



香港人權監察
Hong Kong Human Rights Monitor



6 June, 2019

Carrie Lam
Chief Executive Office of the Chief Executive
Tamar Hong Kong
ceo@ceo.gov.hk

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 共同簽署的人權組織：



Asia Monitor Resource
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China Human Rights
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Chinese Human Rights
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民權
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RIGHTS
OBSERVER
Civil Rights Observer



Committee to Support
Chinese Lawyers



人權公約
施行監督聯盟
Covenants Watch
人權公約施行監督聯盟



Hong Kong Watch



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



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Kong



Lawyers' Rights Watch Canada
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for International Law and Justice
AT FORDHAM LAW SCHOOL, NEW YORK CITY
Leitner Center for
International Law and
Justice at Fordham Law
School



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Progressive Lawyers
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Taiwan Alliance to End the
Death Penalty
台灣廢除死刑推動聯盟



Taiwan Association
for Human Rights
台灣人權促進會



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
澳港聯

Canada-Hong
Kong Link
港加聯



Canadian
Friends of
Hong Kong
Canadian Friends of
Hong Kong
加拿大香港之友



Christians for Hong Kong
Society
基督徒關懷香港學會



Chosen Power
(People First Hong
Kong)
卓新力量



Civil Renaissance
思言行



Dolphin Family
豚聚一家



Fair Trade Hong Kong
香港公平貿易聯盟



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Friends of
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Christian Institute
Limited
香港基督徒學會聯
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Hong Kong Forum,
Los Angeles
洛杉磯香港論壇



Hong Kong Professional
Teachers' Union
香港教育專業人員協會



Hong Kong Wild Boar
Concern Group
香港野豬關注組



Humanistic
Education
Foundation, Taiwan
人本教育文教基本會



International
Domestic Workers
Federation



International
Service for Human
Rights



la la team
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Les Corner Empowerment
Association
女角平權協作組



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活在觀塘



Midnight Blue
午夜藍



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盡責做個好主人·愛·關·公·德
Mongrel Dog Lovers
唐狗就是寶



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New School for Democracy
華人民主書院

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Rainbow Action
彩虹行動



Save Hong Kong
Heritages
全民保育行動



Taiwan Forever
Association
永社



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The Association for the
Advancement of
Feminism
新婦女協進會



香港婦女勞工協會
Hong Kong Women Workers' Association
Hong Kong Women
Workers' Association
香港婦女勞工協會



The Human
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羣民集作



Toronto
Association for
Democracy in
China
多倫多支持中國民主
運動



Vancouver Society
in Support of
Democratic
Movement



Umbrella Blossom
撐傘落區運動



Wang Chau Green Belt
Concern Group



嚴重弱智人士家長協會