

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 rights to freedom of peaceful assembly and of association

REFERENCE:
UA CHN 6/2020

9 March 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; 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 rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 34/5, 42/22, 36/6, 34/18 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of arbitrary arrest and enforced disappearance of three human rights defenders. Mr. Ding Jiayi, Mr. Zhang Zhongshun and Mr. Dai Zhenya were each arrested on 26 December at different locations and placed under Residential Surveillance in Designated Location (RSDL).**

Concerns about RSDL as a form of enforced disappearance, and its imposition on human rights defenders, have been subject to nine previous communications sent to your Excellency's Government; on 20 August 2019 (CHN 15/2019), 19 July 2019 (CHN 14/2019), 24 August 2018 (OL CHN 15/2018), 6 April 2018 (CHN 7/2018), 6 March 2018 (CHN 5/2018), 24 January 2018 (CHN 2/2018), 22 March 2017 (CHN 3/2017), 28 December 2016 (CHN 15/2016) and 29 October 2015 (CHN 10/2015). RSDL, provided for by a 2012 amendment to article 73 of the Criminal Procedure Law, requires the authorities to notify families of detention within 24 hours, but does not require them to reveal the exact whereabouts of the person detained. We thank your Excellency's Government for the response received to a number of these communications, but regret the need to express fresh concerns and reiterate old ones.

We would also like to recall that the cases of Mr. **Ding Jiayi**, Mr. **Zhang Zhongshun** and Mr. **Dai Zhenya** have also been treated under the humanitarian mandate of the Working Group on Enforced or Involuntary Disappearances.

Mr. **Ding Jiayi** (丁家喜) is a human rights lawyer who holds a prominent role in the New Citizens' Movement a loose network of human rights defenders and activists who meet to discuss social justice and legal and political reforms. In the past, he has

promoted the rights of children of migrants. On 18 April 2014 he was sentenced to three and a half years in prison for “gathering a crowd to disrupt order of a public place”, after peacefully exercising his right to protest. Currently, he campaigns for fairer governance, greater state transparency and increased equality in the education system.

Mr. **Zhang Zhongshun** (张忠顺) is a human rights defender and former university professor at Yantai University in Shandong. He promotes grassroots activism, providing training in non-violent rights campaigns as well as raising funds for funding prisoners of conscience and other human rights defenders who find themselves in difficulty. He has been involved in the “same city movement” which comprises of a loose network of activists and human rights defenders from the same city who dine together on an informal basis to discuss human rights and politics. In 2008, Mr. Zhang was sentenced to three years for “using a heretical organisation to subvert the law” after he shared a video related to the Tiananmen crackdown in 1989.

Mr. **Dai Zhenya** (戴振亚) is a human rights defender and finance manager of a private company and is also a member of the New Citizens’ Movement. He advocates for the political prisoners and human rights defenders and he also assists individuals whose rights have allegedly been violated to submit lawsuits and petitions for greater freedom of information in China. Mr. Dai has been arrested on a number of occasions in the past for his work promoting the development of civil society.

According to the information received:

On the weekend of the 7 and 8 December 2019, a number of human rights defenders, activists and lawyers gathered in Xiamen city where they discussed the situation of civil society and politics in China, particularly regarding how to create space for the discussion and enjoyment of human rights. Mr. Ding Jiayi, Mr. Zhang Zhongshun and Mr. Dai Zhenya all participated in the gathering.

Mr. Ding Jiayi (丁家喜)

On 26 December 2019, Mr. Ding Jiayi was arrested from the home of a friend’s house, where he had been staying temporarily. At around 21:00, a relative of his friend returned home to find the door lock broken and approximately ten plain clothed police officers talking to Mr. Ding Jiayi. First, the friend’s relative was arrested and taken to Beijing Municipal Changping District Nanshao Police Station. At around midnight, the relative returned home, while Mr. Ding was being led towards a car outside. The house was allegedly left in a disorderly way, with various items missing, including phones and computers. On 28 December 2019, the relative was allegedly summoned again to Beijing Municipal Changping District Nanshao Police Station, where he was warned by a police officer not to

share information about Mr. Ding's arrest, in order for their family to avoid "trouble".

On 7 January 2020, Mr Ding's lawyer inquired about his client's case at the Yantai City Public Security Bureau (PSB). He was informed by police officers that he was not permitted to visit and that Mr. Ding had been placed under RSDL.

On 9 January 2020, the lawyer submitted a formal request to visit Mr. Ding. He received a phone call the following day, shortly followed up with a written notice a few days later, that he would not be permitted to visit the defender. He was told that, as Mr. Ding had been charged with "inciting subversion of the state", any visit might harm state security.

On 15 January 2020, the lawyer submitted two "applications for inspection" to the Yantai City People's Procuratorate, requesting an investigation into the police force for irregularities in the processing of Mr. Ding's case. He also submitted a complaint to the Yantai City Bureau of Justice regarding his denied visits to Mr. Ding. He has not yet received a response to his requests.

Mr. Zhang Zhongshun (张忠顺)

On 26 December 2019 at around 16:00, the wife of Zhang Zhongshun received a text message from her husband saying that he would return home late as police had requested to speak with him. When his wife arrived home, ten Yantai City national security officers were waiting at the door to their home. The security officers allegedly searched the home without a warrant for approximately six hours. She was presented with a document, which listed all of the confiscated items, among them a computer, a phone and some books. No further details were given regarding the arrest of Mr. Zhang or what charges he was facing.

On 2 January 2020, Mr. Zhang's family was allegedly informed by phone call that the human rights defender had been placed under RSDL. No further details were given except that he was suspected to have committed a criminal act. According to information received, Yantai police have changed the charges faced by Mr. Zhang on multiple occasions, justifying new raids on his home and other properties.

On the same day, police officers presented Mr. Zhang's wife with a warrant to search one of Mr. Zhang's rental properties, based on the allegation of "causing crime through dangerous materials" (art. 136 of the Criminal Law). Police officers claimed to find printed instructions on bomb making along with 245 bullets. Police conducted raids on other properties owned by Mr. Zhang on 4 and 13 January 2020, one based on the crime of "sabotaging broadcasting, television

or public telecommunications facility” and another without any charges listed on it. Mr. Zhang’s wife was not permitted to keep a copy or take a photo of the warrant on any of these occasions.

On 7 January 2020, Mr. Zhang’s lawyer requested to visit his client at Yantai City PSB. He was informed that the officer in charge was not present. The lawyer returned on 8 January 2020, but the officers from the national security team with whom he met informed him that Mr. Zhang had been charged with “subverting state power” and “terrorist activities”. The lawyer was told that he would be notified when a visit would be permitted. On 15 January 2020, the lawyer received a written notice from the Yantai City PSB that visits were banned due to an alleged danger to national security.

Mr. Dai Zhenya (戴振亚)

On 26 December 2019, at around 21:00, the power was cut to Mr. Dai Zhenya’s home. When his family sought to investigate the incident, a number of plainclothes police officers raided the house, handcuffed Mr. Dai and arrested him. Without presenting a warrant or a list of confiscated items, security officers took the human rights defender’s computer, tablet, phone and other items. Mr. Dai’s wife was informed verbally by one of the police officers that he had been suspected of “inciting subversion state power”.

Later that night, when Mr. Dai’s wife went to Huli District Police Station to inquire about the purpose of the raid, she was allegedly informed that he was being detained in that station but that they could not provide any further details. On 2 January 2020, Xiamen police told her to go back to the police station. There, she was informed that Mr. Dai had been put under RSDL on suspicion of committing a criminal act. No further details were given. She was asked to sign a transcript of what she was just informed but has not been given a copy of the transcript at any point.

On 15 January 2020, Mr. Dai’s lawyer went to Yantai City PSB to inquire about visiting his client. Seven police officers informed the lawyer about the case details, but that they were not in a position to respond to the request to visit. The officers informed the lawyer that Mr. Dai was being held on suspicion of “endangering state security”, but could not inform the lawyer of specific details on the crime or provide legal documentation. On 21 January 2020, the lawyer received a written notification from the Yantai PSB, dated 16 January, which affirmed that he was being charged with “inciting subversion of state power” and any lawyer or family visits to Mr. Dai would not be permitted on the basis that they could be damage national security.

Mr. Ding, Mr. Zhang and Mr. Dai were allegedly detained by the Yantai City PSB. According to information received, this forms part of a year-end cross-provincial operation led by a special taskforce of Yantai City PSB of Shandong Province. As part of the operation, approximately 12 of those present at the gathering have been summoned for questioning, five of which have been detained under RSDL with four of them, including Mr. Ding, Mr. Dai and Mr. Zhenya, remaining in custody at the time of writing. The date the human rights defenders were placed under RSDL has not been revealed.

All three human rights defenders have been charged with “inciting subversion of state power”. The families and lawyers of their choosing were only informed of the charges by way of a written notice from the Yantai PSB, which also stated that they were not permitted to visit the human rights defenders on the basis that it would “endanger state security”, under Chinese Criminal Procedure Law (art. 37). Mr. Ding and Mr. Zhang’s family received this information over a week after the arrests. Mr. Dai’s family was informed orally at the time of arrest but did not receive written confirmation for a number of weeks. The human rights defenders continue to be prevented from communicating with their families, and if sentenced, they could face a prison terms of at least five years.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned by the alleged arbitrary arrests and enforced disappearance of Mr. Ding Jiayi, Mr. Zhang Zhongshun and Mr. Dai Zhenya and the raids conducted at their homes. We are also concerned at the harassment of other human rights defenders who participated in the gathering on 13 December 2019. We express our serious concern that the targeting of these defenders is in direct retaliation to the exercise of their fundamental freedoms, especially their rights to freedom of peaceful assembly and freedom of expression. In this regard, we would like to refer to the rights to freedom of opinion and expression and freedom of peaceful assembly, as enshrined in articles 19 and 20(1) of the Universal Declaration of Human Rights and 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, 9 and 12.

We are also particularly concerned that the arrest and enforced disappearance of the three human rights defenders seems to form part of a broader operation to silence dissent in China. There has been a systemic crackdown on lawyers and human rights defenders since the so-called “709 crackdown” in summer 2015. Special Procedures has communicated concerns to your Excellency’s Government about the repression of lawyers in numerous previous communications, on 15 July 2015 (CHN 6/2015), 14 September 2016 (CHN 7/2016), 26 October 2016 (CHN 9/2016), 2 December 2016 (CHN 13/2016), 22 March 2017 (CHN 3/2017), 24 January 2018 (CHN 2/2018), 6 March 2018 (CHN 5/2018) and 6 April 2018 (CHN 7/2018). While we thank your Excellency’s

Government for responses received to some of these communications, we remain deeply concerned that the continuation of interrogation, arrest and enforced disappearance of human rights defenders and lawyers reflects a pattern of intimidations on those who legitimately defend human rights and seek justice.

We also wish to express our deep concern that the late-2019 crackdown reflects a year-end pattern of arrests and sentencing of human rights defenders in recent years. This is reflected in previous communications (CHN 3 2018), (CHN 3/2017) and WGAD Opinion 2018/62. As these crackdowns took place in late-December, when the attention of the international community might be less effective, we are deeply concerned that they may take place to avoid international scrutiny of alleged human rights violations.

We are concerned that the practice of imposing Residential Surveillance in a Designated Location without judicial oversight, without formal charges, in conditions amounting to incommunicado detention or solitary confinement, contravenes the right of every person not to be arbitrarily deprived of his or her liberty and to challenge the lawfulness of detention before a court and without delay. Without of access to legal counsel or their families, those placed under RSDL are at increased risk of cruel and inhuman treatment, including torture. We express our deep concern that RSDL is used to silence dissent and prevent human rights defenders from carrying out their legitimate activities.

The United Nations Declaration on the Protection of All Persons from Enforced Disappearances recognises the right to be held in an officially recognised place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention in order to challenge the legality of the detention. The same Declaration 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 (article 10). The Declaration also establishes the obligation to maintain in every place of detention an official up-to-date register of detained persons (article 12) and provides that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7).

China has expressed on several occasions its support for the international community's efforts to eliminate and prevent enforced disappearances, including at the UN Human Rights Council¹. The Working Group observes that RSDL, where it consists of placing individuals under incommunicado detention for investigation for prolonged periods without disclosing their whereabouts amount to secret detention and is a form of enforced disappearance (A/HRC/36/39, para. 71 and A/HRC/19/58/rev.1 pages 36-37).

¹ Statement made at the 36th session of the Human Rights Council, September 2017

We also express our concern regarding the lack of response received from Mr. Ding's lawyer regarding alleged irregularities in the detention of Mr. Ding, particularly in light of the response provided by your Excellency to CHN 15/2018 on 23 November 2018. This response received from your Excellency's Government explains how an investigation can be launched into the decision to place an individual under RSDL: "[I]f criminal suspects and their legal agents, close relatives or defenders consider that the decision to execute residential surveillance in a designated location is illegal, they shall file a complaint, report or appeal with the People's Procuratorate". In this regard, we remind your Excellency's Government of article 9 (2) of the Universal Declaration Human Rights Defenders.

We are concerned by the lack of transparency by the authorities regarding the legal basis for the arrest of the human rights lawyers and the raids on their properties at the times in which they took place. We are particularly concerned that the raids conducted on the properties of Mr. Zhenya were allegedly warranted on different charges, or in one case, allegedly no charge at all. We also express our concern at the delay in informing the lawyers of the human rights defenders of the reason for the arrests. In this regard, we remind your Excellency's Government of article 9 (2) of the International Covenant on Civil and Political Rights (ICCPR), which states that "[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him".

We are concerned by the repeated use of national security legislation to target human rights defenders and all those who express dissenting opinions from that of the Government. We are particularly concerned that this may have a chilling effect on civil society in China, hindering the basic exercise of human rights and depriving individuals of the protections offered by human rights legislation. We also express our concern at the use of "subversion of State power" and "incitement of subversion of State power", which hold prison sentences of five to ten years. While we note the legal provisions guaranteeing due process, China's Criminal Procedure Law provides for explicit exemptions and restrictions to the latter for national security crimes, such as notification of family members of arrest within 24 hours, or access to a lawyer within 48 hours.

In this regard, we would like to remind your Excellency's Government of the Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Concluding Observations of its Fifth Periodic Report of China (CAT/C/CHN/CO/5) particularly para. 13 (d) which recommended that China "repeal the provisions in the Criminal Procedure Law that allow restrictions to the right to counsel and to notifying relatives in cases of "endangering State security", "terrorism", serious "bribery" or cases involving "State secrets"". Para. 14 also recommended that the State party repeal, as a matter of urgency, the provisions of the Criminal Procedure Law that allow suspects to be held de facto incommunicado, at a designated location, while under residential surveillance. Pending the repeal of that provision, the Committee

recommended to the State party that it ensures that Procuratorate promptly review all the decisions on residential surveillance taken by public security officers and ensure that detainees who are designated for potential prosecution are charged and tried as soon as possible and those who are not to be charged or tried are immediately released. If detention is justified, detainees should be formally accounted for and held in officially recognised places of detention. Officials responsible for abuses of detainees should be held criminally accountable. These recommendations do not seem to have been taken into account by China and we are hereby reiterating them.

Furthermore, we reiterate our deep concern regarding the use of the law “inciting subversion of state power, a charge applied broadly to human rights defenders in 2019. The Working Group on Arbitrary Detention described the crime of “inciting subversion” a “vague and imprecise offence” and called “upon the [Chinese] Government to repeal article 105 (2) of the Criminal Law or bring it into line with its obligations under international human rights law” (Opinion No. 15/2019, para. 33).

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 persons 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 detailed information on Mr. Ding, Mr. Zhang and Mr. Dai’s place of detention.
3. Please provide detailed information on the legal grounds for the arrest and detention of the human rights lawyers Mr. Ding, Mr. Zhang and Mr. Dai. Please explain how these measures are compatible with international standard related to the right to liberty and security of the person as enshrined in article 9 of the Universal Declaration of Human Rights as well as with the protection of lawyers’ independence as enshrined in the Basic Principles on the Role of Lawyers.
4. Please provide information on the extent of provisions of “national security” crimes, in particular the definition of “subversion of State

power” (Article 105) in the Criminal Law, and related provisions on the right to counsel (Article 39) and to family notification (Article 85) in the Criminal Procedure Law, and how they are comply with international human rights law.

5. Please provide information regarding the status of investigations into the complaint lodged by Mr. Ding’s lawyer into irregularities in the behaviour of police officers. If no investigation has been launched, please explain how this is consistent with Article 7 of the Provisions of the People’s Procuratorate on the Supervision of RSDL.
6. Please indicate what measures have been taken to ensure the physical and psychological integrity of Mr. Ding, Mr. Zhang and Mr. Dai while in detention.
7. Please provide detailed information on the measures taken by the authorities to ensure that the independence of lawyers, in particular those who take up or are involved in cases related to human rights or other sensitive issues, is guaranteed and that they can fulfil their professional functions in a safe and enabling environment.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

Finally, 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 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.

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.

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Leigh Toomey
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