

Opening remarks by SJ at press conference on Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 (with video)

The Secretary for Justice, Ms Teresa Cheng, SC; the Secretary for Security, Mr John Lee; and representatives of the Department of Justice and the Security Bureau held a press conference on the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 yesterday afternoon (May 7). Following is the English translation of the opening remarks by Ms Cheng at the press conference:

Thank you for coming to the press conference this afternoon. In regard to the different views recently expressed in the community on the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill, we would like to reiterate the policy objectives and the directions of the amendments as well as respond to those views. Let me first invite the Secretary for Security to speak on the policy objectives. (Please refer to the opening remarks by the Secretary for Security.)

Thank you, Secretary for Security. I will supplement briefly on the Secretary's remarks on the directions of the amendments. There are three directions. Firstly, the current approach to initiate the procedure of vetting by the Legislative Council will be replaced by a certificate to be issued by the Chief Executive. Secondly, the amendments proposed to change the 46 items of offences and offences punishable with imprisonment for more than one year to 37 items of offences and offences punishable with imprisonment for more than three years. Thirdly, the proposed amendments are to be applicable to any jurisdiction. These three points are the major directions.

I would also like to take this opportunity to respond to some views expressed recently. You may have heard that there are suggestions on amending the Criminal Jurisdiction Ordinance or Offences against the Person Ordinance, or trying Hong Kong residents locally. We understand that these suggestions are aimed at dealing with the murder case that happened in Taiwan. However, they cannot serve the purpose for the following reasons.

Firstly, Hong Kong has a common law system and adopts the territoriality principle in respect of criminal jurisdiction. Generally, our jurisdiction will apply only when the whole or part of the criminal act takes place within the territory. Practical problems in the collection of evidence and tendering of evidence in court will arise if extraterritorial jurisdiction is adopted.

Secondly, the Taiwan murder case could not be dealt with even if the ordinances are amended. Since the suggested amendments will turn acts in other jurisdictions into crimes under the Hong Kong law, the related provisions can only be applicable to crimes committed after the (amendment) ordinance has come into force. Therefore, the suggestion cannot serve the purpose of handling the Taiwan murder case.

Thirdly, if a provision is added to provide for retrospectivity, it will be in violation of Article 12(1) of the Hong Kong Bill of Rights, which stipulates that criminal offences or penalties shall not have retrospective effect. This is an important and fundamental problem which cannot be solved by amending the ordinances.

There are also views on whether there exists an exception based on Article 12(2) of the Hong Kong Bill of Rights. I would like to let everyone here know that this suggestion is not sound. The provision originated from Article 15(2) of the International Covenant on Civil and Political Rights (ICCPR). According to authoritative commentaries on the ICCPR, the concept of "criminal according to the general principles of law recognised by the community of nations" actually refers to crimes committed under international treaty law and customary international laws. One example of crimes under international treaty law would be the crime of genocide under Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide in 1946. In customary international law, we can find examples of war crimes, crimes against humanity and peace, etc. If we look at whether Article 12(2) of the Hong Kong Bill of Rights is an exemption, and whether it can cover a situation like murder, the answer is that it cannot. Therefore, this suggestion is not sound.

Having looked at the above points, it is obvious to all that these suggestions and opinions will not solve the case in Taiwan.

Further, there is recently a saying or suggestion on whether we can adopt "trying Hong Kong residents locally" when dealing with this case. In fact, this idea also has the same problem of criminal retroactivity which I mentioned just now. Even if an ordinance providing for it was enacted, it could only apply to crimes committed after the ordinance has come into force. It cannot apply retroactively to the murder case that occurred in Taiwan last year.

The second problem of this suggestion is the same as the first point I made. In other words, the scope of the proposed "trying Hong Kong residents locally" is more extensive than the amendment of one or two offences. It may be necessary to turn the 46 items of offences under the Fugitive Offenders Ordinance into the mode of "trying Hong Kong residents locally". This involves a fundamental change in our criminal law and system, and Hong Kong's established "territoriality principle". Therefore, this proposal cannot be adopted lightly.

Thirdly, as mentioned earlier, it may bring practical problems in its actual operation, such as collection of evidence, the handling of relevant

evidence during prosecution proceedings, and discharge of duty by the prosecution. Generally speaking, the five proposals are in fact not feasible and the proposal put forward by the Security Bureau and the Government is a desirable option.

I have made some key responses just now. I hope, as the Secretary for Security has said, that we can discuss the various amendments and related issues rationally at the Legislative Council's Bills Committee as soon as possible.