In recent years, the People’s Republic of China successfully sought to establish extradition treaties with a large and quickly growing list of countries. After targeting “the usual suspects” first, often in central- and Southeast Asia, it has also made significant inroads in Europe and beyond. These treaties do not sit idle but are used extensively, with some 250 known cases of people extradited from EU member states alone since 2014. The PRC’s rapid expansion of extradition treaties and their use came hand-in-hand with a severe deterioration in China’s criminal judicial system as well as a major increase in illegal operations on foreign soil to capture and return “fugitives” against their will as presented in the report Involuntary Returns. By January 2021, PRC authorities touted 10,000 successful returns since 2014, from 120 countries, most of them via ‘irregular methods’ (extraditions counting for only 1%), including illegal operations by Chinese police in target countries and the use of kidnappings, including of foreign citizens.

The benchmark of a fair trial is the right to be present in court, to not be subjected to trial in absentia, to be allowed to have a lawyer of one’s choosing, to be tried in public, to be tried by an independent and impartial court, and to be presumed innocent until proven guilty. In the PRC, many of these rights are non-existent per Chinese law.

EXTRADITIONS AND CHINA

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Recent developments have further undermined the rights of suspects. For many the ability to access legal counsel before trial has been removed due to legal reforms, while detention centers often block such access on wholly illegal grounds. In addition, legal defense is rarely given the right to cross-examine witnesses, while courts regular block the defense from using witnesses altogether. The right to your own lawyer has been one of the key negative developments in China, as analyzed in detail in Access Denied III: China’s Legal Blockade. Both prosecutors and courts are controlled by an organ of the CCP (Political and Legal Affairs Commission).

While domestic law provides some - inadequate - legal protection against torture and coerced confession, it remains rampant. Most criminal trials are based on the suspect's confession. In 2019, conviction rates at the court of first instance stood at over 99.96%. Only some 2.54% of prosecutions were dropped by the prosecutor in 2020 because of insufficient evidence. This means to all effects that once a person is arrested, trial and conviction are guaranteed.

**Broken Diplomatic assurances and violation of treaties**

Diplomatic Assurances are guarantees that the target of extradition will not be denied fundamental human rights protections. The PRC makes use of these to appease concerns that extraditions will violate the sending State’s legal commitments. These diplomatic assurances continue to be used despite the ample evidence that China’s assurances are regularly violated. Several recent Higher- or Supreme Court decisions around Europe which have violations noted range from violating the right of consular access 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...”

China’s history of disregarding consular agreements and diplomatic assurances should immediately invalidate any new assurances as unreliable.

The violations noted range from violating the right of consular access to the suspects before trial, blocking officials from even attending their trials, to forcibly stripping the suspect of their foreign citizenship in some cases. Although rare, the PRC has also executed some suspects upon their return to China, despite promises that the death penalty would not be applied. Some of these actions not only violate diplomatic assurances but also bilateral legal instruments.

**RECOMMENDED POLICY RESPONSES**

Extradition treaties lead to a number of significant negatives:

- **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 manners 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. 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 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.