

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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January 10, 2020

Xi Jinping, General Secretary of the Communist Party of China
The State Council General Office
2 Fuyoujie
Xichengqu
Beijingshi 100017
People's Republic of China
Email: english@mail.gov.cn

Dear Mr. Xi;

Re: Immediately Release Arbitrarily Detained and Disappeared Lawyers and Activists

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and other human rights defenders who promote human rights and the rule of law internationally through advocacy, legal research and education. LRWC also campaigns for lawyers and other human rights defenders in danger because of their advocacy. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.

LRWC is alarmed and gravely concerned about the reported arrests and disappearances of activists and lawyers late December 2019 to January 2020. We request immediate action to reveal the location of these individuals and release them from unlawful detention.

Background

The present set of arrests and disappearances commenced on December 26, 2019, and continued into early January 2020. Chinese police detained and questioned over a dozen activists and lawyers who had attended a small, private gathering in Fujian on December 13.

According to NGO Chinese Human Rights Defenders, the following individuals were arrested and have either remained in custody or their whereabouts are unknown:¹

1. Ding Jiayi, 52, disbarred lawyer, former prisoner of conscience, and Beijing resident, was detained on December 26 in Beijing by police. Police searched his place, took away his computer, phone and other personal belongings, without presenting any arrest warrant.
2. Zhang Zhongshun, 52, activist, former prisoner of conscience, university professor, and resident of Yantai, Shandong, was detained on December 26 by Shandong police on suspicion of "subversion of state power." Police did not produce any arrest warrant, searched his house, confiscated computer, phone, and other personal belongings. Reportedly, he has been put under "residential surveillance in a [police] designated location" somewhere in Yantai. His exact whereabouts remain unknown. Mr. Zhang did not attend the Fujian gathering.

¹ Chinese Human Rights Defenders, "Urgent Action: China Must Release Activists/Lawyers Detained for Peaceful Assembly," January 2, 2020, online: <<https://www.nchrd.org/2020/01/urgent-action-china-must-release-activists-lawyers-detained-for-peaceful-assembly/>>.

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3. Dai Zhenya, 46, activist and resident of Fujian, was detained on December 26 on suspicion of “inciting subversion of state power.” No arrest warrant was displayed. Dai’s residence was searched and police took away his computer and phone. Mr. Dai, an accountant at a corporation, has reportedly been put under “residential surveillance in [police] designated [unknown] location.
4. Li Yingjun, 35, activist, factory worker, and resident of Zhangzhou, Fujian, was detained on December 26 in Fujian by police.
5. Huang Zhiqiang, 47, a lawyer, was detained on December 29, in Jinhua, Zhejiang, and is now under criminal detention on suspicion of “picking quarrels and provoking trouble.” Police have sent his family a detention notification. He is being held at the Jinhua City Detention Center.
6. In Sichuan, police detained activist Wei Xiaobing, on December 30. Mr. Wei, 42, a businessman, has recently been detained briefly in relation to distributing T-shirts printed with words expressing support to HK protests. It is unclear whether his detention is related to the crackdown on the Fujian gathering.

China’s International Law Obligations

The arrest, detention and disappearance of the six people named in this letter are arbitrary and in violation of China’s international law obligations. China’s actions violated numerous international rights recognized and guaranteed by the United Nations Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and other instruments, , including rights to:

- the presumption of innocence;
- pre-trial release;
- determination of charges, rights and the legality of detention and treatment by a competent, independent and impartial tribunal; ;
- timely, confidential access to lawyer of choice;
- freedom from ex post facto laws and from charges that violate the international principles of legality;
- trial within a reasonable time;
- freedom from incommunicado detention and other forms of torture or cruel, inhuman or degrading punishment or treatment.

LRWC notes this list of rights and obligations is not exhaustive.

As a member of the United Nations and a signatory to the International Covenant on Civil and Political Rights (ICCPR), China is obligated to ensure the enjoyment by all of the rights and freedoms recognized by the Universal Declaration of Human Rights (UDHR) and guaranteed by the ICCPR, including rights to: equality, liberty, expression, association, presumption of innocence, determination of rights by a competent, independent and impartial tribunal, legal representation, freedom from arbitrary detention and remedies for violations of protected rights. The detentions and disappearances referred to in this letter violate rights protected by the UDHR and ICCPR and constitute a violation by China of its international human rights obligations.

The ICCPR, Article 9 prohibits and guarantees freedom from both arbitrary arrest and detention and unlawful deprivation of liberty. This Article obliges China to ensure that no one shall be deprived of liberty except “on such grounds and in accordance with such procedures as are established by law” and that “[n]o one shall be subjected to arbitrary arrest or detention.” Freedom from arbitrary detention is non-derogable and cannot be justified under any circumstances.² As determined by the UN Human Rights Committee (HR Committee) in General Comment No. 35:

² UN Human Rights Committee General Comment No. 35, CCPR/C/GC/35, 16 December 2014, para. 66.

An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. For example, remand in custody on criminal charges must be reasonable and necessary in all the circumstances.³

Detention is unlawful when, inter alia, it “is incompatible with the requirements of article 9, paragraph 1, or with any other relevant provision of the Covenant.”⁴

In the present case, factors rendering the arrests and detentions arbitrary and/or unlawful include:

1. the reasons for detention lack any clear legal bases⁵ and are not “defined with sufficient precision to avoid overly broad or arbitrary interpretation or application;⁶
2. the detainees appear to have been denied “[p]rompt and regular review by a court or other tribunal possessing the same attributes of independence and impartiality as the judiciary...” i.e. review of the legality of detention and treatment by a competent, impartial and independent tribunal;⁷
3. the detainees have been denied legal representation and access to independent legal advice, as required by Article 14 of the ICCPR;⁸
4. the arrests and detentions are used as “punishment for the legitimate exercise” of rights guaranteed by the ICCPR, specifically the right to peaceful assembly and ;⁹
5. use of enforced disappearances, a particularly aggravated form of arbitrary detention;¹⁰ and,
6. in many cases, the detention is incommunicado.

These breaches of international law are multiple and compounding. The fact that individuals are being held without facing charges, without communication to the outside world, and without access to legal counsel of choice raises concerns of other serious maltreatment occurring, including potential torture. China’s actions are clearly in breach of international law and must be remedied.

Intervention and Action Requested:

Each of the six individuals named in this letter has been arrested and detained on vague charges, if any charges at all. They have been denied their rights to appear before a fair and independent tribunal to determine the validity of their charges and detention. In cases where the individual’s location is unknown, these individuals risk further violation, including serious derogations of human rights to life. Each individual’s right to be free from arbitrary arrest and detention is violated and China must immediately act to rectify the situation by freeing the individuals.

LRWC urges the authorities of China to comply with international law through the following actions:

- Immediately disclose the whereabouts of Mr. Ding, Mr. Zhang, Mr. Dai, Mr. Li; and Mr Wei;
- Unconditionally release Mr. Ding, Mr. Zhang, Mr. Dai, Mr. Li, Mr. Huang, and Mr Wei in conditions that guarantee his safety;

³ *Ibid*, para 12.

⁴ *Ibid*, para 44.

⁵ *Ibid*, para 12.

⁶ *Ibid*, para 22.

⁷ *Ibid*, para 16.

⁸ *Ibid*, para 16.

⁹ *Ibid*, para 18.

¹⁰ *Ibid*, para 17.

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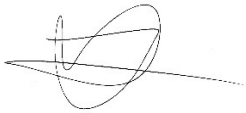
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- commence a prompt, independent and impartial investigation into the enforced disappearance of Mr. Ding, Mr. Zhang, Mr. Dai, Mr. Li, and Mr Wei and identify those responsible; and
- make investigation results public; and,
- ensure that all individuals are free from any form of torture or ill-treatment.

Please advise LRWC by mail, e-mail or fax of the actions that is taking to comply with its international human rights law obligations and with the above noted requests for remedial action.

LRWC awaits your response. Thank you for your attention to our concerns.

Sincerely,



Joey Doyle

Director, Lawyers' Rights Watch Canada

Copied to:

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From LRWC

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