

**Executive Summary of the Investigation Report on the
Procedures for Immigration Control of Persons Who Present
Themselves, Are Found or Returned to Immigration Check Points
Without Proof of Identity**

Background

In late August 2000, extensive media coverage reflected grave public concern over the mishandling of a minor, who crossed the Lo Wu Control Point into Shenzhen without proof of identity. A massive search operation was subsequently mounted, but the whereabouts of the youth is still unknown to date.

2. The incident highlighted possible deficiencies in the procedures of the Immigration Department (Imm D) in handling cases of persons who present themselves, are found or returned to immigration check points, without any proof of identity. To examine the relevant procedures and related issues, The Ombudsman informed the Director of Immigration on 1 September 2000 of her decision to conduct a direct investigation into the subject under Section 7(1)(a)(ii) of The Ombudsman Ordinance.

Purpose and Ambit of the Investigation

3. The purpose of the investigation was to examine, inter alia, the procedures and monitoring mechanism of Imm D in the handling of persons who present themselves, are found or returned to immigration check points without any proof of identity. The investigation sought to examine -

- (a) whether Imm D had procedures on the handling of persons who present themselves, are found or returned to immigration check points without proof of identity;
- (b) what mechanisms existed to monitor or enforce the implementation of such procedures;
- (c) whether there were special procedures relating to the treatment of persons with disabilities, particularly those with communication difficulties; and
- (d) whether these procedures were adequate and effective and if not, how these could be improved.

The Immigration Ordinance

4. Immigration officers and immigration assistants are empowered under Section 4(1)(a) of the Immigration Ordinance, Cap. 115 to 'examine any person on his arrival or landing in or prior to his departure from Hong Kong'. The purpose of such examination is to establish the identity of the arriving or departing passengers, by reference to the proof of identity that they carry.

Security Bureau and Immigration Department

5. Security Bureau (SB) has policy responsibility for immigration matters. Specifically, it is responsible for developing and maintaining appropriate policies governing entry into and exit from Hong Kong; and for ensuring that Hong Kong has a framework of efficient procedures for pre-entry controls and control at points of entry and exit by land, sea and air. Imm D is charged with the statutory function of immigration control of passengers travelling to and from Hong Kong. In this respect, Imm D seeks to facilitate the mobility of tourists, business visitors and Hong Kong residents, to deny entry of undesirables into Hong Kong, and to prevent wanted criminals from departure from Hong Kong.

Guidelines and Procedures

Rules and Directions

6. In October 1992, the Secretary for Security promulgated in the Government Gazette the "Rules and Directions for the questioning of suspects and the taking of statements" (the Rules) for observance by law enforcement officers in Hong Kong. The Rules governed the manner in which law enforcement officers should behave when questioning suspects or when taking statements from them. As regards Imm D, compliance of the Rules by immigration officers was mandatory. The Rules also applied to circumstances where immigration officers were required to obtain information or statements from persons who present themselves, are found or returned to immigration check points without proof of identity, including persons with communication difficulties.

Hong Kong Residents without Proof of Identity

7. Imm D had well-established guidelines and procedures for the handling of Hong Kong residents who present themselves for immigration clearance without any proof of identity. They would be subject to secondary examination and had to go through a series of formalities before they were

permitted to land.

Foreign Visitors without Proof of Identity

8. Imm D had detailed procedures for the handling of foreign visitors who present themselves for immigration clearance without any proof of identity. They would normally be refused landing, and be removed by the first available flight.

Unauthorised Persons (e.g. Stowaway, Illegal Immigrant) without Proof of Identity

9. Imm D also had clear guidelines and procedures in handling the immigration clearance of unauthorised persons (e.g. stowaway, illegal immigrant (II)) without proof of identity. A person not in possession of any valid travel document or other identity paper, intercepted in the immigration clearance hall or in the vicinity of immigration border control points, could be categorised as an II on the establishment of prima facie evidence. On the handling of IIs, the Border Division of Imm D issued an instruction in 1988 stipulating that cases of unusual nature should be reported to the duty Senior Immigration Officer (SIO) immediately who in turn would notify the Section Head instantly.

Travellers Slipping Through Immigration Clearance

10. Imm D had clear guidelines and procedures on the handling of travellers who had slipped through immigration clearance. This included arrival slip-through cases detected on departure from the territory, and departure slip-through cases detected on return to the territory. Channel supervisors performing duties at immigration control points were required to thoroughly check with slip-through passengers and to record their findings on a secondary examination sheet with recommendations to the duty SIO for decision before permitting the passenger to leave.

Persons with Disabilities, Particularly those with Communication Difficulties

11. According to Imm D, instructions on the treatment of disabled passengers were more about facilitation than control. These instructions provided that the aged, infirmed, physically disabled, and persons suffering from mental illness, etc. should be guided out from the queues and dealt with separately. Imm D had special procedures on the taking of statements from a mentally handicapped person or a person whose hearing is impaired. The note to Direction 6 of the

Rules required an appropriate adult to be present for the former category of persons and a sign language interpreter to be present for the latter category of persons.

Liaison with Government Departments and Mainland Authorities

Hong Kong Police Force (HKPF)

12. Before October 2000, Imm D had no laid-down procedures for communicating with HKPF on verification of missing persons. Immigration officers would seek assistance from the Police Station which they deemed appropriate.

Other Government Departments

13. Imm D had no guidelines or procedures on the verification/exchange of information on missing persons with other government departments.

Mainland Authorities

14. The Border Liaison system was set up in early 1980s to improve cross-border consultation and for information sharing on matters of concern in the border area. Under the system, Imm D and its mainland counterpart would appoint liaison officers to meet and to maintain working level contacts. Liaison meetings were held almost on a daily basis. Also, Imm D had established other direct communication channels with the mainland authorities, such as setting up a direct hotline to handle daily operations at border control points.

Monitoring and Control

Monitoring by Duty SIO and CIO

15. Under existing procedures, a person found without proof of identity at immigration control points would be interviewed by one officer of the rank of Immigration Officer (IO). During the process, particulars of the interview, actions taken and recommendations would be recorded in a standard control case report form and submitted to the duty SIO for decision. Also, the duty SIO had to ensure that a passenger under examination or detention was being properly looked after. After a case was concluded, a standard control case report would be passed to the duty Chief Immigration Officer (CIO) for scrutiny.

Field Control and Channel Supervision

16. According to Imm D, channel supervisors were deployed to immigration control points to assume the duties of field control and channel supervision. The manning scale of channel supervision was one channel supervisor to six immigration control officers.

CCTV System and Gates / Doors

17. CCTV systems were installed at immigration control points inside the arrival/departure halls to monitor passenger flow and the overall operation of the immigration counters. Gates/doors were installed between immigration counters and were closed when not in operation to prevent travellers from passing through.

Improvement Measures

18. In the wake of the well publicized 'slip-through' case of an autistic teenager into the mainland in August 2000, Imm D has proposed for implementation a number of improvement measures aiming at preventing the recurrence of similar incidents in the future -

- (a) Imm D had established with HKPF a focal point of contact for enquiries concerning missing persons; and would issue detailed procedures and instructions on this matter for compliance by its staff.
- (b) Imm D would seriously examine the supervision and field control situation at all immigration control points, particularly at Lo Wu.
- (c) Imm D was liaising with Social Welfare Department (SWD) for the setting up of a channel for referral of professional assistance for handling cases involving passengers with disabilities.
- (d) Imm D was conducting an overall review of the training programmes and internal guidelines for dealing with persons with mental disabilities; was designing short-term sensitivity training seminars for the front-line staff; and would issue detailed instructions to staff drawing their attention to the need to adopt a sensitive and caring attitude in dealing with persons with mental disabilities.

Observations and Opinions

19. The Ombudsman has made the following observations and opinions with regard to this investigation -

Undocumented Persons and Slip-Through Cases

Compliance with Guidelines and Procedures

- (a) From the scrutiny of 25 cases selected randomly, this Office notes that there was a high degree of compliance with the guidelines and procedures on the handling of undocumented person and slip-through cases by immigration officers. There was only one case in which immigration officers had failed to comply with the department's guidelines and instructions in three notable respects - failure to report the unusual nature of the case to supervisors; interview with the minor in the absence of a parent, guardian or independent third party; and examination of the mentally handicapped person without the presence of a relative, guardian, or person from a relevant professional field.

Enlisting Professional Assistance

- (b) In handling persons with disabilities and/or communication difficulties, this Office considers there was an imminent need for Imm D to enlist the professional assistance from other government departments or relevant professional organisations/bodies.

Verification of Missing Persons

- (c) Prior to October 2000, this Office notes that Imm D had no established guidelines and procedures or a focal point of contact to communicate with HKPF on the verification of missing persons.

Field Control and Channel Supervision

- (d) This Office notes that field control and channel supervision at those immigration control points with high passenger flow were far below the approved manning scale of one channel supervisor to six immigration control officers. This Office considers that Imm D should urgently review the staffing situation at immigration control points

with a view to strengthening field control and channel supervision, particularly at peak operating hours for those busy immigration control points.

Other Monitoring Facilities

- (e) This Office notes that, for those CCTV systems with recording functions installed in immigration control points, the recorded images were too small for clear identification of "slip-through" passengers. This Office is of the view that Imm D should consider upgrading the existing CCTV systems to make it possible to trace back and monitor the circumstances of any slip-through case.
- (f) This Office notes that, in one of the studied cases, the subject in question easily jumped over the gate of an unmanned immigration clearance counter. This Office considers that Imm D should explore the possibilities of improving the physical blocking devices, such as raising the height of the counter gate and re-positioning the turn lock to prevent easy unlocking of the gate.

Knowledge, Awareness and Staff Training

- (g) This Office observes that immigration officers were in general not sensitive to the handling of persons with disabilities particularly those with communication difficulties. This Office considers that Imm D should organise, in conjunction with relevant authorities and professional bodies, regular staff training and refresher programmes.

Documentation Review and Update

- (h) As regards the relevant guidelines and procedures, this Office considers that Imm D should have them regularly reviewed to ensure that they are comprehensive and up-to-date.

Stowaway Cases

20. In the course of this investigation, the media reported in February 2001 another slip-through case involving a mentally handicapped adult. In this incident, the subject was returned from Huanggang to the Lok Ma Chau Control Point without any proof of identity. The subject's

family subsequently claimed that on departure from Hong Kong, the subject bypassed immigration control by staying on the coach and did not proceed to immigration clearance as all passengers were supposed to have done.

21. This Office notes that Imm D had guidelines and procedures for the clearance of passengers departing from or arriving in Hong Kong through the three border vehicle crossing control points at Lok Ma Chau, Man Kam To and Sha Tau Kok. As Imm D's own investigation into the incident was still underway, this Office has decided not to duplicate investigative efforts but to await the department's findings before considering whether there is a need for the further involvement of this Office.

Conclusions

22. In summary, this Office concludes that -

- (a) Immigration officers generally follow departmental guidelines and procedures in handling cases of undocumented persons and 'slip-through' cases.
- (b) Immigration officers lack the knowledge, skill, awareness, and alertness, when handling undocumented persons with disabilities particularly those with communication difficulties.
- (c) Imm D could do more to improve the overall operation, and in particular to strengthen the field and channel supervision, at the immigration control points.

Recommendations

23. Having regard to the above observations and conclusions, The Ombudsman has made the following 10 recommendations for consideration of Imm D to improve the overall operation and control at immigration control points -

Handling Persons with Disabilities Particularly Those with Communication Difficulties

- (a) To enhance staff awareness and sensitivity in handling persons with disabilities particularly those with communication difficulties, Imm D should re-circulate relevant circulars and notices on a regular basis, and organise relevant talks,

seminars, and training to be delivered by relevant professional bodies at regular intervals.

- (b) To provide better staff guidance, Imm D should consider seeking professional advice and assistance from relevant organisations/bodies in devising detailed guidelines and instructions on the handling of persons with disabilities particularly those with communication difficulties.

Network and Guidelines for Professional Assistance

- (c) To facilitate access to professional assistance, Imm D should consider, in consultation with the Health and Welfare Bureau, establishing focal points of contacts with SWD, setting up a liaison network with other relevant professional organisations and voluntary bodies; and formulating guidelines and procedures in enlisting professional assistance from such relevant parties for internal reference by its staff.

Verification of Missing Persons

- (d) To speed up the verification of missing persons, Imm D should consider -
 - (i) formulating detailed procedures and instructions and issuing them to its staff concerned for checking of missing persons; and
 - (ii) in consultation with Security Bureau and HKPF, exploring the feasibility of sharing with Police the computerised information of missing persons relating to those requiring special care and attention such as minors, persons with disabilities and persons with communication difficulties, to facilitate real-time checking by Imm D.

Field Control and Monitoring Mechanism

- (e) Imm D should review its manning scale realistically with a view to improving operation and control at the immigration control points especially those with high volume of passenger flow. In particular, it should consider designating a channel supervisor or such other appropriate staff in each shift who

has been trained in the handling of persons with disabilities, particularly those with communication difficulties.

- (f) To strengthen control at immigration control points, Imm D should consider upgrading and improving various security devices such as CCTV systems and the design of immigration clearance counter gates.
- (g) To improve monitoring and supervision of staff, Imm D should consider devising a comprehensive monitoring mechanism on compliance of departmental guidelines and procedures by its staff.

Training and Documentation

- (h) To equip its staff, especially those responsible for field control and channel supervision at immigration control points, with the required knowledge, skill and competency, Imm D should enhance staff training on the handling of undocumented persons at immigration control points in general, and on the handling of persons with disabilities and persons with communication difficulties in particular.
- (i) To ensure that guidelines and procedures are comprehensive, adequate and up-to-date, Imm D should put the guidelines and procedures under regular review.

Publicity

- (j) To enhance public awareness, especially those having family members with disabilities or communication difficulties, Imm D should consider stepping up publicity through various channels on the need to carry proof of identity at all times; including seeking help from the Health and Welfare Bureau and SWD, to encourage those with disabilities or communication difficulties to carry a specific identification badge/label similar to those registration cards issued by the Central Registry for Rehabilitation of the Health and Welfare Bureau to people with disabilities.

Response from Imm D and SB

- 24. Imm D has accepted the 10 recommendations and will

implement them as soon as practicable to improve the overall operation at the immigration control points. As regards the investigation report, Imm D considers that The Ombudsman has studied carefully and thoroughly all relevant laid-down procedures and case reports of the immigration control points, and that the facts and statistics quoted in the report are correct. On the case studies mentioned in the report, Imm D proposes the presentation approach to relate the key areas of concern to only three slip-through cases, and to incorporate correspondingly suggested textual amendments into the relevant paragraphs of the investigation report. On the observations and opinions made by The Ombudsman, Imm D also proposes to amend a sentence in the report. The Ombudsman has carefully considered the proposal and decided to amend the sentence with appropriate modifications. Lastly, Imm D informed this Office of the latest development of the legal proceedings instigated in respect of one of the cases studied by this Office.

25. SB finds all the recommendations set out in the report acceptable, and shares Imm D's comments on the investigation report.

Final Remarks

26. The Ombudsman is pleased to note that Imm D has accepted all the recommendations and will implement them as soon as practicable to improve the overall operation at the immigration control points, particularly in handling persons with disabilities and persons with communication difficulties. On the presentation approach proposed by Imm D, The Ombudsman cannot agree to it. As mentioned in the report, the study of cases by this Office has included 15 undocumented persons cases and 10 slip-through cases. As far as in conducting this direct investigation, this Office has tried to review at a macro level the procedures and monitoring mechanism of Imm D in the handling of persons who present themselves, are found or returned to immigration control points without proof of identity. The key areas of concern are based on the overall study of all cases and are not relied solely on the three slip-through cases pointed out by Imm D. This Office also notes the latest development of the legal proceedings instigated in respect of one of the cases studied by this Office. In view of Section 15 of The Ombudsman Ordinance, The Ombudsman considers inappropriate to disclose information provided by Imm D in respect of that case.

27. The Ombudsman would like to be kept informed by Imm D of progress on the implementation of the 10 recommendations, and any major changes in the policy and practice on the subject

matter. Lastly, The Ombudsman would like to express appreciation to the co-operation and assistance rendered by Imm D throughout the course of this investigation.

Office of The Ombudsman
Ref. OMB/WP/14/1 S.F. 90 Pt. III
April 2001