

Government responds to report by United States-China Economic and Security Review Commission

In response to media enquiries on the report by the United States-China Economic and Security Review Commission on the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019, a government spokesman today (May 8) made the following statement:

Since the return to the motherland, the Hong Kong Special Administrative Region (HKSAR) has been exercising the principle of "Hong Kong people administering Hong Kong" and a high degree of autonomy in strict accordance with the Basic Law. The "one country, two systems" principle has been fully and successfully implemented.

The rule of law and judicial independence are the core values of the HKSAR. The HKSAR Government attaches utmost importance to these values and is determined to fully safeguard them and the safety of all members of the public.

Surrender of fugitives is a long-standing international practice to combat serious crimes and to prevent criminals from seeking havens to evade justice. The HKSAR's regime on surrender of fugitives makes reference to the guidelines and model prescribed by the United Nations, and is fully underpinned by human rights protection principles that are prevailing in practising regimes in many jurisdictions around the world. The HKSAR has signed long-term surrender of fugitive offenders agreements with 20 jurisdictions, including the United States. In line with its core policy objective, the HKSAR is actively working on negotiations with numerous other jurisdictions with a view to reaching more long-term surrender arrangements and widening the network of co-operation.

The HKSAR proposes to amend two local laws, namely the Fugitive Offenders Ordinance (Cap. 503) and the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525), which aim to deal with two practical problems, namely (a) a murder case which happened in Taiwan in early 2018 involving a Hong Kong resident killing another Hong Kong resident with the suspect subsequently returning to the HKSAR; and (b) plugging the existing loopholes in the existing regime in criminal and juridical assistance matters, where the geographical restrictions and impractical operational requirements render the legislation inoperable in certain cases.

The proposed amendments do not pinpoint any particular jurisdictions, nor do they target common citizens. After the legislative amendments, the HKSAR can, where there are warranting cases and where it is absolutely necessary, using the same set of standards and under the principle of mutual respect, effectively handle serious criminal cases with a jurisdiction that

does not have any effective long-term agreement with the HKSAR. Similar case-based surrender arrangements have been existing in the laws of the United Kingdom and Canada for decades. The targets of case-based surrenders are fugitives who have committed grave criminal offences on the basis of prima facie evidence, and are wanted for justice due to the offences committed.

The proposed legislative amendments will not affect any of the 20 long-term agreements in force in the HKSAR. The clause on specialty in all 20 agreements will continue to debar any resurrender of fugitives from Hong Kong to another jurisdiction. The proposed arrangement is a supplementary measure to long-term agreement before the latter is reached and comes into the force. Case-based surrender will not be adopted once a long-term agreement has been in place and become effective.

In respect of a case-based surrender request, the HKSAR has full discretion as to whether the request should be acceded to. All existing human rights and procedural safeguards provided for in the current legislation, which have made reference to the model treaty on extradition promulgated by the United Nations and are in line with the common practices in juridical assistance overseas, will be maintained under case-based arrangements. These include the double criminality principle, protection against death penalty, restriction against re-surrender, rule against double jeopardy, no surrender for political offences, application for habeas corpus and right to appeal and judicial review, etc.

The proposed legislative amendments are meant to protect the law-abiding general public in the HKSAR. The amendments, if passed, will protect business activities from the threat of crime and be conducive to the business environment in the HKSAR.

The current exercise is about amending local laws to enhance the HKSAR's capability in dealing with fugitives of serious criminal offences and making the HKSAR a better partner in the international fight against crime.