

# safeguard DEFENDERS

Safeguard Defenders (SD) is a European human rights NGO that undertakes and supports local activities for the protection of human rights, promotion of the rule of law and enhancement of the local civil society capacity in some of the most hostile environments in Asia, with a focus on China.

✉ [info@safeguarddefenders.com](mailto:info@safeguarddefenders.com)

🐦 [@safeguarddefend](https://twitter.com/safeguarddefend)

## RS: A FACTSHEET ON CHINA'S SYSTEM FOR HOUSE ARREST

### What is RS?

*Residential surveillance* (RS) is the system in China for placing an individual under **house arrest**, codified into law in its current state in 2013, when its sister system for **secret detention**, *Residential surveillance at a Designated Location* (RSDL), was introduced (see [RSDL: A factsheet on China's system of black jails](#)). The new powers simply legalized a long-standing and widespread tradition. RS is usually authorised by the police, and requires no permission from a judge, but both prosecutor and judges may also order it. Based on official data from the Chinese government, it is likely that **lawful** use of house arrests since 2013 will surpass **one million** victims sometime between 2022 and, at latest, 2025

Victims:

- are imprisoned in their own home and kept under strict surveillance;
- can be kept under RS for up to six months;
- may leave their home only with police permission and monitoring;
- must get police permission before communicating with or meeting others;
- can be subjected to RS by the police or prosecutor to extend their detention whenever the judicial process has reached a legal time limit and they would otherwise have to be released;
- can held in RS when police are unable to get prosecutor approval for arrest.

### Legal basis

Article 66 of China's Criminal Procedure Law (CPL) formally establishes the RS system, allowing police, the prosecutor and courts to impose it on suspects, and it is to be enforced by police. Article 74 says suspects who are ill, pregnant, or are caretakers for others, can be placed under RS, but it may also be used when "special situations" arise. A provision for its use is also made for situations when time limits for detention or arrest are running out. Article 91 authorises police to use RS if the prosecutor turns down an arrest request. Article 98 (and 167) also allows for RS when any other time limits in the judicial process are expiring, effectively giving authorities a way to keep victims imprisoned at will.

Articles 77-79 stipulate that victims must get permission to leave home, communicate with or meet others; their communications can be monitored; and that the duration can last as long as six months.

Article 170 permits the prosecutor to place a suspect under RS if a case has been forwarded by the National Supervision Commission (NSC), a non-judicial organ with the right to investigate and detain Party members and State functionaries at will (see [Liuzhi: A factsheet on China's system for secret extra-legal detention](#)).

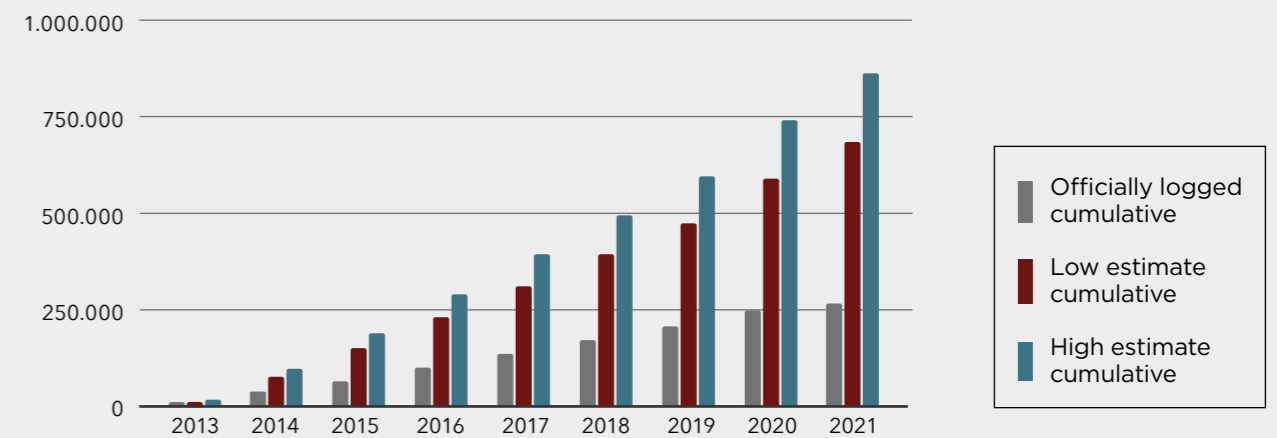
**Activist Zhai Yanmin spent 60 days at a hotel under police guard. Two officers slept in Zhai's room with him. He took his meals in one of the rooms; he was not allowed even to walk around the hotel.**

**In one of the most extreme examples, police installed a barred security gate in the hallway leading to right lawyer Xie Yang's home, which could only be opened with a fingerprint reader.**

### Scope and scale of RS system

Official data on the use of RS is scarce. Beyond this lawful use of RS, it is also known to be used extensively without any formal process (illegally and arbitrarily). Hence, data that can be mined to identify the scale of the system is limited at best. However, a review of the CJO does allow us to create a general sense of how widely RS is used, and how it has developed since the rise of Xi Jinping. But keep in mind that this data is only part of a larger iceberg, the visible part.

#### Cumulative use of house arrests since 2013



### Non Release: Unlawful use of RS on rights defenders after prison



Safeguard Defenders' report [Access Denied #2: China's False Freedom](#), examines the unlawful use of RS or house arrest on rights defenders following their release from prison, a practice that has come to be called Non-Release Release (NRR). Despite having no basis in law, police detain victims from politically-sensitive cases at their home, a hotel, or even a facility, after they have served their sentence. They are often prevented from communicating with the outside world, effectively rendering NRR an enforced disappearance. NRR may last weeks, months, and sometimes more than a year. Police are thought to impose NRR to limit media's ability to contact high-profile victims when they are released from prison.

**The police occupied a flat opposite from right lawyer Wang Yu's apartment from which around a dozen officers kept watch in shifts 24 hours a day. There were surveillance cameras surrounding her house.**

### International Legal Standards

The Universal Declaration of Human Rights (UDHR) article 13 and the International Covenant on Civil and Political Rights (ICCPR) article 12 establish that everyone has the **right to freedom of movement**. The UN Human Rights Committee, the ICCPR expert body, [notes](#) in its General Comment 27 that the right to freedom of movement may only be restricted when provided for by law, in pursuit of a legitimate aim, necessary and proportionate, and consistent with all other international human rights. Any restrictions "should use precise criteria and may not confer unfettered discretion" and "must not impair the essence of the right". China's use of RS fails on these counts to meet the minimum international standards.

ICCPR article 9 is also clear in laying out that "everyone has the **right to liberty and security of person**. No one shall be subjected to arbitrary arrest or detention." The Human Rights Committee General Comment 35 [emphasizes](#) that the notion of arbitrary does not mean against the law, but an action that is without justice, predictability and due process, and lacks necessity and proportionality. In other words, merely legislating a State practice does not shield it from being arbitrary and against international norms.