China’s Pincer move against regulated detentions

On 26 April Safeguard Defenders filed updated data to relevant UN organs on China’s use of its dual systems for enforced disappearances and arbitrary detention: RSDL and Liuzhi. The data presented therein - the most up to date and comprehensive set of data anywhere - is the basis for this article.

Unbeknown to most, since Xi Jinping assumed power, China started implementing two regulated and “legalized” systems for secret detention and enforced disappearances: 1) RSDL, aimed at rights defenders, civil society, and “regular criminals”; and 2) Liuzhi, aimed at Chinese Communist Party members, State functionaries, but also against those working within academia, State-Owned Enterprises, State-media, local contractors, or anyone related to any of the above.

RSDL – short for Residential Surveillance at a Designated Location - came into effect in 2013, while Liuzhi – “retention in custody” – has been adopted in 2018. While both systems have predecessors, their current functioning is very much a product of Xi Jinping’s China. They are but two of many developments that have severely undermined regulated detention and criminal justice procedure since 2013, and represent key loopholes against legal safeguards otherwise available for those targeted with detention, arrest and prosecution.

To ease the readers’ insight into these systems, Safeguard Defenders is releasing two simple one-page factsheets on RSDL (pdf) (also at bottom) and Liuzhi (pdf) (also at bottom), also available on our Publications section.

Following submissions by Safeguard Defenders and partner NGO’s, United Nations Independent Experts have repeatedly condemned the use of RSDL and Liuzhi as tantamount to enforced disappearances and torture.Already in 2015, the UN Committee Against Torture expressly called on the Chinese authorities to repeal the system of RSDL as a matter of urgency. China has since failed to submit its periodic report to the Committee, due in December 2019.

On April 26th, we presented an update submission on the extent of use of the systems to the UN Working Group on Enforced and Involuntary Disappearances, the UN Working Group on Arbitrary Detention and the UN Special Rapporteur on Torture.

As that data shows, the use of disappearances and arbitrary detention in China is significantly growing and is neutering almost all sectors of potential dissent from the government’s hard-line, both within civil society and the government, academia and the Party.
Data on the scope of RSDL is drawn from China’s Judgment Online, a database on verdicts run by the Supreme Court, while data estimates on Liuzhi comes from public statements by the CCDI (the Party-organ that runs Liuzhi) as well as their work reports to the National People’s Congress and Party/State media reports.

For anyone working in government-related environments in China, the sheer mention of Liuzhi is bound to send shivers down their spine. The same goes for any lawyer, journalist or civil society worker at the mention of RSDL.

The horrors inside the Liuzhi system have been exposed in the extensive Human Rights Watch report Special Measures, back when the system was used exclusively on Party members and called “Shuanggui”. The functioning of the re-editioned Liuzhi system has been analysed in Safeguard Defenders’ brief From Central Control to National Supervision and in exhaustive submissions to the UN.

Treatment inside RSDL has been extensively covered by Safeguard Defenders in the acclaimed publication The People’s Republic of the Disappeared, in the graphic report Locked Up, and in data-centered analysis of its scale and scope in Rampant Repression as well as various UN submissions.
A widespread and systematic practice

With both systems operating simultaneously since 2018, modest estimates indicate that at the very least 104,492 people have disappeared into the systems (47,291 into RSDL; 57,201 into Liuzhi). These include a number of high profile targets such as actress Fan Bingbing, Supreme Court judge Wang Linqing, former Chairman of Interpol Meng Hongwei (and probably mogul Jack Ma), as well as numerous foreign citizens, including Canadian diplomat Michael Kovrig. If we add data on RSDL use between 2013 and 2017, the number rises to 141,167.

At the basis of these estimates, one dataset is of particular interest: the minimum number of acknowledged cases. These are numbers provided directly by the Chinese government (or Party) and cannot therefore not be disputed by the government (or Party).

For RSDL - drawing from the Supreme Court website on verdicts for criminal trials at first trial – up to February 18, 2022, that number is 23,700 (verdicts, nor persons) for 2013 to 2021; or 13,105 for 2018 to 2021 only.

For Liuzhi, despite the extremely limited amount of public data available (published numbers exist only for 8/33, 3/33, and 3/33 provinces or regions for 2018 to 2020 respectively, plus CCDI data of 5,006 Liuzhi placements for investigation into the sole accusation of “bribery” for 2021), that number is 11,391.

These numbers place the combined acknowledged use of RSDL and Liuzhi at 35,091 since 2013.

However, occasionally some additional data are released, such as the CCDI’s number of Liuzhi placements as part of a specific campaign targeting law enforcement officials (全国政法队伍教育整顿) citing 1,760 cases of Liuzhi between March and June 2021, and 2,875 between February 27 and end of July 2021. If these two data points are extrapolated to the full year, it would indicate 5,280 to 6,900 people were placed into Liuzhi in 2021 as part of this campaign alone.
While some cases in this dataset might overlap with the provincial or “bribery” campaign data, there is no way to account for them in the officially acknowledged numbers, but it does provide a clear indication that the estimated number for 2021 is far too low, and that likely there has been a continued growth compared to 2020.

Safeguard Defenders has consistently used and extrapolated the little publicly available data provided by Chinese authorities to provide a more likely conservative estimate on the scope of use of the systems:

<table>
<thead>
<tr>
<th>Year</th>
<th>RSDL: Annual Official</th>
<th>RSDL: Cumulative Official</th>
<th>RSDL: Annual Estimate</th>
<th>RSDL: Cumulative Estimate</th>
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<tbody>
<tr>
<td>2013</td>
<td>270</td>
<td>270</td>
<td>765</td>
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</tr>
<tr>
<td>2014</td>
<td>1,670</td>
<td>1,940</td>
<td>5,279</td>
<td>6,043</td>
</tr>
<tr>
<td>2015</td>
<td>2,091</td>
<td>4,031</td>
<td>7,313</td>
<td>13,356</td>
</tr>
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<td>3,185</td>
<td>7,216</td>
<td>10,941</td>
<td>24,296</td>
</tr>
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<td>3,379</td>
<td>10,595</td>
<td>12,379</td>
<td>36,676</td>
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<td>3,210</td>
<td>13,805</td>
<td>12,584</td>
<td>49,260</td>
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<tr>
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<td>2,500</td>
<td>16,305</td>
<td>9,869</td>
<td>59,128</td>
</tr>
<tr>
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<td>4,776</td>
<td>21,081</td>
<td>14,540</td>
<td>73,668</td>
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<tr>
<td>2021</td>
<td>2,619</td>
<td>23,700</td>
<td>10,298</td>
<td>83,966</td>
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<td>2,770</td>
<td>9,155</td>
<td>12,169</td>
<td>57,201</td>
</tr>
</tbody>
</table>

The full methodology for the RSDL data can be found in Rampant Repression, while the methodology for the estimates on Liuzhi can be found in our latest evidence submission here.
Fog of war and crimes against humanity

Safeguard Defenders presents these data and estimates both for the purpose of informing UN Experts and governments on their continued and expanding use, and because the “fog of war” is increasing.

Year by year, the CCDI has released less useful data on its use of Liuzhi, and if this trend continues it will be harder and harder to make realistic estimates on its use in the future. More worrying - and another trend that is damaging China’s criminal justice system in and of itself - is the systematic removal of information from the China Judgments Online database. One ChinaFile investigation estimated that some 11 million verdict were actively removed during three months in early 2021 alone.

Safeguard Defenders’ own regular searches in the database - for RSDL-monitoring, but also on other issues - has also witnessed a reduction in verdicts available, with older ones being deleted, and new ones likely being uploaded on a reduced scale.

Between February 2021 and February 2022, some 6.5% of verdicts mentioning RSDL have disappeared for the years 2013 to 2019. It is very likely the data that is available will soon be so reduced that realistic estimates will become ever more difficult to make.

The “fog of war” is set to increase on both these issues, and the latest data provided to UN Experts might be the best and most realistic data we can expect to get.

In any case, the data shows beyond any doubt that the use of RSDL and Liuzhi are both widespread and systematic, thus constituting a crime against humanity under the Rome Statute of the International Criminal Court for they are enforced disappearances and acts of torture according to international law. Furthermore, Liuzhi also constitutes arbitrary detentions carried out entirely by an organ of a political party rather than a law enforcement agency.
What is RSDL?

Residential surveillance at a designated location (RSDL) is the expanding and widespread system for secret black jails. Implemented since 2013, the police and Ministry of State Security (MSS) have full discretion to place a target into RSDL. Placement into RSDL precedes formal arrest.

Victims are:
- kept outside normal detention facilities, in either makeshift renovated rooms in police-controlled facilities or in custom-built secret jails;
- kept for up to six months;
- held in solitary confinement, in rooms designed to prevent suicide;
- denied access to legal counsel and contact with family;
- kept at unknown locations, their whereabouts secret;
- regularly subjected to torture and forced to confess.

In 2015, the UN Committee Against Torture called for the immediate repeal of the system. Since August 2018, ten UN human rights procedures have repeatedly condemned the system as "enforced disappearances" according to international law and noted the heightened risks of torture.

“I was forced to stay inside the small painted square during the day... If my leg or a foot were out of the square, they would warn me or slap me.”
- Wang Yu

“...I was forced to make up and fabricate things... When failing to do so, I was deprived of sleep, and I was hung up and beaten”
- Niu Tengyu

Legal basis

Article 75 of China's criminal procedure law formally establishes the RSDL system. The right to deny access to legal counsel is enshrined in the same law. Formal obligations to disclose the target’s whereabouts to family members comes with exceptions, and is consistently disregarded. The 2016 Supreme Procuratorate regulation on supervision of RSDL facilities (art 19) also establishes that police may (and most often do) deny prosecutor access to undertake supervision.

“...they locked me to iron railings, they would use five or six electric batons to beat me.”
- Liu Sixin

“We are crossing the mountains. If you want to come back alive, you should think well about what you tell us.”
- Jiang Xiaoyu

Scope and scale of RSDL system

Official data on the use of RSDL is scarce as the China Judgement Online database of verdicts only includes cases leading to a verdict at trial. Many cases never reach this stage. The real number is therefore significantly higher than minimum conservative estimates below. As of end of 2021, it is estimated that between 55,977 and 113,407 have been placed into RSDL (and later faced trial). In 2020 alone, the year with the highest recorded use, some 140,000 people were placed into house arrest using RSDL.

Recent trends and new developments

- Local police have started using the system extensively over the past years;
- Recently the system is often used for minor crimes, unlike at early stages when it was primarily used against high profile targets or cases concerning national security;
- Foreigners, especially when used for ‘hostage diplomacy’, are often placed in RSDL;
- There is a growing number of known cases where people are placed into RSDL for a second time.

“You are now under RSDL. Your only right is to obey.”
- Xie Yang

“For those 10 consecutive days, 24 hours a day, [I] was chained to a tiger bench.”
- Chang Weiping

RSDL as a crime against humanity

- As the whereabouts of the detainee are most often kept secret from either family or (in case of foreigners) foreign governments, RSDL constitutes an enforced disappearance under international law;
- As no prior approval of arrest is needed from prosecutor and access to legal counsel is regularly denied, RSDL constitutes an arbitrary detention;
- The use of prolonged solitary confinement for investigation purposes makes the use of RSDL an act of torture. In addition, the use of physical and psychological torture is widespread;
- According to Articles 7e, 7f, 7i and 7k of the Rome Statute, the systematic and widespread nature of these acts makes the use of RSDL a crime against humanity.
LIUZHI: A FACTSHEET ON CHINA’S SYSTEM FOR SECRET EXTRA-LEGAL DETENTION

What is LiuZhi?

LiuZhi or ‘retention in custody’ is not part of China’s criminal justice system. Instead, it is run by a non-judicial, non-law enforcement body: the National Supervision Commission (NSC).

Founded in 2018, the NSC can place anyone related to the Chinese Communist Party (CCP) and the State, as well as those working for or loosely related to State-owned enterprises or public institutions - such as hospitals, schools, etc. - into LiuZhi.

Conditions of LiuZhi mirror the better known RSDL system (see RSDL factsheet), yet it is not even technically part of the judicial system. It is in reality a private police force run by the CCP, with its own private, secret, detention facilities.

Victims are:
- not allowed legal counsel;
- kept without any outside supervision of any kind;
- kept incommunicado, in facilities designed to prevent suicide;
- kept at unknown locations, their whereabouts secret;
- held for up to six months;
- not allowed to contact family;
- not allowed to appeal to law.

Targets

The most well-known targets are high level party members or state functionaries, often victims of internal power struggles. However, the system has a direct mandate over an estimated 300 million people, including managers at hospitals, schools, trade unions, state-owned corporations and media. It can also be applied to foreigners if an alleged violation relates to the public sector, or an independent contractor working for local government, etc.

LiuZhi as crime against humanity

- As the whereabouts of detainees and sometimes even the mere fact of their detention are kept secret, LiuZhi constitutes an enforced disappearance.
- It constitutes an arbitrary detention as it is not part of a formal criminal process;
- The use of prolonged solitary confinement for investigation purposes makes use of LiuZhi an act of torture. In addition, use of direct physical and psychological torture is known to occur;
- According to Articles 7e, 7f, 7i and 7k of the Rome Statute, the systematic and widespread nature of these acts makes the use of RSDL a crime against humanity.

Legal basis

LiuZhi was established by the National Supervision Law (NSL) March 2018. Article 22 of the NSL establishes the right of the NSC to detain targets, but also other people relevant to the investigation. Only the NSC itself supervises use of LiuZhi (art 43) and decides if the three month period can be extended to six months. No external appeal exists. Wherabouts need not be shared with family, but even notification that the person is in LiuZhi can also be kept secret (art 44).

Cumulative use of LiuZhi 2018-2021 (average estimate)

<table>
<thead>
<tr>
<th>Year</th>
<th>Average Use</th>
</tr>
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<tbody>
<tr>
<td>2018</td>
<td>13,459</td>
</tr>
<tr>
<td>2019</td>
<td>26,052</td>
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<tr>
<td>2020</td>
<td>45,650</td>
</tr>
<tr>
<td>2021</td>
<td>57,819</td>
</tr>
</tbody>
</table>

“...don't let them die. A dead person would create big problems. Someone who is only injured doesn't matter.”

A doctor working at a facility

“'It looks very nice. But it is the worst place in the world’”

Jean Zou, victim

“The only sign of the room’s true purpose was the soft rubber walls. They were installed because too many officials had previously tried to commit suicide...”

Lin Zhe, professor at the Central Party School

“Major crimes related to official duties are not the same as normal crimes and the investigations cannot be done in the same way”

Zhang Shuofu, head of the Beijing Supervision Commission, on the rationale for NSC.