this rule entitles an immigration officer to freely question any person, whether or not he has been taken into custody, so long as he has not been charged with the offence or told that he may be prosecuted for it.

Rule II

Under Rule II, when an immigration officer has reasonable grounds to suspect a person having committed an offence, he shall caution that person or cause him to be cautioned before asking him further questions relating to that offence. The immigration officer shall keep a contemporaneous record of the time and place at which any such questioning or statement began and ended and of the persons present. The significance of the caution lies in that the immigration officer has informed the suspect his being subject to possible prosecution and reminded his 'right to silence', and any subsequent statement made is voluntary.

Rule III

Under Rule III(a) of the Rules, when a person is charged with or informed that he may be prosecuted for an offence, there shall be another caution in another term. Under Rule III(b), in exceptional cases, questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Again, the accused would be cautioned in yet another term

Directions 3 and 4

Direction 3 deals with recording all interviews at Immigration Office or Police Station. Direction 4 is about comfort and refreshment for persons being questioned.

Directions 5, 6 and 8

As regards matters on interviews with children and young persons, taking statements in languages other than English, statement taking from mentally handicapped persons and hearing impaired persons, and facilities provided to persons in custody, these are laid down under Directions 5, 6 and 8 respectively.

Direction 7

When an accused person is to be charged, there are procedures, as mentioned under Direction 7, on the supply of written statement of charge(s) to the accused person.

Salient points of Direction 8 of the Rules

Direction 8 of the Rules deals with facilities provided to persons under custody and these include –

- (a) to speak on the phone to his friends, and to consult and communicate privately with a solicitor or barrister, and to be provided upon request with a list of solicitors provided by the Law Society of Hong Kong;
- (b) to have his letters sent by post with the least possible delay;
- (c) to entitle to have a copy of the cautioned statement or record of interview;
- (d) to be supplied on request with writing materials; and
- (e) to be informed of his rights and the facilities available to him.

AND UNDER INVESTIGATION)

被入境事務處羈留人士或在入境事務處接受調查的人士，
只要不致對調查過程或執行司法工作造成不合理的延誤或阻礙：

- (1) 可打電話給親戚及朋友；
- (2) 可私下打電話給律師或大律師，或以書面或親自與他們聯絡；
- (3) 可要求獲得一份由香港律師會提供的律師名單；
- (4) 在與入境事務隊人員會面時，可獲准律師或大律師在場；
- (5) 在你的同意下，可獲准私下與自稱受第三者委託代表在羈留人士的律師或大律師聯絡；
- (6) 可拒絕與一個不是你自己要求會見的律師或大律師接觸；
- (7) 可要求本處郵寄或遞送信件，盡量不要延誤；
- (8) 在會面後盡快獲給予一份你經警誡後所作的口供或所回答問話的口供副本；
- (9) 在未獲得一份你經警誡後所作的口供或所回答問話的口供副本之前，可拒絕回答其後的問題；及
- (10) 可要求本處提供書寫用具。

我 _____，充分明白在接受調查或羈留期間所獲得的權利。

簽署 _____ 見證人簽署 _____

傳譯員簽署 _____ 日期／時間 _____

Provided that no unreasonable delay or hindrance is reasonably likely to be caused to the process of investigation or the administration of justice, a person in custody or present with the Immigration Department and under investigation may :-

- (1) make telephone calls to relatives and friends;
- (2) make private telephone calls to, or communicate by writing or in person with, a solicitor or barrister;
- (3) be given upon request a list of solicitors provided by the Law Society;
- (4) be allowed to have a solicitor or barrister present during any interview with an immigration officer;
- (5) be allowed to communicate privately with a solicitor or barrister claiming to have been instructed by a third person on behalf of the person in custody, if he desires;
- (6) refuse to communicate with a solicitor or barrister, whom he has not personally requested;
- (7) have letters posted or delivered with the least possible delay;
- (8) be entitled to a copy of cautioned statements or answered questions under caution as soon as possible after the interview;
- (9) refuse to answer subsequent questions until a copy of cautioned statements or answered questions under caution is provided; and
- (10) be provided with a supply of writing materials upon request.

I, _____, am fully aware of my right during the period of interview or detention.

Signed _____
Interpreted by _____

Witnessed by _____
Date and Time _____

NOTICE TO NON-CHINESE CITIZENS IN CUSTODY

Non-Chinese citizens in custody may request to have communication with the consular post of the sending state or to inform the relevant consular officers of the arrest / detention.

I (have read / have had read to me*) the above Notice and acknowledge receipt of a copy of this Notice at _____ hours on _____.

(Recipient) (Interpreter) (Issuing Officer)

* Delete as appropriate.

Note: The original of this Notice to be retained by the OC case as exhibit.

給在羈留的非中國公民的通告

被拘捕 / 羈留的非中國公民可要求與所屬國家的領事館聯絡或將有關被拘捕 / 羈留的情況通知他們。

上述通告已(由本人向本人*)閱讀過及本人已在_____年_____月_____日_____時簽收這份通告的副本。

(受文者) (傳譯員) (簽發人員)

* 適當地刪除

註：本通告的正本由案件主管保管作為證物之用。

Salient points of Direction 6 of the Rules

Direction 6 of the Rules deals with, *inter alia*, matters on taking statements in languages other than English. In case a person making a statement or answering questions in a language other than English –

- (a) Whenever possible all interviews should be conducted in the mother tongue of the suspect unless he chooses, or consents, to use another language in which he is obviously proficient.
- (b) The statement or record of interview should be recorded in the language used by the person making the statement or answering the questions.
- (c) A certified English translation should be made in due course and be proved as an exhibit with the original statement or record of interview.
- (d) The person making the statement or answering questions should sign the statement or record of interview.

2. As mentioned in the booklet containing Direction 6 of the Rules, in order to ensure the validity of any statement recorded from a foreign national or from a person who does not share a common language with the interviewer, a number of rules are to apply and some of them are as follow –

- (a) Statements from Chinese persons should be recorded in Chinese characters using the interviewee's native dialect unless he chooses to use another dialect in which he is proficient, and the dialect so used should be stated in the statement.
- (b) When necessary an interpreter should be enlisted to record any statement in the language and dialect used by the interviewee.
- (c) A person interpreting a statement will make a confirmatory statement to that effect should circumstance dictate.

Salient points of Direction 5 and note to Direction 6 of the Rules

Matters on treatment of children and young persons are mentioned in Direction 5 of the Rules, and on disabled under note to Direction 6.

2. Under Direction 5, so far as practicable, children and young persons under the age of 16 years should only be interviewed in the presence of a parent or guardian, or, in their absence, some person who is not an immigration officer and is of the same sex as the child. A child or young person should not be arrested, or even interviewed, at school if such action can possibly be avoided. Where it is found essential to conduct the interview at school, this should be done only with the consent and in the presence, of the head teacher, or his nominee.

3. The officer in charge of a case may authorise the interview of a child or young person under 16 years of age to take place without parent/guardian or other appropriate adult present providing the full circumstances surrounding the interview and the actual recording of any statement/record of interview are recorded in the notebook of the said officer detailing attempts made to locate persons responsible for the child or young person, and the reasons for the decision to proceed at that time.

4. A cautioned statement from a child or young person arrested late at night or in the early hours of the morning does not have to be taken immediately, unless a delay would cause undue hindrance to the furtherance of justice.

Treatment of mentally handicapped persons and hearing impaired persons under note to Direction 6

5. As regards treatment of disabled in the context of mentally handicapped, note to Direction 6 mentioned that, as far as practicable any person suspected or known to be suffered from a mental disorder, whether suspected of a crime or not, should only be interviewed or have a statement recorded from him in the presence of one of the following appropriate adults –

- (a) a relative, guardian or other person responsible for his care or custody;

- (b) someone who has experience of dealing with mentally disordered or handicapped persons but who is not an immigration officer nor employed by Imm D, such as a social worker; or
- (c) failing either of the above, some other responsible adult who is neither an immigration officer nor employed by Imm D.

6. In respect of treatment of disabled in the context of hearing impaired (deaf and perhaps dumb), note to Direction 6 mentioned that the presence of a sign language interpreter is essential both to assist in questioning and recording any cautioned statement. Where the hearing impaired person is literate, an interview can be conducted in writing subject to the appropriate caution being applied.

Custody Officer and Review Officer System

To improve measures to avoid possible abuse of power, the Interdepartmental Working Group on Law Reform Commission Report on Arrest proposed that all law enforcement agencies should appoint 'custody officers' to ensure those under detention would be treated properly and 'review officer' to review the need for further detention. The Working Group also proposed that the custody officer should not normally be connected with the case under investigation and the review officer should be an independent body not involving in the case. Imm D accepted the proposal for implementation. The custody officer within Imm D should be of the rank of Immigration Officer (IO) whilst the review officer of Chief Immigration Officer (CIO).

2. Ma Tau Kok Detention Centre (MTKDC) is a designated place of detention under the Immigration Service Ordinance, Cap. 331. It had appointed custody officer and review officer respectively for all detainees admitted into MTKDC. Also, each investigation office had appointed its custody officer and review officer accordingly.

3. Review of detention should be carried out at intervals of not more than 24 hours after commencement of the detention. If a detainee was taken out from MTKDC by any investigation section for further enquiries, the concerned section would simultaneously take over the responsibilities of custody officer and review officer until the detainee was returned to MTKDC. When a detainee was admitted into a detention place other than MTKDC, the authority in charge of the detention place would take care of the detainee's welfare. However, the respective review officer should continue to review the detainee's further detention.

4. Details of every incident during detention would be recorded in the Arrest/Detention Sheet. Each section would also maintain its own Detention Register and Personal Search Register for record purpose and for inspection upon demand.

**Statistics on the prosecution and conviction of offenders in breach of the
Immigration Ordinance and other related Ordinances from 1997 to 2000**

1997		1998		1999		2000	
No. of Persons Prosecuted	No. of Persons Convicted						
21,343	21,070	24,990	24,653	25,421	25,161	22,785	22,678

**Statistics of number of forged travel documents detected,
breaking down by location from 1997 to 2000**

Location where forged travel documents were detected	No. of forged travel documents detected in			
	1997	1998	1999	2000
Airport	2,184	2,292	2,434	2,146
Lo Wu Control Point	275	362	422	212
Lok Ma Chau Control Point	17	38	23	12
Man Kam To Control Point	15	12	2	35
Sha Tau Kok Control Point	3	6	1	0
Hung Hom Control Point	14	27	18	16
Macau Terminal Control Point	31	60	57	44
Harbour Control Point	27	68	259	300
China Ferry Terminal Control Point	166	85	82	94
Detected at other Sections of Imm D	206	568	155	162
Referred by other government departments	145	76	77	229
Total:	3,083	3,594	3,530	3,250

**Statistics of Forged Travel Document Offenders Prosecuted
from 1997 to 2000**

Year	1997	1998	1999	2000
No. of Persons Charged	1,313	1,401	1,514	1,187
No. of Persons Convicted	1,303	1,394	1,492	1,184
No. of Persons who pleaded not guilty and case acquitted	10	7	22	3

**A detailed breakdown of forged travel document cases
in 1999 and 2000**

	1999	2000
(a) No. of suspected forged documents encountered	3,530	3,250
(b) No. of persons intercepted in these cases of suspected forged documents encountered	2,732	2,672
(c) No. of prosecution cases	1,514	1,187
(d) No. of cases convicted	1,492	1,184
No. of cases where the accused pleaded guilty as charged	1,405*	1,110**
No. of cases where the accused pleaded not guilty were convicted after trial	87	74
(e) No. of cases not convicted = (c) - (d)	22	3
Reasons for no conviction:		
Court granted benefit of doubt to the accused persons	4	2
Other reasons	18	1
(f) No. of non-prosecution cases = (b) - (c)	1,218	1,485
Reasons for non-prosecution:		
Not prosecuted after independent assessment by immigration prosecutors	424	473
Evidence in hand not support a prima facie case for prosecution	794	1,012

* 571 (or 40.6%) cases were prosecuted mainly in reliance on the suspects' admission statement and Imm D's examination of the suspected forged travel documents. The remaining 834 (or 59.4%) cases were supported by additional evidence, such as forensic examination, verification with consulates, criminal records or immigration records, etc.

** In most of these cases, the accused had made admission statement and the cases were supported by additional evidence, such as forensic examination, verification with consulates, etc.

Immigration Department Circular No. 14/2000 on Hiring of Part-time (Non-government) Interpreters

Some of the major issues covered in this circular included –

Selection of Registered Part-time Interpreters

2. In exception circumstances, section heads might authorise the use of non-registered interpreter and the particulars of such incidents should be reported to the Court Interpreters Office.

“Short List” of Registered Part-time Interpreters

3. The procedures of compiling the “short list” as recommended in the ICAC Report, were incorporated in this circular.

Complaints against Interpreters

4. The circular laid down the reporting channel for cases of unsatisfactory performance of part-time interpreters to the Court Interpreters Office. Further, it reminded sections heads that channels of lodging complaints against interpreters should be made known to interviewees or detainees and suitably publicised. However, there was no mention on, as recommended in the ICAC report, the detailed guidelines and procedures to monitor the performance of part-time interpreters.

Supervision

5. Records of contacts made with part-time non-government interpreters and reports of payments relating to interpretation services would be checked by section heads on a quarterly basis. Records of these checks would also be kept. The Management Audit Division would conduct inspections to ensure that proper procedures had been adopted by user sections.