

## Convention Against Torture

# Prevention of torture: concerns with the use of ‘residential confinement in a designated residence’

Report from The Rights Practice<sup>1</sup> in relation to the fifth periodic report from China

October 2015

### Summary

This report raises specific concerns with the use of ‘residential confinement’ (also known as ‘residential surveillance’), in particular its use in a ‘designated residence’, with respect to the prevention of torture. Legal scholars and lawyers in China have, for many years, expressed the view that this type of ‘coercive measure’ is too easily open to abuse and the risk of torture. ‘Residential confinement in a designated residence’ appears to be being used to circumvent increased protective measures in criminal detention centres (看守所 *kanshousuo*). It can be used for up to six months. In practice only the issuance of a formal notification seems to distinguish ‘residential confinement in a designated residence’ from incommunicado detention.

The report provides a brief introduction to residential confinement and a discussion of some of the specific concerns. The report also introduces two cases illustrative of the lack of effective measures to prevent torture and the use of torture in residential confinement. Relevant articles in the Chinese criminal procedure law (2012) can be found in the annex.

Given the high risk of torture in the use of ‘residential confinement (surveillance)’, particularly its use in a ‘designated residence’, we concur with many lawyers and legal scholars in China that the measure should be abolished. It is also an expensive measure and, we believe, resources could be more effectively expended on improving the prevention of torture and ill-treatment in criminal detention centres (*kanshousuo*).

### Prevention of torture or ill-treatment

General Comment 2 on **article 2** of the Convention Against Torture underlines the obligation of each State party to take all legislative, administrative, judicial or other actions that are effective in preventing torture or ill-treatment.

Through our cooperation with Chinese legal scholars, officials and lawyers over the past decade we have observed and welcomed changing attitudes to the treatment of persons in detention and the need to combat the use of torture. We have been engaged with practical efforts to strengthen procuratorial oversight of detention centres, expand criminal legal aid to include access to duty lawyers and measures to try and reduce ‘extended time detention’. We have also noted new legislation to ensure the audio and visual recording of interviews as a measure to prevent coerced confessions being used as evidence. These are examples of some of the valuable initiatives Chinese legal scholars and officials have been undertaking to protect the rights of

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<sup>1</sup> The Rights Practice is a UK charity that supports the advancement of human rights. [www.rights-practice.org](http://www.rights-practice.org)

persons in pre-trial detention and help prevent the risk of torture or ill-treatment. The focus of these reforms, however, has been on the detention centre (看守所 *kanshousuo*) where the majority of persons are detained pre-trial.

This report highlights the use of a discretionary custodial measure, ‘residential confinement’ particularly when it is applied to “special cases” in a ‘designated residence’ (指定居所监视居住 *zhidingjusuo jianshijuzhu*)<sup>2</sup>. This form of pre-trial detention lacks almost all of the protective measures identified as essential by the Committee Against Torture, thus placing detainees at a high risk of torture or ill-treatment. Moreover, reports of the use of ‘residential confinement in a designated residence’ reveal that the few protective measures which do exist are not respected in practice. The practice of ‘residential confinement in a designated residence’ resembles the use of incommunicado detention or disappearances; the only distinction in many cases seems to be the issuance of notification to the families. Not only does the measure place detainees at risk of torture due to the lack of protective measures, but reports from released detainees provide evidence of the use of physical and mental torture and ill-treatment. Both continuous interrogations and solitary confinement are widely reported in accounts of the use of ‘residential surveillance in a designated residence’.

During the process of amending the 1996 version of the Criminal Procedure Law, there was a public debate about the use of residential confinement and lawyers and legal scholars expressed concern at the potential abusive practices that could result from residential confinement in a ‘designated residence’. According to one of the several National People’s Congress delegates who tried unsuccessfully to eliminate residential confinement in a designated residence, the lack of regulation governing such spaces “could very well render pointless all the hard work on the prohibition of torture and exclusion of illegal evidence”. The coercive measure was, however, retained in the revised Criminal Procedure Law.

### **Residential confinement in a designated residence**

‘Residential confinement in a designated residence’ is a particular form of pre-trial detention, provided for under the Criminal Procedure Law (CPL). Residential confinement is governed by Articles 72 to 77 of the 2012 Criminal Procedure Law and the supplementary regulations on implementation, in particular those issued by the Supreme People’s Procuratorate (SPP) and the Ministry of Public Security (MPS). Residential confinement is one of several ‘compulsory measures’ (CPL Art. 64) that may be used with respect to criminal suspects.

The 2012 CPL provides for two kinds of residential confinement: one takes place in the suspect’s place of residence, and the other in a ‘designated’ location or residence (指定居所 *zhiding jusuo*). A designated location can be used in two circumstances: when the suspect or defendant does not have a permanent domicile or for persons suspected of crimes of endangering state security, terrorist activities or especially serious bribery and where confinement in their own home may ‘impede the investigation’ (Art. 73). The law does not specify how another residence may be designated a lawful place of residence in the context of criminal procedure. Both the police and the procuratorate have the power to authorise the use of ‘residential confinement in a designated residence’. The decision must be approved by the procuratorate or public security organ at the next higher level. As paragraph 58 of China’s state report confirms, the procuratorial authorities

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<sup>2</sup> The Chinese expression 监视居住 (*jianshi juzhu*) is often literally translated as ‘residential surveillance’, but the term confinement is probably a legally more accurate translation. 指定居所监视居住 (*zhidingjusuo jianshijuzhu*) is sometimes translated as ‘non-residential’ residential surveillance (Rosenzweig) or ‘residential surveillance in a designated location’. This report will use the translation ‘residential confinement in a designated residence’.

have the 'right' (responsibility?) to exercise 'legal supervision' on whether the decision to enforce residential confinement and its implementation are lawful. Enforcement of both kinds of residential confinement is the responsibility of the public security organs (CPL Art. 72). Residential confinement may be used for a period of up to six months (Art. 77).

Residential confinement may be used in the cases of criminal suspects and defendants who are ill, disabled, pregnant, nursing or sole carers (CPL Art. 72(i-iii)). Article 72 also specifies that it may be used to detain people beyond normal detention time limits and where they could otherwise be given bail, but cannot find a guarantor or surety. In addition, it can be used in 'other special situations or case-handling needs that make it more appropriate to employ residential confinement' (CPL Art. 72(iv)). However, nowhere in the implementing regulations for this provision are the types of special situations or case-handling needs specified.

Persons being held in 'designated residences' under residential confinement are specifically prohibited by law from being held in the criminal detention centres (*kanshousuo*) normally reserved for pre-trial detention. The MPS and SPP implementing regulations state that 'detention centres, administrative detention facilities, holding cells, or other work spaces in the public security organ' cannot be designated as residences for the purpose of residential confinement and special facilities cannot be constructed. Instead, MPS and SPP regulations require 'designated residences' to: (1) possess conditions for ordinary living and rest; (2) accommodate monitoring and management; and (3) ensure security. Despite being required to provide conditions for 'ordinary living and rest,' there is no corresponding obligation to allow individuals under residential confinement any right to rest. Reports indicate that 'designated residences' are often hotels, guesthouses, training centres and similar locations with bedrooms.

#### *Use of 'residential confinement in a designated residence'*

Several legal scholars in China continue to take an interest in the use of residential confinement and the legal concerns it raises, but detailed empirical data cannot easily be published. On 9<sup>th</sup> July 2015 the Chinese authorities initiated a crackdown on Chinese lawyers and some of the staff who work with them (now referred by many as the '709 incident'). While the vast majority of lawyers who were summoned for questioning have been released, 23 persons remain in police custody. Of those in police custody, 15 are reported to be being held in 'residential confinement in a designated residence', many being detained on suspicion of 'inciting subversion of state power'; three are in criminal detention centres and there is no information on the circumstances under which five of the 23 are being detained<sup>3</sup>.

### **Specific Concerns**

General Comment 2 on article 2 highlights key protective measures which should be in place to prevent the use of torture. We highlight specific concerns with the use of 'residential confinement in a designated residence' with respect to: the legality of detention, custody records, independent medical examinations, access to a lawyer, contact with relatives, informing detainees of their rights and inspecting conditions of detention.

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<sup>3</sup> China Human Rights Lawyers Concern Group has documented the recent detentions. The numbers quoted here only include those who seem to have been detained as part of the allegations against Feng Rui Law Firm and do not include those detained as part of the crackdown on the use of crosses in Zhejiang.  
<http://www.chrlawyers.hk/en/%E6%96%87%E7%AB%A0%E9%A1%9E%E5%9E%8B/%E6%9C%80%E6%96%B0%E6%B6%88%E6%81%AF>

## *Legality of detention*

Legal scholars and lawyers in China have questioned the extent to which the use of ‘residential confinement in a designated residence’ complies with China’s own criminal procedure law. Article 72 sets out two conditions for the use of residential confinement: these are that ‘arrest’ (逮捕 *daibu*) is justified and that the person falls into one of five circumstances described in Article 72. Both conditions are problematic. The Chinese concept of ‘arrest’ is more akin to the decision to charge or indict someone and is a decision that must be approved by the procuratorate or the court (Articles 78 and 79). When suspects are detained in a detention centre (*kanshousuo*) the police have a maximum of 30 days to submit a request to the procuratorate for approval of arrest. Legal scholars and lawyers argue that it is unclear how the decision is made that someone subject to residential confinement meets the ‘conditions for arrest’. Using residential confinement in situations that do not meet the conditions for arrest would be unlawful. Since residential confinement can be used for up to six months this period far exceeds the 30-day period of initial police detention in a detention centre prior to approval of arrest (which make take a further seven days). Empirical research indicates that at the end of a period of residential confinement suspects may be formally arrested or released. Hong Kong journalist Ching Cheong described in his memoir<sup>4</sup> of his imprisonment in China that after 105 days under ‘residential confinement in a designated location’ he was formally arrested. This period of detention for initial investigations far exceeds international standards.

Of the five circumstances, set out in Article 72, one of which persons subject to ‘residential confinement’ must satisfy, three have a protective purpose (illness, disability, pregnancy, nursing mothers and sole carers) and one appears to be intended to comply with time limits on detention within the detention centre and the right to bail. These circumstances reflect the original intention of residential confinement as a milder measure than detention in a detention centre. The purpose of the fifth circumstance (Art. 72.iv) is different and is intended to meet the needs of the investigation. The law lacks detail on what constitutes the kind of ‘special case measures’ which may necessitate the use of residential confinement.

The use of ‘residential confinement in a designated residence’ must satisfy one of two further conditions set out in Article 73. The person must either have no permanent domicile where the case is being investigated or their alleged crime constitutes serious bribery, terrorism or endangering state security. Persons with no permanent domicile, eligible, under Article 72, for bail, but lacking the funds to pay a surety, may be confined to a ‘designated residence’. Like Article 72, Article 73 also seems to indicate that the use of ‘designated residence’ has a protective purpose, but can also be used for confining people suspected of some of the most serious cases<sup>5</sup>. The ‘709’ cases illustrate the way in which accusations of state subversion, an allegation used extensively against human rights defenders and political activists, appear to have been made to justify the use of ‘residential confinement in a designated residence’.

The decision to use ‘residential confinement in a designated residence’ must be approved by the procuratorate or public security organ at the next higher level (CPL Art. 73). In cases of serious bribery the procuratorate are the investigating authority and it would appear that the police should approve their use of a ‘designated residence’. Since both public security organs and the procuratorate are investigatory bodies there would appear to be a conflict of interest in their supervising the use of a ‘designated residence’ for investigation purposes.

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<sup>4</sup> Cheong, Ching. *My 1,000 Days of Ordeal: a patriot's torture*. Straits Times Press. Singapore. 2013. p110.

<sup>5</sup> Rosenzweig, Joshua. “Residential Surveillance: evolution of a Janus-faced measure”. Forthcoming.

The regulations do not set out whether there is any requirement for the ‘necessity’ of using ‘residential confinement’ to be reviewed. Article 93 of the CPL establishes a responsibility on the procuratorate to continue to check the ‘necessity’ of detention and provides the opportunity for the person to be released or the compulsory measures altered. This would include the possibility of placing the person on bail (取保候审 *qubaohoushen*), a ‘compulsory measure’ which provides suspects with more freedom (although they may be subject to conditions). A failure to apply Article 93 to persons confined in a ‘designated residence’ would imply that, in practice, the measure is intended to be harsher than detention in a the detention centre.

### *Custody records*

‘Designated residences’ are not registered places of detention and, therefore, do not benefit from any of the protective measures provided by a regulated detention centre. The police have the power to designate any place to be a ‘designated location’ provided it meets the minimum requirements to provide facilities for ‘normal living’ and security set out in the regulations. There is no publicly available list of such places and the procedures for selecting ‘designated locations’ appear unaccountable. Most seem to be small hotels, guesthouses or training facilities, including facilities used by the Chinese Communist Party Disciplinary Committee for so-called *shuanggui* investigations. There are no provisions for custody records in the relevant legislation and information about the exact location in which someone is being held is not included on the formal notification of ‘residential confinement in a designated residence’ which is sent to family members. Paragraph 12 of the State report, however, describes a June 2009 Ministry of Public Security notice which requires implementation of a ‘case-registration system’ which covers residential confinement as well as other types of detention; in principle, therefore, custody records should be available to a detainee’s lawyers. In the recently documented ‘709’ cases the police have refused to divulge the location of the ‘designated residences’ to lawyers. This indicates that, certainly in many cases, ‘residential confinement in a designated residence’ could be considered an ‘enforced disappearance’ (International Convention for the Protection of All Persons from Enforced Disappearance Article 2).

### *Independent medical examination*

There are no legal provisions for any kind of medical examination, independent or otherwise, on entry to ‘residential confinement in a designated residence’. Since ‘residential confinement in a designated residence’ is expressly not allowed to take place in a detention facility, medical treatment during residential confinement is not covered by the Chinese government’s statement that “detention facilities in China always provide timely medical treatment to all detainee patients”<sup>6</sup>. The regulations governing residential confinement in a designated residence are silent on the provision of medical services. Ching Cheong reports that his guards only provided him with traditional Chinese medicine for a heart problem and other medical conditions during detention<sup>7</sup>.

### *Access to lawyers*

Access to a lawyer for a person held under ‘coercive measures’, is governed by Article 33 of the CPL and Article 73 confirms the relevance of this article to persons detained under residential confinement. This provision sets out the general rights of a ‘criminal suspect’ to appoint a defender at different stages of the criminal process and the obligations of the authorities to inform detainees of these rights. However, the rights

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<sup>6</sup> List of issues prior to the submission of the fifth periodic report of China (CAT/C/CHN/5), Article 11 paragraph 25 (b).

<sup>7</sup> Cheong, Ching p. 59.

conferred on the defendant by Article 33 should be read in conjunction with paragraphs 1, 3 and 4 of Article 37. While paragraphs 1 and 4 allow a defence lawyer to meet and correspond with their client, enquire about the case and provide legal advice, paragraph 3 states that in cases where the detainee is suspected of endangering state security, terrorism or serious bribery, the lawyer must obtain permission from the investigating authority.

In principle lawyers should be able to challenge the investigating authority's decision to deny them permission to meet their client through using the complaints and investigations procedures provided by government departments (CPL Article 108 and Administrative Procedure Law Article 11). In practice the '709' cases illustrate not only that the lawyers have all been denied meetings with their clients, but that efforts to challenge the decision through filing complaints have all been obstructed. Lawyers have also been denied the right to correspond in the form of open letters with their clients, a violation, they argue, of the constitutional right to correspond with their client (PRC Constitution Article 40). Case I details the efforts of Gao Yue's lawyers to meet, correspond and be informed of her case, all to no avail.

#### *Contact with relatives*

Pre-trial detainees in China are not normally allowed contact with relatives; family members cannot see them or correspond with them although they can place money on account to pay for extra food and other necessities. Families should be notified that someone has been placed in 'residential confinement in a designated residence' within 24 hours, 'save where it is impossible to furnish a notice' (Art. 73). There is no requirement that the notice specifies the location of the place of detention. This not only hinders the ability of lawyers to meet with their client, but also for family members to provide clothing or other daily necessities.

#### *Informing detainees of their rights*

Article 14 of the CPL requires the courts, procuratorate and police to safeguard rights to defence and other procedural rights. There are few rights which the authorities are explicitly required to inform detainees, but these include the right to appoint a lawyer (Article 33). However, since a 'designated residence' is not a regulated detention facility it is not clear who has the responsibility to inform a detainee of their defence rights.

During interrogation, a suspect should be informed that a truthful account of their offence may be treated with leniency (Art. 118). A complete audio or video recording of the entire process of interrogation is mandatory in the case of serious crimes (重大犯罪案件) although there is no explicit requirement to inform detainees of this. The 'case-registration system', referred to in paragraph 12 of the state report, is supposed to include recording the use of 'continuous interrogation' and the report states that its main purpose is to establish whether or not the police have used torture to extort confessions. Self-reporting by the police of the use of 'continuous interrogation' may not be effective without strong internal checks and balances on the conduct of interrogations. There are many reports of the video recording of interviews being interrupted and edited and indeed this is acknowledged indirectly in Article 203 of the MPS regulations for handling criminal cases (2012) which forbids selective recording, splicing and editing.

Most persons held in 'residential confinement in a designated residence' have been accused of serious crimes: terrorism, major bribery or state subversion and their confinement in this manner is justified by the investigation needs of the case (Art. 72). There is nothing in the law, however, that specifically regulates the conduct of interrogations during residential confinement; for suspects held in a detention centre interrogations must take place within the centre (Art. 116) and there is growing professional distinction

between the police officers responsible for investigating a case and the police guards in the detention centre. Legal scholars have identified the lack of separation between those responsible for detention and interrogation in residential confinement as problematic. Persons who have been held in residential confinement report lengthy interrogation sessions with teams of interrogators sometimes working round the clock. Lawyer Cai Ying, who was held for 87 days in ‘residential confinement in a designated residence’, reported the use of an interrogation session which lasted five days and nights in order to try and secure a confession (see Case II). The use of ‘residential confinement in a designated residence’ for investigation purposes in certain types of crime suggests that the measure is being deliberately used to circumvent protections against the use of torture which are required where suspects are held in a detention centre.

### *Inspecting conditions of detention*

There are no published guidelines regarding the conditions of detention or oversight of police behaviour during residential confinement in a designated residence. The procuratorate has a general responsibility to oversee detention facilities, but the regulations are not clear as to their duties with respect to ‘residential confinement in a designated residence’ and we have not seen any reports from former detainees that senior officers monitored the conditions of detention to check compliance with any minimum standards of treatment. There are no published rules requiring same sex guards in ‘designated residences’ thus placing female detainees, in particular, at added risk of sexual violence. Although detention centres (*kanshousuo*) are crowded and the daily regime can be oppressive, nevertheless there are some protections for detainees including the use of CCTV cameras, restrictions on taking suspects outside the detention centre for interrogation and inspections by on-site procuratorate.

Many persons previously held in a ‘designated residence’ or in forced disappearance report that they were denied natural light and fresh air; that the lights in the room were kept on throughout the night; that they were constantly monitored by guards in the room and were not allowed any reading or writing materials or to converse with the guards. Former detainees report being required to sit for long periods without moving, to face a wall or lie in bed all the time; there were no opportunities for exercise. The pressure of solitary confinement over weeks and months took a heavy toll on their physical and mental health. Former detainees report high levels of anxiety; fears of what may happen next were heightened when they were moved to new premises or hooded. Solitary confinement in the context of ‘residential confinement in a designated residence’ appears to be one of the objectives of this type of ‘coercive measure’ and is being used as a form of punishment and to induce compliance, including confessions.

## **Case I                    Prevention of Torture: lack of effective measures**

### **Case of Gao Yue (高月)**

Gao Yue, female, (date of birth 27<sup>th</sup> September 1987) is the project administrative officer on a cooperation project between lawyer Li Heping and The Rights Practice. The project is financed by the European Commission and its goal is to support Chinese civil society engagement on combating torture. Li Heping is a well-known human rights lawyer in China with a longstanding interest and personal commitment to the eradication of torture in China. He has been active in raising awareness of China’s obligations under UNCAT among lawyers and in supporting cases involving allegations of torture and miscarriages of justice. Gao Yue was engaged to assist Li Heping with



the financial administration of project-funded activities and provide logistical support. Li Heping was detained on 10<sup>th</sup> July as part of a widespread crackdown on lawyers which started on 9<sup>th</sup> July 2015.

Following Li Heping's disappearance Gao Yue went to stay with a friend in Hebei. On the 20<sup>th</sup> July she informed other friends that she was returning to Beijing and that was the last they heard from her. On the 24<sup>th</sup> July Gao Yue's family received a document from Hexi district public security bureau, Tianjin municipality, confirming that Gao Yue was being held under 'residential confinement' in a 'designated residence' on suspicion of the offence of 'picking quarrels and stirring up trouble' (Criminal Law Art. 293).

On 4<sup>th</sup> August Gao Yue's lawyers, Li Guobei and Wang Fei, made the first of several visits to Tianjin. During the first visit the lawyers were informed by Hexi district police that since the alleged offence had been changed it was unlikely that the lawyers would be granted permission to meet with Gao Yue. Within a week the lawyers received written notification that the alleged offence had been changed to 'incitement to subvert state power' and that permission to meet her lawyers had been denied. In order to try and establish contact with Gao Yue and in accordance with the right to correspond (Art. 37), Li Guobei wrote Gao Yue an open letter, via the Tianjin police, asking her to confirm that she accepted Li Guobei to represent her. No reply was received. Lawyer Li made a second visit to Tianjin on the 24<sup>th</sup> August to pursue her right to correspond and receive basic information on the case against Gao Yue (Art. 37). Receiving no response from the police she visited the complaints and investigations department of Hexi procuratorate who reluctantly received a formal complaint and request to investigate.

Li Guobei made two visits to Tianjin in September requesting news from the procuratorate on progress of the complaint and, again, asking the police at both the district and city level for the basic information on the case. Her requests for information were referred to different relevant departments (legal, petitions, domestic security and investigations) and no one was willing to willing to meet with her. Together with lawyers representing some of the other '709' cases, Li Guobei requested Tianjin procuratorate to convey their demand to Hexi procuratorate that their right to communicate with their clients and be informed about the cases, be respected. To date there has been no progress.

Gao Yue's case raises a number of concerns regarding the decision to use 'residential confinement in a designated residence' rather than a detention centre. First, some observers believe that Tianjin was given jurisdiction over the '709' cases in order to justify the use of a 'designated residence' since none of the detained lived in Tianjin and 'residential confinement' could not take place at home. Second, Gao Yue was originally detained for a relatively minor offence which was then changed to a state subversion offence; this seems to have been done in order to further justify the use of a 'designated residence' and to deny her the right to meet with her lawyers. The ease with which a young woman with no record of social activism can be disappeared and be exposed to the risk of mental and physical torture on the basis of a police decision which cannot be challenged, is deeply troubling.



## Case II Use of torture in ‘residential confinement in a designated residence’

### Case of Cai Ying (蔡瑛)

Cai Ying, male, (date of birth 1<sup>st</sup> October 1964) is a lawyer in Changsha, Hunan province. On 29<sup>th</sup> July 2012 he was detained by Yuanjiang city procuratorate, Yiyang, Hunan. After several days of intensive questioning he was placed under ‘residential confinement in a designated residence’ on suspicion of bribery. Throughout his detention and the relentless interrogations Cai Ying maintained his innocence and alleged that the case being made against him was fabricated. Eventually, after 87 days in residential confinement in a designated residence Cai Ying was released on bail. On 13<sup>th</sup> January 2013 Yuanjiang procuratorate decided that there was insufficient evidence and dropped the case. Since his release Cai Ying has applied for state compensation to Yuanjiang Procuratorate for wrongful detention, lost earnings, medical expenses and the use of torture including continuous interrogation, humiliation, beating and threats. In January 2015 Yuanjiang procuratorate refused his application for compensation on the grounds that although his liberty had been restricted he had not suffered serious mental harm. Cai Ying has sought a court hearing.



At a meeting hosted by the Bar Council Human Rights Committee at the Law Society of England and Wales (5<sup>th</sup> March 2015) and in an interview with the South China Morning Post (27<sup>th</sup> June 2015) Cai Ying spoke of his ordeal and the torture he endured. He has also circulated online a personal account of his experience.

Although Cai Ying was told by Yuanjiang Procuratorate that he was being placed under residential confinement, in fact he was detained at ‘the ‘shuanggui’ interrogation centre of Yuanjiang CCP Disciplinary Committee (*jiwei*). Despite the legal provisions for ‘residential confinement in a designated residence’, Cai Ying reported that he was not guarded by the police. Throughout the time that he was detained, three people were appointed to ‘accompany his detention’. These guards continuously monitored him including when he went to the toilet where he was watched and urged to hurry up. At meal times he was made to sit on a small stool so that he couldn’t reach his bowl easily. There were constant humiliations.

Continuous interrogations were the worst aspect of his treatment. During the interrogations he was forced to sit on a chair suspended above the floor so that his feet could not touch the ground; his hands were shackled to a board in front of him. After awhile his legs felt like they were being pricked by pins and went numb. The endless interrogations caused him to lose his appetite and he was often unable to speak. In the ‘*shuanggui*’ interrogation centre the suspended interrogation chair also had a lock in the middle of the seat which bore into his bottom. Whenever he tried to move the guards shouted at him to sit up straight and were deaf to his entreaties. On one occasion he was interrogated night and day for five days. At the end when he tried to stand up he fell over and eventually some of the guards helped him up. When he was given something to drink his hands shook so much he couldn’t hold the glass; his stomach heaved and he retched. He had had just three meals in five days. He then slept for two days. When he woke and went to the toilet he saw that he had rectal bleeding; this endured for some time.

Different interrogators came and went; in turn they were diligent, insulting, and threatening; they blew hot and cold air on him and at one point a black plastic bag was put over his head and he feared the worst; all tried to compel him to confess to bribery. He lost track of time and often felt that it would be better to die than endure such treatment; on several occasions he thought about committing suicide. Cai Ying continues to experience the physical and mental effects of the trauma, including heart disease, chronic problems from a slipped disc, numbness in his lower limbs and nightmares.

## **Annex I      Relevant articles in the Chinese criminal procedure law (2012)**

**Article 72** Under any of the following circumstances, a people's court, a people's procuratorate, and a public security authority may place a criminal suspect or defendant who meets the arrest conditions under residential confinement:

- (1) the criminal suspect or defendant suffers a serious illness and cannot live by himself or herself;
- (2) the criminal suspect or defendant is a pregnant woman or a woman who is breastfeeding her own baby;
- (3) the criminal suspect or defendant is the sole supporter of a person who cannot live by himself or herself;
- (4) considering the special circumstances of the case or as needed for handling the case, residential confinement is more appropriate; or
- (5) the term of custody has expired but the case has not been closed, and residential confinement is necessary.

Where a criminal suspect or defendant meets the conditions for bail but is neither able to provide a surety nor able to pay a bond, he or she may be placed under residential confinement.

Residential confinement shall be executed by a public security authority.

**Article 73** Residential confinement shall be executed at the residence of a criminal suspect or defendant; or may be executed at a designated residence if the criminal suspect or defendant has no fixed residence. Where execution of residential confinement at the residence of a criminal suspect or defendant in a case regarding compromising national security, terrorist activities, or extraordinarily significant bribery may obstruct criminal investigation, it may be executed at a designated residence with the approval of the people's procuratorate or public security authority at the next higher level. However, residential confinement may not be executed at a place of custody or a place specially used for handling cases.

If residential confinement is executed at a designated residence, the family of the person under residential confinement shall be notified within 24 hours after residential confinement is executed, unless such notification is impossible.

Where a criminal suspect or defendant under residential confinement retains a defender, the provisions of Article 33 of this Law shall apply.

People's procuratorates shall oversee the legality of decisions and execution of residential confinement at a designated residence.

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People's procuratorates shall oversee the legality of decisions and execution of residential confinement at a designated residence.

**Article 74** The term of residential confinement at a designated residence shall decrease the term of punishment. For a sentence of supervision without incarceration, one day of residential confinement equals one day of the term of punishment; for a sentence of limited incarceration or fixed-term imprisonment, two days of residential confinement equals one day of the term of punishment.

**Article 75** A criminal suspect or defendant under residential confinement shall comply with the following provisions:

- (1) not leaving the residence where residential confinement is executed without the approval of the execution authority;
- (2) not meeting or communicating with others without the approval of the execution authority;
- (3) appearing before court in a timely manner when summoned;
- (4) not interfering in any way with the testimony of witnesses;
- (5) not destroying or forging evidence or making a false confession in collusion; and
- (6) delivering his or her passport and other international travel credentials and driver's license to the execution authority for preservation.

A criminal suspect or defendant under residential confinement who seriously violates any provision of the preceding paragraph may be arrested; and if arrest is necessary, the criminal suspect or defendant may be detained first.

**Article 76** Execution authorities may oversee criminal suspects or defendants under residential confinement regarding their compliance with residential confinement provisions by electronic monitoring, random inspection, and other surveillance means; and during the period of criminal investigation, may monitor the communications of criminal suspects under residential confinement.

**Article 77** The period of bail granted by a people's court, a people's procuratorate, or a public security authority to a criminal suspect or defendant shall not exceed 12 months; and the period of residential confinement shall not exceed 6 months.

During the period of bail or residential confinement, the investigation, prosecution, and trial of a case shall not be suspended. If it is discovered that a criminal suspect or defendant shall not be subject to criminal liability or when the period of bail or residential confinement expires, the bail or residential confinement shall be terminated in a timely manner. The bailed person or person under residential confinement and relevant entities shall be notified of the termination in a timely manner.