

立法會CB(2)1322/18-19(01)號文件

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立法會議員楊岳橋辦公室

Office of the  
Hon. Alvin Yeung  
Legislative Councillor

圖文傳真：2185 7845

香港添馬  
立法會  
保安事務委員會  
事務委員會主席  
陳克勤議員, BBS, JP

陳主席：

《侵害人身罪（修訂）（域外法律效力）條例草案》

特區政府最近向立法會提出《2019 年逃犯及刑事事宜相互法律協助法例（修訂）條例草案》，社會各界就此爭議不斷。特區政府意圖透過有關修訂解決台灣陳同佳殺人案所引起的所謂「法律漏洞」問題，同時卻引起了各方疑犯可能被移交至缺乏公平審訊和人權保障的司法管轄區的憂慮。

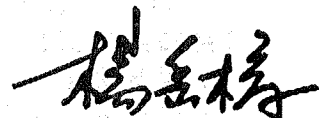
為此，我將向立法會提交《侵害人身罪（修訂）（域外法律效力）條例草案》，試圖為爭議尋找合適的出路。該議員法案的目的，在於賦予特區政府及香港司法機關權力，處理香港永久居民及通常在港居住人士，於尚未與香港簽訂移交逃犯及／或刑事互助條約或協議的地區觸犯與謀殺、誤殺及意圖謀殺時，可循香港的執法及司法程序向該疑犯展開刑事調查、檢控及審訊。

此舉既可避免政府將疑犯移交至缺乏公平審訊的司法管轄區，也能保障香港市民或在港外國人的人身自由，有助解決現時的政治爭拗。

更重要的是，議員法案清晰地示範了，在現今的法律架之下，仍然有許多方式可以有效處理台灣陳同佳殺人案所引起的法律疑慮，而毋須修訂《逃犯條例》。我們促請特區政府，積極參考我們所建議的法律框架，考慮以其他方式解決有關法律疑慮，撤回現時就《逃犯條例》的修訂，以平息相關的爭議。

隨函附上議員法案的草擬本，以及相關的《立法會參考資料摘要》，希望事務委員會可盡快召開會議討論。如有任何疑問及意見，歡迎與本人聯絡，就此作進一步的交流。順頌

鈞安



委員  
楊岳橋

2019 年 4 月 25 日

附件： 《侵害人身罪（修訂）（域外法律效力）條例草案》草擬本  
及立法會資料摘要

## 立法會參考資料摘要

### 《侵害人身罪條例》(第 212 章)

### 《侵害人身罪(修訂)(域外法律效力)條例草案》

#### 引言

立法會議員楊岳橋擬向立法會提交《2019 年侵害人身罪(修訂)(域外法律效力)條例草案》，旨在賦予特區政府及香港司法機關權力，處理香港永久居民及通常在港居住人士，於尚未與香港簽訂移交逃犯及／或刑事互助條約或協議的地區觸犯與謀殺、誤殺及意圖謀殺時，可循香港的執法及司法程序向該疑犯展開刑事調查、檢控及審訊。

#### 理據

2018 年 2 月，一名香港女子與一名香港男子一同前往台灣，期間該名女子遭該名男子殺害，該名男子事後逃回香港。

由於香港與台灣之間尚未簽訂任何移交逃犯或刑事司法互助協議，因此不能根據《逃犯條例》(第 503 章)及《刑事事宜相互法律協助條例》(第 525 章)將疑犯移交台灣的執法和司法機構調查及審訊。

行政長官會同行政會議於 2019 年 3 月 26 日，通過《2019 年逃犯及刑事事宜相互法律協助法例(修訂)條例草案》(下稱「政府草案」)，並於 4 月 3 日的立法會會議上動議首讀及二讀。

政府草案建議設立新機制，容許特區政府以個案方式移交在未與本港簽訂移交逃犯及／或刑事司法互助協議地區觸犯刑事罪行而身處香港的任何人士到涉案地區接受調查及審訊。此舉將容許特區政府按中國內地要求，移交在當地涉嫌犯罪而身處香港的任何人士，而中國內地的司法制度一直被認為未達到法治的標準，缺乏公平審訊和保障人權的機制，因此香港市民、各專業界別、傳媒、本地及外國商界以及不少外國政府對政府草案表示強烈反對及／或保留。台灣當局亦表明不會根據政府草案建議的機制處理港人在台殺人案件。

香港大律師公會曾於 4 月 3 日發表意見書，對政府草案表達反對意見之外，亦建議特區政府考慮修訂其他法例，容許香港執法及司法機關調查及審訊身處香港而在香港境外涉嫌犯罪的疑犯。

現行的《刑事罪行條例》(第 200 章)訂明,某些罪行即使不在香港發生,但香港擁有域外法律效力,可以調查及審訊在香港境外發生的罪行。例如特區政府曾於 2007 年、2010 年及 2017 年,引用《刑事罪行條例》第 153P 條,分別向三名曾在中國廣州、中國雲南及泰國性侵犯未成年人士的香港人提出刑事檢控。最後該等被告均被判罪成及入獄。<sup>1</sup>

香港的法治水平和司法制度一直被公認為優良,而且在港人在台殺人案中,疑犯與受害者均為香港人,特區政府應有責任和權力循香港的司法制度處理該案件。修訂現行條例容許香港處理在其境外發生的殺人案件,比起政府草案建議的機制更完善和可行,相信亦更為香港市民、本地及外國商會以及外國政府接受。

## 建議

本人建議參考《刑事罪行條例》第 153P 條,修訂《侵害人身罪條例》,訂明香港永久居民或在港通常居住人士在香港境外觸犯了《侵害人身罪條例》中 8 項與謀殺、誤殺或意圖謀殺有關的罪行時,特區政府可按照現行的執法和司法程序,向該疑犯展開調查和提出檢控。

## 修訂條例草案

條例草案的主要條文,是在《侵害人身罪條例》第 9 條後加入新條文,訂明身為香港永久性居民或通常居於香港的人在香港以外地方作出任何作為,而該作為假若是在香港作出即構成該條例第 2、7、9A、10、11、12、13 及 14 條的罪行,特區政府即可提出檢控,香港法院亦可理審訊。

## 查詢

如對本摘要有任何查詢,請與立法會議員楊岳橋聯絡。

立法會議員楊岳橋  
2019 年 4 月

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<sup>1</sup> 分別是 HCCC 189/2006、ESCC 684/2010 及 HCCC 138/2017 號案件。

**Legislative Council Brief**  
**Offences against the Person Ordinance (Cap. 212)**

**Offences against the Person (Amendment) (Extra-territoriality) Bill**

**Introduction**

Legislative Council Member Alvin Yeung intends to introduce the Offences against the Person (Amendment) (Extra-territoriality) Bill to the Legislative Council (LegCo), which will empower the Special Administrative Region government (SAR government) and the Hong Kong judiciary to deal with Hong Kong permanent residents and individuals who ordinarily reside in Hong Kong and who are suspected of criminal behaviour relating to murder, manslaughter and attempt to murder in regions which Hong Kong has not signed any extradition or mutual legal assistance in criminal matters agreement with, wherein investigation, prosecution, and trial can be conducted under Hong Kong law enforcement and judicial procedures.

**Objectives**

In February 2018, a Hong Kong woman travelled to Taiwan accompanied by a Hong Kong man, during her trip she was murdered by the said man. He escaped to Hong Kong after the incident.

Since Hong Kong and Taiwan have not signed any extradition and/or mutual legal assistance in criminal matters agreement, the SAR government was unable to transfer the suspect under the Fugitive Offenders Ordinance (Cap. 503) and the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) to Taiwan for investigation and trial by Taiwanese law enforcement agencies and judiciary.

On 26 March 2019, the Chief Executive in Council passed the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Ordinance (Amendment) Bill 2019 (the "government bill"), and introduced the bill at the LegCo Meeting on 3 April for first and second reading.

The government bill recommends setting up a new mechanism which enables the SAR government to transfer anyone in Hong Kong to regions which has not signed an extradition and/or mutual legal assistance in criminal matters agreement with Hong Kong on a case-by-case basis. This new arrangement will enable to SAR government

to transfer individuals in Hong Kong who are suspected to have committed crimes in China on China's request. Given China's judicial system has for a long time been perceived as falling short in meeting an adequate standard of rule of law, Hong Kong citizens, professionals, journalists, businesses both local and foreign, and many foreign governments have expressed strong opposition and/or reservations. The Taiwanese authorities also indicated that they will not process the murder case in Taiwan involving two Hongkongers according to the mechanism recommended by the government bill.

The Hong Kong Bar Association published a submission on 3 April expressing opposing view to the government bill, and recommending the SAR government to consider amending other ordinances so to enable Hong Kong law enforcement agencies and judiciary to investigate and try suspects who are physically in Hong Kong and allegedly committed crimes outside Hong Kong.

The present Crimes Ordinance (Cap. 200) (CO) stipulates that some offences, even if they took place abroad, Hong Kong has extra-territorial jurisdiction over them and may investigate and try for crimes taking place outside Hong Kong. For example, the SAR government cited section 153P of the CO and laid criminal charges against three Hongkongers who sexually assaulted minors in Guangzhou, China, Yunnan, China, and Thailand in 2007, 2010, and 2017 respectively. All the aforementioned defendants were found guilty and sentenced to jail.<sup>1</sup>

It is widely recognised that the rule of law and judiciary of Hong Kong are excellent. Moreover, since both the suspect and the victim of the murder case in Taiwan are Hongkongers, the SAR government should take up responsibility and exercise its jurisdiction over the case by dealing with it in Hong Kong's judicial system. Amending present laws to enable Hong Kong to deal with murder cases abroad involving Hongkongers is indeed more appropriate and practical than the mechanism recommended by the government bill. Also, Hong Kong citizens, chambers of commerce both local and foreign, and foreign governments are more likely to accept this solution.

## **Recommendations**

I suggest making amendments to the Offences against the Person Ordinance (Cap. 212) (OAPO) similar to section 153P of the CO, thus empowering the SAR government

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<sup>1</sup> The case numbers of these cases are HCCC 189/2006, ESCC 684/2010 and HCCC 138/2017.

to investigate and prosecute under present law enforcement and judicial procedures suspects who are Hong Kong permanent residents or ordinarily reside in Hong Kong, and who are suspected of committing one or more of the eight offences listed in the OAPO relating to murder, manslaughter, and attempt to murder.

### **The amendment bill**

The main clause of the amendment bill adds a new section after OAPO section 9, which deals with the acts of Hong Kong permanent residents or individuals ordinarily residing in Hong Kong which constitute an offence under section 2, 7, 9A, 10, 11, 12, 13, and 14 in the ordinance had they taken place in Hong Kong, whereto the SAR government may conduct prosecution and the Hong Kong court can conduct trial.

### **Enquiries**

For enquiries concerning this brief, please contact Legislative Council Member Alvin Yeung.

**Legislative Council Member**  
**Alvin YEUNG**  
**April 2019**

# 《侵害人身罪（修訂）（域外法律效力）條例草案》

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# 本條例草案

## 旨在

修訂《侵害人身罪條例》以使與有關殺人及嚴重侵害人身之罪行具有域外法律效力；並對相關事宜訂定條文。

由立法會制定。

## 第 1 部

### 導言

#### 1. 簡稱

本條例可引稱為《侵害人身罪（修訂）（域外法律效力）條例草案》。

《侵害人身罪（修訂）（域外法律效力）條例草案》

第2部  
第2段

2

第2部

修訂《侵害人身罪條例》

2. 修訂《侵害人身罪條例》

《侵害人身罪條例》(第212章)現予修訂，修訂方式列於本部。

3. 加入副標題及條文

在第55條之後——

加入

“域外法律效力

55A. 與殺人等相關罪行的域外法律效力

(1) 凡——

(a) 身為香港永久性居民或通常居於香港的人在  
香港以外地方作出任何作為；而

(b) 該作為假若是在香港作出即構成第(2)款指明的  
的任何條文所訂罪行，

即該人即屬犯該罪行。

(2) 第(1)(b)款所述條文為——

(a) 本條例下列條文所訂的任何罪行——

第2條 (謀殺)

《侵害人身罪（修訂）（域外法律效力）條例草案》

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第7條 (誤殺)

第9A條 (危害種族)

第10條 (意圖謀殺而施用毒藥或傷人)

第11條 (意圖謀殺而摧毀或破壞建築物)

第12條 (意圖謀殺而放火燒船或破壞船舶)

第13條 (意圖謀殺而企圖施用毒藥或射擊或企圖射擊、淹溺等)

第14條 (以未有指明的方法企圖謀殺)

(b) 本條例下列條文適用——

第8條 (可原諒殺人)

第8A條 (轉以他罪裁決)”



# 《侵害人身罪（修訂）（域外法律效力）條例草案》

## 摘要說明

### 第 1 段

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## 摘要說明

本條例草案的目的為修訂《侵害人身罪條例》以使與有關殺人及嚴重侵害人身之罪行具有域外法律效力；並對相關事宜訂定條文。

2. 本條例草案共有 3 項條文。
3. 草案第 1 條列出簡稱。
4. 草案第 3 條在《侵害人身罪條例》（第 212 章）加入副標題及第 55A 條，以使與有關殺人及嚴重侵害人身之罪行具有域外法律效力。

**Offences against the Person (Amendment) (Extra-territoriality) Bill**

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**A BILL**

**To**

Amend the Offences against the Person Ordinance to make provision for extra-territorial effect of offences related to homicide and serious offences against the person; and to provide for related matters.

Enacted by the Legislative Council.

**Part 1**

**Preliminary**

**1. Short title**

This Ordinance may be cited as the Offences against the Person (Amendment) (Extra-territoriality) Bill 2019.

## Part 2

### Amendments to Offences against the Person Ordinance

2. Offences against the Person Ordinance amended

The Offences against the Person Ordinance (Cap. 212) is amended as set out in this Part.

3. Subheading and section added

After Section 55—

Add

#### “Extra-territoriality

55A. Extra-territorial effect of offences relating to homicide, etc.

(1) Where—

- (a) a person who is a Hong Kong permanent resident or who ordinarily resides in Hong Kong commits any act outside Hong Kong; and
- (b) the act would have constituted an offence under any of the provisions specified in subsection (2) had it been committed in Hong Kong,

then the person shall be guilty of that offence.

(2) The provisions referred to in subsection (1)(b) are—

- (a) an offence under the following provisions of this Ordinance—

section 2 (murder)

section 7 (manslaughter)

section 9A (genocide)

section 10 (administering poison or wounding with intent to murder)

section 11 (destroying or damaging building with intent to murder)

section 12 (setting fire or casting away ship with intent to murder)

section 13 (attempting to administer poison, or shooting, or attempting to shoot or drown, etc., with intent to murder)

section 14 (attempting to commit murder by means not specified)

(b) the following provisions of this Ordinance apply—

section 8 (excusable homicide)

section 8A (alternative verdicts)”

**Explanatory Memorandum**

- The object of this Bill is to amend the Offences against the Person Ordinance (Cap. 212) to make provision for extra-territorial effect of offences related to homicide and serious offences against the person; and to provide for related matters.
2. This bill has 3 clauses.
  3. Clause 1 sets out the short title.
  4. Clause 3 adds subheading and section 55A to the Offences against the Person Ordinance (Cap. 212) to provide for the extra-territorial effect of offences related to homicide and serious offences against the person.