

# Hong Kong's Extradition Bill: Protests and Implications

*By Zhao Litao, Qi Dongtao and Shan Wei*

**A**fter a massive protest against the highly controversial extradition bill on 9 June 2019, Hong Kong's Chief Executive Carrie Lam announced the indefinite suspension of the bill on 15 June. Nevertheless, a larger protest demanding the complete withdrawal of the bill and Carrie Lam's resignation took place on 16 June. Although Lam did not accept the protesters' demand for her resignation, she apologised to the public through a government statement amid the larger protest. The tension between the Hong Kong government and society will likely continue in the near future, probably in more moderate forms. This can have profound implications for Hong Kong, Taiwan, the "one country, two systems" principle and China's relationship with some Western countries.

1. The Hong Kong government intended to pass the extradition bill in the current legislative session ending in July. The proposed amendment would allow Hong Kong to hand over fugitives to any jurisdiction, including mainland China, Taiwan and Macau, with which it has no prior extradition agreement. The Hong Kong government believes this would plug a "loophole" exposed by a murder case in February 2018 in which the Taiwan authorities were unable to prosecute a Hong Kong citizen who fled to Hong Kong after killing his girlfriend in Taipei.
2. However, the government's "loophole" rationale has been challenged by Hong Kong's legal communities, such as the Hong Kong Bar Association. The Association pointed out in early April that the Taiwan government had expressed its rejection of an extradition deal with Hong Kong as it would have implications for the one-China principle. In other words, even if the extradition bill was passed, Taiwan would not request for the extradition as the amended extradition regime views Taiwan a part of China. The Association has suggested alternative options to the extradition bill, such as amending the Criminal Jurisdiction Ordinance to legalise the trial of the abovementioned homicide suspect in Hong Kong instead of surrendering him to Taiwan.
3. The legal community has also reminded the government that the exclusion of mainland China from the existing extradition regime is not a "loophole" but a deliberate design to protect suspects from being surrendered to a legal system where fair trial and human rights protection are seriously questionable. Since the Hong Kong government has not shown convincing evidences of significant improvement in China's legal system and human rights protection, it is highly controversial to surrender suspects to the Mainland.

4. Nevertheless, with the support of pro-establishment legislators in the Legislative Council (LegCo), Hong Kong's Chief Executive Carrie Lam was initially confident of passing of the bill. However, she underestimated the opposition from pan-democrats in the LegCo, the legal and business communities, and Hong Kong society at large.
5. The issue at stake is whether the extradition bill would undermine Hong Kong's rule of law. Opponents assert that the amended legislation would empower Beijing to ask for the rendition of politically targeted persons in Hong Kong, Hong Kong does not have strong legal safeguards against Beijing's requests and the Chinese legal system cannot be trusted for a fair trial. A particularly controversial issue is the transfer of the oversight role of the LegCo for case-by-case extradition to the Chief Executive who is appointed by and therefore accountable to Beijing.<sup>1</sup>
6. For a large segment of Hong Kong society, the rule of law is a hallmark of its identity and pride. Many see Beijing's support of the extradition bill as an intrusion into Hong Kong's internal affairs, legal system and autonomy. The extradition bill is widely seen as a threat to Hong Kong's pride, identity and way of life. Carrie Lam's labelling of the clashes between protesters and the police on the night of 9 June as "riots" was counterproductive, turning more Hong Kongers from all walks of life into protesters.
7. The recent waves of protest in March, April and June mark a new social movement cycle in Hong Kong. Hong Kong's social protest against the government has declined since the end of the Umbrella Movement in 2014. In the past few years, the Hong Kong government had successfully repressed not only the Umbrella Movement, but also other social resistance by deploying the police force and through legal means.
8. The nature of the anti-extradition protest is notably different from that of the 2014 Umbrella Movement. The Umbrella Movement was motivated by the quest for genuine democracy—universal suffrage in the election of the Chief Executive, something that Hong Kongers do not have yet. By contrast, the anti-extradition movement is framed as a defence of what Hong Kongers cannot afford to lose—autonomy, freedom and safety guaranteed by the rule of law. This was why the 2019 wave of protest resonated more with the public than the 2014 Umbrella Movement.
9. The Chief Executive's miscalculation has been costly. She had to shelve the extradition bill and apologise, and has to work with her team to rebuild the public's trust. She will likely face greater difficulty in governing Hong Kong down the road. In the short term, she has to deal with the calls for her to withdraw the bill and then step down.
10. The extradition bill also casts a shadow on the relationship between the Chief Executive and pro-establishment legislators who had supported her in pushing ahead with the bill. Some pro-establishment legislators complained about the lack of consultation on the decision to withdraw the bill. The fallout of the extradition bill could negatively affect the performance of their parties in the District Council Election in November this year and the Legislative Council elections in September next year.

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<sup>1</sup> Extradition practice varies significantly among countries. Some countries, such as China, do not allow extradition of own citizens. Extradition process in the requested country generally comprises two layers of scrutiny: a judicial and an executive scrutiny. Hong Kong's extradition regime has three layers of scrutiny: the Chief Executive, LegCo and the Court. Countries that emphasise human rights supervision and protection normally empower their independent judiciary to decide on the fundamental issues involved in the extradition process. For more details, see the US Department of Justice website: <https://www.justice.gov/criminal-oia/frequently-asked-questions-regarding-extradition>, and joint observations on the human rights implications of the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 by seven international legal associations.

11. For Beijing, the protest against the extradition bill does not bode well for its attempt to shift the emphasis from “two systems” to “one country”. For the Hong Kongers, due to their distrust of the Chinese system, they may view Beijing’s greater integration effort as an “existential threat”. The Greater Bay Area project, Beijing’s newest initiative to integrate Hong Kong with city clusters in Guangdong, is likely to encounter scepticism and distrust as did the extradition bill.
12. The protest wave in Hong Kong has repercussions for Taiwan as well. Since the ruling Democratic Progressive Party (DPP) lost the local elections to the Kuomintang (KMT) in November 2018, the DPP’s key hope for the 2020 presidential election is to stoke the public’s anti-Beijing sentiments and turn it into votes for the DPP. In January, Taiwan President Tsai Ing-wen had successfully taken advantage of China’s President Xi Jinping’s speech on Taiwan to boost her popularity by rejecting the “one country, two systems”.
13. Hong Kong’s protests further promoted President Tsai’s popularity and helped her win the DPP presidential primary. Before the Hong Kong protests, Tsai’s popularity had consistently ranked third or four among all the possible and strong presidential candidates in most public opinion polls; after the 9 June Hong Kong protest, her popularity has soared and topped all five public opinion polls conducted between 10 and 12 June. After the protests, not only Tsai, all the major politicians, including the most pro-Beijing KMT presidential candidate Han Kuo-yu, had slammed the “one country, two systems” at public gatherings. Various social groups also organised demonstrations in several cities in Taiwan to support the Hong Kong protests. Evidently, the protests have made it harder for the PRC government to sell the “one country, two systems” to Taiwan.
14. Externally, the US government had voiced its opposition to the extradition bill, warning that it could pose serious risks for US national security and Hong Kong’s economic interests. Currently, Hong Kong is home to an estimated 85,000 US nationals and over 1,300 US firms. From the US perspective, the extradition bill could threaten the safety of American citizens residing in or transiting through Hong Kong. Other countries, such as the UK, Canada and the Europe Union have voiced similar concern over the bill.
15. China has a high stake in maintaining Hong Kong as an international hub for finance and trade. The special treatment accorded by the United States to Hong Kong is of value to China especially at a time of a tense US-China trade war. The suspension of the extradition bill might, at least temporarily, prevent Hong Kong from becoming a thorny issue in the US-China relationship.
16. In the longer term, the protests reveal a sharp divide that will continue to impact Hong Kong’s future. While the Chinese government views Hong Kong as part of China and urges for greater integration with its own system, many Hong Kongers, with regional and international support, hold that Hong Kong’s rule of law, autonomy and freedom should be maintained. The tension between these two views will not disappear with the suspension of the extradition bill in June 2019.

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