

Briefing Paper in Support of the Revocation of the Bilateral Extradition Treaty between the Kingdom of Belgium and the People's Republic of China

In view of the May 4th hearings and debate at the Foreign Affairs Committee of the Belgian Chamber regarding the human rights situation in the People's Republic of China and the Xinjiang Autonomous Region in particular, Safeguard Defenders hereby submits additional background information in support of the proposal to suspend or upend the Bilateral Extradition Agreement between the Kingdom of Belgium and the People's Republic of China, entered into force after publication in the *Belgisch Staatsblad / Moniteur belge* on 16 December 2020.

Whereas the intimidation and targeting through the threat of extradition of Chinese Communist Party (CCP) opponents and alleged criminals around the world has a direct impact on the democratic freedoms of expression, assembly, and association around the world, the current Bilateral Agreement risks creating a dangerous spill-over effect of the silencing and censorship efforts of the CCP, similar to what we have already witnessed in Hong Kong or on entities operating within the PRC. Moreover, it lends legitimacy to a judicial system which does not respect all due process guarantees under International Conventions.

In particular, Safeguard Defenders would like to raise concern with the following areas of abuse:

1. Framing China's use of Extraditions: Exporting the Chilling Effect;
2. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
3. Right to a Fair trial;
4. Unkept Diplomatic Assurances;

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Safeguard Defenders (SD) is a European human rights NGO that undertakes and supports local activities for the protection of human rights, promotion of the rule of law and enhancement of the local civil society capacity in some of the most hostile environments in Asia, with a focus on China. It is a registered foundation in the European Union (Spain), under the name *Fundacion Safeguard Defenders* (G88426192), and has ample experience in supporting individuals facing judicial reviews on possible extraditions back to China. It appears at court, helps arrange expert witnesses, and provides the most authoritative data available on the Chinese criminal justice system.

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1. Framing China's use of extraditions: Exporting the Chilling Effect

Expanding China's access to claimed fugitives around the world is part of Xi Jinping's signature policy on broadening the extra-territorial reach of its National Security provisions¹ (effectively penalizing activities committed in third countries and fully legal under the rule of law and national frameworks of those third countries²) and the Chinese police. Since the conclusion of negotiations on the Bilateral Extradition Treaty with the Kingdom of Belgium and its adoption in the Belgian Parliament in 2018, these policies have rapidly expanded as repression inside the country is rampant. While China often seeks to use the instrument of so-called *voluntary returns*³, the marked acceleration in establishing a wider scope of extraterritoriality has gone hand in hand with a recent increase in ratifications of Bilateral Extradition Treaties by China.

These developments signal a direct threat to the rule of law, human rights and international accountability mechanisms in Western democracies and export the *chilling effect* imposed on activists, human rights defenders, journalists, etc. within Hong Kong and China to the heart of Europe.

Recent reports, such as the letter by the German Interior Ministry to Gyde Jensen MP⁴, confirm that Chinese government activities aimed at the intimidation and repression of diaspora communities and human rights activists continue abroad. Likewise, they are likely targets for requests under the Extradition Treaties, in particular those who have fled from political persecution in Xinjiang, Tibet, Hong Kong or elsewhere in China. Though the Treaty precludes the extradition requests being made for political offences, this does not serve as sufficient protection for those at risk. The Chinese government rarely targets those who express dissent on explicitly political charges.

Belgian authorities have so far assured Members of Parliament and human rights activists that the judicial and political review of any extradition request will be thorough and take the local situation into account. Yet, the uncertainty in outcome of such a process - especially given the increased use of 'alternative' allegations against dissidents - is further aggravated by the uncertainty during said process. As official sources at the Belgian Ministry of Justice have confirmed, individuals requested for extradition could still face restrictions to their freedom of movement and be placed under significant inconvenience and discomfort while their extradition case is being considered, even if the Belgian government eventually decides to deny the request.

This is of particular relevance in Brussels, home to the European Institutions and as such an important hub for human rights activists who have expressed their fears of a chilling effect⁵ in travelling to Brussels to meet with law- and policy-makers. Four Danish citizens, including two Members of Parliament, targeted by the Hong Kong National

¹ See for example: Sarah Cook for Freedom House, *Analysis: Through Hong Kong, Beijing Funnels Its Repression to the World*, <https://freedomhouse.org/report/china-media-bulletin/2020/beijings-extraterritorial-reach-hong-kong-national-security-law>.

² See the express provisions under the Hong Kong National Security Law, but also provisions relating to national security in Mainland China's Criminal Code which recently led to the conviction of a Belizean national to 11 years in prison for providing support to Hong Kong activists while in the United States, <https://safeguarddefenders.com/en/blog/foreign-citizen-accused-supporting-anti-china-forces-abroad-paraded-chinese-tv-giving>.

³ Such "voluntary returns" take two forms; either the person's family still in China is approached to help the police or other organ "convince" the person to return to China. In other cases, agents of the Ministry of Public Security roams the world, makes contact with the targets, and tries to "convince" them directly. On rare occasions, people are directly kidnapped, most often in Southeast- or East Asia, including a Swedish citizen and a UK citizen. Eight officers engaged in such behaviour in the United States, acting illegally to harass and target current or former Chinese nationals into returning, are facing prosecution. It goes without saying that threats to the targets, and their family members back in China, are common.

⁴ Reuters, *China has tried to intimidate Hong Kong activists in Germany, Berlin says*, 23/02/2021, <https://www.reuters.com/article/us-hongkong-security-germany-idUSKBN2AN1BZ>

⁵ Ray Wong, *Extradition treaties with the PRC leaves Europe a dangerous place for activists*, 03/02/2021, <https://www.hongkongwatch.org/all-posts/2021/2/3/without-the-suspension-of-extradition-treaties-with-the-prc-europe-remains-a-dangerous-place-for-those-who-wish-to-speak-out-against-the-ccps-human-rights-abuses>.

Security Law for their assistance in securing safe exile for former Hong Kong lawmaker Ted Hui have been warned by Danish intelligence services to refrain from traveling to Member States with standing Extradition Treaties.

The foundation for such real fear is clearly demonstrated by the recent case of Li Zhuhui - Falung Gong adherent and Swedish citizen since 2016 - who was detained in March 7, 2019, when he was arrested on the basis of a red notice issued by China for undocumented allegations of economic crimes at Warsaw's Chopin Airport, en route from Sweden to Bulgaria⁶. Whereas the outcome of said extradition process has just recently concluded in his favour, his almost two-year detention is a red warning sign for those facing possible persecution from China in Europe. So is the case of the Spanish 2019 deportation of 94 Taiwanese individuals accused of telecommunications fraud to Beijing rather than Taiwan, creating a very realistic fear for Hong Kong activists to be deported directly to mainland China.

In this framework, attention should be paid also to China's use of *hostage diplomacy*, as recently denounced by 58 UN Member States, including Belgium, on 15 February 2021 with the launch of the *Declaration Against Arbitrary Detention in State-to-State Relations*⁷ by Canada.

2. Torture and Other Cruel, Inhuman or Degrading Treatment

While China is a State-Party to the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*⁸ (CAT), it has failed to adhere to its obligations under the Convention. This includes failing to define, and effectively prohibit and prosecute torture under domestic law. China has failed to effectively ban the exclusion of evidence obtained through torture as explicitly required under the Convention (CAT, Article 15)⁹, and there is no effective legal mechanism for challenging confessions or evidence obtained through torture or remedy for victims of torture despite the obligation under international law (CAT, Article 14; Basic Principles on Right to Remedy)¹⁰.

The United Nations Committee Against Torture¹¹ report on China (2016)¹² concluded:

- Despite some statutory safeguards, the Committee “remains seriously concerned over consistent reports that the practice of torture and ill-treatment is still deeply entrenched in the criminal justice system”.
- “The Committee remains concerned over allegations of death in custody as a result of torture or resulting from lack of prompt medical care and treatment during detention.”
- “The Committee regrets that, despite its requests to the State party's delegation to provide statistical data on the number of deaths in custody during the period under review, no information has been received on this subject, or on any investigations into such deaths.”
- “The Committee remains concerned that their [procuratorates] dual function as prosecutors and supervisors [of detention facilities] compromises the independence of their functions.”

⁶ Safeguard Defenders, *Polish Supreme Court set to test commitment to Rule of law in extradition row*, 11/01/2021, <https://safeguarddefenders.com/en/blog/polish-supreme-court-set-test-commitment-rule-law-extradition-row>.

⁷ https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/arbitrary_detention-detention_arbitraire.aspx?lang=eng.

⁸ China ratified the CAT on 8 October 1988.

⁹ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

¹⁰ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>

¹¹ China has entered a reservation against CAT Article 20, denying the authority of the Committee Against Torture, in a clear sign of disregard for independent monitoring of its compliance under the Convention.

¹² *Concluding observations on the fifth periodic report of China*, <https://undocs.org/CAT/C/CHN/CO/5>

As such, in 2018 a group of UN Special Procedures declared that “[those extradited to China] may be exposed to the risk of torture, other ill-treatment, or the death penalty”¹³. China has not joined the Optional Protocol to the CAT¹⁴, which allows for independent monitoring, nor lifted its reservation to Article 20 granting authority to the Committee Against Torture. China continues to refuse any visits by UN officials to monitor the situation related to torture.

The **British Conservative Party Human Rights Commission** in its *2021 Report on Human Rights in China 2016-2020* found that, “the use of torture in China’s detention systems continues to be pervasive, widespread, systematic and egregious. From the evidence received by the Conservative Party Human Rights Commission, it is beyond doubt that the authorities in China use torture – both physical and psychological – as a matter of course.”¹⁶

The **Annual Report on China from the United States Congress**¹⁷ concurs and states that torture and abuse of detainees continues (Page 91). The *U.S. 2020 China Country Report* (from its State Department)¹⁸ on China stated “Numerous former prisoners and detainees reported they were beaten, raped, subjected to electric shock, forced to sit on stools for hours on end, hung by the wrists, deprived of sleep, force fed, forced to take medication against their will, and otherwise subjected to physical and psychological abuse. Although prison authorities abused ordinary prisoners, they reportedly singled out political and religious dissidents for particularly harsh treatment.”

The **Country Report from Sweden**¹⁹, issued in 2019, states that, besides torture, cases of inmates being used to attack the victim, rather than being tortured by police, interrogators or police themselves, is also practiced. It also notes the lack of access to medical treatment, medicine, and healthy food. It also notes a lack of independent investigations into allegations of torture (see below).

In addition, despite some modest legal reforms to outlaw use of torture to secure confessions, China’s own data shows that almost no police nor prosecutor is held accountable for such. In the first half of 2015, which is the most recent period for which China has released data, only 11 people were convicted for extorting confessions by torture. Convictions under another provision, “collection of evidence by force”, stood at 0. “Ill-treatment of detainees”, amounting to a violation of CAT article 16, stood at 19²⁰. This under a criminal justice system that in 2015 issued 1,232,667 judgments by a Court of first instance (conviction rate, 99.95%)²¹.

¹³ OHCHR, ‘UN human rights experts urge Spain to halt extraditions to China fearing risk of torture or death penalty,’ Agnes Callamard, *Special Rapporteur on extrajudicial, summary or arbitrary executions*; Nils Melzer, *Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*; Felipe González Morales, *Special Rapporteur on the human rights of migrants*; Maria Grazia Giammarinaro, *Special Rapporteur on trafficking in persons, especially women and children*.

¹⁴ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23105&LangID=E>
¹⁵ <https://www.ohchr.org/en/professionalinterest/pages/opcat.aspx>

¹⁶ *The Darkness Deepens: The Crackdown on Human Rights in China 2016-2020*, <https://conservativepartyhumanrightscommission.co.uk/wp-content/uploads/2021/01/CPHRC-China-Report.pdf>

¹⁷ *Congressional-Executive Commission on China 2020 ANNUAL REPORT*, <https://www.cecc.gov/publications/annual-reports/2020-annual-report>

¹⁸ *2020 Country Reports on Human Rights Practices: China (Includes Hong Kong, Macau, and Tibet)*, <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/china/>

¹⁹ <https://www.regeringen.se/4a7346/contentassets/f8f0525faeaf4673affbb62159c57189/kina---manskliga-rattigheter-demokrati-och-rattsstatens-principer-2019.pdf>

²⁰ INT_CAT_RLI_CHN_22225_E, *China’s Reply to CAT’s List of Issues 2015*, para22,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FRLI%2FCHN%2F22225&Lang=en

²¹ See: *Presumed Guilty report and trials of Michaels Spavor and Kovrig*, <https://safeguarddefenders.com/en/blog/presumed-guilty-report-and-trials-michaels-spavor-and-kovrig>

3. Right to a Fair Trial

Addressing minimum fair trial standards, the Committee Against Torture in 2016²² noted:

- There is no legal right to access a lawyer immediately, only after first initial interrogation (CPL art 34).
- In certain cases, the right to legal counsel is denied entirely (lawyers need State's permission).
- Access to legal counsel is guaranteed only for those facing life imprisonment or death penalty (CPL art 35).
- Access to legal counsel can be denied to those facing national security charges, terrorism, or large-scale bribery (CPL article 39).
- The judicial system *"Overly relies on confessions as the basis for convictions"*
- *"It expresses concern that the majority of allegations of torture and ill-treatment take place during pre-trial and extra-legal detention, and involve police officers", and who is "without effective control by procuratorate and the judiciary". "This overarching power is reportedly further intensified by the public security's joint responsibilities over the investigation and the administration of detention centre" and which "creates an incentive for the investigators to use detention as a means to compel detainees to confess".*
- *"The Committee continues to be concerned that the dual functions of procuratorates, namely, prosecution and pre-indictment review of the police investigation, creates a conflict of interest that could taint the impartiality of its actions, even if carried out by different departments.*
- *"The Committee is concerned, however, at the necessity of keeping a political body to coordinate the proceedings, with a potential to interfere in judicial affairs, particularly in cases of political relevance."*
- China needs to, the Committee concludes, take steps to ensure that: *"Chinese Communist Party Politics and Law Committees are prevented from undertaking inappropriate or unwarranted interference with the judicial process"*

The rate of criminal conviction stands at 99.96% (2019), as shown in research compiled by Safeguard Defenders, on the basis of official data from the Chinese Supreme Court and Supreme Procuratorate²³. In addition, the rate of prosecutions that are aborted, that is, those who after being arrested are not put on trial because the prosecutor finds no evidence of a crime or because of insufficient evidence, stands at a mere 2.54% (2020).

These statistics shows that once an arrest has been approved – and this always happens, per definition – and an ensuing extradition request is made, trial is near certain. At trial, conviction is, in practical terms, guaranteed. Of over 1.66 million trials of first instance 2019, only **637** were found *not guilty*.

A cursory look at the Chinese Supreme Court's database on verdicts²⁴, which is far from complete, shows that, as practicing criminal defence lawyers in China also state, confessions stand as the basis for the judicial systems ability to secure a near guaranteed conviction rate. In addition, it is up to judges to decide who gets to call witnesses, with prosecutors given extensive leeway, rarely afforded to the defence. In fact, a key problem, according to defence attorneys²⁵, is that Courts regularly allow prosecutors to use witness statements, making it impossible for the defence to cross examine them. Their own possibility to bring in supporting witnesses, or related statements, is very limited.

²² Concluding observations on the fifth periodic report of China, <https://undocs.org/CAT/C/CHN/CO/5>

²³ See: Presumed Guilty report and trials of Michaels Spavor and Kovrig, <https://safeguarddefenders.com/en/blog/presumed-guilty-report-and-trials-michaels-spavor-and-kovrig>; In China, even your name is not safe, <https://safeguarddefenders.com/en/blog/china-even-your-name-not-safe>

²⁴ Carried out for research for [Rampant Repression](#) and [Presumed Guilty](#) reports.

²⁵ Interviews 2019, 2020, 2021 with over 30 active criminal defence attorneys.

4. Unkept Diplomatic Assurances

Most assurances in the past have been vague, and the flawed legal system described above cannot provide the necessary guarantees against torture or the promise that the victim will receive a fair trial. Diplomatic assurances provided are often *unenforceable*, and may be so because a) of vagueness; b) that they contravene local law; or c) that the counterpart country does not have the resources to investigate compliance with the assurances the way they are offered by China. The best example of China's failure to adhere to diplomatic agreements is its wanton disregard for consular agreements, as exemplified in the cases of Canadian citizens Michael Kovrig, Michael Spavor, and Swedish citizen Gui Minhai.

Canada maintains a bilateral consular access treaty with China²⁶, lodged as an international treaty. It adds additional obligations for both parties beyond the basic rights and obligations under the Vienna Convention on Consular Relations²⁷. The treaty with Canada specifies that Canada should have the right to visit any Canadian national facing a criminal proceeding in China on a monthly basis. Yet in the cases of former Diplomat Michael Kovrig and businessman Michael Spavor, in the 28 months since they were first detained in December 2018, each of them has had only 2 such visits, not 28.

In addition, both Michaels were put on trial in March 2021. The same treaty specifies that consular officials should be able to attend any such trials. It was denied. China claimed State Secrets exemptions and refused consular access. The treaty however explicitly states that no domestic situation, or domestic law, may be used to impede such consular access. In all these cases, Canada has raised diplomatic protests for violation of international law, but with no consequence for China.

Sweden, using the Vienna treaty as the basis, as they have no bilateral consular treaty with China, has likewise been refused access to its citizen, Gui Minhai, who was kidnapped in Thailand in October 2015. Before his latest trial, in 2020, Gui had his Swedish citizenship – in violation of international law – unilaterally revoked. At the same time, they stated that Gui had 'reclaimed' this prior Chinese citizenship, while being held incommunicado awaiting his trial. According to relevant law, the Nationalities Law, it would be impossible, practically, for Gui to have filed and performed such a process. Sweden was denied access to his trial, which was also held in secret.

For Chinese nationals extradited back, there is no legal basis for a foreign government to be given the right to access or supervise that person's situation or case once back in China.

United Nations Committee Against Torture, in a 2018 General comments 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.*"²⁸

²⁶ Consular Agreement Between the Government of CANADA and the Government of the PEOPLE'S REPUBLIC OF CHINA, <https://travel.gc.ca/assistance/emergency-info/consular/framework/china>

²⁷ Vienna Convention on Consular Relations 1963, https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf

²⁸ General comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, https://www.ohchr.org/documents/hrbodies/cat/cat-c-gc-4_en.pdf

Conclusion

The intimidation and targeting through the threat of extradition of Chinese Communist Party (CCP) opponents and alleged criminals around the world has a direct impact on the democratic freedoms of expression, assembly, and association around the world and poses a direct risk on the freedom of movement and speech within the European Union.

China's demands that its political opponents and alleged criminal targets alike face extradition to an abusive legal system in China weakens the rule of law and international accountability mechanisms in Western democracies who comply with China's extradition regime.

As consistent conviction rates of 99,96% overwhelmingly demonstrate and international reports by UN bodies testify, the criminal justice system in China systematically denies any and all fair trial standards – from the presumption of innocence to the timely access to a lawyer -, makes frequent use of torture to obtain confessions, and still applies the death penalty.

The current agreement not only puts opponents and alleged criminals at risk of such abuses which run counter to all due process guarantees under International Conventions, but also lends indirect legitimacy to a judicial system not governed under the rule of law.

Furthermore, these issues in the judicial system, in full violation of the international legal principle of non-refoulement, are but the tip of the iceberg, as a slew of non-judicial mechanisms – from the camps in Xinjiang to the persecution under the National Security Commission – do not even provide for any or all trial and cannot be subjected to any appeal or complaint mechanisms.

Assurances provided to third States in the framework of extradition agreements are oftentimes non-enforceable and limited access provisions do not allow for adequate monitoring.

It appears therefore evident that, following the suspension of Extradition Treaties with Hong Kong in many European Member States, the bilateral agreements with China should face the same – if not additional – scrutiny and be revoked.

Belgium has an opportunity to honour its obligations under international human rights law and the European Convention on Human Rights, and should take immediate actions to suspend its extradition agreement with China.