



NEW YORK
CITY BAR

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Via email:

The Honorable Carrie Lam
Office of the Chief Executive
1 Tim Wa Avenue
Admiralty
Hong Kong, S.A.R.
ceo@ceo.gov.hk

Re: Proposed Amendments to Hong Kong's Extradition Laws

Dear Chief Executive Lam:

I am writing on behalf of the Association of the Bar of the City of New York¹ to express our concern regarding proposed amendments to Hong Kong's extradition laws, as well as the process by which these amendments are being considered. Because the Legislative Council ("LegCo") Bills Committee has not yet had an opportunity to formally vet a full proposal, I urge you to delay the voting process set to resume on April 30, 2019. I further urge you to ensure that any final bill sent for approval includes necessary safeguards—which are lacking in the current draft—consistent with the Hong Kong Basic Law and international legal principles.

Under existing legislation concerning extradition, individuals can only be extradited to countries with which the Hong Kong government has standing extradition agreements. Extraditions to other countries are considered on a case-by-case basis. Existing legislation deliberately excludes mainland China from these arrangements, a decision made prior to Hong Kong's transfer of sovereignty in 1997 as a commitment to the people of Hong Kong and the international community on the rule of law, and resulting from concerns over mainland China's poor human rights record and lack of basic due process protections in the criminal justice process.²

¹ The Association is an independent non-governmental organization with more than 24,000 members in over 50 countries. Founded in 1870, the Association has a long history of dedication to promoting the rule of law in China and in Hong Kong, chiefly through its Committee on International Human Rights, its Committee of Asian Affairs, and its Task Force on the Independence of Lawyers and Judges.

² The Association has raised its concerns regarding these issues on numerous occasions. *See, e.g.*, Letter Marking the Third Anniversary of the '709 Crackdown' in China (Jul. 9, 2019), <http://bit.ly/2KX0MyB>; Letter to the President of China regarding the intimidation and harassment of human rights and public interest lawyers (Jul. 28, 2015), <http://bit.ly/2KYGogp>; Letter to China's Minister of Justice Regarding Recent Detention of Women's Rights Defenders (Apr. 3, 2015), <http://bit.ly/2Vi5RWh>. (All websites cited in this letter were last visited on April 29, 2019.)

Indeed this decision has proven extremely beneficial to Hong Kong's relationships and bolstered the legitimacy of existing extradition treaties.³

The Hong Kong Security Bureau proposed changes⁴ to two laws in February 2019: The Fugitive Offenders Ordinance⁵ and the Mutual Legal Assistance in Criminal Matters Ordinance.⁶ The changes⁷ would expand the case-by-case extradition arrangement to mainland China, as well as any other jurisdictions where there are no existing agreements, and remove LegCo's role in providing oversight and protection by reviewing individual requests for extradition before the transfer of criminal suspects to mainland authorities.

The removal of provisions in existing laws that exclude applicability to mainland China is especially troubling because it allows the transfer of people accused of crimes abroad from Hong Kong to mainland China where the judiciary lacks independence. In China, individuals would be subjected to a system that has a long record of serious violations of the right to a fair trial, including limitations on access to counsel, arbitrary detention, torture and other ill-treatment, and other violations of human rights. The amendments thus have the potential to seriously undermine existing rule of law commitments by the Hong Kong government to the rule of law and the international community.

Indeed, there are already concerns about Hong Kong's existing international obligations around extradition. In May of 2018, Hong Kong's refusal to extradite a cybercriminal to the United States under a bilateral agreement for prosecution upon the request of Beijing is the most serious example of these recent actions.⁸ The proposed extradition law only strengthens this concern. Despite the recent amendments to the legislation, which remove certain business-related offenses, the City Bar remains concerned that the proposed amendments will threaten Hong Kong's role as a robust and neutral venue for international business.

Moreover, the amendments threaten to put Hong Kong in direct contravention of international laws. Protections in the International Covenant on Civil and Political Rights (ICCPR) apply in Hong Kong, and Hong Kong is bound by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as customary international law. All of these laws prohibit *refoulement* or returning people to places where they are likely to face torture and other ill-treatment, unfair trials, and other human rights violations.

³ See e.g. Erik Alexander Rapoport, EXTRADITION AND THE HONG KONG SPECIAL ADMINISTRATIVE REGION: WILL HONG KONG REMAIN A SEPARATE AND INDEPENDENT JURISDICTION AFTER 1997, 4 Asian Am. L. J. 135 (1997).

⁴ Gary Cheung, Alvin Lum, and Ng Kang-Chung, "Fugitives face extradition to Macau, Taiwan and mainland China under Hong Kong government proposal to amend law this year," South China Morning Post (Feb. 12, 2019), <http://bit.ly/2UQEyCY>.

⁵ Fugitive Offenders Ordinance (Cap 5013), <http://bit.ly/2UP9pjd>.

⁶ Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525), <http://bit.ly/2GvkYeY>.

⁷ The Hong Kong Government's submission to the Legislative Council on the proposal, <http://bit.ly/2URVlph>.

⁸ Naomi Ng and Alvin Lung, "In a first, Hong Kong refused US extradition bid following Beijing request, State Department report says", South China Morning Post (May 30, 2018); *see also* Venus Wu, "China leaned on Hong Kong not to hand fugitive to U.S., State Department says", Reuters (May 30, 2018).

We are especially concerned about the impact these proposed changes will have for human rights activists, journalists, and others critical of the Chinese government whose activities are protected in Hong Kong but not in mainland China. The Hong Kong Government's submission to LegCo regarding the proposed amendments details safeguards for human rights, including that there must be "double criminality" where the crime concerned in an extradition request must be an offence in both Hong Kong and the requesting jurisdiction, and that requests of a "political character" will be refused, among other protections.⁹ These safeguards, however, provide little comfort in the context of the Chinese government's history targeting human rights activists and others, including by regularly bringing non-political criminal charges such as fraud of tax offenses that are also criminalized in Hong Kong against individuals critical of the government as a means of silencing and preventing their work. Further, the term "political character" is not defined, and given increasing concerns over the independence of the Hong Kong judiciary from pressure from Beijing, that protection may be meaningless. Indeed, the very existence of the new extradition provisions, should they pass, may have potent chilling effect on freedom of expression and association in Hong Kong.

Given the serious impact that this proposed legislation will have on rights and freedoms in Hong Kong, we urge the Security Bureau to rescind the proposed amendments in their current form, and urge you to exercise your authority to enable the legislative process greater time to review any future proposals. Alternative proposals to address any existing loopholes in the current law have been proposed by professional organizations, civil society groups, and groups of legislators. The three-week time period for consultation that was provided is woefully inadequate, and I urge you to postpone the voting process, currently set to resume on April 30, 2019, before the Bills Committee has formally vetted the proposal.

These amendments, if approved, will seriously undermine rule of law protections for the people of Hong Kong, foreigners residing in Hong Kong, and business persons and tourists visiting Hong Kong. This proposal will irrevocably tarnish the city's image as a business center governed by the rule of law. We urge you to take steps to ensure that Hong Kong maintain its independence and commitments to the international community and the people of Hong Kong by ensuring that these amendments are discarded, and a thoughtful process for any future changes to existing legislation is resumed with due time and consideration provided to lawmakers.

Respectfully,



Roger Juan Maldonado
President

cc:

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⁹ The Hong Kong Government's submission to the Legislative Council on the proposal, <http://bit.ly/2URVlph>.