

Truth In the Extradition: Extradition Treaties as Objective Tools for Assessing Human Rights Conditions

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Abstract. This paper explores the reliability of extradition treaties as objective tools for assessing human rights conditions, using the China-Australia extradition treaty as a case study. Unlike biased statements from government officials, extradition treaties are formal legal agreements, offering a more credible lens for evaluating justice systems. The paper examines Australia's refusal to ratify the 2007 treaty with China, citing concerns about torture, politically motivated charges, and the death penalty. It also highlights some complexities in China's legal system, including the *shuanggui* practice and high conviction rates, raising questions about procedural fairness. Australia's decision to resist ratification underscores its commitment to human rights and sets a precedent for other nations in handling diplomatic relations with China.

Keywords: Extradition Treaty, Human Rights, Legal System.

1. Introduction

Typically, people lack credible sources of information when it comes to politically charged topics. For instance, Secretary of State Antony J. Blinken once said, "With increasing international condemnation, the People's Republic of China continues to commit genocide and crimes against humanity in its western Xinjiang region." In response, Wang Wenbin, spokesman of the Chinese Ministry of Foreign Affairs, expressed, "We condemn the United States for spreading lies again and smearing attacks on China. American politicians spreading lies and smearing China will only discredit them and let the world see their sinister intentions." [1]

Various factors influence the rhetoric of these two politicians, including the economic conflict between their nations, the prevailing spirit of nationalism, and their respective domestic political systems. The contradictory statements from representatives of both countries create confusion for those unfamiliar with political affairs, making it difficult to trust either perspective.

In this paper, I argue that, unlike the biased judgments by individual politicians, extradition treaties offer a more objective and trustworthy perspective on human rights issues. In what follows, I will use the China-Australia extradition as a case study, demonstrating that documents related to China-Australia extradition are dependable sources for examining human-rights issues within the Chinese criminal justice system.

2. Measurements of Human Rights

When addressing human rights, finding an objective measure to evaluate conditions in a given state is challenging. Relying solely on the speeches or comments of government officials can lead to biased and prejudicial judgments. Thus, this paper proposes using extradition treaties as a standard measurement for assessing the conditions of human rights. Generally, laws - including official treaties, such as extradition treaties, are subject to comprehensive governmental procedures, making them more reliable and rigorous, with less room for ambiguity and bias. An extradition treaty represents a cooperative law enforcement procedure and arrangement between the two jurisdictions. For example, if a criminal from Country A flees to Country B, Country A can request the extradition of that individual back to its territory based on their treaty. Countries typically agree to such treaties only when there is mutual trust in each other's legal and judicial systems.¹

¹ Strong diplomatic relations and successful past legal cooperation also facilitate the signing of these treaties. For the purpose of this paper, I will not further expand on that.

Many developed countries, particularly democratic ones, do not have official extradition treaties with China, reflecting their concerns about human rights issues in the country. For instance, the extradition treaty between China and Australia was signed on 6 September 2007, during the final months of the Howard government [2]. However, the treaty has not yet been ratified due to significant concerns among the Australian government and institutions regarding the human rights situation in China. Numerous Australian organizations have called for better human rights protections, citing apprehensions about China's political and judicial systems. A diverse coalition, including the Greens, Nick Xenophon's Team, Australian Conservatives' Cory Bernadi, the Law Council of Australia and Amnesty International, has raised concerns and opposed the ratification of the treaty [3]. Many of these groups have proposed a range of safeguards to address human rights issues.

3. Concerns of Extradition to China

Extradition to China raises several human rights concerns. First, there is apprehension that individuals extradited may face torture or inhumane treatment due to the nature of China's justice system. Second, extradition for political or military offenses is particularly problematic, as it may target political dissent rather than genuine criminal acts. Third, concerns exist that extradition could be employed to persecute individuals based on their political beliefs. Lastly, the potential for the death penalty in China exacerbates these concerns, making extradition even more contentious, unless there are guarantees that it will not be imposed or carried out.[4] These concerns render extradition to China a complex and controversial topic for many governments, highlighting the potential flaws of the Chinese criminal justice system. The consideration surrounding the Australian government's procedure underscore these flaws in a more visible way, providing a reasonable basis for concerns regarding human rights in China.

In contrast, many politicians and governmental officials express personal opinions on China's complex political landscape. For instance, Mr. Hastie, Member of Parliament for Canning in West Australia and head of a parliamentary security committee, criticized China in a piece published in Sydney Morning Herald after being banned from entering the country. He stated, "Like the French, Australia has failed to see how mobile our authoritarian neighbour has become" and added "Hong Kong is one of the most amazing places in the world and what is happening there is an absolute tragedy and I believe the Communist Party bears some responsibility for that." [5] Following his remarks on human-rights issues, the Chinese embassy in Australia responded by accusing Hastie of exhibiting a "Cold War mentality and ideological bias".[6]

Navigating the truth can be challenging when relying on politicians' comments and expressions of free speech, as their views may be influenced by personal agendas. For example, Mr. Hastie's ban from China suggests a bias in his criticisms. Social media and newspaper commentary from politicians often reflect patriotic sentiments or personal ambitions, which can lead to significant bias. These opinions are less credible as evidence of human rights issues compared to the more objective processes of government, such as extradition treaties. These legal frameworks provide reliable safeguards, allowing people to trust the concerns raised by government institutions, which are grounded in abundant evidence and legal regulations.

4. Complexities in China's Legal System

To illustrate how extradition treaties can inform us about human rights issues, I will discuss specific concerns within China's legal system that are rarely addressed by Australian politicians. One reason these flaws are often overlooked may be a lack of familiarity among Australian politicians with the intricacies of Chinese law. A significant concern is the practice of *shuanggui*, an extra-legal system used to detain and interrogate members of the Chinese Communist Party (CCP) for potential corruption or political charges. During the *shuanggui* process, suspects can disappear for months, only to reappear with coerced confessions.[7]

This extra-legal system exemplifies the broader issues of the Chinese legal system. Australian institutions question whether Chinese authorities can guarantee fair trials for individuals extracted to China, emphasizing that the Chinese state's criminal justice system 'does not adhere to procedural fairness and rule of law standards in criminal proceedings.' [8] They list evidence that, in some cases, especially when the case is politically sensitive, suspects are unable to access legal counsel. According to a 2012 report by the Beijing Municipal People's Procuratorate to the National People's Congress, of 20,000 criminal cases, defense counsel handled only an estimated 500 cases, or 2.5 percent of the total [9] And it was reported that there have been reports of the detention and interrogation of more than 200 lawyers and activists since July 9, 2015.[10] These insights reveal the complexities and deficiencies within China's legal system, emphasizing the importance of using extradition treaties as a lens through which to assess human rights issues more objectively.

According to Norton, the conviction rate in Chinese courts is as high as 99.92%. In 2015, only 1,039 individuals were declared innocent, while 1.232 million were found guilty. This significant disparity has raised serious questions about the fairness of trials in China, further supporting concerns about the integrity of the judicial system.[11]

These specific criticisms of the Chinese criminal justice system highlight Australia's significant concerns and reasons for not rectifying the treaty. More importantly, they provide a clearer understanding of the human rights issues in China.

In contrast to the baseless judgments made by politicians or social media, Australia's refusal to sign an extradition treaty with China is based on legitimate concerns about China's legal system. Australia's reluctance to sign an extradition treaty underscores the seriousness of these human rights issues.

Not ratifying the extradition treaty has significant consequences. The refusal is not merely a matter of legal prudence; it also reflects broader concerns about how such a treaty could affect diplomatic relations, economic interactions, and other aspects of bilateral relations between the two countries. Therefore, Australia's strong deny of not ratifying extradition treaty with China demonstrates its commitment to upholding human rights and legal standards in international agreements. By resisting pressure to sign the treaty, Australia is sending a clear message about the potential human rights risks embedded in China's legal system. This decision could may also set a precedent for other countries when considering their own legal and diplomatic relationships with China.

5. Summary

Ultimately, the Australian government has consistently cited concerns related to the Chinese criminal justice system as the reason for its refusal to ratify the treaty. Even those who are not familiar with legal matters can recognize the weaknesses of this system through the lens of extradition treaties. Thus, official declarations and statements by the Australian government could serve as a more credible source on China's human rights issues in China.

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