

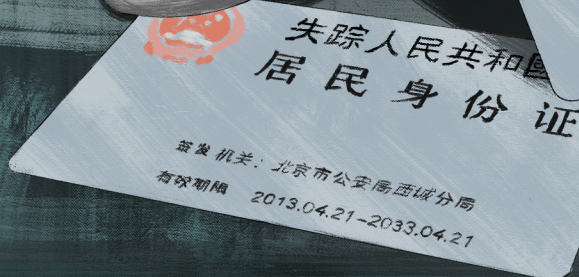


> Report Series

ACCESS DENIED #1

CHINA'S VANISHING SUSPECTS

天津市第二看守所



ACCESS DENIED

Access Denied is a three-part report series that looks at the serious deterioration that has been happening to due process in China. This first volume, **Access Denied: China's Vanishing Suspects**, examines the police practice of registering suspects under fake names at pre-trial detention centres, making it difficult or impossible for lawyers to access their clients or for families to know where their loved ones are being held. The second volume, **Access Denied: China's False Freedom**, researches the 'non-release release' phenomenon, as first coined by US professor of law Jerome Cohen, in which prisoners, once freed from jail or a detention centre, continue to be arbitrarily confined by the police, usually at a secret location or at their home for weeks, months or even years. The final volume, **Access Denied: China's Legal Blockade**, looks at the multitude of ways police employ to deny suspects legal assistance, including the use of threats or torture to force them into renouncing their own lawyer and accepting state-appointed counsel.

About Safeguard Defenders

Safeguard Defenders is a human rights NGO founded in late 2016. It undertakes and supports local field activities that contribute to the protection of basic rights, promote the rule of law and enhance the ability of local civil society and human rights defenders in some of the most hostile environments in Asia.

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Access Denied: China's Vanishing Suspects

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Introduction

China has a long history of state-sponsored disappearances. Such practices have only multiplied and become more institutionalised and far-reaching under General Secretary Xi Jinping, who came to power in late 2012. For example, since 2013, security forces have been legally able to use a custodial system called Residential Surveillance at a Designated Location (RSDL) to hold suspects incommunicado at isolated facilities for up to six months, entirely cut off from the outside world, including any contact with family and legal counsel.¹ Police began using this custodial practice on a large scale against human rights defenders (HRDs) beginning in July 2015 with the launch of the 709 Crackdown (sometimes called the War against Lawyers).²

When police believe they have enough evidence for the case against a suspect, he or she is often transferred from RSDL to a detention centre and formally arrested. In theory, this would mean they would now have the right to access a lawyer and that their family would be informed of their location and could send them supplies, such as food and money and apply for permission to visit (although this latter is not a guaranteed right under Chinese law).

However, in practice, **Chinese police are increasingly extending the length of time a victim remains disappeared by illegally registering them under fake names at detention centres.** This ensures that they continue to be untraceable by their families, friends and lawyers, effectively denying them the rights that they have under Chinese law to see a lawyer once they have been arrested and placed in a detention centre. That right should be honoured within 48 hours of a request being made by the victim, or their family, which has power of attorney to appoint a lawyer.³ This change of name is made with **absolutely no legal authority.** With no record of them under their real name, the detention centre can simply deny the detainee is being held at the facility, leaving their family and lawyer with no way of reaching them. "There's no one here by that name," is the typical response by detention centre staff,

according to interviews with family members of victims made for this report.

This illegal practice of forcing detainees to accept fake names is not a new phenomenon. HRDs have long reported being given fake names in detention (and sometimes in prison or prison hospital), but anecdotally at least, after the introduction of RSDL, the practice appears to have become much more widespread. It is as if the legalization of six months of enforced disappearance under RSDL has given Chinese security forces the confidence to extend their powers with no legal basis to keep suspects separate from society for as long as possible.

Living with a fake name for a prolonged period lengthens the isolation the victims are subjected to, especially if it follows six months of incommunicado RSDL detention. Rights lawyer Wang Quanzhang's six months of RSDL was followed by almost three years and four months living with a fake name in two detention centres, even after sentencing.

While the mental torture this causes the victim is unimaginable, it also results in extended anguish for family members and loved ones. In the words of Yuan Shanshan, the wife of human rights lawyer Xie Yanyi, who lived with his fake name for a year, she felt that "time had stopped after they took [my husband]."



Name :

Zhai Yanmin
Tiancheng



Name :

Gao Yue
Ming



Name :

Wang Yu
Ning



Name :

Li Heping
Xiacchou



Name :

Leng Guoquan
Chen Deng



Name :

Xing Qingxian
Xin Ping



Name :

Liu Duwei
Wang Wei



Name :

Jia Lingmin
Wu Kang

Hidden in detention

While this study focused on HRDs, media reports indicate that the practice of hiding suspects in detention with a fake name extends to general prisoners too.⁴ In our research we interviewed **ten** victims and recorded a total of **30** cases that spanned 11 years from 2009 to 2019. Of these, we collected a minimum of basic data for **27** cases, including the fake name. More than half of these cases were HRDs disappeared during the 709 Crackdown. They involve detention centres from across the country from Beijing and Tianjin in the north, Henan in the centre and several in the south including the cities of Guangzhou, Shenzhen and Zhuhai. Please find the Methodology under Appendix 1.

The experience of being given a fake name in detention varies – some were told about it directly; others only found out about it much later. Many suspects were brought into a detention centre straight from the police station, others only after a lengthy spell in RSDL. However, in all cases the practice is an illegal means to deny the detainee both their rights to see a lawyer or a lawyer of their choice (either throughout or for a period of time); prevent contact with sources of support such as family and friends; and in all cases, deny them their very identity.

When rights lawyer Ni Yulan (倪玉兰) –who was crippled by a police beating during an earlier incarceration and now uses a wheelchair–was detained again in 2011 at Xicheng District Detention Centre in Beijing, she wasn't even given the dignity of a 'real' name. During roll call on her first day, officers called her Xikan Yihao (西看一号), Number One Xicheng Detention Centre. She was not properly processed when she first entered the detention centre–the officer checking her in did not have the right paperwork so a senior official gave permission to bypass this requirement. Officers told her later to keep her real name secret from detention centre guards and she was not permitted to talk to other inmates. She was never told the reason for this, but she believes that it was to prevent her from accessing legal help. Ni was later sentenced to two years and eight months on charges of fraud and inciting a disturbance.⁵

Women's rights activist Su Changlan (苏昌兰)

had no idea she had been given a fake name, Su Erqi (苏二七), until more than half a year into her detention at Nanhai Detention Centre in Guangdong province. Like Ni, she did not go through the formal registration process when she first arrived and she was forbidden from speaking to other inmates. Her false identity became a joke for the detention centre staff once they found out. She was also aware that police used a fake name for her on the two occasions they checked her into hospital. Su had to endure the indignity of not being called by her real name for three years, until she was finally released. She believes this was done to her to prevent other inmates talking about her case outside after they were released and also to more easily hide the evidence if she were to die in detention.

Legal scholar Liu Sixin (刘四新) describes how he found out his colleague, rights activist Zhai Yanmin (翟岩民), had been given a fake name while he was also in a detention centre.

"I was in the cell when the cell leader told someone to switch over to CCTV-13, even though we were not allowed to watch the news. The guards outside were not paying much attention to us. The news reported that Zhai Yanmin had been given a three-year suspended sentence. One of the other prisoners in my cell who had been transferred from the same detention centre as Zhai said: 'That's Zhai Tiancheng!' Zhai had been given the name Tiancheng when he was locked up, to conceal his real identity. I'd been given a fake name too—Liu Shunli. We were given false names so no one could find us. Technically, there was no one called Liu Sixin in my cell. I was not allowed to disclose my real name, not even to my cellmates."⁶

Lawyer Xie Yanyi (谢燕益) was disappeared on 12 July 2015. After six months of incommunicado detention (no RSDL notice was even issued), he was formally arrested.

"By January 2016, I was formally arrested on charges of 'inciting subversion of state power,' and was transferred to Tianjin No. 2 Detention Centre. When I got to Tianjin No. 2, they wouldn't use my own name. They gave me an alias—Xie Zhendong."⁷

This study used data from these 30 cases to investigate six key areas: the choice of fake name; whether victims were former RSDL prisoners; how long victims were made to live with the fake name; why police use fake names; was it successful in preventing lawyer access; and how victims were informed, if at all, about the fake name. Please see Appendix 2 for the list of these 30 cases.

The fake name

The fake name often retains the family name

The fake name usually bears some similarity to the original name. For example, police tend to retain the family name of the detainee for the new fake name. In **19 out of 27 cases, the family name was the same**. For example, rights activist Wu Gan (吴淦) was renamed Wu Ming (吴明); lawyer Wang Yu (王宇) became Wang Ning (王宁); while her husband and fellow activist Bao Longjun (包龙军) was given the name Bao Yuzhuo (包宇卓). This could simply be a lack of creativity on the part of the police, or employed to make it easier to identify them once the name had been changed. Some of the names were hardly changed at all—just the second given name was dropped or swapped for a similar sounding character. For example: rights lawyer Wang Quanzhang (王全璋) simply became Wang Quan (王全), while activist Liu Yongping (刘永平) was called Liu Yongming (刘永明). However, even such minor changes would mean the detention centre could not match a visitation request.

In the early years of our study sample, the name could be quite different. For example, blogger activist Liu Dejun (刘德军), who was detained during the 2011 Jasmine Revolution⁸, was given the number, “2-2011-2”, while Ni Yulan was called “Number One Xicheng Detention Centre”, named after the facility she was detained in.

Wu Gan



Wu Gan (吴淦) is a rights activist and blogger in his 40s, who attracted attention to his protests through the use of provocative slogans such as mocking corrupt officials by portraying them with pig heads. He defended those he saw as being victims of the state, most famously Deng Yujiao, who had killed a Communist Party official when he tried to rape her. Just before he was detained by police in 2015, Wu had started working for Fengrui Law Firm, the main target of the 709 Crackdown. In detention, Wu was forced to use the fake name Wu Ming. He is seen as a hero for refusing to take part in a forced televised confession. It took one and a half years for police to allow him to see a lawyer. On Christmas Day 2017, he was handed down the unusually harsh sentence of eight years for state subversion. In 2018, an attempt to appeal his sentence failed.

RSDL

Fake names were often given to prisoners coming from RSDL

Because our research focuses on HRDs, and many HRDs were held in RSDL during the 709 Crackdown, the bulk of the cases in this study were moved into detention following at least several months held under RSDL, where they would have been kept incommunicado and at a secret location. In such cases, being given a fake name meant the continuation of this isolation from their loved ones and legal help. Lawyer Wang Quanzhang remained incommunicado for almost four years—living for six months under RSDL and then being given a false name after formal arrest and relocation to two detention centres, even after trial and sentencing.

While we cannot conclude that the practice of giving fake names is mostly used on RSDL victims since we lack data from the wider detainee population, we can conclude that it is widely used on HRDs held under RSDL.

Duration

Victims typically have to live with the fake name for around six months, but it can be up to years

Wang Quanzhang lived with his fake name for more than three years, the maximum duration recorded for this study. The average is between six and eight months, but Su Changlan also lived with her fake name for almost three years; and rights lawyer Xie Yanyi had his for just under one year. The name usually lasts until the suspect is released on bail or goes to trial. In Wang's case, his fake name was retained for several months after sentencing, and only removed when he was transferred from the detention centre to prison.

Reasons

While official reasons for assigning a fake name to a suspect are rarely given, many believe it is to deny access to a lawyer or news about their case being leaked outside by other inmates

Most victims are not told why they must accept the fake name. Some are simply informed, "It's for your own good"

The most common reasons victims thought they had been given a fake name were: to deny them access to a lawyer and prevent others in the detention centre from finding out their story and telling people outside, especially if their case was high profile with a lot of media attention, like that of Wang Quanzhang's. If they were lawyers, there was even more reason for the police to want to keep their identity hidden, since inmates tend to treat lawyers better believing they might get legal advice or help. Other reasons were: it would be easier to hide the news if they died in detention and it was a way to weaken their morale still further by preventing their family sending them money and supplies. This could make it easier for the police to coerce a confession or simply just to punish the victim further.

Lawyer access

Overwhelmingly, victims of fake names in detention were not able to see a lawyer or a lawyer of their choice, particularly those who were caught up in the 709 Crackdown

Twenty of the 30 victims (two unknowns) did not see a lawyer or a lawyer of their choice throughout their time in detention. **Eight** in our study did get to see a lawyer, but most of them only after waiting many months in detention. For example, activist Wu Gan, who received one of the harshest punishments of all 709 Crackdown victims—an eight-year sentence in 2017,⁹ was only allowed to see his lawyer after one and a half years. The same was true for democracy activist Qin Yongmin (秦永敏), one of China's longest serving political prisoners. Others were given access after three to seven months. Note that under Chinese law, access to legal counsel for a detainee in a detention centre should be granted within 48 hours of a request for one.¹⁰

Wang Yu



Wang Yu (王宇), is one of China's most respected human rights lawyers and a recipient of numerous human rights awards. Wang dedicated herself to rights defense work in 2011 after her own experiences with police abuse and wrongful imprisonment. Her most high-profile cases include defending Uighur scholar Ilham Tohti (who was given a life sentence for separatism in 2014) and Cao Shunli (曹顺利), a women's rights defender (who died in police custody that same year). In the middle of the night, on 9 July 2015, the authorities abducted Wang from her home in Beijing, sparking the 709 Crackdown. In detention, she 'became' Wang Ning, although she refused to accept the name. She never saw a lawyer throughout the two years she was kept in RSDL and detention. Wang was finally released in August 2016 after being forced to appear in several televised confessions.

Secret names

While some were not informed about the name change, those who were told were instructed to keep it secret from other inmates

Many of those held under RSDL were told the night before they were transferred to the detention centre or on the drive to the detention centre about their new fake name and that they were not allowed to reveal their real name to the other inmates. While several complied, rights lawyers Xie Yanyi, Wang Yu and her husband Bao Longjun said they tried to resist. Wang Quanzhang agreed to keep it secret but quietly told the other inmates anyway because he wanted news of his whereabouts to be made public. He thought this could happen if they were released or if they were able to tell their lawyers about him (since they were generally allowed to meet with their legal counsel).

It was usually one of the interrogators or police officers handling the case that informed the detainee of their fake name. Earlier victims, like Su and Ni, were not told, they only found out later when detention centre staff called them by the fake name.

Other uses of fake names

Although this report focuses on the practice of registering victims with false names at detention centres, there have been reported instances of authorities using false names for prisoners in other forms of custody, most notably in prisons and hospital.

In 2018, Huang Wan (黄婉) tried to visit her husband Zhou Bin¹¹ (周滨), who had been sentenced to 18 years for taking bribes back in 2016. When she and his lawyer went to Yichang Prison in Hubei province, they were told there was no one there by that name. Media reported that prison authorities had hidden him by registering him under an alias.¹²

Dissident writer Yu Jie (余杰) reported being beaten so badly by police in detention in 2012 that they took him to hospital, telling the doctors he had suffered an epileptic seizure. At the hospital, police registered him under the fake name, Li Li. He believes that they did this so that if he died in hospital, his death would go unreported.^{13 14} When Yu tried to explain to the doctors the next day that he had been beaten by the police, an officer called the doctor to one side, while another whispered to Yu that if he said anything else to the doctors they would rip out all his tubes and he would die.

Three disappearances

Imposing a fake name on the detainee has practical and emotional implications for the victim's family as well as for the victims themselves.

If police provide a detention notice to the family (this is a legal requirement that is sometimes violated), when they or the lawyers arrive at the named detention centre, they are usually told no one is there by that name because there is no 'match'. It often takes repeated visits for the detention centre to finally admit that the detainee is being held there. A series of other tactics is then employed to prevent lawyer access, such as requesting the lawyer to apply for additional permissions or forcing the detainee to dismiss the lawyer hired by the family and accept a state-appointed one instead.¹⁵

When no detention notice is sent, but the family member finds out through a contact where their loved one is likely being held, the same process is repeated. But without the detention notice, police can stonewall lawyers and families for much longer.

We interviewed three wives of human rights lawyers about their experiences trying to locate their detained husbands. Their accounts are reproduced in the following pages.

Yu Wensheng



Human rights lawyer Yu Wensheng (余文生) was grabbed by police in Beijing on 19 January 2018 while taking his son to school.¹⁶ He was disappeared shortly afterwards into RSDL in Xuzhou, more than 700km from his wife and child back in the capital. After he was formally arrested on 19 April 2018 and transferred to Xuzhou Detention Centre, he was allowed one brief video call with his wife, but has not been allowed to see her or his lawyers since. Police said he had sacked them, but in a video he recorded before he was taken, Yu said he would have to be tortured to accept state-appointed lawyers.¹⁷

Yu was tried secretly on 9 May 2019, accused of inciting subversion of state power, according to his wife. More than a year later, on 16 June 2020, she received a call from the Xuzhou City prosecutors informing her Yu had been sentenced to four years. There has been no record

of that trial, the verdict or the sentencing. They told her Yu was planning to appeal.

Yu had taken on many sensitive cases including defending fellow rights lawyer Wang Quanzhang, representing parents of children who had been given faulty vaccines and suing the Beijing government over its poor handling of air pollution. In 2017, just a few months before he was seized, he had written an open letter calling for the resignation of Xi Jinping. During his imprisonment in 2018, Yu received the Franco-German Prize for Human Rights and the Rule of Law.

Xu Yan (许艳), Yu's wife, was given a detention notice in April 2018 stating that her husband was being held at Xuzhou Detention Centre (no notice was issued for his initial detention in Beijing). Each time she or a lawyer tried to visit him, detention centre staff gave her a different excuse, which initially included Yu's name not being on the detention centre's register. Sometimes they said there was "no one there by that name," or that their computer system didn't show up anyone by that name. While Xu does not know whether he was given a fake name, or simply not registered properly at the detention centre—neither she nor a lawyer has been able to speak to Yu to ask him—her experiences mirror that of others whose family members were made to take a fake name.

Later, when the detention centre admitted Yu was being held there, excuses varied from insisting Xu or her lawyers complete overly complicated procedures to make a visitation appointment, to staff not being on duty during weekends. Neither

Xu nor the lawyers she hired ever got the chance to meet Yu face to face. She told Safeguard Defenders:

"For such a long time, both me and the defence lawyers have not been able to meet with Yu. He hasn't spent any of the money I deposited in [the detention centre] for him [the total is still there]. I have my suspicions about whether he was really held at that detention centre. Some police told me that he had been held in solitary all this time. If this is true, then this makes it much more likely that he has been tortured."

For Xu, the situation has been harrowing. She lives in Beijing with their young son, so has to make the long journey of around 700+ km every time she tries to find her husband. By the time of this interview, November 2019, she had made the

journey more than 20 times, heading out about once or twice a month.

"I'm also really worried about whether he has been tortured. I don't know how he's doing. His disappearance has filled me with dread and worry. I'm frightened and I feel helpless."

If China had rule of law, Xu could find a way to appeal, to fight back. But after more than two years since he disappeared, she has no idea whether he is even still alive.

"When a person is detained according to legal procedures, at the very least you can find out if they are dead or alive, you can find out if they are well or not. Being disappeared is being in a constant state of uncertainty. Anything could happen to you. Things could change at any time. Also, while he's disappeared, if anything happens to him, he has no way to get any help from his family or his lawyers. [Yu] will feel even more helpless and isolated."

In an interview in May 2020 to mark one year since his secret trial, Xu told Safeguard Defenders:

"It's been extremely difficult. The days pass so slowly, they are like years. We are suffering both mentally and physically. Most importantly, we can't stop worrying about Yu. Whether his health is OK, whether he would get a heavy sentence, (she has since found out he was given four years), and whether they will keep holding him and we'll never be able to see him again."

Zhai Yanmin



Zhai Yanmin (翟岩民) is a **human rights activist** from Beijing, who sometimes worked with Fengrui Law Firm, a company famous for taking on sensitive cases including that of artist Ai Weiwei. Fengrui was the main target of the 709 Crackdown. Zhai was one of its first victims.

He was snatched by police on 15 June 2015 in Beijing, later accused of organizing a crowd to protest outside a courthouse in Weifang, Shandong province. Zhai was kept for almost six months incommunicado in RSDL facilities in Beijing and Tianjin. During his internment, when he had no access to lawyers or his family, police forced him into making recorded confessions with state TV journalists by threatening to detain his son if he did not cooperate. Three of these confessions were aired.

After his time in RSDL, Zhai spent the next half year in a detention centre in Tianjin under a fake name—Zhai Tiancheng—to hide his identity from the other prisoners and prevent his family from sending him money and providing legal counsel. On 2 August 2016, he was tried for subversion of state power, found guilty, and sentenced to three years, suspended for four.

Zhai's wife Liu Ermin (刘二敏) did not receive a detention notice when he was moved out of RSDL in 2016 and into a detention centre. She explained:

"I didn't know where he had been detained, so in mid-January [2016] I went to Xicheng District Police Station [in Beijing] to report his disappearance. Only then did the police handling the case tell me that Zhai's arrest had been formally approved, but I didn't know where he was being detained. Two days later, I received a call from a lawyer named Zhang who told me [my husband] was in Tianjin... and when I went to the detention centre there, they told me there was no one there by that name."

With Zhai seemingly disappeared it was agony for the family.

"It really affected me, because [he] had just disappeared! Of course, I was anxious, because at that time, his father who was 97 years old asked me every day to push him outside to go and look for Zhai. It didn't matter if it was at nighttime, every day he kept on asking, for months and months."

Soon, Liu started meeting with the wives of other 709 victims, who also heard that their husbands were all being kept in Tianjin. They travelled to the city together to give each other moral support and to try to meet with their husbands. Even after the detention centre admitted Zhai was being held there, they continued to block access to him by saying that he had hired his own state-appointed lawyer so they wouldn't allow another lawyer to see him. If she tried to give him clothing or food, they said he had everything he needed. Zhai never got access to a lawyer of his choice.

Xie Yanyi



Human rights lawyer Xie Yanyi (谢燕益) was disappeared by Chinese police in the summer of 2015, placed under RSDL and beaten, starved, tortured and forced to take "medicine". He was incarcerated for 553 days, during which time his wife gave birth to their baby daughter and his mother died.

Xie is a prominent and outspoken human rights lawyer based in Beijing. He gained notoriety in 2003 when he attempted to sue former Chinese President Jiang Zemin for staying on as Central Military Commission Chairman after he had stepped down from his General Secretary and presidential posts. He has also represented rights activists and villagers battling illegal land seizures and has published articles supporting freedom of speech and democracy in China.

Xie's wife Yuan Shanshan (原珊珊) received the detention notice four days after Xie was formally arrested and sent to Tianjin No.2 Detention Centre on 8 January 2016. However, Xie had been registered under the fake name Xie Zhengdong, causing problems from the outset. Yuan told Safeguard Defenders:

"The first time I went, I took a lawyer that I had hired to go and see him, and when I asked to see my husband, they said there was no one there by the name of Xie Yanyi. So, I took the detention notice and showed them, and they said maybe he hadn't been registered yet. The staff at reception said

they were only responsible for reception, if I wanted to see [Xie], I had to apply to the relevant department, and then they would let us know."

The next time she went, they did admit Xie was being held there but as in so many other cases, they tried a number of common tactics to prevent access, such as claiming he had hired his own lawyer and that access for family members required a complicated registration procedure and permission that always ended in long waits and no success.

It was a similar story if she tried to deposit money and items to give to Xie at the detention centre.

"The staff would tell me that according to the detention centre's regulations, I could only deposit if they informed us we could deposit first. So, the first few times I tried, I was unable to [deposit anything]. Later, when I was allowed to deposit, they would give me a paper with Xie Yanyi's name on it, as if they were asking me to check the characters, because his name was not registered in their computer. These excuses prevented us from seeing him and went on for a year until [my husband] was released. That was when I finally learned that he had been using the name Xie Zhengdong inside the detention centre."

This lack of access made Yuan fearful her husband was being kept somewhere else entirely and caused her great anguish.

"I didn't know whether he was in the detention centre or not. I didn't even know if he was still alive. I went to all the possible detention centres he could be held in—to our household registration address (Gaobeidian, Hebei), our residence (Miyun, Beijing) and so on. But I couldn't find him."

"Xie Yanyi's mother is also a lawyer. She's a top-ranked national lawyer. She would often say: 'Where did they take my son, is he still alive?' I wrote an indictment letter against Xinhua, (China's state news agency), and posted it online. Early the next morning, Guobao [national security police, of-

ficers usually in charge of political suspects] knocked on my door and asked me whose idea was it, to write that... My home was monitored, we were followed by guobao and people who didn't show any identification (including when I took my son to and from school). Teachers monitored my son in class and reported everything to the guobao. The residential committee [members] in my housing compound would stop my son and ask him where I was. Surveillance cameras were installed outside my home. I didn't dare leave my house.

"I always chose times when there were not many people around to go outside. I felt that time had stopped after they took Xie."

Lawless

This section includes commentary by Chinese rights lawyers, who for their own protection, will remain anonymous.

There is no single law in China that makes it illegal to register a suspect under a fake name at a detention centre. There are, however, regulations that govern the correct procedure for registering a suspect at a detention facility that common sense would dictate would render the police's use of fake names illegal.

It also conflicts with a suspect's right to see a lawyer, regulations on notifying family members of the suspect's registration at a detention centre, and the right to receive assistance—money and essential supplies—from family members.

It also effectively violates their right to a fair trial as it denies them the right to legal counsel of their choice; it increases the likelihood of their mistreatment and torture at the hands of the police; and prolongs the mental agony of isolation from loved ones.

Detention Centre Law

Practices at detention centres in China are governed by the **Detention Centre Law** (看守所条例)¹⁸, enacted in 1990 under the **Criminal Procedure Law** (刑事诉讼法).

In addition, Chinese law also regulates detention centre procedures with the **Rules for the Implementation of Regulations of Detention Centres** (中华人民共和国看守所条例实施办法),¹⁹ brought in a year later in 1991.

The Detention Centre Law (DCL) was supplemented by **Details on Law Enforcement at Detention Centres** (看守所执法细则)²⁰, an internal document published in 2010, in part to counteract criticism of the treatment of inmates at detention centres and in particular after the well-publicised scandals of several deaths of suspects held in Chinese detention.²¹

Since the DCL has not been revised for 30 years, it is significantly outdated in terms of human rights

protections. The Rules for the Implementation of Regulations of Detention Centres (RIRDC), published by the Ministry of Public Security, is also simple in both concept and structure and lacks any consideration of human rights or the basic rights of detainees.

The 2010 Details on Law Enforcement at Detention Centres (DLEDC) compensate to a certain degree for the shortcomings and loopholes of the outdated DCL, but they also highlight the problem of the judiciary paying more attention to "power"—that is the police—than they do to the rule of law, something which is deeply rooted in China's custodial and judicial systems. The situation is so bad that in 2019 a provincial deputy to the National People's Congress called for the Ministry of Justice to take over the running of China's detention centres from the police in order to better protect the rights of inmates.²²

Registration of new detainees

The concept of ID numbers (which can precisely identify an individual) was relatively new in 1990. China only started using an ID system from around the mid-1980s and it was not a national policy until 1991. This is why the DCL, published in 1990, does not directly reference these when covering how to process the registration of a new inmate to a detention centre.

The DCL does not clearly stipulate that a detainee's identity must be confirmed, but it does stipulate that details of the detainee must be entered into various forms. And although common sense would dictate that this should include the ID number of the person, the law itself did not specifically mention that.

For example, Article 12 of the DCL says that when receiving "criminals"²³ a file on the individual should be created. Article 6 of the RIRDC says that the detainee should be questioned when received by the detention centre, a "detainee registration form" should be filled out, and that detention centres should handle the detainee's documents and access to these documents can only be given by the detention centre's director.

There are several regulations listed in the DLEDC that would make registering someone under a fake name unlawful.

In Section 2-1, on receiving a suspect into custody, there are several regulations that cover the needed paperwork for registering a new inmate to the detention centre. These include a “detention certificate” and an “arrest certificate,” which should clearly include the correct name of the individual. Article 2.1.10 also clearly states that if any details on the paperwork appear incorrect (presumably this would include for example the name on the notice not matching the name of the person being admitted), then the individual “shall not be admitted into custody [at the detention centre]²⁴.”

“If the above-mentioned certificates are not provided, or any stamp is not clear, or the content of the certificate does not match the actual situation, [the person] shall not be admitted into custody [at the detention centre].”

Section 2-2, on verifying identity, makes this even clearer. The detention centre must only accept individuals whose identity can be confirmed. It states:

“Detention centre police shall question the detainee and verify their identity. If their identity information is inconsistent, then the individual shall not be admitted into custody.”

It is not clear whether detention centre staff are always aware of the use of a fake name, but the use of ID cards in China is so entrenched that it is inconceivable that it is not standard procedure to check the ID card of any new suspect. It can only be concluded that the police either order the detention centre staff to ignore the requirement to verify the identity with the ID card, or tell staff that they must register the suspect with the fake name and not the one on the ID card.

Informing the family

The first Article of Section 9 of the DLEDC, which covers special procedures for admitting detainees, stipulates that detention centres must inform the family or guardian of the detainee of their location within five days following the completion of procedures to admit him or her.

In addition, according to Article 85 of the 2012 Criminal Procedure Law (CPL), the case handling organ should inform the family within 24 hours of placing an individual in a detention centre. Exceptions are made if family members cannot be located or notifying them would obstruct the investigation (for example, the suspected crime is terrorism-related or concerns national security). The family are then notified as soon as it is deemed that doing so would not impact the investigation. It has become the common practice for police to pin national security crimes on HRDs, such as state subversion or inciting state subversion, precisely because doing so allows the police free rein to keep the detainee incommunicado and hidden under this “legal” loophole for longer.

Access to legal counsel and family members

Article 37 of the CPL also states that a detainee has the right to see their lawyer within 48 hours of asking for one—a period of time that many consider is still too long. In practice, of course, the detention centre routinely denies access for much longer using a myriad of tactics and excuses²⁵, and for those who are registered under a fake name, they will have no access at all because their lawyer has no means of locating them. Family members, that have power of attorney, can appoint a lawyer on the suspect’s behalf, and enjoy the same 48 hours access requirement.

According to the CPL, DCL, RIRDC and DLEDC, lawyers have the right to make an appointment to meet their client held at the detention centre. Other counsels may request permission from the court and procuratorate to meet with the defendant.

However, there is no equivalent right for a family member to meet with a suspect, unless that family

member is acting as their legal counsel. Only lawyers and case-handling individuals have the right to meet with a suspect at a detention centre. Family members, may, however file an application with the case-handling organ to meet with the defendant, but there is no guarantee in law that permission would be granted. If the defendant wishes to contact a family member, they must first get the permission of the case-handling organ and the public security organ.

Families and friends are allowed to send detainees food and necessities while they are incarcerated. Indeed, they are expected to since very little is supplied by the detention centre. Article 3-12 of the DLEDC describes the process of accepting goods or money from family members including inspecting them for approval and providing receipts upon acceptance. Of course, if a fake name is used, the family cannot complete the process of providing food and necessities to the detainee because there is no means of identifying them.

International Law

Keeping a suspect under a false name in detention unequivocally violates the right to a fair trial. The Universal Declaration of Human Rights, Article 11, holds that:

“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”²⁶

The right to a fair trial implies presumption of innocence and therefore requires that the rights of the detained person be upheld, such as the right to legal counsel. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment²⁷ rules that the right of the detained person “to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted” except under limited circumstances. Further, the same Principles hold that communication “with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.”²⁸

So fundamental is the right to a fair trial—which can only occur if all rights in detention are also upheld—that it appears in countless international treaties, state practices, and jurisprudence. It is part of customary international law and binding upon states regardless of treaty ratification. For example, the United Nations Human Rights Council (UNHRC) describes the right to a fair trial as “a key element of human rights protection and serves as a procedural means to safeguard the rule of law.”

Being registered under a fake name so as to separate the individual from contact with family and lawyers renders him or her especially vulnerable to torture. Torture is so repugnant a violation of human rights, there are no circumstances that excuse the practice and under specific conditions it may rise to the level of a crime against humanity.

New Draft Detention Centre Law

In June 2017, the Ministry of Public Security released a new draft Detention Centre Law,²⁹ which included changing the reference to inmates from “criminals” to “suspects”³⁰ but as of August 2020, it has not yet been passed. Legal professionals and the UN have long called on China to reform its Detention Centre Law, largely because of the continued prevalence of torture and mistreatment at these facilities, including several deaths.^{31 32} The draft has also been criticized for not addressing the continuing problem of excessive power being left in the hands of the police.³³ While the draft law mentions the procuratorate having the right to supervise detention centres, as we have seen with RSDL, where they also have the right to supervise the police, they rarely do so in practice.³⁴

Another problematic area, is that the Ministry of Public Security (effectively the police) drafted the new law (although it will be reviewed and eventually approved by the Standing Committee of the National People’s Congress). This means that the police are in charge of making laws to govern themselves. There is no question that they will be strongly motivated to protect their own interests and safeguard their own powers over any effort to improve the rule of law and protect the rights of detainees.

Conclusion

Police in China have disproportionate power over those they detain. In recent years, they have increasingly used a variety of tools, some legal and others extra-legal, but used with impunity, to keep individuals isolated, helpless and incommunicado from their family and legal help. One approach that is increasingly utilized is the practice of registering people under fake names in detention centres. This ensures they are untraceable by their families, friends and lawyers and effectively denies them the rights that they have under Chinese law to see a lawyer once they have been arrested and placed in a detention centre. This is done with no legal authority. Under Chinese law, detention centre staff must verify incoming prisoners' details and they must allow access to a lawyer within 48 hours of a request being made.

This phenomenon of forcing fake names on suspects is clearly planned and intentional, and its use has become so widespread that its practice can be considered systematic. It not only breaks domestic law; it is a violation of international human rights laws guaranteeing the right to a fair trial. Keeping someone isolated from their lawyer and family also places them at greater risk of torture; already a serious issue for detainees in China registered under their real names. While this is not the only tactic used by police to keep suspects isolated, it is one that causes great anguish for family and friends, because they will not even know for sure where their loved one is being held and may even doubt if they are still alive.³⁵

Our study shows that the majority of victims are unable to see a lawyer of their choice and the few that eventually do wait months or a year to meet with legal counsel. Fake names are widely forced on victims of RSDL, causing extended suffering for the individual and their families from the continuation of the separation first enforced under RSDL that may last additional months or even years. Our research showed that victims typically live with a fake name for around six months, but it can be as much as three or more years.

Safeguard Defenders strongly urges the Chinese government to ensure that the practice of concealing detainees in detention under false

names is immediately halted; that all detainees are granted their full rights under Chinese law including their right to consult with a lawyer of their choice in a timely fashion; for their families to be notified of where they are being held and to freely send them funds and supplies; and to hold all police and detention centre staff accountable for employing this abusive practice.

Appendix 1: Methodology

Using existing networks, we searched for HRDs in China to find those who had been victims of fake names in detention. These individuals were then questioned about their experiences. Some responses were provided by the individual; several others were provided by family members who knew the situation. Key data gathered were: real name, fake name, name of detention centre, reasons given for fake name, their ideas why the fake name was given, duration and situation immediately before detention centre admission and whether or not they were given access to a lawyer of their choice.

If the victim or their family were unable to complete the survey, we used media reports to supplement the information.

We also searched online for media or NGO reports for examples of fake names in detention in both Chinese and English. The search terms used included various combinations of:

Chinese: 看守所 (detention centre), 假名 (fake name), 化名 (alias), 关押 (detained/imprisoned), 拘留 (to detain), 访民 (petitioner), 维权 (rights defense) and 霸押 (to detain).

English: China, "detention centre", "fake name", "false name", "detain"

We then tried to contact these individuals so that we could request them to complete a survey.

Appendix 2: Data

The table of data on victims is on page 22.

Name	Name (CN)	Fake Name	Fake Name (CN)	Year	Detention Center	Access to lawyer
Leng Guoquan	冷国权	Chen Dong	陈东	2009	Fengcheng DC, Liaoning	Yes
Liu Dejun	刘德军	2-2011-2	2-2011-2	2011	No. 1 DC, Beijing	Unknown
Ni Yulan	倪玉兰	Xikan Yihao	西看一号	2011	Xicheng DC, Beijing	Yes
Su Changlan	苏昌兰	Su Erqi	苏二七	2014	Nanhai DC, Guangdong	Yes, after 7 months
Liu Diwei	刘地伟	Wang Wei	汪伟	2014	Xingyang DC, Henan	Yes, 3 months after case sent to prosecutor
Jia Lingmin	贾灵敏	Wu Hong	吴红	2014	No. 3 DC, Henan	Yes, after 3 months
Chen Qitang	陈启棠	Chen Wu	陈伍	2015	Nanhai DC, Guangdong	Yes, after 7 months
Xi Longsheng	习龙生	Li Xiaolong	李小龙	2015	Unknown	Unknown
Xie Yanyi	谢燕益	Xie Zhengdong	谢正东	2016	No. 2 DC, Tianjin	No
Tang Zhishun	唐志顺	Tang Biao	唐彪	2016	No. 2 DC, Tianjin	No
Xing Qingxian	李清贤	Xin Ping	辛平	2016	No. 2 DC, Tianjin	No
Liu Sixin	刘四新	Liu Shunli	刘顺利	2016	No. 2 DC, Tianjin	No
Zhai Yanmin	翟岩民	Zhai Tiancheng	翟天成	2016	No. 1 DC, Tianjin	No
Wang Yu	王宇	Wang Ning	王宁	2016	No. 1 DC, Tianjin	No
Bao Longjun	包龙军	Bao Yuzhuo	包宇卓	2016	No. 2 DC, Tianjin	No
Gou Hongguo	勾洪国	Gou Ping	勾平	2016	No. 1 DC, Tianjin	No
Li Heping	李和平	Li Xiaochun	李小春	2016	No. 1 DC, Tianjin	No
Hu Shigen	胡石根	Hu Shi	胡适	2016	No. 1 DC, Tianjin	No
Zhao Wei	赵威	Zhao Na	赵娜	2016	No. 1 DC, Tianjin	No
Wang Quanzhang	王全璋	Wang Quan	王全	2016	No. 1 DC + No. 2 DC, Tianjin	No
Li Chunfu	李春富	Li Fuping	李富平	2016	No. 2 DC, Tianjin	No
Wu Gan	吴淦	Wu Ming	吴明	2016	No. 2 DC, Tianjin	Yes, after 1.5 years
Liu Yongping	刘永平	Liu Yongming	刘永明	2016	No. 1 DC, Tianjin	No
Zhou Shifeng	周世锋	Unknown	Unknown	2016	No. 1 DC, Tianjin	No
Qin Yongmin	秦永敏	Wang Qiang	王强	2016	No. 2 DC, Tianjin	Yes, after 1.5 years
Li Shuyun	李姝云	Li Juan	李娟	2016	No. 1 DC, Tianjin	No
Gao Yue	高月	Gao Ming	高茗	2016	No. 1 DC, Tianjin	No
Lin Bin	林斌	Lin Wangwen	林旺文	2016	No. 2 DC, Tianjin	No
Zhen Jianghua	甄江华	Unknown	Unknown	2018	Zuhai DC, Guangdong	No
Wei Zhili	危志立	Unknown	Unknown	2019	No. 2 DC, Shenzhen	No

¹ Although the law states that the detainees' family should be notified, the police routinely resort to using exceptions of national security crimes to free themselves of this stipulation.

² In the summer of 2015, hundreds of human rights lawyers, activists and other associates were arrested across the country in a largely successful effort by the authorities to crush the emerging human rights movement in China and now commonly known as the '709 Crackdown'. Dozens of people were disappeared into RSDL where they were threatened and tortured; some were forced to appear on national TV to make a forced confession. The highest profile lawyers and activists faced lengthy jail terms, while most of those eventually released who were lawyers lost their license to practice law.

³ Article 37 of China's Criminal Procedure Law.

⁴ Leng Guoquan was a seafood trader accused of being part of a drug smuggling outfit. His family and lawyers struggled to locate him because when he was first detained he was registered under the fake name Chen Dong. Please see: <https://www.longdom.org/open-access/chinas-justice-practice-towards-the-adversarial-process-ipr.1000130.pdf>

⁵ *South China Morning Post*, (undated), Dissident Ni Yulan jailed 32 months over protest. <https://www.scmp.com/article/997890/dissident-ni-yulan-jailed-32-months-over-protest>

⁶ "Ed. Dahlin, P., (2018), *Trial By Media: China's new show trials, and the global expansion of Chinese media*. Safeguard Defenders.

⁷ China Change, (9 July 2018), Video: China's lawyer crackdown 3 years on - 'The most painful part of it all was the squandering of life', Hong Kong Free Press. <https://www.hongkongfp.com/2018/07/09/video-chinas-lawyer-crackdown-3-years-painful-part-squandering-life>

⁸ The Jasmine Revolution was the name given to a series of small-scale pro-democracy protests across China starting on 20 February 2011. It was inspired by the pro-democracy protests that broke out in Tunisia just a few months earlier.

⁹ BBC, (26 December 2017), China's 'Super Vulgar Butcher' activist Wu Gan gets eight years. <https://www.bbc.com/news/world-asia-china-42482916>

¹⁰ Article 37 of China's Criminal Procedure Law.

¹¹ He is the son of China's disgraced security chief Zhou Yongkang who is now serving life behind bars.

¹² *Radio Free Asia*, (6 January 2018), 周永康之子周滨被用化名关押湖北监狱 律师妻女要求会见被拒. <https://www.rfa.org/mandarin/Xinwen/9-01062018162859.html>

¹³ Personal communication with Yu Jie.

¹⁴ Society for Threatened Peoples, (April 2012), *Enemies of the State: Persecuted Writers in China*. https://www.gfbv.de/fileadmin/redaktion/Reporte_Memoranden/2012/ChinaReportEngl-1.pdf

¹⁵ This will be discussed further in *Access Denied: Legal Blockade*, part three of this series due out later in 2020.

¹⁶ Safeguard Defenders, (6 May 2020), Where is Chinese rights lawyer Yu Wensheng? <https://safeguarddefenders.com/en/blog/where-chinese-rights-lawyer-yu-wensheng>

¹⁷ Please see <https://www.youtube.com/watch?v=XD0VYOAPSWoE>

¹⁸ Congressional-executive Commission on China, (17 March 1990), Regulations on Detention Centers of the People's Republic of China (Chinese Text). Accessed from: <https://www.cecc.gov/resources/legal-provisions/regulations-on-detention-centers-of-the-peoples-republic-of-china-chinese>

¹⁹ The text in Chinese of these Rules was accessed here: <https://www.cecc.gov/resources/legal-provisions/regulations-on-detention-centers-of-the-peoples-republic-of-china-chinese>

²⁰ The text of these Details in Chinese was accessed here: <https://www.66law.cn/tiaoli/1724.aspx>

²¹ Eds. Biddulph, S., Nesossi, E., Sapio, F. & Trevaskes, S., (2016), *Legal reforms and deprivation of liberty in contemporary China*, London: Routledge.

²² Xiao, H. & Ren, Q., (8 March 2019), Legislator Calls for Taking Away Detention Centers From Police to Protect Suspects, Caixin Global. <https://www.caixinglobal.com/2019-03-08/legislator-calls-for-taking-away-detention-centers-from-police-to-protect-suspects-101389580.html>

²³ At this stage, of course, the individual would still be a suspect, but the language of the DCL of 1990 refers to them as criminals. A new draft version of the law, that was still not passed as of August 2020, changes that language to the more internationally accepted "suspect".

²⁴ The relevant articles are as follows:

- Article 2-1.1 Suspects and defendants detained and arrested shall be taken into custody on the basis of the "detention certificate" and the "arrest certificate" according to the law.
- Article 2-1.2 During the investigation stage, those who are detained in different administrative areas at or above the county level shall be taken into custody by providing "detention certificate", "arrest certificate" and the approval procedures of the common higher-level public security supervision department of the two places.
- Article 2-1.3 If the jurisdiction is changed, the legal documents that change the jurisdiction of the case-handling authority and the designated jurisdictional decision letter shall be provided in order to take the individual into custody.
- Article 2-1.10 If the above-mentioned certificates are not provided, or any stamp is not clear, or the content of the certificate does not match the actual situation, [the person] shall not be admitted into custody [at the detention centre].

²⁵ This is the subject of another Safeguard Defenders' report, *Access Denied: Legal Blockade*, to be published later in 2020.

²⁶ The text of the Universal Declaration of Human Rights can be found here: <http://www.un.org/en/universal-declaration-human-rights/>

²⁷ The text of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment can be found here: <https://www.ohchr.org/Documents/ProfessionalInterest/bodyprinciples.pdf>

²⁸ Ibid.

²⁹ The text of the new draft detention law in Chinese was accessed here: <https://www.mps.gov.cn/n2254536/n4904355/c5728120/content.html>

³⁰ Lewis, M.K., (23 July 2017), *Behind the Walls and Laws of Chinese Detention Centers*, The News Lens. <https://international.thenewslens.com/article/74131>

³¹ Lew, L., (14 December 2019), *Unofficial survey reveals appalling conditions in China's detention centres*, South China Morning Post. <https://www.scmp.com/news/china/politics/article/3042068/unofficial-survey-reveals-appalling-conditions-chinas-detention>

³² Ni, D., (19 June 2017), *Lawyers Skeptical About China's New Detention Center Law*, Sixth Tone. <https://www.sixthtone.com/news/1000357/lawyers-skeptical-about-chinas-new-detention-center-law>

³³ Ibid.

³⁴ The Provisions on People's Procuratorates' Oversight of Residential Surveillance in a Designated Location, which came into effect in 2016, stipulates that the Procuratorate (Prosecutor's office) may (but is not required) to visit those held in RSDL on a weekly basis and to provide oversight against torture and maltreatment. However, in Safeguard Defenders' research of RSDL, not a single victim said they had been visited by the Procuratorate. The same regulation also gives police the right to block any visit if they deem it would impede their investigation.

³⁵ Until July 2018, Li Wenzu the wife of rights lawyer Wang Quanzhang suspected he may have died in detention as she had had no news of him for almost three years. He was eventually released and the two were reunited in April 2020. Please see: <https://hongkongfp.com/2018/07/13/wife-detained-chinese-human-rights-lawyer-wang-quanzhang-hears-alive-first-time-3-years/>