

LCQ3: Government's efforts in explaining Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019

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

Question:

On the 15th of last month, the Director of the Hong Kong and Macao Affairs Office (HKMAO) of the State Council said that the work of the Special Administrative Region (SAR) Government on amending "two pieces" of ordinances regarding the transfer of fugitive offenders was necessary, appropriate, reasonable and lawful, and the worries about it were unwarranted. On the 17th of last month, the Director of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (the Liaison Office) met with dozens of Hong Kong deputies to the National People's Congress and Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, notifying them that the Central Authorities supported the SAR Government's effort to amend the ordinances in accordance with the law, and requesting them to support the SAR Government in accomplishing its work on amending the ordinances. On the 21st of last month, a Vice-Premier of the State Council said that the SAR Government's amending the ordinances was constitutional and a manifestation of the rule of law, and that the Central Authorities fully supported the work of amending the ordinances. On the same day, the Chief Executive (CE) said that both HKMAO and the Liaison Office had expressed their stances on amending the ordinances because external forces were intervening, and the issues concerning the amendment of the ordinances had been elevated to the level of "one country, two systems". In this connection, will the Government inform this Council:

(1) whether the expression of views by the foreign governments in respect of the personal safety of their nationals in Hong Kong is tantamount to an intervention by external forces referred to by CE; if so, of the justifications for that, and whether it has assessed if CE's remarks have seriously undermined the status of Hong Kong as an international financial centre; if it has assessed and the outcome is in the affirmative, of the remedial measures; if the assessment outcome is in the negative, the justifications for that;

(2) of the details of the Government's efforts in explaining the amendment of the ordinances to representatives of foreign chambers of commerce and foreign

government officials and listening to their views (including the number and dates of meetings, as well as the names of the chambers of commerce and the post titles of the foreign government officials); if the targets to which the explanations were given did not include foreign government officials, of the reasons for that; and

(3) as Article 22 of the Basic Law provides that "[n]o department of the Central People's Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the Hong Kong Special Administrative Region administers on its own in accordance with this Law...", whether it has assessed if Mainland officials' expression of the aforesaid stances constituted a violation of the provision; if it has assessed and the outcome is in the affirmative, how the Government will pursue the matter; if the assessment outcome is in the negative, of the justifications for that?

Reply:

President,

Surrender of fugitive offenders (SFO) is an international consensus to co-operate on combating organised and cross-boundary crimes. The existing Fugitive Offenders Ordinance (FOO) (Cap 503) has drawn reference from the United Nation's Model Treaty on Extradition and is in line with the common international practice. It has in place adequate human rights and legal procedural safeguards, which balance the needs to apprehend fugitive offenders and protect human rights. The subject persons have the right to appeal, apply for habeas corpus and appeal to the Court of Final Appeal; and can also apply for a judicial review of any decision and procedure and appeal to the Court of Final Appeal.

The Hong Kong Special Administrative Region (HKSAR) Government proposes to amend the FOO and the Mutual Legal Assistance in Criminal Matters Ordinance (MLAO) (Cap 525), and the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 (the Bill) was submitted to the Legislative Council (LegCo) on April 3, 2019. The objectives are to form a legal basis on which the HKSAR Government can make necessary preparation for bringing the suspect of the Taiwan homicide case happened in early 2018 to face due legal sanction; and, at the same time, to plug the loopholes in the existing regimes of SFO and mutual legal assistance in criminal matters, including the geographical restrictions and some impractical operational procedures therein.

My consolidated reply to the three parts of Dr Hon Fernando Cheung's question is as follows:

Some jurisdictions in the international community have expressed concerns over the amendment of FOO by the HKSAR Government. We realise that more explanations of the Bill will help people better understand its provisions, objectives and safeguards. The Bill targets fugitive offenders of serious crimes, definitely not ordinary people who are law-abiding. The case-

based surrender proposed by the Bill helps to ensure that offenders of serious crimes punishable with imprisonment for seven years or more cannot elude liability by taking advantage of a legal vacuum while protecting the safety of the general public and the community. The legislative amendments proposed, if passed, will protect the whole society (including business activities) from the threat of offenders. It also had positive effect on and is necessary for the performance of international obligation in maintaining public security and combating serious crimes.

Some places which have entered into a long-term SFO agreement with Hong Kong expressed concerns about whether amending FOO would affect the current long-term agreement. I would like to point out clearly that the proposed amendments will not affect the existing long-term SFO arrangements already in place between Hong Kong and other jurisdictions, nor will it affect the long-term arrangements to be signed between Hong Kong and other jurisdictions in the future. Case-based surrender arrangements only apply to jurisdictions which have not entered into a long-term SFO agreement with Hong Kong. Case-based surrender is only a supplementary measure before long-term co-operation arrangements come into effect and will be adopted only when an applicable long-term agreement is not available. Entering into long-term agreements with other jurisdictions remains our major and principal policy objective. Jurisdictions with a long-term agreement will not and cannot make any case-based surrender arrangements.

The HKSAR Government attaches importance to the views of all social sectors. In respect of the public, since consulting with the LegCo Panel on Security on February 15, the Government team comprising different Principal Officials has kept explaining the proposed legislative amendments to various sectors and listening to their views, and elaborated on the proposal to the public many times through different means. Without stopping their efforts, the Principal Officials met with different sectors and local communities on numerous occasions to have face-to-face dialogues and exchanges. In respect of organisations, the Government has also worked hard on providing extensive explanations.

As at end-May, the Security Bureau and other policy bureaux of the HKSAR Government have met with more than 50 organisations regarding the proposed legislative amendments. In March, the Secretary for Security had a meeting with the European Union Office to Hong Kong and Macao and the related Consuls-General or their representatives at the Central Government Offices for the purpose of briefing and explaining on the aim and contents of the Bill. In March and April, meetings were held with Consuls-General of some countries with a long-term agreement in place for the same purpose. During the meetings, the Secretary for Security stressed that the Bill would not affect long-term agreements already signed and to be signed, and that case-based surrender would not be applicable to jurisdictions with a long-term agreement. The Bill sought only the removal of the geographical restrictions for case-based surrender and the activation of surrender by a certificate issued by the Chief Executive (CE), while fully maintaining the legal regime, court procedures and human rights safeguards. Additional limitations might also be imposed. Furthermore, the Government team attended meetings of the

LegCo Panel on Security for a total of 20 hours on five consecutive days in the recent week to discuss the policy objective and contents of the Bill and respond to Members' questions, so that the Government team could explain more about the Bill's contents.

Regarding the remarks made by the Central Government on the amendments to F00 and MLA0, as pointed out by CE earlier, the HKSAR Government has assumed the leading role in and been responsible for taking forward the legislative amendments all along. Under the provisions of the Basic Law, CE, being the head of the HKSAR, is accountable to the Central People's Government and the HKSAR. CE has reflected the concerns of Hong Kong's society on the legislative amendments to the Central Authorities. Regarding the need to take further measures to allay public concerns, the Central Authorities have expressed understanding and respect and support the HKSAR Government's various Mainland-related measures for enhancing protection, hoping that the HKSAR Government's consolidated response can promote rational discussions in the local community and ease worries. Besides, there have been many views in society about the Central Authorities and the HKSAR as well as "one country, two systems". The Basic Law is the law for implementing "one country, two systems". As such, it is fairly normal for the Central Government to speak on the legislative amendments.

Thank you, President.