

For discussion
on 3 December 1998

LegCo Panel on Security

Arrangements with the Mainland on Surrender of Fugitive Offenders

Existing arrangements

To ensure that criminals cannot escape justice by fleeing to Hong Kong from other jurisdictions, or vice versa, we have embarked on a programme to establish a network of bilateral Surrender of Fugitive Offenders (SFO) Agreements with other countries. We have so far signed 11 such agreements (with Netherlands, Canada, Australia, Malaysia, Philippines, USA, Indonesia, India, UK, Singapore and New Zealand). However, we have yet to establish a formal rendition arrangement with the Mainland for the surrender of fugitive offenders, although we have developed a practical and effective framework of cooperation with the Mainland to tackle cross-border crimes through our liaison channel. The Fugitive Offenders Ordinance (Cap.503) which provides a statutory framework for our SFO arrangements does not apply to the Mainland.

2. Though we do not have a formal SFO arrangement with the Mainland, there exists an administrative arrangement whereby Hong Kong residents are returned from the Mainland to the HKSAR for investigation or trial if they have committed offences solely in Hong Kong, and if they have also committed offences in the Mainland, they are returned after proceedings in the Mainland have been completed, and the sentences have been served. Since 1990, 128 fugitive offenders have been so returned to Hong Kong from the Mainland in this manner (A breakdown of these cases by nature of the alleged offences is at the **Annex**).

3. Hong Kong has not, on the other hand, returned any fugitive offenders to the Mainland, as this cannot be done in the absence of a formal arrangement which is supported by legislation.

Establishing an arrangement with the Mainland

4. The present arrangement is unsatisfactory. We do not wish to see the HKSAR becoming a haven for fugitive criminals. The recent case of Li Yuhui has also highlighted the need for a rendition arrangement in certain situations of concurrent jurisdiction. We fully recognise the

value of putting in place a formal arrangement with the Mainland as early as possible.

5. Rendition has been a subject of discussion between Hong Kong and the Mainland in the past few years. Prior to the reunification, preliminary discussion with the Guangdong authorities started in April 1996. We provided the Guangdong authorities through our liaison channel with information on our law and procedure in processing requests for SFO from other jurisdictions. We also explained to them the usual safeguards on the rights of the individuals contained in international SFO agreements. We considered it then a logical step to start discussion with the Guangdong authorities first, in view of the close cooperation between the two places in criminal matters. We also reckoned that local legislation would need to be drafted and enacted before fugitive offenders could be arrested, detained and surrendered to the Mainland under any agreed arrangements.

6. Discussion however did not achieve much progress because of other more pressing priorities at the time.

7. After the reunification, we have resumed our efforts to establish a rendition arrangement with the Mainland, and we have been actively considering how to take this forward with the relevant authorities. Given the immense differences in the legal and judicial systems in the Mainland and the HKSAR, we need to proceed carefully and it would not be an easy task. For example, it would be difficult to reconcile the differences in the policy on death penalty in the two places.

8. We are of the view that the following should be our guiding principles in devising a rendition arrangement with the Mainland--

- (1) Our approach should be consistent with the provision under Article 95 of the Basic law which provides that the HKSAR may through consultations and in accordance with the law, maintain juridical relations with the other parts of the country, and they may render assistance to each other.
- (2) Any rendition arrangement must be underpinned by legislation in the HKSAR.
- (3) Any rendition arrangement will have to be acceptable to both the HKSAR and the Mainland.

- (4) Any rendition arrangement should take into account of the One Country Two Systems principle and the differences in the legal and judicial systems of the two places. It should balance the need to prevent criminals from escaping justice and the need to safeguard the rights of individuals. The usual safeguards (including double criminality, speciality, protection against resurrender to a third country, death penalty and the normal exclusion in relation to political offences and political prejudice) in our SFO Agreements with other jurisdictions will be of useful reference.
- (5) Any rendition arrangement must be consistent with Article 19 of the Basic Law which confers to the SAR courts jurisdiction over offences committed in the HKSAR. However, it must be acknowledged that there will be situations of concurrent jurisdiction. Our rendition arrangement should seek to lay down some guiding principles for transfer of cases in such situation, and for determining surrender where cross boundary crimes are involved.

9. We are now aiming at working out an arrangement which is not confined only for application to the Guangdong Province, but a system which may apply to all provinces in the Mainland consistently. We are given to understand that any rendition arrangement will involve the Public Security Ministry, the Procuratorate and the Courts in the Mainland. We have started exploratory discussions with the relevant Mainland authorities to find out more about the systems and arrangements in the Mainland, with the objective of formulating proposals for further study.

10. In view of the public concern over the recent cases of Cheung Tze-keung and Li Yuhui, the Government will, as the Chief Secretary for Administration has pledged, do its utmost to press ahead its work with a view to concluding an early agreement with the Mainland on this important matter.

Security Bureau
23 November 1998

Renlegco/11/98

**Fugitive Offenders Returned from the Mainland to Hong Kong
Breakdown by nature of offences**

	1990	1991	1992	1993	1994	1995	1996	1997	1998 (up to 5.11.98)
Murder, manslaughter, homicide	1		2		3	3	4	2	1
Wounding, assault			1	1	1	1	2		
Rape			1	1			1		3
Kidnapping, false imprisonment		2	1			2			2
Robbery	1		6	5	3	2	3	1	
Blackmail			2		1		1		1
Arson				1				1	
Burglary, theft, handling stolen goods		2		2	3	4	5	4	5
Deception, forgery, counterfeiting			1			1	3	1	3
Dangerous Drugs offences			1	6	2	3	3	4	1
Possession of arms and ammunition							1	1	
Others				2	2	2	1	1	1
Total	2	4	15	18	15	18	24	15	17