

Submission by: Safeguard Defenders

Related to: China

UPR Session: 31st Session of UPR, November 2018

Submitted: 28 March 2018



CONCERNING ENFORCED DISAPPEARANCES AND TORTURE

The following submission has been prepared by **Safeguard Defenders**. Presentation and recommendations are based on the application of human rights instruments to which China is a party, relevant declarations, and information provided by the State, and recommendations offered, during the 17th session of UPR of China (October, 2014).

About Safeguard Defenders

Responding to the rise of authoritarian politics, erosion of the rule of law and media freedom across Asia, **Safeguard Defenders** works directly with human rights defenders (HRDs), women human rights defenders (WHRDs), and civil society at large toward sustainable solutions and to press for change. With an extensive background in developing and managing programs under repressive conditions, training civil society, and coordinating urgent action for at risk human rights defenders, **Safeguard Defenders** provides support and mentorship to frontline defenders struggling for basic rights and freedoms.

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Founded July 2016, Hong Kong (SAR)

EXECUTIVE SUMMARY

1. Shortly before the 2nd cycle UPR of China, the country had adopted a new Criminal Procedure Law (in effect as of 1 January 2013), instituting and legalizing a new system for detention, despite the many calls pointing to vocabulary in the law that it could easily be abused to effectively legalize Enforced Disappearances. Article 73 of the Criminal Procedure Law establishes 'Residential Surveillance at a Designated Location (RSDL), which allows the police to claim certain exceptions in the name of national security, which if invoked, by definition raise the detention to the level of an enforced disappearance. Since the law went into effect, as data in this submission proves, the system has been used increasingly, especially targeting human rights defenders, and in almost all cases, the exceptions allowed that makes RSDL a case of enforced disappearance, have been invoked. Since the enactment of the new Criminal Procedure Law, and after the 2nd cycle UPR review, China has taken additional steps in issuing regulations that have even weakened already weak procedural safeguard. Data shows that the use of torture is common for those placed in RSDL.

BASIS FOR THIS REPORT

2. This NGO stakeholder report, on the issue of Enforced Disappearances, is related to, and focused on, thematic clustering B. Civil and political rights, specifically points 1. Right to life, liberty and security of the person, and 2. Administration of justice, including impunity and the rule of law 3. Fundamental freedoms and participation in public and political life.
3. The country report of China (National Report, A/HRC/WG.6/17/CHN/1) presented for UPR review session 17 October 2013 stated that the country was taking steps to *improve the safeguarding of due process to criminal suspects and the right to hire lawyers during pre-trial investigation phases* (paragraph 55), and paragraph 57, claiming *Judicial openness*, The National Report specifies in paragraph 53 its work to improve and perfect laws to prevent using torture to extract confessions or self-incrimination.
4. OHCHR's compilation report 2013 (Compilation of UN material, A/HRC/WG.6/17/CHN/2) noted (paragraph 13) that the WGEID had a significant amount of cases still outstanding and awaiting response by the state (30 out of 119), and expressed grave concern about the high number of disappearances in 2011 (para 20). The Special Rapporteur on the question of torture remained concerned about the reports of excessive use and length of pretrial detention (para 28), and reiterated that no detainee should be subjected to unsupervised contact with investigators. The Special Rapporteur on the question of torture remained concerned about the reports of excessive use and length of pretrial detention, and ill-treatment of suspects in police custody (both paragraph 28).
5. Recommendations (List of all recommendations made to China and its responses to them, Second Review, Session 17) were offered to address the issues, namely to stop the use of extralegal measures such as enforced disappearances (186.115, 186.116, 186.122) (all noted but not accepted), to ratify international human rights instruments to which the country is not yet a party (186.23 (accepted), 186.21, 186.23 (noted but not accepted). Furthermore, recommendations were made to enhance cooperating with OHCHR (186.69, 186.71) (both accepted) and issue standing invitation to special procedures (186.72. 186.70) (both noted but not accepted).

Furthermore, China accepted recommendation 186.51, to implement institutional mechanism to ensure enforcement of laws prohibiting torture (also 186.117).

6. Information provided in this report, and recommendations offered, are further based on China's commitment under the *Declaration on the Protection of All Persons from Enforced Disappearance*, with art. 2 stating no state shall practice enforced disappearances, and art. 6 (1), that no order or instruction maybe invoked to justify an enforced disappearance, and art. 10, which states that any person deprived of liberty shall be held in an officially recognized place of detention. Furthermore, China has ratified the *Convention against Torture*. Finally, China is a signatory to the *International Covenant on Civil and Political Rights*, which outlaws use of torture (art. 7) and arbitrary detention (art. 9).
7. Safeguard Defenders note that since the 2013 UPR review, the Supreme Court has issued statements clarifying that confessions extracted through Torture must be eliminated, and legal provisions that match that has been enacted, making such confessions inadmissible in court. We also note however that the use of torture remains prevalent, and that measures to protect against use of torture is regularly ignored. Safeguard Defenders further note, with grave concern, that since the UPR 2013 review, both the legal framework concerning enforced disappearances has been significantly weakened, and that the state's use of mechanisms that qualify as enforced disappearances has expanded significantly.

THE REPORT

General Conclusions

8. Safeguard Defenders note, with grave concern, that the state has, since the previous cycle's UPR review, not only failed to take legislative action to prohibit enforced disappearances , but that legislative reform since have enabled the expanded use of enforced disappearances .
9. Safeguard Defenders note that such expansion in law on use of Enforced Disappearances stem from the legalization of 'Residential Surveillance at a Designated Location' (RSDL).
10. Safeguard Defenders further notes that, based on data on the use of RSDL, the use of Enforced Disappearances has significantly increased since previous UPR review cycle.
11. Of the data acquired by Safeguard Defenders, the use of torture is prevalent inside RSDL, and of 25 victims that have provided detailed data, or about whom detailed data have been acquired, on treatment inside RSDL, only one single case does not report torture.
12. Safeguard Defenders note that, in direct contraction to the State's National Report 2013, paragraph 57, on *Judicial Openness*, that regulatory framework has been put into place since previous cycle to intentionally remove the need to publically include information on judicial procedures on RSDL, hence severely hindering the acquisition of public data on the state's use of RSDL.
13. Finally, despite the State's stated commitment to improve and perfect laws to prevent using torture, it continues to focus on making torture illegal *to extract confessions*, rather than making the act of torture itself a punishable offense by those responsible.
14. 'Residential Surveillance at a Designated Location' (RSDL) as Enforced Disappearances.
 - a. The use of 'Residential Surveillance at a Designated Location' (RSDL) qualifies as an *Enforced Disappearances* when:

- b. notification of whereabouts to victim's family and legal representative is not issued - nor is it required by law (Criminal Procedure Law art. 73, 83),
 - c. Access to communicate with legal representation is denied - as done under Criminal Procedure Law art. 37, which states that police or state organ responsible for RSDL must give approval to communicate, access or meet with such legal counsel.
 - d. Suspects in RSDL may by law not be placed in detention centers or case-handling areas, leaving them to be placed outside the judicial custody system.
 - e. Supervision of the legality of placing a suspect in RSDL, and the legality of the suspects' treatment inside RSDL falls with the State's Procuratorate's office, but legislation does not require them to perform on-site visits and interview nor monitor the suspect. Furthermore, legislation states that any such supervision should not interfere with the Police's investigation.
15. The legal framework thus allows the state to deny knowledge of suspects' whereabouts, the judicial process is not publicized on the Supreme Court's database or any other public platform, the suspect is denied access to legal representation, is by law kept in solitary confinement, and without mandatory supervision by the prosecutor. These 'exceptions', employed as norms, as information below will show, makes placement in RSDL by definition an Enforced Disappearance.
16. In all 53 cases of RSDL where data exist on whether they were allowed legal representation, **none** were. That includes cases not involving 'national security' crimes, where such denial is illegal according to domestic law.
17. No case has yet been recorded of any victim in RSDL receiving a visit by the Procuratorate's office, which is tasked with ensuring treatment of suspects in RSDL is lawful.

Use of 'RSDL' system

18. Between the time of the revised Criminal Procedure Law coming into effect January 1, 2013, and the time of China review at the UPR at the previous cycle (October 2014), five cases of use of the RSDL system have been noted.
19. Since the previous cycle's review of China (October 2014), up until the present submission of this NGO stakeholder report (March 2018), 87 cases of using RSDL have been noted.
20. Furthermore, Safeguard Defenders note that placement into RSDL is exempted from being published in the Supreme Court's Online database collecting information on judicial procedures.
21. Hence, with these limitation, both legal and practical, the amount of data available on the use of RSDL is less than its actual use.
22. The maximum time-limit for placement in RSDL is 6 months. Data on 92 cases of known RSDL victims since 2013 shows the average time to be 128 days, and more than one-third is placed in RSDL the full 180 days/6 months.

Torture and maltreatment in 'RSDL'

23. Despite China's ratification of the *Convention Against Torture*, China's domestic laws outlawing of the use of torture is focused on the use of torture to extract confessions, and not upon criminal punishment of those guilty of carrying out torture.

24. Of the 92 cases of RSDL on which Safeguard Defenders have data, data on treatment inside RSDL, all from first-hand sources, exist for 25 cases. In all but one of those cases the victim claims to have suffered torture.
25. Examples of treatment, with specific case references, include:
- a. Prolonged solitary confinement (above 2 weeks, to 6 months) applies to **all** cases of RSDL.
 - b. Forced medication, with unknown substances, has been noted in the cases of Tang Zhishun, Li Chunfu, Li Heping, Xie Yanji, Guo Hongou, and Li Shuyun.
 - c. Forcible, pro-longed, stress positions, is common practice. Wang Yu had a 40x40 cm square painted on floor, failure to sit inside that, for entire days, would lead to punishment. Tang Zhishun, Wang Yu, Xie Yanyi, Xie Yang, Bao Longjun, Li Shuyun, Kou Yanding and Liu Yao have all been subjected to similar, for example by use of ‘dangling chair’, that cuts blood flow to legs and cause intense pain, and often used against victims for the entirety of the day, often many days in a row.
 - d. Prolonged sleep and/or food deprivation is have been recorded in 13 cases, out of 14 cases for which there is data.
 - e. Beatings have been recorded, ranging from slaps, to fists, kicks, kneeing and more, such as in the case of Xie Yang, Xing Qingxian, Guo Hongou, Xie Yanji.
 - f. Threats to the physical wellbeing of the victim, threats to family members, relatives and loved one, have similarly been recorded in 14 cases out of the 15 for which data exist, for example Xie Yang was threatened that his wife would be ‘investigated’, and that his brother could face a corruption investigation. Peter Dahlin was told his girlfriend, also placed in RSDL, would be kept in RSDL and solitary confinement until Peter worked with investigators to ‘solve’ his own case. Bao Longjun and Wang Yu was told their teenage son would be detained. Wang Quanzhang’s young child has been harassed and denied access to school.

RECOMMENDATIONS

26. That China **ratifies** the *International Covenant on Civil- and Political Rights* to strengthen protection against all forms of arbitrary detention. Concerning the situation of Enforced Disappearances, that China initiate a review and prepare for the **ratification** of the *International Convention for the Protection of All Persons from Enforced Disappearance*, and that China issues a **standing invitation** to the *United Nations Working Group on Enforced or Involuntary Detentions* (WGEID).
27. That China **revise the language in domestic law**, including the Criminal Procedure Law, the Detention Center Law, and Prison Law, to explicitly make torture, as defined by the *Convention Against Torture* illegal, and not as currently, merely illegal as a means of extracting confessions or evidence.
28. And, of the outmost urgency, that **domestic legislation is revised** as to ensure that the use of ‘*Residential Surveillance at a Designated Location*’ cannot be applied in such a way as to constitute an Enforced Disappearance, including:
- a. Remove the ability of police to bar access to legal counsel in cases concerning ‘State Security’, ‘Terrorism’, or ‘Significant bribery’ (art 37, 83, Criminal Procedure Law).

- b. Rewrite art 73 of Criminal Procedure Law so to require police to disclose the location of placement into 'Residential Surveillance at a Designated Location'.
 - c. Rewrite the Supreme People's Procuratorate oversight rules on 'Residential Surveillance at a Designated Location' to require weekly visits, including physical visit to suspect in custody, and remove the ability of police to refuse such visits on the grounds of 'hindering police investigation'.
 - d. Require any appeal to the Prosecutor about Police's decision to place a suspect in custody to hear either the victim or victim's lawyers before decision on appeal is taken.
29. Finally, China need to aim for the complete removal of provisions allowing for 'Residential Surveillance at a Designated Location' from the criminal code, and abolish the use of the system.