



HONG KONG BAR ASSOCIATION

12 June 2019

Secretariat: LG2 Floor, High Court, 38 Queensway, Hong Kong

E-mail: info@hkba.org Website: www.hkba.org

Telephone: 2869 0210 Fax: 2869 0189

The Honourable Carrie Lam, GBM, GBS

Chief Executive

of the Hong Kong Special Administrative Region People's Republic of China

Tamar, Hong Kong.

Dear *Chief Executive*

**Re: The Fugitive Offenders And Mutual Legal Assistance In Criminal Matters
Legislation (Amendment) Bill 2019 ("The Bill")**

I refer to the Bill as captioned, second reading of which is due to be resumed at the Legislative Council.

I trust you would by now have become aware that of the judgment issued by the New Zealand Court of Appeal in *Kyung Yup Kim v. Minister of Justice of New Zealand & Another* [2019] NZCA 209 ("Judgment"). This case, in which the New Zealand Court of Appeal quashed the decision of Minister of Justice to extradite Korean citizen to Mainland China for suspected murder, has, as you might have been advised, a significant bearing on the matter of ad hoc surrender of fugitives to the other parts of PRC as proposed under the Bill. We wish to seek the HKSAR Government's understanding of the relevant principles for surrender of fugitives to Mainland China in light of the said judgment.

In that regard, may I refer you to the three sets of Observations of the Hong Kong Bar Association ("HKBA") on the proposals dated 4 March 2019, 2 April 2019 and 6 June 2019. HKBA questioned, amongst other things, why the Government has in the current exercise reneged on the Government's previous commitment to carry a full consultation of the subject of rendition to Mainland China in view of serious concerns of the domestic population as well as the international community with regard to the lack of protection of minimum rights, including the right to a fair trial, in Mainland China. In response to calls from many quarters that the Government should enact a provision in the bill similar to s.21 and s.87 of the English Extradition Act 2003, which mandates the committal court to refuse to surrender if the surrender is incompatible, in the Hong Kong context, with the protection provided under the Hong Kong Bill of Rights Ordinance, the HKSAR Government has come out with a proposal to obtain assurances from the requesting state (presumably including from the Central People's Government) to respect the presumption of innocence, open trial, and visiting rights, and to ban forced confessions, as well as to provide the right to appeal.

香港大律師公會

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The Judgment made it clear that before a requested state is entitled to rely upon assurances given by the requesting state, the requested state is required to address a “preliminary question”, namely, in the context of the extradition request subject of the Judgment, whether “the general human rights situation in the PRC was such that assurances should be sought” (§275(b)).

We would like to know whether the Government, in now proposing to require assurances to be given, including by the Central People’s Government, has already considered the general human rights situation in the Mainland such that assurances should be sought.

In that regard, the Judgment enumerates various human rights issues which are perceived in the Mainland. These include:

- (a) In relation to the risk of torture:
 - (i) Notwithstanding that torture is already against the law, it persists in the Mainland;
 - (ii) The practice of torture in the PRC is concealed, and its use is difficult to detect;
 - (iii) Videotaping of interrogations is selective and torture often occurs outside the recorded session;
 - (iv) Evidence obtained by torture is frequently admitted in court; and
 - (v) There are substantial disincentives for anyone, including the detained person, reporting the practice of torture.

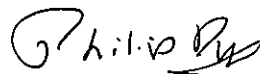
(§275(f))
- (b) In relation to the guarantees for a fair trial:
 - (i) Political influence is pervasive in the PRC’s criminal justice system wherein the political influence prioritises social policy objectives over individual procedural protections;
 - (ii) The right to legal representation, including the right to present a defence, receive legal assistance, adequately prepare a defence and to examine witnesses, is subject to serious doubt according to the evidence before the Minister as enunciated in at §275(j).

We would like to know what the HKSAR Government’s view on these matters and whether in light of such matters the Government considers it sufficient to seek assurances as announced on 30 May 2019.

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Finally, the massive turnout at the protest against the bill on Sunday 9 June 2019 is powerful testimony of the widespread and deep-seated public unease with the Bill. The HKBA therefore urges the Government to withdraw the bill for a full and proper consultation. In the mean time, we look forward to your reply to our queries stated above.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Philip Dykes". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Philip Dykes S.C.
Chairman
Hong Kong Bar Association

cc. Ms. Teresa Cheng SC, Secretary for Justice
(Department of Justice, 5/F Main Wing, Justice Place, 18 Lower Albert Road Central, HK).