6 June, 2019

Carrie Lam
Chief Executive Office of the Chief Executive
Tamar Hong Kong
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Dear Chief Executive,

OPEN LETTER REGARDING PROPOSED CHANGES TO HONG KONG’S EXTRADITION LAW

We are writing to express our grave concern regarding the Hong Kong government’s proposed amendments to two Hong Kong laws concerning extradition, the Fugitive Offenders’ Ordinance (FOO) and the Mutual Legal Assistance in Criminal Matters Ordinance (MLACMO).

The existing legislation expressly excludes Mainland China from extradition and mutual legal assistance arrangements, a deliberate decision reflecting public and lawmakers’ concerns about China’s poor human rights record. However, the proposed changes to expand the extradition arrangement to Mainland China would have the effect of enabling the handover of persons in the territory of Hong Kong, be they residents of Hong Kong, persons travelling to or working in Hong Kong, or persons merely in transit, as well as materials carried by them or in their possession.

We are especially concerned that in the proposed amendments, anyone who is accused of “aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting to commit an offence” that are within the offences described in the FOO, will also fall on the extraditable offences. Given the Chinese judiciary’s lack of independence, and other procedural shortcomings that often result in unfair trials, we are worried that the proposed changes will put at risk anyone in the territory of Hong Kong who has carried out work related to the Mainland, including human rights defenders, journalists, NGO workers and social workers, even if the person was outside the Mainland when the ostensible crime was committed. We are calling on the Hong Kong government to immediately withdraw the bill to amend the FOO and the MLACMO.

The government also proposed to amend the MLACMO, which allows Hong Kong police to search individuals or enter private premises for evidence and confiscate or freeze properties in Hong Kong upon China’s request for assistance.

The court would order the extradition of the suspect once the evidence adduced by the government reaches prima facie level. The suspect cannot adduce evidence and raise a defence and there is no cross-examination on the evidence.

Serious shortcomings in the proposed amendment

The Hong Kong Security Bureau contends that the amendments contain adequate safeguards for human rights and any Hong Kong court would consider the human rights situation of the countries
that make the request for surrender of fugitives or material. However, in practice, the safeguards are unlikely to provide genuine and effective protection:

1. Under the Immigration Ordinance, “torture claims” to ward off forced removals cannot be made against China
2. The court does not have the clear explicit jurisdiction and legal obligation to examine the various human rights involved in Mainland China or in other countries
3. Surrender of fugitives or materials under the proposed arrangement does not guarantee comparable minimum rights enjoyed by persons in Hong Kong's criminal justice system
4. The courts’ review function is limited to ensure the Hong Kong government has complied with the formal requirements set out in the FOO
5. Removal of legislative scrutiny for the arrest and surrender of persons requested by a country with which Hong Kong does not have a treaty-based arrangement

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 where there is a real risk of torture or 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 scrutiny in Hong Kong.

China's justice system has a record of arbitrary detention, torture and other ill-treatment, serious violations of fair trial rights, enforced disappearances and various systems of incommunicado detention without trial. These problems are exacerbated because the Mainland judiciary lacks independence from the government and the 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 are calling on the Hong Kong government to immediately halt its plan to amend the legislation.

We look forward to your reply and would appreciate receiving your response on this matter.

Sincerely,

Man-kei Tam
Director
Amnesty International Hong Kong

Law Yuk Kai
Director
Hong Kong Human Rights Monitor

Sophie Richardson
China Director
Human Rights Watch
Co-signing Organizations of Human Rights Defenders and Journalists

Asia Monitor Resource Centre
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China Human Rights Lawyers Concern Group
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Chinese Human Rights Defenders

Committee to Support Chinese Lawyers
中國律師之友

Covenants Watch
人權公約施行監督聯盟

Civil Rights Observer

Committee to Support Chinese Lawyers

Hong Kong Watch

Judicial Reform Foundation
民間司法改革基金會（台灣）

Lawyers’ Rights Watch Canada

Leitner Center for International Law and Justice at Fordham Law School

PEN Hong Kong

Progressive Lawyers Group
法政匯思

Reporter Without Borders (RSF)
無國界記者

The Committee to Protect Journalists

The Hong Kong Society for Asylum-seekers and Refugees

The Law Society of England and Wales

The Rights Practice
Co-signing non-governmental organizations 共同簽署的非政府組織:

- Animal Life Guard Action Group
- Australia-Hong Kong Link
- Canada-Hong Kong Link
- Canadian Friends of Hong Kong
- Christians for Hong Kong Society
- Chosen Power (People First Hong Kong)
- Civil Renaissance
- Dolphin Family
- Fair Trade Hong Kong
- Financier Conscience
- Friends of Conscience
- Hong Kong Christian Institute Limited
- Hong Kong Forum, Los Angeles
- Hong Kong Professional Teachers’ Union
- Humanistic Education Foundation, Taiwan
- International Domestic Workers Federation
- International Service for Human Rights
- la la team
- Les Corner Empowerment Association
-啦啦隊
- 女角平權協作組
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