

LETTERHEAD OF HONG KONG HUMAN RIGHTS MONITOR

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14 November 2001.

Chairman Hon James TO Kun-sun,
Subcommittee on Fugitive Offenders (Sri Lanka) Order & Fugitive Offenders (Portugal)
Order,
Legislative Council.

Dear Chairman,

Fugitive Offenders (Sri Lanka) Order & Fugitive Offenders (Portugal) Order

The Hong Kong Human Rights Monitor believes there are certain areas of Fugitive Offenders (Sri Lanka) Order and Fugitive Offenders (Portugal) Order which may have serious human rights implications and need careful study and evaluation. Therefore we urge your Committee to study the orders, in particular those **concerns set out below**, carefully. We also urge your Committee resolve to extend the period for considering the Orders (or at least Fugitive Offenders (Sri Lanka) Order) so that human rights NGOs, like the Hong Kong Human Rights Monitor, may have time to study the issues involved. It will make it possible for us to prepare our written submission for your Committee and meet the Committee at a later time if we do find problems in the Orders.

To cite one of the problematic articles that we believe your Committee need further consideration is Art. 3 of Fugitive Offenders (Sri Lanka) Order, "Surrender of Nationals ... The Government of the Hong Kong Special Administrative Region reserves the right to refuse the surrender of nationals of the People's Republic of China." The article covers PRC nationals

without mentioning permanent residents of Hong Kong SAR who may not necessarily be PRC nationals. The Order is a bilateral agreement between HKSAR and the Democratic Socialist Republic of Sri Lanka. The protection should also be given to Hong Kong permanent residents. It is difficult to understand that while the Central Authority has allowed the Hong Kong SAR to enter into an agreement with a foreign government on behalf of Hong Kong but our government reserves the right to reserve to surrender Chinese nationals only but not also Hong Kong permanent residents in all agreements except the ones with the United Kingdom and Portugal. Please refer to the attachment for further information on those relevant provisions in other Fugitive Offenders Orders.

We are also concerned that there are a number of qualifications on what is considered an offence of political character in the Fugitive Offenders (Sri Lanka) Order. Such qualifications include (1) murder or manslaughter, (2) offenses against laws relating to explosives, and (3) an offence in which both parties have an obligation under any convention to prosecute or grant surrender. The Order contains one of the most elaborate sets of qualifications as compared to most of the Orders (See attachment). Moreover, the qualification in respect of offences against laws relating to explosives is totally new. All these deserve detailed examinations and careful scrutiny. Our worry is that with the qualifications, the court will be less free to determine if an offence of which a person is accused or was convicted falls within qualification (1) or (2) is in fact of a political character.

Your Committee may also want to look at the offences like "offences related to women and girls" and question its vagueness and why not any child instead of just the girl child.

As the Monitor did not realise that the Orders are being considered by the Committee until very recently, we are sorry that we cannot provide you with a full submission at this moment.

Yours sincerely,

Law Yuk-kai (Signed)

Director

ATTACHMENT: INFORMATION ON FUGITIVE OFFENDERS

1. Country: *Netherlands* (§503A)
 - Reserve the right not to surrender: nationals of the state whose Government is responsible for its foreign affairs.
 - No qualifications on what is considered an offence of political character.
2. Country: *Canada* (§503B)
 - Reserve the right not to surrender: nationals of the state whose Government is responsible for its foreign affairs.
 - No qualifications on what is considered an offence of political character.
3. Country: *Australia* (§503C)
 - Reserve the right not to surrender: nationals of the state whose Government is responsible for its foreign affairs.
 - Qualifications on what is considered an offence of political character: (1) any offence in which both parties have an obligation in accordance with a multilateral agreement.
4. Country: *Malaysia* (§503D)
 - Reserve the right not to surrender: nationals of the state whose Government is responsible for its foreign affairs.
 - Qualifications on what is considered an offence of political character: (1) murder or other willful crime against the Head of State, (2) regarded as a political character by a binding international agreement, (3) an attempt or conspiracy to commit any such offense.
5. Country: *Philippines* (§503E)
 - Reserve the right not to surrender: nationals of the state whose Government is responsible for its foreign affairs.
 - Qualifications on what is considered an offence of political character: (1) any offence in which both parties have an obligation in accordance with a multilateral agreement.
6. Country: *United States of America* (§503F)
 - Reserve the right not to surrender: nationals of the state whose Government is responsible for its foreign affairs.
 - Qualifications on what is considered an offence of political character: (1) murder or other willful crime against the Head of State, (2) regarded as a political character by a binding international agreement, (3) an attempt or conspiracy to commit any such offense.
7. Country: *Indonesia* (§503O)
 - Reserve the right not to surrender: nationals of the state whose Government is responsible for its foreign affairs.

- Qualifications on what is considered an offence of political character: (1) murder or other willful crime against the Head of State. Note: in any case where the question arises as to where a case is a political offence the decision of the requested party is determinative.
8. Country: *India* (§503P)
- Reserve the right not to surrender: nationals of the state whose Government is responsible for its foreign affairs.
 - Qualifications on what is considered an offence of political character: (1) murder or other willful crime against the Head of State, (2) offenses in the scope of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft (1970), (3) offenses in the scope of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), (4) offences within the scope of the NY Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (1973), (5) offenses within the scope of the NY International Convention against the Taking of Hostages (1979), (6) offence in which both parties have an obligation in accordance with a multilateral agreement.
9. Country: *Singapore* (§503Q)
- Reserve the right not to surrender: nationals of the People's Republic of China.
 - No qualifications on what is considered an offence of political character.
10. Country: *United Kingdom* (§503R)
- Reserve the right not to surrender: nationals of the People's Republic of China, with clauses regarding people with the right of abode in Hong Kong.
 - No qualifications on what is considered an offence of political character.
11. Country: *New Zealand* (§503S)
- Reserve the right not to surrender: nationals of the People's Republic of China.
 - No qualifications on what is considered an offence of political character.
12. Country: *Sri Lanka* (§503T)
- *Reserve the right not to surrender: nationals of the People's Republic of China.*
 - *Qualifications on what is considered an offence of political character: (1) murder or manslaughter (no qualification regarding Head of State), (2) offenses against laws related to explosives, (3) an offence in which both parties have an obligation under any convention to prosecute or grant surrender.*
13. Country: *Portugal* (§503U)
- *Reserve the right not to surrender: nationals of the People's Republic of China or Hong Kong permanent residents.*
 - *No qualifications on what is considered an offence of political character.*

Note: For countries 12 & 13, agreements not yet incorporated into the laws of Hong Kong.