

RETURNED WITHOUT RIGHTS

State of Extraditions to China



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About Safeguard Defenders

Safeguard Defenders is a human rights NGO founded in late 2016. It undertakes and supports local field activities that contribute to the protection of basic rights, promote the rule of law and enhance the ability of local civil society and human rights defenders in some of the most hostile environments in Asia.

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INTRODUCTION

Over the past two decades China and its ruling Chinese Communist Party (CCP) has successfully expanded its international extradition reach to track down both claimed fugitives and political opponents around the world. The growth of China's extraterritorial reach has proceeded despite worsening human rights abuses in China and a clear track record of acting in breach of diplomatic assurances ostensibly designed to settle concerns of abuse for the returned. Alarming, this has come about not only at the conclusion of treaties with authoritarian but also democratic countries who profess to embrace the rule of law and act in accordance with international obligations under international law – which clearly prohibit the extradition or any other transfer of an individual to a country where they are at risk of gross human rights abuses.

China continues to deny its citizens' their right to a fair trial. Torture is widespread. And secret detentions are growing. One system rife with such gross human rights abuses, *Residential Surveillance at a Designated Location* (RSDL) has seen an estimated 83,966 to 113,407 people subjected to arbitrary and secret detention between 2013 and 2021 - counting only those listed in the Supreme Court database who later faced trial (many do not).¹ For those facing extradition for charges relating to their position as party members, or as State functionaries, may instead end up in *Liuzhi*, an even worse system, which exists entirely outside the realm of law enforcement in China. China has often tried to dismiss or downplay these widespread and systematic human rights abuses, and in the context of seeking extradition suspects it has issued diplomatic assurances that they would be free of such abuses. But China's track record tells a story of a serial violator of all international norms, from fundamental human rights to basic diplomatic assurances and consular agreements

After Thailand entered into an extradition treaty with China and extradited Wang Jianye (王建业), he was executed despite China's assurances that they would not seek capital punishment in his case. Following diplomatic assurances from China, Canada also agreed to return a Chinese citizen, Yang Fong (杨峰), where Canadian officials had been assured that the 35-year old's rights would be respected. Following his deportation to China, Yang was promptly executed without explanation. His crime, a ten-year old computer fraud case.

RSDL

Residential Surveillance at a Designated Location (RSDL) is a relatively new system for custodial control, launched when Xi Jinping came to power, where police may detain a target in special facilities outside the normal judicial system and keep them for up to six months. Once inside, all are kept in solitary confinement, with their whereabouts unknown. Inside, most victims are denied access to legal counsel and kept incommunicado, many for the full six months. The victim is, like in *Liuzhi*, effectively disappeared and kept in complete isolation. Placement into RSDL precedes arrest and prosecution. Inside RSDL, "You're only right is to obey", as police informed one target. For foreigners, the location is also kept secret from the person's government, and RSDL has been used extensively in China's 'hostage diplomacy'.

Most of China's violations of agreements, treaties and assurances may not be so extreme, but violations are rife.

From 2018 until 2021, Canadians Michael Kovrig and Michael Spavor were detained in China, including under RSDL, as part of a diplomatic hostage ploy from China. Despite a bilateral treaty requiring regular consular access, both were routinely denied contact with Canadian officials for months at a time, including at their trials, in explicit violations of the treaty. China has likewise disregarded its obligations under a consular treaty with Australia and international norms on consular access guiding relations with other countries including Sweden, the United States, and others.

Despite the ongoing deterioration in human rights domestically and China's record of breaching international norms and agreements, increasingly more countries, including democratic nations, are signing and ratifying extradition treaties and agreeing to extradite people to China - where they are highly likely to face gross abuse of rights guaranteed in the sending country.

Extraditions continue despite these concerns. In Europe alone, from 2014 until January 31, 2022, some 250 cases of extraditions to China have been identified by Safeguard Defenders (SD). Many cases are never reported in the local country's media, or in Chinese or international media. Even those cases where the initial detention and extradition process is reported or documented, for those forcibly returned to China the public disclosure trail often goes cold. This makes it all but impossible for sending (extraditing) countries to monitor diplomatic assurances, or for civil society to document the fate and treatment of those forcibly returned to China. The true number of individuals extradited is likely much higher than presently known. The full scope of their experiences may never be entirely known.

Liuzhi

Retention in custody, or *Liuzhi* (留置), is an extra-legal system used against party members, State functionaries, or management within public bodies or State-owned enterprises and was established in 2018. Since then, at the very least, some 65,000 people have been detained in the system. It is not a legal process, and the body running these secret jails, the National Supervision Commission (NSC), is not a judicial body. Those placed into *Liuzhi* can be kept, in solitary confinement, for up to 6 months. There is no external redress and no right to access legal counsel. Only after the investigation carried out by the NSC may a case be handed over to the judiciary, in which case the victim is placed under regular detention and begins a legal process. It is, in reality, a system of secret jails run by the CCP's own private police force, and those taken are both arbitrarily detained and enforcedly disappeared.

Yu Hao (于浩), a Chinese citizen living in the Netherlands was taken by the police in Poland after he went to a local police station to pay a speeding ticket. It turns out he was wanted via an INTERPOL Red Notice issued by China. Yu spent some two years, often in solitary confinement, in a detention center waiting his extradition hearing. Tragically, Yu committed suicide in the Polish detention facility after waiting so long and losing hope. Another target of China's long arm wanted for extradition, also in Poland, Liu Hongtao (刘鸿韬), has spent almost four years waiting for his hearing. These cases illustrate the danger of China's extradition reach into outwardly rule of law respecting countries. Even when extradition defense for cases in Europe are successful, the victims may lose years of their lives in the process.

What's more, the signing of extradition agreements between China and outwardly democratic or rule of law respecting democracies risks contributing to the weakening of global norms.

Internationally, countries with existing extradition agreements act injudiciously as though China was a good faith actor, and courts seldom possess the country expertise on China's human rights abuses, or information about the functioning of the Chinese judiciary, even when their other branches of government issue condemnatory reports. This is especially problematic at courts of first instance in hearing extradition, deportation, or immigration infraction cases, also sometimes called 'disguised extraditions.' However, it was noted with increasing success that where individuals at risk of extradition are able to contract country experts to their defense that these testimonies have provided the courts with the necessary information to rule indeed that an extradition to China would violate national or international norms and human rights law. However, most victims do not have the resources nor needed knowledge to arrange such a defense and rely on local court personnel and their limited or non-existing knowledge.

As China continues to pursue abusive extraditions around the world, every victim cannot be expected to have the means to retain country experts to their aid. **It is time for the international community to draw from the facts and declare a full moratorium on all extraditions to China until serious, structural changes and reforms are undertaken.**



This brief report draws from the comprehensive manual on countering extraditions to China, **Hide and Seek: China's Extradition Problem (A manual on countering extradition to China)**², and presents some of the key issues facing countries today caught up in China's international push to expand its extraterritorial reach in breach of international norms. It also incorporates information from Safeguard Defenders' major report **Involuntary Returns: China's covert operation to force 'fugitives' overseas back home.**³



CHINA'S EXTRADITION PROBLEM

China's efforts to expand judicial and law enforcement extraterritoriality, such as through extradition treaties and agreements, is a direct threat to fundamental international norms and democratic institutions. China's domestic legal system is built on the denial of the rule of law and procedural safeguards. There are no effective protections of basic rights for those extradited.

Sending anyone to China is a clear breach of the fundamental international norm of *non-refoulement*, which dictates that nobody should be transferred to a country where they are at risk of persecution and gross human rights abuses.

No country should enter into or maintain extradition agreements with China.

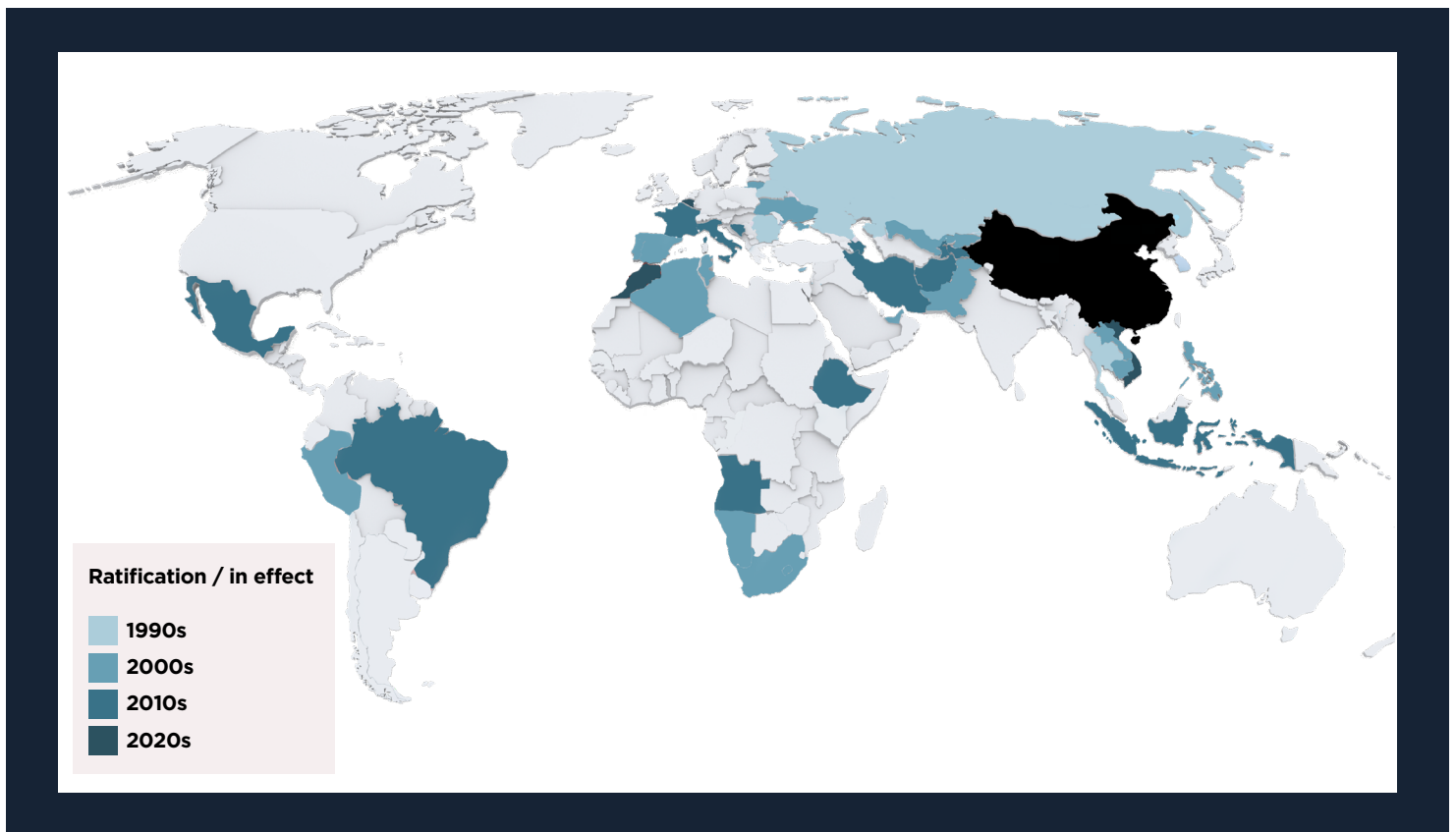
China's abuse of international law enforcement cooperation and related mechanisms is not a new phenomenon and extraditions do not exist in a vacuum. China's expanding extradition regime is part of an interconnected system of domestic rights abuses and international efforts by China to upend the post-World War II norms-based system, through outwardly legitimate extradition treaties and wholly extrajudicial, transnational repression. The latter issue is examined in great detail in Safeguard Defenders' report *Involuntary Returns*.⁴

China began negotiating and ratifying extradition agreements in earnest in the late 1990s. The first wave of countries entering into formal extradition agreements with China were not liberal democracies: Russia and Bulgaria in 1997 and Belarus in 1998. By the end of the 1990s, China had concluded 10 formal bilateral extradition agreements. In 2000, China also enacted its own domestic Extradition Law. In the following decade, China concluded an additional 16 agreements, and even more in the next ten-year period, 2011-2021. To date, China has ratified 43 extradition agreements, with another 14 signed and awaiting ratification. It is alarming that this includes extradition agreements with a number of democratic, rule of law-abiding countries such as Spain (2007) and Belgium (2020). China has used these treaties to hunt down targets, with nearly 250 people extradited from EU member states alone since 2015.

China has sought to position the narrative as one of mutual coordination against corruption and international crimes, such as through its active and quickly growing engagement with INTERPOL.⁵ This is a patent falsehood. China, especially under Xi Jinping, has weaponized this rhetoric to pursue regime opponents around the world and forcibly return them, through formal extradition or involuntary returns (see text box below), to a system devoid of any human rights protections. **It is important to begin from an understanding that there is no legal obligation under international law that requires any State to extradite someone.**⁶

On the contrary, international norms establish very clear grounds for automatic rejection of extraditions.⁷ In part, when these involve political offences, or where there are well founded concerns over torture, denial of a fair trial, and risk of persecution based on race, religion, ethnicity or political opinion. A common, yet questionable practice, is to accept diplomatic assurances that the individual facing extradition will be treated fairly and free of persecution, promises which China regularly violates - with impunity, without consequence.

Spread of extradition treaties with China in effect (ratified)



Knowingly returning someone to a country where they are at risk of torture or persecution is a violation of international human rights law, and the principle of non-refoulement. The UN has held firm that no amount of diplomatic assurances can deny state's obligations on these fundamental principles.

Deportations as 'disguised extraditions'

Due to the prolonged judicial process of seeking an extradition, China many seek to pressure host countries to returned target individuals via deportations, based on immigration law infractions. In many known instances, host countries will cooperate with China in this matter, as it may not be politically viable for the host country to extradite someone without political fallout. It is very common for non-democratic countries to deport wanted Chinese nationals to China even when they have extradition treaties and when the situation is most appropriately dealt with in that manner, but it also happens on occasion in developed rule of law nations. A disguised extradition is still very much a breach of host country's obligations not to send anyone back to a country where they are at risk of persecution or rights abuses.

The intimidation and targeting of CCP opponents and alleged criminals, whether through the threat of formal extradition or other forms of 'involuntary return,' has a direct impact on the Chinese diaspora's ability to exercise basic democratic freedoms for fear of persecution, for themselves or family still in China.

Involuntary Returns as primary method of returning those wanted

China's use of extraditions is part of the larger toolkit in their global struggle to exert control over (primarily) Chinese nationals or former Chinese nationals. The vast majority of those forcibly returned to China to face trial and imprisonment are not returned via extraditions, but instead via deportations, and most commonly as an 'involuntary returns':

- 1) Threatening or detaining relatives in China to force them to return;
- 2) Sending police or other agents abroad, illegally, to intimidate and harass the person to return;
- 3) Direct use of kidnappings. The use of such blatantly illegal methods is not only acknowledged by the Chinese government, repeatedly, but inscribed in an official legal interpretation.

In 2018, 1,335 persons were returned according to government statistics, of which only 1% were via extraditions. Safeguard Defenders' report *Involuntary Returns* revealed that the number of people returned from 2014 to 2021 reached 10,000.⁸

Of note is that many of these illegal involuntary returns take place in countries that do have extradition treaties with China, as the government finds involuntary returns easier and faster than drawn out extradition proceedings. This is especially the true when targets are political in nature, and thus subject to closer evaluation for breach of international norms prohibiting extraditions for political crimes. Those first targeted via involuntary returns, and which upon failing, face extradition requests instead are in a highly prejudicial situation should they be returned, with no chance of a fair trial. The effort to first seek their return via non-legal means should clearly taint any pretense of legality in future proceedings as well.

“A fugitive is like a kite. Even though he is abroad, the string is held in China. He can always be found through his family.”

Shanghai policeman describing why using involuntary Returns can be so effective, 2016

CHANGES BEHIND THE SCENES OF CHINA'S EXTRADITION WORK

The marked increase in the use of extraditions, and China's push for extradition treaties, as well as its increased use (and misuse) of INTERPOL, does not exist in a vacuum. This is occurring alongside a sweeping and still growing campaign to use illegal means via involuntary returns to force back claimed fugitives to China.

The use of INTERPOL, China's SkyNet (which runs the involuntary return operations), and China's push for extradition treaties have been publicly linked to Xi Jinping's anti-corruption campaign. The campaign, which also targets corruption, is ultimately a drive for centralized political control under both the CCP in general and Xi Jinping in particular. Expanding its reach abroad is simply the international arm of the same campaign, as it is paramount for the CCP to instill the message in China that escape, even abroad, is an impossible or futile gesture. State media is careful to ensure that those returned, including via extraditions, appear on national TV to speak about how miserable life abroad is, how it was better for them to return to China to face justice, and how they believe in the Party.

One key reform that touches upon both these issues is the introduction of the National Supervision Commission (NSC) in 2018. This not only centralizes more power to the party and Xi Jinping away from the judiciary but also establishes a new body in charge of coordinating China's expanding reach abroad. Despite not being a judicial organ, the NSC is now in charge of standing as a counterpoint in State-to-State judicial cooperation, and China is seeking such agreements, many times simply Memorandums of Understandings (MOUs) without any real consequence, as a way to build up legitimacy for the NSC as a counterpart in engaging in international judicial cooperation. It has had shocking success, signing agreements with over 80 countries, including two democracies, Australia (the federal police) and Denmark (the Parliamentary Ombudsman), as well as United Nations Office on Drugs and Crime (UNODC).

The NSC is the same body that runs China's *Liuzhi* system for extra-legal detentions. It is also the same body in charge of the SkyNet program, which runs China's involuntary returns operations. In an official legal interpretation, the NSC has been given the right to use entrapment of victims abroad, the sending of agents to foreign countries covertly, and use kidnappings.⁹

Engaging in judicial cooperation with China now likely means to engage with the NSC, which by definition provides added legitimacy to a body that should have none, as it is **not** a judicial body. Furthermore, by running the *Liuzhi* system, it is either the perpetrator of a mass atrocity at best, or a crime against humanity.

IN CHINA THERE IS NO RIGHT TO A FAIR TRIAL

“The Communist Party of China’s absolute leadership over political and legal systems must be upheld” and the “legal system should uphold the Party’s absolute leadership.”

Xi Jinping, 2018

The benchmark of a fair trial is the right to have a lawyer of one's choosing, to be present in court, to not be subjected to trial in absentia, to be tried in public, by an independent and impartial judiciary, and to be presumed innocent until proven guilty. In China, many of these fundamental fair trial rights are not guaranteed or protected under the law and routinely denied to criminal suspects.

Recent developments have further undermined the rights of the suspect, removing for many the ability to access legal counsel before trial due to legal reforms, while detention centers often block access on wholly illegitimate grounds. In addition, during trial, legal defense is rarely given the right to cross-examine witnesses provided by the prosecutor, while courts regularly block the defense from using witnesses altogether. Both prosecutors and courts are controlled by an organ of the CCP (Political and Legal Affairs Commission). The law and public statements by officials assert that the legal system is subservient to party leadership.

Yu Wensheng, Tortured into Abandoning Fair Trial Rights



Yu Wensheng (余文生) is an outspoken human rights lawyer who has represented many other persecuted human rights defenders in China and is a recipient of the prestigious Martin Ennals Award for Human Rights Defenders. He was arrested in 2018, and held incommunicado. His crime had been writing an open letter calling for political liberalization in China. The United Nations Working Group on Arbitrary Detention (WGAD) found Yu's detention to be arbitrary due to having been held incommunicado, his denial of due process and fair trial rights, and the fact he was targeted because of his human rights work.¹⁰

Before he disappeared, he had recorded a video of himself declaring that he would never give up his right to select his own lawyer unless he was tortured. The right to select a lawyer of one's choosing, and to prompt access, is a fundamental tenant of the right to a fair trial. After months of secret detention, police brazenly claimed that Yu had denounced his trusted lawyers and opted for state-sponsored counsel.

Domestic law provides some, although inadequate, legal protection against torture and coerced confession, yet it remains rampant, and most criminal trials are based on suspect's confessions. In 2019, conviction rate at court of first instance was over 99.96%. Only some 2.54% of prosecutions were dropped by the prosecutor in 2020 because of insufficient evidence, meaning, in effect, once arrested, trial is certain, and at trial, conviction is guaranteed.

“China’s legal system cannot be characterised as a full-fledged rule of law system against Western standards, due to the lack of separation of powers, supremacy of law, legal certainty and judicial independence.”

Bridging the EU-China's gap on the Rule of Law

IN CHINA TORTURE IS RAMPANT

While China is a State-Party to the Convention against Torture (CAT), its prior reports to the Committee Against Torture shows its failure to adhere to its obligations. It refuses to recognize the body's mandate to make inquiries into allegations of torture. Furthermore, it has since stopped providing the five-yearly reports to the Committee. Other UN organs have condemned the systematic use of torture, and China's failure to adapt local legislation in line with CAT. Recent country reports on China from various foreign ministries echo these concerns.

Yang Hengjun, "They tortured me"



In January 2019, writer and blogger Yang Hengjun (杨恒均), a Chinese-born Australian citizen, was detained by Chinese authorities and initially held under RSDL for six months before he was transferred to a detention facility in Beijing. In a message later sent from detention, Yang wrote: "The first six months, when I was in RSDL, was a really bad period. They tortured me."¹¹

He was not permitted consular access with Australia until after he was transferred from RSDL. At his May

2021 trial, Australia's Ambassador to China, among other diplomats, were refused entry, despite the clear provision of the right to consular access at trial provided in Article 11 of the China-Australia Consular Agreement.¹²

Torture in China is of particular concern, as noted by UN human rights experts and recent European high court jurisprudence blocking extraditions. The risk of torture is especially noted within China's pre-arrest custodial systems, namely the RSDL system run by the police and the *Liuzhi* system run by the NSC.

"[Those extradited to China] may be exposed to the risk of torture, other ill-treatment, or the death penalty."

Four UN Special Procedures, 2018 [Extrajudicial executions, Torture, Migrants, Trafficking]

DIPLOMATIC ASSURANCES FROM CHINA CANNOT BE TRUSTED

Diplomatic Assurances are guarantees from the requesting State to the sending State that the target of extradition will be afforded human rights protections by both parties. Diplomatic assurances, sometimes called diplomatic notes, are most common in death penalty cases, or concerns of torture and ill-treatment, or the fairness of judicial proceedings.

The problem is that diplomatic assurances are mostly only ever sought in cases where there are already serious grounds for concern of abuse. As the Commissioner for Human Rights of

the Council of Europe noted in 2004, “The weakness inherent in the practice of diplomatic assurances lies in the fact that where there is a need for such assurances, there is clearly an acknowledged risk of torture and ill-treatment.”¹³

The reality of human rights abuse in China is stark enough that in pursuing extraditions it must issue diplomatic assurances in almost every case to appease concerns of the hosting country that compliance with the extradition won't violate their legal commitments. But for diplomatic assurances to work, they must be made in good faith.

The UN Committee Against Torture has recommended that diplomatic assurances should not be accepted from States who “systematically violate the [Convention Against Torture].”¹⁴

There is ample evidence that consular agreements and diplomatic assurances from China are regularly violated. Several recent Supreme Court decisions around Europe (see further below) have rightly denied extraditions partly because:

- China has a track record of breaking its promises, including diplomatic assurances for extraditions;
- The assurances are not legally binding in accordance with China's own laws;
- The assurances are often, practically, un-enforceable, or even in violation of Chinese law.

“China is willing to violate its international commitments in criminal justice matters when it finds it convenient, and granting extradition in this [New Zealand] case risks opening the door to future extraditions on the basis of unreliable guarantees.”

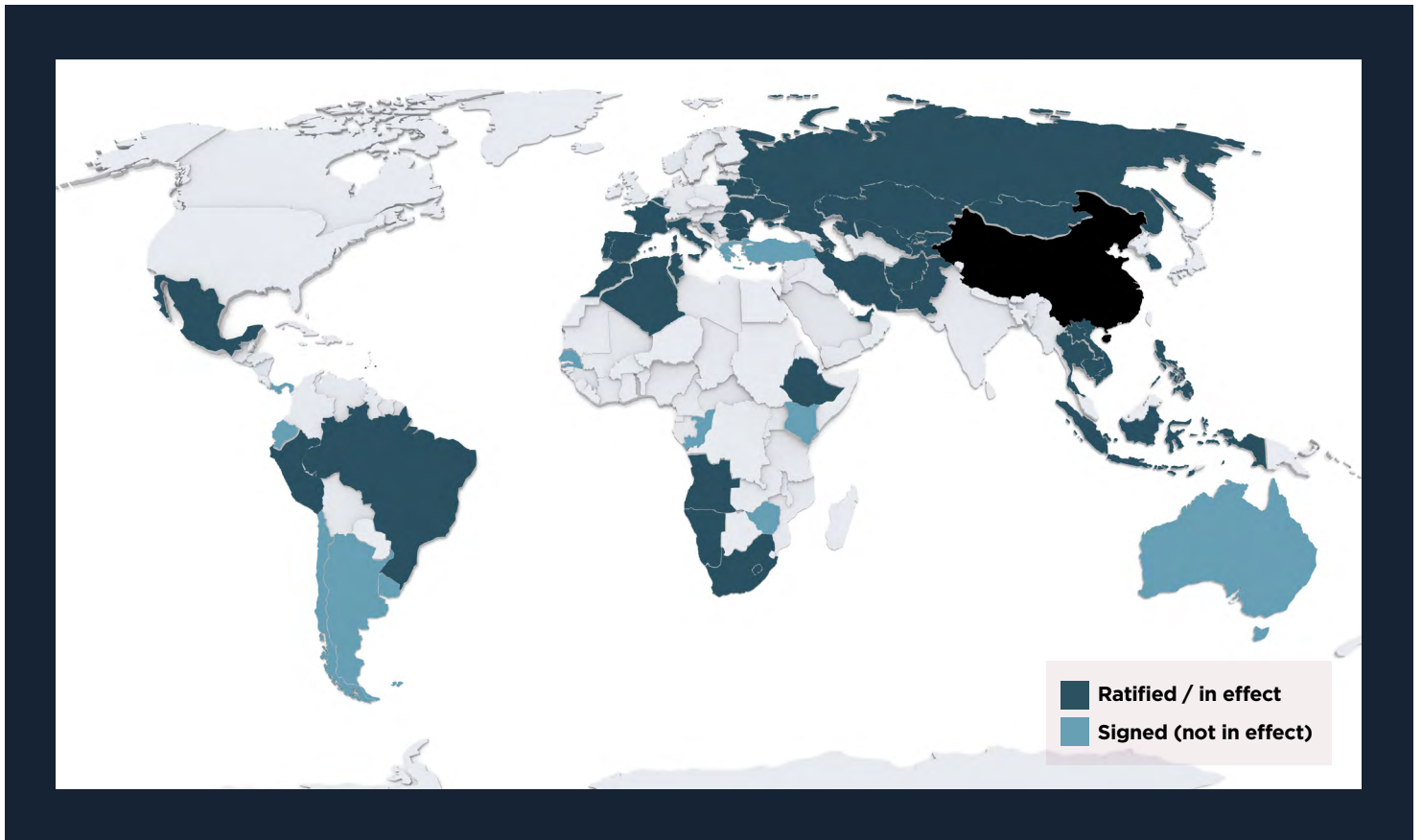
Donald Clarke, George Washington University Law School, 2021

The United Nations Committee Against Torture, in a 2018 General comment stated that: “The Committee considers that diplomatic assurances from a State party to the Convention to which a person is to be deported should not be used as a loophole to undermine the principle of non-refoulement as set out in Article 3 of the Convention, where there are substantial grounds for believing that he/she would be in danger of being subjected to torture in that State.”

For anyone doubting how blatantly China violates extradition-related agreements, look no further than the recent cases of Canadians Michael Kovrig and Michael Spavor. By the time their detentions closed in on the two and half year mark, they had only had four consular meetings (two of which were online only) each, despite a bilateral treaty specifying at least one meeting per month. They should each have had 30 meetings at that point. The treaty explicitly states that no national security or any other claim can be used to abrogate this obligation, yet China did so almost continuously, without consequence.

These concerns range from violating the right of consular access to foreign suspects before trial to blocking officials from even attending their trials, and in some cases forcibly stripping the suspect of their foreign citizenship. In the past, the PRC has gone as far as to execute suspects upon their return to China, despite promises that the death penalty would not be applied.

Current status of signed versus ratified extradition agreements



EXTRADITIONS AND CHINA'S MISUSE OF INTERPOL

Recent studies from Safeguard Defenders have shown that China has significantly expanded its manipulation of INTERPOL under Xi Jinping to track down, harass, detain, and forcibly return targets from around the world.¹⁵ This is directly tied to extraditions. No Red Notice shall be made unless the country is ready to seek an extradition following the apprehension of the targeted person. Previously, such extraditions have been hard for China to secure, and so INTERPOL was used less. With the expansion of extradition agreements, allowing formal extraditions, or through a willingness to act on disguised extraditions, combined with greater international judicial and law enforcement cooperation with China, the manipulation of INTERPOL has increased in kind.

There have since been more instances of misuse of INTERPOL Red Notices (some of which have then been cancelled by INTERPOL). However, such cancellations only happen in cases which attain significant media attention. China is still filing people for Red Notices even when they are not able to seek their extradition if apprehended, as a form of harassment of the target.



Dolkun Isa, President of the World Uyghur Congress, a global advocacy organization, first fled China in 1996 and was granted political asylum in Germany. In 1997, at China's behest, INTERPOL issued a Red Notice against him, but it wasn't until 1999 that German police informed him of the notice's existence. The fact that he had been granted asylum in Germany should have been enough for INTERPOL to deny the Red Notice much earlier. Despite its clear political origin and abusive nature, it took nearly 20 years for the notice to be withdrawn.



CASE EXAMPLES, EUROPE AND BEYOND

Fifteen countries across Europe have signed bilateral extradition agreements with China, 12 of which at the time of writing are in effect. These include 13 Council of Europe (COE) countries, plus Belarus whose COE 'Special Guest' status was suspended due to its lack of respect for human rights and democratic principles.

The human rights situation in China has reached such a level of abuse as to constitute a widespread and systematic problem to which an extradition should be seen as a violation of country's obligations under the European Convention on Human Rights (ECHR).

Article 2 of the European Convention on Human Rights establishes the right to life, and an objection to the death penalty. Article 3 reiterates the international prohibition against all forms of torture or inhuman or degrading treatment or punishment. Article 6 establishes the right to a fair trial. In particular this includes expectations to be tried within a reasonable time by an independent judiciary, to be presumed innocent until proven guilty, and to have legal representation of one's own choosing. Article 5 furthermore explains that the right to a fair trial includes protection against arbitrary interference in ones' liberty and security, namely the prohibition of arbitrary detention. The ECHR also lays out in Article 13 that everyone has a right to an effective remedy where their rights have been violated.¹⁶

The European Court of Human Rights (ECtHR) has also ruled on the issue of diplomatic assurances, although not explicitly about cases involving China but in jurisprudence that should influence decisions regarding extraditions to China. Of note, the ECtHR has noted that the presumption of good faith in assessing diplomatic assurances should only be applied to States with a long history of respect for democracy, human rights, and the rule of law.¹⁷

A number of high courts have recently ruled against extraditions to China explicitly because following through on the transfer would violate ECHR human rights provisions. This jurisprudence is important to assessing future extradition cases, and indeed should be applied to legislative considerations.

REFUSAL OF EXTRADITIONS

SWEDEN (2019)

The Swedish Supreme Court ruled that Sweden could not extradite Chinese national Qiao Jianjun (乔建军) because doing so would violate Sweden's extradition law on the grounds that he was at risk of likely persecution upon his return. It also ruled that the extradition would violate Articles 2, 3 and 6 of the ECHR. The Court concluded that China's diplomatic assurance were not legally valid because the Chinese embassy never presented a guarantee from China's Supreme Court of China, as required by China's Extradition Law.

The Court's verdict ran: "the Supreme Court makes the judgement that there is a high likelihood to believe that QJ, even if the use of death penalty can be discounted, would be at real risk of being treated in violation of ECHR Article 3."¹⁸ It also noted that **"any trial of [would] significantly deviate from a standard that is acceptable"**¹⁹ and thus be in violation of Article 6. The court pointed out China's reservation of Article 20 of the CAT (allowing the Committee to carry out an inquiry into a state's purported use of torture), and said that: "The practical ability to, in the way the prosecutor states, control and monitor that an assurance given by China is adhered to is **very** limited."²⁰

CZECH REPUBLIC (2020)

The **Czech Supreme Court** rejected Beijing's request for the extradition of eight Taiwanese nationals, citing in its decision the Czech Charter of Fundamental Rights and Freedoms, the ECHR, and Czech Extradition Law. The Court, found that a lower court's earlier approval of the extradition request had not taken into account **the likelihood the eight individuals would suffer from torture and other inhumane treatment if they were sent to China. It deemed the diplomatic assurances provided by China unreliable and insufficient to eliminate these risks.**²¹

The Court found that "Chinese law prohibiting torture was not itself sufficient to rule that it would not be used, because of evidence presented that torture is widespread in China."²² The Court found that the extradition would therefore violate Article 3 of the ECHR and Article 7(2) of the Charter of Fundamental Rights and Freedoms. It also noted its lack of confidence that Czech consular staff in China would be given access to the group of Taiwanese nationals once they were returned to China because such right of access is not guaranteed under Chinese law and that they did not believe that a diplomatic assurance to grant access would be honored.²³

POLAND (2021)

The **Warsaw Appeals Court** denied the extradition of Li Zihui (李志惠) on the grounds that it would violate the EU's Charter of Fundamental Rights of the European Union, which applies to all EU citizens.²⁴ Li is a China-born Swedish citizen. It also argued that diplomatic assurances from China were not legal in accordance with Chinese law and so could not be accepted. The court assessed China's record on following international human rights law and cooperating with international human rights organization found it lacking.

It also pointed out that it was against Polish law to extradite someone to a country with life imprisonment where there was no system for reduction of punishment. In its view, China's system is unpredictable and under control of the executing organ. The court expressed concern whether there was an effective way for conditional release or reduction in sentence. The extradition would thus be in violation of Polish law, as well as Article 2 and 3 of the ECHR.²⁵

APPROVAL OF EXTRADITIONS AND ‘DISGUISED EXTRADITIONS’

CAMBODIA

Cambodia was one of the first countries in Asia Pacific to ratify an extradition agreement with China, ratified in 2000. The agreement fails to include some key international norms and procedural safeguards for protecting the rights of extradition targets. Given Cambodia’s own poor record on human rights this is not surprising. Since the ratification of the extradition agreement, Cambodia has been involved in several highly problematic extraditions.

In December 2009, Cambodia deported, or otherwise extradited, a group of 22 Uyghurs (17 men, one woman and two children) to China. They had fled China after July 2009 protests and a violent crackdown in Xinjiang. They had already been granted “Person of Concern” status by the United Nations High Commissioner for Refugees (UNHCR).²⁶ This disregard of UNHCR protection added a further breach of international norms to Cambodia’s decision to comply with China’s request. It was clear that economic leverage from China played a part when two days after the group of Uyghurs were returned, China signed nearly one billion dollars’ worth of investment deals with Cambodia’s government.²⁷ Two of the Uyghurs forcibly returned from Cambodia were sentenced to life imprisonment in 2012, another was given 17 years, while the sentences for the rest of the group are unknown because their trials in China were held in secret.²⁸

Cambodia has also extradited Taiwanese nationals to China on several occasions, despite objections from Taipei.²⁹ These extraditions were conducted in waves in 2011 (two batches of some 200 individuals) and 2012 (one group of 49 individuals). The Taiwanese citizens were accompanied by Chinese citizens.³⁰ The Department of International and Cross-Strait Legal Affairs of Taiwan’s Ministry of Justice called for an investigation in June 2016 into a separate incident when Cambodia extradited a group of 25 Taiwanese to China.³¹ In 2017, Cambodia extradited another group of Taiwanese nationals. Taiwan called on Cambodia to “truly guarantee our nationals’ judicial rights and interests and access to assistance,” and expressed “solemn concerns and deep regrets about its Taiwan nationals being sent to China.”³²

On several occasions, Taiwan’s Ministry of Justice has unsuccessfully attempted to negotiate with the Chinese Ministry of Public Security and Cambodian officials in efforts to prevent the extradition of their nationals from Cambodia to China. Taiwan does not have formal diplomatic relations with Cambodia and the Cambodia – China Extradition Agreement has been used by China to also cover the apprehension and extradition of Taiwanese nationals, often without any consultation or prior notification to Taiwanese ministries.

The bilateral extradition agreement between Peru and China, which came into effect in 2003,³³ is incompatible with a number of international standards. Peru is one of the countries with whom China maintains an extradition agreement that includes a mechanism for “simplified extradition,” defined as one in which the targeted individual for extradition agrees to be transferred to the requesting State, thus allowing the host State to extradite that person as soon as possible within the scope of law but without the need for any other procedural steps. In other words, if China wants someone in Peru and the Peruvian authorities claim that the individual agrees to the extradition request then Peru does not need to investigate any claims or concerns of the risk of abuse upon return to China.

Simplified extradition combined with State coercion raises the risk of serious abuse of human rights.

In 2016, China completed its first extradition from Latin America. Huang Haiyong (黄海勇), also known as Wong Ho Wing, was extradited from Peru³⁴ after China accused him in 2001 of being involved in a crude soybean oil smuggling case involving around 100 million USD worth of tax evasion. He and two associates had reportedly fled to the United States in 1998, when an INTERPOL Red Notice was issued for him. Huang was arrested on his arrival in Peru in October 2008 and negotiations began over his extradition. At a public hearing in December 2008, Huang said he would be at risk of torture and the death penalty if he was sent back. He requested his trial be held in Peru.³⁵

In 2009, the Inter-American Commission granted “precautionary measures” asking the Peruvian authorities not to extradite Huang until the Inter-American Court of Human Rights (IACHR) had decided on his petition for protection. Over the ensuing years, a number of *habeas corpus* petitions were filed regarding Huang’s ongoing detention in Peru awaiting extradition while Chinese and Peruvian officials negotiated the domestic annulment of the death penalty for the smuggling crime for which he was sought for extradition.³⁶ In May 2011, China removed the death penalty for this crime in May 2011. In 2014, Huang’s prolonged detention in Peru was determined “unreasonable” and he was released into house arrest under his brother’s supervision. In 2016, at the end of a contentious eight-year legal fight, Huang was extradited to China, and subsequently sentenced to 15 years in prison. His case is considered one of the most complicated extradition cases involving China.³⁷ His current fate is unknown.

MOROCCO

On 19 July 2021, Uyghur activist **Yidiresi Aishan** (also known as Idris Hasan) (伊德里斯·哈桑), was arrested in Casablanca by Moroccan authorities after flying into the country from Turkey.³⁸ The arrest came at the request of China following an abusive Red Notice, which claimed without evidence that he is wanted on terrorism charges. His forcible transfer to China would place him at extreme risk of torture and other inhuman and degrading treatment, in violation of Morocco's obligations under international law.

On 11 August 2021, INTERPOL canceled the standing Red Notice for Idris Hasan citing grounds that the original Red Notice request was not in compliance with Article 1(1) and 3 of INTERPOL's Constitution, which enjoins INTERPOL to promote mutual assistance between countries but only in the spirit of the Universal Declaration of Human Rights (Article 2(1)) and that "it is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character."³⁹

Four UN Special Procedures of the Human Rights Council wrote to the Moroccan authorities expressing their concerns being persecuted on the basis of his work to defend the human rights of Uyghurs and stating: "Although we do not wish to prejudge the accuracy of the allegations above, we express our deep concern about the potential extradition of Mr. Aishan to China, where he is at risk of torture and other mistreatment, both for belonging to an ethnic and religious minority and for his accusation of being affiliated with a terrorist organization."⁴⁰

Again, on 16 December, four Special Procedures of the UN Human Rights Council, called on the government of Morocco to immediately halt its decision to extradite Idris Hasan "where he risks serious human rights violations including arbitrary detention, enforced disappearance, or torture and other cruel, inhuman or degrading treatment or punishment."⁴¹



The independent experts reiterated that:

No State has the right to expel, return or otherwise remove any individual from its territory whenever there are "substantial grounds" for believing that the person would be in danger of being subjected to torture in the State of destination, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.⁴²

At the time of writing, Morocco has yet to make a final decision concerning Idris Hasan's fate.

CONCLUSION AND POLICY RECOMMENDATIONS

States with active extradition agreements with China should declare an immediate moratorium and refuse to grant any further extradition requests, including “disguised extraditions” such as deportations, pending comprehensive reviews of the severe deterioration of China’s judiciary since Xi Jinping’s rise to power, and how such agreements are being used for political ends.

Extradition treaties lead to a number of significant negative results for the signing State:

- **No reciprocity:** Almost no country ever seeks extraditions from China, meaning there is no real reciprocity in function.
- **Undermining local courts:** Courts in countries that sign/ratify extradition treaties will read such treaties as the local legislatures’ position that extradition is acceptable and that China’s judiciary is competent to handle criminal judicial matters in a fair manner.
- **Undermines local justice:** The above is of greater concern at lower-level courts with little to no knowledge of China and for suspects without resources to hire expert legal counsel, meaning that often only privileged clients are able to get fair extradition hearings.
- **Legitimizes unlawful or unsuitable bodies for international judicial cooperation:** The PRC is putting the non-judicial, non-law enforcement body the National Supervision Commission (NSC) in charge of international judicial cooperation. This a body credibly accused of crimes against humanity and wholly ill-suited as counterpart for judicial cooperation as it is a non-judicial organ.
- **Rewards continued violations:** The PRC repeatedly violates bilateral and international treaties, as well as international human rights norms, including the execution of those returned upon guarantees of no use of death penalty. Continued extraditions rewards such behavior.
- **Used by China for ulterior motives:** Any treaty is used domestically to state that the foreign government is supporting Xi Jinping’s reform on criminal justice, and is used internationally to convince other countries to engage in extradition- and other forms of judicial cooperation.
- **Infringes fundamental freedoms elsewhere:** The recent increase in the number of extradition treaties, in combination with the PRC’s more assertive global stance and growing extraterritorial provisions in its criminal law are putting a severe strain on the enjoyment of fundamental rights such as freedom of expression and movement for citizens around the world, especially ethnic Chinese.

The CCP’s main argument is that failure to appease their wish for an extradition treaty will create a ‘safe haven’ for Chinese criminals. This has failed to materialize anywhere. Should a Chinese criminal abscond to a target country, extraditions can be carried out via a multilateral instrument (UNCAC) if related to economic crimes. Furthermore, in most jurisdictions extraditions can also be carried out on an ad-hoc basis, still pending a hearing on the merits and assessment of human rights concerns. When both options are not suitable, the person can face either local prosecution or remote prosecution by China. The ‘safe haven’ argument is faulty.

Safeguard Defenders Recommends:

States with mutual legal assistance treaties with China should further consider suspending bi- and multi-lateral law enforcement coordination, especially as relates to pursuing Chinese suspects abroad, and to work with INTERPOL to resist China's ability to manipulate Red Notices;

International multi-lateral institutions with a mandate on law enforcement coordination should conduct a thorough due diligence assessment on the human rights implications of China's membership. This especially includes INTERPOL and China's role on the executive committee. In addition, international bodies such as the UN Office of Drugs and Crime (UNODC) should reconsider partnership agreements to coordinate with Chinese party-state organs, such as the National Supervision Commission, on matters of combatting international criminal activity noting China's abuse of such partnerships to persecute opponents in breach of international norms.

Safeguard Defenders urges states with active extradition treaties to suspend them and to institute a comprehensive review of all forms of judicial cooperation with the PRC. While we do not call for an a priori end to all cooperation, there is an urgent need for a proper analysis and risk assessment, alongside an analysis of how such cooperation influences key foreign policy goals and the upholding of international human rights and rule of law.

For further details, see Safeguard Defenders' manual **[Hide and Seek: China's Extradition Problem \(A manual on countering extradition to China\)](#)**, on which this report is based.

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