

**AMNESTY
INTERNATIONAL**



24 March 2016

Hon Luke Hartsuyker MP
Chair
Joint Standing Committee on Treaties
Parliament House
Canberra ACT 2600

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Dear Chair,

Re: Treaty on extradition between Australia and the People's Republic of China

On behalf of Amnesty International's 500,000 Australian supporters, I welcome the opportunity to provide comment on the proposed extradition treaty between Australia and the People's Republic of China ('the treaty').

Amnesty International notes the treaty has a number of safeguards in the form of mandatory grounds for refusal, including issues relating to the death penalty and torture, among others.

Despite these safeguards, Amnesty International has a number of concerns relating to the treaty and whether its human rights safeguards are efficient. These concerns are expanded upon below.

The death penalty in China

The death penalty is cruel, inhuman and degrading. Amnesty International opposes the death penalty at all times -- regardless of who is accused, the crime, guilt or innocence or method of execution.

Executions in China are a state secret. Transparency is non-existent. Amnesty International's 2014 annual report on death sentences and executions worldwide estimated China executed more people than the rest of the world combined -- numbering in the thousands annually -- but did not publish figures. Amnesty stopped publishing figures on China in 2009 and instead challenges the Chinese government to release the numbers themselves in line with international standards, and to prove their claims that they are achieving their goal of reducing the application of the death penalty.

Amnesty continues to monitor the use of the death penalty in China through available, but limited, sources. We have verifiable information that death sentences continue to be imposed in China after unfair trials and for non-lethal acts. In 2014, Amnesty estimated that approximately 8% of all recorded executions in China were for drug-related crimes. Economic crimes -- such as embezzlement, counterfeiting and bribe-taking accounted for around 15% of all executions in China in 2014. Importantly, if media reports surrounding this treaty are correct, it is for economic crimes that China expects to extradite most nationals from Australia.¹

Amnesty has detailed that in some instances family members only found out about the executions of their relatives on the same day the death sentences were implemented.

Adequacy of safeguard against use of the death penalty

Amnesty welcomes the fact that Article 3(f) of treaty stipulates a mandatory and general refusal of extradition where the person sought may be sentenced to death. However, we are concerned about the fact the treaty will allow an individual to be extradited to China on a capital charge when the requesting party undertakes the death penalty will not be "imposed or, if imposed, will not be carried out." The organisation has grave reservations about the reliability and effectiveness of any

¹ Amnesty International (2015), *Death Sentences and Executions 2014*, pp26-28

such undertakings by the Chinese government. The undertaking should stipulate, unequivocally, “the death penalty will not be imposed.”

Amnesty is of the view that this exception significantly weakens the safeguard intended by Article 3(f).

It is not clear how Australia could realistically ensure the undertaking is reliable, effective and binding given the lack of transparency in the Chinese justice system. How would Australia monitor to ensure the Chinese government is upholding its undertaking? Would the Australian government continue to ensure whoever is subject to extradition has not been in fact been sentenced to death or executed? Without this transparency, diplomatic assurances regarding the death penalty may not be reliable, effective and enforceable.

When it comes to any extradition case, undertakings need to be specific to the individual case, country, crimes alleged, bases of prosecution, and factual situation. Any history of violations of international human rights law by the requesting state, especially when imposing or carrying out the death penalty, should weigh heavily against the acceptance of an assurance. Undertakings must be applicable to all branches of power in the requesting state, all jurisdictions in a federal system, and any transfers to third countries. If necessary, multiple, complementary statements must be provided by all relevant authorities. Undertakings must also be comprehensive, binding and enforceable – that is, open to judicial review in the transferring state. They must be transparent and objectively verifiable. The duty of the requested state to assess, prior to extradition, whether there is a real risk of the death penalty must be complemented by an independent and effective monitoring mechanism once extradition has occurred.

Amnesty also notes that this treaty is being considered in the context of a renewed Australian advocacy for the abolition of the death penalty. Amnesty has welcomed commitments by the Foreign Minister to make Australia’s advocacy for worldwide abolition of the death penalty a focal point of the Australian government’s campaign to win a seat on the United Nations Human Rights Council.

Australia’s opposition and advocacy must be principled, and unequivocal. Amnesty also notes there is an ongoing inquiry by the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade into Australia’s advocacy for the abolition of the death penalty. Amnesty is concerned this treaty’s ratification could undermine Australia’s unequivocal opposition to the death penalty.

Amnesty International recommends Australia refuse all requests for extradition of an individual who risks being sentenced to death, in the absence of reliable, effective and binding assurances that the death penalty will not be sought or applied.

Torture and other ill-treatment

The treaty’s accompanying National Interest Analysis states that the treaty’s text is largely consistent with Australia’s human rights obligations because:

Under the proposed Treaty, extradition must be refused if there are substantial grounds for believing the person sought has been, or will be, subjected to torture or other cruel, inhuman or humiliating treatment or punishment.²

This is reasonable, and is the absolute minimum for the treaty to be consistent with Australia’s human rights obligations.

Amnesty’s 2015-16 Annual Report noted that, in China over the past twelve months:

Torture and other ill-treatment remained widespread in detention and during interrogation, largely because of shortcomings in domestic law, systemic problems in the criminal justice system, and difficulties with implementing rules and procedures in the face of entrenched practices.³

² Treaty on Extradition Between Australia and the People’s Republic of China, National Interest Analysis

³ Amnesty International (2016), *Amnesty International Report 2015-16: The State of the World’s Human Rights*, p.120

This demonstrates the difficulty facing the Australian government. Amnesty would appreciate an explanation from the government regarding how it intends to draw a conclusion relating to “substantial grounds.” In addition, how does it intend to monitor what is happening to those subject to extradition to ensure they are not being subject to torture?

In addition, Amnesty recalls that any undertakings, such as those considered for the death penalty (see above), should never be applicable and acceptable in case of a real risk of torture or other ill-treatment. Such undertakings, among other things, would undermine the international legal prohibition of torture and other ill-treatment. Furthermore, they are inherently unreliable and unenforceable, and the respective treatment is usually practiced in secret and denied by governments.

Hence, when it comes to torture and other ill-treatment, an assurance from the Chinese government to Australia that a prisoner will not be subject to torture is not sufficient.

Fair trials

Amnesty is concerned that, even when an individual is being charged with a serious crime, the opacity of China’s legal process means raises serious human rights concerns.

China does not have an independent judiciary. Many suspected criminals are unable to access legal counsel, especially in politically “sensitive” cases. Forced “confessions” extracted through torture and other forms of ill-treatment continue to play an important role in the Chinese criminal justice system, despite some recent laws, regulations, and policies attempting to curb the practice.

Refoulement

Amnesty notes the treaty raises issues regarding the principle of non-refoulement.

Any transfer of criminal suspects (including their extradition, deportation, expulsion or other removal) to situations where they would face a real risk of serious human rights violations or abuses would be a violation of human rights. The principle of non-refoulement applies when States know or ought to know that the persons’ removal would expose them to a real risk of serious human rights violations or abuses.

Double criminality and crimes under international law

Amnesty notes that Article 2(1) stipulates that extraditable offences under the treaty are only offences which are – under the domestic laws of both parties – punishable for a period of one year or more: a so-called ‘double criminality’ provision. We also note the exception to strict double criminality in Article 2(4).

On this point, Amnesty argues the treaty should not create obstacles for the extradition of criminal suspects for crimes under international law, which may not be sufficiently criminalised in the domestic law of the requested party, but where an obligation to prosecute or extradite exists. For example, the treaty should not in fact exclude possible extradition for torture

Conclusion

Amnesty notes that a treaty such as this, if it includes rigorous human rights protections, may help the Australian government seek the return of criminal suspects from China. With this in mind, Amnesty would appreciate the Committee seeking further clarifications from the Australian government addressing the concerns raised in this submission.

Yours sincerely,

Amnesty International Australia