



FREEDOM NOW

MEDIA RELEASE

FOR IMMEDIATE RELEASE
January 25, 2012

Contact: Jared Genser
jgenser@freedom-now.org
+1.202.320.4135

**IMPRISONED CHINESE HUMAN RIGHTS LAWYER GAO ZHISHENG'S LEGAL TEAM
FILES PETITION WITH UNITED NATIONS URGING HIS IMMEDIATE RELEASE**

Washington, D.C.: Today, Gao Zhisheng's international *pro bono* legal team filed a petition with the United Nations Working Group on Arbitrary Detention on behalf of the prominent Chinese human rights lawyer. The petition seeks an opinion that Chinese government's continued detention of Mr. Gao violates international law.

On December 22, 2006, a Beijing court handed down a three-year suspended prison sentence against Mr. Gao, subject to a five-year probationary period. The charges, inciting subversion, are frequently used by the government to squelch criticism and came in response to Mr. Gao's work advocating on behalf of Chinese religious minorities. Despite the formal suspension of his prison sentence, the government placed Mr. Gao under de facto house arrest and repeatedly disappeared him for prolonged periods totaling more than three years. The government denied Mr. Gao access to legal counsel during his disappearances and frequently tortured him.

In response to a petition by his legal team, the UN Working Group held in 2010 that the government's disappearances of Mr. Gao constituted "a clear non-observance of the international norms relating to the right to a fair trial." After over 20 months without information about his location or wellbeing, the government announced on December 19, 2011 that Mr. Gao would be sent to prison to serve the sentence imposed in 2006, claiming he had violated his probation. Today, Mr. Gao's legal team submitted a second petition to the UN Working Group seeking a finding that his imprisonment under the latest detention order also violates China's international obligations.

"The government's attempt to invoke Gao's suspended sentence—only days before the probationary period was to expire—shows just how far the Chinese government will distort the truth to silence its critics," Freedom Now founder Jared Genser stated. "The government's continued detention of Gao is an outrage and belies any claim that the authorities respect the rule of law."

Freedom Now represents Gao Zhisheng with a team of international human rights specialists including Jerome A. Cohen, Irwin Cotler MP, Albert Ho, David Matas, and David Kilgour.

###



FREEDOM NOW

Honorary Co-Chairs
The Most Reverend Desmond M. Tutu
The Honorable Václav Havel (*In Memoriam*, 2006-2011)

PETITION TO
UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

Chairperson-Rapporteur: Mr. Malick El Hadji Sow (Senegal)
Vice-Chairperson: Ms. Shaheen Ali (Pakistan)
Mr. Vladimir Tochilovsky (Ukraine)
Mr. Roberto Garretón (Chile)
Mr. Mads Andenas (Norway)

HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of
Gao Zhisheng,
Citizen of the People's Republic of China
v.
People's Republic of China

PETITION FOR URGENT ACTION

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, and 15/18¹

Submitted By:

Jared Genser, Jerome A. Cohen, and Patrick Griffith
Freedom Now
1776 K Street, NW, 8th Floor
Washington, D.C. 20006
United States of America
+1 (202) 320-4135 (tel)
jgenser@freedom-now.org

January 25, 2012

¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. Resolutions 6/4 and 15/18, further extending the mandate of the Working Group, were adopted by the Human Rights Council, which has "assume[d] . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights . . ." G.A. Res. 60/251, para. 6

BASIS FOR URGENT ACTION

As set forth in the attached Petition, despite the Working Group's issuance of Opinion No. 26/2010, the Chinese government continues to deprive Gao Zhisheng of his liberty, albeit now for different reasons. Given Mr. Gao's fame in China and previous and well-documented torture at the hands of Chinese authorities, there is reason to believe that his health and safety remain in serious jeopardy while he remains in Chinese custody and barred from communication with the outside world. On December 16, 2011, the Beijing People's First Intermediate Court ordered that Gao Zhisheng be imprisoned for three years, just days before his five-year "probationary period" was scheduled to end. This court ruling may end a prolonged disappearance at the hands of Chinese government agents, which began on April 20, 2010. In response to this action, four of the UN Human Rights Council's special procedures issued a joint statement denouncing the continued detention of Gao Zhisheng.² These UN experts commented as follows:

- Malick El Hadji Sow, Chair-Rapporteur of the Working Group on Arbitrary Detention: "It is alarming that Mr. Gao continues to be arbitrarily detained. His detention over the years has resulted in various human rights violations, including his fundamental right to a fair trial. I urge the authorities to release Mr. Gao."³
- Frank La Rue, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression: "Under no circumstances should Mr. Gao be subjected to attacks, including arbitrary detention, aimed at preventing him from exercising his legitimate right to freedom of expression as a human rights lawyer. I call upon the Government of the People's Republic of China to take effective measures to protect Mr. Gao against such attacks."⁴
- Margaret Sekaggya, Special Rapporteur on the Situation of Human Rights Defenders: "States should ensure a conducive working environment for human rights defenders which is free from persecution and judicial harassment. I am concerned that the measures enacted in this case contribute to criminalizing the legitimate activities of people working to ensure respect for human rights."⁵
- Mr. Jeremy Sarkin, Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances: "His detention in an unknown location is an enforced disappearance and a crime under international law. The Working Group will continue to monitor his case with particular attention."⁶

The Working Group on Arbitrary Detention has not yet considered this new order of detention and we respectfully request this communication be considered a formal request for a new opinion of the Working Group pursuant to Resolutions 1997/50, 2000/23, and 2002/31 of the Commission on Human Rights, and Resolutions 6/4 and 15/18 of the Human Rights Council.⁷

² See *China: UN Experts Denounce Secret Detention of Human Rights Lawyer Gao Zhisheng*, Office of the High Commissioner for Human Rights, Dec. 23, 2011.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ The Working Group has reexamined the detention of an individual where the detainee remains in government custody, but the government's stated reason for the detention has changed. See, e.g., *Aung San Suu Kyi v. Union of Myanmar*, Opinion No. 12/2010; *Aung San Suu Kyi v. Union of Myanmar*, Opinion No. 46/2008.

Circumstances of Mr. Gao's Arrest and Detention

As noted by the Working Group in Opinion No. 26/2010, Gao Zhisheng “is a brilliant lawyer known for the defense of human rights, in particular those with low income [and who] also advocates against corruption and the violations of the rights of religious groups.” As a result, he has been “arrested and tortured on several occasions, placed under house arrest and convicted of subversion.”⁸

In 2001, the Ministry of Justice celebrated Mr. Gao's legal work and named him one of China's top ten lawyers. However, after he began taking politically sensitive cases and publicly challenging human rights violations in China, “the courts systematically refused to lodge his lawsuits [and] he turned to writing reports and publishing open letters.” As a result of his activism, Mr. Gao and his family came under increasing pressure from authorities.⁹ The government shuttered Mr. Gao's law firm.¹⁰ He, his wife, and their two young children suffered threats, constant surveillance, harassment, and even physical attacks.¹¹

On August 15, 2006, authorities arrested Mr. Gao in Shandong Province, but failed to notify his family of the arrest until September 21.¹² After the arrest, the government prevented Mr. Gao's chosen lawyers, Mo Shaoping and Ding Xikui, from meeting with him.¹³ Accused of inciting subversion, interrogators extracted a confession from Mr. Gao by torturing him. They, “forced him to sit motionless in an iron chair for extended sessions that totaled hundreds of hours, surrounded him with bright lights and used other torture techniques” including threats against Mr. Gao's wife and children.¹⁴ Later, acknowledging that the confession was coerced, he recalled “[i]n the end I decided I could not haggle about my children's future.”¹⁵

The trial on December 12, 2006, lasted less than a day and the court conducted it without notifying Mr. Gao's wife or the family's chosen legal team.¹⁶ On December 22, 2006, Beijing's First Intermediate People's Court sentenced Mr. Gao to a three-year suspended prison term subject to a five-year probationary period.¹⁷ In finding Mr. Gao guilty, the court cited nine articles written by Mr. Gao, claiming that he had “defamed and made rumors about China's current government and social system, conspiring to topple the regime.”¹⁸ In commenting on the sentence, Chinese state media also noted that Mr. Gao gave 10 interviews to overseas media,

⁸ *Gao Zhisheng v. People's Republic of China*, Opinion No. 26/ 2010.

⁹ Human Rights Watch, “Walking on Thin Ice: Control Intimidation and Harassment of Lawyers in China,” Apr. 2008, available at http://www.hrw.org/sites/default/files/reports/china0408_1.pdf.

¹⁰ Andrew Jacobs, “China's Defiance Stirs Fears for Missing Dissident,” *New York Times*, Feb. 2, 2010, available at <http://www.nytimes.com/2010/02/03/world/asia/03dissident.html>.

¹¹ Human Rights Watch, *supra* note 9 at 34-35.

¹² *See id.* at 34.

¹³ Benjamin Kang Lim, “China Gives Rights Lawyer Suspended Sentence,” *Reuters*, Dec. 22, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/21/AR2006122102067.html>.

¹⁴ Joseph Kahn, “China Dissident Says Confession Was Coerced,” *New York Times*, Apr. 10, 2007, available at http://www.nytimes.com/2007/04/10/world/asia/10china.html?_r=1&oref=slogin.

¹⁵ *Id.*

¹⁶ Jim Yardley, “Chinese Rights Lawyer Is Put on Trial,” *New York Times*, Dec. 13, 2006, available at http://www.nytimes.com/2006/12/13/world/asia/13cnd-gao.html?_r=1&oref=slogin&pagewanted=print. The trial judge told the family that Gao did not want a lawyer, although he was unable to provide a written waiver signed by Gao, and later appointed two other lawyers to represent him at trial. However, like his confession, authorities “coerced [Gao] into... relinquishing the right to choose his lawyer.” Human Rights Watch, *supra* note 9 at 33.

¹⁷ Lim, *supra* note 13. The probationary period is also widely described as a five-year “reprieve.”

¹⁸ *See id.*

including Radio Free Asia.¹⁹

Following the sentencing, Mr. Gao remained effectively under house arrest, “in nearly total isolation, surrounded by plainclothes security forces and forbidden to leave his home, use his telephone or computer or otherwise communicate with the outside world.”²⁰

On September 21, 2007, authorities disappeared Mr. Gao for over 50 days, again torturing him, after he wrote an open letter to the United States Congress highlighting human rights abuses in China.²¹ In a horrifying description of the abuse, Mr. Gao recalled that his captors repeatedly threatened and beat him, even shocking his genitals with an electric baton and piercing them with toothpicks. As with the torture experienced during his pretrial detention, the purpose of this mistreatment was to extract a false confession.²²

Authorities again disappeared Mr. Gao on February 4, 2009, without notice to his family or even the pretense of legal process. Mr. Gao mysteriously reappeared on March 28, 2010, only to disappear again on April 20, 2010, after security agents instructed him to return to Beijing from western China. However, during his short release, he described even more torture by the authorities. Police had “stripped [him] bare and pummeled him with handguns in holsters,” taking turns as they beat him for two days and nights.²³

Weeks of inactivity were punctuated by outbursts of brutality. He was hooded several times. His captors tied him up with belts, made him sit motionless for up to 16 hours and told him his children were having nervous breakdowns. They threatened to kill him and dump his body in a river.²⁴

In Opinion No. 26/2010, the Working Group found the government’s disappearance of Mr. Gao in violation of international law falling within Categories II and III of its categorization of cases. The Working Group held that Mr. Gao’s detention “result[ed] from the exercise of rights or freedoms” protected by the Universal Declaration of Human Rights (Universal Declaration). Further, the Working Group noted that his “*incommunicado* detention [] without charge or notice to his family constitute[ed] a clear non-observance of the international norms relating to the right to a fair trial” and that the government deprived him of “his right to select and meet a lawyer of his choice.”²⁵

After over 20 months without information regarding Mr. Gao’s location or wellbeing, the Chinese government acknowledged on December 16, 2011, that it would be taking him to prison to serve the full sentence imposed on December 22, 2006. State media reported that the Beijing First Intermediate People’s Court withdrew Mr. Gao’s probation—set to expire the following

¹⁹ Lim, *supra* note 13.

²⁰ Kahn, *supra* note 14.

²¹ Alex Olesen, “Outspoken Chinese Lawyer Arrested,” *Associated Press*, Sept. 26, 2007, available at <http://www.phayul.com/news/article.aspx?id=18024&t=1>. *See also*, Human Rights In China, “Torture Account by Missing Rights Defense Lawyer Gao Zhisheng,” Feb. 8, 2009, available at http://hrichina.org/sites/default/files/oldsite/PDFs/PressReleases/2009.02.08_Gao_Zhisheng_account_ENG.pdf.

²² *See id.*

²³ Charles Hutzler, “Gao Zhisheng, Missing Chinese Lawyer, Described Torture Before Disappearing,” *Associated Press*, Jan. 10, 2011, available at http://www.huffingtonpost.com/2011/01/10/gao-zhisheng-missing-chin_n_806998.html.

²⁴ *Id.*

²⁵ *Gao Zhisheng v. People’s Republic of China*, Opinion No. 26/2010.

week—claiming without explanation that Mr. Gao had “seriously violated probation rules a number of times.”²⁶ The government later informed his brother that Mr. Gao was imprisoned at the Shaya County Prison in a remote area of the Xinjian on December 29, 2011. Nevertheless, his brother was turned away from the prison attempting to visit him and no independent party has confirmed his presence there or that he is even still alive.²⁷

The Current Detention of Mr. Gao is Arbitrary under Category I

The imprisonment of Mr. Gao at the Shaya County Prison is arbitrary under Category I because the government has already detained Mr. Gao for a period exceeding the original three-year sentence for inciting subversion.²⁸ Even if one accepts the legitimacy of the sentence handed down against Mr. Gao—which is demonstrated below to violate international law—the government has detained Mr. Gao for over 40 months since his arrest on August 15, 2006, on subversion charges.

During pretrial detention, which under Chinese law is to be credited against the total period of imprisonment served,²⁹ the government detained Mr. Gao for four months and 16 days. Further, the government repeatedly disappeared Mr. Gao between 2007 and 2011 for at least period of 35 months and 21 days. Therefore, the government has held Mr. Gao in detention for a total of at least 40 months and six days, far exceeding the limits imposed by the court’s sentence. As such, his continued imprisonment is arbitrary under Category I.

The Current Detention of Mr. Gao is Arbitrary under Category II

The imprisonment of Mr. Gao at the Shaya County Prison is arbitrary under Category II because it resulted from the exercise of his fundamental right to freedom of expression.³⁰

The right to freedom of expression is enshrined under international law by both the Universal Declaration and the International Covenant on Civil and Political Rights (ICCPR).³¹ Similarly, the right to freedom of expression³² and the right to criticize the government are

²⁶ “Beijing Court Withdraws Probation on Ex-Lawyer Convicted of Overthrowing State,” *Xinhua*, Dec. 16, 2011, available at http://news.xinhuanet.com/english/china/2011-12/16/c_131311157.htm.

²⁷ “Chinese Rights Lawyer Gao Zhisheng Denied Visitors in Jail,” *The Guardian (UK)*, Jan. 10, 2012.

²⁸ A detention is arbitrary under Category I “[w]hen it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him.” Working Group on Arbitrary Detention, Revised methods of work of the Working Group, Report of the Working Group on Arbitrary Detention, Annex, ¶ 8(a), A/HRC/16/47 (2011) (“Revised methods of work.”)

²⁹ Criminal Law of the People’s Republic of China, art. 47 (“A term of fixed-term imprisonment shall be counted from the date the judgment begins to be executed; if the criminal is held in custody before the execution of the judgment, one day in custody shall be considered one day of the term sentenced.”)

³⁰ A detention is arbitrary under Category II “[w]hen the deprivation of liberty results from the exercise of the rights or freedoms granted by articles 7, 13, 14, 18, 19, 20 and 21 of the [UDHR] and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the [ICCPR].” Revised methods of work, *supra* note 28, ¶ 8(b).

³¹ Article 19 of the Universal Declaration provides that “[e]veryone has the right to freedom of opinion and expression...” G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948) (“Universal Declaration”). Article 19(2) of the ICCPR provides that “[e]veryone shall have the right to freedom of expression...” G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 9999 U.N.T.S. 171, entered into force Mar. 23, 1976 (China signed the ICCPR on Oct. 5, 1998).

³² Constitution of the People’s Republic of China, art. 35 (“Citizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, procession and demonstration.”)

protected by the Chinese Constitution.³³

Through his work as a lawyer and rights advocate in China, Mr. Gao publicly exposed human rights violations through his writings and interviews. As a result, the government subjected Mr. Gao to surveillance, harassment, detention, and torture. It is precisely because of his written and spoken criticism of the government—as acknowledged by the Beijing First Intermediate People’s Court and the Chinese state media—that the government imposed a three-year suspended prison sentence against Mr. Gao on December 22, 2006. Because this underlying sentence violated Mr. Gao’s right to freedom of expression, its execution now, even under the guise of a probation infraction, renders his detention arbitrary under Category II.

The Current Detention of Gao is Arbitrary under Category III

The continued imprisonment of Mr. Gao at the Shaya County Prison is arbitrary under Category III because the government failed to observe minimum international standards for due process.³⁴

First, the government has tortured Mr. Gao on repeated occasions in an attempt to coerce a confession from him.³⁵ The prohibition against the use of torture under international law is clear and unqualified.³⁶ In flagrant violation of this mandate, the Chinese government subjected Mr. Gao to torture in the successful attempt to extract a confession with respect to the subversion charges against him.

Second, the government failed to satisfy Mr. Gao’s right to legal counsel of his choosing. Article 14(3)(d) of the ICCPR requires that in criminal prosecutions, each defendant is entitled “to defend himself in person or through legal assistance *of his own choosing*.”³⁷ However, during Mr. Gao’s pretrial detention, the government prevented his family’s chosen legal counsel from meeting with him. Further, the government violated this right again during the trial by failing to notify the family or the family’s chosen lawyers of the trial—effectively excluding them entirely from the short proceedings. And most recently, by refusing to allow Gao’s family to visit him, Gao has been unable to retain counsel to challenge the revocation of his probation.

Finally, the Beijing First Intermediate People’s Court revoked Mr. Gao’s probation and re-imposed the prison sentence against him without any process whatsoever. Chinese law provides that during a probationary period, a suspended sentence may be executed where the accused violates the law or the administrative rules or regulations related to suspended

³³ Constitution of the People’s Republic of China, art. 41 (“Citizens of the People’s Republic of China have the right to criticize and make suggestions to any state organ or functionary... No one may suppress such complaints, charges and exposures, or retaliate against the citizen making them.”)

³⁴ A detention is arbitrary under Category III “[w]hen the total or partial non-observance of international norms relating to the right to a fair trial, established by the [UDHR] and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.” Revised methods of work, *supra* note 28, ¶ 8(c).

³⁵ “The Working Group has repeatedly held that investigation of allegations of ill-treatment inflicted upon detainees in violation of the prohibition of torture and the right to physical integrity generally falls within the scope of its mandate only insofar as it is used in order to obtain a confession of guilt of the pretrial detainee or otherwise impairs his or her exercise of the right to a proper defense.” Communication No. 16/2008.

³⁶ Article 7 of the ICCPR, *supra* note 31, established a non-derogable prohibition on torture (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”)

³⁷ ICCPR, *supra* note 31 at art. 14(3)(d) (emphasis added).

sentences.³⁸ However, it is unclear how an individual in government custody—in this case as the result of a long-term illegal disappearance—could possibly violate any regulations or conditions of his probation. Rather, the revocation of Mr. Gao’s probation only one week before it was scheduled to lapse was merely an attempt to paint an otherwise illegal detention with a thin veneer of legitimacy. Moreover, the revocation of Mr. Gao’s suspended sentence appears to have been effected without any notice to him or his family, any opportunity to have a hearing on the alleged basis for revocation or any opportunity to have the assistance of counsel. No copy of the court’s revocation decision has been made available, only a notice to Gao’s brother of his imprisonment.

Because the government extracted a confession from Mr. Gao through torture, denied him the right to legal counsel of his own choosing, and re-imposed a suspended sentence without any due process of law, his detention failed to meet international standards for due process and is therefore arbitrary under Category III.

Conclusion

The continued imprisonment of Mr. Gao, now allegedly at the Shaya County Prison, is arbitrary under Categories I, II, and III of the Working Group’s categories of cases. Specifically, the government has already detained Mr. Gao for more than three years, his detention resulted from the exercise of his right to freedom of expression, and the government has failed to observe minimum international standards for due process.

We respectfully request this communication be considered a formal request for a new opinion of the Working Group pursuant to Resolutions 1997/50, 2000/23, and 2002/31 of the Commission on Human Rights, and Resolutions 6/4 and 15/18 of the Human Rights Council.

³⁸ Criminal Law of the People’s Republic of China, Art. 77 (“If, during the probation period for suspension of sentence, a criminal whose sentence is suspended violates law, administrative rules and regulations relating to supervision and control over suspension of sentence stipulated by the department of public safety under the State Council and if the circumstances are serious, the suspension shall be revoked and the original punishment shall be executed.”)