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香港人權監察

Hong Kong Human Rights Monitor

HUMAN
RIGHTS
WATCH

April 1, 2019

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Chief Executive
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Re: Proposed Changes to Hong Kong's Extradition Laws

Dear Chief Executive,

We are writing to express concerns about the Hong Kong Security Bureau's [proposed changes](#) to two Hong Kong laws concerning extradition, the Fugitive Offenders Ordinance (FOO) and the Mutual Legal Assistance in Criminal Matters Ordinance. Amnesty International, Hong Kong Human Rights Monitor, and Human Rights Watch are concerned that these changes would remove existing safeguards from the process of extradition, allowing people to be sent to jurisdictions, notably mainland China, where they are at risk of torture or other ill-treatment, and unfair trials.

Under existing legislation, Hong Kong authorities can only extradite people to jurisdictions with which the Hong Kong government has standing extradition agreements or to other jurisdictions on a case-by-case basis. Changes to these arrangements must be ordered by the Hong Kong chief executive and scrutinized by the Legislative Council (LegCo).

The existing legislation excludes mainland China from these arrangements, a deliberate decision taken before Hong Kong's handover to China in 1997, reflecting [public and lawmakers' concerns](#) about China's poor human rights record, and to build international confidence in the territory's "One Country, Two Systems."

But the proposed Security Bureau changes would expand the case-by-case extradition arrangement to mainland China, enabling the Hong Kong government to transfer criminal suspects to the mainland authorities. The changes would remove the LegCo from scrutinizing these individual executive requests, a crucial layer of governmental and public oversight.

The Security Bureau [contends](#) that the amendments contain adequate safeguards for human rights because, among other elements, the crime concerned must constitute an offense in both jurisdictions and cannot be "political in nature."

In practice, the safeguards are unlikely to provide genuine protection. The Chinese government regularly brings criminal charges recognized as legitimate and non-political, such as tax offenses, to [prosecute and imprison peaceful activists](#), human rights defenders, and those who oppose government policy.

Moreover, the ability of Hong Kong's judiciary to withstand pressure from China in ruling on such cases is increasingly in question. Hong Kong courts are generally known for their independence and the enforcement of procedural protections. However, these safeguards are unlikely to be adequate when dealing with extradition requests from the mainland, including because judgments of Hong Kong courts may be subject to Beijing's "interpretations of the Basic Law." In 2016, the Chinese government [actively interfered](#) in a highly political court case, ejecting two pro-independence advocates elected to the LegCo.

In recent years, the Hong Kong government has increasingly made use of the legal system to silence critical voices, bringing [politically motivated prosecutions](#) against peaceful protesters. The courts have [convicted and sentenced](#) a number of them. The extradition amendments, once they pass, can present a potent tool for the Hong Kong and Beijing governments to further intimidate critics.

The International Covenant on Civil and Political Rights, which applies to Hong Kong, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Hong Kong is bound, as well as customary international law, prohibit the return of individuals to jurisdictions in which there is a real risk of torture and other ill-treatment, including detention in poor conditions for indefinite periods, or other serious human rights violations. We also note the obligation to mandatorily and generally refuse extradition requests where the person sought may face the death penalty, as reflected in present Hong Kong law and practice, and that any assurances as to its non-application would have to be reliable, effective, and open to judicial overview in Hong Kong.

China's justice system has a record of [arbitrary detention](#), [torture and other ill-treatment](#), serious violations of fair trial rights, and [various systems](#) of incommunicado [detention without trial](#). These problems are exacerbated because the judiciary lacks independence from the government and Chinese Communist Party. As a result, we are gravely concerned that anyone extradited to China will be at risk of torture and other ill-treatment and other grave human rights violations.

We urge the Hong Kong Security Bureau to rescind its proposals to amend the legislation.

We look forward to your reply and would be pleased to discuss these matters with appropriate officials at your convenience.

Sincerely,

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Amnesty International Hong Kong

Law Yuk Kai
Director
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Sophie Richardson
China Director
Human Rights Watch

CC: John Lee Ka-chiu, Secretary for Security