

For discussion on
3 May 2001

LegCo Panel on Security

Hong Kong residents detained in the Mainland and the reciprocal notification mechanism between the Mainland public security authorities and the Hong Kong Police

Introduction

The Administration is requested to provide information on a number of issues relating to Hong Kong residents being detained in the Mainland and the operation of the reciprocal notification mechanism between the Mainland public security authorities and the Hong Kong Police. The list of questions we received from the Clerk to the Panel is at Annex. Our response to these questions is set out in this paper.

Assistance to Detainees and their Families

2. The HKSAR Government is very concerned about safeguarding the legal rights of Hong Kong residents being detained in the Mainland. Under the “One Country, Two Systems” principle, the HKSAR Government does not interfere with the jurisdiction of the Mainland authorities, nor do we expect the Mainland authorities to interfere with our jurisdiction. Hong Kong residents who are being detained in the Mainland for suspected criminal offences should be dealt with and their rights protected in accordance with the relevant laws in the Mainland. Even before the operation of the reciprocal notification mechanism in January this year, upon the request of the detainee or his or her family, we

would render practical assistance as and when necessary to Hong Kong residents detained in the Mainland. The usual procedures adopted are set out below -

- (a) Upon the receipt of a request for assistance from the detainee or his or her family, the Immigration Department will interview the family members to get a thorough understanding of the case;
- (b) Immigration Department will provide information on the contact address and telephone number of law societies in the Mainland as published in 《全國律師協會及有關部門通訊錄》 to the family members concerned so that they can consider the need to seek legal advice; and
- (c) Depending on the nature of the requests made by the family members, Security Bureau will coordinate actions with other relevant Government Bureaux/Departments including the Beijing Office to provide the following assistance -
 - (i) to convey the requests or appeals of family members to the relevant Mainland authorities through the established channel;
 - (ii) through its liaison network at both the central and provincial levels, the Beijing Office will take appropriate follow-up actions where necessary to keep track of the response of the relevant Mainland authorities to the requests referred to them by the

SAR Government;

- (iii) Immigration Department will immediately convey to the family members concerned any latest information received from the Mainland authorities through the Beijing Office. Further referrals will be made if necessary upon the request of family members; and
 - (iv) in the case of a report of a missing person who is suspected to have gone to the Mainland, we will seek the assistance of the Liaison Bureau of the Police to liaise with their Mainland counterparts with a view to verifying if the missing Hong Kong resident has gone to the Mainland and, if so, to locate the person.
3. The Security Bureau will oversee and closely monitor progress on the referrals made to the Mainland authorities. The Immigration Department keeps in close touch with the family members concerned.
4. As at 15 April 2001, there were 104 outstanding request for assistance cases which involved 107 Hong Kong residents being handled by the Immigration Department. Of these, 57 persons are under detention/ trial/ bail in the Mainland while the remaining 50 persons are serving prison sentence. Between 1 July 1997 and 15 April 2001, a total of 100 Hong Kong residents have been released and returned to Hong Kong.

The Reciprocal Notification Mechanism

5. In October 2000, the Security Bureau reached a consensus with the Ministry of Public Security on a reciprocal notification mechanism. It is expressed in the form of an administrative arrangement implemented on the basis of mutual respect for the relevant laws of both sides. The mechanism became operative on 1 January 2001. We have submitted a paper on the notification mechanism for discussion in the Security Panel on 24 October 2000. The scope of the mechanism is recapitulated below -

- (a) Matters which the Mainland Notification Unit should notify the Hong Kong Notification Unit (i.e. the Police) include the imposition of criminal compulsory measures on Hong Kong residents by the public security authorities and the Mainland customs authorities, and the unnatural deaths of Hong Kong residents in the Mainland; and
- (b) Matters which the Hong Kong Notification Unit should notify their Mainland counterpart include criminal prosecutions instituted by the Hong Kong Police Force, the Customs and Excise Department and the Immigration Department against Mainland residents, and the unnatural deaths of Mainland residents in Hong Kong.

6. As at 15 April 2001, a total number of 114 notifications have been made by the Mainland Notification Unit involving 87 Hong Kong residents. (In some cases, the Mainland Authorities made more than one notification to the Hong Kong Police upon a change in the compulsory

measure being taken against a Hong Kong resident, such as from detention to putting on bail; from detention to arrest etc.) Among them, 84 persons are subject to compulsory measures and 3 were dead. Cases relating to the imposition of compulsory measures are mostly related to fraud and smuggling offences and mainly committed in Guangdong. Some cases took place in other provinces/ cities, such as Beijing, Hunan, Liaoning, Shanghai etc. The Hong Kong Notification Unit have made a total number of 642 notifications to the Mainland Notification Unit involving 650 Mainland residents. Of these, 426 cases were under the purview of the Immigration Department, 183 under the Police and 33 under the Customs and Excise Department. These cases were mostly related to forgery, false statement, prostitution, smuggling goods and dangerous drugs offences.

7. As regards the recently reported cases of Mr. Li Shaomin and Mr. Xu Zerong, we have not received any notification from the Mainland Notification Unit. It should be noted that the scope of the notification mechanism only covers cases where criminal compulsory measures are taken by the public security authorities and the Mainland customs authorities. As stated in paragraph 2 above, we will take appropriate follow-up actions if the family members concerned approach the Government for assistance, even if the cases are outside the scope of the notification mechanism. The Government respects the privacy rights of the detainee and the wishes of the families concerned. Not only have we not received any request for assistance in these two cases, one family in fact specifically asked us not to take any action.

8. In the case of Mr. Leung Wah, after Police investigation, it was confirmed in April 2001 that Mr. Leung was the victim of a suspected homicide case which took place in Shenzhen in November last year. A body was found in Nam Tau of Shenzhen on 23 November 2000. The body was badly disfigured and no identification document was found, but the Shenzhen Public Security Bureau suspected that the victim might be a Hong Kong resident and requested the Hong Kong Police to assist in enquiries on 24 November 2000. Checks on all outstanding missing person reports did not yield any match. The Police only received a missing person report on Mr. Leung Wah when he failed to turn up for bail on 11 December 2000 in connection with his involvement in a suspected offence. Mr. Leung was arrested by the Police on 17 November 2000 for possession of obscene articles for the purpose of publication. He was on bail and was required to report back to the Police on 11 December 2000. The Police has been taking appropriate follow-up actions since receiving the missing person report. Subsequent investigations and forensic verification to match Mr. Leung Wah's dental records finally confirmed the identity of the body on 13 April 2001. The Shenzhen Public Security Bureau is investigating the homicide case. The Police will continue to maintain close liaison with the Mainland public security authorities to render any necessary assistance on the investigation.

Relevant Provisions in Mainland Laws

9. The power of the public security authorities in imposing

compulsory measures is provided for under the Criminal Procedure Law of the People's Republic of China. According to the Law, there are five types of compulsory measures which can be taken by the public security authorities, namely summons for questioning, putting on bail, residence under surveillance, detention and arrest. The rights and obligations of persons suspected to have committed a criminal offence are also provided in the Law. The law enforcement authorities are required to inform the family of the detainee or the organisation/unit which he or she belongs to of the reasons for and the place of detention within 24 hours, unless it is not feasible to do so or such notification will affect investigation. A suspect being detained has the right to meet his or her legal representative.

10. To enhance the public's understanding of criminal legal proceedings in the Mainland, the Security Bureau, with the assistance of the Supreme People's Procuratorate, published a booklet on the Criminal Procedure Law 《內地刑事訴訟簡介》 in March 2000. The booklet contains a list of addresses and telephone numbers of complaint channels in the Mainland Public Security Bureaux, People's Procuratorate and the Courts. The booklet has been widely distributed to the public through the Information Office and branch offices of the Immigration Department, the Beijing Office, District Offices and offices of the Hong Kong Trade Development Council. Copies were also made available to the LegCo Secretariat on 22 March 2000.

11. In August 2000, the Beijing Office published another reference booklet on Mainland criminal law and regulations relating to arrest and detention 《與被拘留、逮捕者有關的內地刑事法律、法規實用資料》. This booklet sets out the rights and obligations of persons suspected to have committed a criminal offence in the Mainland. The booklets published by the Security Bureau and the Beijing Office have been uploaded onto the HKSAR Government's web site.

Security Bureau

April 2001

Annex

The Clerk to Security Panel wrote to the Administration on 4 April in relation to the reported detention of Mr. Li Shaomin, Mr. Xu Zerong and Mr. Leung Wah in the Mainland, and asked for replies to the following questions -

- (a) Whether the HKSAR Government has conveyed to the Mainland authorities the concern and worry of Hong Kong people about the recently reported detention cases concerning these cases ?
- (b) Whether the HKSAR Government has taken any actions to understand these cases and whether it is aware of the reasons for detaining these persons in the Mainland ?
- (c) The operation of the reciprocal notification mechanism between the Mainland Public Security authorities and the Hong Kong Police since its implementation, and whether the above cases fall under the scope of notification under the notification mechanism?
- (d) What assistance would be provided by the HKSAR Government to Hong Kong residents detained in the Mainland and their family members?
- (e) Provision in the Mainland laws regarding detention and arrest by the Mainland authorities.