

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 33/30, 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest, incommunicado detention and charges against human rights defender Mr. **Yu Wensheng**, along with his denial of access to lawyers and family.

Mr. Yu Wensheng is a Beijing-based human rights lawyer known for taking on many high profile cases, including that of a human rights lawyer who has been detained for three years.

According to the information received:

In 2017, Chinese judicial authorities refused to allow Mr. Yu Wensheng to pass his annual bar license review, ultimately forcing him to leave his position at the Beijing Daoheng Law Firm and effectively precluding him from practicing, as in order to do so he must be affiliated with an established law firm.

Mr. Yu Wensheng subsequently attempted to establish his own independent law firm, but in January 2018, he was informed that his application for registration had been denied. He was subsequently informed that his legal license would be revoked, on the basis that he had not been employed by a law firm in over six months.

On 18 January 2018, Mr. Yu Wensheng published an open letter recommending amendments to the Chinese constitution, calling for fair elections, and for an oversight system for the Chinese Communist Party, amongst other reforms.

On 19 January 2018, while accompanying his son to school, Mr. Yu Wensheng was allegedly detained by approximately a dozen law enforcement officers, including police and armoured vehicles, who stated that he was being brought for

questioning on suspicion of “picking quarrels and provoking troubles”. Mr. Yu Wensheng was forced into a police vehicle after a physical altercation between the defender and at least one officer. His wife was alerted of his arrest by his son who returned home alone shortly thereafter.

On 20 January 2018, Mr. Yu Wensheng’s wife received official notice that he was being held in criminal detention on the charge of “disrupting public service” at Shijingshan District Detention Centre. He has since been transferred to Xuzhou city in the eastern province of Jiangsu on a more serious charge of “incitement to subvert State power” and has been placed under “residential surveillance in a designated location”.

To date, neither Mr. Yu Wensheng’s lawyers, nor his family have been able to contact or visit him. They are currently unsure of his location despite repeated requests for disclosure, and they have not been permitted to deposit funds for his use while in detention.

Serious concern is expressed over the alleged arbitrary arrest, incommunicado detention and charges against Mr. Yu Wensheng for reasons that appear to be connected with his work as a human rights lawyer and with his exercise of the right to freedom of expression. We recall the importance of the activities of those in the legal profession as they pertain to the protection of human rights defenders and human rights overall.

The use of the measure of “residential surveillance at a designated location” by authorities also raises serious concerns over the treatment of Mr. Yu Wensheng, along with the conditions he is being kept in. Concern is similarly expressed over the lack of the guarantees of due process, including Mr. Yu Wensheng’s alleged lack of access to legal counsel and family members, due to the effects this may have on his ability to mount an effective defence to the charges which may potentially be levelled against him.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency’s Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to draw your Excellency’s Government to article 19 of the Universal Declaration of Human Rights (UDHR) guaranteeing the right to freedom of opinion and expression. We further wish to refer to resolution 12/16 of the Human Rights Council, which calls on States to refrain from imposing restrictions on discussion of government policies and political debate and reporting on human rights.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the above-mentioned individual is arbitrary or not, we wish to

draw your Excellency's Government's attention to articles 3, 9, 10 and 11 of the UDHR, enshrining protection for the right to liberty and security of the person, the right to not be subject to arbitrary detention, as well as the right to a fair and public hearing before an independent and impartial tribunal in the determination of rights and obligations.

We would also like to draw your attention to the Basic Principles on the Role of Lawyers, which stipulate that governments have the duty to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and that lawyers shall not suffer, or be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics (Principle 16).

We would finally like to refer to 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(b and c) and 9 paragraph 3(c) which provide for the rights to promote and to strive for the protection and realisation of human rights and fundamental freedoms, to publish and disseminate information on human rights and to offer and provide professionally qualified legal assistance in defending human rights.

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 any comment you may have on the above-mentioned allegations.
2. Please provide legal grounds for the measure of "residential surveillance at a designated location" imposed on Mr. Yu Wensheng, along with information as to which authority has Mr. Yu Wensheng in custody and where he is currently detained, and how this measure is compatible with articles 9, 10 and 19 of the UDHR.
3. Please provide specific facts and evidence supporting the claims that Mr. Yu Wensheng has committed crimes involving "incitement to subvert

state power” or “disrupting public service”. Please provide information about how these legal bases comply with international human rights standards for the restriction of the right to freedom of expression. Please indicate whether he has in fact been charged and if so, details of the charges.

4. Please indicate whether Mr. Yu Wensheng has been provided access to lawyers and whether he has been granted any access to or contact with his family. If not, please explain how this is compatible with international human rights standards.
5. Please kindly indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment and persecution 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(s) responsible of the alleged violations.

We would like to inform your Excellency’s Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such allegation letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the allegation letter procedure and the regular procedure.

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.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

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

Michel Forst
Special Rapporteur on the situation of human rights defenders