

United States House of Representatives
Committee on Foreign Affairs

Investigating the Chinese Threat, Part Two: Human Rights Abuses, Torture and Disappearances

Testimony of Jared Genser¹ Founder of Freedom Now and International *Pro Bono* Legal
Counsel to Liu Xiaobo, Liu Xia, and Gao Zhisheng

July 25, 2012

Good afternoon Madam Chairman and Ranking Member Berman and thank you for inviting me to speak with you today. I would like to begin by thanking the Members and staff of the House Committee on Foreign Affairs for your continued support of prisoners of conscience around the world and your deep commitment to ensuring that respect for fundamental human rights remains a central component of U.S. foreign policy.

I am the founder of Freedom Now, an international legal advocacy organization that represents prisoners of conscience worldwide, and serve as international *pro bono* legal counsel to Nobel Peace Prize Laureate Liu Xiaobo, his wife Liu Xia, and the prominent rights lawyer Gao Zhisheng. My comments today will address each of these cases, the ways in which their ongoing detentions violate both Chinese and international law, what lessons we can draw from these illustrative cases, and what I believe the U.S. Government should do on their behalf and others similarly situated.

Dr. Liu Xiaobo, perhaps China's most prominent prisoner of conscience and the world's only imprisoned Nobel Peace Prize Laureate, is a respected intellectual with a long history of putting his own liberty at risk to defend the universal values of freedom and democracy. In 1989, Dr. Liu left the relative safety of Columbia University to join the students then protesting in Tiananmen Square. In response, the government held him for 20 months on "counterrevolution" charges and banned him from publishing in the country. But Dr. Liu continued to write and

¹ Jared Genser can be contacted at jgenser@freedom-now.org or (202) 320-4135.

became a leading voice for peaceful democratic reform in China. Despite more arrests, surveillance, and harassment in the following years, Dr. Liu joined a group of reformers in drafting Charter '08, a manifesto calling for peaceful political reform in China based on the principles of human rights, freedom, and democracy.

Just days before Charter '08 was to be made public in December 2008, police arrested Dr. Liu and held him *incommunicado* for three weeks and without charge or access to a lawyer for nearly six months. His trial on “inciting subversion” charges lasted only two hours and the defense was allowed only 14 minutes to present its case. Foreshadowing later events, police prevented Dr. Liu’s wife, Liu Xia, from leaving home to attend the trial. Ultimately, the court convicted Dr. Liu—citing as evidence his involvement in drafting Charter '08 and online essays—and sentenced him to 11 years in prison. In a demonstration of the moral force of his character, which would later lead the Norwegian Nobel Committee to award him its Peace Prize, Dr. Liu responded to the verdict in a statement saying that “I have long been aware that when an independent intellectual stands up to an autocratic state, step one towards freedom is often a step into prison. Now I am taking that step; and true freedom is that much nearer.”

In the days before the Nobel Committee’s announcement in 2010, Liu Xia spoke openly about her fears that if her husband won the award, authorities would prevent him from receiving it. Hours after Dr. Liu won the award, Chinese authorities moved to isolate Liu Xia from the outside world. After taking her to see Dr. Liu at the Jinzhou Prison, authorities placed Liu Xia under house arrest. After nearly 22 months, she remains under house arrest without charge and without any legal process whatsoever—her only “crime” is having been married to a Nobel Peace Prize Laureate.

Our legal team, which includes my colleague Professor Cohen, submitted petitions on

behalf of the Lius to the United Nations Working Group on Arbitrary Detention—unfortunately, the government’s responses have mirrored its tired talking points. As usual, the government made blanket statements about the right to freedom of expression and respect for the rule of law, claiming that the government strictly followed domestic law in imprisoning Mr. Liu. More shockingly, and despite a vast body of publicly available information documenting her house arrest, the government responded that “no legal enforcement measure has been taken on Liu Xia.” Such a claim remains either an admission of the illegality of her detention or a flagrant and intentional lie. In either case, it demonstrates an incredible lack of respect for the UN as an institution and a total disregard for the fundamental rights of one of its own citizens.

The Working Group, in separate well-reasoned opinions, held that the continued detention of the Lius by the Chinese government is arbitrary as a violation of Articles 9, 10, and 19 of the Universal Declaration of Human Rights and called for their immediate release. As we explained to the Working Group, their detentions are arbitrary for the same two reasons. First, both were detained for peacefully exercising their fundamental rights—Dr. Liu for writing in support of democratic reform and respect for human rights in China and Liu Xia for speaking out in support of her husband. Second, in both cases the government failed to meet certain minimum international standards for due process. Dr. Liu was detained *incommunicado* for three weeks and held without charge or access to an attorney for nearly six months. His trial was far from fair. In Liu Xia’s case, there has simply been no procedure at all.

However, despite the Working Group’s demand that the Lius be released—a demand that has been echoed by countless individuals and institutions around the world—Chinese authorities continue to deny their liberty.

The government also refuses to release Gao Zhisheng, a prominent Chinese rights lawyer

who has been repeatedly detained and disappeared by the government for his work defending the rights of others. Mr. Gao rose to prominence within the Chinese legal establishment and was named one of the country's top ten lawyers by the Ministry of Justice in 2001, but fell out of favor with the authorities after he defended the rights of China's most vulnerable citizens, in particular religious minority groups and victims of illegal land seizures. In 2005, the government shuttered his law firm. In 2006, police detained and tortured Mr. Gao, forcing him to confess to "inciting subversion" by threatening his wife and children. After a trial that lasted less than a day, Mr. Gao was given a three-year suspended sentence subject to five years of probation. After the sentence, the government placed Mr. Gao under *de facto* house arrest and placed his family under intense surveillance, going so far as to station officers inside their home.

In 2007, authorities disappeared Mr. Gao for 50 days and brutally tortured him after he issued an open letter to the U.S. Congress documenting rights abuses in China. In testimony to the Congressional Executive Commission on China in February, Mr. Gao's wife, Geng He, described the mistreatment. She said, "policemen covered his head with a black mask and took him to a room where they stripped him naked and beat him. They used electric batons to shock him all over his body—specifically his private parts—turning his skin black. After losing consciousness from the torture, he awoke covered in urine. Later, his captors used cigarette smoke to burn his eyes so severely that could not open them. They even stabbed his private parts with toothpicks," she told the Commission.

The government again disappeared Mr. Gao in early 2009 shortly after his wife and two young children fled the country to seek asylum in the United States. This time he remained *incommunicado* for over a year. At the time, the government had variously claimed that Mr. Gao had gone "missing," that he was "where he should be," and that with a population of 1.3 billion

people, the authorities could not be expected to know his whereabouts. But in 2010, Mr. Gao briefly reappeared, describing even more torture at the hands of his captors. Shortly thereafter, authorities disappeared Mr. Gao again for another 20 months.

In response to a petition submitted by our legal team to the United Nations Working Group on Arbitrary Detention, the government, as in the case of the Lius, failed to engage in an honest discussion of the facts. This time the government refused to even respond—though the government had told another UN body, again in the face of overwhelming and public evidence to the contrary, that Mr. Gao was working in Northwest China and was in contact with family. In finding Mr. Gao’s detention arbitrary, the Working Group held that his disappearance constituted a “clear non-observance of the international norms relating to the rights to a fair trial.” The Working Group also held that Mr. Gao’s detention “result[ed] from the exercise of rights and freedoms” protected by the Universal Declaration on Human Rights and demanded that he be immediately released. However, as in the case of the Lius, the Chinese government failed to release Mr. Gao despite these findings.

Then last December, the government announced that it had revoked Mr. Gao’s probation, which was scheduled to expire within days, and would imprison him for three more years under the “inciting subversion” charges imposed in 2007. Needless to say, the notion that Mr. Gao could have violated the terms of his probation while the government held him in secret detention is at best farcical. Adding insult to injury, prison authorities prevented family members from seeing Mr. Gao for months and even claimed he didn’t want to see them.

As outlined in our most recent submission to the Working Group, this new detention is a clear violation of China’s obligations under international law. Not only did the 2007 prosecution result from Gao’s legitimate work advocating for the rights of others; not only did the

government's prosecution fail to meet any meaningful standard of fairness or due process; but, the fact remains that Mr. Gao has already spent more than three years in government custody often completely *incommunicado*—there is simply no justification under Chinese law for his continued detention.

Far from making progress on human rights, in March the National People's Congress took another step backwards by essentially legalizing the disappearance of individuals suspected of endangering national security for up to six months. Such a provision poses a real threat in a country where free and peaceful expression can result in charges of “inciting subversion.” While some limitations on the power to disappear suspects were included after an international outcry and the revised Criminal Code does include some new protections on the right to an attorney and the exclusion of evidence obtained through torture, hope that these provisions will be respected in practice is wishful thinking in light of the government's track record.

As it has done repeatedly when pressed on the continued detention of the Lius and Mr. Gao, the Chinese government frequently claims to respect the rule of law. But these cases illustrate the grim reality for those who dare to defy the government or the Communist Party that controls it. Dissenters are silenced, intimidated, harassed, tortured, disappeared, given lengthy prison terms, and sometimes just killed. Even family members are targeted and persecuted with impunity. None of this is consistent with either the rule of law or China's international obligations. Sadly, the victims are left with no legal recourse.

The government claims that it wants to engage in dialogue on human rights in a spirit of mutual cooperation, but attempts by international institutions and other governments to engage in a real dialogue inevitably result in a series of sequential monologues. As it does in public, the government frequently sticks to the implausible talking point that these cases are being handled

in accordance with Chinese law. In cases where the government's actions clearly violate domestic law, such as those of Liu Xia and Mr. Gao, it simply lies with the expectation that others will move onto the next issue or fail to hold the government accountable for its demonstrably false claims. In these circumstances, the only remaining approach is to push-back and press the government privately and publicly, unilaterally and multilaterally, to address these ongoing violations of Chinese and international law. Rights dialogues, like the one occurring this week, will only be successful if we have the courage to stand unwaveringly with the victims and speak out on their behalf.

It is important to emphasize that while broad and systemic changes are needed in China's criminal justice system, making dialogue on issues such as police training and legislative reform essential, there is no substitute for addressing specific cases where the treatment of individuals deviates from existing laws. By definition, if we can secure the releases of those individuals who are most seriously oppressed, we will create greater space for them to operate and imbue others with the confidence that they too can conduct their own internationally-protected activities. But if there is not progress on these bellwether cases, any claimed progress in other areas is incomplete, inconsistent, and insufficient. To these ends, I would recommend the three following measures.

First, President Obama and Secretary Clinton must personally engage on Chinese human rights cases and make full use of the bully-pulpit, something they have only done to date on rare occasions. While Chen Guangcheng's case was successfully resolved, the circumstances of his release—including his harrowing escape from house arrest and arrival at the U.S. Embassy—are unique and cannot be a model for how we approach cases in the future. China's backsliding on rights should have long since merited a change in tactics and a more proactive and public

approach—for example, President Obama could send a very important message to the Chinese government by meeting with Gao Zhisheng’s wife Geng He. Such an action would be particularly appropriate because our government owes Mr. Gao’s family a special obligation since it has taken them as refugees. Mr. Obama could also organize a group of foreign leaders to publicly call on China to release Liu Xiaobo, his fellow Nobel Peace Prize Laureate, from prison and his wife from house arrest.

Second, the Congress should adopt a non-binding resolution highlighting a host of illustrative cases of concern and urge the Chinese government to bring them to a final resolution. It should also consider taking more aggressive measures given China’s intransigence, such as awarding Liu Xiaobo a Congressional Gold Medal.

Finally, the United States, both the Administration and the Congress, should consider multilateral efforts directed at the Chinese government. The government is accustomed to brushing aside criticisms from individual countries—again, this suggests there is a need to change tactics to address the ongoing violation of human rights more aggressively.

There are no easy solutions to transform China’s conduct on human rights matters. Nevertheless, we must insist that China abide by its obligations under international law and its own Constitution. If we cannot persuade China to bring its own conduct into compliance with these obligations through quiet dialogue, its government leaves no alternative but to engage on these issues publicly. We should not be deterred by past failures to highlight the impunity of the Chinese government on human rights. Instead, we must adapt, change tactics, and find ways to ensure that the government hears the message loudly and unequivocally from the international community that its conduct is unacceptable and there will be serious consequences for its image and relationships with other governments and international institutions around the world.