

**Observations of the Hong Kong Bar Association (“HKBA”)  
on the Security Bureau’s Proposal to Amend the  
Mutual Legal Assistance in Criminal Matters Ordinance, Cap. 525  
 (“MLAO”) and the Fugitive Offenders Ordinance, Cap.503 (“FOO”)**

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1. The Security Bureau proposes amending the MLAO and FOO on two fronts, namely:
  - (a) Remove legislative scrutiny for new *ad hoc* “case-based” arrangement for the surrender of a person subject of a request by another jurisdiction (with which Hong Kong does not have a long-term extradition agreement) and instead, empower the Chief Executive (“CE”) to issue a certificate to start processing a request from such a place<sup>1</sup>; and
  - (b) Enable one-off case-based arrangement to apply to any place with which Hong Kong has not entered into long-term arrangement for the surrender of fugitives or of mutual legal assistance,<sup>2</sup> extending case-based arrangement to places such as Mainland China and Taiwan.
2. HKBA notes that such proposed amendments would have the effect of enabling the rendition of persons in Hong Kong to Mainland China, be they residents of Hong Kong or persons merely passing through Hong Kong, under a case-based arrangement implemented through a much curtailed procedure based on the issue of a certificate by the CE. This is despite the subject of rendition of

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<sup>1</sup> Security Bureau paper dated 15 February 2019 at §10(a)

<sup>2</sup> Security Bureau paper dated 15 February 2019 at §10(b)

fugitives to Mainland China being both a highly complex legal matter and controversial issue which has been in abeyance since the resumption of sovereignty in 1997. The HKSAR Government had previously made a firm commitment that a rendition arrangement with Mainland China would not be put in place without thorough consultation with the public in Hong Kong. HKBA is concerned that the HKSAR Government is now “jumping the gun” by seeking to put in place *ad hoc* rendition arrangements with Mainland China and within a short time-frame<sup>3</sup>, in breach of its commitment for full consultation on this delicate matter.

3. Various government officials, including the CE, have said that the proposed amendments are aimed at redressing an injustice arising from the recent homicide case of a Hong Kong resident in Taiwan where the suspect, also a Hong Kong resident, had returned to Hong Kong and did not face a murder charge. Without a rendition agreement the suspect could not be returned to Taiwan for trial. However, it is noted that:
  - (a) For the purpose of enabling the murder suspect (or any other suspect in a similar situation) to be returned to Taiwan for trial, it is not necessary to “over-liberalize” the FOO and MLA0 regime, and in particular, to include Mainland China within the scope of the proposed case-based arrangement in circumstances described in §2 above.
  - (b) Further, it is highly doubtful whether the proposed changes would in practice achieve the intended purpose, namely, to

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<sup>3</sup> The Government intends to introduce legislative amendments in this legislative year.

secure the rendition of suspects to Taiwan, without an assurance from Taiwan that it will accede to the proposed arrangements. In that regard, the principal official of Taiwan's Mainland Affairs Council is reported to have said that the Taiwan Government would not agree to any arrangement with the HKSAR Government which is at variance with its understanding of the One-China Policy.<sup>4</sup>

(c) HKBA notes that it is open to the HKSAR Government to amend the provisions under the Criminal Jurisdiction Ordinance, Cap. 423 to cater for the investigation, apprehension, trial and conviction, in Hong Kong, of persons like the murder suspect in the Taiwan homicide case as explained below.

4. HKBA also expresses concerns that the removal of legislative scrutiny for case-based arrangements and replacing it with executive authorization for the arrest and surrender of persons requested by another place with which Hong Kong does not have a proper bilateral arrangement would also lower the bar for securing the liberty and security persons who may be subject of requests from any other territory or jurisdiction, including an authoritarian or totalitarian regime.

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<sup>4</sup> See, for instance, South China Morning Post, "Taipei won't sign any extradition deal with Hong Kong if it implies Taiwan is part of China, official says", 22 February 2019.

5. In summary, the current proposals have significant and wide-ranging effects and potentially undermine the reputation of Hong Kong as a free and safe city governed by the rule of law.
6. HKBA wishes to emphasize that, obviously, it does not want Hong Kong to become a refuge for fugitives whether from Taiwan, Mainland China or, indeed, from anywhere else in the world. However, the Legislative Council clearly thought there were good reasons to exclude the PRC when the FOO and MLOA were enacted in 1997. If circumstances have changed since 1997 and the objections to inclusion of these places have gone then the HKSAR Government needs to say why things have changed.
7. If there have been demonstrable changes such that the HKSAR Government now has confidence in the criminal justice system in those other parts of China then logic would suggest that comprehensive surrender and assistance agreements, instead of *ad hoc* agreements, should be negotiated, and the Legislative Council should continue to have its say in that matter. Just as the HKSAR is not bound to conclude surrender and assistance agreements with every other jurisdiction in the world, it could amend the relevant laws so that it might conclude agreements with Taiwan only if it was satisfied that it was now right to do so and assurances from Taiwan would be honoured.
8. Meanwhile HKBA wishes to underline the present serious concerns that the Hong Kong public and the international community have over Mainland China's human rights record. It also notes that the surrender of fugitives under arrangements that do not actually secure

comparable minimum rights enjoyed by persons in our criminal justice system and prisons can only harm the international image of the HKSAR.

**Fundamental concerns with rendition of Hong Kong fugitives to Mainland China**

9. The fact that there has been no long-term rendition arrangement with Mainland China for two decades after the handover is not an oversight. The absence of such an agreement is evidence of the grave concerns the Hong Kong public has concerning the Mainland legal and judicial system. These concerns cannot be discounted and by-passed because *ad hoc* case-based arrangements are put in place. Even for those countries where executive-led *ad hoc* arrangements are permissible, respect for the rule of law is important when deciding whether *ad hoc* arrangements are acceptable, as demonstrated in the case of *Lord Advocate v. Dean* [2017] UKSC 44. In that case representations about the post-trial stage of Taiwanese criminal process was the subject of judicial scrutiny. Assurances given by a receiving state cannot always be taken at their face-value. Consideration must be given to the quality of assurances and whether they can be relied upon in light of the receiving state's practices. See *Othman v. United Kingdom* (2012) 55 EHRR 1, at §§188-189.
  
10. Concerns about the sufficiency of rights protection in Mainland China are widespread and deep-rooted. It is noted that the PRC has signed extradition treaties with 50 countries (37 of which have been ratified). See **Annex 1** on the list of countries with which the PRC

has extradition treaty (including those which have not been ratified). In the case of Australia, the Government of Australia refused to ratify an extradition treaty with Mainland China in 2017. The general concerns with ratification may be gleaned from the submission of the Law Council of Australia to the Joint Standing Committee on Treaties in the Inquiry into the Treaty on Extradition between Australia and The People’s Republic of China. The Law Council of Australia, which represents 16 Australian State and Territory law societies and bar associations, stated *inter alia*:

“Concern has long been expressed in Australia about the ability of China to comply with the rule of law. Concerns have been raised about shortcomings in the quality of justice in China including denial and harassment of defence lawyers, corruption within the judiciary, political interference in trials, denial of procedural fairness (or ‘due process’), prejudgment and bias. There have been frequent reports of the torture of prisoners to extract confessions or to punish, the holding of prisoners in detrimental conditions, and even organ harvesting from prisoners.”<sup>5</sup>

11. Various international human rights reports have also dealt with human rights in China. Their authors have pointed out the lack of an independent judiciary, arbitrary detention, lack of fair public trial, prison conditions, and lack of the right to access lawyers as continuing human rights concerns in China. Some of the relevant reports and summaries of their comments are set out in the **Annex 2**

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<sup>5</sup> “*Treaty on Extradition Between Australia and the People’s Republic of China*”, 24 March 2016, Law Council of Australia, paragraph 17

12. Even in the case of Spain which has ratified a treaty with the PRC, human right experts at the UNHCR have expressed alarm and concerns with Spain's decision to extradite individuals to the PRC where, the experts say, the persons to be surrendered might be exposed to the risk of torture, other ill-treatment, or the death penalty. The experts in that case suggested that the decision "clearly contravened Spain's international commitment to refrain from expelling, returning or extraditing people to any State where there are well-founded reasons to believe they might be in danger of being subjected to torture".<sup>6</sup>
  
13. The HKBA notes that the former Secretary for Security, Ms. Regina Ip, addressed the Legislative Council Panel on Security on 3<sup>rd</sup> December 1998<sup>7</sup> on this topic. She emphasized the need to engage Mainland authorities to have a detailed discussion before a complete set of recommendations could be presented. There was a promise that there would be public consultation on the details of any substantive rendition arrangement proposals with the Mainland upon completion of discussions with Mainland authorities.
  
14. Issues involved in concluding rendition arrangements with the Mainland were raised in the years after the handover. The issues set out in the report of the Research and Library Services Division of

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<sup>6</sup> "UN human rights experts urge Spain to halt extraditions to China fearing risk of torture or death penalty", 18 May 2018, Office of the High Commissioner, UNHCR

<sup>7</sup> See 立法會 CB(2)812/98-99 號文件; also see "Arrangements with the Mainland on Surrender of Fugitive Offenders", 23<sup>rd</sup> November 1998, LC Paper No. CB(2) 748/98-99(02) and

the Legislative Council Secretariat in March 2001<sup>8</sup> are still highly pertinent. These issues (other than rights protection) include:

- (a) How will the principle of double criminality be applied in an arrangement with the Mainland?<sup>9</sup>
- (b) How will the principle of non-extradition in death penalty cases be applied?<sup>10</sup>
- (c) Non-extradition for political offences is an established general principle. How will “political offence” be defined in surrender arrangements between Hong Kong and the Mainland?
- (d) The right against double jeopardy is guaranteed by Article 11 of the Hong Kong Bill of Rights. Article 10 of the PRC Criminal Law provides that a person who was tried and convicted in a foreign court can be tried and sentenced again in Mainland courts for the same offence. How should the

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<sup>8</sup> “*Research Study on the Agreement between Hong Kong and the Mainland concerning Surrender of Fugitive Offenders*”, RP05/00-01

<sup>9</sup> A surrender request must relate to conduct that amounts to a criminal offence in both the requesting and requested state. Under the Hong Kong FOO regime, the range of offences that fall under surrender regime is very broad and consists of only descriptions rather substantive provisions.<sup>9</sup> For example, all offences “against the law relating to protection of intellectual property rights, copyrights, patents, or trademark”, “offences involving the unlawful use of computers”, or “offences relating to fiscal matters, taxes or duties” can be subject of surrender. While there are safeguards against surrender for an offence of a “political character” or prosecutions being in fact made “on account of race, religion, nationality or political opinions”<sup>9</sup>. There is nothing in the current proposals to safeguard requests for the surrender of political dissidents or political enemies for prosecution under the pretext of these broadly described and wide-ranging offences.

<sup>10</sup> Hong Kong has abolished the death penalty in 1993 and the right to life and freedom from torture or cruel inhumane or degrading treatment or punishment are enshrined in the *Basic Law* and the *Hong Kong Bill of Rights*. On the other hand, the death penalty is regularly carried out on the Mainland. This issue must be fully resolved before Hong Kong and the Mainland enters into any surrender arrangement.

principle of double jeopardy, a fundamental principle under the common law, be implemented?

- (e) How would questions over concurrent jurisdiction be resolved?
- (f) *Habeas corpus* is not available under Chinese law but available under Hong Kong law. How could analogous arrangements be made and implemented in order to sufficiently protect a Hong Kong resident's right to liberty and freedom of the person?
- (g) Surrender requests have to go through both judicial and administrative reviews under a FOO regime that is designed to protect fundamental rights. The Mainland's review system is mainly a formality and no substantive review is carried out. Should these two different systems be incorporated into any surrender arrangements?

15. There is also the issue of re-extradition which is removing a surrendered person to another jurisdiction. In a further Information Note to the March 2001 Legislative Council Secretariat research study, it is observed at paragraph 5.5:

“Because there is no agreement between mainland China and Hong Kong on the surrender of fugitive offenders, the rule of speciality in the bilateral extradition agreements between either mainland China or Hong Kong with respective foreign countries shall effectively limit the re-surrender of fugitive offenders. But if mainland China and Hong Kong were to agree to a set of arrangements for the surrender of fugitive offenders, and no limitations were imposed on the agreements of the re-surrender of fugitive offenders who have

been extradited from foreign countries to Hong Kong or mainland China respectively, foreign countries would be easily suspicious and concerned, and the implementation of the existing bilateral extradition agreements entered into by mainland China and Hong Kong respectively would be affected.”

16. The current proposals have raised international concerns. Existing long-term arrangements with Hong Kong are liable to be revisited by foreign countries.

**Blanket removal of legislative scrutiny of ad hoc arrangements**

17. The anxieties surrounding the possibility of rendition of persons in Hong Kong to the Mainland are aggravated by the proposal to remove legislative oversight on case-based arrangements.
18. Under the current legislative scheme, a person may be surrendered to another jurisdiction only if there is a general long-term arrangement between Hong Kong and that other jurisdiction,<sup>11</sup> or an *ad hoc* case-based arrangement with that jurisdiction<sup>12</sup>. For the arrangement to be effective, the CE-in-Council has to make and gazette an order in relation to such arrangement<sup>13</sup>, which will then be laid before the Legislative Council (“Legco”)<sup>14</sup> for negative vetting<sup>15</sup> within a prescribed timeframe<sup>16</sup>. Once legislative vetting is complete and the legislative basis for the arrangement is in place, the

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<sup>11</sup> Made pursuant to bilateral or multi-lateral treaty.

<sup>12</sup> Which may be made under s.2(4) of the FOO.

<sup>13</sup> FOO: s.3(1)

<sup>14</sup> FOO: s.3(2)

<sup>15</sup> FOO: s.3(3)

<sup>16</sup> FOO: s.6

CE may issue an “authority to proceed” in respect of a request.<sup>17</sup> A warrant of arrest may be issued by a magistrate for the committal of that person before a magistrate. The Court of Committal hears the case and in considering whether to make an order of committal, the Court would have regard to s.5 of FOO which provides grounds of refusing surrender.<sup>18</sup> If an order of committal is made, the person subject to the order may make an application for *habeas corpus* under s.12 of FOO and will not be surrendered until the application has been disposed of. Lastly, the CE has discretion under s.13 of FOO to make no order for surrender even after an order for committal has been made.

19. HKBA takes the view that the HKSAR Government’s proposal to dispense with the negative vetting procedure of Legco in the case of *ad hoc* case-based arrangement and replacing it with executive certification to trigger the processing of a request would be detrimental to the surrender regime.
20. The Security Bureau paper says that the “human rights and procedural safeguards in the two ordinances will remain unchanged”<sup>19</sup> and further there will be “express stipulation” that the case-based arrangements “must substantively in full compliance with the provisions in FOO, and in terms of human rights protection,

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<sup>17</sup> Similarly, in the case of mutual legal assistance, s.2(3) of MLAO provides for the power to make *ad hoc* MLA arrangements which, as in the case of long-term arrangements, have to be approved by Legco by way of positive vetting. See s.4(1) and (7) MLAO. S.5(4) also specifically provides that the ordinance a request from a place with which Hong Kong does not have an MLA arrangement shall be refused in the absence of a reciprocal undertaking from an appropriate authority of that place that a future request for MLA from Hong Kong will be complied with.

<sup>18</sup> The court of committal’s decision is subject to appeal to the Court of First Instance, Court of Appeal and Court of Final Appeal.

<sup>19</sup> §10

the [case-based arrangement] can only be subject to more, not less limitations to surrender than what is currently required under the FOO”.<sup>20</sup>

21. Without the benefit of seeing the legislative amendments now contemplated, it is difficult to see how case-based arrangements would be subject to “more, not less limitations to surrender” than currently required, when one clear and obvious effect of the current proposal is to remove the layer of scrutiny provided by Legco, leaving the matter entirely in the hands of the Chief Executive before the matter comes to Court. This is unsatisfactory given the Court’s limited scope of review in the legislative scheme. In that regard, apart from the possibility of it giving effect to one or more of the general restrictions<sup>21</sup> set out in s.5 of the FOO, the Court of Committal must commit a person to custody for surrender if the basic requirements set out in section 10(6) are met. In other words, a person will be committed to custody for the CE’s decision to surrender him where the committal court is satisfied that:

- (a) the offence to which the authority to proceed relates is a relevant offence as defined in section 2(2) and Schedule 1 of the FOO;
- (b) supporting documents have been produced and are duly authenticated;

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<sup>20</sup> §10(a)

<sup>21</sup> These general restrictions include refusal to surrender for: offence of political character, sentence for conviction *in absentia*, requests which are in fact made for the purposes of prosecuting or punishing a returnee on account of race, religion, nationality or political opinions, or prosecution where the returnee will be subject to double jeopardy. See section 5(1) of the FOO.

- (c) there is prima facie evidence to warrant the subject's committal for trial in Hong Kong had the offence been committed in Hong Kong; and
- (d) where the person arrested was already convicted with a relevant offence but pending sentence, or a sentence of at least 6 months' imprisonment remained to be served.<sup>22</sup>

22. The court's review function is limited to ensuring that the HKSAR Government has complied with the formal requirements set out in the FOO. Leaving the a magistrate sitting in a Court of Committal as the only safeguard as proposed by the Security Bureau would severely weaken the existing FOO regime that is designed to ensure the HKSAR Government's compliance with human rights obligations and protect the surrender subject's fundamental rights.

**Concerns with public disclosure of case details**

23. The Security Bureau's concern about public disclosure of case details if *ad hoc* arrangements were to go through Legco scrutiny can be addressed by the application of rule 88 of the Legislative Council Rules of Procedure, which will require withdrawal of the press and the public from Legislative Council or its committee's meetings. Public access to the records of those closed-door meetings can also be restricted under Schedule 2 of the Rules of Procedure.

24. Any concern that such public disclosure or any ensuing public discussion may compromise a fair hearing can be dealt with under

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<sup>22</sup> FOO: s.10(6)(b)

the existing approach used by criminal courts of considering “whether the risk of prejudice of pre-trial publicity was so grave that no direction of the trial judge, however careful, could reasonably be expected to remove it.”<sup>23</sup>

**Delay in Legco vetting process**

25. Currently, sections 3(3) to 3(5) of the FOO already set out a relatively tight timeframe designed to ensure that the Legco will have the opportunity to consider a proposed arrangement and not approve it if considered appropriate to do so.
26. Risk of escape as a result of delay caused by the Legco scrutiny process can be addressed by bringing forward the time when a provisional arrest warrant can become available. Under the current regime, a provisional arrest warrant can only be made after a surrender arrangement is put in place after Legco vetting.
27. The HKBA takes the view it is open to the HKSAR Government to amend the FOO to allow issuance of a provisional arrest warrant and remand in custody upon the request of surrender is received from a foreign country and an *ad hoc* arrangement is tabled with the Legco within a stipulated time. An appropriate amendment can impose a tighter timetable for Legco approval.
28. The early issue of provisional arrest warrants is already provided for in many existing long-term arrangements such as those with

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<sup>23</sup> *HKSAR v. Kissel* [2014] 1 HKLRD 460, Court of Appeal

Canada<sup>24</sup>, Indonesia<sup>25</sup>, and the Czech Republic<sup>26</sup> where provisional arrest warrants in urgent cases can be made upon the request of the party seeking surrender and on condition that a formal request for surrender will be made and supporting documents will be provided within 60 days. The required period for making of formal request and provision of supporting documents can be made shorter for urgent *ad hoc* cases.

**Amendment of legislation to provide for surrender to Taiwan only**

29. In any event, if the purpose of the proposal is to enable fugitives such as the party in the Taiwan homicide case to be returned to Taiwan, the Government should amend the legislation to enact Taiwan-only *ad hoc* arrangement under the existing legal framework, always assuming that Taiwan agrees to it.
30. Taiwan was a signatory to the ICCPR but its active signatory status was lost when the PRC achieved international recognition. However, Taiwan has volunteered to report to the UN Human Rights Committee.
31. There is no reason to suppose that the criminal justice system in Taiwan does not at least meet the minimum standards set by the

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<sup>24</sup> Article 11 of the Agreement between the Government of Hong Kong and the Government of Canada for Surrender of Fugitive Offenders, *Fugitive Offenders (Canada) Order*, Cap. 503B

<sup>25</sup> Article 14 of the Agreement between the Government of Hong Kong and the Government of the Republic of Indonesia for Surrender of Fugitive Offenders, *Fugitive Offenders (Indonesia) Order*, Cap. 503O

<sup>26</sup> Article 12 of the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Czech Republic on Surrender of Persons Wanted for Criminal Proceedings, *Fugitive Offenders (Czech Republic) Order*, Cap. 503AI

ICCPR. See the examination of a part of the system by the UK Supreme Court in *Lord Advocate v. Dean* (*op. cit.*).

32. Tabling a limited amendment to include Taiwan for *ad hoc* arrangement for surrender and putting in place a one-off regulation for the case in question will dispense with the controversy surrounding the current proposals.

**Alternative option - amending the Criminal Jurisdiction Ordinance, Cap. 461 (“CJO”)**

33. HKBA takes the view that the HKSAR Government should also consider and study the possibility of amending the CJO such that homicide cases involving Hong Kong permanent residents as suspected perpetrators and victims could be tried in Hong Kong.
34. Extra-territorial jurisdiction of Hong Kong criminal courts can already be found under the CJO which confers jurisdiction to Hong Kong criminal courts for acts such as theft, false accounting, blackmail, offences involving forgery and false instruments, and conspiring, attempting, or inciting the commission of these offences committed outside of Hong Kong.
35. Section 153P of the Crimes Ordinance, Cap. 200 also confers jurisdiction to Hong Kong criminal courts if a Hong Kong permanent resident commits certain sexual offences against children under the age 16 outside of Hong Kong.
36. In relation to the offence of homicide, under the Offences Against the Person Ordinance, Cap. 212, conspiring in Hong Kong to murder

someone outside of Hong Kong<sup>27</sup>, homicide where only the act causing death<sup>28</sup> or only the death itself<sup>29</sup> took place in Hong Kong are all triable in Hong Kong courts.

37. In order to address Hong Kong courts' lack of jurisdiction in cases such as that in the Taiwan homicide case in the future, amendments may be made to the Offences Against the Person Ordinance and the Criminal Jurisdiction Ordinance to extend Hong Kong criminal courts' jurisdiction over situations where Hong Kong permanent residents committing homicide outside of Hong Kong and where the victim of such homicide is a Hong Kong permanent resident. A request for MLA to furnish the necessary evidence for the trial of the suspect in Hong Kong may be made to the government of the jurisdiction in which the offence took place either on the basis of long-term MLA arrangement or under an *ad hoc* case based arrangement under the existing legislative framework.

### **Reservation**

38. HKBA reserves the right to make further submissions on all the issues canvassed about and when the legislative amendments are tabled.

## **HONG KONG BAR ASSOCIATION**

4<sup>th</sup> March 2019

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<sup>27</sup> Section 5, *Offences Against the Person Ordinance*, Cap. 212

<sup>28</sup> Section 8B, *Offences Against the Person Ordinance*, Cap. 212

<sup>29</sup> Section 9, *Offences Against the Person Ordinance*, Cap. 212

## ANNEX 1

List of countries PRC has signed extradition treaties with year of ratification:

1. Thailand (1999)
2. Belarus (1998)
3. Russia (1997)
4. Bulgaria (1997)
5. Romania (1999)
6. Kazakhstan (1998)
7. Mongolia (1999)
8. Kyrgyzstan (2004)
9. Ukraine (2000)
10. Cambodia (2000)
11. Uzbekistan (2000)
12. South Korea (2002)
13. Philippines (2006)
14. Peru (2003)
15. Tunisia (2005)
16. South Africa (2004)
17. Laos (2003)
18. United Arab Emirates (2004)
19. Lithuania (2003)
20. Pakistan (2008)
21. Lesotho (2005)
22. Brazil (2014)
23. Azerbaijan (2010)
24. Spain (2007)
25. Namibia (2009)

26. Angola (2013)
27. Algeria (2009)
28. Portugal (2009)
29. France (2015)
30. Mexico (2012)
31. Indonesia (2018)
32. Italy (2015)
33. Iran (2017)
34. Bosnia and Herzegovina (2014)
35. Tajikistan (2017)
36. Afghanistan (2017)
37. Ethiopia (2017)

List of countries PRC has signed extradition treaties with but has not been ratified:

1. Argentina
2. Australia
3. Vietnam
4. Chile
5. Barbados
6. Grenada
7. Sri Lanka
8. Morocco
9. Republic of the Congo
10. Belgium
11. Ecuador
12. Turkey
13. Kenya

## ANNEX 2

1. According to Human Rights Watch's World Report 2019, human rights defenders in China endure arbitrary detention, imprisonment, and enforced disappearance. For instance, human rights lawyer Wang Quanzhang was detained for years and was reportedly tortured with electric shocks and forced to take medications. Others continue to face long detentions without trials or verdicts. Chinese authorities have also stepped up mass arbitrary detention, in both pre-trial detention centres and prisons and "political education" camps, which have no basis under Chinese law.
2. According to the *Amnesty International Report 2017-18*, the Chinese government continued to "conceal the true extent of the use of the death penalty". The authorities used "residential surveillance in a designated location" as a form of secret incommunicado detention to hold individuals up to 6 months without access to legal counsel, and at the risk of torture and ill-treatment.
3. In the *Country Reports on Human Rights Practices* for 2017, the United States Department of State observed that China was responsible for arbitrary or unlawful deprivation of life and executions without due process, extra-legal measures such as forced disappearances, torture and coerced confessions of prisoners, and arbitrary detention:
  - (a) The Report highlighted "generally harsh and often degrading" conditions in penal institutions. Authorities regularly held prisoners and detainees in overcrowded conditions with poor

sanitation, and inadequate food and water. The authorities also executed some defendants in criminal proceedings following convictions that lacked due process and adequate channels for appeal.

- (b) Only criminal detention beyond 37 days would require approval of a formal arrest by the procuratorate. However, in cases pertaining to national security, terrorism and major bribery, the law permits up to 6 months of *incommunicado* detention by the Chinese authorities without formal arrest. Pre-trial detention periods of one year or more were common. For instance, in the “709 crackdown”, human rights lawyers were detained in pre-trial detention centres for more than one year without access to their families or their lawyers.
- (c) Arbitrary arrests continued to take place as authorities detained persons on allegations of revealing state secrets, subversion and other crimes as a means to suppress political dissent. Such charges remained ill-defined. Any piece of information could be retroactively designated a state secret. Authorities also relied on the vaguely worded charges of “picking quarrels and provoking trouble” broadly against civil activists, yet it remained unclear what the phrase would encompass.
- (d) Many activists were subjected to extra-legal house arrest, denied travel rights, or administratively detained. Although the law requires notification of family members within 24 hours of detention, authorities often held individuals without providing such notification.

- (e) The right to a fair public trial is also denied in China. Judges regularly received political guidance on pending cases, particularly in politically sensitive cases. Corruption often influenced court decisions, since safeguards against judicial corruption were vague and poorly enforced. Televised confessions were used to establish guilt before criminal trial proceedings began.
- (f) Since courts are not allowed to rule on the constitutionality of legislation, lawyers cannot rely on constitutional claims in litigation. The notion of “judicial independence” remain one of the subjects that the CCP ordered university professors not to discuss.
- (g) Whilst regulations of the Supreme People’s Court require trials to be conducted openly to public, authorities used the “state secrets” provision to keep politically sensitive proceedings closed to the public, and to withhold a defendant’s access to defence counsel. Authorities have also barred foreign diplomats and journalists from attending trials.