

16 May 2018  
Geneva, Switzerland

To:

The Working Group on arbitrary detention  
The Working Group on enforced or involuntary disappearances  
The Special Rapporteur on the situation of human rights defenders  
The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment  
The Special Rapporteur on the independence of judges and lawyers  
The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health  
The Special Rapporteur on violence against women, its causes and consequences  
The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression  
The Special Rapporteur on the rights to freedom of peaceful assembly and of association  
The Special Rapporteur on the promotion and protection of human rights while countering terrorism  
The Special Rapporteur on extreme poverty and human rights  
The Special Rapporteur on the right to privacy  
The Special Rapporteur in the field of cultural rights  
The Special Rapporteur on minority issues  
The Special Rapporteur on the right to education

**Submission:**

**A review of the implications of ‘residential surveillance in a designated location’ on the fulfillment by China of its international human rights obligations and commitments**

Annexes:

1. Criminal Procedure Law of the People's Republic of China (Draft Amendments) – unofficial English translation, as provided on [www.chinalawtranslate.com](http://www.chinalawtranslate.com)
2. 中华人民共和国刑事诉讼法（修正草案） - official version as provided by website of the National People’s Congress and Peking University Law School, reposted at <http://wemedia.ifeng.com/60004444/wemedia.shtml>

Cc: Peggy Hicks, Director, TSPRD  
Jyoti Sanghera, FoTCLD  
Sebastien Gillioz, FoTCLD

## Overview

We would like to recognize and express our appreciation for your continued attention to the human rights situation in China, in particular for individuals and groups acting to protect and promote internationally-recognized human rights.

We have noted, through analysis of the responses to Communications of the Special Procedures and in the Observations on Communications compiled by some Special Procedures mandate holders, that meaningful engagement with the government of the People's Republic of China to substantively address human rights concerns continues to be a challenge. We believe that the upcoming Universal Periodic Review of China, scheduled for November 2018, is an important opportunity for the international community to engage in dialogue with the Government around its implementation of previous recommendations, and need for further action. Many of those second-cycle recommendations, accepted in March 2014, focus on issues of key importance to your mandates.

However, one issue not raised in the second cycle UPR was the use of 'residential surveillance in a designated location', as per Criminal Procedure Law Article 73 (CPL, amended 2012).

In our view, this form of detention (henceforth, 'RSDL') has become a key tool for the Chinese government to sanction the defence of human rights and the expression of views that dissent from the core values of the government and, more fundamentally, of the Chinese Communist Party. Its impacts range broadly across civil, political, economic, social and cultural rights of those targeted by such provisions; their associates and self- and family-appointed lawyers; and their families and communities.

The present submission aims to provide – through a summary of the legal framework for RSDL; a review of commentary on RSDL in past Communications of various Special Procedures and other authoritative bodies; and a series of illustrative cases shared by Chinese human rights defenders subject to RSDL – a comprehensive explanation of the current state of use, and misuse, of this provision.

We hope that the Special Procedures can use this submission, as well as their own analysis of the legal provision, to provide a reflection on the compliance of Article 73 of the CPL with various of China's international obligations, and recommendations to the Government of China, particularly the State Council, and the international community about how to address any gaps in law and in practice. Such a document, communicated formally to the Government of China and to the international community, could assist in our mutual efforts to strengthen protection for human rights in China.

The sections that follow include:

1. A discussion of the legal background and evolution of criminal and criminal procedure law
2. A list of case summaries for individuals held in 'residential surveillance in a designated location'
3. A non-exhaustive analysis of internationally-recognized human rights which may be infringed upon during, as a result of, and in connection to the application of RSDL
4. A conclusion and short set of recommendations to the Special Procedures

Contacts:

Sarah M Brooks, International Service for Human Rights - [s.brooks@ishr.ch](mailto:s.brooks@ishr.ch)

Michael Caster, Safeguard Defenders – [michael@safeguarddefenders.com](mailto:michael@safeguarddefenders.com)

Frances Eve, Network of Chinese Human Rights Defenders - [franceseve@nchr.org](mailto:franceseve@nchr.org)

Nicola Macbean, The Rights Practice- [nmacbean@therightspractice.org](mailto:nmacbean@therightspractice.org)

## 1. Legal background of ‘residential surveillance in a designated location’

China makes extensive use of pre-trial detention. Most ‘criminal suspects and defendants’ are held in detention centres (*kanshousuo*). The 2012 Criminal Procedure Law (CPL) includes other measures that can restrict a person’s liberty, namely ‘release on guarantee’ (sometimes translated as bail) and detention under ‘residential surveillance’ (Article 72) and ‘residential surveillance in a designated location’ (Article 73).

‘Residential surveillance in a designated location’ (*zhiding jusuo jianshi juzhu*, or RSDL) takes place in unofficial detention facilities and seems to be largely targeted at those suspected of one of the ‘three types of crime’ (terrorism, major bribery and endangering national security). Suspects can be detained in RSDL for up to six months. The CAT Committee noted in December 2015 that ‘these provisions, together with the possibility of refusing access to a lawyer for these types of crimes, may amount to incommunicado detention in secret places’.<sup>1</sup> This will be the focus of the following analysis.

However, while this is retrospective, there are reasons to believe that alternative forms of pre-trial detention are under development or already exist. For example, Article 22 in the new 2018 Supervision Law introduces ‘retention in custody’ (*liuzhi*). This will replace the much-criticised *shuanggui*, an extra-legal investigation and detention procedure carried out by the Chinese Communist Party’s Commission on Discipline Inspection. ‘Retention in custody’ is not formally part of the Chinese criminal justice system and will be implemented by the newly established Supervision Commission. This Commission has jurisdiction over public employees particularly in relation to suspected abuse of public office.

Civil society groups are concerned about the implications for further pre-trial and potentially arbitrary detention under this law. And with good reason - the first reported death in *liuzhi* was reported on May 9, 2018.<sup>2</sup>

### Legal History

The 1979 and the 1996 criminal procedure laws included provisions for the use of residential surveillance. Criteria for using residential surveillance were vague, but included a requirement that the person should not pose a danger to society. Provisions in the 1996 law included the possibility of using ‘residential surveillance’ for persons who are seriously ill, pregnant or nursing a baby thus indicating that the measure had a protective purpose. Where a person had no fixed domicile a ‘designated residence’ could be used. The 1996 law was, however, ambiguous about the use of RSDL for other categories of people and, prior to the 2012 amendments, there were numerous reports of persons being held in secret detention facilities. The cases of Liu Xiaobo and Ai Weiwei were among those attracting international and domestic criticism.

The draft amendments to the CPL were first made public in August 2011 and several provisions attracted controversy. Of particular concern was the inclusion of a set of exceptional circumstances in which the police could detain someone without informing family members. This raised the spectre of secret arrests and expanding police powers. Although this provision was eventually dropped and family members must be notified in any circumstances, the 2012 amendments introduced other provisions that allowed persons in cases involving one of the so-called ‘three types of crimes’ of endangering national security, terrorism or major bribery to be treated differently. This included the use of RSDL and restrictions on access to lawyers. While some commentators suggested that this would restrict

---

<sup>1</sup> CAT/C/CHN/CO/5 para 14.

<sup>2</sup> <https://rsdlmonitor.com/first-death-new-liuzhi-system/>

police powers to use RSDL in other situations, the power to decide whether a case fell into one of the three types of crime lay with the police.

### Eligibility for RSDL

Anyone subject to RSDL must meet the conditions for 'residential surveillance' set out in Article 72 of the 2012 CPL. These are that the 'requirements for arrest (*daibu*)' of the person are met *and* that they are in one of five circumstances. Three of these suggest a protective purpose: illness; disability; and nursing mothers or sole carers. The detaining and investigating authorities determine the other two circumstances. The fourth circumstance is when there are undefined 'special situations or case-handling needs', while the fifth is when the case has not been fully resolved, but the detention period is 'complete'.

Where the circumstances of the individual or the case permit the use of 'residential surveillance', the police or procuratorate may, in one of two additional circumstances, impose it in a 'designated location'. These circumstances are set out in CPL Article 73. RSDL may be used when the suspect does not have a permanent domicile or when persons are suspected of endangering state security, terrorist activities or major bribery *and* where confinement in their own home may 'impede the investigation' (CPL Article 73).

The Supreme People's Procuratorate Regulations to Implement Monitoring of RSDL which came into effect in January 2016 (the 2016 SPP Regulations) state that RSDL can be used when the suspect does not have a permanent domicile in the city or county where the investigation is taking place. In the '709' cases (a large scale crackdown on Chinese lawyers called after the date it was initiated) the investigation was led by police in Tianjin; this may have been a decision to help justify the use of RSDL.

### Authorisation and time limits

Under Chinese criminal procedure law an arrest must be authorised by the procuratorate within 37 days of the initial detention. The police are not required to seek procuratorate approval for 30 days and the procuratorate have up to seven days to approve or turn down a police recommendation to arrest someone. The decision to arrest in Chinese law is the first time that a police decision to detain is reviewed. The stipulation in Article 72 that the 'requirements for arrest are met' (*fuhe daibu tiaojian*) in residential surveillance or RSDL cases is not specified in any detail. The law requires that a police decision to place someone under RSDL must be approved by the police at the next higher administrative level.

The procuratorate also have a responsibility to check the lawfulness of the decision to use RSDL. The 2016 SPP Regulations require procurators to ascertain that the relevant documentation is complete and the decision to use RSDL is lawful. An official explanation of the Regulations explains that they are intended to allay concerns at the abuse of RSDL. The Regulations do not provide for any formal review of the decision to use RSDL and whether the case meets the criteria for arrest. Chinese legal scholars have raised this issue in commentary on the use of RSDL. It appears that the RSDL is lawful provided that the criteria for its use are respected. The procuratorate have no power to challenge discretionary decisions by the police and there is no formal procedure for reviewing the police designation of a case as involving terrorist activities, major bribery or endangering national security. No publicly available data sheds light on how many persons accused of the 'three types of crime' have been subject to RSDL.

In documented cases of RSDL there are no records of procuratorate oversight of the decision to detain. Indeed, arrest (*daibu*) has been reported several months later following transfer to a detention centre (*kanshouso*). Efforts by lawyers representing lawyer Li Heping, detained in July 2015 as part of the

'709' crackdown, to seek procuratorate review of the decision to hold him in RSDL were repeatedly rebuffed.

RSDL may be used for up to six months and it is enforced by the police. In the '709' cases, the six months' time limit for RSDL appears to have been respected. Nevertheless, while six months is the upper limit there have also been reports of detainees being held in RSDL for less than six months. Due to the lack of transparency regarding the use of RSDL, it is impossible to know the full number of RSDL detainees and the length of time each detainee is held.

#### Location and notification of RSDL

Article 73 of the 2012 CPL specifies that the 'designated location' must *not* be a pre-trial detention centre (*kanshousuo*) or an investigation facility. RSDL facilities are required to possess conditions for ordinary living and rest, presumably a bed and bathroom and these should be separate from where interrogations take place. The facilities are also supposed to accommodate 'monitoring and management and ensure security' (2016 SPP Regulations Article 4).

Families should be notified within 24 hours that someone has been placed in RSDL, but the notice does not need to specify the address of the designated place of detention. In the '709' cases family members assumed that detainees were being held in Tianjin since the notification was issued by Tianjin police. The police and procuratorate both refused to provide further information.

#### Treatment in RSDL and monitoring

The 2012 CPL does not specify how persons in RSDL should be treated. There appears to be no formal right to eat, to rest or to medical care. Former detainees report disturbing examples of forced medication for apparently non-existent medical conditions, such as high blood pressure, and other forms of physical and psychological torture. The draft Detention Centre Law makes provision for visits and correspondence with relatives, but RSDL is not covered by this law and RSDL detainees have been unable to correspond with family members.

The 2016 SPP Regulations (Article 4) state that the location for interrogation should be separate from the living area. The CPL (Article 117) allows suspects who are not detained in custody to be interrogated in their residence or another location. Although it seems that the original intention of residential surveillance was to provide a means for restricting someone's liberty and was not supposed to be used for police interviews, in practice RSDL is being used for conducting interrogations.

Under the CPL persons held in RSDL have the right to appoint a defender (Articles 73 and 33) following the imposition of 'compulsory measures'. However, under Article 37 the investigation body has the power to grant permission for defence counsel to meet with anyone suspected of major bribery, terrorist activities or endangering national security. In cases monitored by civil society permission is routinely denied.

The 2016 Regulations (Article 16 (iv)) require the procuratorate to check that detainees have not been subjected to corporal punishment and ill treatment. They also require procurators to check if interrogations have taken place. As part of their responsibility to monitor treatment there seems to be no requirement that the procuratorate speak with the detainee in confidence. While the possible use of corporal punishment is highlighted there is no reference to treatment that may contribute to mental distress. Numerous reports of treatment in RSDL describe conditions that may over time, or where applied severally, constitute psychological torture or a kind of physical torture that leaves few obvious traces.

## 2. Illustrative cases

The below cases are meant to illustrate some of the experiences which those held in residential surveillance have documented and shared with human rights organisations.

Lawyer BAO Longjun (包龙军), husband of lawyer Wang Yu (see below), had received his law license in Inner Mongolia but was not employed by a law firm prior to his arrest. He was seized by police at Beijing Capital International Airport on the evening of July 8; Tianjin authorities then held Bao in RSDL on suspicions of “picking quarrels and provoking trouble” and “inciting subversion of state power.” His family and lawyers received no information from authorities on his status until August 24, 2015 and were not allowed to visit him. Bao was formally arrested on January 8, 2016, on suspicion of “inciting subversion of state power” and then transferred to Tianjin No. 2 Detention Centre. Bao was released on bail sometime in the first week of August 2016 following his wife’s televised ‘confession’ on July 31. Since that time, he and his family have reportedly been held under house arrest in an apartment in Inner Mongolia, with 24-hour police guards and escorts if they leave the home.

GAO Yue (高月) was Li Heping’s assistant on an EU-funded project. She was not an active human rights defender and had taken care not to speak out on social media. She was detained on the July 20, 2015 and held for six months in RSDL. When Gao Yue was first detained her family were informed she was held on suspicion of ‘picking quarrels and provoking trouble’. This charge was changed within days to ‘inciting subversion of state power’. She was unable to meet any lawyer when she was in RSDL. She was formally arrested on suspicion of ‘helping to destroy evidence’ on January 8, 2016 and transferred to a detention centre, from which she was eventually released on bail in April 2016.

Prominent human rights lawyer JIANG Tianyong (江天勇) disappeared on November 21, 2016, at the Changsha South Train Station in Hunan Province, where he was meant to board a train to Beijing. Jiang had been in Hunan Province to meet with Chen Guiqiu, wife of arrested human rights lawyer XIE Yang (谢阳, see below), and Xie’s defense lawyers. On December 23, Jiang’s family received a notice from Changsha Public Security Bureau indicating that Jiang was under ‘residential surveillance at a designated location’ on suspicion of ‘inciting subversion of state power’. The police notice did not list where Jiang was being held. Authorities turned down a request from Jiang’s lawyer, Chen Jinxue (陈进学), to visit him and refused to release information on his whereabouts, claiming it may ‘endanger national security’.

LI Heping (李和平) is a prominent lawyer who gained a reputation for representing freedom of religion cases. He also participated in cases and other initiatives, including an EU-funded project with The Rights Practice, which challenged the use of torture. He was detained on July 10, 2015 and held for six months in RSDL, accused of ‘subversion of state power’. During the first weeks of RSDL, Li was forced to take between one and six tablets of medicine, supposedly to treat high blood pressure, although he did not have high blood pressure disease. He would be held down and forced to take the medicine if he resisted. His wife said that he suffered from a number of side effects including muscle pain, blurred vision and brain fog. He was arrested and transferred to a detention centre in January 2016 and eventually released following a secret trial in May 2017. Throughout his time in detention he was unable to meet with lawyers appointed by his wife. On release he reported the use of forced medication which seemed to temporarily affect his eyesight and limbs. Efforts by lawyers representing detained Li to seek procuratorate review of the decision to hold him in RSDL were repeatedly rebuffed.

Human rights lawyer SUI Muqing (隋牧青) was held under RSDL on suspicion of ‘inciting subversion of state power’ from July 10, 2015, when police seized him from his home, until his release on bail on January 6, 2016. Originally held on suspicion of ‘picking quarrels and provoking troubles’, Sui was

interrogated for four or five days straight while detained. His interrogators used a spotlight and shone it directly in his eyes to stop him from going to sleep during questioning. He described the pain from the lack of sleep and constant interrogations as like being ‘roasted by a fire, while at the same time feeling extremely cold’. It was so painful he thought that he was dying.

Activist TANG Zhishun (唐志顺) was detained after police caught him trying to help Wang Yu’s son escape China into Myanmar in 2015. While Tang endured physical torture, including hours in the dangling chair<sup>3</sup>, he wrote he was most affected by police threats to his family – they threatened to kill his mother, sister, wife and daughter, even if they were not in China. Tang began focusing on rights defense issues after his home was demolished in 2006. He wrote a training manual to assist others in defending land rights, helped eight villages in Beijing whose homes were threatened with demolition, and helped found a public welfare NGO.

WANG Yu (王宇) was a well-known lawyer who had been involved in a number of high-profile political cases, including in 2014 a case related to sexual abuse of schoolchildren in Hainan Province. She had also served as Cao Shunli’s lawyer, during her disappearance and detention linked to participation in China’s second-cycle Universal Periodic Review. Wang was placed in RSDL on an unknown date after her disappearance on July 9, 2015, on charges of ‘inciting subversion of state power’. She was subjected to various forms of ill treatment while in detention, including RSDL. For example, on the floor of her cell there was a painted 40x40 cm square; she was instructed she must sit within this square, without extending her arms and legs beyond the square. Failure to do so would result in punishment. On one occasion, she was forced to strip in her cell when female guards pushed her to the ground and removed her clothes. She was asked to stand naked and turn around. Her request to do the search in another room without surveillance cameras was denied. After she complained about this treatment, her interrogator locked her in shackles and handcuffs. She eventually submitted to filmed forced confessions, which were aired in October 2015 and on July 31, 2016.

Lawyer XIE Yang (谢阳) was seized by police from a hotel in Hunan province on July 11, 2015 and then put under RSDL. Changsha City police formally arrested him on January 9, 2016 on charges of ‘inciting subversion of state power’ and ‘disrupting court order’. While detained, Xie was forced to sit in a ‘dangling chair’ for up to 20 hours a day for days on end. Xie was not allowed to adjust his position on the chair, if he tried to move, the guards would punish him. They would also interrogate Xie while he was sitting in the chair and blow cigarette smoke in his face. Sometimes they would throw Xie off the chair to a corner of the room not covered by the surveillance cameras where they would punch and kick him but avoided his face so the bruises would not show.

Rights lawyer XIE Yanyi (谢燕益) was forced to sit on a block for 12-16 hours a day without moving. He was not allowed to support himself with his hands. He had to sit with his chest out, head up, back straight, hands on knees without moving from 6am to 10pm. He was in such pain he could no longer urinate. Xie was never formally held under RSDL, but was in an undisclosed location from his seizure on 12 July 2015 until his formal arrest on charges of ‘inciting subversion of state power’ on January 8, 2016.

Beijing lawyer ZHANG Kai (张凯), male, was released on March 23, 2016, approximately one month after he was placed under criminal detention on February 26, 2016. Prior to that, Zhang had been held for six months under RSDL, before state media broadcast his televised ‘confession’ on February 25, 2016. In the confession, Zhang ‘admitted’ to having ‘damaged national security’ through his actions, and urged Chinese lawyers not to accept financial support from abroad. Zhang’s televised confession followed a pattern of ‘confessions’ made by incommunicado detainees. After his release, Zhang was

---

<sup>3</sup> A dangling chair is a stack of stools that are high enough to prevent the feet touching the ground. Sitting on the chair restricts blood flow and causes the legs and back to swell and become very painful.

reportedly put under house arrest for a period of time. He is restricted from freely traveling, meeting with friends, or contacting supporters.

Activist ZHEN Jianghua (甄江华) was criminally detained by Zhuhai, Guangdong police on September 2, 2017 on suspicion of ‘inciting subversion of state power’ before being transferred on an unknown date to RSDL. Police only informed his lawyer in December 2017 of the change in criminal coercive measures. Zhuhai police have denied Zhen all meetings with his lawyers and threatened his family to not speak publicly about his case. On March 30, 2018 – more than six months after Zhen had first been detained – police informed the lawyer that Zhen had been formally arrested. Police informed the lawyer in April that he had been ‘dismissed’ by Zhen but provided no evidence the decision was voluntarily made. Zhen’s current location is still unknown, though he is believed to have been moved to a detention centre in Zhuhai.

### **3. Direct and indirect impacts on internationally-recognized human rights**

#### Enforced or involuntary disappearance

China is a signatory to the International Convention on Civil and Political Rights, and a State Party to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment. Although China is not a signatory to the Convention on Enforced Disappearances, the delegation expressed their support in principle during the drafting of the UN Declaration on the Protection of All Persons from Enforced Disappearances at the UN General Assembly, and were present for the adoption by consensus.

At the UN Human Rights Council, China has regularly upheld the prohibition against enforced or involuntary disappearances. Most recently, in September 2017, the delegation asserted that ‘China has always supported the international community’s efforts to eliminate and prevent enforced disappearance. We believe all countries should prevent, combat and punish enforced disappearances’.<sup>4</sup>

The Special Procedures have previously made clear that RSDL may violate China’s human rights obligations and commitments regarding enforced disappearances. The WGEID expressed concerns about the 2012 amendments to the CPL,<sup>5</sup> and expressed ‘deep concern... at the wider implications of Article 73 of the Criminal Procedure Law’ upon its adoption, noting that ‘its provisions for residential surveillance to be imposed in a place other than the subject’s home, without specifying the need to inform relatives or legal representatives of the subject of the location of their detention, in light of the possibility that it may put individuals at risk of enforced disappearance... could potentially expose them to other grave human rights violations’.<sup>6</sup>

The Special Procedures have since reiterated their concern, in the case of lawyer JIANG Tianyong, about ‘the compulsory criminal measures, including the “residential surveillance at a designated location” brought against [him], which appear to be related to his longstanding human rights work’,<sup>7</sup> and have indicated that RSDL could contradict the UN Declaration on Disappearances, specifically Art. 2, 3, 7, 10 and 12.<sup>8</sup>

---

<sup>4</sup> UN WebTV, from 11 September 2017.

<sup>5</sup> A/HRC/19/58/Rev.1, paras. 99-104 and 123

<sup>6</sup> JUA CHN 1/2013

<sup>7</sup> JUA CHN 15/2016

<sup>8</sup> JUA CHN 3/2017

## Right to a fair trial and independence of the judiciary and the legal profession

China is a signatory to the International Convention on Civil and Political Rights. It is also a state party to several conventions in which the independence of judges and lawyers and the right to a fair trial are implicit, including the United Nations Convention against Torture and the Convention on the Rights of the Child.

In January 2018, China hosted a cross-regional seminar with the UN Office on Drugs and Crime to discuss implementation of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.<sup>9</sup> The Principles recognise that legal aid is essential to the enjoyment of the right to a fair trial. China was also a member of the Human Rights Council in June 2015 when the Council passed 29/6 on 'Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers'. The Chinese government recently stated: 'In safeguarding international fairness and justice, China firmly upholds the basic principles of international law with the United Nations Charter at its core'.

The use of RSDL raises serious concerns with respect to the independence of judges and lawyers and the right of 'consumers of justice' to impartial justice. The 2017 Report of the Special Rapporteur on the independence of judges and lawyers underlines the Special Rapporteur's concerns at the lack of 'clear limits' to restrictions on judicial independence in cases involving the protection of national security. A particular concern with respect to RSDL is the excessive usage of police prerogatives in national security cases. Other concerns are the lack of any meaningful separation of powers between the police and the procuratorate, which has the power to approve the use of RSDL; and restrictions on the role of lawyers and the bar association thereby undermining the independence of the legal profession.

Provisions in the Chinese Criminal Procedure Law which allow differential treatment of those persons accused of terrorist activities, major bribery or endangering national security pave the way for reduced protections including the use of RSDL. There is no meaningful or accountable review by a judicial agency of the decision to detain someone under RSDL. The procuratorate review is perfunctory and unaccountable with the detainee unrepresented and family members uninformed.

Persons held in RSDL are, in principle, allowed to appoint a defence lawyer. However, in cases involving endangering state security, terrorism or serious bribery, the lawyer must obtain permission from the investigating authority (Article 37). In all of our documented case, detainees held in RSDL have not been granted access to lawyers. This situation contrasts with the improved access, following the 2012 CPL, to defence counsel for detainees in detention centres. In most cases involving human rights defenders, when after six months they are transferred to a pre-trial detention centre, lawyers appointed by family members are denied access and told they have been dismissed. The bar associations lack independence from the Ministry of Justice and are unable to challenge the identification of lawyers with their clients in the kind of politically sensitive cases which are subject to RSDL.<sup>10</sup>

---

<sup>9</sup> [https://www.unodc.org/unodc/en/frontpage/2018/January/unodc--china-hold-cross-regional-seminar-on-legal-aid-in-criminal-justice-systems--photo\\_-unodc.html](https://www.unodc.org/unodc/en/frontpage/2018/January/unodc--china-hold-cross-regional-seminar-on-legal-aid-in-criminal-justice-systems--photo_-unodc.html)

<sup>10</sup> In JUA CHN 10/2015 the Special Procedures experts highlight, specifically with regard to allegations of harassment of Sui Muqing, that 'the Basic Principles also state that lawyers shall not suffer, or be threatened with, prosecution or other sanctions for any action taken in accordance with recognized professional duties (Principle 16) and that they shall not be identified with their clients or their clients' causes as a result of discharging their functions (Principle 18)'.

In July 2015 UN experts urged China to halt the widespread detentions of lawyers undertaken as part of the '709' crackdown; several of the lawyers and activists detained in that crackdown were held in RSDL. In none of these cases did the detainees have access to a lawyer while under RSDL. UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein voiced his concern in February 2016 that the Chinese authorities 'too often reflexively confuse the legitimate role of lawyers and activists with threats to public order and security'. In their response to the High Commissioner's statement the Chinese government refuted the allegations and referred to 'so-called 'lawyers' as criminals.

#### Right to be free from torture and other cruel, inhumane or degrading treatment

China is a State Party to the UN Convention against Torture, and underwent a review of its 5<sup>th</sup> periodic report to the UN Committee against Torture in November 2015. The Committee's Concluding Observations, issued on 9 December 2015, clearly address a range of concerns about due process and fair trial protections.

China's initial efforts in 1988 to curb the use of torture were taken not in law but in interpretations issued by the Procuratorate, and those interpretations have focused on laying the ground for excluding evidence extracted by torture at trial. Since then, parts of those interpretations have been inserted into the revised Criminal Law and Criminal Procedure Law, but not all. As they stand today, the Criminal Law and Criminal Procedure Law fail to define torture in accordance with the Convention, leaving many forms of torture not prohibited and not criminalized. For example, the definition of torture does not include any form of mental torture, such as threat to family, long periods of solitary confinement, long periods of interrogation, etc. It also does not define torture outside of the investigatory phase, for the purpose of extracting confessions or evidence.

Specific to RSDL, the Committee stated:

The State party should repeal, as a matter of urgency, the provisions of the Criminal Procedure Law that allow suspects to be held de facto incommunicado in residential surveillance at a designated location. In the meantime, the State party must ensure that procuratorates promptly review all the decisions of residential surveillance taken by public security officers, ensure that detainees who are designated for potential prosecution are charged and tried as soon as possible, and those who are not to be charged or tried are immediately released. If detention is justified, detainees should be formally accounted for and held in officially recognised places of detention. Officials responsible for abuses of detainees should be held criminally accountable.

In JUA CHN 10/2015, the Special Procedures include the following admonition:

We would like to draw the attention of your Excellency's Government to paragraph 27 of General Assembly Resolution 68/156, which, '[r]eminds all States that prolonged incommunicado detention can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person'.

JUA CHN 3/2017, addressing the cases of Mr JIANG Tianyong, Mr LI Heping, Mr WANG Quanzhang and Mr XIE Yang, requested the following information from the Government, in an effort to address allegations of torture and ill-treatment experienced by each of the individuals while in RSDL:

- information on any measures taken to ensure the protection of the physical and psychological integrity of the above-named individuals, and in particular during their RSDL, as per China's obligations under the CAT
- indication of measures being taken to investigate the allegations of torture and other ill-treatment in a prompt, impartial and effective manner, and to ensure that any public officials involved in such acts are prosecuted, according to existing law
- and, where applicable, the details and the results of any such investigation, and judicial or other inquiries carried out in relation to the above-mentioned allegations.

While in RSDL, as clarified in the illustrative cases above and the summary numbers below, torture and ill-treatment remain common experiences. According to in-depth qualitative interviews, this has included solitary confinement (all subjects); sleep deprivation (nearly 90% of cases); and withholding of medical treatment (roughly half of cases).

#### Right to the highest attainable standard of health

China is a State Party to the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture, among other relevant treaties.

In the Concluding Observations from its review of China in May 2014, the UN Committee on Economic, Social and Cultural Rights expressed its concern about reports that detained Chinese activists and lawyers have been deprived of medical care as a form of government reprisal. Recognizing this serious issue, the Committee urged China to guarantee these individuals 'have adequate access to health care in all circumstances'. More recently, the Special Procedures have reminded the Chinese government that

State Parties [to ICESCR] should take all the necessary steps in order to ensure that the right to health shall be exercised without discrimination of any kind (art. 2.2) and should refrain from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (General Comment No. 14, para. 34). Furthermore, the Mandela Rules recognise that the provision of health care for prisoners is a State responsibility...<sup>11</sup>

Interview subjects who were subject to RSDL reported forced medication (TANG, WANG, and XIE, among others). In other cases, prolonged pre-trial detention has also been characterised by lack of access to medication for pre-existing conditions.

A press release by the UN Special Procedures on 23 March 2018 raised clear concerns about the treatment of JIANG Tianyong, who supporters suspect 'may have been drugged' during his time in detention.

#### Women human rights defenders

China is a State Party to the Convention on the Elimination of Discrimination against Women and the International Covenant on Economic, Social and Cultural Rights, among other relevant treaties.

Concerns about the situation for women human rights defenders in the country had been raised by the Working Group on Discrimination against Women in Law and Practice, during their 2013 visit to

---

<sup>11</sup> JUA CHN 8/2016 addressing the case of Dr WANG Bingzhang,

the country. At the time, the experts noted that ‘the goal of gender equality cannot be fulfilled in China unless women’s rights defenders can function in an environment of freedom and transparency in national and international forums’.<sup>12</sup> They further recommended that the Chinese government ‘provide legal protection for all defenders of women’s human rights and autonomous women’s groups and coalitions in civil society to allow them to advance implementation of the law...’<sup>13</sup>

The Special Procedures Communications have also raised concerns about reports of harassment by public authorities of Ms WANG Qiaoling (wife of LI Heping) and Ms LI Wenzu (wife of WANG Quanzhang). The experts noted that protections under Principles 16 and 17 of the UN Basic Principles on the Role of Lawyers include, ‘of course, the guarantee that no reprisals should be taken against the families of lawyers for conducting their professional duties’.<sup>14</sup> Further, they ‘express concern regarding the harassment and surveillance of Ms. WANG and Ms. LI’ as a result of their human rights work.<sup>15</sup>

### Right to an education

China is a State Party to the Covenant on Economic, Social and Cultural Rights and to the Convention on the Rights of the Child. In 2013, the Committee on the Rights of the Child urged China to ‘end all forms of intimidation and retaliation against families seeking accountability for violations of children’s rights and against children of human rights defenders’.<sup>16</sup>

The Committee on Economic, Social and Cultural Rights has raised concerns about ‘reports of instances where labour and human rights activists, and their lawyers, have been victims of repression and reprisals’ and has urged China to ‘guarantee that human rights and labour activists, as well as their lawyers, have adequate access to health care in all circumstances, and that their children fully enjoy the right to education’.<sup>17</sup>

In the context of the Human Rights Council, China has welcomed efforts to promote the right to education (June 2016) and noted that education is the basis for social equality and that government attaches high importance to the right to education, which ‘lets children’s dreams come true’. China, they continued, will continue its efforts to exchange with other countries to work toward the common effort to realize the right to education.

Information reported in the Special Procedures Communications include:

Ms. Li’s three-year-old son has also been the subject of harassment. The police reportedly notified all the kindergartens in the neighborhood not to enroll Ms. Li’s son under any circumstance. Subsequently, two kindergartens refused to enroll Ms. Li’s son, despite the fact that Ms. Li had already signed a contract with them and paid a tuition fee.

On 18 August 2016, Ms. Wang was forced to leave the new apartment she had found, allegedly after the police threatened her new landlord. Since then, Ms. Wang has been

---

<sup>12</sup> Para. 67

<sup>13</sup> Para. 108(c)

<sup>14</sup> JUA CHN 9/2016

<sup>15</sup> JUA CHN 5/2017, with changes to names for accuracy

<sup>16</sup> CRC/C/CHN/CO/3-4 (CRC, 2013), which continues ‘[and to end] intimidation and harassment of families [...] of human rights defenders and their families are promptly and independently investigated, and that those responsible for such abuses are held accountable’.

<sup>17</sup> E/C.12/CHN/CO/2, para. 38

forced to stay in different temporary accommodations. She had to send her daughter to her friends' home and her son to a boarding school.<sup>18</sup>

#### Right to a private life

According to the Special Procedures, they received information alleging that 'on 27 March 2017, Ms. LI took her son to the hospital for medical consultation and was accompanied by Ms. WANG. They were followed by at least five security officers. That afternoon, Ms. LI, together with her little son, went to stay in Ms. WANG's apartment. In the evening, police in the neighborhood came to the apartment'.<sup>19</sup> The information continues:

On 9 April 2017, Ms. LI was followed by security agents as she took a walk with her parents in the Shijingshan District. Later that day, she was similarly followed by agents as she took her son to the dentist.

The experts make clear to the government that they also read this information in light of 'articles 12 and 19 of the Universal Declaration of Human Rights, largely regarded as reflecting customary international law, which provide for the rights to privacy and freedom of opinion and expression, respectively'. The experts deem that this harassment and surveillance 'appears to have the purpose of intimidating them into ending their legitimate campaign to denounce the detention and prosecution of their human rights lawyer husbands'. Finally, they call on the Chinese government to 'provide detailed information on the allegations of close surveillance and harassment currently being conducted against Ms. WANG and Ms. LI, as well as on the authorities responsible for these acts and their motives'.<sup>20</sup>

#### Rights to freely exercise peaceful assembly and association; to freedom of opinion and expression; and to protect and promote internationally recognised human rights

China is a signatory to the International Covenant on Civil and Political Rights. However, it restricts the space for the exercise of these rights and criminalises those who do exercise them.

The UN Special Procedures noted that the 'first reported instance of use of Article 73 of the CPL' was against Mr ZHU Chengzhi, an activist who repeatedly called for an investigation into the death of labour rights defender LI Wangyang.<sup>21</sup>

The Communication concludes:

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2... Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms...

---

<sup>18</sup> JUA CHN 9/2016

<sup>19</sup> JUA CHN 5/2017, with changes to names for accuracy

<sup>20</sup> Ibid.

<sup>21</sup> JUA CHN 1/2013

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms...

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.<sup>22</sup>

A later Communication on CHEN Yunfei asserts that his arrest on March 26, 2015 may have been in retaliation for his efforts to, with others, commemorate the victims of the June 4, 1989 massacre on Tiananmen Square. While Mr Chen was charged 10 days later, on April 4, with ‘inciting subversion of state power’ and ‘picking quarrels and provoking trouble’, his lawyer SUI Muqing (mentioned above) was not able to have access to him. Sui himself was placed in RSDL on July 10, 2015, apparently because of his efforts to communicate with his client.<sup>23</sup>

In its response to JUA 3/2017, the Chinese government did not directly address concerns of RSDL or incommunicado detention. Rather, they defended their actions to criminalise (and prosecute) various forms of the exercise of freedom of opinion and expression, stating:

If Mr. Li [Heping] and the others have been the subject of action taken in accordance with the law by bodies of the Chinese justice system, it is not because they are so-called “rights defenders”, nor is it because they defended the legal rights of persons involved in court proceedings, but because, for an extended period, under the banner of attorneys and using the pretext of being “rights defenders”, they carried out illegal criminal activities aimed at overthrowing the fundamental State system established by the Chinese Constitution. They... made use through their planning and organization of a number of issues and cases of popular concern to incite others to illegally gather and stir up trouble in judicial bodies and in public places; incited unsuspecting people both online and offline to be hostile toward and oppose the judicial authorities and bodies of State power.

... The criminal acts perpetrated by these people violated the law. The way their cases have been handled fully gives effect to the principle of the equality of all persons before the law; it is also consistent with the practices of the overwhelming majority of countries and is in keeping with the related provisions of United Nations conventions.

#### Minority rights and freedom from discrimination

China is a signatory to the International Covenant on Civil and Political Rights and a State Party to the Convention on the Elimination of Racial Discrimination and the International Covenant on Economic, Social and Cultural Rights.

The CESCR said in 2014:

---

<sup>22</sup> Ibid.

<sup>23</sup>JUA CHN 10/2015

The Committee urges the State party to take all necessary measures to adopt comprehensive anti-discrimination legislation in line with article 2, paragraph 2, of the Covenant. The Committee recommends that the State party strengthen its efforts to combat all forms of discrimination against ethnic minorities, particularly in the western provinces and regions, and to ensure their enjoyment of all economic, social and cultural rights, including legal work, social security, adequate housing, public health care, and education.

In information provided to the Working Group on Arbitrary Detention, summarised in their Opinion 69/2017 on Tashi Wangchuk, ‘the Constitution of China and the Regional Ethnic Autonomy Law, which stipulate that all minority nationalities have the right to use their own spoken and written languages. The source notes that, in China, the Law on the Standard Spoken and Written Chinese Language, the Compulsory Education Law and the National Plan for Medium and Long-Term Education Reform and Development (2010-2020) also provide for the language rights of minority groups’. The experts continue, noting that ‘States are obliged under international law to adopt specific measures that ensure meaningful access to that right by certain groups of detainees, including persons belonging to ethnic, cultural or linguistic minorities’. While not formally placed in RSDL, Tashi Wangchuk was held in similar circumstances, specifically incommunicado detention; the Working Group ultimately determined that Tashi Wangchuk’s detention was arbitrary according to categories II and III, but could not determine whether he was also subject to this treatment on discriminatory grounds (e.g., category V) based on his ethnicity.

#### **4. Conclusion and Recommendations**

In summary, RSDL is the outcome of a criminal justice system which has tolerated, and indeed sanctioned, the use of informal places of detention. While the 2012 CPL places some restrictions on the situations in which residential surveillance in a designated location can be used, it has also helped to formalise the emergence of a dual track system in which certain categories of persons can be treated distinctly and with fewer human rights protections. All persons facing allegations of endangering national security, terrorist activities or major bribery face the risk of six months incommunicado detention under RSDL.

The legal justification for RSDL is to bypass detention time limits or to facilitate an investigation (CPL Article 72). In the current context in China, however, such investigations are generally not independent, and focus on charges which are often politically motivated. In addition to this problematic justification, detention in the form of RSDL inherently places detainees at high risk of torture and CID, and can lead to violations of other, related rights.

The broad-ranging nature of violations linked to the use of RSDL has not only been demonstrated by the Special Procedures Communications cited above, but also by the illustrative cases provided to supplement the analysis. It has received increased attention from government delegations in the context of the UN Human Rights Council, with the EU Special Representative for Human Rights raising concerns about ‘the arbitrary arrests and detentions of many human rights defenders or lawyers’ in China<sup>24</sup>, while the delegation of Germany noted the violations of ‘the right to a fair trial, manifest in the secret detention called “residential surveillance in a designated location”’.<sup>25</sup>

---

<sup>24</sup> [https://eeas.europa.eu/delegations/un-geneva/40477/hrc-37-high-level-segment-statement-he-mr-stavros-lambrinidis-eu-special-representative-eusr\\_en](https://eeas.europa.eu/delegations/un-geneva/40477/hrc-37-high-level-segment-statement-he-mr-stavros-lambrinidis-eu-special-representative-eusr_en)

<sup>25</sup> Accessible on HRC Extranet, 37<sup>th</sup> session, Wednesday 14 March 2018.

There is no official quantitative data available to demonstrate the use of RSDL, as data transparency in much of the criminal justice system is virtually non-existent. While our submission has focused on human rights defenders who are, generally, known to our organisations, we suspect that the use of RSDL is much more extensive when including other target groups, namely individuals charged with ‘terrorist activities’ and crimes of ‘major bribery’.

However, one-on-one and private interviews conducted by one of the authors with those released from detention show this with stark numbers. Based on a data set of 94 interviews, RSDL happens across China but with a concentration in certain provinces. Jiangxi, Guangdong, Zhejiang, Tianjin and Beijing combined account for a total of 84% of reported cases.

Among those 94 interviewed, 28% were lawyers or legal professionals; 38% identified as activists; and 12 percent – or 11 individuals – were family members guilty by association. About half of the interviewees answered more detailed questions, showing that:

- In 50 of 80 cases, or 59%, involved crimes related to national security
- 44 of 44 interviewees who answered about access to a lawyer said they had had none while in RSDL
- Only 1 interviewee out of 28 indicated that s/he was able to have access to a family member; in the remaining 27 cases, the family not only did not have access to the detainee, but was not informed of his/her whereabouts
- Despite this, 23 of 28 interviewees said that they recorded a confession, of which 19 were aired on media or the internet
- 21 of 22 interviewees indicated that following release from RSDL (without charge), they were subject to other forms of deprivation of liberty, including house arrest, forced travel, or supervision

We welcome the recognition of the WGAD, in their Opinion 69/2017, that in its 25 year history the Working Group ‘has adopted 84 opinions in relation to China. In 77 of those cases, the Working Group found the deprivation of liberty to be arbitrary<sup>26</sup>... and recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity’.<sup>27</sup>

In light of these facts, we urge the Special Procedures to take the following steps:

- Call on the Chinese government to end the use of all unofficial places of detention
- Specifically press the Chinese government to urgently end the use of ‘residential surveillance in a designated location’
- Urge the Chinese government to end discretionary powers of investigatory agencies or ‘organs’ (such as the procuratorates and police) to deny access to counsel
- Promote awareness among Chinese officials of the OPCAT and the Istanbul Protocol
- Submit any conclusions or findings to other UN human rights mechanisms, including treaty bodies of treaties to which China is a State Party, and the United Nations report to the Universal Periodic Review
- Encourage members and observers of the Human Rights Council to take into consideration this report in their preparations for the third cycle Universal Periodic Review of China in November 2018.

---

<sup>26</sup> Put differently, this means that until the end of 2017, 92% of all cases from China reviewed by the Working Group on Arbitrary Detention met at least one of the criteria necessary to consider a detention arbitrary.

<sup>27</sup> See, for example, opinion No. 47/2012, para. 22.