

SJ's opening remarks at meeting of Legco Panel on Administration of Justice and Legal Services

Following are the opening remarks by the Secretary for Justice, Mr Wong Yan Lung, SC, at the meeting of the Panel on Administration of Justice and Legal Services in the Legislative Council today (March 30)(translation):

Madam Chairman,

The incident concerning Mrs Grace Mugabe, the wife of the President of the Republic of Zimbabwe, was only touched upon briefly in the Special Finance Committee last Monday. I am grateful for the opportunity this afternoon to provide further details to this Panel.

By way of background, Mrs Mugabe was alleged to have assaulted Mr Richard Jones, a photojournalist working for the Sinopix Photo Agency, and a colleague of his, on 15 January 2009 during her visit to Hong Kong. The photojournalists made a report to the Hong Kong Police on January 17, 2009, the day after Mrs Mugabe's departure.

The police referred the case to the Prosecutions Division of the Department of Justice (DoJ) for legal advice. In view of the identity of Mrs Mugabe, the HKSARG approached OCMFA to ascertain whether she enjoyed any privileges or immunities.

OCMFA advised that in accordance with customary international law and Chinese diplomatic practice, the Central People's Government in general confers diplomatic privileges and immunities to spouses of foreign heads of states during their stay in China, including Hong Kong, and requested the HKSARG to handle the case in accordance with Article 22.1(3) of the Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities (the Regulations).

Article 22.1(3) of the Regulations provides:

"The following persons shall enjoy immunity and inviolability necessary for their transit through or sojourn in China: ... (3) other visiting foreigners to whom the Chinese Government has granted the privileges and immunities specified in the present Article."

OCMFA further advised that the privileges and immunities that Mrs Mugabe enjoyed included the immunity from criminal jurisdiction equivalent to that enjoyed by diplomatic agents under Article 14 of the Regulations, irrespective of whether the relevant act was performed in the exercise of official functions.

The issue of privileges and immunities is a matter of foreign affairs, which is the sole responsibility of the Central People's Government under Article 13.1 of the Basic Law. It is further specifically governed by the Regulations, which apply to Hong Kong by virtue of Article 18.2 and their inclusion in Annex III of the Basic Law upon their promulgation by the Promulgation of National Laws Notice 1997.

This case has been handled strictly in accordance with the Regulations and the relevant customary international law and practice. In fact, apart from China, several states grant immunities to spouses of foreign heads of state, including the UK and Australia.

In the case of UK, section 20(1) of the State Immunity Act 1978 provides that the Diplomatic Privileges Act 1964 shall apply to "a sovereign or other head of State" and "members of his family forming part of his household", "as it applies to the head of a diplomatic mission" and "to members of his family forming part of his household". Therefore, the immunities of the travelling head of state and his family members are taken to be the same as the complete procedural immunity enjoyed by a diplomatic agent. As such, family members, including spouses, of foreign heads of state are conferred immunities in the UK, including immunities from arrest or detention, and from criminal, civil and administrative jurisdiction. Members may note that similar protection was conferred in Hong Kong before 1997 by the State Immunity Act 1978 through the State Immunity (Overseas Territories) Order 1979.

In the case of Australia, section 36 of the Foreign States Immunities Act 1985 (Cth) provides that the Diplomatic Privileges and Immunities Act 1967 (Cth) extends to both "the head of a foreign State" and "a spouse of the head of a foreign State" as that Act applies "in relation to a person when he or she is the head of a diplomatic mission". Spouses of foreign heads of state are therefore conferred immunities in Australia, including immunities from arrest or detention, and from criminal, civil and administrative jurisdiction.

It is clear from the above that there is considerable international practice of conferring immunities to spouses of foreign heads of state, which serves the important purpose of contributing to the development of friendly relations among nations.

There is no question of this incident having the effect of undermining the rule of law or the principle of one country two systems and high degree of autonomy laid down in the Basic Law.

As I have pointed out before, the issue of privileges and immunities is a matter of foreign affairs for which the Central People's Government is responsible under the Basic Law, and the matter is regulated by the Regulations which apply to the HKSAR under the Basic Law.

In exercising DoJ's independent prosecution powers conferred by Article 63 of the Basic Law, DoJ is obliged to take into account all relevant laws and factors, including the issues of immunity under any applicable national laws. DoJ has no power to prosecute a person who enjoys immunity from criminal prosecution pursuant to the laws of Hong Kong. DoJ acted in strict accordance with the law in the present case.

I should add that the OCMFA was informed of circumstances of the case before it advised HKSARG of the position of immunity regarding Mrs Mugabe. The HKSARG has acted in strict accordance with the Basic Law and other relevant laws

of Hong Kong, and has conveyed to the CPG the concerns of the community of Hong Kong about the incident.

Thank you.

Ends/Monday, March 30, 2009