

Honourable Legislative Councillor,
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Central, Hong Kong.

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Honourable Legislative Councillor,

Re: Extradition Bill.

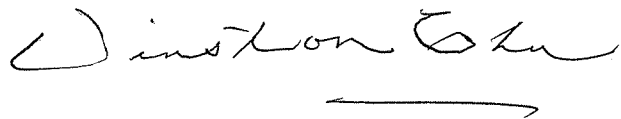
I respectfully submit for your kind consideration my enclosed letter and the Chief Secretary Mr. Matthew Cheung Kin-Chung's article recently published in South China Morning Post.

To be fair to Hong Kong people, the proposed Bill must not be passed with indecent haste. Their legal right to a fair trial must not be sacrificed in return for vague promises by the Government of administrative protection. These are mere empty words without any legal force or effect.

It is therefore essential for the Bill to be thoroughly debated and its language and long-term effects carefully scrutinized in accordance with normal due process.

Passing the Bill without such proper safeguards is dangerous.

Yours faithfully,



Winston Ka-Sun Chu, J.P.

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LETTERS

South China Morning Post

FRIDAY, MAY 24, 2019

Those who are extradited must receive fair trial

As a former lawyer and law teacher, I was impressed by the May 13 article, "Justice demands that we amend our extradition laws".

In his article, Chief Secretary Matthew Cheung Kin-chung "lays out the case for why Hong Kong should not fear the government's plan", and he also ably sets out 10 arguments to support the government's current proposal.

But he did not address the most fundamental issue: whether the person surrendered to another jurisdiction will be given a fair trial there, nor how this could be ensured after the person has been handed over.

The government has always been proud to sing the praises of Hong Kong's legal system, which is supported by our system of the rule of law, our observance of the rules of natural justice and our compliance with our Bill of Rights based upon international standards and norms.

Our legal system is also supported by jury trials, excellent judges, fair-minded prosecutors and competent lawyers.

Most of all, the Hong Kong government itself ascribes to – and is bound by – the rule of law.

Mr Cheung and all of our officials, whether in government or elected to office, are reminded that their first duty – as representatives of Hongkongers – is owed to everyone who is entitled to the protection of our laws.

Extremely careful consideration must be given to any proposal that may see a Hong Kong person, protected under Hong Kong's legal system, handed over to a different jurisdiction that may not practise the same legal principles or may enforce a different rule of law system, and where a fair trial cannot be assured.

I shall be grateful if Mr Cheung could publicly respond to these concerns to dispel the legitimate fears of Hong Kong people.

Winston K.S. Chu, Wan Chai

Justice demands that we amend our extradition laws

S C M P 1 . 5 . 2 0 1 9

Matthew Cheung lays out the case for why Hong Kong should not fear the government's plan

The Hong Kong government's proposal to amend the Fugitive Offenders Ordinance and the Mutual Legal Assistance in Criminal Matters Ordinance has aroused considerable concern in some quarters.

Some fear it might affect Hong Kong businessmen doing business on the mainland. Others contend it might erode overseas investors' confidence in Hong Kong and put at risk the integrity of "one country, two systems". Those who subscribe to the conspiracy theory resist the proposal as politically motivated.

These concerns and misgivings are simply unfounded and unwarranted. Let me clear the air and debunk the myth which apparently stems from misunderstanding and misapprehension.

The fact is that there is absolutely no hidden agenda behind the proposal. Nor is it tailor-made for the mainland. In fact, the system of surrender of fugitive offenders in Hong Kong and the proposed case-based surrender of fugitives is formulated with reference to the United Nations model and accords with international practice. It does not pinpoint any particular jurisdiction, and applies equally to all jurisdictions that do not have long-term agreements with Hong Kong.

I must stress that the Hong Kong government attaches the utmost importance to the protection of human rights and freedoms in Hong Kong. They are our core values and underpin our long-term stability and prosperity. We will fiercely protect them.

In 2018, there was a murder case in Taiwan in which a Hong Kong permanent resident was suspected to be the culprit.

However, as there is no applicable law in Hong Kong, we cannot surrender the suspect to Taiwan, despite repeated requests from Taiwanese judicial authorities. The suspect is serving a sentence for other criminal offences in Hong Kong but is expected to be released in October. There is thus a pressing need to establish a legal basis for the assistance that we want to render to Taiwan, before the Legislative Council goes into summer recess.

The Taiwan case has highlighted serious legal gaps in the current surrender system that can allow offenders of serious crimes to escape justice.

Apart from frustrating due administration of justice, the vacuum also poses a serious threat to Hong Kong's public safety. We must fill the void, strengthen cooperation with places outside Hong Kong and uphold justice.

The proposal will allow Hong Kong to handle requests for surrender of offenders on a case-by-case basis with any place with which Hong Kong has not signed a long-term agreement. The targets of case-based surrender are fugitives who have committed serious criminal offences on the basis of prima facie evidence, and are wanted for justice due to the offences committed. Similar case-based surrender arrangements have been adopted in Britain and Canada for years, and similar models are also found in countries such as New Zealand and South Africa.

The proposed legislative amendments will not affect any of the 20 long-term surrender agreements in force in Hong Kong.

Hong Kong has full discretion as to

whether the request should be acceded to. All the existing human rights and procedural safeguards provided for in the current legislation will be retained. Human rights safeguards include:

- Double criminality – the act or omission concerned must constitute an offence in both the requesting and requested jurisdictions;
- Rule against double jeopardy – an offence being tried in one place cannot be tried again in another;
- Political offence bar – requests in relation to offences of a political character will be refused;



There is absolutely no hidden agenda behind the proposal

- Refusal of requests based on political or other motives – requests involving people being prejudiced or prosecuted or punished on account of race, religion, nationality or political opinions will be refused;
- Protection against death penalty – for an offence punishable with death, the requesting party must assure that such punishment will not be imposed or carried out. Otherwise the surrender request will be refused; and
- Protection and restriction against re-surrender – prosecution of any offence other than the offence(s) for which the person was surrendered will be refused.

Any request for re-surrendering of the person to any other place will be refused.

Procedural safeguards include:

- The chief executive will scrutinise all relevant circumstances of a case, the relevant arrangements made with the requesting party and the relevant law before issuing an authority to proceed;
- The holding of a committal hearing in open court to examine the evidence and circumstances of each case having regard to the relevant law;
- The individual concerned has access to legal redress including habeas corpus and appeal, application for bail supported by special circumstances, application for discharge in case of delay in their surrender, and judicial review of the executive decisions at any point of the procedure and resort to legal aid; and
- The consideration of a surrender order by the chief executive having regard to the court's committal decision and the circumstances of the case.

In essence, both the executive authorities and the judiciary would play the key role of a vigilant and rigorous double gatekeeper.

Hong Kong's judicial independence ranks first in Asia and eighth in the world. Currently, there are 14 eminent non-permanent judges from other common law jurisdictions (Britain, Australia and Canada) sitting on our Court of Final Appeal.

The proposal is meant to protect the law-abiding general public in Hong Kong. It will protect business activities from the threat of serious crimes and should thus be conducive to our business environment. It will make us a better partner in the international fight against crime.

Matthew Cheung Kin-chung is Hong Kong's chief secretary