

Mandates of 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 situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE: UA
CHN 1/2016:

15 January 2016

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 25/2, 24/5, 25/18, and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **arrest and detention of labour activists and human rights defenders, Ms. Zhu Xiaomei, Mr. He Xiaobo, Mr. Peng Jiayong, Mr. Deng Xiaoming, Mr. Meng Han, and a fifth male activist whose name is known to the special procedures mandate holders.** They have all been active in labour rights movements, engaged with defending workers' rights and negotiating with employers on their behalves.

Mr. He Xiaobo is the head of the Nanfeiyan Social Work Service Center that campaigns for the compensation of unpaid workers and whose registration was reportedly withdrawn earlier this year. **Mr. Peng Jiayong** is the Director of Panyu Labourer Mutual Aid Group that also promotes and protects workers' rights. **Ms. Zhu Xiaomei, Mr. Deng Xiaoming and Mr. Meng Han** are local workers' rights defenders.

The **fifth unnamed male labour activist** is the head of a local migrant worker center.

According to the information received:

In early December 2015, Ms. Zhu Xiaomei, Mr. Meng Han, and a male labour activist whose name is known to the special procedures mandate holders, were arrested. They were charged in early January 2016 with “gathering a crowd to disturb social order”. Mr. Peng Jiayong and Mr. Deng Xiaoming were similarly arrested on allegations of “gathering a crowd to disturb social order”, but no charges have been brought against them to this day. They are all detained at the Guangzhou No. 1 Detention Center.

On 4 December 2015, Mr. He Xiaobo was reportedly arrested in Nanhai district, and charged in early January 2016 with “illegal misappropriation of workplace funds”. The authorities subsequently searched his home and confiscated a number of electronic devices and materials. He is reportedly detained at the Foshan Nanhai District Detention Center.

It is alleged that the detention and prosecution of Ms. Zhu Xiaomei, Mr. He Xiaobo, Mr. Peng Jiayong, Mr. Deng Xiaoming, Mr. Meng Han, and another sixth activist did not comply with the due process guarantees of a fair trial and that the charges brought against them were unsubstantiated. All the detainees have reportedly been denied access to a lawyer.

Serious concern is expressed about the alleged arrest and detention of Ms. Zhu Xiaomei, Mr. He Xiaobo, Mr. Peng Jiayong, Mr. Deng Xiaoming, Mr. Meng Han, and the sixth labour activist, which appear to have resulted from their activism in pro-labour movement, as a form of criminalisation of their human rights activities and the exercise of their rights to freedom of expression and of association. We also express serious concern at the allegations of unfounded charges brought against them and the lack of access to a lawyer in the course of the judicial proceedings.

Without expressing an opinion on whether or not the detention of the aforementioned labour activists is arbitrary, the above allegations appear to be in contravention of their right not to be deprived arbitrarily of liberty and to a fair and public hearing by an independent and impartial tribunal, as set forth in articles 9 and 10 of the Universal Declaration of Human Rights (UDHR). We also wish to recall the principle of equality of arms and the right to have adequate time and facilities for the preparation of one’s defence, including access to appropriate information, as provided the UN Basic Principles on the Role of Lawyers.

We would like to refer to your Excellency’s Government to articles 19 and 20 of the Universal Declaration of Human Rights which provides the right to freedom of expression and the right to freedom of peaceful assembly and association.

We would like to further refer to Human Rights Council resolution 24/5, in particular its operative paragraph 2, in which the Council “[r]eminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law”.

We also wish to refer 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 6 and 12.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information concerning the legal grounds for the arrest and detention of the aforementioned labour activists, and the charges brought against four of them. Please explain how these measures are compatible with international human rights norms and standards.
3. Please provide information on whether the labour activists have had access to family members, legal counsel and medical personnel while in detention.
4. Please indicate what measures have been taken to ensure the physical and psychological integrity of the aforementioned individuals while in detention.
5. Please provide information about the measures taken to ensure that human rights defenders in China can carry out their legitimate activities without fear of harassment and prosecution of any sort.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers