

LCQ2: Human rights safeguards under Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019

Following is a question by the Hon James To and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (June 5):

Question:

ã€ã€ã€The Government has submitted to this Council a bill which seeks to enable the Government to surrender fugitive offenders under a one-off case-based approach to jurisdictions (including Mainland China) with which Hong Kong has not entered into any long-term surrender arrangements. Earlier on, 130 000 members of the public joined a march to express strong objection to the proposed legislative amendments of the bill, and the government officials of a number of countries as well as some international chambers of commerce have expressed grave concern on the matter. On the other hand, the Government conducted a public consultation lasting for 20 days only and, under the circumstances that the relevant Bills Committee was yet to examine the general merits, principles and detailed provisions of the bill and was yet to listen to public views, the Government indicated on May 20 that "[it] intend[s] to give notice to the Clerk to the Legislative Council (LegCo) for resumption of the Second Reading debate on the Bill on June 12". In this connection, will the Government inform this Council:

(1) whether it has assessed if the hasty law amendment process and insufficiency in public engagement opportunities will draw a strong backlash from the various sectors of society; if it has, of the details; whether it will consider afresh withdrawing the bill so as to maintain social stability; if not, of the reasons for that;

(2) as the United States-China Economic and Security Review Commission, created by the United States (US) Congress, pointed out in a report published on the 7th of last month that the bill would create serious risks for the national security and economic interests of the US and could potentially violate numerous key provisions of the Hong Kong Policy Act, whether the Government has assessed the impacts on US-Hong Kong relations that the passage of the bill will bring about, including whether the US would repeal the Hong Kong Policy Act and whether such a situation would lead to any adverse consequences, such as overseas enterprises moving their regional headquarters out of Hong Kong and implementing large-scale layoffs in the territory; if it has assessed and the outcome is in the affirmative, of the counter measures; and

(3) given that two years ago, some US Congressmen, out of their worries that

the human rights and freedom in Hong Kong would be jeopardised, re-introduced the Hong Kong Human Rights and Democracy Act to the US Congress, proposing the imposition of sanctions against the government officials in Hong Kong and Mainland China who suppress the basic freedoms of Hong Kong residents, including freezing their US-based assets and denying them entry into the US (but the Act was not enacted), whether the Government has assessed, upon the passage of the bill on surrendering fugitive offenders, if some US Congressmen will re-introduce the Hong Kong Human Rights and Democracy Act and what impacts such a situation will bring onto Hong Kong; if it has, of the details; if not, the reasons for that?

Reply:

President,

Having consulted the Panel on Security of the Legislative Council (LegCo) on February 15, 2019, the Hong Kong Special Administrative Region (HKSAR) Government submitted the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 (the Bill) to LegCo on April 3. The Bill aims at enabling us to deal with a case of a Hong Kong resident suspected of murdering another Hong Kong resident in Taiwan, and plugging the loopholes in the current regime of Hong Kong on mutual assistance in criminal matters (including geographical restrictions and impracticable operational procedures) at the same time. The legislative amendment involves time element. We must establish a legal basis prior to the release of the suspect of the homicide case, which is expected to be in October this year the earliest so that the Government can make necessary preparation for bringing the suspect to face due legal sanction.

Since putting forward the proposal, the Government team has been explaining the proposal to various sectors of the community and listening to their views. Members of the Government team, including Secretaries of Departments and Directors of Bureaux, met with various organisations and sectors, local and overseas chambers of commerce, foreign envoys and local communities, etc. on numerous occasions to have dialogues and exchanges. From our first-hand experience, face-to-face explanation by government officials and their point-to-point responses could often help ease such worries and rectify some incorrect sayings in the community. The Government team will continue to work hard on providing explanations for enhancing the understanding of the Bill among members of the public.

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

(1) By international consensus, surrender of fugitive offenders is executed to fight organised and cross-boundary crimes and a commonly accepted means to reduce crimes effectively. The existing Fugitive Offenders Ordinance (FOO) has made reference to the model treaty promulgated by the United Nations and is in line with the international common practice in respect of human rights and legal procedures. Also, it has balanced the needs of both apprehending fugitive offenders and protecting human rights. With the proposed special surrender arrangements prescribed under the Bill by the Government, there

will only be more instead of fewer requirements for protection of the rights of the subject than under the existing F00.

With the principle of providing more instead of fewer safeguards in making special surrender arrangements, and having considered the specific views and concerns expressed by various sectors, the Government promulgated on May 30 the provision of additional safeguards in the following three aspects to ease the concerns: (1) limiting the application of special surrender arrangements to the most serious offences only by raising the threshold requirement for applicable offences from imprisonment for more than three years to seven years or above; (2) including safeguards that are in line with common human rights protection in the activation of special surrender arrangements, such as presumption of innocence, open trial, legal representation, right to cross-examine witnesses, no coerced confession, right to appeal, etc.; and the requesting party must guarantee that the effective limitation period of the relevant offence has not lapsed; and (3) enhancing protection for the interests of surrendered persons, such as processing only requests from the central authority (as opposed to the local authority) of a place, following up with the Mainland the arrangements for helping sentenced persons to serve their sentence in Hong Kong, negotiating appropriate means and arrangements for post-surrender visits, etc. The policy goals and needs of the Bill are clear. To achieve such goals and needs, the Government considers it necessary to proceed with the legislative process.

(2) Our unique status and advantages under "one country, two systems" are conferred on the HKSAR by the Basic Law. Hong Kong is a separate customs territory and participates in such international organisations as the World Trade Organization and the Asia-Pacific Economic Cooperation, etc. as a separate member. Hong Kong also establishes mutually beneficial relationships with our trading partners. Since Hong Kong's return to the Motherland, the United States (US) has continued to maintain and expand economic and trade ties with Hong Kong on the basis of our unique status. In terms of individual economies, the US is Hong Kong's 2nd largest merchandise trading partner in the world, while Hong Kong is the US' 10th largest export market. For many years, the US has been enjoying the largest trade surplus with Hong Kong among its global trading partners, valued at US\$33.8 billion in 2018. Hong Kong and the US also maintain close investment relations. In 2017, the US was the 7th major source of inward direct investment into Hong Kong, while the US was the 9th major destination of outward direct investment from Hong Kong.

The latest report on the United States-Hong Kong Policy Act published by the US Department of State in March 2019 continues to affirm this special treatment of Hong Kong. The report also recapitulates the fact that "the United States continues to have deep economic and cultural interests in Hong Kong", and that "co-operation between the US government and the Hong Kong government remains broad and effective in many areas, providing significant benefits to the US economy and homeland security". We believe that it is in the US' and Hong Kong's mutual interests to maintain and promote our bilateral relations. At the same time, such bilateral relations can only be maintained and developed on the premise of mutual respect and co-operation.

(3) Since the reunification, the HKSAR has been implementing "Hong Kong

people ruling Hong Kong” and a high degree of autonomy in accordance with the Basic Law, fully and successfully implemented the “one country, two systems” principle. Article 27 of the Basic Law stipulates that Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike. Article 39 also stipulates that the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong shall remain in force and they are implemented by the Hong Kong Bill of Rights Ordinance. We will not allow the illegal suppression of the human rights and freedom in Hong Kong.

The proposals in the Bill target the fugitives who committed serious crimes and do not affect the legal rights and freedom of individuals. On the other hand, Hong Kong's judicial independence ranks 1st in Asia and 8th in the world. Judges exercise judicial power independently, free from any interference. Eminent judges from other common law jurisdictions, such as the United Kingdom, Australia and Canada, have been appointed as non-permanent judges of the Court of Final Appeal. Any case-based surrender request must fully comply with the law and relevant requirements under the arrangement and the safeguards of the rights of individual, including the application for habeas corpus, review of the executive decisions, and the judicial review. In this respect, the Government and the Judiciary have the duty to perform their powers and responsibilities.

We reiterate that amending the FOO is a local legislation exercise, the internal affairs of the HKSAR to which overseas legislatures should respect. The Economic and Trade Offices of the HKSAR in the US have maintained liaison with the local politicians, government officials, businessmen and think tank personnel, and provided explanations to ease their unnecessary worries.

Thank you President.