

# safeguard DEFENDERS

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.

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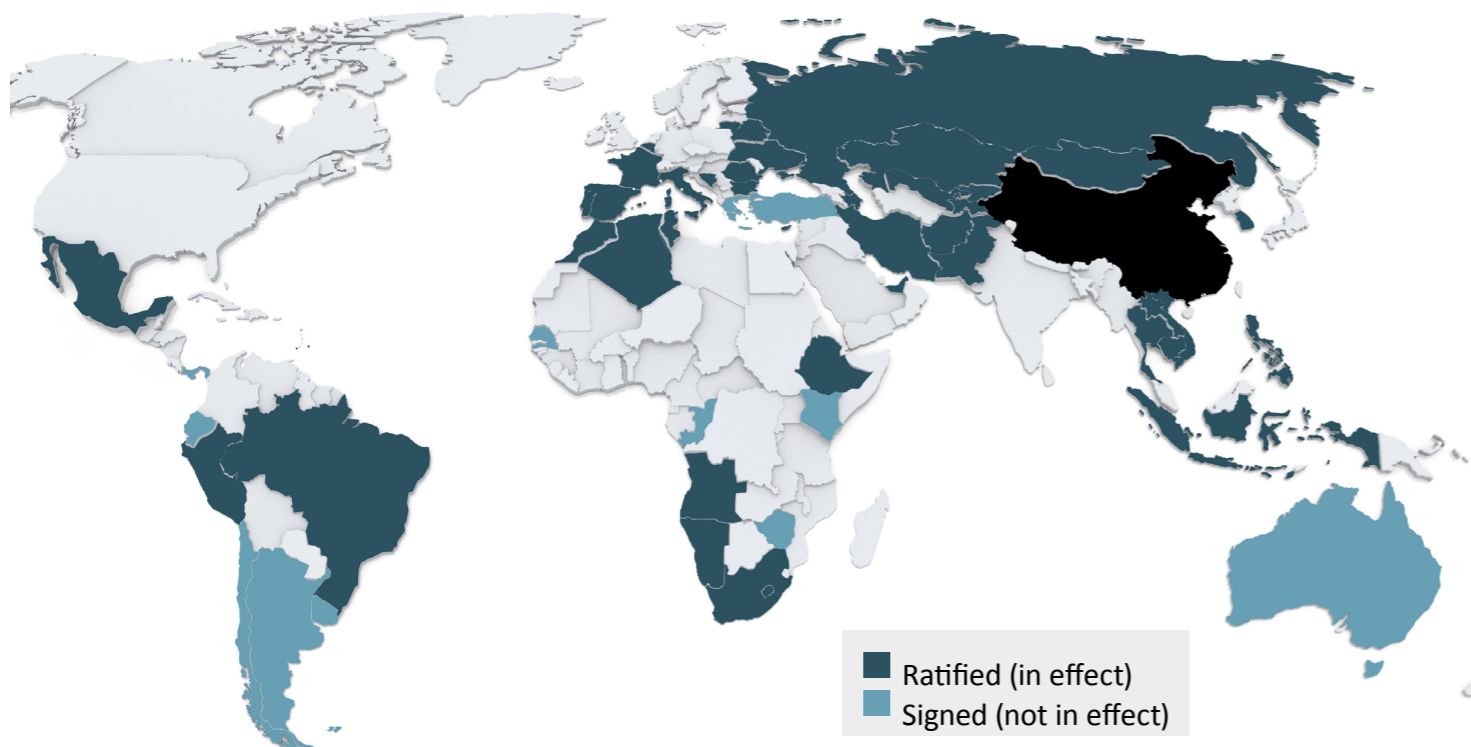
## EXTRADITIONS AND CHINA

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.

Safeguard Defenders (SD) 150+ pages manual, [Hide and Seek: A guide to confronting China's extradition problem](#) – by far the most significant resource on the subject ever produced - and the briefer [Returned Without Rights: State of Extraditions and China](#) report provide in-depth information, both out February 28, 2022.

Safeguard Defenders' [No Room To Run](#) similarly explores the PRC's misuse of INTERPOL, while [Pursued For Life](#) does the same for Hong Kong and its National Security law.



## International Human Rights norms and democratic freedoms abroad

International norms establish grounds for automatic rejection of extraditions: when these involve political offences, where there are concerns over torture, denial of a fair trial, or when there is a risk of persecution based on race, religion, ethnicity or political opinion. A common yet questionable practice is to accept diplomatic assurances, promises which the PRC does not only regularly violates in the most blatant manner, but which do not relieve the counterpart State of its international obligations.

Knowingly returning someone to a country where they are at severe risk of unfair persecution and torture constitutes a clear violation of international human rights law and the principle of non-refoulement.

Alongside other forms of 'returns' of Chinese Communist Party (CCP) opponents and alleged criminals, the intimidation exercised through the threat of extradition has a direct impact on the significant Chinese diaspora's ability to exercise basic democratic freedoms. Instead, they live in constant fear of persecution of themselves or of family or relatives still in China. Under growing extra-territorial criminal provisions, this threat and infringement on fundamental freedoms is rapidly expanding around the globe, with direct warnings to Members of Parliament and activists in sovereign countries to avoid travel to countries with extradition treaties with the PRC and/or Hong Kong.

**"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, 2016

## Torture and other cruel, inhuman or degrading treatment or punishment

While China is a State-Party to the Convention against Torture (CAT), its prior reports to the relevant oversight committee shows its failure to adhere to it. It also refuses to recognize the body's mandate to make inquiries into allegations of torture. Furthermore, since 2019 it has failed to provide its five-yearly reports to the Committee. Other UN procedures have repeatedly condemned the systematic use of torture. Recent country reports on China from a variety of foreign ministries echo these concerns, as does a wide variety of data-based research reports.

As noted by UN procedures and in verdicts denying extraditions, torture is of particular concern in China's new systems for custody before formal arrest. These include the expanding use of *Residential Surveillance at a Designated Location* (RSDL) and the new *Liuzhi* system run by the non-judicial body the National Supervision Commission (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]

## 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 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.

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 regularly 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 prosecutor 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.

**“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

## 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 denied extraditions did so in part because:

- The PRC 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; and
- The assurances are often un-enforceable in practice, or even in violation of Chinese law.

**“The record shows that 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...”*

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.

## Violating national sovereignty, Sky Net and global “fugitive” chase

Extraditions are but one tool employed by the PRC to hunt claimed fugitives. Eschewing the difficulties of normal judicial proceedings, the PRC prefers to seek the return of targets via irregular methods through its Sky Net operation. Methods range from threatening family back in China; sending agents to harass the target in the foreign country –without the target country's knowledge - including in Europe, North America and Australia; and, in some cases, direct kidnappings. In 2018, for example, 1,335 persons were returned, with formal extraditions amounting to only 17 of those. However, having formal extradition or other judicial cooperation agreements with the PRC does not add to protection of national sovereignty, with illegal operations conducted on such territories as well.

## 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 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. 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.