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Hong Kong's Proposed Extradition Law Amendments

Two proposed changes to Hong Kong's extradition law have sparked over two months of massive demonstrations across the city. If they had been adopted, the changes could make anyone—including U.S. citizens—residing in, visiting, or transiting the Hong Kong Special Administrative District (HKSAR) vulnerable to investigation by or extradition to mainland China, raising concerns about possible political prosecutions.

On April 3, 2019, Hong Kong's Chief Executive Carrie Lam Cheng Yuet-ngor submitted to the city's Legislative Council (Legco) proposed amendments to the Fugitive Offenders Ordinance (FOO) that would permit—for the first time—extradition of alleged criminals from Hong Kong to mainland China, the Macau Special Administrative Region (Macau), and Taiwan. In addition, the legislation seeks to amend its Mutual Legal Assistance in Criminal Matters Ordinance (MLAO) to include mainland China, Macau, and Taiwan.

Legco was scheduled to take up the proposed amendments on June 12, but large-scale demonstrations on June 9 and 12 led Chief Executive Lam to announce on June 15 the suspension of consideration of the bill. On June 16, Hong Kong protesters gathered in even larger numbers in opposition to the amendments. Since then, large-scale protests have been held in Hong Kong every week, as the focus of the demonstrations has expanded beyond the extradition bill to an expression of general dissatisfaction with the status of Hong Kong under China's policy of "one country, two systems." On October 23, 2019, Secretary for Security John Lee Ka-chiu formally withdrew the proposed amendments, but the protests are expected to continue.

What is the Fugitive Offenders Ordinance (FOO)?

The FOO establishes the process by which the HKSAR government administers extradition requests from other governments, including those with which the HKSAR has an extradition agreement (such as the United States). It also specifies which types of crimes are eligible for extradition.

Why propose the FOO amendments?

The HKSAR government has offered two reasons to amend the FOO. The first broad reason is to allow extradition of people to "other parts of the People's Republic of China" (PRC), including Macau, mainland China, and Taiwan. The second specific reason is to permit the extradition of Hong Kong permanent resident Chan Tong-kai to Taiwan to face trial for the alleged murder of his girlfriend while they were vacationing in Taiwan in February 2018. After serving 19 months in Hong Kong for money-laundering, Chan was

released on October 23, 2019, and has offered to voluntarily return to Taiwan to face murder charges.

How would extradition requests from mainland China be administered under the proposed amendments?

The FOO amendments would have changed how the HKSAR government can extradite people to jurisdictions with which the HKSAR does not have an extradition agreement. Under the current FOO, the HKSAR government must ask Legco for permission to consider such an extradition request. The FOO amendments would have created a new "special surrender arrangement" that would eliminate the need to obtain Legco's approval, including requests from mainland China.

Should U.S. citizens be concerned?

If the FOO amendments had been adopted, any U.S. citizen residing in, visiting, or transiting through Hong Kong could have been extradited from Hong Kong to mainland China. In addition, if the MLAG amendments had been approved, PRC security officers could request that HKSAR security officers assist criminal investigations against U.S. citizens, including conducting searches of suspects' homes or businesses. The State Department estimated that there were 85,000 U.S. citizens residing in Hong Kong in 2018.

Does the United States have an extradition agreement with Hong Kong?

Yes, that agreement sets the terms for extradition requests between Hong Kong and the United States, which are then administered in Hong Kong in accordance with the FOO.

Why was the PRC excluded from the original FOO?

Legco passed the FOO in March 1997, four months before the United Kingdom transferred sovereignty over Hong Kong to the PRC. According to Hong Kong's last colonial Governor Chris Patten and others, China was intentionally excluded from the FOO because its legal and judicial systems were not up to international standards. Chief Executive Lam has claimed, however, that the exclusion of China from the FOO was an oversight.

Do the current FOO and/or the proposed amendments protect people from false or politically-based charges, or human rights abuses after extradition to mainland China?

The current FOO, as well as the proposed amendments, include some safeguards, such as prohibiting the extradition of a person for "an offence of a political character." They also prohibit the extradition of people who were convicted in absentia, or where the sentence could be the death penalty. Opponents fear the PRC will use the extradition

process to persecute or falsely imprison its critics, like was done in the cases of Swedish national Gui Minhai,

Canadians Michael Kovrig and Michael Spavor, and U.S. citizens Kai Li and Sandy Phan-Gillis.

Table 1. Extradition Provisions of Hong Kong's Fugitive Offenders Ordinance (FOO)

Existing FOO compared to proposed amendments, as submitted on April 3, 2019

	Existing FOO		Amended FOO	
Coverage	Governments with which the HKSAR has an extradition agreement	Any other governments (excluding Mainland China, Macau, and Taiwan)	Governments with which the HKSAR has an extradition agreement	Any other governments (including Mainland China, Macau, and Taiwan)
Crimes Subject to Extradition	46 types of violent and commercial crimes with possible sentence of 1 year or more	46 types of violent and commercial crimes with possible sentence of 1 year or more	46 types of violent and commercial crimes with possible sentence of 1 year or more	37 types of violent and commercial crimes with possible sentence of 3 years or more (see Note)
Role of Legco	None	Pass legislation to permit HKSAR to enter into a special extradition arrangement	None	None

Source: CRS analysis.

Notes: Excludes crimes pertaining to bankruptcy and insolvency; acts of corporate officers; security and futures trading; intellectual property rights; environmental pollution and public health; export or import controls and international fund transfers; use of computers; taxes or duties; and false or misleading trade descriptions.

How have people in Hong Kong reacted to the proposed FOO amendments?

On June 9, 2019, according to the protest organizers, 1.03 million people joined a march opposing the extradition amendments (the Hong Kong Police's official estimate was 240,000 people). On June 12, 2019, the day Legco was to take up the bill, tens of thousands of protesters surrounded the Legco building and the HKSAR government headquarters. An estimated 5,000 Hong Kong police officers used tear gas, rubber bullets, bean bag rounds and water cannons to break up the protest. On June 16, 2019, an estimated 2 million people (338,000, according to the Hong Kong police) rallied in protest against the bill and alleged police misconduct on June 12.

Since then, large-scale demonstrations have been organized in various parts of Hong Kong every weekend, and on many weekdays. The protesters have given 5 demands to be met before they will end the demonstrations: (1) complete withdrawal of the extradition bill; (2) drop all charges against protesters; (3) reverse the characterization of June 12 demonstration as a "riot"; (4) conduct an independent investigation of police conduct during the protests; and (5) implement the election of the Chief Executive and all Legco members by universal suffrage. While the initial demonstrations generally have been peaceful, confrontations between police officers in riot gear and some more militant protesters have escalated, generally ending with the police using tear gas, rubber bullets, and pepper spray to disperse the protesters.

How has the Trump Administration responded?

On June 10, 2019, the State Department expressed "its grave concern" about the Hong Kong government's proposed amendments to its fugitive offenders ordinance, and stated that the continued erosion of the "One Country,

Two Systems" framework puts at risk Hong Kong's long-established special status in international affairs. On June 12, 2019, President Trump said that he was sure that Hong Kong and China will "be able to work it out." In subsequent tweets and statements, he has expressed similar views that it is up to China and Hong Kong to address the protests.

What has the PRC government said?

The PRC government supported the amendments, but has backed Lam's decision to suspend the bill. It also has accused the United States and other governments of interfering in China's "internal affairs," and claims that "the opposition camp and its foreign allies" have "hoodwinked" Hong Kong residents into joining the protests.

How has Taiwan's government reacted to the issue?

The Taiwan government has stated it would not seek Chan's extradition under the amended FOO, as it implied that Taiwan is part of the PRC, but is blocking Chan's voluntary return to Taiwan.

What legislation has been introduced regarding U.S. policy in Hong Kong?

Three bills have been introduced specifically on Hong Kong. H.R. 3289 and S. 1838 are companion bills that would require that the Secretary of State certify annually that Hong Kong remains sufficiently autonomous to justify separate treatment from mainland China, seeks to protect U.S. citizens from extradition to mainland China, and blocks the entrance into the United States of persons responsible for abductions or extraditions of people from Hong Kong to mainland China. H.R. 3289, as amended, passed the House on October 15, 2019. H.R. 4270 would "prohibit the issuance of licenses to export covered defense articles and services and covered munitions items to the

Hong Kong Police.” H.R. 4270, as amended, passed the House on October 15, 2019.

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