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## FREEDOM NOW

### **FREEDOM NOW – SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)**

#### **UNIVERSAL PERIODIC REVIEW: PEOPLE'S REPUBLIC OF CHINA 17<sup>TH</sup> SESSION – OCTOBER 21-NOVEMBER 1, 2013**

**March 4, 2013**

#### **Introduction**

1. Freedom Now individually submits this report to assist the Human Rights Council (HRC) in the Universal Periodic Review (UPR) regarding the human rights policies and practices of the People's Republic of China (PRC). Freedom Now is a non-partisan, non-governmental organization that works to free prisoners of conscience through focused legal, political, and public relations advocacy. In particular, Freedom Now serves as international *pro bono* counsel to detained Chinese citizens Gao Zhisheng, Dr. Liu Xiaobo, and Liu Xia.

2. This report describes the Chinese government's continued use of arbitrary detention since its first UPR in 2009 and demonstrates the government's failure to engage honestly with the international community by highlighting the facts of representative individual cases.

#### **Arbitrary Detention in the PRC**

3. The targeting of lawyers and rights activists, especially for exercising the right to freedom of expression, continues to be widespread in the PRC. In particular, the use of arbitrary detention to silence government critics, often on charges of inciting subversion, has not abated despite the government's consistent claims to the contrary.

4. During the 2009 UPR, the PRC highlighted its constitutional provisions on the rule of law and the right to freedom of expression while it rejected specific recommendations related to arbitrary detention. The government claimed its "citizens enjoy the freedom of speech and of the press, and have the right to criticize a State organ or its officials and to make suggestions." The government even went so far as to assert that "[n]o individual or press [have] been penalized for voicing their opinions or views." The PRC further stated that any limitations on the right to free expression in the country, in particular for inciting subversion, complied with the requirements of the International Covenant on Civil and Political Rights (ICCPR).<sup>1</sup> Notwithstanding such

<sup>1</sup> Human Rights Council, National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1: China, Nov. 10, 2008, UN Doc. A/HRC/WG.6/4/CHN/1 (*hereinafter* National Report), at ¶¶ 46, 49, and 59. Human Rights Council, Report of the Working Group on the Universal Periodic Review: China, Oct. 5, 2009, UN Doc. A/HRC/11/25 (*hereinafter* Working Group Report), at ¶¶ 9, 69, and 71.

general assurances, however, the government rejected a number of recommendations related to the practice of arbitrary detention.<sup>2</sup>

5. The government's refusal to accept reasonable recommendations regarding arbitrary detention is an unfortunate reflection of the widespread use of imprisonment and house arrest to silence critical voices in the country. Chinese citizens continue to face detention—frequently on charges of inciting subversion or without any legal process whatsoever—for merely exercising their fundamental rights. Such activists often face long prison sentences for criticizing government policy or calling for peaceful democratic reform. This practice clearly violates the detainee's right to freedom of expression and political participation, both protected fundamental rights under the ICCPR and the Universal Declaration of Human Rights. While subject to arbitrary detention, Chinese citizens also face the very real threat of torture. This is particularly true during periods of enforced disappearance. Further, the worrying trend of retaliation by Chinese authorities against the family members of these prisoners of conscience has also continued. In some cases, the government has subjected the spouses and children of prominent activists to harassment, surveillance, and even house arrest—simply because of their relationship to a government critic.

6. While the PRC expressed an interest in cooperating with the HRC's special procedure mandate holders during the 2009 UPR, the government has since failed to engage honestly with them when confronted with specific cases of arbitrary detention. In addition to accepting the recommendations that it step-up cooperation and engage with the special procedures, the government affirmed in 2009 that it "attaches great importance to their reports and actively implements reasonable recommendations."<sup>3</sup> However, when special procedure mandate holders, especially the UN Working Group on Arbitrary Detention (UNWGAD), have attempted to engage with the PRC on cases of individual prisoners of conscience, the government consistently fails to honestly engage on the facts or implement reasonable recommendations.

7. Although the use of arbitrary detention in China is widespread, consideration of individual cases provides useful insight into broader trends and gives concrete examples of human rights conditions on the ground—facts not easily dismissed by broad statements about formal legal protections. More importantly, it gives a voice to those who cannot speak publicly about their detention. As such, the following case studies are presented as specific and well-documented examples of arbitrary detention in the PRC.

### **The Arbitrary Detention of Gao Zhisheng<sup>4</sup>**

8. Gao Zhisheng is one of China's most prominent human rights lawyers and widely recognized as a prisoner of conscience. Once named among the top attorneys in the country by

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<sup>2</sup> See e.g. Working Group Report at ¶¶ 27(g), 28(f), 82(b) and 82 (c).

<sup>3</sup> Working Group Report, at ¶¶ 65 and 114(A)(10).

<sup>4</sup> For a detailed discussion of the facts and law involved, see Freedom Now, *Petition to the UN Working Group on Arbitrary Detention: In the Matter of Gao Zhisheng v. People's Republic of China*, Mar. 9, 2010, available at <http://www.freedom-now.org/wp-content/uploads/2010/09/Zhisheng-Petition-to-the-WGAD-3.9.10.pdf>. See also Freedom Now, *Petition to the UN Working Group on Arbitrary Detention: In the Matter of Gao Zhisheng v. People's Republic of China*, Jan. 25, 2012, available at <http://www.freedom-now.org/wp-content/uploads/2012/01/Gao-Zhisheng-UNWGAD-Petition-1-25-11.pdf>.

the Ministry of Justice, Mr. Gao fell out of favor with authorities after representing politically sensitive clients, in particular religious minority groups. Mr. Gao continued his advocacy even after the government closed his law firm. Chinese authorities responded by subjecting him to repeated periods of arbitrary detention, enforced disappearance, and torture.

9. In 2006, police arrested Mr. Gao days after he issued a public letter highlighting rights violations in the country and renouncing his membership in the Communist Party. Charged with “inciting subversion,” Mr. Gao confessed to the charges after interrogators made threats against his wife and young children. Following a short trial conducted without notice to Mr. Gao’s family or their chosen legal team, the court accused Mr. Gao of defaming the government through his writing and sentenced him to a suspended three-year prison term subject to a five-year probationary period.

10. In the following years, despite the formal suspension of Mr. Gao’s sentence, Chinese authorities repeatedly detained and tortured Mr. Gao. After releasing Mr. Gao in 2006, the government placed him under effective house arrest, preventing him from leaving his home or using a telephone or computer. The government also put his family under constant surveillance, stationing guards in their apartment building and following them everywhere. Between 2007 and 2011, Chinese authorities disappeared Mr. Gao—without any legal process whatsoever—on three separate occasions totaling almost three years. After emerging from his first two disappearances, Mr. Gao described brutal torture at the hands of his captors. Guards severely beat him, shocked him with electric batons, and pierced his genitals with toothpicks. Then, in December 2011, after holding Mr. Gao at an unknown location without access to family or an attorney for over 20 months, the government announced that it would imprison him in remote northwestern China for an additional three years. Authorities implausibly claimed that Mr. Gao violated the terms of his probation. Even after formally imprisoning Mr. Gao, the government repeatedly interfered with his access to family, allowing only two visits since December 2011.

11. Throughout its detention of Mr. Gao, the PRC has failed to engage honestly with the international community. Despite its assurances during the 2009 UPR, the government has consistently lied about the circumstances of Mr. Gao’s detention or refused to address the facts of his case—including to the UN Working Group on Enforced and Involuntary Disappearances (UNWGEID) and to the UNWGAD. After disappearing Mr. Gao in 2009, authorities variously claimed that Mr. Gao had gone “missing,” was “where he should be,” and that the government, with a population of 1.3 billion people, could not be expected to know his whereabouts. Although the government claimed to the UNWGEID—despite overwhelming and publicly available evidence to the contrary—that Mr. Gao was free, working in northwest China, and in contact with family members, it failed to respond to inquiries by the UNWGAD.<sup>5</sup> In light of the well-documented facts of Mr. Gao’s case, the UNWGAD nonetheless found his detention to be a violation of international law and called for his immediate release.<sup>6</sup> However, Mr. Gao remains imprisoned despite this unequivocal finding by a special procedure mandate holder.

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<sup>5</sup> Testimony of Jared Genser, Founder of Freedom Now, before the United States House of Representatives Committee on Foreign Affairs, *Investigating the Chinese Threat, Part Two: Human Rights Abuses, Torture and Disappearances*, July 25, 2012, at pp 4-5, available at <http://www.freedom-now.org/wp-content/uploads/2012/07/US-House-Committee-on-Foreign-Affairs-Jared-Genser-Testimony-7-25-121.pdf>.

<sup>6</sup> *Gao Zhisheng v. People’s Republic of China*, UN Working Group on Arbitrary Detention, Opinion No. 26/2010 (Nov. 19, 2010) available at <http://www.unwgaddatabase.org/un/Document.aspx?id=2777>.

## **The Arbitrary Detention of Dr. Liu Xiaobo and Liu Xia<sup>7</sup>**

12. Dr. Liu Xiaobo, the world's only imprisoned Nobel Peace Prize Laureate, is a widely-respected intellectual-turned-activist who has been detained in the PRC since 2008 because of his peaceful advocacy. The government first detained Dr. Liu after he left a prestigious academic position to join student protests in the summer of 1989. Authorities held him for 20 months and banned him publishing in the country. Undeterred by another period of detention between 1995 and 1999, Dr. Liu continued to author political essays and publish abroad.

13. Dr. Liu's most recent detention began after he lead an initiative called Charter '08, a political manifesto that calls for peaceful democratic reform and respect for fundamental human rights in China. Police arrested Dr. Liu on December 8, 2008, just days before the scheduled release of Charter '08, and held him without charge or access to a lawyer for six months. The government eventually charged Dr. Liu with "inciting subversion" and presented his pro-democracy essays and Charter '08 as evidence of guilt. Police prevented Dr. Liu's wife, Liu Xia, from attending the trial by detaining her at the couple's home in Beijing and also barred journalists and diplomats from entering the courthouse. After a two hour trial, during which the defense was limited to a 14-minute presentation, the court convicted Dr. Liu and sentenced him to 11 years in prison.

14. In addition to its detention of Dr. Liu, the PRC has held Li Xia under house arrest—without any charge or legal process—for over two years. In October 2010, the Norwegian Nobel Committee announced Dr. Liu as the 2010 Peace Prize Laureate. Representatives of the international community, including four HRC special procedure mandate holders, welcomed the announcement and called for Dr. Liu's release. The PRC, however, only increased its repression and placed Liu Xia under house arrest, cutting her off from the outside world. She remains under house arrest, merely because of her relationship to Dr. Liu. Recently reached by journalists for the first time in nearly two years, Liu Xia described the isolation of her ongoing detention as "painfully surreal."

15. As in the case of Mr. Gao, the PRC has failed to engage honesty with the international community about its detention of Dr. Liu and Liu Xia. In response to petitions submitted to the UNWGAD on behalf of the Lius, the government failed to address the facts of either case. With respect to Dr. Liu's detention, the government reiterated its usual claim that Dr. Liu is a criminal and that the government respects the rule of law. However, the PRC failed to address any of the specific and well-documented facts contained in the petition. Surprisingly, in Liu Xia's case, the government claimed that "no legal enforcement measure has been taken against [her]." In light of the vast body of publicly available information documenting her house arrest in Beijing, this claim is either demonstrably false or an admission that her continued detention is a blatant violation of domestic and international law. In either case, such a response is far from the constructive engagement special procedure mandate holders were promised by the PRC in 2009. Despite the government's failure to address the facts of either case, the UNWGAD issued two well-reasoned opinions finding the continued detention of the Lius to be arbitrary under

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<sup>7</sup> For a detailed description of the facts and law involved, see Freedom Now, *Petition to the UN Working Group on Arbitrary Detention: In the Matter of Liu Xiaobo and Liu Xia v. Government of the People's Republic of China*, Nov. 4, 2010, available at <http://www.freedom-now.org/wp-content/uploads/2010/11/Press-Release-and-Petitions-for-Liu-Xiaobo-and-Liu-Xia-to-UNWGAD1.pdf>.

international law.<sup>8</sup> Notwithstanding this finding by the UNWGAD, and its reasonable recommendation that the Lius be released immediately, Dr. Liu remains imprisoned in remote northwestern China and Liu Xia continues to be held under house arrest in Beijing.

## Conclusion and Recommendations

16. The continued detention of Gao Zhisheng, Dr. Liu Xiaobo, and Liu Xia in the People's Republic of China demonstrates that the government continues to employ arbitrary detention to silence critical voices in clear violation of international law. These cases also illustrate the very real threat of mistreatment or disappearance faced by lawyers and human rights defenders in the country and the government's willingness to target their families. In light of the above, Freedom Now submits the following recommendations:

- Immediately and unconditionally release all Chinese citizens currently detained because they exercised internationally protected human rights—including Gao Zhisheng, Dr. Liu Xiaobo, and Liu Xia.
- End the practice of arbitrarily detaining individuals in response to their peaceful exercise of fundamental human rights—including the right to peaceful free expression and association.
- End the practice of subjecting peaceful government critics to *incommunicado* detention and enforced disappearance because of their advocacy.
- Revise legislation prohibiting the incitement of subversion to specifically protect the right to peaceful free expression and association.
- End the practice of subjecting the family members of rights lawyers and activists to harassment, surveillance, and house arrest.
- Investigate and punish the torture of prisoners of conscience—including the repeated and brutal mistreatment of Gao Zhisheng.
- Fully cooperate with, respond to, and follow the recommendations of all HRC special mandate holders—including the UNWGEID and UNWGAD.

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<sup>8</sup> *Liu Xiaobo v. People's Republic of China*, UN Working Group on Arbitrary Detention, Opinion No. 15/2011, May 5, 2011, available at <http://www.unwgaddatabase.org/un/Document.aspx?id=2759>; *Liu Xia v. People's Republic of China*, Opinion No. 16/2011, May 5, 2011, available at <http://www.unwgaddatabase.org/un/Document.aspx?id=2760>.