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Harmful Effects

Jerome A. Cohen and Jared Genser say China's international reputation is suffering because of the continuing disregard for the rule of law in the detention and torture of lawyer Gao Zhisheng

On December 22, 2006, a Beijing court sentenced Chinese rights lawyer Gao Zhisheng to three years in prison for "inciting subversion", the charge frequently used to silence independent voices like that of 2010 Nobel Peace Prize laureate Liu Xiaobo . But the court suspended Gao's sentence subject to five years of probation. What seemed like a light sentence, however, soon turned into a nightmare of "disappearances" and torture.



Gao was last seen on April 20, 2010. For 20 months afterwards, there was widespread uncertainty about whether he was still alive. Then, last December 16, just days before his five-year probation would have been completed, the Chinese government announced that it had been revoked and that he would begin serving the three-year prison term. On January 1, the government notified Gao's brother that it is now holding him in a prison in far-western China. Today, Gao's international pro bono legal team submitted a petition to the UN Working Group on Arbitrary Detention, seeking a determination that this latest imprisonment violates international law.

Gao's case demonstrates how far the Chinese government will go to suppress legitimate criticism by its citizens. A self-trained lawyer and once rising star in China's legal establishment, Gao found himself under attack after representing some of China's most vulnerable citizens - victims of illegal government land grabs and religious persecution. While lawyers in countries that respect the rule of law are often lauded for such work, in China they are often punished.

In 2005, authorities closed Gao's law firm. He and his family were placed under surveillance, repeatedly harassed, and even physically abused. Because Gao continued his work, in August 2006 police detained him. While in custody without access to counsel, interrogators tortured him, ultimately securing a forced confession after

threatening his wife and children.

The family and their lawyers were not notified of Gao's "trial", which lasted less than a day and focused on his writings that were critical of the government. The probation he was granted proved to be like no other. Not content to hold him in almost complete isolation under de facto house arrest, the government repeatedly "disappeared" and tortured him.

In September 2007, Gao wrote an open letter exposing this misconduct. The government reacted by abducting and holding Gao in secret for over a month. His captors ferociously beat him. They subjected him to electric shocks in the face and genitals. They pierced his genitals with toothpicks and held lit cigarettes to his eyes. When Gao passed out from the pain, guards urinated on him. His skin turned black. Before releasing Gao, authorities threatened to torture him in front of his family and kill him if he disclosed the torture.

The government again disappeared Gao in February 2009, briefly releasing him in March 2010. Although that mysterious reappearance lasted less than a month, Gao was able to reveal in horrific detail even more abuse by Chinese authorities. In the vain hope of ending the torture, Gao had pleaded to be put into an ordinary prison, but was told: "You going to prison, that's a dream. You're not good enough for that. Whenever we want you to disappear, you will disappear."

Despite the Chinese government's well-worn claims that it respects the "rule of law" and its commitment to the international convention against torture, Gao's mistreatment and trial violated international law as well as Chinese law. Recognising this, in 2010 the UN Working Group on Arbitrary Detention found that Gao's disappearance constituted "a clear non-observance of the international norms relating to the right to a fair trial" and resulted from his exercising fundamental rights and freedoms. This independent body of experts from around the world called for his immediate release.

Undeterred by this unequivocal ruling, the Chinese government continued to hold him in secret until the Beijing court's recent, last-minute announcement, without elaboration, that Gao had "seriously violated probation rules a number of times". Neither Gao nor we will ever know what those violations were and whether they were committed during the brief periods of his probation that he was not in police custody. The court apparently made its decision without notice to Gao or his family and without granting him opportunity for assistance of counsel and a court hearing.

Moreover, a fair court would have taken into account that, since his detention on charges of inciting subversion, Gao has already spent more than three years in government custody. He should have been afforded credit for time served instead of being ordered to start his three-year term.

To add insult to injury, this month, after Gao's brother travelled thousands of miles to visit the remote Xinjiang prison where authorities now claim to hold Gao, officials turned him away, stating that Gao "didn't want to see family" and that visits would not be allowed until after a three-month "observation period". This latest attempt to isolate Gao from the outside world leaves the family with the inevitable fear that the government is hiding the results of even more torture.

It is time for the Chinese government to end the long and ludicrous legal charade over this case that has done so much harm to China's reputation as well as the cause of human rights. Gao should be released immediately, and the international community should seize this moment to demand nothing less.

Jerome A. Cohen, an NYU law professor and co-director of its US-Asia Law Institute, is also adjunct senior fellow for Asia at the Council on Foreign Relations. Jared Genser is founder of Freedom Now. They serve as international counsel to Gao Zhisheng.