

**Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Working Group on Enforced or Involuntary Disappearances; 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:  
AL OTH 20/2019

1 May 2019

Dear Mr. Pan,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Working Group on Enforced or Involuntary Disappearances; 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 35/7, 36/6, 34/18, 32/32, 34/5 and 35/11.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received.<sup>1</sup> Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention allegations we have received concerning the arrest and detention of, and charges against, five labour rights defenders, as a result of their advocacy for labour rights and better working conditions at the Jasic Technology plant in Shenzhen, and for their attempts to form a trade union.

**Mr. Fu Changguo** is a human rights defender and staff member of Shenzhen Dagongzhe Migrant Workers Centre (DGZ), a non-governmental organisation which defends the labour rights of migrant workers in Shenzhen.

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<sup>1</sup> Further information about the communication procedure is available at:  
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

**Mr. Li Zhan, Mr. Liu Penghua, Mr. Mi Jiuping and Mr. Yu Juncong** are all labour rights defenders and previous employees of the Jasic Technology Ltd. Factory in Shenzhen city, Guangdong.

According to the information received:

On 8 May 2018, following complaints that Mr. Yu Juncong had made to the Pingshan District Federation of Trade Unions (PFTU) regarding working conditions at the Jasic Technology Ltd. factory in Shenzhen, Guangdong, Mr. Yu was beaten by his team leader at the factory. Two days later, Mr. Yu was informed by a personnel manager that he had been dismissed from his position.

On 10 May 2018, Mr. Li Zhan, Mr. Liu Penghua and Mr. Mi Jiuping, among others, went to the PFTU and the Pingshan District Human Resources Department with a petition listing several workplace grievances at the Jasic factory and containing a request for permission to form a labour union. Among these grievances were allegations of illegal restrictions on time off, restrictions of movement during rest time, underpayment of contributions for workers' social insurance and housing funds, and the illegal creation of a blacklist of employees. The chairperson of the PFTU subsequently gave oral approval for the request to form a labour union.

On 7 June 2018, after filing an official request to form a trade union through the submission of a form found on the PFTU website, Mr. Li, Mr. Liu and Mr. Mi were told that they would require an official seal from Jasic management in order for their request to be approved. The management of the factory, however, denied to put the seal on the form. After contacting the PFTU once more for guidance, they were advised to first recruit 100 union members, and to hold an assembly to select a union preparation committee. Between 12 and 13 July 2018, the human rights defenders were able to collect 89 signatures.

On 14 July 2018, in retaliation against their signature campaign, the Jasic management initiated a smear campaign against Mr. Liu and Mr. Mi, stating that they had obtained the signatures by fraudulent means. Furthermore, management discouraged others from signing the petition through the use of threats. Mr. Liu and Mr. Mi were also threatened with dismissal if they did not relocate to different work posts, allegedly in order to isolate them. While Mr. Liu complied, Mr. Mi refused, instead making a complaint to the PFTU. However, when Mr. Mi made this complaint, the PFTU stated that they had already established channels of communication with Jasic, and that complaints should be addressed directly to the company. Mr. Mi thus published an open letter online detailing his complaints. This open letter was dismissed by Jasic management, and prompted a statement from the deputy chair of the PFTU which said that the defenders' attempts to form a labour union were illegal.

On 16 July 2018, two unidentified men assaulted Mr. Liu at his isolated work station. After the assault, they were escorted out of the factory and driven away. The same day, he was dismissed from his job. After his dismissal, he reported the assault to the police, however their reaction was to detain him overnight. On 18 July 2018, Mr. Mi was also assaulted by security guards and dismissed. Both defenders were barred from re-entering the factory.

On 20 July 2018, Mr. Mi and Mr. Liu, along with another group of dismissed employees, attempted to enter the plant in order to return to work, however they were intercepted by security guards, who called the police. When the police arrived, a number of the dismissed workers were arrested, including Mr. Mi and Mr. Liu. The arrested workers were released the next day, following demonstrations of colleagues and other supporters outside of the police station.

On 27 July 2018, during another planned demonstration involving re-entry to the factory, Messrs. Li, Liu, Mi and Yu were detained outside the factory by police, along with 25 other workers and one student activist, on suspicion of “picking quarrels and provoking trouble” under article 293 of the Criminal Law of the People’s Republic of China.

On 10 August 2018, Mr. Fu was detained by police at Ailian police station, Shenzhen, on suspicion of “picking quarrels and provoking trouble” under article 293 of the Criminal Law. He had previously been summoned for questioning by police on 25 and 26 July, and on 4 and 7 August 2018. At the same time, Chinese state media stated that the protests in front of the factory had been organised by an illegal NGO (allegedly a reference to Dagongzhe Migrant Workers Centre) who had received foreign funding.

On 28 August 2018, Mr. Liu and Mr. Mi were formally arrested on charges of “gathering a crowd to disturb public order”, under article 290 of the Criminal Law. Although the formal arrest dates of Mr. Li and Mr. Yu are unknown, due to the failure of Chinese authorities to provide this information to their families or legal representatives, it is understood that both also face charges under article 290 of the Criminal Law. Mr. Fu was formally arrested on 8 September 2018 on the same charges.

On 2 December 2018, Mr. Fu’s elder sister filed an application for his bail, which was rejected on 25 December 2018, on the grounds that he may destroy or fabricate evidence. While Mr. Fu has had three separate lawyers, he has only been permitted to meet with one of them once, on 20 September 2019. Other than this, he has not been permitted to contact his legal representation or family. All three of his lawyers have since resigned due to fear of reprisal by Chinese authorities or due to pressure from Guangdong Judicial Bureau. Mr. Fu had initially been held at Shenzhen city No. 2 detention centre. However, on 1 and 6 February 2019, a family member tried to deposit funds into his account at the detention centre, but

the money was returned as there was no person of that name at the centre. Mr. Fu's whereabouts are currently unknown.

Mr. Li is currently detained at Shenzhen city No. 2 detention centre. He has had two separate lawyers, however, his first lawyer reportedly resigned due to pressure from the Henan Judicial Bureau. He was permitted to meet once with his second lawyer on 18 September 2018, however subsequent attempts have been denied. After an attempt by Mr. Li's second lawyer to meet with him on 25 February 2019, the lawyer was handed a letter stating that Mr. Li had terminated his representation. On 26 February 2019, the lawyer was presented with a short video stating the same.

Mr. Liu is currently detained at Shenzhen city No. 2 detention centre. This is known as his family received an arrest notice listing this location. He has two separate lawyers, one of whom was permitted to meet with him shortly after his arrest. Subsequent requests to meet with Mr. Liu have been denied, allegedly because his case involves "state secrets".

Mr. Mi is currently detained at Shenzhen city No. 2 detention centre. This is known as his family received an arrest notice listing this location. He has had three lawyers. His first lawyer was permitted to meet with him on 30 August 2018. His second lawyer met with him on 28 September 2018, however later resigned, reportedly due to pressure from the Judicial Bureau. Subsequent requests for meetings by his third lawyer have been denied on the basis that his case involves "state secrets".

Mr. Yu is currently detained at Shenzhen city No. 2 detention centre and has had two lawyers. His location is known as his lawyer initially went to search for him at Longgang detention centre, but later found him in Shenzhen city No. 2. He was able to meet with his first lawyer on 30 August 2018, however this lawyer later resigned, reportedly due to pressure from the Judicial Bureau. Subsequent requests for meetings made by his second lawyer were refused.

To date, none of these five human rights defenders have been permitted to contact their families.

Concerns at the alleged arrests, arbitrary detentions and charges against Messrs. Yu, Li, Liu, Mi and Fu, along with the latter's enforced disappearance, for reasons which are seemingly linked to their defence of labour rights in the Jasic Technologies Ltd. Factory, have been raised in a communication to the Government of the People's Republic of China.

We also wish to express our concerns regarding the overall working conditions at the Jasic Technologies Ltd. factory, especially with regards to allegations of beatings and smear campaigns against employees. We highlight that the company has an obligation to

protect workers and human rights defenders against attacks, underlining that businesses have an independent responsibility to protect and promote human rights.

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

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 information as to what human rights due diligence has been undertaken by your company to prevent, identify and remedy human rights violations which may arise or have arisen with regards to the treatment of employees, in line with the UN Guiding Principles on Business and Human Rights.
3. Please provide detailed information regarding the measures taken to ensure that Jasic employees are able to associate and communicate freely on issues regarding their work, including through the formation of trade unions.
4. Please provide information about existing measures, including policies that your company has put in place in order to prevent threats, violence and other forms of harassment committed by and against your employees in the workplace.
5. Please provide information on steps taken by your company to provide for effective remedy or cooperate in remediation of adverse human rights impacts including violence, threatening behaviour and other forms of harassment committed by your company or its employees, through legitimate processes, as set forth in the UN Guiding Principles on Business and Human Rights.
6. Please provide information on steps taken by your company to establish any company- level grievance mechanisms to address adverse human rights impacts caused, or contributed to, by your company.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your company will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please note that a letter on this matter has also been sent to the People's Republic of China.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged abuses and prevent their re-occurrence.

Please accept, Mr. Pan, the assurances of our highest consideration.

Surya Deva

Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Bernard Duhaime

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

David Kaye

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

Clement Nyaletsossi Voule

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Diego García-Sayán

Special Rapporteur on the independence of judges and lawyers

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw the attention of Jasic Technologies Ltd. to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

As set forth in the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that "business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts" (Guiding Principle 13).

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when "business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes".

The Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

In connection with above alleged facts and concerns, we would like to draw your attention to articles 9, 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), signed by China on 5 October 1998, along with articles 3, 9, 11, 19 and 20 of the Universal Declaration of Human Rights, which provide for the rights to liberty and security of person, the right not to be arbitrarily detained, the right to a fair

trial and due process, the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association.

We wish to underscore that according to article 22 ICCPR, the right to freedom of association may only be restricted when such restrictions are provided for by law and are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.

We further note that article 21 of the ICCPR recognises that the right to freedom of peaceful assembly should be enjoyed by everyone, as provided for by article 2 of the Covenant and resolutions 15/21, 21/16 and 24/5 of the Human Rights Council. Importantly, in its resolution 24/5, the Council reminded 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 those rights (A/HRC/26/29, para 22.).

We would like to draw your attention to Human Rights Council resolution 12/16, calling on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 29 of the UDHR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

With regards to security of person, we recall that, as established by the Human Rights Committee, this right concerns freedom from injury to the body and the mind, or bodily and mental integrity regardless of whether the victim is detained or non-detained (CCPR/C/GC/35, para. 3 and 9). As interpreted by the Committee, “the right to personal security also obliges States parties to take appropriate measures (...) to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury” (CCPR/C/GC/35, para. 9).

We would like to refer also to the Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realisation of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in meditation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and



abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

In connection with the above alleged facts and concerns we would like to refer your attention 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, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to specifically bring to your attention the following provisions of the UN Declaration on Human Rights Defenders:

- Article 5(b), which states that everyone has the right to form, join and participate in non-governmental organisations, associations or groups.
- Article 12 (2), which states 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.

In addition, other international human rights standards clarify the rights of migrant workers and non-citizens alike. We would like to highlight article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by China on 27 March 2001, which recognises the “right of everyone to the enjoyment of just and favourable conditions of work”. Such conditions must ensure, inter alia, remuneration which provides all workers, as a minimum, a decent living for themselves and their families, safe and healthy working conditions, rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. The rights in the Covenant apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation (Committee on Economic, Social and Cultural Rights, general comment no 20, para. 30).

We would like to draw your attention to the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in resolution A/HRC/RES/17/31 in 2011. These Guiding Principles are grounded in recognition of:

- a) “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) “The role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights; and
- c) “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

The Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

The Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba on 27 August to 7 September 1990 establish in principle 1 that all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings. Principle 8 states that all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Finally, principle 16 calls on governments to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.