



Portrait of Sun Zhigang,  
by Lau Ka-kuen.  
PC: South China  
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## Systematising Human Rights Violations

Coercive Custody  
and Institutionalised  
Disappearances in China

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*The People's Republic of China has a long history of abusive coercive custody—from administrative reeducation through labour to forced incarceration in police-run psychiatric facilities and extra-legal black jails. Through recent legislative and constitutional amendments China has attempted to systematise human rights abuses behind the veneer of the rule of law. But in institutionalising arbitrary and secret detention, China is in stark violation of international human rights law and fundamental norms.*

Although the People's Republic of China has a long history of coercive custody—from administrative reeducation through labour to forced incarceration in police-run psychiatric facilities and extralegal black jails—over the past few years the Chinese authorities have institutionalised arbitrary and secret detention as a fundamental feature of governance through a series of legislative and constitutional amendments. This is epitomised in the euphemistic 'Residential Surveillance at a Designated Location' system (指定居所监视居住, RSDL), defined in the 2012 Criminal Procedure Law (CPL), and the new *liuzhi* system (留置), which came into being with the

2018 National Supervision Law (NSL). Despite contravening a host of international norms, by instituting these systems within China's legal code, the Chinese Party-state is attempting to mask its human rights violations behind the veneer of the rule of law.

For well over a decade, China has arguably pursued a model of rule of law based more on the total number of laws passed rather than compliance with international norms. Needless to say, this is not an acceptable approach from the perspective of international law. Under Xi Jinping, the Party has further weaponised notions of the rule of law to exert control, institutionalising serious human rights violations. Of course, the legislative changes that gave rise to RSDL and *liuzhi* did not appear in a vacuum, nor can they be attributed to Xi Jinping's leadership alone. They have evolved from a tradition of administrative or extralegal measures. It is by examining these preceding systems that it is possible to show the evolving abusive nature of arbitrary and secret detention and better understand its systematisation.

## A Brief History of Coercive Custody in China

A reasonable starting point for an analysis of the evolution of secret, coercive custody in China is the death in custody of a 27-year-old migrant worker named Sun Zhigang in March 2003. He had been held in secret for three days in Guangzhou under the then administrative procedure known as 'Custody and Repatriation' (收容遣送), which permitted police to detain someone without a court decision and without notifying anybody. At that time, this procedure was often applied to migrant workers or petitioners. Upon Sun Zhigang's death, the Custody and Repatriation system attracted widespread public criticism. Following campaigning by human rights lawyers Xu Zhiyong, Teng Biao, and others, in

June 2003 the Chinese authorities announced the abolishment of the 1982 regulation that had established the system (Hand 2006).

However, within a few years reports of an equally abusive and even more secretive detention system emerged. 'Black jails' (黑监狱) arguably performed the same 'social stability maintenance' (维稳) purpose of secretly controlling petitioners and human rights defenders that had been lost with the abolishment of Custody and Repatriation but, unlike the previous administrative measures, this new system was entirely extralegal. Held in 'private' facilities such as hotels, guesthouses, and restaurant back rooms, individuals who disappeared into black jails were denied fundamental habeas corpus rights. Torture was common. The detained were neither permitted legal representation nor contact with family members. The Chinese authorities tried hard to conceal their existence to the point that, in September 2007, then-Reuters' correspondent Chris Buckley was tackled and beaten after having snuck into a black jail to interview its detainees (Buckley 2007). Leading up to the 2009 Universal Periodic Review of China before the United Nations Human Rights Council, my former organisation, the Chinese Urgent Action Working Group, among others, campaigned against black jails. I myself spent months prior to the session meeting with foreign diplomats in Beijing to raise the issue. Ultimately, despite evidence and victims' testimonies, China categorically denied the existence of black jails (UPR 2009).

By the time of the 'Jasmine Revolution' (茉莉花革命) in 2011, China had expanded its reliance on secret detention through black jails. Among many others, it also targeted well-known lawyers such as Tang Jitian and Teng Biao, as well as international artist Ai Weiwei. By the end of the year, the New York-based Chinese Human Rights Defenders Network stated in its annual report that 2011 had been a year characterised by the 'extensive use of extralegal detention, and enforced disappearance and torture' (CHRDN

2011). The United Nations Working Group on Enforced or Involuntary Disappearances declared a ‘pattern of enforced disappearances in China, where persons suspected of dissent are taken to secret detention facilities’ (UN News 2011). Still unresolved by the time of the 2013 Universal Periodic Review, the official summary of stakeholder information compiled by the Office of the High Commissioner for Human Rights, quoting the New York-based NGO Human Rights in China, noted ‘a resurgence of informal, extra-legal political institutions that advanced predatory and repressive government policies, including “black jails” and enforced disappearances used to target activists, petitioners and dissidents’ (UN General Assembly 2013). China again denied their existence.

It was clear that while black jails served their purpose in maintaining the equilibrium of coercive custody lost with the abolishment of the Custody and Repatriation system, growing international condemnation and their extralegal nature posed an obstacle for the Chinese authorities as they pursued their hollow rhetoric of the rule of law. As it happened, the years from 2011 to 2013 also saw major changes in Chinese criminal statutes, which arguably presented an opportunity for China to legislate previously extralegal measures in an attempt to mask their inherent abusiveness behind so-called legal reform. RSDL was born in such a context, with the amendment of the CPL in March 2012.

## Torture and Disappearances under the RSDL System

RSDL applies to crimes of endangering national security, terrorism, or serious bribery, and is supposed to be applied only when police determine the suspect cannot remain in their own residence during the investigation phase. But, as documented by my organisation

Safeguard Defenders and others in a submission to the United Nations, it is frequently used to arbitrarily detain peaceful human rights defenders in secret for lengthy periods of time, just as with black jails.

By law, RSDL may be imposed for up to six months but authorities often resort to tricks to prolong disappearances, including registering someone in a detention facility under a false name to make it impossible for lawyers or family to locate them (Safeguard Defenders 2019a). Following six months in RSDL, in politically-sensitive cases authorities may announce formal charges and move the individual into criminal detention, but often refuse contact with a lawyer or family, effectively prolonging incommunicado detention. This contravenes all relevant international norms. The United Nations General Assembly has held that ‘prolonged incommunicado detention or detention in secret places 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’ (UN General Assembly 2014)—a sentiment which has been further emphasised in the Istanbul Protocol (OHCHR 2004). The case of human rights lawyer Wang Quanzhang, a former colleague of mine, is emblematic of such lengthy secret detention. Following six months of incommunicado RSDL, he was detained in secret, lacking contact with the outside world, for three and a half years before he even faced a trial (Caster 2018).

The United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as the Nelson Mandela Rules (UN General Assembly 2016), hold that every prisoner should have the right and ability to immediately inform their family about their imprisonment. This is not the case with the RSDL system in China. Although an earlier draft of the CPL held that family members should be notified ‘of the reason for and location of the residential surveillance’ (Dui Hua 2012), this requirement was removed in the final version. The current law only calls for notifying family that someone has been placed

under RSDL, but does not require the police to divulge the reason or location. However, police seize on exceptions in the law to overlook even this basic procedural safeguard against enforced disappearances and torture, and often do not notify family until months later. This is what happened in the recent case of labour rights defender Fu Changguo (Caster 2019).

Although Chinese law provides for the right to meet and communicate with a lawyer of one's choosing, in cases of accusations of endangering national security that are most often used to detain human rights defenders, this right is conditional on the permission of the investigating authority. This poses an immediate problem in light of the fact that the investigating authority is often the same party responsible for the detention, interrogation, and abuse of the detained individual. It is a *prima facie* denial of the right to a lawyer, which almost always means a denial of the right to a fair trial as called for under the International Covenant on Civil and Political Rights.

In cases involving human rights defenders, the Chinese authorities have frequently gone so far as to falsify documents by individuals held in incommunicado detention to claim they have forfeited their right to select lawyers of their own choosing. Most emblematic of this abusive practice is perhaps the case of human rights lawyer Yu Wensheng. Before his disappearance, Yu had recorded a video in which he said, among other things, that he would never give up his right to select his own lawyer unless he was tortured. Brazenly, after months in secret detention police claimed Yu had denounced his trusted lawyer and opted for state-sponsored counsel. The United Nations has found Yu Wensheng's detention to be arbitrary due to his incommunicado status, denial of due process, and patent targeting over his human rights work (OHCHR 2019).

In its 2015 review of China, the United Nations Committee Against Torture called on China to repeal, as a matter of urgency, the provisions of the CPL that allowed for incommunicado detention under RSDL (CAT 2015). In August 2018, responding to a submission filed by my

organisation Safeguard Defenders, along with the International Service for Human Rights, Chinese Human Rights Defenders Network, and the Rights Practice, a group of ten United Nations Special Procedures—i.e. independent experts serving under the Human Rights Council—released a joint statement on RSDL.

Among other issues, they found that exceptions set out in the Chinese law make placement in RSDL tantamount to an enforced disappearance (OHCHR 2018). They also raised concerns over torture. One of the major human rights concerns associated with secret detention is precisely that the individual, kept at an unknown location outside any legal or procedural safeguard, is at a high risk of torture. With numerous cases, we have seen that torture within RSDL is common, as it was under black jails and similar mechanisms. This includes sleep deprivation, prolonged stress positions, physical and psychological abuse, and more. A prime example of torture in RSDL is that of Hunan-based human rights lawyer Xie Yang, who while detained for over two years between 2015 and 2017 was made to withstand stress positions, sleep deprivation, and physical assault (Phillips 2017).

## From RSDL to *Liuzhi*

In as much as RSDL allowed China to fold the abusiveness of extrajudicial black jails into the statutory gymnastics of the CPL, so too did it arguably provide a template for regulating and expanding other equally abusive but previously extrajudicial and intra-Party disciplinary measures into a Constitutional amendment and new legislation in 2018. Before establishing the *liuzhi* system, the Central Commission for Disciplinary Inspection (中国共产党中央纪律检查委员会, CCIDI) oversaw its shadowy predecessor, the *shuanggui* (双规) system, which like the other forms of coercive custody mentioned above facilitated serious human rights violations, including torture and other ill-treatment (Human Rights Watch 2016).

Being placed under *shuanggui* meant ending up in ‘the worst place in the world’, according to the wife of one of its victims (Vanderklippe 2017). But, similar to black jails, *shuanggui* had no legal basis and, as such, clearly did not fit with Xi Jinping’s rhetoric of the rule of law.

This began to change in 2016 with the rollout of pilot programmes in Beijing, Shanxi province, and Zhejiang province, which were then expanded in 2017 (China Daily 2018). In Beijing alone, according to the Chinese Government’s statistics under the pilot *liuzhi* system the number of officials put under passive supervision swelled from around 200,000 to nearly one million (China Daily 2018). Of course, these figures do not refer to people in actual detention but are a clear indication of how that the pilot and later legal mechanism expanded the target demographic of potential secret detentions massively to include all staff of Party organs, legislatures, courts, some judges, political advisory bodies, managerial staff at state-owned enterprises and public institutions such as hospitals or universities, and others.

When the National People’s Congress convened in March 2018, the pilot *liuzhi* became law through the passing of the NSL that established a National Supervision Commission (国家监察委员会), which was made into an official state organ pursuant to an amendment to the Constitution (Xinhua 2018). With no substantive improvements over the abusiveness of *shuanggui*, and in some ways creating an even more abusive system, the purpose was ostensibly to unify previously disjointed supervisory functions. However, arguably the main reason was again to take a highly abusive system for coercive custody that previously existed outside legislative authority and legitimise it with new regulations.

*Liuzhi* under the NSL is quite similar to RSDL. The suspect can be held in custody at a designated location, for various reasons at the discretion of the investigating authority. This can last for upwards of six months, during which time the victim is often kept in solitary confinement and held incommunicado

without access to family members or a lawyer, at risk of torture and ill-treatment. Although, much like the CPL, the NSL states that *liuzhi* victims’ family or work units shall be notified within 24 hours of their detention, it also provides an exception for those cases where this might impede the investigation. This way, once again, the Chinese authorities have created a statutory exception to fundamental procedural safeguards meant to prevent enforced disappearances and torture. And in China exceptions are the rule.

As with RSDL, under *liuzhi* the victim is held in solitary confinement, with only guards and interrogators for company. This violates international norms, including the Istanbul Statement on the Use and Effect of Solitary Confinement (2008) and the Special Rapporteur on Torture (2011), which hold that prolonged isolation, defined as longer than 15 days, fundamentally violates the absolute prohibition on torture and other cruel, inhuman, or degrading treatment. Solitary confinement is only to be used in exceptional cases and as a last resort for as short a time as possible. In light of this, ahead of the 30 August 2019 International Day of the Disappeared, my organisation Safeguard Defenders sent a submission to the Working Groups on Arbitrary Detention and Enforced Disappearances along with six other Special Procedures to outline key human rights concerns with *liuzhi* (Safeguard Defenders 2019b). At the time of writing, the Special Procedures have yet to respond.

## Systematising and Legitimising Human Rights Violations

What we arguably see is a pattern emerging of China moving to unify and institutionalise certain systems of coercive custody under new laws in order to hide inherent human rights violations behind a superficial rhetoric of the rule of law. However, international law is clear

on the fundamental prohibition of torture and enforced disappearance, and on the fact that under no circumstances does domestic law supersede a state's obligations to uphold such universal human rights. In legislating abusive practices, not only is China brazenly violating its obligations under international law but it is also systematising such violations within its legal system. Gross human rights violations such as torture and enforced disappearances, especially under RSDL and *liuzhi*, have become a systematic practice and policy, organised and predictable. Arbitrary and secret detention have been institutionalised. ■