

LCQ 7: Administrative detention of Hong Kong residents on mainland

Following is a question by the Hon Charles Mok and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (December 4):

Question:

It has been reported that on August 8 this year, a Hong Kong resident then employed by the British Consulate General in Hong Kong took a business trip to the Mainland. In the evening on that day, he boarded a Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) train in Shenzhen to return to Hong Kong. However, upon arrival at the Mainland Port Area of the XRL West Kowloon Station, he was taken back to a police station in the Luohu District of Shenzhen on the Mainland by Mainland law enforcement officers. He alleged that during his detention, he was subjected to inhuman treatment (including coercive interrogation, sleep deprivation, blindfolding and hooding, hours of continuous torture and assault, as well as forced unlocking of his mobile phone and social media account), resulting in a violation of his basic human rights. He was released after 15 days of administrative detention. In this connection, will the Government inform this Council:

(1) as that person claimed that some Mainland law enforcement officers had revealed to him that some Hong Kong young people who had participated in the movement of opposition to the proposed legislative amendments (the opposition movement) in Hong Kong were being detained in Luohu police station on the Mainland, whether the Government is aware of such situation; if so, of the details;

(2) whether the Government received any complaint in the past three years about Hong Kong people being beaten or forced to confess by Mainland law enforcement officers during their detention on the Mainland; if so, whether it followed up such cases with the relevant Mainland departments for investigating if the complaints were substantiated and if any law enforcement officer had violated the laws;

(3) whether it knows the number of cases, since the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance (Cap 632) came into operation in September 2018, which involved Mainland law enforcement officers taking law enforcement actions against any person at the Mainland Port Area of the West Kowloon Station; whether the Government has been notified by the Mainland authorities of any case of criminal detention of Hong Kong residents in the Area; if so, of the details; and

(4) whether it knows the number of Hong Kong residents, since June this year, who were subjected to criminal compulsory measures (including summons for questioning, putting on bail, residential surveillance, detention and arrest)

by the Mainland authorities because they had participated in the opposition movement; of the details of such cases, as well as the follow-up actions taken by the Government to ensure that the fundamental rights of those residents are protected?

Reply:

President,

ã€ã€ã€In respect of the alleged case cited in the question which was also reported by the media, the Mainland authorities have stated that the subject was in administrative detention for 15 days for soliciting prostitution in breach of the Law on Penalties for Administration of Public Security, and that during the period the Mainland authorities had in accordance with the law protected the various legal rights of the subject. Therefore, our reply to the Hon Mok does not imply our acknowledgement of the allegations raised in the question.

ã€ã€ã€Regarding the question raised by the Hon Charles Mok, my reply after consultation with relevant bureaux and departments is as follows:

(1) and (2) Upon receipt of request for assistance from the subject's family on August 9, the Hong Kong Immigration Department (ImmD) immediately inquired about and followed up the matter via the Economic and Trade Office (ETO) of the Government of the Hong Kong Special Administrative Region (HKSAR) in Guangzhou, and provided appropriate assistance and advice according to his family's wishes. Meanwhile, the Police also received report from the subject's family and classified the case as missing person. In late August the subject returned to Hong Kong upon release, and he has not raised further requests to the HKSAR Government for assistance.

ã€ã€ã€The HKSAR Government always attaches importance to cases in which Hong Kong residents are detained or imprisoned outside the territory. The Government also takes heed of their legal rights and strives to provide them with assistance. At the same time, Hong Kong residents must abide by local laws when they are outside Hong Kong. The HKSAR Government will not and also considers it inappropriate to interfere in the enforcement actions under the jurisdiction of the local authorities.

ã€ã€ã€When Hong Kong residents are detained or involved in criminal litigations or proceedings on the Mainland, the ImmD and/or ETOs on the Mainland will, depending on the circumstances of individual cases and the wishes of the assistance seekers (usually through family members of the concerned Hong Kong residents), inquire of the assistance seekers about details of the cases and explain to them the relevant legislation, regulations and criminal procedures on the Mainland; remind the assistance seekers to consider engaging lawyers on the Mainland to act as their legal representatives and give legal advice on their cases; and if necessary, provide information on the lawyers' associations on the Mainland. Besides, at the request of the assistance seekers, the ETOs on the Mainland will assist them in conveying their requests to relevant authorities on the Mainland

through the established mechanism as appropriate.

(3) According to the Co-operation Arrangement between the Mainland and the Hong Kong Special Administrative Region on the Establishment of the Port at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link for Implementing Co-location Arrangement and the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance, except for "reserved matters" provided in the Ordinance, for the purposes of the applicability of law and delineation of jurisdiction, the West Kowloon Station Mainland Port Area is within the Mainland jurisdiction; and the Mainland authorities can exercise jurisdiction in the Mainland Port Area. Figures of law enforcement in the Mainland Port Area and individual cases are matters related to the Mainland jurisdiction instead of the HKSAR's, and the HKSAR Government does not maintain such information.

Under the current reciprocal notification mechanism, the Mainland and the HKSAR Government should notify each other of the following two kinds of cases regarding residents of the other side: i) the imposition of criminal compulsory measures or institution of criminal prosecution; and ii) unnatural deaths. The notification arrangements also apply to the West Kowloon Station Mainland Port Area.

(4) According to the reciprocal notification mechanism between the Mainland and the HKSAR, during the period from January to October this year the Mainland authorities made 799 notifications concerning the imposition of criminal compulsory measures on Hong Kong residents, involving 611 Hong Kong residents who were suspected of committing crimes such as drug abuse, fraud and smuggling. After receiving notification from the Mainland, the HKSAR Government will inform the family members of concerned Hong Kong resident as early as possible of the imposition of criminal compulsory measures on the Hong Kong residents on the Mainland, so that the person's family members may consider and decide whether to engage a local lawyer or to render other assistance to the person in order to safeguard his/her legal rights. They may also seek assistance from the HKSAR Government when necessary.