

Mandates of the the Working Group on Arbitrary Detention; 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; 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; Working Group on Enforced or Involuntary Disappearances; 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, 36/6, 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 alleged arbitrary detention, enforced disappearance and charging of labour rights defenders Messrs. **Chengbing Ke**, **Zhili Wei** and **Zhengjun Yang**.

Mr. **Chengbing Ke** is a labour rights defender who specializes in grassroots rural human rights issues. Mr. **Zhili Wei's** human rights work focuses on the living conditions of Chinese migrant workers. He previously provided legal and organizational support to workers in Shenzhen. Mr. **Zhengjun Yang** advocates for the rights of Chinese factory workers. Since 2013, the three human rights defenders have worked as editors of the independent online media platform iLabour (later renamed *Weigonghui*) which raises awareness about labour rights issues in China. Further to covering stories concerning labour rights, *Weigonghui* provides a consultation platform for workers whose rights have been violated.

The use of Residential Surveillance in a Designated Location (RSDL) as amended by Article 73 of the 2012 Criminal Procedure Law, in relation to persons suspected of endangering State security, of terrorist activities or of involvement in major bribery and where confinement in their own home may 'impede the investigation' has been subject of a joint communication sent by Special Procedures mandate holders to your Excellency's Government on 24 August 2018 (OL CHN 15/2018). Concerns relating to the arrest, detention and charging of other labour rights defenders, along with the enforced disappearance of one defender, as a result of their advocacy for labour rights and better working conditions in a factory in Shenzhen, were the subject of a joint communication sent by Special Procedures mandate holders to your Excellency's Government on 1 May 2019 (AL CHN 3/2019). While we would like to thank your Excellency's Government

for the responses dated 23 November 2018 and 21 May 2019, respectively, we remain concerned given the allegations below.

According to the information received:

In November 2014, the WeChat account of the media platform iLabour was shut down by WeChat at the behest of the Government, marking the first of several attempts by the State to censor and restrict the media platform's work. The platform's WeChat account was later reopened and shut down several times.

In April 2016, Mr. Chengbing Ke was interrogated by the police after articles concerning a protest held by coal miners in Heilongjiang Province were shared on iLabour's WeChat account.

In January 2017, following the publication of an article on a workers' strike in Guangzhou City, Guangdong Province, the platform's WeChat account was once again closed.

In November 2018, a new WeChat account opened by the human rights defenders for their media platform was shut down, after they had posted information about the use of pepper gas by police to suppress a protest of Hunanese workers in Shenzhen City. The human rights defenders had used their media platform to disseminate information concerning the situation of migrant workers from Hunan Province who had contracted an occupational lung disease, while also assisting them in the process of submitting complaints to government authorities.

On 7 January 2019, a group of migrant workers, whose rights Mr. Zhengjun Yang had been defending, came to Shenzhen City to demand a response from the local government regarding their complaint over an occupational lung disease which they had allegedly contracted as a result of work on construction sites in the city.

On 8 January 2019, Mr. Yang and three other individuals were detained at his house in Guangzhou City by police officers from the Shenzhen City Public Security Bureau and the Yuzhu Residential District branch. Mr. Yang was not presented with an arrest warrant or informed about the reason for his detention. The police searched his room and seized computers, cell phones, and other electronic devices. Only one out of approximately 10 police officers displayed his public security identification badge upon Mr. Yang's request.

The three individuals who had been detained alongside Mr. Yang were released within 24 hours, after reportedly being questioned about their relationship with Mr. Yang and his advocacy activities on behalf of the migrant workers who had presented themselves in Shenzhen City.

Mr. Yang was detained at Shenzhen City No. 2 Detention Center, where he remained until 6 February 2019, when he was placed under Residential Surveillance in a Designated Location on charges of “picking quarrels and provoking trouble” under Article 293 of China’s Criminal Law, which is a crime in the category of “disrupting public order”. According to Article 75 of China’s Criminal Procedure Law, Residential Surveillance in a Designated Location can only be applied to suspects detained on suspicion of “endangering national security, terrorism or serious bribery”. The police did not officially notify the family or lawyers of Mr. Yang of this change in his status. Since this date his place of detention has been unknown.

On 20 March 2019, Mr. Ke was detained at his house in Huangpu village, Haizhu District, Guangzhou City, by police officers from the Pingshan District Sub-Bureau of the Shenzhen City Public Security Bureau and taken to Shenzhen City No. 2 Detention Centre. He was not presented with an arrest warrant.

On the same date, Mr. Zhili Wei was detained at his parent’s home in Baiyun District, Guangzhou City by police officers from the Pingshan District Sub-Bureau of the Shenzhen City Public Security Bureau. The police told Mr. Wei’s parents that he was being taken away for “education”, as he had been “brainwashed”. They also stated that he had “disrupted public security” and “opposed the Communist Party” through his activism. Mr. Wei was not presented with an arrest warrant. The police confiscated his computer and cell phone.

On 26 March 2019, Mr. Wei’s family were informed by the Shenzhen police that Mr. Wei was being detained at the Shenzhen No. 2 Detention Center on suspicion of “picking quarrels and provoking trouble” under Article 293 of China’s Criminal Law. During visits by his lawyer to the Detention Centre, Mr. Wei said that he had been verbally humiliated by the police and threatened that his family would be brought to the interrogation room if he “refused to cooperate”.

On 3 April 2019, two weeks after he was detained, Mr. Ke’s family members received official notice of his detention. According to Article 83 of the Criminal Procedure Law, the family must be officially notified within 24 hours of an individual being detained.

On 19 April 2019, Mr. Wei and Mr. Ke were also placed under Residential Surveillance in a Designated Location on charges of “picking quarrels and provoking trouble” under Article 293 of China’s Criminal Law. Since this change in status, their place of detention has remained unknown and they have been deprived of access to a lawyer.

On 22 April 2019, the family members of all three labour rights defenders sent a joint letter to the Pingshan District Shenzhen City People's Procuratorate explaining that the actions of the detained had not constituted the crime of "picking quarrels and provoking trouble", and calling for their release. They also expressed their concern at the wellbeing of their detained family members and their possible exposure to torture in detention.

On 23 April 2019, national security officers visited Mr. Ke's father at his workplace and held him for ten hours without food until he signed an agreement dismissing Mr. Ke's lawyer. On 23 and 24 April 2019, Mr. Ke's lawyer filed complaints with Pingshan District Shenzhen City People's Procuratorate, concerning the denial of his right to visit his client and the detention of Mr. Ke's father on 23 April 2019. The Procuratorate replied that according to the information provided by the Pingshan District Sub-Bureau of the Shenzhen City Public Security Bureau, Mr. Ke's family members had dismissed his lawyer. The Procuratorate did not address the complaints concerning the illegal actions of the Pingshan District Sub-Bureau of the Shenzhen City Public Security Bureau.

On 25 April 2019, Mr. Yang's lawyer filed a bail application at the Pingshan District Sub-bureau of the Shenzhen City Public Security Bureau. The next day, he requested a visit with Mr. Yang. The police responded that they did not possess Mr. Yang's case files and told Mr. Yang's lawyer to go to the Shenzhen City Public Security Bureau. There, he was informed that the "special working group" responsible for the case could not be contacted directly. He was not given the name of the official in charge of the case, and was told that his request should be submitted through a "petitioning office."

On 14 May 2019, one of two lawyers hired by Mr. Wei's family to defend him requested a visit with Mr. Wei through the Pingshan District Sub-Bureau of the Shenzhen City Public Security Bureau. His request was rejected, as the authorities claimed that the human rights defender had stated in writing that he had "dismissed" his other lawyer and would not recognize anyone else as his legal defense.

On 20 May 2019, Mr. Yang's lawyer filed another bail application and a request to visit his client with an officer of the Pingshan District Sub-bureau of the Shenzhen City Public Security Bureau. He was informed that in February 2019, Mr. Yang had declared in writing that he would only accept lawyers entrusted by himself. When Mr. Yang's lawyer asked to see the statement, he was informed that in order to enable such, he would need to make an appointment in advance. Mr. Yang has been deprived of access to a lawyer during his entire period in detention.

We wish to express our serious concerns regarding the alleged arbitrary detention and enforced disappearance of Messrs. Ke, Wei and Yang, and the charges brought against them, which appear to be a direct result of their labour rights activism, and their exercise of the right to freedom of expression. We also wish to express our concerns over the alleged obstacles put in place preventing them from having sufficient meetings with their legal representation in order to mount their legal defence, and their preclusion from contact with their families. The use of the measure of Residential Surveillance in Designated Location by the authorities also raises serious concerns over the treatment of the human rights defenders, along with the conditions they are being kept in.

We reiterate our concerns that the Residential Surveillance in Designated Location, purportedly intended to apply to suspected crimes involving acts of terrorism, major bribery or endangering national security, is being used to muzzle the peaceful and legitimate rights to freedom of expression and to peaceful assembly and association of individuals expressing dissenting or critical views or seeking to support or protect the peaceful work of human rights defenders. We further reiterate our concerns that Residential Surveillance in a Designated Location extends the police and the public security organs' discretionary powers to arbitrary arrest and unlawfully detain individuals in conditions that may amount to secret detention and enforced disappearance.

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.

Without expressing at this stage an opinion on the facts of the case and on whether the detention and the placement of Mr. Ke, Mr. Wei and Mr. Yang under Residential Surveillance in Designated Location was arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR). Further, the right to have access to a lawyer is also enshrined in the Basic Principles on the Role of Lawyers as well as the Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court (Principle 9 and Guideline 8).

We would also like to draw the attention of your Excellency's Government to paragraph 27 of General Assembly Resolution 68/156, which, "[r]eminds all States that prolonged incommunicado detention 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, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person.

We would further like to recall that the Working Group on Arbitrary Detention stated in its Opinion No. 15/2019 (China) that the placement of an individual incommunicado under Residential Surveillance in a Designated Location in the circumstances of that case constituted a violation of articles 6, 9, 10, and 11(1) of the Universal Declaration of Human Rights and deprived the individual of his right to recognition as a person before the law (para. 44).

We would also like to refer your Excellency's Government to article 19 of the UDHR which provides for 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.

We would also like to draw your attention to Human Rights Council Resolution 22/6, which urges States to ensure that legislation designed to guarantee public safety and public order contains clearly defined provisions consistent with international human rights law and that it is not used to impede or restrict the exercise of any human right.

We also wish 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 and 12.

We further recall the United Nations Declaration on the Protection of All Persons from Enforced Disappearances and in particular article 10 which establishes the obligation of the detaining authorities to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest as well as articles 7 and 12.

Furthermore, the Human Rights Council, in paragraph 2 of its resolution 31/32, has called 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.

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 information on the fate and whereabouts of Messrs. Ke, Wei and Yang including the address of their current place of detention.
3. Please provide information concerning the legal grounds for the detention of and charges against Messrs. Ke, Wei and Yang, as well as their placement under Residential Surveillance in Designated Location. Please provide information on how these measures are compatible with international human rights norms and standards.
4. Please provide information as to why Messrs. Ke, Wei and Yang have been prevented from engaging in contact with their legal representatives and families, and explain how this is in line with international human rights standards, including article 10 of the Universal Declaration of Human Rights.
5. Please provide information on why the families of Messrs. Ke and Wei were not notified of their original detention for 6 days and 2 weeks respectively. Please include information on how this is compatible with international human rights standards and with Article 83 of the Criminal Procedure Law of China.
6. Please provide information concerning any investigation which has been undertaken with regards to the alleged violations of the rights of the migrant workers from Hunan Province who had contracted an occupational lung disease. If no investigation has been undertaken, please explain why.
7. Please indicate what measures have been taken to ensure that human rights defenders in China are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment 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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal 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 urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We would also like to bring to the attention of your Excellency's Government that should sources submit the allegation of enforced disappearance mentioned in this communication as a case to the Working Group on Enforced or Involuntary Disappearances, it will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by a separate correspondence.

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

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Bernard Duhaime
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David Kaye
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