

## LCQ2: Granting of asylum by Germany to two bail jumpers

Following is a question by the Hon Michael Tien and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (June 26):

Question:

In December 2017, two men who had been charged with rioting offences and admitted to bail pending trial failed to attend the trial, and the court therefore issued warrants of arrest against them. It was reported last month that they had been granted asylum by the German authorities in May last year. In this connection, will the Government inform this Council:

(1) whether, before the two persons were granted asylum by the German authorities, the Government had received requests from the German authorities for information about the offences in which they were involved for the purpose of assessing their asylum requests; whether a mechanism is in place for the Government to seek a review by the German authorities of their decision to grant asylum;

(2) when the Government came to know that the two persons had been granted asylum; apart from the Chief Executive conveying to Germany's Acting Consul General in Hong Kong strong objection to the granting of asylum, of the specific follow-up actions that have been and will be taken by the Government in this regard; and

(3) whether, according to the surrender of fugitive offenders agreement signed between the governments of Hong Kong and Germany, the offences allegedly committed by the two persons are offences for which surrender may be granted?

Reply:

President:

The two absconders who had jumped bail mentioned in the question were involved in the Mong Kok riot which took place in the small hours of February 9, 2016. The Mong Kok riot was a serious large-scale incident of mob violence. On the day, many rioters attacked police officers with bricks dug out from the pavement, home-made weapons and various kinds of hard objects, set fires at various locations and damaged police vehicles, wounded others and destroyed public property. Such violent acts seriously jeopardised public order and safety. Over 100 persons were injured in the incident, including over 80 police officers, as well as members of the media, unsettling many people in Hong Kong. After the incident, the Government of the Hong Kong Special Administrative Region (HKSAR) as well as various sectors of society

strongly condemned the acts of the rioters.

As at May 31, 2019, the Police arrested a total of 91 persons in connection with the Mong Kok riot. The Department of Justice has also prosecuted some arrestees of the alleged offences, including riot, incitement to riot, arson, unlawful assembly, incitement to unlawful assembly and assaulting police officers. The judicial proceedings of certain persons concerned are still on-going. So far, 30 persons have been convicted by the court, of which 23 persons were convicted of riot and were sentenced to training centre order or imprisonment ranging from three to seven years.

The two absconders who had jumped bail mentioned in the question were charged with serious charges, including "riot" and "assaulting police officer", in relation to the Mong Kok riot. The acts were in contravention of section 19 of the Public Order Ordinance (Cap 245) concerning the offence of riot with a maximum penalty of imprisonment for 10 years, and section 36 of the Offences against the Person Ordinance (Cap 212) concerning the offence of "assaulting any police officer in the due execution of his duty" with a penalty of imprisonment for two years. The two persons were originally scheduled to appear before the High Court on December 9, 2017 for a pre-trial review, but they did not attend the hearing and jumped court bail. The court issued an arrest warrant on the day, requesting the Police to track down the absconders and apprehend them.

My reply to the various parts of the question is as follows:

(1) The case mentioned in the question is a criminal litigation case. Generally speaking, the Police are responsible for case investigation, gathering of evidence and making arrests, while the Department of Justice will study and determine whether to prosecute and to prosecute with what charge, and make independent decisions. In the case mentioned in the question, the Hong Kong Police and the Department of Justice have never received any request for information from the German authorities. The HKSAR Government is disappointed that no basic assessment on or verification of the facts had been conducted by the German authorities. The Chief Executive in her meeting with Germany's Acting Consul General in Hong Kong on May 24 had expressed the HKSAR's strong objections and deep regrets.

(2) According to the Criminal Procedure Ordinance (Cap 221), a person admitted to bail who, without reasonable cause, fails to surrender to custody as shall have been appointed by a court, commits an offence. The person is liable on summary conviction to a fine of \$75 000 and to imprisonment for six months, and on conviction upon indictment to a fine of any amount and to imprisonment for 12 months. The court may issue an arrest warrant against the defendant. The Police will execute the arrest warrant and spare no efforts in tracking down the whereabouts of the suspect, with a view to bringing the suspect to court for handling as appropriate, including pursuing the legal liability of his jumping court bail, and continuing to handle the original case.

With regard to the two bail jumpers mentioned in the question, since the

issuance of arrest warrant by the court upon their failure to appear before the court in December 2017, the Police have been following up to locate the whereabouts of the persons, including making enquiries with the law enforcement agencies of multiple related countries through the police co-operation mechanism of INTERPOL. Upon learning about the report of the German authorities granting asylum, the Police have again asked the German police to provide information through the INTERPOL mechanism. As regards the specific content of the case, since details of investigation and pursuit of the bail jumpers are involved, it is not appropriate to be made public.

Besides, the Police and the Department of Justice are studying the case and will follow up in accordance with the relevant laws and evidence. The Police will continue to, by all possible means, pursue the two absconders who have jumped court bail against whom arrest warrants have been issued.

As mentioned before, upon learning about the media reports of the captioned case, the HKSAR Government has publicly expressed its strong objections and deep regrets. The HKSAR Government considers the granting of asylum to persons who had committed serious crimes and jumped court bail and absconded whilst awaiting trial, without any basic assessment or verifications of facts, lacks objective evidential basis, and unjustifiably undermines Hong Kong's international reputation in the rule of law and judicial independence. The Chief Executive has personally and categorically indicated her strong objections and deep regrets to Germany's Acting Consul General in Hong Kong.

(3) According to the "Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Federal Republic of Germany for the Surrender of Fugitive Offenders", there are 46 offences for which surrender may be granted. The first 45 offences are descriptions of specific offences, while the 46th offence is "any other offence for which surrender may be granted in accordance with the laws of both Parties".

According to the Fugitive Offenders Ordinance (Cap 503), the crime for which surrender may be granted must comply with the "double criminality" principle, i.e. it must constitute an offence in the jurisdictions of both the requesting party and the requested party.

In determining whether an offence is an offence punishable under the laws of both the party requesting the surrender and the requested party, the totality of the alleged acts or omissions of the person of whom surrender is sought shall be taken into account before reaching a decision, regardless of whether, under the laws of the parties, the constituent elements of the offence or the definition of the offence are the same. Simply put, the "double criminality" principle is decided based on the "act". Whether or not surrender may be granted over the act or omission depends on whether the act or omission itself also constitutes a criminal offence in Hong Kong and complies with the requirements in section 2(2)(b) of the Fugitive Offenders Ordinance; otherwise, it is not an offence for which surrender may be granted. The offence of jumping bail itself is not an offence for which

surrender may be granted under the Agreement.

Hong Kong's rule of law and independent judicial system are the core values of our society, and have long been held in high regard by the international community. According to the World Economic Forum's Global Competitiveness Report, Hong Kong is ranked first in Asia for judicial independence. According to Article 82 of the Basic Law, the power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal. The Court of Final Appeal may as required invite judges from other common law jurisdictions to hear cases. Currently, there are 14 eminent overseas judges from the United Kingdom, Australia and Canada sitting on our Court of Final Appeal as non-permanent judges. In respect of criminal justice, anyone accused of breaching the law in Hong Kong would face an open and fair trial. Article 10 and Article 11 of the Hong Kong Bill of Rights also provide sufficient protection to any person with any criminal charge laid against him, or whose rights and obligations are in a suit at law. The Hong Kong courts will, as always, with their sound rule of law and human rights protection, handle all cases in an independent, fair and just manner.

Thank you, President.

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## LCQ3: Flood prevention in the New Territories

Following is a question by the Hon Kenneth Lau and a reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (June 26):

Question:

Last month, a series of severe rainstorms caused serious flooding at a number of villages in Tin Shui Wai, with floodwater reaching the waist level and quite a number of villagers being trapped. Some villagers have relayed that during the onslaught of super typhoons in Hong Kong in the past two years, they suffered huge losses and their lives were under threat. As extreme weather conditions have become increasingly frequent and this year's typhoon season is drawing near, the villagers are very worried. In this connection, will the Government inform this Council:

(1) of the number of flooding reports received by the Drainage Services Department in each of the past five years, the number of the flooding locations which were flooding black spots, as well as the causes for the flooding;

(2) of the measures taken by the Government, since the onslaught of super

typhoon Mangkhut in September last year, to improve the flood discharge capacity at the flooding black spots and the villages at low-lying locations vulnerable to seawater inundation in the New Territories, as well as the details of such measures; and

(3) whether it reviewed afresh and updated, in the past six months, the list of flooding black spots and the list of low-lying locations vulnerable to seawater inundation in the New Territories, and carried out corresponding flood prevention works; if so, of the details; if not, the reasons for that?

Reply:

President,

The drainage facilities in rural areas in the New Territories (NT) comprise a mixture of natural streams, man-made channels and pipes. In general, the construction and maintenance of the required drainage facilities are undertaken by the Drainage Services Department (DSD), other relevant departments and private owners concerned according to their respective responsibility. To prevent flooding caused by drain blockage, the DSD, before every rainy season, collaborates with other relevant departments to step up cleaning of public channels and pipes, and reminds private owners to properly check and repair the drainage facilities on their lands through distribution of pamphlets.

Upon receipt of a flooding report, the DSD will provide emergency support to help the citizens tackle the flooding problem. In the morning of May 27, 2019, the Hong Kong Observatory (HKO) issued the Amber Rainstorm Warning Signal, meaning "rain has fallen generally over Hong Kong, exceeding 30 millimetres in an hour". However, at that time, rainfall in some parts of Tuen Mun and Yuen Long (including Tin Shui Wai) had already reached 70 millimetres in an hour and the DSD had received a total of five flooding reports in the two districts. The DSD staff were swiftly deployed to the affected areas to render assistance, sparing no effort in cleaning blocked channels and draining excessive water, regardless of whether the drains were on private or government land. These areas resumed to their normal state shortly after the flood.

In addition to offering emergency support, the DSD has been examining villages with past flooding records so as to formulate appropriate drainage improvement measures. It has completed a number of flood prevention works in the NT, including the river training works for Sheung Yue River, Shan Pui River and Kam Tin River. We are currently seeking funding approval from the Finance Committee for conducting drainage improvement works in the rural areas of Northern NT, Yuen Long and Ngong Ping. Moreover, the Home Affairs Department will consider the villagers' requests for implementation of minor construction or improvement works to the drainage facilities in the villages under minor works projects.

Having consulted the relevant departments, I provide a reply to the three parts of the Hon Kenneth Lau's question as follows:

(1) According to records, the DSD received about 400 flooding reports in the past five years, with an average of 80 cases per year and seven of which occurred in NT flooding blackspots. Basically, these were incidents of localised flooding lasting for a short period of time. The affected areas were quickly reinstated after emergency services had been rendered by the DSD. The findings of the DSD indicated that the flooding incidents mainly occurred in areas with blocked drains or inadequate drainage under persistent heavy rain, and low-lying locations vulnerable to seawater infusion or inundation during typhoons.

(2) and (3) The DSD reviews the flooding blackspots and locations vulnerable to seawater infusion and inundation in Hong Kong every year.

With the progressive completion of major flood prevention projects, the number of flooding blackspots has reduced substantially. As at March 2019, 125 flooding blackspots have been eliminated, and there are only six remaining. Drainage improvement works for two flooding blackspots located at Ting Kok Road in Tai Po and Wan Chai District have already been completed, with their effectiveness being closely monitored. These blackspots will be eliminated when appropriate. As regards the other four blackspots, two of them are located in the NT, namely Shek Wu Wai in San Tin and Lam Tsuen Valley Basin, while the other two are in Tsim Sha Tsui and the Southern District. The DSD is taking forward in phases the strengthening of the drainage facilities in these areas. Funding approval is being sought from the Finance Committee to enhance the flood prevention capacity of the blackspot in the Southern District. Strategically, upstream interception and downstream upgrading works are generally effective measures to alleviate the flooding risk in the village environ.

As revealed from previous severe or super typhoons, the Government has identified some low-lying locations vulnerable to seawater infusion or inundation (including Luen On San Tsuen, Kar Wo Lei, Sham Tseng San Tsuen, Lei Yue Mu, Nam Wai in Sai Kung, Tai O and low-lying areas along the seaside of North-western Yuen Long). The DSD and other relevant departments are implementing measures such as provision of flood walls/demountable flood barriers and installation of flap valves at the drainage outlet to prevent seawater from flowing in. The construction of concrete walls and rock-armoured bunds along the seashore can also lower the risk of flooding caused by waves overtopping the seawalls. Besides, the Government has set up storm-surge alert systems at various low-lying areas that are vulnerable to seawater inundation. Upon the issuance of warning on storm surge by the HKO, the DSD will, at the relevant locations, deploy pumping facilities, install water-stop boards, or provide sandbags for the use of the residents and shop operators in need, in order to reduce the flooding risk arising from storm surge.

In April this year, the Civil Engineering and Development Department commissioned a consultant to undertake a feasibility study entitled "Coastal Hazards under Climate Change and Extreme Weather and Formulation of Improvement Measures". The study aims to conduct a comprehensive review of

the low-lying coastal or windy locations, and to carry out investigations into storm surge and wave in order to assess the impacts of extreme weather on these locations. Based on the outcome of the study, the Government will formulate appropriate protection measures, including improvement works, management measures and other options, to strengthen the resilience to big waves at the coastal areas in the long run.

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## **Fireboat Alexander Grantham Exhibition Gallery to close temporarily**

The Leisure and Cultural Services Department today (June 26) announced that the Fireboat Alexander Grantham Exhibition Gallery at Quarry Bay Park will be closed temporarily from July 2 for maintenance and renovation works.

The works are expected to be completed in September this year. During the renovation period, all the facilities at the gallery will be closed, but outreach programmes will be organised.

For enquiries, please call 2367 7821.

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## **Hong Kong and Cambodia enter into tax pact**

The Secretary for Financial Services and the Treasury, Mr James Lau, on behalf of the Hong Kong Special Administrative Region Government, signed a comprehensive avoidance of double taxation agreement (CDTA) with Cambodia today (June 26), promoting further bilateral investment and trade between the two jurisdictions.

This CDTA is the 41st agreement that Hong Kong has concluded. It sets out the allocation of taxing rights between the two jurisdictions and will help investors better assess their potential tax liabilities from cross-border economic activities.

Mr Lau said, "Cambodia was Hong Kong's 38th largest trading partner in 2018. We have all along treasured our economic and trade ties with Cambodia and I have every confidence that this agreement will encourage more bilateral investments and bring our co-operation to a new level."

Under the Hong Kong-Cambodia CDTA, double taxation will be avoided in

that any tax paid in Cambodia by Hong Kong companies in accordance with the CDTA will be allowed as a credit against the tax payable in Hong Kong on the same income, subject to the provisions of the tax laws of Hong Kong. Likewise, for Cambodian companies, the tax paid in Hong Kong will be allowed as a deduction from the tax payable on the same income in Cambodia.

Moreover, the Hong Kong-Cambodia CDTA also provides the following tax relief arrangements:

(a) Cambodia's withholding tax rates for Hong Kong residents on dividends, interest, royalties and fees for technical services will be reduced from the current level of 14 per cent to 10 per cent;

(b) Hong Kong airlines operating flights to and from Cambodia will be taxed at Hong Kong's corporation tax rate, and will not be subjected to tax on income in Cambodia; and

(c) Hong Kong residents deriving profits from international shipping transport in Cambodia will enjoy 50 per cent reduction in tax on income in Cambodia in respect of the profits subject to tax there.

The Hong Kong-Cambodia CDTA has also incorporated an article on exchange of information, which enables Hong Kong to fulfil its international obligations on enhancing tax transparency and combating tax evasion.

This CDTA will come into force after the completion of ratification procedures by both jurisdictions. In the case of Hong Kong, it will be implemented by way of an order to be made by the Chief Executive in Council under the Inland Revenue Ordinance. The order is subject to negative vetting by the Legislative Council.

Details of the Hong Kong-Cambodia CDTA are available on the website of the Inland Revenue Department ([www.ird.gov.hk/eng/pdf/Agreement\\_Cambodia\\_HongKong.pdf](http://www.ird.gov.hk/eng/pdf/Agreement_Cambodia_HongKong.pdf)).

Hong Kong will continue to negotiate with trading and investment partners with a view to expanding its CDTA network.

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## **LCQ8: Supply of water to Hong Kong**

Following is a question by the Hon Lau Kwok-fan and a written reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (June 26):

Question:

The new agreement on the supply of Dongjiang (DJ) water to Hong Kong



from 2018 to 2020, signed by the Government and the Guangdong provincial authorities in December 2017, continues to adopt the "package deal lump sum" approach in calculating water prices. However, both parties have agreed to conduct a review of the future payment approach for water supply. In addition, it has been reported that the Pearl River Delta Water Resources Allocation Project (commonly known as the "West to East Water Diversion Project") commenced last month and is expected to be completed in 2024. In this connection, will the Government inform this Council:

(1) whether it has started discussing with the Mainland authorities the arrangements for making Xijiang water a backup supply for Hong Kong; if so, of the details; if not, the reasons for that;

(2) given that the quality standard of DJ water supplied to Hong Kong is in compliance with Type II waters in the Environmental Quality Standards for Surface Water (GB3838-2002), which is the highest national standard for surface water quality applicable for the abstraction for human consumption, and the quality standard of Xijiang water supplied to Macao from 2014 to 2016 was in compliance with the national standard at a grade lower (i.e. Type III waters), whether the Government has conducted studies and made preparation in this regard to ensure that the quality of Xijiang water to be supplied to Hong Kong meets the highest standard; if so, of the details; if not, the reasons for that; and

(3) of the details, specific timetable and progress in respect of the review of the payment approach for DJ water; as the Democratic Alliance for the Betterment and Progress of Hong Kong has suggested switching to the adoption of a combined payment approach for the purpose of securing stable water supply and reasonable charges, whether the Government has assessed if Xijiang water as a backup supply may provide a better assurance for water supply, so that the feasibility of adopting a combined payment approach is enhanced; if it has conducted such an assessment and the outcome is in the affirmative, whether the Government will discuss with the Guangdong provincial authorities the adoption of a combined payment approach?

Reply:

President,

In all the Dongjiang (DJ) water supply agreements signed with the Guangdong (GD) authorities since 2006, the "package deal lump sum" approach has been adopted to ensure reliable and flexible supply of DJ water to Hong Kong. As Hong Kong's fresh water resources come from local yield and DJ water, the "package deal lump sum" approach allows us to import DJ water as needed based on the actual local yield and up to an annual supply ceiling specified in the supply agreements. This not only ensures adequate water supply for Hong Kong under the drought condition with a return period of 1 in 100 years, but also avoids wastage of the DJ water resources and saves related operating costs when more local yield is available in a particular year. Nevertheless, given the "package deal lump sum" approach has been adopted for more than 10 years, it is considered an appropriate time to

review the payment approach. To this end, we set up a working group with the GD authorities in August 2017 to take forward the review on the "package deal lump sum" payment approach.

Moreover, since the water resource utilisation rate of DJ has already reached a level very close to its exploitation limit, the Pearl River Delta Water Resources Allocation Project is to divert water from Xijiang to the eastern part of the Pearl River Delta (including Guangzhou Nansha, Shenzhen and Dongguan) to alleviate the pressure of demand for DJ water in those areas. At the same time, the Project will provide an opportunity for the provision of emergency backup to areas including Hong Kong, Panyu, Shunde to further safeguard the reliability of water supply in these areas.

The responses to the Hon Lau's three queries are as follows:

(1) The Pearl River Delta Water Resources Allocation Project will provide an opportunity for the provision of emergency backup to the DJ water imported to Hong Kong. As the works of the Project have just started, details of the emergency backup arrangements have not yet been worked out by the GD authorities. We will follow up with the Water Resources Department of the GD Province on the related arrangements in due course.

(2) The Pearl River Delta Water Resources Allocation Project takes water from the main branch of Xijiang at Liyuzhou in Shunde district of Foshan, which is different from the location where Macao takes water from Xijiang. Based on our understanding, the quality of the water near the water intake point at Liyuzhou meets the Type II waters in the "Environmental Quality Standards for Surface Water (GB3838-2002)" (i.e. the highest national standard for surface water applicable for the abstraction for human consumption) which is the same as the water quality standard of DJ water specified in the DJ water supply agreements.

(3) A working group has been set up with the GD authorities for reviewing the "package deal lump sum" payment approach. Apart from reviewing the existing "package deal lump sum" payment approach, the review will explore other payment approaches. As the review is still ongoing, it is premature to disclose the details at this stage. However, no matter which payment approach is to be adopted, we will ensure that it will not affect the reliability of water supply to Hong Kong. We will strive to complete the review before the negotiation of the next supply agreement in 2020.