Enforced Disappearances in the context of transnational repression:
The Case of China and Hong Kong
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China is perhaps the leading state practitioner of enforced disappearances, including both domestic cases and ones involving disappearance from outside China. Data is limited, but the overall number of enforced disappearances carried out by the Chinese government is undoubtedly quite large, running into the tens if not hundreds of thousands. The vast majority of these cases are purely domestic, involving state and party officials being investigated for corruption; Uighurs, Tibetans, and other members of ethnic minority groups; and rights activists and lawyers who have refused to heed official warnings to end their activist work. Even everyday citizens who take part in unsanctioned protests can be disappeared, often for weeks or months, as was seen during the so-called white paper protests in November and December 2022.

The total number of transnational enforced disappearance cases carried out by the Chinese government in recent decades is not known.[1] Without doubt, the number of transnational enforced disappearances is a small fraction of those carried out by China in the domestic context. That said, over the past twenty years, the use of this tool has become a regular feature of China's growing transnational influence and repression toolkit. The Chinese government has targeted three core groups in its growing use of transnational enforced disappearance: ethnic minorities fleeing repression in China; allegedly corrupt Party officials who are fleeing potential criminal prosecution; and rights activists, lawyers, and liberal intellectuals who are attempting to flee harassment and persecution at home.

Since 2020, a new pattern has emerged, against a new target group: the *threat* of transnational enforced disappearance, often targeting Hong Kong exile activists, most of whom left Hong Kong just before or just after the 2020 National Security Law (NSL) went into effect. Though no Hong Kong exile activist has been forcibly returned to Hong Kong or mainland China, nonetheless the threat of return remains. At the same time, the Hong Kong government and Beijing have engaged in a campaign of harassment of key exile figures, including the issuance of arrest warrants and bounties against 34 individuals. This campaign has had a direct impact on these activists, creating very real (if indirect) limits on their rights to free expression and association, and their right to travel. We will discuss these elements of the Hong Kong context in more detail below.

[1] More research is needed, but our research and interviews suggest that the total number of known cases likely runs somewhere between several dozen and approximately one hundred or more. Scarce information on many of the probable cases makes it difficult to determine whether individuals who were forcibly returned to China from abroad were actually disappeared after they were returned, or whether they were transferred into the criminal justice system, with limited or almost non-existent due process rights.

China has neither signed nor ratified the International Convention for the Protection of All Persons from Enforced Disappearance. It has also repeatedly refused or ignored requests from the UN Working Group on Enforced and Involuntary Disappearances to visit the People's Republic of China, including the most recent request made on January 7, 2022.[2] As discussed in more detail below, given the concerns over the scope, scale, and severity of China's use of enforced disappearances as a tool of repression and political control, GCAL believes that the CED and the WGEID should maintain a heavy focus on China's actions. The CED and the WGEID should continue to monitor existing and emerging cases involving the Chinese government, and should continue to press the Chinese government for an official visit. Both bodies should also continue to press the Chinese government to sign and ratify the Convention on Enforced Disappearances.

Given space constraints, this submission will focus on three key prongs of China's use of transnational enforced disappearance: its use against rights activists, lawyers, and intellectuals either based outside China or who are fleeing China; the creation of a new body of national security laws in Hong Kong; and the use of those laws against exile Hong Kong activists.

Georgetown Center for Asian Law (GCAL) is a leading academic center for teaching and research on Asian law in the United States, with a particular focus on legal developments in China and Hong Kong. GCAL is based at Georgetown University Law Center in Washington, D.C. GCAL is submitting this briefing in response to a call for inputs put out by the CED and the WGEID. This submission can be made public; GCAL plans to publish an expanded version of this submission on its own website.

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The People's Republic of China: Transnational Enforced Disappearance as a Coercive Tool

In preparing this submission, GCAL has looked closely at several of the known cases of transnational enforced disappearance carried out by the Chinese government in recent years. Generally speaking, there are some differences between China's approach to transnational enforced disappearance, and the more extreme approach taken by several Latin American governments in many cases during the 1970s and 1980s. Most often, the Chinese government uses transnational enforced disappearance as a means to neutralize perceived political threats, then turning them over to the formal criminal justice system for prosecution and all-too-certain conviction and imprisonment. Enforced disappearance isolates the targeted individual, making him or her more vulnerable to threats and coercion, and in turn more likely to agree to confess to alleged crime. Individuals are also often pressured to sign statements pledging to forego future activism, or even promising not to disclose the nature of their disappearance.

[2] "Civil society call to end enforced disappearances in China," advocacy letter signed by several non-governmental organizations, August 30, 2022.

Though they are beyond the scope of this submission, there are some purely domestic cases of enforced disappearance that have stretched on for several years, and that more closely mirror the paradigmatic cases that emerged from Latin America during that period. The rights lawyer and activist Gao Zhisheng, for example, was forcibly disappeared in August 2017.[3] Over the past eight-and-a-half years since he was disappeared, the Chinese government has refused to acknowledge his detention, or even to provide any information on his whereabouts or status. Such extreme cases involving rights activists and lawyers are somewhat uncommon in the Chinese context, but they do happen.

Some of the cases involving transnational enforced disappearance have also stretched on for years. Take, for example, the case of Lhamjab Borjigin, a prominent Mongolian writer. Borjigin, originally from the Inner Mongolian Autonomous Region in China, was detained at his home in Ulaan Baatar, Mongolia, on May 3, 2023, by Chinese officials.[4] He was forcibly returned to China that same day. Close to three years later, there is no publicly available information on Lhamjab Borjigin's current whereabouts or his health status. It is also not known whether he has been charged with a crime or criminally prosecuted.

In other cases, individuals who have been forcibly disappeared after being returned to China from overseas have been allowed to resurface, however briefly, even as the Chinese government has maintained a high degree of control over them. Book publisher and liberal intellectual Gui Minhai, for example, was kidnapped by Chinese security agents, and forcibly removed from his home in Thailand in October 2015.[5] (Gui is originally from China, but later adopted Swedish citizenship after moving there in the late 1980s.) His whereabouts were initially unknown for several months, until he gave a pair of television interviews in January and February 2016, in which he claimed to have returned to China voluntarily, to face criminal charges over an alleged drunk driving incident from 2003. Given the strangeness of Gui's statements, and the known involvement of Chinese security agents in his removal from Thailand, it seems clear that his involvement in both interviews was coerced.

Gui then disappeared for another twenty months, during which time he remained in incommunicado detention, his legal status unclear. In October 2017, Gui was granted a form of partial, supervised release, and was allowed to have some contact with Swedish consular officials in Shanghai. He was disappeared for a second time after being removed from a train to Beijing in January 2018.

The Chinese government eventually moved to create a legal basis for Gui's incarceration. He was convicted of providing intelligence to overseas actors in February 2020, and sentenced to ten

[3] For more on Gao's disappearance, *see* "China: Release Lawyer Gao Zhisheng, Forcibly Disappeared Since 2017," Chinese Human Rights Defenders press release, August 13, 2025.

[4] "Chinese police makes arrest on Mongolian soil, deporting prominent writer," Southern Mongolian Human Rights and Information Center press release, May 11, 2023.

[5] For more on Gui's case, *see* Thomas E. Kellogg, "News of a Kidnapping: The Gui Minhai Case and China's Approach to International Law," *Fordham International Law Journal*, Vol. 41, Iss. 5 (2018), pp. 1215-42.

years in prison. GCAL believes that his prosecution and his draconian sentence were both politically motivated. As of this writing, he remains in prison. Assuming he serves the full sentence, he will be released in January 2028.

Gui's case illustrates the Chinese government's divergence from the most extreme version of the classic model: rather than disappearing an individual permanently, the Chinese government has used transnational enforced disappearance to obtain control over an individual based overseas, and to neutralize them, before then transferring their case to, most often, the formal criminal justice system. A period of disappearance, lasting weeks, months, or, as in Gui's case, years, is used to pressure an individual to cooperate with the authorities, which often includes the individual publicly signaling his or her confession of a crime. In Gui's case, this public signaling also included a denial that he had been subjected to enforced disappearance, and a public repudiation of his Swedish citizenship. Overall, Gui's transfer to formal criminal prosecution took more than four years, and ended with a ten-year prison sentence.

Recommendations

- Given the role that third countries play in either facilitating or at least allowing Chinese state agents to remove individuals from their country of residence, the WGEID and the CED may want to consider efforts to remind all states, including China's neighbor states in Southeast and Central Asia, of their obligations, both under the Convention and under other customary international law, not to engage in refoulement. As this brief analysis shows, other states have allowed – or, at best, failed to stop – Chinese government actors from removing target individuals from their own home soil.

- The WGEID and the CED may also want to consider whether states whose nationals are subjected to enforced disappearance could or should have greater rights vis a vis states who have forcibly disappeared their own citizens or residents. After Gui Minhai was forcibly disappeared, for example, the Swedish government repeatedly requested information on his whereabouts, and also asked to be given consular access to him. This access was only infrequently granted, in violation of China's obligations under international law. At the same time, the limits of such mechanisms, though useful, are clear: they do not create a basis for an individual's release, nor do they create a potential pathway for imposing penalties or costs on states that engage in enforced disappearance.

- As likely one of the leading state practitioners of transnational enforced disappearance, the Chinese government should recommit to ending its use of the practice, and should sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance. It should renew its engagement with the UN Working Group on Enforced and Involuntary Disappearances, and allow a visit from the WGEID as soon as is practicable for both sides. Last but not least, the Chinese government should reform or repeal laws, including criminal law provisions relating to Residential Surveillance at a Designated Location (RSDL), that create a legal veneer for enforced disappearances.

Hong Kong: A Legal Framework for Enforced Disappearance, a Target Jurisdiction for Enforced Disappearances?

In the wake of the truly massive 2019 pro-democracy protest movement in Hong Kong, the central government implemented the 2020 National Security Law (NSL). The law contains several key criminal provisions that have been used to crack down on peaceful political activity. Scores of individuals have been arrested and prosecuted under the law, including opposition politicians, civil society activists, journalists, rights lawyers, and intellectuals.

More relevant to this submission, the law also contains several key procedural and jurisdictional provisions, all of which could be used to create a thin veneer of legality over enforced disappearances, including transnational enforced disappearances. GCAL believes that these provisions, taken together, constitute a violation of 17 and 18 of the Convention on Enforced Disappearances, in that they could be used to put individuals into incommunicado detention, without disclosing their whereabouts or the reasons for their detention. In other words, the key provisions of the NSL, described below, could be used to forcibly disappear individuals, either in Hong Kong, or anywhere in the world.

As of this writing, there are no known cases of individuals being forcibly disappeared using these NSL provisions. That said, this legal framework could be used at any time against the government's peaceful critics, in violation of both the Convention, and of Hong Kong's broader international human rights obligations. It's also worth noting that, as discussed in more detail below, the Hong Kong government has issued arrest warrants and offered bounties against 34 exile Hong Kongers, virtually all of whom are prominent members of Hong Kong's exile human rights and democracy movement. This pattern of threats and harassment against overseas activists suggests that the Hong Kong government views transnational repression – potentially including transnational enforced disappearance – as a legitimate tool to silence individuals who engage in peaceful political activity in ways that the government itself doesn't like.

First and foremost, the NSL is designed to achieve truly global reach. Under NSL Articles 37 and 38, actions by individuals based outside of Hong Kong can constitute a crime. Given that the NSL's criminal provisions are incredibly vague and overbroad, and given that they are regularly used to target peaceful political activity, the stage is set for the Hong Kong government and Beijing to assert jurisdiction over individuals for their peaceful speech or other expressive activity while based far from Hong Kong, even if they are not Hong Kong citizens. These provisions make all too clear that the NSL is a tool for both local and transnational repression.

Once an individual is detained in Hong Kong for alleged NSL crimes, the risk of enforced disappearance is all too clear. Under NSL Articles 55 and 56, individuals accused of national security crimes could be sent to the Mainland, as long as their case is deemed sufficiently "complex." Although these provisions refer to criminal adjudication of national security cases by Mainland courts, the PRC system has various mechanisms by which individuals can be subjected to enforced disappearance, and due process rights fully denied. Under the Mainland's system of

Residential Surveillance at a Designated Location (RSDL), for example, individuals can be held virtually indefinitely in an undisclosed location, and denied access to both legal counsel and family members. Various UN bodies, including the WGEID, have found RSDL to be a form of enforced disappearance, and have urged the Chinese government to repeal the relevant provisions of Chinese criminal law that allow for the use of RSDL.[6]

If an individual were to remain in Hong Kong, and subjected to national security investigation and prosecution there, his or her rights – including her core due process rights that are meant to guard against enforced disappearance, such as the right to access to an attorney, the right to pre-trial release where appropriate, and the right to a trial in open court – will be severely restricted, and will make it virtually impossible for that individual to obtain a fair trial.[7] Take, for example, Article 42 of the NSL, which limits the right to pre-trial release in national security cases. In practice, this provision has been read to eliminate pre-trial release in virtually any case in which the government objects to it.

Under Article 41(4) of the NSL, trials can be closed to the public if it is deemed that "state secrets or public order" make such a move necessary. All national security verdicts, however, are meant to be made public.

The NSL does not contain any provisions that explicitly limit an individual's access to legal counsel. But the 2024 Safeguarding National Security Ordinance (SNSO), which was passed by the Hong Kong Legislature as a complement to the NSL, does limit access to counsel under certain circumstances, including if access to counsel would "endanger national security."[8] Though the limits on access to counsel are meant to be time-bound – s. 80 of the SNSO mentions a 48-hour window in cases in which the individual has already been arrested, for example – nonetheless it remains unclear whether such limits would always be honored in practice. In any case, these restrictions on access to counsel are vague and overbroad, and could be abused to prevent an individual from exercising her or his core right to consult with legal counsel immediately after arrest, and regularly thereafter.

What about the role of the courts in ensuring that due process rights are protected, and that constitutional rights – including the right to counsel and the right to a fair trial under Hong Kong's Basic Law – remain at the center of all criminal trials, including those involving national security? Sadly, the NSL circumscribes judicial independence, and thereby undercuts the role of the courts in upholding core due process rights. Under Article 44 of the NSL, the Hong Kong Chief Executive designates a core group of judges to handle national security cases. In practice, it seems clear that national security designated judges are being chosen on the basis of their political reliability, and their willingness to deliver pro-government decisions, both on the due

[6] For an excellent assessment of the UN's work in this area, *see* "Briefing Paper: United Nations Documentation of Residential Surveillance at a Designated Location (RSDL) as a form of enforced disappearance, arbitrary detention, and torture," International Service for Human Rights, August 2024.
[7] For more on due process rights in national security cases, *see* Wong, Kellogg, and Lai, *Hong Kong's National Security Law and the Right to a Fair Trial: A GCAL Briefing Paper*, June 28, 2021.
[8] SNSO, s. 80.

process front and in terms of substantive verdicts. This system raises very real questions as to whether the courts would be able to stop the government from engaging in acts that rise to the level of enforced disappearance under Article 2 of the Convention. The judiciary's track record, since the 2020 NSL went into effect, is a deeply disturbing one, and gives almost no hint of any willingness to serve as a check on government power in national security cases.

As noted above, taken together, these provisions do deep damage to the core due process rights of individuals accused of national security crimes. As GCAL has documented in its extensive work on national security prosecutions in Hong Kong over the past five and a half years, it is now impossible for anyone accused of a national security crime to obtain a fair trial. This fact speaks to the high rate of guilty pleas that have been entered by national security defendants, many of whom are guilty of nothing more than exercising their constitutional rights to expression, association, and assembly.

But what about the risk of enforced disappearance, above and beyond the risk posed by the use of NSL Articles 55 and 56? Taken together, the NSL, the NSL's Article 43 Implementing Regulations, and the Safeguarding National Security Ordinance do not create the truly glaring gaps in basic due process rights that clearly and unquestionably create the circumstances for a "legalization" of enforced disappearance. In other words, these laws are not – at least not yet – a Hong Kong equivalent to the Mainland's system of RSDL. Though these laws fall far below international standards, they do not provide a legal blank check for Hong Kong and Mainland officials to forcibly disappear individuals, while using these laws as a form of legal cover or justification. That said, these provisions do dramatically weaken the due process rights of individuals accused of national security crimes, so much so that the risk of enforced disappearance in Hong Kong itself remains present.

There is one last element of Hong Kong's status as a separate legal jurisdiction from Mainland China that makes it worthy of note, as regards transnational enforced disappearances. Under Hong Kong's constitutional framework, Mainland police and security officials are generally not meant to operate in Hong Kong, and certainly not meant to forcibly disappear individuals based in Hong Kong, whether they be Hong Kong citizens, or PRC citizens who are physically located in Hong Kong. (To be sure, the NSL has weakened the legal wall between Hong Kong and the PRC, but even so, any actions by PRC officials in Hong Kong should be carried out under the NSL framework.) Several individuals, including both Hong Kongers and PRC citizens, have been forcibly disappeared from Hong Kong in recent years, making it a key site of human rights abuses related to enforced disappearances.

Strictly speaking abductions from Hong Kong into Mainland China are not transnational, but they are cross-jurisdictional. For that reason, they share some similarities to the transnational cases described above: Chinese officials are operating in a place beyond their formal legal reach, and going around local legal protections, and the local legal system, meant to protect the rights of local citizens and residents.

Take, for example, the case of Chinese billionaire businessman Xiao Jianhua. Xiao, who was known to be connected to many of the top families in the Chinese Communist Party, was kidnapped from the Four Seasons Hotel in Hong Kong in January 2017 by Chinese state security agents.[9] He was then disappeared for several years, with minimal contact with his family, before being put on trial for embezzlement and bribery in 2022. He was found guilty and sentenced to 13 years in prison.

If Hong Kong is to return to its former level of autonomy, cases like the abduction of Xiao Jianhua would have to come to an end: genuine autonomy for Hong Kong also means that enforced disappearances of China's perceived enemies, a common occurrence on the Mainland, would simply not take place in Hong Kong.

Recommendations

- China's National People's Congress Standing Committee (NPCSC) should immediately repeal the 2020 Hong Kong National Security Law. Going forward, the NPCSC should leave any future national security legislation to the Hong Kong Legislative Council (LegCo). For its part, the Hong Kong LegCo should repeal the Safeguarding National Security Ordinance (SNSO). Any future national security legislation should be drafted in broad consultation with relevant stakeholders across the political spectrum in Hong Kong, and should conform to Hong Kong's obligations under international human rights law.

- The Hong Kong government should immediately rescind the 34 warrants and bounties that have been announced against exile Hong Kong activists based around the world. Going forward, it should refrain from making threats against overseas activists, and should also pledge to leave the Hong Kong-based family members of exile activists alone.

[9] Michael Forsythe and Paul Mozur, "A Video, a Wheelchair, a Suitcase: Mystery of Vanished Tycoon Deepens," *New York Times*, February 10, 2017.