

PURSUED FOR LIFE

Hong Kong's global hunt for fugitives, the National Security Law, and risk of INTERPOL misuse



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Executive summary	3
Key takeaways	4
Background to the NSL	4
Extraterritorial reach of the NSL	6
Threats and attempts to hunting pro-democracy activists abroad	6
Growing fears over HKPF extending its reach abroad	8
Red Notice vs Diffusion	11
Fears of PRC takeover of NSL investigations	11
Mapping Hong Kong activists wanted by HKPF	12
Protecting INTERPOL from misuse by PRC and HKPF	13
Core rules for using Red Notices and Diffusions	13
References	15

Executive Summary

While the selection of judges handpicked by Chief Executive to work on national security cases¹ continues to hear and sentence pro-democracy and anti-extradition activists under the 2020 Beijing-imposed National Security Law (NSL), the Hong Kong Police Force (HKPF) is running a campaign to pursue national security “fugitives” in Australia, Canada, Europe, Taiwan, the United Kingdom and the United States.

At the end of December 2020, it was revealed that “some 30” people who had left Hong Kong were being sought under the NSL.² How many others overseas are wanted for prosecution under Hong Kong law for charges of rioting, public disturbance, unlawful assembly, etc. remains unknown. In addition, some foreigners outside of Hong Kong have been implicated in ongoing prosecutions and warned by their own government that they are at risk of detention and extradition to Hong Kong if they travel overseas - including Members of the British Parliament (MPs). Several elected lawmakers in Japan and the United States have also been implicated, while Danish MPs been sought out for investigation by both Hong Kong and Chinese police.³ In late November, additional arrest warrants were

announced, for Ted Hui and Yau Man-chin, both former lawmakers having fled into exile. Both mainland China (PRC) and Hong Kong authorities have issued a growing series of threats to make use of mutual legal assistance treaties (MLATs) with third countries, as well as the tools provided by INTERPOL, to actively chase and repatriate “fugitives”.

This investigation provides a brief overview of worrying trends and statements under the Beijing-imposed Hong Kong NSL and its growing global reach. It forms⁴ the backbone of a campaign by targeted individuals to avoid the further misuse of INTERPOL in the persecution of political and thought crimes.

Considering the well-known failures of INTERPOL to properly vet and review requested Red Notices, and the far greater lack of review for Diffusions – often similar in effect to a Red Notice - these threats should be taken very seriously.⁵ Their impact on the fundamental rights of individuals around the world – in particular freedom of movement and **refoulement** – requires an immediate and coordinated response by democratic countries to avoid the further violation of core principles of INTERPOL’s Constitution.

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Key takeaways

- Definition of NSL crimes in Hong Kong is expanding continuously and its extra-territorial element under article 38 is of particular concern;
- Both PRC and Hong Kong authorities are increasingly issuing announcements that they are actively chasing and seeking the prosecution of “suspects” abroad;
- These statements expressly include the use of INTERPOL mechanisms, and in ways that would violate INTERPOL charter;
- Named suspects include foreign nationals who have been warned by their own governments to avoid travel to countries that maintain extradition treaties with Hong Kong or the PRC;
- INTERPOL is under increasing scrutiny for its continued failure to ensure compliance of issued Notices, in particular the prohibition of persecution on political, religious or ethnic grounds;
- Current review mechanisms and practices within INTERPOL puts human rights defenders and activists at risk, constituting an unacceptable infringement of fundamental rights protected by article 2 of INTERPOL’s Constitution;
- A public preventive notice of political persecution has been sent to INTERPOL’s General Secretariat and their Commission for the Control of Files (CCF) by Hong Kongers at risk.

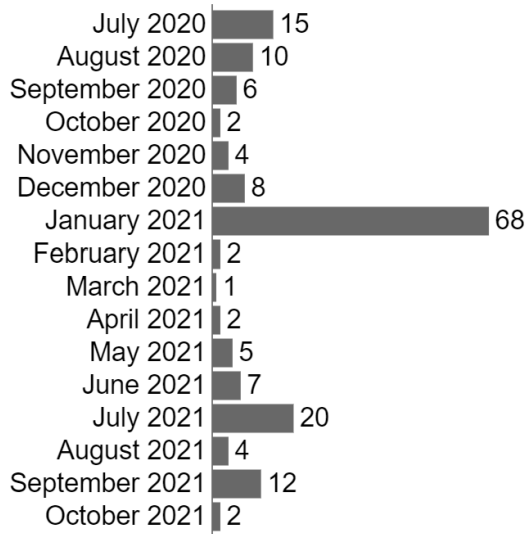
Background to the NSL

On 26 October 2021, 31-year-old Ma Chun-man was convicted under Hong Kong’s NSL for, amongst other things, shouting slogans (“*Hong Kong independence, the only way out*” and “*liberate Hong Kong, revolution of our times*”).⁶ The prosecution said he had also flouted the NSL by claiming that calling for Hong Kong independence was his constitutional right.⁷ Also, 24-year-old Tong Ying-kit, the first person convicted under the NSL (30 July 2021) was sentenced partly for carrying a banner with the words “*Liberate Hong Kong, revolution of our times*” written on it.⁸ Yet another case is taking this even further; Tam Tak-chi, currently on trial at the time of going to press with this report, is accused of violating the NSL not merely for

shouting slogans (“*Liberate Hong Kong*”) but also for conspiracy to shout slogans before it had even happened.⁹

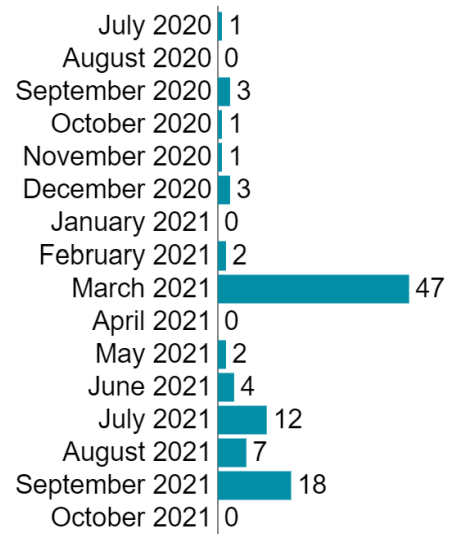
As of October this year, the special National Security branch of the HKPF has arrested some 155 people, with 100 of them facing formal charges. The Hong Kong government refuses to disclose how many NSL cases are currently under investigation.¹⁰ In addition, some 10,447 people have been detained or arrested (as of October 2021)¹¹ in relation to the 2019 protests that shook Hong Kong after the PRC tried to force the adoption of an extradition law between Hong Kong and Beijing.

Arrests by Month



Total individuals arrested: 168

Charges by Month



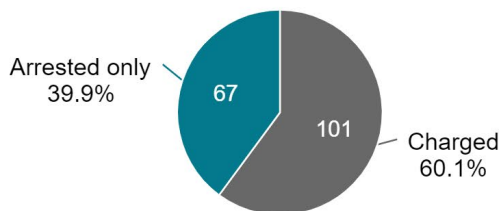
Total individuals charged: 101

Source: ChinaFile

In its outstanding analysis of how the NSL has been used up to October 2021¹², ChinaFile broke down the data in the graphic. For a further breakdown of the 10,447 people detained or arrested on non-NSL charges, see Kong Tsung-Gan’s data collection.¹³

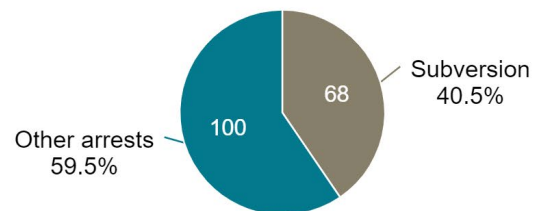
Charged Individuals

Individuals arrested under the NSL or by the NSD who have since been charged, out of all individuals arrested



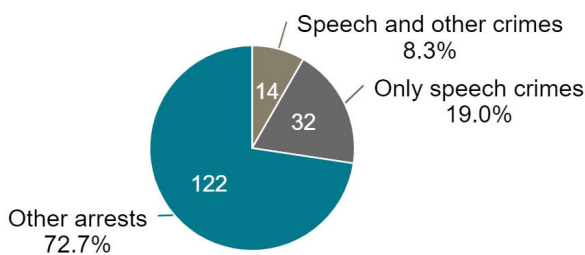
Arrests for Subversion

Arrests for inciting, abetting, or committing subversion, in comparison with other NSL violations or NSD arrests



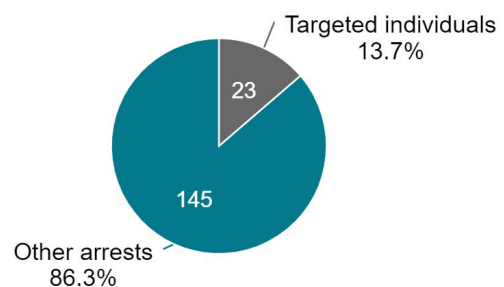
Arrests for Speech Crimes

Arrests for “seditionist” or “secessionist” speech or materials, in comparison with other NSL violations or NSD arrests



Individuals Targeted Due to Foreign Interactions

People arrested for violating the NSL or by the NSD, who were likely targeted based on their interactions with foreign entities



Source: ChinaFile

The HKPF has also encouraged the public to assist it in implementing the NSL. In November 2021, it was revealed that a hotline dedicated to national security tipoffs had received around 200,000 calls in its first year of operation.¹⁴ However, not satisfied with the silencing of protests and the fast-creeping chilling effect imposed on Hong Kong's once flourishing civil society, the HKPF is increasingly engaged in a larger struggle to expand its reach outside of Hong Kong and secure the return of claimed fugitives for prosecution under the NSL.

Hong Kong, as well as the PRC, are using increasingly emboldened language to call on other countries to refrain from offering "safe havens" to "fugitives" as this – in typical language – would constitute a gross "interference" in Hong Kong's internal affairs.¹⁵ In mid-October 2020, China's ambassador to Canada, Cong Peiwu, urged Ottawa to stop granting asylum to democracy activists from

Hong Kong, whom he described as violent criminals, and warned that continuing to do so could jeopardize the "health and safety" of 300,000 Canadians who live in the former British colony.¹⁶

Moreover, the HKPF has made it clear that it is also investigating foreign nationals living abroad for their support and assistance to protesters or other advocacy work deemed to be "against" the Hong Kong government.

Extraterritorial reach of the NSL

Article 38: This Law shall apply to offences under this Law committed against the Hong Kong Special Administrative Region from outside the Region by a person who is not a permanent resident of the Region.¹⁷

Threats and attempts to hunting pro-democracy activists abroad

While the selection of judges handpicked by Chief Executive to work on national security cases¹⁸ continues to hear and sentence pro-democracy and anti-extradition activists under the 2020 Beijing-imposed National Security Law (NSL), the Hong Kong Police Force (HKPF) is running a campaign to pursue national security "fugitives" in Australia, Canada, Europe, Taiwan, the United Kingdom and the United States.

At the end of December 2020, it was revealed that "some 30" people who had left Hong Kong were being sought under the NSL.¹⁹ How many others overseas are wanted for prosecution under Hong Kong law for charges of rioting, public disturbance charges, unlawful assembly, etc. remains unknown.

In addition, foreigners living outside of Hong Kong have been implicated in ongoing

prosecutions, either for advocating for sanctions against Hong Kong- or PRC officials, or for helping Hongkongers escape the territory as in the case of Uffe Elbæk and Katarina Ammitzbøll, two members of the Danish parliament that assisted former Hong Kong legislator Ted Hui escape certain arrest and prosecution.²⁰

In November 2021 Safeguard Defenders released the first-ever investigation into China's use of INTERPOL, which presented evidence of a clear change in China's use of INTERPOL amidst the launch of its Fox Hunt and Sky Net operations - which seeks to return claimed fugitives from abroad. That investigation, "No Room To Run" can be found [here](#).

At the time, Hong Kong's Security Bureau issued this statement: "Wherever any person, regardless of his nationality, is suspected of having committed a crime in organising, planning or aiding the abscondence, or in such criminal conspiracy, the police will actively investigate and pursue their legal liabilities under the existing legal framework."²¹

The bureau also expanded on the need to pursue such offenders abroad, saying: "In light of the circumstances of each case, the police will track down the whereabouts of the fugitive offenders through various means in accordance with the law and pursue them".²²

Ted Hui, already known to be wanted under the NSL, and fellow former lawmaker Yau Man-chun, were both announced, in late November, to have arrest warrants on them issued by the city's anti-corruption watchdog, the Independent Commission Against Corruption (ICAC), for encouraging boycotting or using blank votes in upcoming election.²³

Earlier this year, referencing escaped lawmaker Ted Hui, Hong Kong's Department of Justice told the Legislative Council that "police would hunt down Hui"²⁴, presumably using Article 89 of the Criminal Procedure Ordinance (Chapter 221)²⁵. Pro-CCP Hong Kong media also pointed out the possibility of using section 159A of the Crimes Ordinance (Cap. 200) concerning conspiracy, and noted that Hong Kong has extraterritorial jurisdiction over the crime of conspiracy as confirmed by the then-Minister for Security John Lee Ka-chiu.²⁶

The PRC also weighed in. "We oppose having any individual in any country interfering in Hong Kong's matters and China's domestic affairs in any way, and harbouring criminal," said Foreign Ministry spokesperson Hua Chunying.²⁷

Then-Minister of Security, John Lee Ka-chiu - since appointed to the HKSAR's second highest leadership position as Chief Secretary for Administration - in mid-2021 upped the ante by adding: "Fugitives who have fled overseas under charges related to national security will be pursued for life under the national security law for Hong Kong."

To ensure no escaped Hongkonger felt safe, in a TV interview he went on to say that "... fugitives, who are currently "protected" by foreign governments, will become disposable when they are of no political value, and will be pursued for the rest of their lives by the Hong Kong police."²⁸

Even in the event that MLATs or INTERPOL Red Notices could not be used, he threatened that: "International relations are changing every moment...But we hold them criminally responsible for life..."²⁹

In another fear-inducing statement, Kennedy Wong Ying-ho, solicitor of the Supreme Court of Hong Kong, told Chinese State media that: "The Hong Kong government, police and courts can work together to take various measures to recapture absconders..."³⁰

He also brought up the use of INTERPOL, saying: "Hong Kong is a member of INTERPOL, and member countries or regions have the obligation to provide mutual legal assistance to each other in criminal matters" and, "The Hong Kong police can make an offer of arrest to INTERPOL. If the absconder is on bail, then the court can also issue an international warrant."³¹

On 1 September 2021, Regina Ip Lau Suk-ye, a member of the Executive Council and former Minister for Security, echoed his statement, pointing out that even without an extradition treaty, Hong Kong has other tools to force the return of fugitives, including the many MLATs it maintains with other countries. She added that Hong Kong could use INTERPOL to have them arrested and sent back, a possibility also echoed by non-official Executive Council member and senior legal counsel Ronny Tong Ka-wah.³²

The threat of using legal mechanisms, including INTERPOL, against the claimed targets would not only clearly violate article 2 and 3 of the INTERPOL charter, but many times also their refugee policy, which states that those given asylum should not be targeted. Hong Kong officials claiming they will hunt those "protected" by other countries seems to imply an intention to go after those given asylum as well, which would further be in violation of INTERPOL rules.

政情

港府擬控助許智峯潛逃丹麥議員 葉劉：可透過國際刑警發通緝令

撰文：彭焯焯

出版：2021-01-09 14:36 更新：2021-01-09 15:26

139

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熱門文章

01獨家：通關要求辣 一宗本地確診即熔断
通關初期每日「工配額」

SOURCE: HK01

Considering the well-known failures of INTERPOL to properly vet and review requested Red Notices, and the lack of stringent reviews

for Diffusions – often similar in effect to a Red Notice - these threats should be taken very seriously.

Growing fears over HKPF extending its reach abroad

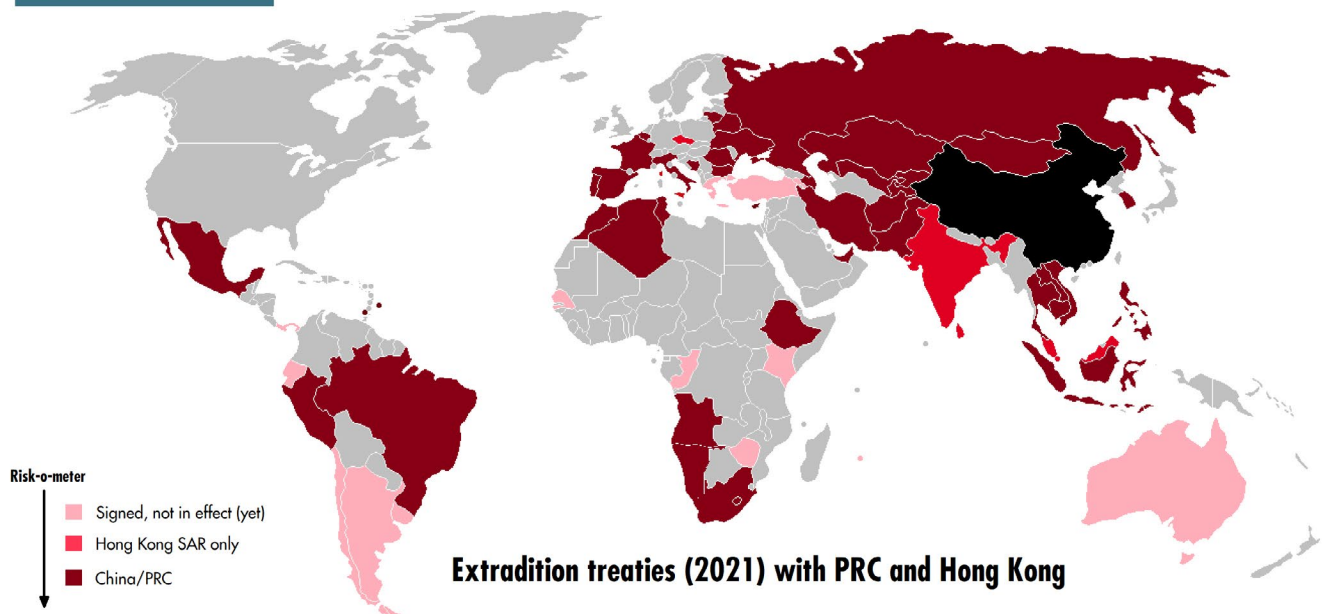
The risk to Hong Kong activists in exile became very real in late September 2021 when it was leaked that the UK's Foreign and Commonwealth Office (FCO) had contacted a number of British citizens, including Members of Parliament, to warn them of the possible risk of detention, extradition to and prosecution in Hong Kong.³⁴ These individuals were specifically advised to avoid travel to any country maintaining an extradition treaty with the PRC or Hong Kong, effectively meaning that travel to several EU members states would be risky, and thereby gravely impacting their fundamental right to freedom of movement.³⁵

While not all involved individuals have been publicly identified, those known include Lord David Alton, and prominent activists William

Browder, Luke de Pulford and Jack Hazlewood. Fears for the individuals stem from mention of their names in charges filed by Hong Kong prosecutors against activist Andy Li and paralegal Chan Tsz-wah, citing them as *co-conspirators*.³⁶ The same prosecution charge includes a long list of Japanese MPs, American politicians, Hong Kong activists, as well as several organizations and business entities.³⁷

As any extradition attempt would require the apprehension of the person by the third country's authorities, the principal option available is via either an INTERPOL Red Notice or a Diffusion, thus it logically follows that the UK authorities consider this a very real possibility, even against its own citizens.

CHINA TRAVEL RISK ADVISORY



Note: As of 2021, Australia, Canada, Finland, Germany, Ireland, New Zealand, the Netherlands, the United Kingdom and the United States have all suspended their extradition treaties with Hong Kong (France suspended its ratification). A total of 10 countries still maintain such treaties with Hong Kong: Indonesia, India, Malaysia, the Philippines, Singapore, South Africa, South Korea, and Sri Lanka, along with EU member states the Czech Republic and Portugal.

Shortly after, Danish newspaper Politiken broke the news that the HKPF – communicating via INTERPOL channels - and the PRC’s Ministry of Public Security (MPS) had indeed already tried to use the PRC and Hong Kong’s MLAT with Denmark to investigate the two Danish

Members of Parliament Uffe Elbæk and Katarina Ammitzbøl.³⁸ Even though Denmark rejected their attempts, this provides further evidence that the ever more hostile statements from Hong Kong government figures are not merely empty threats.³⁹

Hong Kong Police is investigating a public order event related case that occurred on 2019-07-06 in Tuen Mun area, Hong Kong. During the event, a passer-by (Victim) was alleged to have taken photos of the participants and a dispute aroused between the parties. Wanted Person (WP: M/HUI Chi-fung, Date of Birth: 1982-06-08; HKID: Z231924(2)) approached Victim, demanded to examine his mobile phone and required to delete therefrom any said images, if found, in order to prevent the police from getting access to the data for criminal investigation. Though being rejected, WP eventually managed to get Victim's phone and deleted some videos in it. Upon police enquiry, WP was arrested and charged with the offences of (1) Doing an act tending and intended to pervert the course of public justice; (2) Obtaining access to computer with dishonest intent; and (3) Criminal Damage. The case will be brought up at the District Court for plea on 2021-01-26.

WP was released on court bail with conditions requiring him to submit proof of official overseas visits to the Prosecutions 72 hours prior to his departure, if he intends to leave Hong Kong. He is also required to report to a local Police station every Monday. WP provided two letters dated 2020-10-20 and 2020-11-18 (Annex A & B as attached below) which he reported being issued by the Parliament of Denmark inviting him to participate in a series of meetings with some representatives from the Danish parliament and other parties between 2020-12-02 and 2020-12-03.

WP later failed to report to the local Police station and is now wanted by the Hong Kong Police.

Request

In view of the above, we would like to seek your assistance in confirming WP's invitation by the Parliament of Denmark for the stated meetings, if really any, between 2020-12-02 and 2020-12-03 in Denmark.

Thank you for your assistance in this matter.

Regards,

INTERPOL Hong Kong, China

SOURCE: Politiken

Whether INTERPOL has received any Red Notice or Diffusion requests from either the PRC or Hong Kong in relation to these cases is unknown at the time of writing. Hong Kong joined INTERPOL in

1960 and, since the handover to China in 1997, maintains a sub-bureau with a high degree of autonomy under the PRC's INTERPOL Bureau (National Central Bureau, or NCB).⁴⁰

Red Notice vs Diffusion

Red Notice: Red notices are published at the request of a National Central Bureau in order to seek the location of a wanted person and his/her detention, arrest or restriction of movement for the purpose of extradition, surrender, or similar lawful action.⁴¹ While no member state is obliged to act upon or arrest the sought person (they are not formal provisional arrest requests in themselves), in practice many countries do treat Red Notices as a specific arrest warrant. A Red Notice goes out to all member states automatically after an initial review by INTERPOL.

Diffusion: The diffusions system consists of standardized requests for cooperation and alerts each corresponding to a specific purpose: (a) to arrest, detain or restrict the movements of a convicted or accused person; (b) to locate and trace; (c) to obtain additional information; (d) for identification purposes; (e) to warn about a person's criminal activities; (f) for information purposes.⁴² Diffusions are immediately visible to the targeted member states, prior to any review by INTERPOL, making them useful tools for non-rule of law States in their attempts for apprehension, even if they know that the Diffusion may be withdrawn upon later review by INTERPOL. A diffusion is sent directly by one NCB to one, or several, other countries NCB, and is checked and approved by INTERPOL only after they have already been sent out.

The growing threats of using INTERPOL and MLATs – including evidence of the use of INTERPOL channels to investigate foreign citizens – go hand-in-hand with the worrying expansion of the definition of national security crimes. As demonstrated by the above cited ongoing trial of Tam Tak-chi, the goalposts of what constitutes a crime under the NSL are continually moving further from shouting slogans (“uttering seditious words”) to planning or conspiring to do so (“conspiracy to utter seditious words”).⁴³ In November 2021, the Hong Kong government

attacked the Hong Kong Foreign Correspondents Club, claiming that its members’ survey on journalists’ working environment and related issues – regularly carried out by similar clubs all over the world – constituted an attack on the NSL itself.⁴⁴ Fear of being embroiled in NSL-related offences have already forced the closure of long-standing human rights NGOs in Hong Kong, including Amnesty International and the China Human Rights Lawyers Concern Group, alongside media organizations, professional- and labour unions, and political advocacy groups.

Fears of PRC takeover of NSL investigations

Mainland police and State Security (MSS) forces have been moved to Hong Kong to help with the NSL, with article 48 giving them the authority to handle NSL cases. Adding to this issue of grave concern is the legalization and *potential normalization* of mainland police and prosecutors taking over detention and prosecution from their Hong Kong counterparts, for crimes committed in or against Hong Kong.

Article 55 of the NSL provides for the possible transfer of cases and detained suspects from

Hong Kong to the mainland with Beijing only able to authorise such a move of jurisdiction. The article merely stipulates that a transfer can be undertaken if the alleged offense is: a) complex due to the involvement of a foreign country or “external elements”; b) a situation where the Hong Kong government cannot “effectively” enforce the law; or c) a major and imminent national security threat exists. Upon transfer of jurisdiction, the laws, procedures and safeguards of the new jurisdiction – e.g. mainland China - apply.



Source: Safeguard Defenders/Shutterstock
Office of the national security police of the PRC in Hong Kong

In light of the above, this provision technically allows for the HKPF to apply for extradition to Hong Kong and then, once they are within the territory, hand them over to the mainland without the need for any formal extradition procedure between Hong Kong and the mainland. It puts an added strain on those countries – including

within the European Union – who still maintain extradition treaties with Hong Kong.

To date there are no *known* cases where jurisdiction was transferred from Hong Kong to mainland China in accordance with article 55.

Mapping Hong Kong activists wanted by HKPF

The HKPF has claimed “some 30” pro-democracy activists are wanted by the police for prosecution under the NSL but have not as yet issued a public list of individuals. This is in line with the PRC’s *intended and announced policy* to refrain from making its requested Red Notices public. However, on the basis of statements from the HKPF, Hong Kong and PRC pro-government media reports, and ongoing prosecutions in Hong Kong, Safeguard Defenders has identified potential candidates and their current whereabouts, including several foreign citizens.

Most likely there are a great many more are at risk of criminal liability under non-NSL “violations” should they return to Hong Kong or the PRC, or be apprehended via an INTERPOL Red Notice or Diffusion in a country that maintains extradition treaties with Hong Kong (such as the Portugal and the Czech Republic in the EU, as well as the Philippines, India, Singapore, Indonesia, Malaysia, Sri Lanka, South Korea and South Africa).

Protecting INTERPOL from misuse by PRC and HKPF

The alarming use of a 2017-issued INTERPOL Red Notice to arrest Idris Hasan, an ethnic Uyghur man, in Morocco this year has highlighted how INTERPOL fails to review and correct “non-compliant” Red Notices from China despite extensive media attention of the atrocities in the PRC’s Xinjiang region.⁴⁵ This places INTERPOL’s shortcomings and the risk for similar abuses of INTERPOL’s mechanisms front and centre.

If the PRC, despite grave human rights abuses in Xinjiang, politicized justice system, and growing reputation for misusing international mechanisms, is able to evade INTERPOL’s review, many now fear what Hong Kong authorities would be able to do with its tarnished but still better reputation. There is substantial concern that the HKPF can use Diffusions instead, thus having targets detained or harassed via INTERPOL channels without the stricter review that Red Notices require.

On November 25, 2021, China successfully had Hu Bincheng, a member of the Ministry of Public Security (MPS) and who works in its International Cooperation Department, elected to INTERPOL’s 13-member Executive Committee, despite protests from lawmakers, NGOs and

rights defenders alike, increasing the possibility of Chinese abuse of the system.

In response to these developments, Safeguard Defenders and a group of the identified claimed fugitives has filed a public letter to INTERPOL’s General Secretariat and the Commission for the Control of INTERPOL’s Files (CCF), alerting INTERPOL to the potential misuse of INTERPOL Red Notices and Diffusions by both the PRC’s MPS and Hong Kong’s HKPF.

Safeguard Defenders and the people in question are asking INTERPOL to take preventive measures against possible forthcoming Red Notice- or Diffusion requests concerning these individuals and to ensure none of them are currently listed. If they are listed, INTERPOL is requested to take immediate action to review the legality of such requests.

The charges against them, public statements from the Hong Kong and PRC governments, as well as statements from relevant UN organs make it clear beyond doubt that attempts to use INTERPOL to seek the return of these individuals would be in clear violation of articles 2 and 3 of the INTERPOL Constitution, and in many cases its refugee/asylum policy.

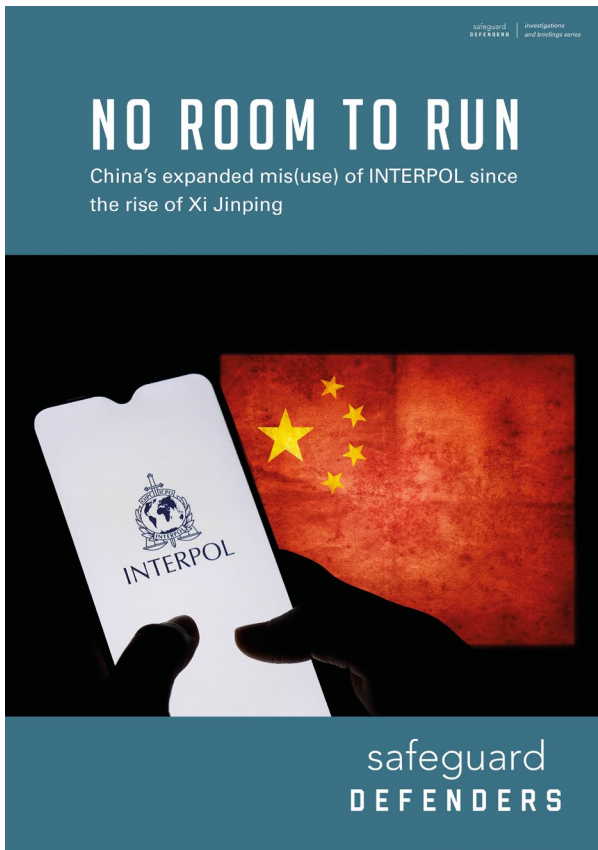
Core rules for using Red Notices and Diffusions

Article 2 of the Constitution provides that INTERPOL’s mandate is to ensure and promote international police cooperation *in the spirit of the Universal Declaration of Human Rights*.

Article 3 of the Constitution provides that it is *strictly prohibited for the Organization to undertake any intervention or activities of a political, military, religious or racial character*; sometimes referred to as the ‘neutrality rule’.

The systematic violations of these articles provides INTERPOL with the right to take counter measures against the offending member state, including limiting their access to INTERPOL data and right to file for notices and other support via

INTERPOL. INTERPOL needs to take urgent note of the changing nature of the judicial system in Hong Kong and the HKPF’s public statements on chasing “fugitives” abroad through INTERPOL for what can only be classified as political crimes.



Several of the people signing the letter have been afforded asylum around the world, per INTERPOL rules any Red Notice or Diffusion should be automatically deleted upon request of the individual concerned. However, since only a fraction of Notices are made public and their originator – e.g. the PRC or Hong Kong – may prohibit INTERPOL from sharing the information, the individuals concerned cannot request the removal of the Notice because they will not aware that it exists.

In conjunction with this action, some of these identified targets have filed “Request for Access to Information” with INTERPOL’s CCF, asking for information on whether or not they are listed in INTERPOL’s databases.

For more information, see Safeguard Defenders’ November investigation *No Room To Run - China’s expanded (mis)use of INTERPOL since the rise of Xi Jinping*.

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²⁹ <https://www.globaltimes.cn/page/202105/1224065.shtml>

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³⁴ <https://www.smh.com.au/world/europe/britain-warns-mp-activists-against-travel-to-50-countries-over-china-risk-20210924-p58udf.html>

³⁵ <https://www.voanews.com/a/britain-warns-citizens-of-hong-kong-extradition-threat/6247737.html>

³⁶ The two men plead guilty to “colluding with foreign forces to endanger China’s national security” in August 2021. Please see: www.theguardian.com/world/2021/aug/19/hong-kong-protest-pair-swept-up-in-national-security-crackdown-plead-guilty

³⁷ *HKSAR v Chan Tze-wah, Li Yu-hin, WKCC 624, Criminal case HCCC 147/2021*

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⁴¹ Article 82, https://www.interpol.int/content/download/5694/file/24%20E%20RPD%20UPDATE%207%2011%2019_ok.pdf

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