

LCQ22: Cooperation between HKSAR Government and other jurisdictions on MLA and SFO

Following is a question by the Hon Starry Lee and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (June 6):

Question:

It has been reported that in March this year, the Taiwan Police found, after investigation, that a Hong Kong woman was killed in Taiwan and her corpse was dumped there. The Taiwan Police suspect that a Hong Kong man who went to Taiwan with the woman and subsequently returned to Hong Kong alone is the murderer. However, in the absence of an arrangement for mutual legal assistance in criminal matters or surrender of fugitive offenders (SFO) between Hong Kong and Taiwan, there is no formal channel for exchange of intelligence and documents and for SFO between the two places, which has made it difficult for the law enforcement agencies of the two places to track down the suspect's criminal liability along the line of murder. To ensure that offenders cannot elude justice, and to demonstrate to the public the Government's determination and capability in upholding the rule of law, will the Government inform this Council:

- (1) whether it will facilitate a prompt discussion between the law enforcement agencies of Hong Kong and Taiwan about the exchange of intelligence and documents relating to the aforesaid case;
- (2) whether it has studied if special arrangements may be made to surrender the aforesaid suspect to the law enforcement agency of Taiwan, and assist it in gathering evidence for the case and instituting prosecution; and
- (3) whether it will explore entering into a reciprocal judicial assistance agreement with the Taiwan authorities; if so, of the details; if not, the reasons for that?

Reply:

President,

A consolidated reply to the three parts of the question is as follows:

According to Article 95 of the Basic Law, "[t]he Hong Kong Special Administrative Region may, through consultations and in accordance with law, maintain juridical relations with the judicial organs of other parts of the country, and they may render assistance to each other". According to Article 96 of the Basic Law, "[w]ith the assistance or authorisation of the Central

People's Government, the Government of the Hong Kong Special Administrative Region may make appropriate arrangements with foreign states for reciprocal juridical assistance". Since Hong Kong's return to the Motherland, the Hong Kong Special Administrative Region (HKSAR) Government has been actively taking forward cooperation with other jurisdictions on mutual legal assistance in criminal matters (MLA) and surrender of fugitive offenders (SFO) in accordance with the Basic Law, with a view to combating crimes and upholding justice. At present, Hong Kong has signed MLA agreements with 32 jurisdictions (Note 1) and SFO agreements with 20 jurisdictions (Note 2). The HKSAR Government will continue its proactive work on this front.

It is stipulated in section 2(1) of the Mutual Legal Assistance in Criminal Matters Ordinance (Chapter 525 of the Laws of Hong Kong) that MLA arrangements are applicable to "the Government and the government of a place outside Hong Kong" or "Hong Kong and a place outside Hong Kong" other than "the Central People's Government or the government of any other part of the People's Republic of China" or "any other part of the People's Republic of China". It is also stated in section 2(1) of the Fugitive Offenders Ordinance (Chapter 503 of the Laws of Hong Kong) that SFO arrangements are applicable to "the Government and the government of a place outside Hong Kong" or "Hong Kong and a place outside Hong Kong" other than "the Central People's Government or the government of any other part of the People's Republic of China" or "any other part of the People's Republic of China". At present, Hong Kong does not have MLA or SFO arrangements with Taiwan. Prior to the implementation of a new MLA or SFO arrangement between Hong Kong and any jurisdiction (prescribed arrangement), both parties have to go through the processes of negotiation and signing of the relevant agreement or arrangement as well as completing the respective procedures required for entry into force of the relevant agreement or arrangement before the prescribed arrangement can take legal effect.

Apart from MLA and SFO arrangements, the Hong Kong Police and other law enforcement agencies liaise and cooperate with their counterparts of other places from time to time to exchange intelligence for combating crimes. Besides, under Part VIII of the Evidence Ordinance (Chapter 8 of the Laws of Hong Kong), Hong Kong may, via letters of request issued by the court, seek assistance on criminal matters from courts of other places; similarly, if other places need assistance on criminal matters from Hong Kong, they may make relevant applications to the Hong Kong court. Parties concerned are required to strictly comply with their respective laws and requirements in the liaison and cooperation.

The HKSAR Government is very concerned about and attaches great importance to the case of the victim Poon Hiu-wing. The Hong Kong Police arrested the suspect on March 13, 2018. The case was brought before the Kwun Tong Magistrates' Courts on March 15, and the suspect was detained under the court order on the same day. Hearings were held on April 12 and May 10. At the hearing in May, the prosecution indicated that the investigation would continue for potential new charges and advice from the Department of Justice (DoJ) would be sought. The case has been adjourned to July 5 for further hearing, and the suspect is remanded in the custody of the Correctional

Services Department during the period.

The HKSAR Government is now continuing to handle the case proactively. Police investigation is in full swing under their purview according to laws of Hong Kong and in light of the actual circumstances of evidence collection. Three police officers were sent to Taiwan on March 21, 2018 to follow up the case. The body of the deceased, after returning to Hong Kong, was examined by a forensic pathologist on April 4. The Police are now striving to collect all evidence that may be useful and will not skip any small clue. Also, as the case involves two jurisdictions, DoJ is contemplating how the case should be handled and followed up under the existing legal framework. As legal proceedings of the case are underway, relevant investigation details and evidence cannot be disclosed in order not to affect the conduct of such proceedings. Meanwhile, the Police have been providing assistance and support to the family members of the victim Poon Hiu-wing.

The HKSAR Government fully understands the community's concern about the case. The Police and DoJ will definitely spare no effort to obtain a thorough and clear understanding of the incidents happened, crimes involved and evidence collected in the two jurisdictions, with a view to handling the case in the most appropriate manner.

Note 1: Argentina, Australia, Belgium, Canada, Czech Republic, Denmark, France, Finland, Germany, India, Indonesia, Ireland, Israel, Italy, Japan, Malaysia, Mongolia, the Netherlands, New Zealand, the Philippines, Poland, Portugal, Republic of Korea, Singapore, Sri Lanka, South Africa, Spain, Sweden, Switzerland, the United Kingdom, the United States and Ukraine.

Note 2: Australia, Canada, Czech Republic, France, Finland, Germany, India, Indonesia, Ireland, Malaysia, the Netherlands, New Zealand, the Philippines, Portugal, Republic of Korea, Singapore, South Africa, Sri Lanka, the United Kingdom and the United States.