

Discussion Paper (Translation)  
on 3 July 2003

**Panel on Security  
of the Legislative Council**

**Agenda Item V – Issues Relating to  
Hong Kong Residents Detained in the Mainland**

**Introduction**

The Administration is requested to provide information on two issues raised by Members in the case conferences held on 29 January and 15 April this year in relation to Hong Kong residents detained in the Mainland. Our response is set out in this paper.

**Visiting Hong Kong Residents Released on Bail Pending Trial and  
Receiving Treatment in Hospitals in the Mainland**

2. At the case conference held on 29 January 2003, Members enquired whether representatives of the HKSAR Government could visit Hong Kong residents released on bail pending trial who were receiving treatment in hospitals in the Mainland.

3. The HKSAR Government is very concerned about safeguarding the legal rights of Hong Kong residents being subject to criminal compulsory measures in the Mainland. We would offer them appropriate and feasible assistance under the established mechanism. Under the “One Country, Two Systems” principle, the HKSAR Government does not interfere with the jurisdiction of the Mainland authorities. Similarly, the Mainland authorities do not interfere with our independent judicial power as enshrined in the “Basic Law”. Hence, we have to respect the “One Country, Two Systems” principle when offering assistance to the Hong Kong residents concerned.

4. Under the Mainland laws, the HKSAR Government has no right to communicate or visit<sup>Note 1</sup> Hong Kong residents detained in the Mainland. Releasing on bail pending trial is one of the criminal compulsory measures implemented in the Mainland. Under normal circumstances, prior permission has to be obtained from the relevant Mainland authorities before any visit, including visits by family members or any other persons, can be made to a suspect or a defendant who is released on bail pending trial.

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<sup>Note 1</sup> Under the Regulations on Houses of Detention 《看守所條例》 in the Mainland, close relatives of a detainee may visit and communicate with the detainee upon consent of the authority handling the case and approval of the public security authorities. (Close relatives refer to spouses, parents, children and blood siblings.) Besides, a detainee has the right to consult a lawyer.

5. After the case conference held on 29 January, we have reflected to the Mainland authorities Members' concern about Hong Kong residents released on bail pending trial who are receiving treatment in hospitals in the Mainland. In response, the Mainland authorities have indicated that the arrangements set out in paragraph 4 above apply to this category of cases.

### **Response Rate to Enquiries Relating to Request for Assistance Cases**

6. At the case conference held on 15 April 2003, Members expressed concern about the rate of response made by the Mainland authorities to enquiries in relation to request for assistance cases.

7. The HKSAR Government has been taking proactive follow up actions on the petitions and enquiries from the detainees concerned or their family members, and is in close liaison with the relevant Mainland authorities in this respect through the Beijing Office. Between 1 July 1997 and 15 June 2003, replies to 180 cases were received from the Mainland authorities (representing about 40% of the request for assistance cases handled by the Administration during the period). Among these, replies to 126 cases (70%) were received after the implementation of the Notification Mechanism<sup>Note 2</sup>. The response rate for the first six months of 2003 (as at 15 June 2003) is 76%.

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<sup>Note 2</sup> The reciprocal notification mechanism between the Mainland authorities and the Hong Kong Police Force commenced operation on 1 January 2001.

8. The above figures only cover the replies received by the Administration. We do not have figures on replies directly sent to the families of the detainees concerned. In conveying the requests or petitions from the family members, it is our normal practice to request the Mainland authorities to send their replies direct to the families concerned. By doing so, we hope the family members can receive such replies at the earliest opportunity.

9. The Administration will continue to liaise with the Mainland authorities from time to time with a view to securing a better response rate.

Security Bureau  
27 June 2003