

LCQ7: Administrative detention of Hong Kong residents on Mainland

Following is a question by the Dr Hon Kwok Ka-ki and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (December 18):

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, and was detained by Mainland law enforcement authorities on the same day. He alleged that during his detention, he was subjected to inhuman treatment. He was released after 15 days of administrative detention, and he is now seeking asylum in a third place. In this connection, will the Government inform this Council:

- (1) as the aforesaid person has said that Mainland law enforcement officers had claimed that they would report his case to his family members by sending a letter to the Interpol for onward transmission to the Hong Kong Police Force (HKPF) and then to his family members, whether HKPF have received such a letter; if so, of the reasons why HKPF have not passed on the letter to that person's family members; if not, whether HKPF will gain an understanding from the Mainland law enforcement authorities if the letter had been sent;
- (2) since the aforesaid person claimed that he was told that he would be taken back to the Mainland if he received media interviews and spoke publicly about anything other than the alleged offence that he had committed, of the measures in place to protect the personal liberty of that person upon his return to Hong Kong, and whether, after he was released by the Mainland law enforcement authorities, the Government has contacted him to offer any assistance that he may need;
- (3) whether the Government will gain an understanding from the Mainland law enforcement authorities in respect of the allegations made by the aforesaid person, and express unequivocal condemnations to the relevant authorities if the allegations were found to be substantiated;
- (4) whether it knows the number of Hong Kong residents who were subject to administrative detention on the Mainland in each of the past three years;
- (5) whether it knows the procedure to be followed by the Mainland law enforcement authorities for notifying the family members of a Hong Kong resident who is subject to administrative detention, as well as the number of times for which such procedure was followed by the relevant authorities in taking law enforcement actions, in each of the past three years;
- (6) of the reasons why administrative detention is not covered by the scope

of the current notification mechanism set up between HKPF and the Mainland law enforcement authorities; whether both parties will discuss the expansion of the scope of the notification mechanism to cover administrative detention; and

(7) whether it knows the number of Hong Kong residents currently employed by the various consulates-general in Hong Kong; of the measures to ensure that such persons have access to the assistance they need when they are subject to administrative detention on the Mainland?

Reply:

President,

The Hong Kong Special Administrative Region (HKSAR) Government always attaches importance to cases in which Hong Kong residents are detained or imprisoned outside the territory. It also takes heed of their legal rights and strives to provide them with assistance. At the same time, any person 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 any authorities outside Hong Kong.

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

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 Dr Hon Kwok does not imply our acknowledgement of the allegations and details mentioned in the question.

Regarding the question raised by the Member, my reply after consultation with relevant departments is as follows:

(1) to (3) In respect of the case mentioned in the question, upon receipt of

request for assistance from the subject's family on August 9 this year, ImmD immediately inquired about and followed up the matter via the HKSAR Government's Economic and Trade Office in Guangdong, 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. Other issues mentioned in the question are details of the case and we will not comment on them.

Law enforcement agencies outside Hong Kong, including those of the Mainland and overseas, do not have the authority to enforce laws in Hong Kong. If law enforcement officers of non-Hong Kong jurisdictions take law enforcement actions in Hong Kong, this will contravene Hong Kong laws. If there is any illegal act, the Police will handle in accordance with the law. Any person who is worried about his or her personal safety may contact the Police direct.

(4) to (7) Under the current reciprocal notification mechanism, the Mainland and the HKSAR 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 prosecutions; and ii) unnatural deaths.

The Mainland authorities notify the HKSAR Government of criminal compulsory measures imposed on Hong Kong residents suspected of having committed crimes, including detention, arrest, putting on bail and residence under surveillance. From January to November this year, the Mainland authorities made 855 notifications concerning the imposition of compulsory measures on Hong Kong residents, involving 659 Hong Kong residents who were suspected of having committed crimes such as drug abuse, fraud and smuggling. After receiving notification from the Mainland, the HKSAR Government will inform the family members of the Hong Kong resident concerned as early as possible of the imposition of criminal compulsory measures on him or her in 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. They may also seek assistance from the HKSAR Government where necessary.

Cases of administrative detention commonly involve unlawful acts committed by the subjects concerned in the Mainland in breach of the Law on Penalties for Administration of Public Security. Such cases do not fall within the reciprocal notification mechanism. Despite this, the Mainland law enforcement agencies will notify the family members of the subject in accordance with the laws and regulations of the Mainland, although the subject may not want the case to be disclosed to his or her family members. In any event, upon receipt of requests for assistance from Hong Kong residents, ImmD and/or Offices of the HKSAR Government in the Mainland will provide appropriate assistance having regard to the circumstances of the cases and the wishes of the assistance seekers.

The Administration does not maintain the figures requested in the question.