

HONG KONG BAR ASSOCIATION

A BRIEF GUIDE TO ISSUES ARISING FROM THE FUGITIVE OFFENDERS AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS LEGISLATION (AMENDMENT) BILL 2019 (“THE BILL”)

1. *Briefly, what does the Bill do?*

The Bill seeks to amend two ordinances.

The first ordinance is the Fugitive Offenders Ordinance, Cap. 503 (“FOO”) which provides for the surrender of persons wanted in other jurisdictions in connection with criminal matters. The bill removes the geographical limitations in the FOO the effect of which is to permit surrenders pursuant to “one-off” or “case-based” or “*ad hoc*” agreements to the other parts of China, namely to Macao, Taiwan and the Mainland, and to other places where there are no present reciprocal arrangements for surrender. The new one-off agreements are called “special surrender arrangements” in the Bill. See further below on what are “case-based” arrangements.

The second ordinance proposed to be amended is the Mutual Legal Assistance in Criminal Matters Ordinance Cap. 525 (“MLAO”) which enables foreign jurisdictions to ask Hong Kong authorities to help gather evidence by way of search and seizure for use outside the HKSAR and to render other forms of assistance, such as freezing and confiscating the assets of persons wanted for crimes in other jurisdictions. The proposal is to remove similar limitations as those found in FOO to enable the provision of assistance in criminal matters to other parts of the P.R.C.

2. *I see that these ordinances assist other jurisdictions but is there a duty on the part of a state to surrender people wanted for crimes to another jurisdiction or provide legal assistance?*

Unless a state enters into an extradition treaty or a treaty to provide legal assistance, there is no duty in international law to surrender an individual or provide legal assistance.

The HKSAR is a constituent part of the P.R.C. The P.R.C. does not recognize that HKSAR has a duty to surrender or provide legal assistance except through extradition and legal assistance treaties.

Currently, Hong Kong has treaties for surrendering fugitives with 20 jurisdictions and is a party to a number of multi-lateral conventions such as, for

example, the Convention against Genocide which create obligations to assist in preventing and punishing genocide.¹ Hong Kong also has treaties with 32 jurisdictions for mutual legal assistance.

Case-based or “one-off” surrender to a jurisdiction with whom Hong Kong does not have an extradition treaty is permissible under the current provisions of the FOO but no person has been surrendered in the last 22 years under a case-based approach.

3. *Concerns seem to have been focused on the proposed changes to FOO and not so much on MLAO. Why is that?*

Although the proposed changes to MLAO are significant, the changes to FOO will mean that, for the first time in about 90 years, people living in Hong Kong can be removed from Hong Kong to stand trial in the Mainland or serve a criminal sentence there. The life-changing potential of the proposed changes to FOO have, naturally, caused more anxieties than evidence-gathering and other types of legal assistance under MLAO.

4. *If people could be removed to the Mainland 90 years ago, what happened to end that?*

The Chinese Extradition Ordinance, Cap. 235 (“CEO”), was enacted over one hundred years ago to give effect to a clause in the Treaty of Tientsin 1858 which required British authorities governing Hong Kong to give up Chinese subjects wanted for crimes in Imperial China. People were surrendered under this ordinance on a regular basis until Chinese authorities became reluctant to invoke the provisions of a treaty that they regarded as “unequal” and the last extradition under the CEO was in the 1930’s.

Although not used after that time the CEO was not repealed. It remained ‘on the books’ until 1997 when it was declared to be in contravention of the Basic Law by the Standing Committee of the National People’s Congress.

5. *Do legal “loopholes” exist to prevent criminals from being removed to the Mainland? The HKSARG has explained that the changes are made to plug ‘loopholes’ in the two ordinances. What’s that all about?*

¹ Other multi-lateral conventions which apply to Hong Kong creating comparable obligations include: International Convention on the Taking of Hostages; Convention for the Suppression of Unlawful Seizure of Aircraft; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. Orders under FOO have been made in respect of some of these conventions.

It might be the case that the HKSARG thinks it desirable now to extend the geographical reach of the FOO and the MLAO but it is unfair to describe the limitations on the reach of both ordinances as ‘loopholes’, implying that a negligent draftsman or a careless Legislative Council forgot to include the rest of China in both ordinances and that omission has only just been discovered.

FOO was prepared by the outgoing colonial administration and enacted in April 1997. Macao, Taiwan and the Mainland are excluded because the definition of ‘arrangements for the surrender of fugitive offenders’ in s. 2 FOO is defined as arrangements between the HKSARG and the governments of other places outside Hong Kong “other than the Central People’s Government or the government of any other part of the People’s Republic of China”. This limitation on the scope of the FOO was, obviously, deliberate and a former Foreign Secretary, Sir Malcom Rifkind, has confirmed this to be the case, referring to relevant Foreign Office archive materials.²

When the FOO was enacted, it was envisaged that the HKSAR might enter into a long-term arrangement with the PRC in due course. The Government at that time explained that a separate but similar arrangement would be reached with the Mainland.³ The Government further contemplated using the FOO as a model for a long-term arrangement with the PRC.⁴

Going back to the Government’s current preference to describe geographical limitation in the FOO as a “loophole”, if it was thought that the colonial draftsman had introduced an unwanted limitation then the FOO could have been amended soon after the establishment of the HKSAR. This did not happen. In fact, when the first HKSAR legislature came to enact MLAO in September 1997, the FOO definition of ‘arrangements for the surrender of fugitive offenders’ was copied for the definition of ‘arrangements for mutual legal assistance’ at s. 2 of that new law.

² **“There is no ‘loophole’ in Hong Kong’s current extradition law. Rather, it provides a necessary firewall to protect the legal system.” Article by Sir Malcom Rifkind, S.C.M.P. 4 June 2019.**

³ Bills Committee meeting on the Fugitives Offenders Bill on 20 December 1996, cited in Walsh, *Cross-Border Crimes in Hong Kong* (December 2018), footnote 20.

⁴ At the same Bills Committee meeting, it was stated by the Government that it believed the bill “was a good model for arrangements between Hong Kong and every other place outside Hong Kong, including PRC”. During second reading of the bill on 19 March 1997, the Government said in respect of the question of rendition to the PRC that “As this is under discussion with the appropriate Mainland authorities, all I will say at this stage is that we share the community’s concern that there should be adequate protection for the rights of the individual”. Walsh, *op cit*, footnote 21.

Also, CEO had been declared not to be consistent with the Basic Law. The NPCSC decision in 1997 not to adopt that ordinance is further evidence that the issue of arrangements for the surrender of fugitives to the Mainland was a matter that must have been considered then.

Circumstances may have changed since 1997 and it may now be thought desirable by the HKSARG at this time to revise both ordinances but that is not ‘plugging loopholes’.

6. *The now repealed CEO talks about ‘extradition’ and the FOO talks about ‘surrender’ when dealing with the same thing, i.e. the enforced removal of wanted persons from Hong Kong. What’s the difference?*

From the point of view of the person removed, there is no practical difference between extradition and surrender. The terms can be used interchangeably but there is a subtle legal difference.

The term ‘extradition’ is used to describe the formal surrender by one country to another of a person who has been accused or convicted of a criminal offence.

English law used the word ‘surrender’ to describe the same process when the jurisdiction that removed the individual did not have sovereign status and the U.K. was responsible for that place’s foreign affairs.

So it was the case that extraditions from the U.K. used to be dealt with under the Extradition Act 1870 and later Acts concerning extradition, but the surrender process was regulated by the Fugitive Offenders Act 1881 and succeeding Acts dealing with surrender.

The FOO continues using the term ‘surrender’ as the HKSAR is not a state and so it does not ‘extradite’ persons.

Various provisions in the FOO serve as a reminder that the HKSAR does not have a free hand and is accountable to the Central Peoples Government to which the Chief Executive (“CE”) must notify certain steps taken under FOO and which itself can issue instructions to the CE on what to do in certain cases: see section 24(3), e.g. to take or not to take an action “on the ground that if the instruction were not complied with the interests of the People’s Republic of China in matters of defence or foreign affairs would be significantly affected”.

At this point it is worth noting that ‘surrender’ or ‘extradition’ are different from other means by which persons can be removed from the HKSAR. ‘Deportation’ is the process by which persons who are not permanent residents are removed from the HKSAR on account of having committed a crime.

Persons who are not permanent residents can be ‘removed’ by the Director of Immigration if they contravene conditions of stay or enter the region unlawfully.

The effect of deportation or removal may, coincidentally, be to return an individual to a place that wishes to prosecute him or her for an offence.

7. *FOO describes a person liable to surrender as a ‘fugitive’’. That implies that the person whose surrender is sought is deliberately fleeing justice. Is that right?*

The term ‘fugitive’ is sometimes used to describe a criminal suspect who flees, evades, or escapes arrest, prosecution or imprisonment after a conviction but the word is used throughout the FOO in connection the description of those persons who are liable to be surrendered under it.

A person in Hong Kong who is wanted in a prescribed place for prosecution, or for the imposition or enforcement of a sentence, in respect of a relevant offence against the law of that place may be arrested and surrendered to that place in accordance with the provisions of this Ordinance. (Section 4)

Therefore ‘fugitives’ can refer to persons who have been convicted of committing criminal offences or persons who face allegations of having committed criminal offences. It is therefore possible that some persons who are liable to be surrendered may not be aware of criminal process in the place that seeks their arrest. They are ‘fugitives’ under the FOO.

8. *The HKSARG has referred to making ‘one off’ arrangements under the proposed amendments to FOO. What does this mean?*

The surrender of fugitives and provision of other assistance in criminal cases usually take place under long-term reciprocal arrangements between states which set out the terms and conditions under which extradition or assistance will be provided. Under the Basic Law the HKSAR may conclude such agreements under the authority of the Central People’s Government. Twenty agreements exist for the reciprocal surrender of fugitives and others deal with legal assistance under MLAO.

The content of surrender agreements with other countries must conform to the FOO because a fugitive found in the HKSAR may be surrendered to a place outside the HKSAR only in accordance with the provisions of FOO (section 4).

When an agreement has been concluded with another jurisdiction the Chief Executive may apply FOO to it. This is done by an order that effectively annexes the surrender agreement to FOO and so making it subsidiary legislation. The Chief Executive's order doing this must be laid before the Legislative Council which has an opportunity to repeal it. (section 3).

However, it is wrong to think that surrender can only occur when there is a reciprocal surrender arrangement in place.

The FOO currently provides for a 'one off' arrangement which is an agreement for surrender in an individual case with a place that does not already have a reciprocal arrangement with the HKSAR. Potentially, the HKSAR could conclude 'one off' arrangements with any one of about 170 jurisdictions which do not have reciprocal agreements with it. Under the existing FOO, Macao, Taiwan and the Mainland are excluded from such one-off arrangements because of the current geographical limitation in FOO referred to above.

9. *Are "one off" extradition or surrender agreements all that unusual?*

"One off" extradition or surrender agreements are unusual because countries will take great care to secure comprehensive reciprocal arrangements with other jurisdictions to make sure that their interests are secured on a long-term and predictable basis. Reciprocal agreements also mean that there is uniformity of treatment when dealing with requests for surrender of nationals, if that is permitted, and the surrender of other persons within their jurisdiction.

"One off" arrangements will usually only be made if there is a good reason why a regular agreement is not in place or there are political reasons preventing the making such an agreement.

For example, two countries agree that they will enter into a formal reciprocal agreement at some time in the future but an important case arises before such an agreement can be concluded that needs to be addressed on an 'ad hoc' basis.

Or there may be political issues which stand in the way of a proper reciprocal agreement. A few years ago the UK concluded a 'one off' agreement with Taiwan to cover the case of a UK national who had fled Taiwan to Scotland before sentencing in a criminal case. The unique status of Taiwan was an obstacle to making an ordinary reciprocal agreement but the UK felt it could deal with the matter on an 'ad hoc' basis after the UK Supreme Court was satisfied that the subject had received a fair trial and his human rights were sufficiently protected.⁵

⁵ *Lord Advocate v Dean* [2017] UKSC 44

10. *Why does the HKSAR not conclude more reciprocal arrangements for surrender and mutual assistance?*

The HKSAR does not have an entirely free hand in this matter. Making treaties with foreign jurisdictions is a matter for the Central Authorities at the end of the day. Moreover, international agreements cannot be compelled. The HKSAR may wish to conclude more agreements but countries may not wish to conclude agreements with the HKSAR.

11. *Why should a country not wish to have a surrender or assistance agreement with another jurisdiction?*

In this day and age, many countries feel constrained to not surrender individuals or provide legal assistance if they feel that surrender or providing assistance could result in a breach of human rights, including the right to a fair trial and humane and decent conditions of detention if a surrendered person is sentenced to a prison term.

Moreover, international extradition has developed a core of principles that prohibits surrender even if the requesting state has established that a fugitive is wanted for an offence or in order to serve a prison sentence.

Accordingly, countries will normally audit other countries in order to be satisfied that if it enters into an agreement for the surrender of fugitives, minimum standards of treatment will be met in the other country if a fugitive is surrendered. If those standards are not going to be met, surrender to that place may have legal consequences in the place that surrenders the fugitive.

For example, under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment it is absolutely forbidden to return a person, whether wanted for a crime or not, to a place where they are at risk of being tortured.

When a country is satisfied that it can enter into arrangements with another country the consequences are that courts will generally assume that requesting states will act in good faith and will discharge their obligations under the agreement.

Conversely, a country will not enter into an extradition treaty if it is not satisfied that the negotiating state can meet such minimum standards. The Government

of Australia in 2017 refused to ratify an extradition treaty with the P.R.C., out of concerns expressed about the “quality of justice” in China.⁶

12. *Nevertheless, why would countries have extradition agreements with jurisdictions which have questionable record in delivering justice e.g. The UK has extradition treaty with Zimbabwe (116 out of 126 in World Justice Report Rule of Law Index)? Why should HKSAR be concerned about having arrangements with jurisdictions which have a questionable record in this regard?*

It is believed that a country has an interest in having extradition arrangements with other countries to ensure that people cannot evade prosecution by the authorities in that country. In the example of UK and Zimbabwe referred to above, eight years ago it was believed that outward extradition from the UK’s perspective was unlikely to take place.⁷

HKSAR should be wary about concluding any arrangement with a jurisdiction where the outward extradition traffic is expected to be not insignificant. Once a person is surrendered, it is difficult if not impossible to have redress if that person is treated in a way considered to be unacceptable.

13. *What is the effect of “one off” agreements on other countries that may have concluded full reciprocal surrender arrangements with a jurisdiction? I have read about concerns by foreign consuls on this point.*

As explained earlier, “one off” surrender arrangements are the exception to the rule. There is certainty in having in place reciprocal surrender agreements that will endure for many years. States have protested when one of their nationals has been extradited from one country to another under “ad hoc” arrangements because such arrangements usually arise with little or no notice, they target only one person or a few and they lack the protections of regular reciprocal arrangements.⁸

⁶ “Australia shelves China extradition treaty, after opponents raise human rights concerns.” Bloomberg report in S.C.M.P. , 28 March 2017.

⁷ *A Review of the United Kingdom’s Extradition Arrangements*, presented to the Home Secretary on 30 September 2011 at para 8.95.

⁸ See *Oppenheim’s International Law* (9th) Vol.1 “Rise of Extradition Treaties” at ¶ 416, fn. 11.

14. *The bilateral arrangements that are currently made under FOO and MLA0 clearly entail international agreements and are, presumably, premised on the basis of sovereign states negotiating agreements on equal terms. How does this work when it comes to concluding ‘one off’ agreements with Taiwan, Macao and the rest of the one country?*

This is where pursuing analogies with extradition cases breaks down. For a start, obviously, there are no international relations at play between the HKSAR and the rest of the country.

That relationship is set out in the Basic Law. It is plainly not a symmetrical relationship. The Chief Executive, who approves surrender requests under the FOO and can refuse to surrender even if a magistrate says that there are no bars to surrender, is appointed by the Central People’s Government and is accountable to it: see Articles 43 and 44 Basic Law.

It is probably right to say that the Chief Executive will not refuse a request for surrender from the appropriate Mainland requesting authority.

This means that there will be no discretionary element in the surrender process on the part of the Executive. This leaves the magistrate dealing with a surrender case to examine whether all due formalities have been observed by the requesting jurisdiction and that no statutory bars to surrender exist. See further below the Court’s functions in the surrender process.

The status of Taiwan presents special problems. If concluding an ‘ad hoc’ arrangement with that place means first dealing with its central authorities, the question arises whether Taiwan can have central authorities that co-exist with, and are equivalent to, central authorities in Beijing.

15. *Taiwan! Didn’t the HKSARG say that the proposed changes were needed so that a murder suspect who is presently serving a prison sentence for other offences could be sent there as soon as he completed his sentence and so will not be able to go elsewhere and avoid justice?*

The ostensible reason for the proposed changes to FOO and the urgency to see them go through the legislative process in the summer was to deal with this one case. The suspect will complete his sentence in about October. However, the relevant Taiwan authorities have indicated that they will not enter into any special arrangements made under an amended FOO for a number of reasons. The proposed changes to FOO and MLA0 are not required as a matter of urgency to meet this case.

16. *What kind of restrictions are usually found in surrender agreements?*

Some countries will not surrender their own nationals and so prohibitions on their surrender are commonly found. Some countries will not surrender if the person surrendered may face the death penalty and agreements will require assurances that the death penalty will not be sought in the requesting country or, if imposed by a court, will not be carried out.

An important common restriction forbidding surrender is that a fugitive is sought in connection with 'an offence of a political character'. Another is that surrender is sought for an offence which is being pursued for extraneous reasons, which means reasons that are connected with the fugitive's status as a member of a political party or a religious group. A person wanted who has been tried in their absence will not be surrendered unless it was established that they had the opportunity to be tried in their presence. Other restrictions deal with matters like time limits.

17. *Can you say why the political offence exception exists and give some examples when the political offence exception might arise?*

The exception dates from the early nineteenth century when states began to recognize the right of political dissent which right extended to committing crimes for political purposes, e.g. robbing a bank for funds for a political movement or the assassination of a government figure.

States would not extradite persons who had committed crimes for a political purpose on the grounds that states should not be seen to be interfering with domestic political struggles and that they should prevent retaliation against individuals who had fought a political fight and lost it.

In more recent times certain conduct amounting to a criminal offence may not qualify as a political offence. Multilateral conventions have sought to exclude a consideration of motives behind acts of aircraft hijacking and some acts of terrorism.

Offences of treason, sedition or subversion would normally be regarded as offences of a political character and thus non-extraditable. They would never appear in an extradition treaty as extraditable crimes.

18. *Is there a relation here between a refusal to surrender and the grant of asylum?*

Yes. They are the opposite sides of the same coin. A country may grant asylum to fugitives on the grounds that they have committed political offences or that they have been singled out for prosecution for political reasons. The place from which these fugitives have fled may seek their return under an extradition treaty but the request will likely be refused.

A duty to extradite would be inconsistent with a state's right to provide asylum to such persons that it wishes to shelter, even though they may be fugitives from justice in another country.

19. *What is a court's function in dealing with a request for surrender?*

The function of a magistrate dealing with an application for surrender is to see that the formalities of the request for surrender made by the requesting state have been met and that no grounds exist for refusing surrender. The magistrate may not inquire into whether the person whose surrender is sought is in fact guilty of the offence for which surrender is sought. (Section 23(4) FOO). Similarly the magistrate does not have jurisdiction to inquire into the "quality of justice" that the fugitive may enjoy once surrendered to the requesting jurisdiction. If all formalities have been met and there are no grounds for refusing the request, the magistrate must commit the fugitive for transfer.

20. *Is that the end of the road for the fugitive? Can he or she appeal?*

The finding of the magistrate that there are no legal grounds to prevent a surrender does not mean that a fugitive will be surrendered. The decision to surrender lies with the Chief Executive, not the courts (section 13 FOO). Surrender may be refused at this stage for reasons that are not connected with the statutory grounds for refusal in the FOO, such as the mental or physical health of the fugitive or for political reasons.

The fugitive has a right of appeal by way of applying to the Court of First Instance for a writ of *habeas corpus* against a court order directing that he or she should be committed to await the Chief Executive's decision about surrender (section 12) with the usual avenue for appeals up to the Court of Final Appeal. This appeal is only concerned with the correctness of the magistrate's decision which means being satisfied that there was evidence to make an order for committal and that the magistrate had jurisdiction to commit the fugitive.

The Chief Executive's decision to make an order for surrender is subject to judicial review and the usual avenue for appeals up to the Court of Final Appeal.

21. *I have heard about ‘speciality’ and ‘double criminality’ in the context of discussions about FOO. What are these all about?*

‘Speciality’ means that a state may only prosecute a person who has been extradited for offences agreed upon by the state that sends the fugitive to the requesting state. If a fugitive is sent back for conduct amounting to theft in the requested state, he or she cannot be tried for assault or criminal damage. The principle of speciality recognizes that a sovereign state has the right to place limitations on the surrender of persons to another jurisdiction.

‘Double criminality’ is a related concept. A state will not surrender an individual in respect of conduct which does not amount to an offence under its own domestic legal regime. An extradition agreement will contain mutually agreed upon lists of conduct that are criminal offences in both countries. The requested state must be satisfied that the request is made under one or more heads of conduct before surrender can take place.

22. *I think I understand the court’s role in proceedings under FOO. Is it really true that it cannot look into the prospects of the person surrendered getting a fair trial or being detained or sentenced to imprisonment in very poor conditions?*

As explained above, an examining magistrate can thoroughly scrutinise a case where surrender is sought to make sure that all the conditions under FOO have been met and that there are no grounds on which surrender that must be refused but he or she can go no further. This limitation, sometimes called the ‘non-inquiry’ principle, arises from the presumption that countries will discharge their obligations under international agreements, which is what extradition and legal assistance agreements are, in good faith.⁹

A “one off” agreement with the Mainland would not be an international agreement however so that presumption would not apply. That does not alter the limitations in FOO on non-inquiry into what goes on in a requesting jurisdiction.

23. *I understand that if a person makes a claim under the UN Torture Convention then the Director of Immigration is bound to make inquiries into*

⁹ *Gomes v Government of Trinidad and Tobago* [2009] UKHL 21 at [36] per Lord Brown “The extradition process, it must be remembered, is only available for returning suspects to friendly foreign states with whom this country has entered into multi-lateral or bilateral treaty obligations involving mutually agreed and reciprocal commitments. The arrangements are founded on mutual trust and respect. There is a strong public interest in respecting such treaty obligations.”

the human rights situation in other states and make a decision about asylum and grant it if there is a chance the claimant will be tortured on return. Is there any legal principle preventing a HK court from inquiring in a similar way into what may happen if a person is surrendered under a “one off” arrangement or, indeed, under a regular reciprocal arrangement?

There is no legal principle that prevents a Hong Kong court inquiring into the human rights situation in another jurisdiction.

But note that the United Kingdom has express provisions in its Extradition Act 2003 that require a court to consider whether a person whose extradition is sought, and in respect of which there are no obstacles to extradition, as the last step in the committal process whether extradition would be compatible with the person’s human rights under the European Convention on Human Rights as contained in the Human Rights Act 1998.¹⁰

In 2009 an English court allowed appeals under the 2003 Act by Rwandan nationals that were to be extradited to Rwanda for genocide offences under ‘ad hoc’ arrangements on the grounds that they would not get a fair trial if returned there.¹¹

Unlike the UK, there is no statutory provision in the FOO requiring the court of committal to consider whether the person's surrender would be compatible with his rights under the Hong Kong Bill of Rights Ordinance.

In Hong Kong, in the extradition context, any potential breach of a fugitive's rights under article 2 (right to life) and article 3 (torture and inhuman treatment) will be dealt with under the relevant mechanism for screening torture claims. Potential breaches with other rights may be raised by a fugitive with the CE at the stage when the CE makes the order for surrender. Any decision by the CE is subject to judicial review which will be determined under the usual procedure, viz., for instance, the HK court can only examine if the decision was made illegally, unreasonably, or the procedure adopted in reaching the decision was unfair.

24. Is one way to get round the issue of being concerned whether a fugitive’s human rights will be respected if surrendered to another jurisdiction is to deal only with places that have the same or similar international human rights commitments?

¹⁰ Rights under that convention include fair trial rights and rights for persons detained.

¹¹ *Brown v Government of Rwanda* [2009] EWHC 770 (Admin)

Although some reassurance can be found in the fact that another place has signed up to the same human rights treaties as applicable in the HKSAR, it is well-known that some countries do not implement their treaty obligations and there may well be unfair trials and poor prison conditions in spite of a formal commitment to human rights treaties.

Ratification of a human rights treaty containing provisions concerning fair trials and decent conditions of detention, like the UN International Covenant on Civil and Political Rights (“ICCPR”), is not a guarantee that those rights will be recognized in all cases.

The limited assurance that comes from a country ratifying the ICCPR does not apply in the case of the P.R.C. The P.R.C. has signified an intention to be bound by the ICCPR through signing that treaty in October 1998 but has still to ratify the treaty and so, as a matter of international law, has not established on the international plane that it consents to be bound by it.

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