

**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 CHN 3/2019

1 May 2019

Excellency,

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.

In this connection, we would like to bring to the attention of your Excellency's Government allegations we have received concerning the arrest and detention of, and charges against, five labour rights defenders, as well as the enforced disappearance of one of them as a result of their advocacy for labour rights and better working conditions at the Jasic Technology factory 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.

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, 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, he 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 also 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.

We wish to express our serious concerns regarding the alleged arrests, arbitrary detentions and charges against Messrs. Yu, Li, Liu, Mi and Fu, along with the latter’s enforced disappearance, following their defence of labour rights in the Jasic Technologies Ltd. factory and their exercise of their rights to freedom of expression, and freedom of peaceful assembly and association. We express concern that the charges are inconsistent with international human rights standards as they criminalise the legitimate exercise of the above mentioned rights. We also wish to express our concern that such a matter is being dealt from a criminal standpoint when it seems that the origin of the claim emanates from social injustice and inequality. In addition, we express our concerns over their alleged inability to meet sufficiently with legal representation in order to mount their legal defence, and their preclusion from contact with their families. We wish to stress that incommunicado detention presents an increased risk for torture and other forms of cruel, inhuman and degrading treatment.

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 your Excellency’s Government has an obligation to protect human rights defenders against attacks, both by state and non-state actors, and underline that businesses also have an independent responsibility respect human rights under the UN Guiding Principles on Business and Human Rights.

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.

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 on the fate and whereabouts of Mr. Fu.
3. Please provide explanations as to why this situation is handled under a criminal procedure as opposed to a social approach to the matter at stake that seems to be more appropriate leaving no one behind.
4. Please provide information as to why Messrs. Fu, Li, Liu, Mi and Yu have been prevented from engaging in sufficient 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 concerning any investigation which has been undertaken with regards to the alleged assaults of Mr. Liu and Mr. Mi in the Jasic Technologies Ltd. factory, along with any larger investigation which has been undertaken with regards to the alleged violations of labour rights there. If no investigation has been undertaken, please explain why.
6. 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.
7. Please indicate the steps that the Government has taken, or is considering to take, to ensure that businesses enterprises such as Jasic Technologies Ltd., respect human rights, including the rights to the enjoyment of just and favourable condition of work and to join and form trade union, in line with the UN Guiding Principles on Business and Human Rights.
8. Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure that all businesses enterprises such as Jasic Technologies Ltd., provide (or cooperate in the provision of) effective remedies to the affected human rights defenders, in line with the UN Guiding Principles.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government 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 involved company.

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 for the alleged violations.

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.

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 your Excellency's Government's attention to articles 3, 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights, along with articles 9, 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), signed by China on 5 October 1998, 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. As established by the Vienna Convention on the Law of Treaties (VCLT), where the signature to a treaty is not subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory State to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty (VCLT, articles 10 and 18).

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 the attention of your Excellency's Government 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 mediation 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.

We would also like to highlight the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which states that no State shall practice, permit or tolerate enforced disappearances (article 2), that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction (article 3) and that accurate information on detention persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information (article 10 (2)).

We wish to refer to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, specifically Principle 11, which states that “a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority” and that “a detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law”, and Principle 15 which states that “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days”.

We would also like to highlight 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.”

It is a recognised principle that States must protect against human rights abuses by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors.

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.

Moreover, we refer your Excellency’s Government 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 the attention of your Excellency’s Government 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.

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 governments to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.