



June 18, 2019

The Honorable Mike Pompeo
Secretary of State
U.S. Department of State
2201 C St. N.W.
Washington D.C., 20520

Dear Secretary Pompeo:

RE: Protests in Hong Kong calling for withdrawal of extradition bill

You would have seen that an estimated 1 million people on June 9, 2019 and almost 2 million on June 16, took to the streets in Hong Kong calling for the government to withdraw its extradition bill, which would enable extradition to mainland China, among other jurisdictions.

On June 15, the Hong Kong government announced it would indefinitely suspend the bill, after widespread criticism from many sectors of society concerning the bill's shortcomings. However the bill has not been withdrawn and could still be brought forward again.

On June 12, tens of thousands of protesters took over streets around the city's government headquarters to stage a protest to stop the legislators from moving forward with the bill. The Hong Kong government, however, took advantage of the violent acts of a small minority of protesters as a pretext and classified the largely peaceful protest as an unlawful assembly and specifically a "riot". The police used tear gas, guns firing bean bag rounds and rubber bullets, batons and pepper spray to disperse the demonstration in full, regardless of whether particular protest areas had seen violence or not. The police's excessive use of force, widely visible in video footage, fuelled tensions, contributed to worsening violence and caused severe injuries to protesters. Some protesters were arrested. The Hong Kong government's actions against the protesters were violations of their human rights to freedom of expression and peaceful assembly. The extradition bill against which people in Hong Kong protested constitutes a direct threat to human rights in Hong Kong. The bill is to amend 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 bill expands the extradition arrangement to mainland China, which would have the effect of enabling the handover of any 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 in their possession. The extradition bill also removes the legislative scrutiny for the arrest and handover of persons requested by a government with which Hong Kong does not have a treaty-based arrangement, including mainland China, which is required under the present law.

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 mainland China's judiciary lacks independence from the government and the Chinese Communist Party. We are therefore gravely concerned that anyone extradited to China will be at risk of torture and other ill-treatment and other grave human rights violations. This would include persons who were outside mainland China when the ostensible crime was committed.

The extradition law amendments stipulate that the crime concerned must constitute an offence in both jurisdictions and cannot be "political in nature". However, 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.

The bill also amends 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 mainland China's request for assistance.

The Hong Kong government contends that the amendment contains adequate safeguards for human rights and any Hong Kong court could consider the human rights situation of the countries that makes the request for handover 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 courts in Hong Kong do not have the clear explicit jurisdiction and legal obligation to examine the various human rights involved in mainland China or in other countries.
3. The courts would order the extradition of the suspects once the evidence adduced by the Hong Kong government reaches *prima facie* level. The suspects cannot cross-examine that evidence or introduce their own counter-evidence and raise a defence.
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. Handover of fugitives or materials under the proposed arrangement does not guarantee comparable minimum rights enjoyed by persons in Hong Kong's criminal justice system.

This would also put at risk people extradited from third countries to Hong Kong, since these could potentially be subject to an “chain” extradition onwards to mainland China.

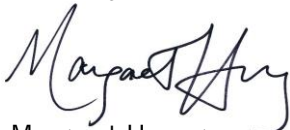
Hong Kong Chief Executive Carrie Lam indicated, after the 9 June large-scale protest, that the government would increase safeguards to extradition arrangements. For example, the Chief Executive would require the requesting government to guarantee a set of human rights protections before the Chief Executive could trigger the extradition process. However, the additional safeguards will not be added in the bill, to allow the government “greater flexibility” depending on the situation of each requesting jurisdiction. The additional measures would not answer the public concerns about the risk of torture, unfair trial and other human rights violations to those people handed over from Hong Kong to the mainland China.

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.

We hope that you will urge the Hong Kong government to immediately and completely withdraw the bill to amend the FOO and the MLACMO, not to repeat any human rights violations or target peaceful protesters who oppose the bill, and ensure the rights to freedom of expression and peaceful assembly are protected and respected. We hope that you will stand with the people of Hong Kong in this crucial moment in history.

We look forward to your reply and would welcome the opportunity to provide any information you may require.

Sincerely,



Margaret Huang
Executive Director
Amnesty International USA