

For information

Legislative Council Panel on Security
Arrangements with the Mainland on Transfer of Sentenced Persons

Purpose

This note is provided in response to Members' request for information on the progress of the discussions with the Mainland on the arrangements for transfer of sentenced persons between the two places.

Background

2. Transfer of sentenced persons (TSP) to their places of origin, by returning them to an environment free of language and cultural barriers and where their friends and relatives can visit them on a regular basis, is conducive to their rehabilitation.

3. Our policy is to facilitate such transfers between Hong Kong and other jurisdictions. Enacted in June 1997, the Transfer of Sentenced Persons Ordinance (Cap. 513) provides a mechanism for implementing TSP arrangements between Hong Kong and other places (excluding China and any part thereof). It also regulates the continued custody of sentenced persons transferred and deals with notification of the sovereign power of any transfer requests.

4. Under the TSP Ordinance, foreign prisoners in Hong Kong, irrespective of their race and nationality, may apply through the Correctional Services Department (CSD) for transfer back to their own countries to serve the remainder of their sentences. Hong Kong people imprisoned in overseas countries may also make similar applications. Transfer applications may be processed in accordance with standing bilateral TSP agreements or pursuant to ad hoc arrangements when such agreement is not in place.

Transfer of Sentenced Persons Arrangements with the Mainland

5. Given the geographical proximity and close ties between Hong Kong and the Mainland, it is natural that there are Hong Kong people who have committed offences on the Mainland and are serving prison sentences there, and vice versa. It is desirable and consistent with our policy that arrangements

should be established for the transfer of sentenced persons between the two places. Article 95 of the Basic Law provides that the HKSAR may, through consultations and in accordance with the law, maintain juridical relations with the judicial organs of other parts of the country, and they may render assistance to each other.

6. Against the above background, the authorities of the two sides commenced discussions on the arrangements for transfer of sentenced persons in March 2000. Discussions have centred around the main principles and provisions enshrined in the TSP Ordinance and the TSP agreements that we have signed with other jurisdictions, which include, for example, the conditions for transfer, procedures for transfer, retention of jurisdiction and continued enforcement of sentence. Through the discussions, both sides have gained more in-depth understanding of the legal system and concepts of the other side. However, because of the differences in the legal and judicial systems of the two places and the complexity of the issues involved, the discussions have not been completed. We will continue to pursue this subject with a view to reaching early agreement with the relevant Mainland experts on an appropriate arrangement for the transfer of sentenced persons between the HKSAR and the Mainland.

7. The TSP Ordinance only enables transfer of sentenced persons between Hong Kong and places outside China, and does not cover possible transfers between Hong Kong and the Mainland. The TSP agreement with Mainland, when concluded, will need to be implemented in Hong Kong by local legislation. The relevant bill will, of course, be subject to the scrutiny of the Legislative Council, and the Panel on Security will be consulted on the legislative proposals beforehand.

Security Bureau
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