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MEDIA RELEASE

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LIU XIAOBO'S INTERNATIONAL LEGAL TEAM FILES PETITION TO UNITED NATIONS TO OBTAIN OPINIONS THAT HIS IMPRISONMENT AND WIFE'S HOUSE ARREST ARE IN VIOLATION OF INTERNATIONAL LAW

Washington, DC: Today, Liu Xiaobo's *pro bono* international legal team filed an urgent action petition with the UN Working Group on Arbitrary Detention on behalf of the 2010 Nobel Peace Prize Laureate. The team also filed an urgent action petition on behalf of Liu Xia, Liu Xiaobo's wife, who was placed under an illegal house arrest following the announcement of the Nobel Peace Prize. The team hopes to obtain opinions from the Working Group that the Chinese government's detentions of Liu Xiaobo and Liu Xia are in violation of international law.

"The Chinese government's imprisonment of Liu Xiaobo violates the Chinese Constitution and international law; and the ongoing house arrest of Liu Xia shocks the conscience," said Freedom Now's Executive Director Maran Turner. "We urge the Chinese government to immediately release both Liu Xiaobo and Liu Xia from their illegal and unjust detentions."

The petitions to the UN Working Group on Arbitrary Detention are submitted in the wake of a letter from 15 Nobel Peace Prize Laureates to UN Secretary-General Ban Ki-moon and leaders of the G-20 countries to urge them to ask Chinese President Hu Jintao at the G-20 Summit on November 11-12, 2010, to release Liu Xiaobo and Liu Xia.

Liu Xiaobo received the Nobel Peace Prize for his "long and non-violent struggle for fundamental human rights in China." He is currently serving an 11-year prison sentence for "inciting subversion to state power." His wife, Liu Xia, has been detained without charge in her Beijing apartment since the announcement of the Nobel Prize. It is unlikely either will be able to attend the December 10, 2010, Nobel Peace Prize award ceremony in Oslo.

Freedom Now represents Liu Xiaobo with a team of international human rights specialists, including NYU Law Professor and Adjunct Senior Fellow at the Council on Foreign Relations Jerome A. Cohen, Canadian Member of Parliament and former Minister of Justice and Attorney General Irwin Cotler, Former Canadian Member of Parliament and Secretary of State, Asia Pacific David Kilgour, and former Freedom Now client and Founder and President of Initiatives for China Dr. Yang Jianli. Freedom Now was retained by Liu Xia to represent Liu Xiaobo as his international *pro bono* legal counsel.

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Our mission is to free prisoners of conscience through focused legal, political and public relations advocacy efforts.

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chairman/Rapporteur: Mr. Malick El Hadji Sow (Senegal)

Vice-Chairperson: Ms. Shaheen Sardar Ali (Pakistan)

Mr. Roberto Garretón (Chile)

Mr. Mads Andenas (Norway)

Mr. Vladimir Tochilovsky (Ukraine)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Liu Xiaobo,

Citizen of the People's Republic of China

v.

Government of the People's Republic of China

URGENT ACTION REQUESTED

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, and 6/4¹

Submitted By:

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November 4, 2010

¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which "assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights" pursuant to UN General Assembly Resolution 60/251, G.A. Res. 60/251, ¶ 6 (Mar. 15, 2006), further extended the mandate through Resolutions 6/4 and 15/18.

BASIS FOR “URGENT ACTION” REQUEST

As set forth in the attached Petition, the Chinese government is arbitrarily depriving Liu Xiaobo of his liberty.

There is reason to believe that Dr. Liu’s life and health may be in danger. The Government of China has consistently attempted to limit Dr. Liu’s access to the outside world. After authorities took him into custody on December 8, 2008, Dr. Liu was held *incommunicado* for nearly one month. The government then detained him for almost six months at an undisclosed location, again without access to a lawyer and allowed him only two visits with his wife. Dr. Liu is currently detained at Jinzhou Prison in Liaoning Province 300 kilometers from Beijing. Though authorities permit Dr. Liu a monthly one-hour visit from his wife, the government now holds her under house arrest, and is increasingly limiting her ability to communicate with the outside world. Because Dr. Liu’s primary contact with the outside world has been severed there are now significant concerns regarding his wellbeing.

The Government of China specifically targets writers, human rights activists, and political dissidents, subjecting some to arbitrary arrest and imprisonment. Conditions in China’s prisons for political and non-political prisoners are bleak; problems include overcrowding, inadequate sanitation, poor food quality, and lack of access to medical treatment.² Despite some reform to the criminal justice system in China, the United Nations Committee Against Torture has expressed concern regarding “reports of abuses in custody, including the high number of deaths, possibly related to torture or ill-treatment, and about the lack of investigation into these abuses and deaths in custody.”³

Accordingly, it is hereby requested that the Working Group consider this petition pursuant to the “Urgent Action” procedure.⁴ In addition, it is also requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights as reconfirmed by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4 and 15/18.

QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

IDENTITY

1. **Family name:** Liu

2. **First name:** Xiaobo

² See U.S. State Dep’t. Country Reports on Human Rights, *China (includes Tibet, Hong Kong, and Macao)*(2009), Mar. 11, 2010, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm> [hereinafter Country Reports].

³ U.N. Gen. Assembly [GAOR], U.N. Comm. Against Torture, *Report of the Comm. Against Torture*, 19, U.N. Doc. A/64/44 (2009).

⁴ *Report of the Working Group on Arbitrary Detention*, E/CN.4/1998/44 (Dec. 19, 1997), Annex 1 at ¶ 22-24.

3. **Sex:** Male
4. **Birth date:** December 28, 1955
5. **Nationality:** People's Republic of China
6. **(a) Identity document (if any):**
(b) Issued by: Unknown
(c) On (date): Unknown
(d) No.: 210203195512285575
7. **Profession and/or activity (if believed to be relevant to the arrest/ detention):**
Democracy advocate and literary scholar
8. **Address of usual residence:**
No. 502, Unit 1, Building 10
Bank of China Dormitory
Qixian Village
Haidian District
Beijing
China

II. ARREST

1. **Date of arrest:** Dr. Liu was taken into custody on December 8, 2008, and placed under "residential supervision." He was formally arrested on June 23, 2009.
2. **Place of arrest (as detailed as possible):** Dr. Liu's home in Beijing
3. **Forces who carried out the arrest or are believed to have carried it out:** Beijing Public Security Bureau
4. **Did they show a warrant or other decision by a public authority?** Yes
5. **Authority who issued the warrant or decision:** Unknown
6. **Relevant legislation applied (if known):** After being taken into custody, Dr. Liu was placed under "residential surveillance," authorized under Article 50 of the Criminal Procedure Law of the People's Republic of China.

III. DETENTION

1. **Date of detention:** December 8, 2008
2. **Duration of detention (if not known, probable duration):** December 8, 2008 – present (approximately 696 days)
3. **Forces holding the detainee under custody:** Authorities at Jinzhou Prison in Liaoning

Province

4. **Places of detention (indicate any transfer and present place of detention)**
December 8, 2008 – June 23, 2009: Unknown location
June 23, 2009 – May 24, 2010: No. 1 Detention Center of Beijing
May 24, 2010 – Present: Jinzhou Prison, Liaoning Province
5. **Authorities that ordered the detention:** Beijing Municipal No. 1 Intermediate People’s Court
6. **Reasons for the detention imputed by the authorities:** Dr. Liu is alleged to have incited subversion of state power and the overthrow of the socialist system. See “Statement of Facts” below.
7. **Relevant legislation applied (if known):** Dr. Liu is alleged to have violated Article 105(2) of the *Criminal Law of the People’s Republic of China*.

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

A. Statement of Facts

This statement of facts details what is known about the circumstances surrounding the detention and trial of Dr. Liu, as well as the current political climate in China for human rights activists.

1. China’s Recent Crackdown on Human Rights and the Rule of Law

Despite gradual steps forward since the 1989 crackdown in Tiananmen Square, the human-rights situation in China remains bleak and is worsening in several areas. In particular, the Chinese government has increased its detention and harassment of human rights activists and political dissidents. The recent twentieth anniversary of Tiananmen Square only served to amplify government suspicion and prompt a greater crack down on free speech. In addition to Internet control, home surveillance, and arbitrary arrests, security forces have reportedly committed arbitrary and unlawful killings to silence some of China’s citizens.⁵

Free speech is among the areas of slowest progress in China. Despite constitutional guarantees of freedom of speech and press, the government treats the Chinese Communist Party’s “leading role” as superior to individual liberties.⁶ In June 2009, authorities imposed house arrest upon several dissidents, including signatories of Charter 08.⁷ “Raids, detentions, arrests, and judicial punishments indiscriminately affected not only those suspected of supporting

⁵ Country Reports, *supra* note 2.

⁶ *Id.*

⁷ *Id.*

terrorism but also those who peacefully sought to pursue political goals or worship.”⁸ Government officials also closely scrutinize intellectual and political gatherings touching upon sensitive topics. In particular, Chinese officials use charges of “subversion” under Article 105 of China’s Criminal Code to punish “peacefully expressed criticism of the government or the Party.”⁹

China’s respect for pre-trial procedures also remains lacking. The law still allows police to detain persons without charging them. Among those most heavily targeted by the government are human rights activists, journalists, former political prisoners, and their families. House arrest remains a popular means of surveillance, control, and non-judicial punishment of such individuals.¹⁰ Liu Xia, the wife of Dr. Liu, has fallen victim to this precise form of government harassment. She has been detained in her home since her husband was announced as the recipient of the 2010 Nobel Peace Prize.

Even at trial, due process remains elusive. While the law calls for independent judicial judgment, detainees are frequently convicted after a show trial based on directives from both the government and the Chinese Communist Party.¹¹ Especially in politically sensitive cases, there is no court presumption of innocence. For example, in 2008, the conviction rate for both first- and second-instance criminal trials exceeded 99 percent.¹²

2. Liu Xiaobo’s Background

Originally from Changchun, located in northeast China’s Jilin Province,¹³ Dr. Liu is a 54-year-old former literature professor and one of the most prominent democracy activists in China.¹⁴ Dr. Liu began an academic career at the Beijing Normal University as a lecturer,¹⁵ where he earned a doctoral degree before joining the faculty.¹⁶ A published and popular professor, Dr. Liu was invited to be a visiting scholar in Europe and the United States.¹⁷ In 1989, however, Dr. Liu left his position as a visiting scholar at Columbia University in New York, and returned to China to join the protests then occurring in Tiananmen Square.¹⁸

⁸ *Id.*

⁹ Congressional-Executive Commission on China, *Annual Report 2010*, 58, Oct. 10, 2010, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_house_committee_prints&docid=f:61507.pdf

¹⁰ Country Reports, *supra* note 2.

¹¹ *Id.*

¹² *Id.*

¹³ David Eimer, *Liu Xiaobo Wins Nobel Peace Prize: A Profile*, TELEGRAPH, Oct. 8, 2010, <http://www.telegraph.co.uk/news/worldnews/asia/china/8050873/Liu-Xiaobo-wins-Nobel-Peace-Prize-a-profile.html>.

¹⁴ Chris Buckley, *China Moves to Trial of Prominent Dissident*, REUTERS, Dec. 12, 2009, <http://www.reuters.com/article/idUSTRE5BB0GV20091212>.

¹⁵ Eimer, *supra* note 13.

¹⁶ Andrew Jacobs & Jonathan Ansfield, *Nobel Peace Prize Given to Jailed Chinese Dissident*, N.Y. TIMES, Oct. 8, 2010, <http://www.nytimes.com/2010/10/09/world/09nobel.html?scp=5&sq=liu%20xiaobo&st=cse>.

¹⁷ Liu Xiaobo, *I Have No Enemies: My Final Statement* (Dec. 23, 2009) (translation by Human Rights in China), http://www.hrchina.org/public/contents/article?revision_id=174000&item_id=173747.

¹⁸ John, Pomfret, *China’s Liu Xiaobo Wins Nobel Prize*, WASH. POST, Oct. 8, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/08/AR2010100801502.html>. See also Jacobs & Ansfield, *Nobel Peace Prize Given to Jailed Chinese Dissident*, *supra* note 16.

When Dr. Liu returned to Beijing, thousands of students were occupying Tiananmen Square, calling for democracy, while other demonstrations spread across the country.¹⁹ When it “became apparent that the military would clear the square by force, Dr. Liu and three other-well known intellectuals²⁰ staged a 72-hour hunger strike as a show of solidarity...”²¹ As tanks prepared to move into the square, Dr. Liu and the older intellectuals persuaded some students to leave the square,²² and negotiated with the military to allow the students to leave the square safely, preventing even more bloodshed.²³ In response, the government detained Dr. Liu for 20 months at the Qincheng Prison on charges of “counterrevolution.”²⁴ Dr. Liu also lost his teaching position with the Beijing Normal University and was prohibited from ever publishing in China again.²⁵ His only two opportunities to speak publicly after 1989 have come while addressing The People’s Intermediate Court in Beijing in defense of criminal charges.²⁶

Despite these violations of his right to freedom of expression, Dr. Liu continued to advocate for peaceful and democratic reform in China. After his experience at Tiananmen Square, he became a moderate voice in the pro-democracy movement, rejecting the use of violence or rebellion.²⁷ During this time Dr. Liu became a prolific writer, authoring hundreds of essays,²⁸ which would eventually lead to further arbitrary detentions.

In 1995, the government placed Dr. Liu under house arrest for eight months at an unknown location for his writings and advocacy.²⁹ Then, in 1996, the Beijing Municipal People’s Government ordered Dr. Liu to serve three years of “reeducation through labor” on charges of “rumor mongering and slander” and “disturbing the social order.”³⁰ These charges were in retaliation for Dr. Liu’s writings in support of freedoms of speech and religion.³¹ On September 15, 1999, the Working Group on Arbitrary Detention (Working Group) recognized that the

¹⁹ *Id.*

²⁰ The other three intellectuals who went on hunger strike and supported peaceful negotiations between the students and government were Hou Dejian, Zhou Duo, and Gao Xin. Human Rights in China, *About Liu Xiaobo*, http://www.hrichina.org/public/contents/article?revision_id=174015&item_id=173591 (last visited Oct. 21, 2010).

²¹ Jacobs & Ansfield, *Nobel Peace Prize Given to Jailed Chinese Dissident*, *supra* note 16.

²² Andrew Jacobs & Jonathan Ansfield, *Unusual Opposition to a Favorite for Nobel*, N.Y. TIMES, Oct. 6, 2010, http://www.nytimes.com/2010/10/07/world/asia/07china.html?ref=liu_xiaobo. In persuading the students to remain non-violent, Liu and the others “pried a stolen rifle from the hands of a disgruntled student...” Jacobs & Ansfield, *Nobel Peace Prize Given to Jailed Chinese Dissident*, *supra* note 16.

²³ *Id.* See also Cara Anna, *Contender for Nobel Prize in Chinese Prison*, ASSOCIATED PRESS, Oct. 2, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/02/AR2010100201667.html>.

²⁴ Human Rights in China, *Liu Xiaobo: A Chronology of Activism*,

http://www.hrichina.org/public/contents/article?revision_id=173903&item_id=173603 (last visited Oct. 21, 2010).

²⁵ Liu Xiaobo, *I Have No Enemies: My Final Statement*, *supra* note 17.

²⁶ *Id.*

²⁷ Pomfret, *supra* note 18. See also Jacobs & Ansfield, *Unusual Opposition to a Favorite for Nobel*, *supra* note 22, noting that his moderation has resulted in criticism from some exiled members of the Chinese democracy movement. Despite his moderate views, the government instead chose to categorize him, through the state-run *Global Times* newspaper, as a radical and separatist. Anna, *Contender for Nobel Prize in Chinese Prison*, *supra* note 23.

²⁸ Human Rights in China, *About Liu Xiaobo*, *supra* note 20.

²⁹ Human Rights in China, *Liu Xiaobo: A Chronology of Activism*, *supra* note 24.

³⁰ *Liu Xiaobo v. People’s Republic of China*, Opinion No. 17/1999, at ¶ 5, U.N. Doc., E/CN.4/2000/4/Add.1, at pg. 72.

³¹ Human Rights in China, *About Liu Xiaobo*, *supra* note 20.

government deprived Dr. Liu of his liberty “simply for exercising fundamental rights,”³² and found the detention arbitrary under Category II.³³ Despite surveillance and harassment by the government after his release in late 1999, Dr. Liu continued to write, criticize the government, and call for reform and support for human rights in China.³⁴

Dr. Liu is married to Liu Xia, a poet, artist, and intellectual currently under house arrest in Beijing. Mrs. Liu’s arbitrary detention is the subject of a petition submitted November 4, 2010, to the Working Group on Arbitrary Detention, *In the Matter of Liu Xia, Citizen of the People’s Republic of China v. Government of the People’s Republic of China*.

3. Current Detention

i. Arrest and *Incommunicado* Detention

The road to Dr. Liu’s current detention is again linked to his writings, in particular Charter 08. Drafted by a number of intellectuals, including Dr. Liu and Zhang Zuhua among others, Charter 08 is modeled after the Charter 77 of then-Czechoslovakia and offers an alternative vision for China’s political future.³⁵ Charter 08 calls for political reform in China based on the principals of human rights, freedom, and democracy.³⁶ Though Dr. Liu did not initially begin as the leader of the group, he eventually volunteered to “be out in front” on the effort.³⁷ Charter 08, originally signed by over 300 workers, intellectuals, and party members, eventually garnered approximately 10,000 signatures before government censors removed it from the Internet in China.³⁸ Since its release, the government has questioned and harassed many of the signatories.³⁹

On December 8, 2008, two days before the public release of Charter 08,⁴⁰ authorities detained Dr. Liu and Zhang Zuhua.⁴¹ Police arrived at Dr. Liu’s home to arrest him just after 9 pm; however, they did not give a reason for the arrest, and the detention order used by the police left the line for “suspected crime” blank.⁴² Officers searched the men’s homes and seized

³² *Xiaobo*, Opinion No. 17/1999, at ¶ 9.

³³ *Id.*, at ¶ 12.

³⁴ See PEN.org, *Liu Xiaobo*, <http://www.pen.org/viewmedia.php/prmMID/3029/prmID/172> (last visited Oct. 21, 2010). See also Human Rights in China, *Liu Xiaobo: A Chronology of Activism*, *supra* note 24. Though he was prohibited from publishing in China and had lost the right to publicly speak in the country, he was able to communicate through foreign media. Liu Xiaobo, *I Have No Enemies: My Final Statement*, *supra* note 17. He did this often by bicycling to the compounds where foreigners lived and worked to fax his articles to overseas publications. Jacobs & Ansfield, *Nobel Peace Prize Given to Jailed Chinese Dissident*, *supra* note 16.

³⁵ Pomfret, *supra* note 18.

³⁶ Charter 08, (translated by Human Rights In China)

http://www.hrichina.org/public/contents/article?revision_id=174002&item_id=173687 (last visited Oct. 21, 2010).

³⁷ Pomfret, *supra* note 18.

³⁸ Eimer, *supra* note 13. See also Sharon LaFaniere, *Wife Detained After Visiting Nobel Winner*, NEW YORK TIMES, Oct. 10, 2010, http://www.nytimes.com/2010/10/11/world/asia/11nobel.html?ref=liu_xiaobo.

³⁹ Country Reports, *supra* note 2.

⁴⁰ Anna, *Contender for Nobel Prize in Chinese Prison*, *supra* note 23.

⁴¹ Ben Blanchard, *China Detains Dissidents Ahead of Human Rights Day*, REUTERS, Dec. 9, 2010, <http://www.reuters.com/article/idUSTRE4B839720081209>.

⁴² Anna, *Contender for Nobel Prize in Chinese Prison*, *supra* note 23.

computers and other materials.⁴³ Though authorities released Zhang the following day, authorities detained Dr. Liu for nearly six months under “residential surveillance” at an unknown location during an official investigation.⁴⁴

After taking Dr. Liu into custody, the Beijing Public Security Bureau refused him access to his family or legal counsel,⁴⁵ and held him *incommunicado* until December 31, 2008, when he was allowed to meet with his wife, Liu Xia.⁴⁶ Though authorities allowed him visits on two occasions with his wife,⁴⁷ authorities held Dr. Liu in solitary confinement⁴⁸ and denied him access to a lawyer or writing materials until he was formally arrested on June 23, 2009, on charges of “inciting subversion of state power.”⁴⁹ After his formal arrest, Dr. Liu was detained at the No. 1 Detention Center of Beijing until May 24, 2010, when he was moved to Jinzhou Prison in Liaoning Province, where he remains today.⁵⁰

ii. Trial, Sentence, and Appeal

On December 10, 2009, the Beijing Municipal People’s Procuratorate Branch No. 1 submitted the indictment against Dr. Liu to the Beijing Municipal No. 1 Intermediate People’s Court.⁵¹ The prosecution asserted that Dr. Liu “disregarded state laws and by means of rumor-mongering, slander, etc. incited subversion of state power and the overthrow of socialist system” in violation of Article 105(2) of the *Criminal Law of the People’s Republic of China*.⁵² Carrying a maximum sentence of 15 years in prison,⁵³ the charges were specifically based upon Dr. Liu’s participation with Charter 08 and six articles he authored.⁵⁴

During a proceeding that took place on December 23, 2009, Dr. Liu received what Human Rights Watch described as a “pre-determined political trial.”⁵⁵ Despite initial assurances

⁴³ PEN.org, *supra* note 34.

⁴⁴ *Id.* Though Dr. Liu’s wife was allowed to meet with him on two occasions during his “residential supervision,” the location of his detention remained unknown because the meetings took place at the Xiaotangshan Conference Center. Defense Statement of the Second Instance, (translated by Human Rights In China), http://www.hrichina.org/public/contents/article?revision_id=174012&item_id=173771 (last visited Oct. 21, 2010).

⁴⁵ Human Rights in China, *Liu Xiaobo: A Chronology of Activism*, *supra* note 24.

⁴⁶ PEN.org, *supra* note 34.

⁴⁷ Benjamin Kang Lim, *China’s Top Dissident Arrested for Subversion*, REUTERS, Jun. 24, 2009. *See also* PEN.org, *supra* note 34.

⁴⁸ Defense Statement of the Second Instance, *supra* note 44. Dr. Liu describes the conditions of his *incommunicado* detention as “worse than that of a detention center.” The main room where he was detained was windowless, and the bathroom had only a small window. *Id.*

⁴⁹ Human Rights in China, *Liu Xiaobo: A Chronology of Activism*, *supra* note 24.

⁵⁰ PEN.org, *supra* note 34.

⁵¹ Human Rights in China, *Liu Xiaobo: A Chronology of Activism*, *supra* note 24.

⁵² Criminal Indictment, (translated by Human Rights in China) http://www.hrichina.org/public/contents/article?revision_id=173912&item_id=173711 (last visited Oct. 21, 2010).

⁵³ Buckley, *China Moves to Trial of Prominent Dissident*, *supra* note 14.

⁵⁴ Criminal Indictment, *supra* note 52. The six articles cited in the indictment by the Beijing Municipal People’s Procuratorate Branch No. 1 included “The CPC’s Dictatorial Patriotism,” “Can It Be that the Chinese People Deserve Only ‘Party-Led Democracy’?,” “Changing the Regime by Changing Society,” “The Many Aspects of CPC Dictatorship,” “The Negative Effects of the Rise of Dictatorship on World Democratization,” and “Further Questions about Child Slavery in China’s Kilns.”

⁵⁵ Human Rights Watch, *China: Liu Xiaobo’s Trial a Travesty of Justice*, Dec. 21, 2009, <http://www.hrw.org/en/news/2009/12/21/china-liu-xiaobo-s-trial-travesty-justice>.

that the trial would be open to the public, Chinese authorities significantly limited access to the proceedings.⁵⁶ Journalists, diplomats from the United States, Canada, Australia, and Europe, and all but two members of Dr. Liu's family were barred from the courthouse on the day of the trial.⁵⁷ Police prevented his wife, Liu Xia, from leaving her home, effectively blocking her access to the trial.⁵⁸

The proceeding lasted only two hours,⁵⁹ and the court limited Dr. Liu's lawyers to 14 minutes to defend against the charges.⁶⁰ Entering a "not-guilty" plea during the trial, Dr. Liu asserted his right to freedom of speech under the Chinese Constitution and international law and reaffirmed his belief in "gradual, peaceful, orderly and controlled" political reform in China.⁶¹ Dr. Liu issued a statement prior to his sentencing, saying,

I look forward to [the day] when my country is a land with freedom of expression, where the speech of every citizen will be treated equally well; where different values, ideas, beliefs, and political views . . . can both compete with each other and peacefully coexist; where both majority and minority views will be equally guaranteed, and where the political views that differ from those currently in power, in particular, will be fully respected and protected; where all political views will spread out under the sun for people to choose from, where every citizen can state political views without fear, and where no one can under any circumstances suffer political persecution for voicing divergent political views. I hope that I will be the last victim of China's endless literary inquisitions and that from now on no one will be incriminated because of speech.

Freedom of expression is the foundation of human rights, the source of humanity, and the mother of truth. To strangle freedom of speech is to trample on human rights, stifle humanity, and suppress truth.

In order to exercise the right to freedom of speech conferred by the Constitution, one should fulfill the social responsibility of a Chinese citizen. There is nothing criminal in anything I have done. [But] if charges are brought against me because of this, I have no

⁵⁶ *Id.*

⁵⁷ Lucy Hornby & Huang Yan, *China Decries Western "Meddling" in Dissident Trial*, REUTERS, DEC. 24, 2009, <http://www.reuters.com/article/idUSTRE5BN0SZ20091224>. Prior to the trial, "[s]everal original co-signatories of Charter '08 who had earlier expressed their solidarity with Liu Xiaobo, as well as other supporters [were] warned by security agents that they should not attempt to attend the trial and placed under police surveillance." Human Rights Watch, *China: Liu Xiaobo's Trial a Travesty of Justice*, *supra* note 55.

⁵⁸ Hornby & Yan, *supra* note 57.

⁵⁹ Jacobs & Ansfield, *Nobel Peace Prize Given to Jailed Chinese Dissident*, *supra* note 16.

⁶⁰ Chris Buckley, *China Jails Dissident Liu Xiaobo for 11 Years*, REUTERS, Dec. 25, 2009, <http://www.reuters.com/article/idUSTRE5BO02320091226>. It appears that the court's reasoning for limiting the defense to 14 minutes was that the prosecution spent only 14 minutes presenting the allegations to the court, *Id.*; however, there does not appear to be a basis in Chinese law for such a limitation. Defense Statement of the First Instance (translated by Human Rights In China), at § IV(B)(3), http://www.hrichina.org/public/contents/article?revision_id=174001&item_id=173723 (last visited Oct. 21, 2010). Liu Xiaobo's attorney, Shang Baojun, indicated that this restriction "created a serious inconvenience..." Buckley, *China Jails Dissident Liu Xiaobo for 11 Years*, *supra* note 60.

⁶¹ Liu Xiaobo, *My Self Defense* (translated by Human Rights In China) Dec. 23, 2009, http://www.hrichina.org/public/contents/article?revision_id=174014&item_id=173735.

complaints.⁶²

On December 25, 2009, the court convicted Dr. Liu of “inciting subversion of state power” and sentenced him to eleven years’ imprisonment and two years’ deprivation of political rights,⁶³ an unusually harsh punishment for the charge.⁶⁴ In reaching the sentence, the court, like the prosecution, pointed to Dr. Liu’s role in drafting and publishing Charter 08 and six other essays.⁶⁵ Though the evidence cited by the court related to Dr. Liu’s production and dissemination of the materials,⁶⁶ the court rejected Dr. Liu’s argument that the content of the materials were protected political expression by merely concluding that:

the facts and evidence established through examination by this court hearing of the case have amply proved that Liu Xiaobo used the media features of the Internet and by means of publishing slanderous articles online carried out activities that incited subversion of our country’s state power and the socialist system. Liu Xiaobo’s actions have obviously exceeded the freedom of speech category and constitute criminal offense.⁶⁷

Dr. Liu stood quietly in the courtroom as the decision was announced; he was not allowed to respond.⁶⁸ After Dr. Liu’s sentencing, he released a statement saying, “I have long been aware that when an independent intellectual stands up to an autocratic state, step one toward freedom is often a step into prison. Now I am taking that step; and true freedom is that much nearer.”⁶⁹ Dr. Liu then appealed his sentence.⁷⁰

⁶² Liu Xiaobo, *I Have No Enemies: My Final Statement*, *supra* note 17.

⁶³ Human Rights in China, *Liu Xiaobo: A Chronology of Activism*, *supra* note 24.

⁶⁴ Buckley, *China Jails Dissident Liu Xiaobo for 11 Years*, *supra* note 60. *See also* Micky Bristow, *Chinese Dissident Liu Xiaobo Jailed for Subversion (Analysis)*, available at <http://news.bbc.co.uk/2/hi/8430409.stm> (last visited Oct. 21, 2010), noting that “Amnesty International said that according to their records this is the longest sentence handed down for this charge since 2003, perhaps longer.”

⁶⁵ Criminal Verdict, (translated by Human Rights In China) available at http://www.hrichina.org/public/contents/article?revision_id=174013&item_id=173759 (last visited Oct. 21, 2010).

⁶⁶ Though the court’s evidentiary findings focus primarily on Liu’s production and dissemination of the cited articles, the receipt of foreign remittances, the possession of a foreign email account, and past convictions on similar charges, the court appears to have accepted as a matter of fact that the criminally inciting language included: “changing the regime by changing society;” “for the emergence of a free China, placing home in ‘new policies’ of those in power is far worse than placing home in the continuous expansion of the ‘new power’ among the people.” The language that the court found to be slanderous, again without analysis, included “Since the Communist Party of China took power, generations of CPC dictators have cared most about their own power and least about human life;” “the official patriotism advocated by the CPC dictatorship is a fallacious system of ‘substituting the party for the country;’ the essence of this patriotism is to demand the that the people love the dictatorship, the one party rule, and the dictators; it usurps patriotism in order to inflict disasters on the on the nation and calamities on the people;” and “all of the tricks used by the CPC are stop-gap measures for the dictators to preserve the last phase of their power and will now be able to support for long this dictatorial edifice that is already showing countless cracks.” *Id.*

⁶⁷ *Id.*

⁶⁸ Buckley, *China Jails Dissident Liu Xiaobo for 11 Years*, *supra* note 60. Though police prevented Liu Xia from leaving her home to attend the trial on December 23, 2009, she was allowed in to witness the verdict on December 25, 2009. *Id.*

⁶⁹ Pomfret, *supra* note 18.

⁷⁰ Appeal Decision (translated by Human Rights In China), available at http://www.hrichina.org/public/contents/article?revision_id=173999&item_id=173783 (last visited Oct. 21, 2010).

On February 9, 2010, the Beijing Municipal High People's Court rejected Dr. Liu's appeal and affirmed the original judgment.⁷¹ Mirroring the approach of the lower court, the Beijing Municipal High People's Court failed to seriously address Dr. Liu's argument that the substance of the articles in question constituted speech protected under both the Chinese Constitution and international law; instead, the court merely asserted that Dr. Liu's "actions have conspicuously overstepped the bounds of free speech and constitute a crime."⁷²

4. Nobel Peace Prize and Backlash

On October 8, 2010, the Norwegian Nobel Committee awarded the 2010 Nobel Peace Prize to Dr. Liu in recognition of "his long and non-violent struggle for fundamental human rights in China."⁷³ Immediately lashing out, China's Foreign Ministry quickly called the decision an "obscenity" and blamed the Norwegian government, though the Committee acts independently of the government.⁷⁴

Governments around the world and international leaders lauded the announcement and called for Dr. Liu's release. In a joint letter issued by three United Nations Special Rapporteurs⁷⁵ and El Hadji Malick Sow, Chair-Rapporteur of the United Nations Working Group on Arbitrary Detention, the experts recognized that "[s]uch a harsh sentence for his peaceful activities in drafting and organizing the signing of Charter 08 is a clear violation of international human rights standard on the right to freedom of expression..."⁷⁶ The experts also noted procedural irregularities in the trial, which failed to meet the international standards related to the right to a fair trial.⁷⁷

Instead of embracing the award, the Chinese government has moved to further restrict fundamental rights in China. During the announcement, the government blocked international news broadcasts during their coverage of the award, and subsequently, text messages and internet searches about Dr. Liu.⁷⁸ As word of the announcement spread, police prevented foreign journalists from reaching Dr. Liu's wife in her home.⁷⁹ The following day, authorities brought Liu Xia to see her husband; moved to tears, Dr. Liu told her that the award was "for the lost souls of June 4th."⁸⁰

Authorities in Beijing have now held Liu Xia under house arrest since her meeting with

⁷¹ *Id.*

⁷² *Id.*

⁷³ Jacobs & Ansfield, *Nobel Peace Prize Given to Jailed Chinese Dissident*, *supra* note 16.

⁷⁴ Chris Buckley, *China Snubs Norway in Nobel Peace Prize Row*, REUTERS, Oct. 11, 2010, <http://www.reuters.com/article/idUSTRE6971XY20101011?pageNumber=1>.

⁷⁵ The other experts included Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue; the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya; and the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul.

⁷⁶ U.N. Experts Urge China to Respect Human Rights and Release All Persons Detained for Peacefully Exercising Their Rights, Office of the High Commissioner for Human Rights (Oct. 11, 2010), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10428&LangID=E>.

⁷⁷ *Id.*

⁷⁸ Jacobs & Ansfield, *Nobel Peace Prize Given to Jailed Chinese Dissident*, *supra* note 16.

⁷⁹ *Id.*

⁸⁰ LaFaniere, *supra* note 38.

Dr. Liu in prison.⁸¹ She has not been formally arrested, nor has she been charged with any crime. Her telephone and internet connection were cut off, and she has been prevented from contacting friends and family.⁸² In addition to reprisals against his family, the government has sought to intimidate Dr. Liu's friends and supporters.⁸³ Dozens of people who have publicly supported Dr. Liu report being "detained, roughed up, harassed or kept from leaving their homes."⁸⁴ One of those detained, Ding Zilin, founder of the Tiananmen Mothers, disappeared along with her husband, Jiang Peikum, from their apartment in the days after the Nobel Committee's announcement.⁸⁵

B. Legal Analysis

The detention of Dr. Liu for subversion constitutes an arbitrary deprivation of his liberty⁸⁶ that falls within Category II and Category III as established by the UN Working Group on Arbitrary Detention.⁸⁷ Specifically, the detention is arbitrary under Category II because Dr. Liu was detained for his exercise of his right to freedom of expression. The detention is also arbitrary under Category III because in the arrest and trial of Dr. Liu, the government failed to observe international norms related to a fair trial.

1. Category II: The Detention Resulted From Liu Xiaobo's Exercise of the Rights or Freedoms Guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights

Arbitrary detention falls under Category II when detention results from the exercise of fundamental rights protected by international law.⁸⁸ These fundamental rights include the right to

⁸¹ Keith B. Richburg, *Party Meeting Begins in Beijing Amid Increasing Dissent Over Human Rights*, WASH. POST FOREIGN SERVICE, Oct. 15, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/15/AR2010101502731.html?sub=AR>.

⁸² LaFaniere, *supra* note 38.

⁸³ Cara Anna, *After Peace Prize, China Targets Winner's Friends*, ASSOCIATED PRESS, Oct. 15, 2010, <http://www.washingtontimes.com/news/2010/oct/15/after-peace-prize-china-targets-winners-friends/>.

⁸⁴ Anna, *After Peace Prize, China Targets Winner's Friends*, *supra* note XX.

⁸⁵ Mark MacKinnon, *China Cracks down on Dissidents Ahead of Major Party Conference*, GLOBE AND MAIL, OCT. 14, 2010, <http://www.theglobeandmail.com/news/world/asia-pacific/china-cracks-down-on-dissidents-ahead-of-major-party-conference/article1757865/>.

⁸⁶ An arbitrary deprivation of liberty is defined as any "depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law." International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 March 1976, at art. 9(1) [hereinafter ICCPR]. Such a deprivation of liberty is specifically prohibited by international law. *Id.* "No one shall be subjected to arbitrary arrest, detention or exile." Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at art 9 (1948) [hereinafter Universal Declaration]. "Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law..." Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, at Principle 2, G.A. Res. 47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [hereinafter Body of Principles].

⁸⁷ See Fact Sheet No. 26, *infra* note 88, at pt. IV(B).

⁸⁸ A Category II deprivation of liberty occurs, "[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration on Human Rights and, and insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights." Office of the High Comm'r for Human Rights, United Nations, Fact Sheet No. 26: The Working Group on Arbitrary Detention, pt. IV(B) [hereinafter Fact Sheet No. 26].

freedom of opinion and expression.⁸⁹ Dr. Liu's detention is a result of his exercise of his right to freedom of expression; therefore, it is arbitrary under Category II.

i. The Chinese Government Detained Liu Xiaobo Because He Exercised His Freedom of Expression and Opinion

The Chinese government's detention of Dr. Liu is punishment for his exercising the freedoms of opinion and expression protected by Article 19 of the Universal Declaration of Human Rights (UDHR),⁹⁰ and Article 19(1) of the International Covenant on Civil and Political Rights (ICCPR). Though China has yet to ratify the ICCPR, it is a signatory,⁹¹ and therefore is obligated to refrain from acts that would defeat the treaty's "object and purpose."⁹² Freedom of expression includes the "freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."⁹³ In addition to the requirements of international law, Chinese law protects the right of freedom of expression. Article 35 of the Chinese Constitution provides that, "[c]itizens of the Peoples Republic of China enjoy freedom of speech [and] of the press..."⁹⁴ and Article 41 provides that they "have the right to criticize and make suggestions regarding any state organ or functionary . . ."⁹⁵

The prosecution of Dr. Liu by the government was solely in reaction to materials he developed and distributed that were well within the protection of freedom of speech by both international and domestic Chinese law. The government, by its own admission in the prosecution's indictment,⁹⁶ the criminal verdict of the Beijing Municipal No.1 Intermediate

⁸⁹ Universal Declaration, *supra* note 86, at art. 19. See also ICCPR, *supra* note 86, at art. 19(2).

⁹⁰ While the Universal Declaration, as a General Assembly resolution, is not technically considered binding in its entirety on all states, scholars continue to debate the binding nature of specific provisions. As a General Assembly resolution, the Body of Principles is similarly not legally binding. However, in looking to the Universal Declaration and the Body of Principles, the Working Group has decided to "rely heavily on 'soft' international legal principles to adjudicate individual cases." Jared M. Genser & Margaret Winterkorn-Meikle, *The Intersection of Politics and International Law: The United Nations Working Group on Arbitrary Detention in Theory and Practice*, 39 Colum. Hum. Rts. L. Rev. 101, 114 (2008).

⁹¹ China became a signatory to the ICCPR on October 5, 1998. Office of the United Nations High Commissioner for Human Rights, *Status of Ratification of the Principal International Human Rights Treaties, as of 14 July, 2006*. available at <http://www2.ohchr.org/english/bodies/docs/status.pdf>.

⁹² Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1979, art. 18, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980).

⁹³ Universal Declaration, *supra* note 86, at art. 19 ("Everyone shall have the freedom of opinion and expression; this rights includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.") See also ICCPR, *supra* note 86, at art 19(2) ("Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.")

⁹⁴ XIAN FA art. 35 (1982) (P.R.C.), <http://www.cecc.gov/pages/newLaws/constitutionENG.php?PHPSESSID=a87bd0448bea46b35a7c1a60ee1de976> (last visited Oct. 21, 2010).

⁹⁵ *Id.*, at art. 41. The Chinese Constitution also provides that "[t]he exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens." *Id.*, at art. 51. However, this limiting provision cannot allow the government to restrict the right to freedom of expression below the standard established by its international obligations.

⁹⁶ Criminal Indictment, *supra* note 52.

People's Court,⁹⁷ and the appeal decision of the Beijing Municipal High People's Court⁹⁸ relied exclusively on Dr. Liu's involvement with Charter 08 and his authorship of six essays. Charter 08, and the six essays selected by the government, from among hundreds of works by Dr. Liu, each contain peaceful calls for gradual democratic reform and the protection of human rights in China.

The government's current detention of Dr. Liu is consistent with past violations of his right to freedom of expression. In 1989, the government detained him for 20 months; in 1995 the government placed him under house arrest for nine months; and, in 1996 he was condemned to a labor camp for a period of three years.⁹⁹ On each occasion, the Government of China did so in response to peaceful political writings and actions, blatantly violating Dr. Liu's right to freedom of expression, protected under both international and Chinese law.

Dr. Liu's peaceful political expression does not fall within the limited category of speech legitimately subject to prohibition by the government. The ICCPR allows governments to restrict freedom of expression only in circumstances that "are provided by law and are necessary: (a) [f]or respect of the rights or reputations of others; (b) [f]or the protection of national security or of public order (*ordre public*), or of public health or morals."¹⁰⁰ This limited qualification does not allow states to punish opinions it dislikes. The Human Rights Committee, the body tasked with authoritatively interpreting the treaty, has held that any restriction of expression is legitimate only if it is, (1) provided by law,¹⁰¹ (2) for the purpose of protecting the rights or reputations of others, or national security or public order, and (3) "necessary" for that limited purpose.¹⁰²

Dr. Liu's detention was not for a legitimate purpose; rather, the government charged Dr. Liu with sedition to stifle his peaceful criticism of the government and the Chinese Communist Party. Even where there is a legitimate purpose, prohibiting expression in this way fails the "necessity" requirement. As the Human Rights Committee noted that "[t]he legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenants, and human rights . . ."¹⁰³

Recognizing this important principle, the Working Group has stated that "[p]eaceful expression of opposition to any regime cannot give rise to arbitrary arrest."¹⁰⁴ In this case, by prosecuting Dr. Liu on charges of "subversion" and sentencing him to 11 years' imprisonment because of his

⁹⁷ Criminal Verdict, *supra* note 65.

⁹⁸ Appeal Decision, *supra* note 70.

⁹⁹ See Human Rights in China, *Liu Xiaobo: A Chronology of Activism*, *supra* note 24.

¹⁰⁰ ICCPR, *supra* note 86, at art. 19(3).

¹⁰¹ While the Human Rights Committee has not addressed this requirement in its jurisprudence, it would likely be interpreted, as other provisions of the ICCPR have, to require "that the limitation must be sufficiently delineated in a State's law." Sarah Joseph, et al., THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 391 (2000). As such, insofar as the sedition charges are vague and overbroad, they may fall outside the exception contained in ICCPR Article 19(3).

¹⁰² See e.g. Human Rights Committee, *Robert Faurisson v. France*, Communication No. 550/1993, at ¶ 9.4, U.N. Doc. CCPR/C/58/D/550/1993(1996).

¹⁰³ Human Rights Committee, *supra* note XX, at ¶ 9.

¹⁰⁴ See *James Mawdsley v. Myanmar*, Opinion No. 25/2000, at ¶ 6, E/CN.4/2001/14/Add.1, at p. 124.

legitimate political speech, the Government of China violated Dr. Liu's right to freedom of expression, thus rendering his detention arbitrary under Category II.

2. Category III: The Trial and Detention of Liu Xiaobo Failed to Respect International Norms Relating to the Right to a Fair Trial

The Working Group considers a deprivation of liberty to be a Category III arbitrary detention “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights 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.”¹⁰⁵ Additionally, the Working Group will look to the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.¹⁰⁶ Because the trial and detention of Dr. Liu failed to observe the minimum international norms relating to a fair trial, as contained in the Universal Declaration, the ICCPR, and the Body of Principles, his detention is arbitrary under Category III.

i. The Chinese Government Failed to Inform Liu Xiaobo of the Charges Against Him at the Time of His Arrest

The Chinese government failed to observe international norms relating to a fair trial when it failed to inform Dr. Liu of the charges against him at the time of his arrest. This failure is in violation of the ICCPR and the Body of Principles. Article 14(3)(a) of the ICCPR protects the right of individuals “[t]o be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”¹⁰⁷ Principle 10 of the Body of Principles further provides that “[a]nyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.”¹⁰⁸ However, when police arrived at Dr. Liu's residence and placed him in custody, the arresting authorities did not inform him of the reason for the arrest.¹⁰⁹ Further, the arresting document in the possession of the police at the time of Dr. Liu's arrest was blank in the space provided for the “suspected crime.”¹¹⁰

The classification of Dr. Liu's initial detention as “residential surveillance” does not change the above analysis. The Body of Principles defines “detention” as the “condition of detained persons,” and defines “detained person” as “any person deprived of personal liberty except as the result of a conviction.”¹¹¹ As such, the provisions of the Body of Principles apply to Dr. Liu's detention, despite the fact that the government classified his detention as “residential surveillance.” This alleged residential surveillance took place in an unknown location. The government cannot evade its obligations by merely reclassifying what is clearly detention.

¹⁰⁵ Fact Sheet No. 26, *supra* note 88, at part IV(B).

¹⁰⁶ *Id.*

¹⁰⁷ ICCPR, *supra* note 86, at art. 14(3)(a).

¹⁰⁸ Body of Principles, *supra* note 86 at Principle 10. *See also* ICCPR, *supra* note 86, at art. 9(2) (“Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”).

¹⁰⁹ *See Anna, Contender for Nobel Prize in Chinese Prison, supra* note 23.

¹¹⁰ *Id.*

¹¹¹ Body of Principles, *supra* note 86, at Use of Terms.

Because the government failed to inform Dr. Liu of the charges against him at the time of his arrest, his detention is arbitrary under Category III.

ii. The Chinese Government Held Liu Xiaobo *Incommunicado* and Without Access to Legal Counsel or Prompt Judicial Review

The Chinese government's *incommunicado*¹¹² detention of Dr. Liu for a period of three weeks, without any access to the outside world or his family, also renders his detention arbitrary under Category III. Article 14(3)(b) of the ICCPR provides that "[i]n the determination of any criminal charges against him...everyone shall be entitled to...have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing."¹¹³ The Body of Principles further elaborates that "a detained or imprisoned person shall be entitled to communicate and consult with legal counsel."¹¹⁴ While the Body of Principles does not specifically identify when access to counsel must be granted, Principle 15 notes that, notwithstanding exceptions in the event of exceptional circumstances, "communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days."¹¹⁵

In this case, the Chinese government held Dr. Liu *incommunicado* for a period of three weeks, from December 9, 2008 to December 31, 2008,¹¹⁶ in blatant disregard of international law. Because the materials in question were already written and public at the time of Dr. Liu's detention (Charter 08 was made public two days after his arrest),¹¹⁷ there were no "exceptional circumstances" that could have justified holding him *incommunicado*. Further, even assuming the existence of such circumstances, the government held him without access to the outside world for three weeks,¹¹⁸ far longer than a mere "matter of days."

The government also prohibited Dr. Liu from accessing legal counsel from December 9, 2008 to June 23, 2009. As noted above, even in the event of extraordinary circumstances, which are not present in this case, access to legal counsel "shall not be denied for more than a matter of days."¹¹⁹ Though limited access to legal counsel was finally allowed after Dr. Liu was "formally arrested,"¹²⁰ because the Body of Principles applies to his nearly six month detention prior to his "formal arrest," refusing him access to legal counsel during this time renders the detention arbitrary.

Further, because the government detained Dr. Liu in such a way that prevented him from receiving prompt judicial review of his detention, his detention is rendered arbitrary. Article 9(3) of the ICCPR states that anyone who is "detained on a criminal charge shall be brought promptly

¹¹² "Incommunicado" is defined as "[w]ithout any means of communication." BLACK'S LAW DICTIONARY, 634 (8th ed. 2005).

¹¹³ ICCPR, *supra* note 86, at art. 14(3)(b).

¹¹⁴ Body of Principles, *supra* note 86, at Principle 18(1).

¹¹⁵ Body of Principles, *supra* note 86, at Principle 15.

¹¹⁶ See PEN.org, *supra* note 34.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Body of Principles, *supra* note 86, at Principle 15.

¹²⁰ See Human Rights in China, *Liu Xiaobo: A Chronology of Activism*, *supra* note 24.

before a judge... and shall be entitled to trial within a reasonable time or to release.”¹²¹ According to the Human Rights Committee, a delay of “over two months violates the requirement...that anyone arrested shall be brought ‘promptly’ before a judge.”¹²² The Body of Principles provides that “[a] person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.”¹²³ Despite these protections, the Chinese government detained Dr. Liu for nearly six months without the opportunity to challenge his detention. Further, the fact that Dr. Liu was not formally arrested does not change this analysis. The government should not be allowed to avoid its international obligation to provide those in its detention an opportunity to challenge their detention by detaining individuals without charge, such that there is no “criminal charge” to contest. Because Dr. Liu was detained without the opportunity to challenge his detention for nearly six months, his detention is arbitrary under Category III.

iii. Liu Xiaobo’s Trial Failed to Meet the Minimum Standards of a Fair Trial

The government’s prosecution of Dr. Liu in a trial that was not open to the public failed to meet minimum standards related to a fair trial. As such his detention is arbitrary. Article 10 of the Universal Declaration provides that “[e]veryone is entitled in full equality to a fair public hearing by an independent and impartial tribunal, in the determination . . . of any criminal charge against him.”¹²⁴ Further, Article 14(1) of the ICCPR protects the right “to a fair and public hearing,”¹²⁵ and the right “to be tried without undue delay.”¹²⁶

Dr. Liu’s trial was not open to the public, as required by Article 10 of the Universal Declaration and Article 14(1) of the ICCPR; rather, the government chose to exclude journalists, foreign diplomats, and all but two members of Dr. Liu’s family.¹²⁷ Though Dr. Liu’s wife was permitted to attend the sentencing two days later, she was prevented from attending the trial itself because police prohibited her from leaving her home.¹²⁸

¹²¹ ICCPR, *supra* note 86, at art. 9(3). Though Dr. Liu was not “formally arrested” arrested until nearly six months after his de-facto house arrest, he should be treated, for the purposes of Article 9(3) as having been “detained on a criminal charge. Otherwise, states could circumvent provision’s requirements entirely by detaining individuals without bringing formal charges.

¹²² UN Human Rights Committee, *Berry v. Jamaica*, Communication No. 330/88, at ¶ 11.1, U.N. Doc. CCPR/C/50/D/330/1988 (1994).

¹²³ Body of Principles, *supra* note 86, at Principle 11(1). *See also* ICCPR, *supra* note 86, at art. 9(4) (“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order the release if the detention is not lawful.”).

¹²⁴ Universal Declaration, *supra* note 86, at art. 10.

¹²⁵ ICCPR, *supra* note 86, at art. 14(1). In addition to international law, Article 11 of the Criminal Procedure Law of the People’s Republic of China provides that “[c]ases in the People’s Courts shall be heard in public, unless otherwise provided by the Law.” Criminal Procedure Law (P.R.C.), adopted Jan. 1, 1997, *available at* <http://www.cecc.gov/pages/newLaws/criminalProcedureENG.php> (last visited Oct. 25, 2010).

¹²⁶ ICCPR, *supra* note 86, at art. 14(3)(c). Additionally, The Body of Principles also provides that individuals “shall be presumed innocent and shall be treated as such until proved guilty according to the law in a public trial at which he has had all of the guarantees necessary for his defense.” Body of Principles, *supra* note 86, at Principle 36(1).

¹²⁷ Hornby & Yan, *supra* note 57.

¹²⁸ *Id.*

Further, the nature of the proceedings was not sufficient to afford Dr. Liu a fair and impartial hearing as required by Article 10 of the Universal Declaration and Article 14(1) of the ICCPR. During the trial, the court allowed only 14 minutes for the defense to present its case,¹²⁹ which prevented Dr. Liu from fully presenting his defense.¹³⁰ The court based this limitation upon the fact that the prosecution spent 14 minutes presenting its case against Dr. Liu;¹³¹ however, Dr. Liu's lawyers in China have noted that there was no basis for such a limitation in Chinese law.¹³² Providing the defense merely 14 minutes for the presentation denied him access to a fair and impartial tribunal where he would enjoy a presumption of innocence. There was no basis in Chinese law for the court to impose such a limitation.¹³³ Because of this serious limitation on his ability to present a defense, Dr. Liu was not afforded a fair and impartial trial, thus rendering his detention arbitrary under Category III.

Though Liu Xiaobo received a trial, the proceedings were neither public nor fair, as required by the Universal Declaration, the ICCPR, and the Body of Principles. Because his trial failed to meet the minimum standards related to a fair and public trial, his detention is arbitrary under Category III.

3. Conclusion

Dr. Liu's detention was punishment for exercising his fundamental right to freedom of expression, and his arrest, detention, and trial failed to meet the minimum standards required for a fair and impartial trial. Therefore, his detention is arbitrary under Category II and Category III, and in violation of both Chinese and international human rights norms.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

On December 23, 2009, Dr. Liu's trial took place before the Beijing Municipal No. 1 Intermediate People's Court. On December 25, 2009, the court found Dr. Liu guilty of "inciting subversion of state power," and sentenced him to eleven years' imprisonment from the date of his formal arrest on June 23, 2009, and two years' deprivation of political rights.

The decision of trial court was affirmed by the Beijing Municipal High People's Court by its Final Verdict No. 64 (2010), on February 9, 2010.

VI. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER OF POSSIBLE)

¹²⁹ See Buckley, *supra* note 60.

¹³⁰ Congressional-Executive Commission on China, *supra* note 9, at 59.

¹³¹ Defense Statement of the First Instance, *supra* note 60, at § IV(B)(3).

¹³² *Id.*

¹³³ See *Id.*

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PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chairman/Rapporteur: Mr. Malick El Hadji Sow (Senegal)

Vice-Chairperson: Ms. Shaheen Sardar Ali (Pakistan)

Mr. Roberto Garretón (Chile)

Mr. Mads Andenas (Norway)

Mr. Vladimir Tochilovsky (Ukraine)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Liu Xia,

Citizen of the People's Republic of China

v.

Government of the People's Republic of China

URGENT ACTION REQUESTED

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

Submitted By:

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November 4, 2010

¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to UN General Assembly Resolution 60/251, G.A. Res. 60/251, ¶ 6 (Mar. 15, 2006), has further extended the mandate through Resolution 6/4 and 15/18.

BASIS FOR “URGENT ACTION” REQUEST

As set forth in the attached Petition, the Chinese government is arbitrarily depriving Liu Xia of her liberty. Mrs. Liu is the wife of imprisoned 2010 Nobel Peace Prize winner Dr. Liu Xiaobo.

There is reason to believe that Mrs. Liu’s life and health may be in serious danger. Chinese security forces moved to isolate Mrs. Liu on October 8, 2010, after the Norwegian Nobel Committee awarded the 2010 Nobel Peace Prize to her husband. Since that time, Mrs. Liu’s liberty has been significantly undermined by the government of China, and she is currently being detained under house arrest at her home in Beijing. Authorities have attempted to limit her contact with the outside world; two of her cell phones have been disconnected, reporters and diplomats have been prevented from visiting her, and she has not yet had access to legal counsel. There are concerns that Mrs. Liu may be moved out of Beijing, raising further alarm about her safety.

The Chinese government has a history of using dissidents’ family members as leverage against them through physical intimidation and detention. Dr. Liu’s case was sensitive for the Government of China prior to his award of the 2010 Nobel Peace Prize. In the wake of the award, the Government of China has increased its repression of democracy and human rights advocates. Mrs. Liu continues to be held under house arrest in this context with little access to the outside world; this raises serious concerns about her well-being while in custody.

The Petitioner respectfully requests that the Working Group consider this petition pursuant to the “Urgent Action” procedure.² In addition, the Petitioner also requests that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights as reconfirmed by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4 and 15/18.

QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

IDENTITY

1. **Family name:** Liu
2. **First name:** Xia
3. **Sex:** Female
4. **Birth date:** 1959
5. **Nationality:** People’s Republic of China
6. **(a) Identity document (if any):** Not Known

² *Report of the Working Group on Arbitrary Detention*, E/CN.4/1998/44 (Dec. 19, 1997), Annex 1 at ¶ 22-24.

- (b) Issued by:
- (c) On (date):
- (d) No.:

- 7. **Profession and/or activity (if believed to be relevant to the arrest/ detention):** Poet, artist, and intellectual.

- 8. **Address of usual residence:**
No. 502, Unit 1, Building 10
Bank of China Dormitory
Qixian Village
Haidian District
Beijing
China

II. ARREST

- 1. **Date of arrest:** October 8, 2010

- 2. **Place of arrest (as detailed as possible):** Mrs. Liu was detained in her home in Beijing.

- 3. **Forces who carried out the arrest or are believed to have carried it out:** Mrs. Liu was placed under house arrest by public security officers in Beijing.

- 4. **Did they show a warrant or other decision by a public authority?** No.

- 5. **Authority who issued the warrant or decision:** No warrant was issued.

- 6. **Relevant legislation applied (if known):** Chinese authorities have not made any official charges against Mrs. Liu and therefore have not cited any legislation relevant to her case.

III. DETENTION

- 1. **Date of detention:** October 8, 2010

- 2. **Duration of detention (if not known, probable duration):** October 8, 2010 – Present (approximately 27 days)

- 3. **Forces holding the detainee under custody:** Mrs. Liu is being held under house arrest by public security officers in Beijing.

- 4. **Places of detention (indicate any transfer and present place of detention)**
October 8, 2010 – October 9, 2010: Mrs. Liu's home in Beijing
October 9, 2010 – October 10, 2010: Police forcibly removed Mrs. Liu to Jinzhou Prison in Liaoning Province to visit her husband.
October 10 – Present: Mrs. Liu is detained at her home in Beijing, except for short, approved trips, when she must travel under police escort.

5. **Authorities that ordered the detention:** Not known
6. **Reasons for the detention imputed by the authorities:** Chinese authorities have not given any reason for nor acknowledged that Mrs. Liu is being detained.
7. **Relevant legislation applied (if known):** Chinese authorities have not cited any legislation relevant to Mrs. Liu's detention.

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

A. Statement of Facts

This Statement of Facts details what is known about the circumstances surrounding the continuing detention of Mrs. Liu, as well as the current political climate in China for the families of activists.

1. China's Recent Crackdown on Human Rights and the Rule of Law

Despite gradual steps forward since the 1989 violence at Tiananmen Square, the human rights situation in China remains bleak and is worsening in some areas. In particular, the Chinese government has increased its detention and harassment of human rights activists, political dissidents, and their families. The recent twentieth anniversary of Tiananmen Square only served to amplify government suspicion and prompt a greater crack down on free speech. In this climate, government forces have resorted to internet controls, home surveillance, arbitrary arrests, and enforced disappearances to silence peaceful criticism.³

Chinese law facilitates the arbitrary deprivation of liberty by authorizing long periods of administrative detention. The law allows police to detain individuals without arrest or charge for up to 37 days.⁴ In addition to administrative detention, house arrest has remained a popular means of surveillance, control, and non-judicial punishment. Among those regularly targeted for house arrest are human rights defenders and their families.⁵

The Chinese government targets family members of human rights activists, not only to force their silence, but also to put pressure on the activists themselves. For example, in 2006, the prominent human rights lawyer Gao Zhisheng was coerced into a public confession after security officials made threats against his children.⁶ Even after his release from prison, Chinese lawyer Chen Guangcheng and his family remain subject to house arrest.⁷ Imprisoned activist Hu Jia

³ U.S. State Dep't. Country Reports on Human Rights, *China (includes Tibet, Hong Kong, and Macao)*(2009), Mar. 11, 2010, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm> [hereinafter Country Reports].

⁴ *Id.* at § 1(d).

⁵ *Id.*

⁶ David W. Chen, *How the Family of a Dissident Fled China*, N.Y. TIMES, May 9, 2009, <http://www.nytimes.com/2009/05/10/world/asia/10dissident.html>.

⁷ Blinds Rights Advocate Chen Guangcheng Should Be Set Free, National Endowment for Democracy (Oct. 4, 2010), <http://www.ned.org/for-reporters/blind-rights-advocate-chen-guangcheng-should-be-set-free>.

called attention to the immense “mental and life pressure” on families of dissidents in China after authorities placed his own family under house arrest.⁸

2. Background of Mrs. Liu Xia

Mrs. Liu is a poet, artist, and intellectual. She is married to Dr. Liu Xiaobo, the winner of the 2010 Nobel Peace Prize and co-author of Charter 08. Dr. Liu’s arbitrary detention is the subject of a petition submitted November 4, 2010, to the Working Group on Arbitrary Detention, *In the Matter of Liu Xiaobo, Citizen of the People’s Republic of China v. Government of the People’s Republic of China*.

Mrs. Liu is not part of the Chinese dissident community. She has said, “I’m not so interested in politics and I don’t have much hope of changing society... I seldom read what [Liu Xiaobo] writes.”⁹ Circumstances, however, have placed Mrs. Liu in the center of a sensitive political controversy in China. In the days prior to the announcement of the Nobel Peace Prize, despite constant surveillance by security agents,¹⁰ Mrs. Liu spoke to non-Chinese media about her fears that the Chinese government would prevent Dr. Liu from receiving the Nobel Peace Prize, stating, “[t]o get what it wants, the Communist Party will spare no effort. It will use all types of methods to block the prize or anything else that would hurt the party. They will use their money and power to get others to support them.”¹¹

3. Detention of Mrs. Liu

On October 8, 2010, Mrs. Liu’s husband was awarded the 2010 Nobel Peace Prize, and within hours, the Chinese government moved to isolate her from the outside world. The government now holds Mrs. Liu under house arrest, but has not charged her with a crime, nor allowed her access to legal counsel.

After the announcement of the Nobel Peace Prize on October 8, journalists converged on Mrs. Liu’s Beijing apartment complex; however, police refused to allow Mrs. Liu to meet with any journalists.¹² The following day, Chinese police escorted Mrs. Liu to see Dr. Liu in Jinzhou Prison, in Liaoning Province.¹³ She told journalists who were briefly able to reach her that it was not her choice to leave Beijing and she believed the purpose of taking her to Jinzhou Prison was

⁸ See European Parliament, Sakharov Human Rights Prize Awarded to China’s Hu Jia, (Dec. 18, 2008), <http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IM-PRESS&reference=20081216STO44643>. See also China: Hu Jia’s Family Become Human “State Secrets,” Global Voices Advocacy (Jan. 30, 2008), <http://advocacy.globalvoicesonline.org/2008/01/30/china-hu-jias-state-secrets>.

⁹ Tania Branigan, *My Dear Husband Liu Xiaobo, the Writer China Has Put Behind Bars*, GUARDIAN, Feb. 28, 2010, <http://www.guardian.co.uk/world/2010/feb/28/liu-xia-china-dissident-xiaobo>.

¹⁰ The Chinese government’s surveillance of Mrs. Liu has been constant since before Dr. Liu’s trial in December 2009. Andrew Jacobs, *Trial in China Signals New Limits on Dissent*, N.Y. TIMES, Dec. 23, 2009, <http://www.nytimes.com/2009/12/24/world/asia/24china.html>.

¹¹ Lucy Hornby & Benjamin Kang Lim, *China Will “Try to Block” Nobel Prize for Dissident*, REUTERS, Oct. 7, 2010, <http://www.reuters.com/article/idUSTRE69612I20101007>.

¹² Andrew Jacobs, *supra* note 10.

¹³ Sharon LaFraniere, *Wife Detained After Visiting Nobel Winner*, N.Y. TIMES, Oct. 10, 2010, <http://www.nytimes.com/2010/10/11/world/asia/11nobel.html>.

to prevent her from conducting interviews.¹⁴ It does not appear that officials presented any warrant authorizing Mrs. Liu's detention.

Since security agents took Mrs. Liu from Jinzhou Prison on Sunday, October 10 and brought her back to her home in Beijing, the government has continued to isolate her from the outside world. She is permitted to leave her apartment only under police escort and for brief trips.¹⁵ Visitors to her apartment are forbidden.¹⁶ Mrs. Liu was briefly able to speak to *The Guardian* about her circumstances, saying, "They have told me not to go out, not to visit friends. If I want to see my parents or buy food, I can only go in their car," she said. "I don't even talk to my neighbours because I don't want to get them into trouble."¹⁷ Authorities placed a sign on the fence in front of her apartment complex that states people in the residential compound do not accept interviews.¹⁸ Plainclothes security agents stand in front of the gate to the compound, warning journalists and visitors away.¹⁹

In addition to preventing Mrs. Liu from freely leaving her apartment or receiving visitors, the Chinese government is preventing her from communicating with the outside world. Mrs. Liu's telephone and Internet access were cut off in the hours following the announcement of the Nobel Peace Prize.²⁰ Her mobile phone was broken.²¹ A second replacement phone was also cut off.²² Mrs. Liu is occasionally able to tweet or briefly slip calls to journalists. However, restrictions on these communications appear to be tightening.

The Chinese government is also blocking foreign diplomats from meeting with Mrs. Liu. Political Affairs First Secretary to the European Union's Delegation Simon Sharpe attempted to hand deliver a message of congratulations from EU Commission President Jose Manuel Barroso but was turned away by security agents. Mr. Sharpe was accompanied by diplomats from other embassies, including Australia, Belgium, the Czech Republic, Hungary, Italy, Poland, Sweden, and Switzerland.²³ Norwegian diplomats were also prevented from seeing Mrs. Liu.²⁴

¹⁴ Ben Blanchard, *Nobel Euphoria Fails to Mask Tough Reality in China*, REUTERS, Oct. 9, 2010, <http://www.reuters.com/article/idUSTRE6971XY20101009>.

¹⁵ Christopher Bodeen, *China Nobel Winner's Wife Still Under House Arrest*, ASSOCIATED PRESS, Oct. 19, 2010, http://news.yahoo.com/s/ap/20101019/ap_on_re_as/as_china_nobel_peace_prize_1.

¹⁶ *Id.*

¹⁷ Jonathan Watts, *Liu Xiaobo's Wife Fears China May Prevent Nobel Prize Collection*, GUARDIAN, Oct. 12, 2010, <http://www.allvoices.com/news/7000663-liu-xiaobos-wife-fears-china-may-prevent-nobel-prize-collection>.

¹⁸ Stephanie Ho, *Nobel Peace Laureate's Wife Prevented from Meeting Reporters*, Voice of America, Oct. 11, 2010, <http://www.voanews.com/english/news/Chinese-Authorities-Prevent-Nobel-Peace-Laureates-Wife-From-Meeting-Reporters-104694979.html>.

¹⁹ *Id.*

²⁰ LaFraniere, *supra* note 13.

²¹ Michael Sainsbury and Zhang Yufei, *Arrest of Nobel Peace Laureate's Wife Liu Xia 'Illegal'*, AUSTRALIAN, Oct. 12, 2010, <http://www.theaustralian.com.au/news/world/arrest-of-nobel-peace-laureates-wife-liu-xia-illegal/story-e6frg6so-1225937339513>.

²² Marianne Barriaux, *Chinese Nobel Laureate's Wife Slams 'Illegal House Arrest'*, TELEGRAPH, Oct. 12, 2010, <http://www.telegraph.co.uk/news/worldnews/asia/china/8061325/Chinese-Nobel-laureates-wife-slams-illegal-house-arrest.html>.

²³ Gillian Wong, *Norway: China Cancels Meeting, Days After Nobel*, ASSOCIATED PRESS, Oct. 11, 2010, <http://www.google.com/hostednews/ap/article/ALeqM5jy5n5CDcoNHRqOk6ZihXwoOSuHxgD9IPF7BO0?docId=D9IPF7BO0>.

²⁴ Barriaux, *supra* note 22.

Further, Mrs. Liu has not been allowed to contact her lawyers.²⁵ Nor are her lawyers allowed to see or communicate with her.²⁶ The Chinese government refuses to comment on which laws it believes gives it the authority to hold Mrs. Liu under house arrest or prevent her from meeting with journalists.²⁷ There are also concerns that Mrs. Liu may be removed from Beijing,²⁸ raising concerns about her safety.

In response, members of the international community have called upon the Chinese government to end Mrs. Liu's house arrest. Fifteen Nobel Peace Prize Laureates issued a letter urging world leaders to raise her case with Chinese President Hu Jintao at the upcoming G-20 Summit.²⁹ United States Embassy spokesman Richard Buangan said that "[h]er rights should be respected and she should be allowed to move freely."³⁰ Mrs. Liu hopes to attend the Nobel Peace Prize Ceremony on December 10, 2010, but believes government officials will ban her from leaving China.³¹

B. Legal Analysis

For the reasons set forth below, the house arrest³² of Mrs. Liu is an arbitrary deprivation of her liberty³³ under Category II and Category III, as set forth by the United Nations Working Group on Arbitrary Detention (Working Group). Specifically, her detention is arbitrary under Category II because Mrs. Liu is detained for the exercise of her fundamental rights to freedom of expression and freedom of association. Further, her detention is arbitrary under Category III because her house arrest, without charge or notice of the reasons therefore, fails to satisfy

²⁵ Sainsbury & Yufei, *supra* note 21.

²⁶ Barriaux, *supra* note 22.

²⁷ Bodeen, *supra* note 15.

²⁸ Cara Anna, *After Peace Prize, China Targets Winner's Friends*, ASSOCIATED PRESS, Oct. 15, 2010, <http://www.washingtontimes.com/news/2010/oct/15/after-peace-prize-china-targets-winners-friends/>.

²⁹ Andrew Quinn, *15 Nobel Laureates Ask G-20 to Raise Liu Case*, REUTERS, Oct. 25, 2010, <http://www.reuters.com/article/idUSTRE69O33720101025>.

³⁰ *U.S. Embassy Says China Nobel Winner's Wife Should Travel Freely*, BLOOMBERG NEWS, Oct. 12, 2010, <http://www.businessweek.com/news/2010-10-12/u-s-embassy-says-china-nobel-winner-s-wife-should-travel-freely.html>.

³¹ Tania Branigan, *Chinese Twitter User Seized After Supporting Liu Xiaobo*, GUARDIAN, Oct. 26, 2010, <http://www.guardian.co.uk/world/2010/oct/26/china-nobel-liu-xiaobo-tweet-arrest>.

³² According to "Deliberation 01" of the Working Group, "[w]ithout prejudicing the arbitrary character... of the measure, house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave." Report of the Working Group on Arbitrary Detention, Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, E/CN.4/1993/24, Jan. 12, 1993, at ¶ 20.

³³ An arbitrary deprivation of liberty is defined as any "depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law." International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 March 1976, at art. 9(1) [hereinafter ICCPR]. Such a deprivation of liberty is specifically prohibited by international law. *Id.* "No one shall be subjected to arbitrary arrest, detention or exile." Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at art. 9 (1948) [hereinafter Universal Declaration]. "Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law" Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, at Principle 2, G.A. Res. 47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [hereinafter Body of Principals].

international norms related to a fair trial and renders the detention arbitrary.

1. Category II: The Detention Resulted From Mrs. Liu’s Exercise of Her Rights and Freedoms Guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights

Arbitrary detention falls under Category II when detention results from the exercise of fundamental rights protected by international law.³⁴ These fundamental rights include the right to freedom of opinion and expression,³⁵ and the right of freedom of association.³⁶ Mrs. Liu’s detention is arbitrary under Category II because it resulted from her exercise of these fundamental freedoms.

a. The Chinese Government Detained Mrs. Liu Because She Exercised Her Right to Freedom of Expression and Opinion

The Government of China is holding Mrs. Liu under house arrest because she exercised her right of freedom of opinion and expression, as protected by Article 19 of the Universal Declaration of Human Rights (Universal Declaration),³⁷ and Article 19(1) of the International Covenant on Civil and Political Rights (ICCPR). Although China has yet to ratify the ICCPR, it is a signatory,³⁸ and therefore is obligated to refrain from acts that would defeat the treaty’s “object and purpose.”³⁹ The right of freedom of expression includes the “freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”⁴⁰ In addition to the requirements of international law, Chinese law protects the right of freedom of expression. Article 35 of the Chinese Constitution provides that, “[c]itizens of the Peoples Republic of China enjoy freedom of speech [and] of the

³⁴ Specifically, a Category II deprivation of liberty occurs, “[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration of Human Rights and, and insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights.” Office of the High Comm’r for Human Rights, United Nations, Fact Sheet No. 26: The Working Group on Arbitrary Detention, pt. IV(B) [hereinafter Fact Sheet No. 26].

³⁵ Universal Declaration, *supra* note 33, at art. 19. See also ICCPR, *supra* note 33, at art. 19(2).

³⁶ Universal Declaration, *supra* note 33, at art. 20(1). See also ICCPR *supra* note 33, at art. 22(1).

³⁷ While the Universal Declaration, as a General Assembly resolution, is not technically considered binding in its entirety on all states, scholars continue to debate the binding nature of specific provisions. As a General Assembly resolution, the Body of Principles is similarly not legally binding. However, in looking to the Universal Declaration and the Body of Principles, the Working Group on Arbitrary Detention has decided to “rely heavily on ‘soft’ international legal principles to adjudicate individual cases.” Jared M. Genser & Margaret Winterkorn-Meikle, *The Intersection of Politics and International Law: The United Nations Working Group on Arbitrary Detention in Theory and Practice*, 39 Colum. Hum. Rts. L. Rev. 101, 114 (2008).

³⁸ China became a signatory to the ICCPR on October 5, 1998. Office of the United Nations High Commissioner for Human Rights, *Status of Ratification of the Principal International Human Rights Treaties, as of 14 July, 2006*. available at <http://www2.ohchr.org/english/bodies/docs/status.pdf>.

³⁹ Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1979, art. 18, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980).

⁴⁰ Universal Declaration, *supra* note 33, at art. 19 (“Everyone shall have the right to freedom of opinion and expression; this rights includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”) See also ICCPR, *supra* note 33, at art 19(2) (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”)

press...”⁴¹ Further, Article 41 provides that they “have the right to criticize and make suggestions regarding any state organ or functionary.”⁴²

Mrs. Liu exercised her right of freedom of expression by supporting her husband and criticizing the Government of China, and, as a result, the government placed her under house arrest. This renders her detention arbitrary under Category II. Though she was not active in the Chinese democracy movement,⁴³ Mrs. Liu refused to stay silent after the sentencing of her husband on December 25, 2009. In the days before the announcement of the Nobel Peace Prize, she openly worried that the government would use its influence to prevent Dr. Liu from winning the award, noting that the “government is one that has never given reasons for its actions. It is a government that thinks there is nothing it can’t do.”⁴⁴ Shortly after making these statements, authorities placed Ms. Liu under house arrest, rendering her unable to meet with reporters outside the apartment complex.⁴⁵ The fact that reporters were prohibited from meeting Mrs. Liu after her husband won the Nobel Peace Prize is strong evidence that the government’s motivation for placing her under house arrest was to limit her ability to exercise her right to freedom of expression. Such a flagrant attempt to stifle Mrs. Liu’s support for her husband and criticism of the government is a clear violation of her right to freedom of expression, as protected by Article 19 of the Universal Declaration and Article 19(1) of the ICCPR, and thus gives the detention an arbitrary character pursuant to Category II.

Mrs. Liu’s peaceful criticism of the government and support of her husband does not fall within the limited category of speech subject to legitimate constraint by the government. Article 19(3) of the ICCPR allows governments to restrict freedom of expression only in circumstances that “are provided by law and are necessary: (a) [f]or respect of the rights or reputations of others; (b) [f]or the protection of national security or of public order (*ordre public*), or of public health or morals.”⁴⁶ However, this limited qualification does not allow states to punish opinions it dislikes. The Human Rights Committee, the body tasked with authoritatively interpreting the treaty, has indicated that any restriction of expression under this provision is legitimate only if it is, (1) provided by law,⁴⁷ (2) for the purpose of protecting the rights or reputations of others, or national security or public order, and (3) “necessary” for that limited purpose.⁴⁸

⁴¹ XIAN FA art. 35 (1982) (P.R.C.) available at <http://www.cecc.gov/pages/newLaws/constitutionENG.php?PHPSESSID=a87bd0448bea46b35a7c1a60ee1de976> (last visited Oct. 21, 2010).

⁴² *Id.*, at art. 41. The Chinese Constitution also provides that “The exercise by citizens of the People’s Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens.” *Id.*, at art. 51. However, this limiting provision cannot allow the government to restrict the right to freedom of expression below the standard established by its international obligations.

⁴³ See Branigan, *My Dear Husband Liu Xiaobo, the Writer China Has Put Behind Bars*, *supra*, note 9.

⁴⁴ Hornby & Lim, *supra* note 11.

⁴⁵ See Jacobs, *supra* note 10..

⁴⁶ ICCPR, *supra* note 33, at art. 19(3).

⁴⁷ While the Human Rights Committee has not addressed this requirement in its jurisprudence, it would likely be interpreted, as other similar provisions of the ICCPR have been interpreted, to require “that the limitation must be sufficiently delineated in a State’s law.” Sarah Joseph, et al., *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* 391 (2000). As such, insofar as the sedition charges are vague and overbroad, they may fall outside the limited exception to freedom of expression contained Article 19(3) of the ICCPR.

⁴⁸ See e.g. Human Rights Committee, *Robert Faurisson v. France*, Communication No. 550/1993, at ¶ 9.4, U.N. Doc. CCPR/C/58/D/550/1993(1996).

Mrs. Liu's detention is not for a legitimate purpose; rather, the government is detaining her to stifle her peaceful criticism of the government and public support for her husband. As the Working Group has recognized, "[p]eaceful expression of opposition to any regime cannot give rise to arbitrary arrest."⁴⁹ Because the narrow exception to the right to freedom of expression under Article 19(3) of the ICCPR does not apply in this case, the Government of China is arbitrarily detaining Mrs. Liu under Category II because it placed her under house arrest when she exercised her right to freedom of expression.

b. The Chinese Government Detained Mrs. Liu Because She Exercised Her Right to Freedom of Association

The Chinese government's detention of Mrs. Liu is arbitrary because it results from her association with her husband Liu Xiaobo. Article 20(1) of the Universal Declaration provides that "[e]veryone has the right to freedom of peaceful assembly and association."⁵⁰ Further, Article 22(1) of the ICCPR provides that "[e]veryone shall have the right to freedom of association with others..."⁵¹ Similarly, Chinese law ensures the right to freedom of association. Article 35 of the Constitution of the People's Republic of China affirms that "[c]itizens of the People's Republic of China enjoy the freedom...of association."⁵²

Despite these protections, it is evident that the Government of China singled out Mrs. Liu for house arrest because of her association with her husband; this violates her right to freedom of association under international and Chinese law, and renders her detention arbitrary under Category II. Though Mrs. Liu is decidedly non-political,⁵³ the government placed her under surveillance in the period after Dr. Liu's imprisonment in 2009.⁵⁴ Security forces then moved to isolate her, particularly from the media, after Dr. Liu won the Nobel Peace Prize.⁵⁵ Now, the government continues to hold Mrs. Liu under house arrest as the Nobel award ceremony approaches, and refuses to indicate whether she will be allowed to attend.⁵⁶ The Government of China is detaining Mrs. Liu because of her association with her husband; therefore, her right to freedom of association under Article 20(1) of the Universal Declaration and Article 22(1) of the ICCPR has been violated. This violation renders her detention arbitrary pursuant to Category II.

The Government of China placed Mrs. Liu under house arrest because she exercised the fundamental right to freedom of expression and the fundamental right to freedom of association; as such, her continued detention is arbitrary pursuant to Category II.

2. Category III: The Detention of Mrs. Liu Fails to Respect Chinese and International Norms Relating to the Right to a Fair Trial

⁴⁹ UN Working Group on Arbitrary Detention, *James Mawdsley v. Myanmar*, Opinion No. 25/2000, ¶12 (Sep. 14 2000), U.N. Doc. E/CN.4/2001/14/Add.1, at 124 (Nov. 9, 2000).

⁵⁰ Universal Declaration, *supra* note 33, at art. 20(1).

⁵¹ ICCPR, *supra* note 33, at art. 22(1).

⁵² XIAN FA, *supra* note 41, at art. 35.

⁵³ See Branigan, *My Dear Husband Liu Xiaobo, the Writer China Has Put Behind Bars*, *supra* note 9.

⁵⁴ *Id.*

⁵⁵ See Jacobs, *supra* note 10.

⁵⁶ Bodeen, *supra* note 15.

The Working Group considers a deprivation of liberty to be a Category III arbitrary detention “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights 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.”⁵⁷ Additionally, the Working Group will look to the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Body of Principles).⁵⁸ Because the detention of Mrs. Liu failed to observe the minimum international norms relating to a fair trial, as contained in the Universal Declaration, the ICCPR, and the Body of Principles, her detention is arbitrary under Category III.

a. The Chinese Government Failed to Inform Mrs. Liu of the Charges Against Her

The Government of China failed to observe international norms relating to a fair trial when it failed to inform Mrs. Liu of the charges against her at the time of her detention, in violation of the ICCPR and the Body of Principles. Article 14(3) of the ICCPR protects the right of individuals “[i]n the determination of any criminal charge against him... (a) [t]o be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”⁵⁹ Principle 10 of the Body of Principles also provides that “[a]nyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.”⁶⁰

There is no indication that Chinese security forces provided any information which would fulfill the government’s obligation to inform Mrs. Liu of the reason for her detention when they first detained her on October 8, 2010. Even today, the Chinese government has provided no information. Rather, Chinese officials refuse to even acknowledge that Mrs. Liu’s liberty is restricted by the government.⁶¹ This failure to provide any explanation for the house arrest to Mrs. Liu renders her detention arbitrary under Category III.

The fact that the government has not formally arrested or charged Mrs. Liu with a crime does not change the conclusion that she is entitled to be informed of the reason for the limitations on her liberty. The Body of Principles defines “detention” as the “condition of detained persons,” and defines “detained person” as “any person deprived of personal liberty except as the result of a conviction.”⁶² Therefore, the protections of the ICCPR and the Body of Principles should apply

⁵⁷ Fact Sheet No. 26, *supra* note 34, at pt. IV(B).

⁵⁸ *Id.*

⁵⁹ ICCPR, *supra* note 33, at art 14(3)(a).

⁶⁰ Body of Principles, *supra* note 33 at Principle 10. *See also* ICCPR, *supra* note 33, at art. 9(2) (“Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”).

⁶¹ For example, when pressed on whether Mrs. Liu would be allowed to travel to Oslo for the Nobel Peace Prize ceremony, Foreign Ministry spokesman Ma Zhaoxu responded by calling the question hypothetical and suggest that reporters should first ask her whether she wanted to attend, while failing to acknowledge that she could not be reached due to her arrest. Peter Simpson, *Wife of Jailed Nobel Winner Urges Friends, Activists to Attend Award Ceremony*, Voice of America, Oct. 26, 2010, <http://www.voanews.com/english/news/Wife-of-Jailed-Nobel-Winner-Liu-Xiaobo-Urge-Chinese-Friends-to-Attend-Award-Ceremony-105760983.html>.

⁶² Body of Principles, *supra* note 33, at “Use of Terms.”

to Mrs. Liu's house arrest, despite the fact that the government thus far refused to acknowledge that she is being detained. Arguing that these protections are contingent upon a formal arrest would allow the government to avoid its obligations under international law. As such, the Government of China was under an obligation to inform Mrs. Liu of the basis for her detention at the time that it occurred; its failure to do so constitutes a breach of its obligations under Article 14(3)(a) of the ICCPR and Principle 10 of the Body of Principles; this violation renders Mrs. Liu's house arrest arbitrary under Category III.

b. The Chinese Government Failed to Provide Notification of Mrs. Liu's Detention to Her Family Within 24 hours, as Required by Chinese Law

The Government of China failed to meet the family notification requirements under Chinese law, thus rendering Mrs. Liu's detention arbitrary because the government did not follow its own procedure. Article 64 of the Criminal Procedure Law of the People's Republic of China provides that:

When detaining a person, a public security organ must produce a detention warrant. Within 24 hours after a person has been detained, his family or the unit to which he belongs shall be notified of the reasons for detention and the place of custody, except in circumstances where such notification would hinder the investigation or there is no way of notifying them.⁶³

The Government of China continues to ignore this requirement contained in its own law with regard to Mrs. Liu.

As noted above, when security officials first detained Mrs. Liu, there is no indication that officers presented any notice or warrant to anyone authorizing the detention. Additionally, the government failed to provide the family notification as required under Article 64 of the Criminal Procedure Code. Though Mrs. Liu's family is no doubt aware, as is the entire world, that the government is holding Mrs. Liu under house arrest at her home in Beijing, the government refuses to acknowledge that she is being detained.⁶⁴

The limited exception contained in Article 64 of the Criminal Procedure Code, where family notification would "hinder the investigation," does not apply in this case. Mrs. Liu's family is clearly aware of the limitations on her liberty,⁶⁵ and thus no harm would result from the required notification. General awareness of Mrs. Liu's house arrest, however, does not satisfy the government's obligation under Article 64 to provide the family with notice and a reason for the detention within 24 hours. Rather, it merely demonstrates that such notification would not

⁶³ Criminal Procedure Law (P.R.C.) (adopted Jan. 1, 1997), at art. 64, *available at* <http://www.cecc.gov/pages/newLaws/criminalProcedureENG.php>.

⁶⁴ Though it does not appear that the government of China has officially denied that Mrs. Liu is being detained, it has insinuated as much by telling reporters at her apartment complex merely that the residents were not giving interviews, Ho, *supra* note 18, and that they should ask her about whether she planned on attending the Nobel Peace Prize ceremonies in Oslo. See Simpson, *supra* note 61.

⁶⁵ After her 77 year-old mother visited with Mrs. Liu at her home because she was unable to call the family, her mother indicated that the family was "concerned" about the situation. Barriaux, *supra* note 22.

“hinder the investigation” as required by the Article’s narrow exception. Because the government is in clear violation of one of its own laws related to the right to a fair trial, Mrs. Liu’s house arrest is arbitrary under Category III.

c. The Chinese Government Has Restricted Mrs. Liu’s Access to Legal Counsel During Her House Arrest

The Chinese government’s attempt to restrict Mrs. Liu’s access to legal counsel during her ongoing house arrest violates international norms related to a fair trial, and renders her detention arbitrary under Category III. Article 14(3) of the ICCPR protects individuals “[i]n the determination of any criminal charge against him... (b) [t]o have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.”⁶⁶ Principle 18(1) of the Body of Principles further elaborates that “[a] detained or imprisoned person shall be entitled to communicate and consult with legal counsel.”⁶⁷ While the Body of Principles does not specifically identify when access to counsel must be granted, Principle 15 notes that, notwithstanding exceptions in the event of exceptional circumstances, “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.”⁶⁸

The Government of China has detained Mrs. Liu under a house arrest since October 8, 2010 and has since that time prevented her from accessing legal counsel, rendering her detention arbitrary under Category III. Despite the protections contained in the ICCPR and the Body of Principles, it does not appear that Mrs. Liu has been able to meet with legal counsel since authorities first moved to isolate her on October 8, 2010.⁶⁹ Though lawyers have attempted to contact Mrs. Liu, they have been unable to reach her.⁷⁰ In this case, there are no “extraordinary circumstances” that would justify limiting Mrs. Liu’s access to counsel during her detention. Further, the government has limited this access for nearly one month; such a period clearly exceeds the outer limits of a “matter of days,” even if extraordinary circumstances existed. The Government of China’s failure to grant Mrs. Liu access to counsel in these circumstances therefore violates both Article 14(3)(b) of the ICCPR and Principles 15 and 18(1) of the Body of Principles, and renders the detention arbitrary.

Because the government failed to provide notice of Mrs. Liu’s detention and because she has been denied access to legal counsel since the beginning of her detention on October 8, 2010, the circumstances of her detention fail to meet international standards related to a fair trial. This renders the detention arbitrary under Category III.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR

⁶⁶ ICCPR, *supra* note 33, at art. 14(3)(b).

⁶⁷ Body of Principles, *supra* note 33, at Principle 18(1).

⁶⁸ *Id.* at Principle 15.

⁶⁹ *See* Barriaux, *supra* note 22.

⁷⁰ *Id.*

REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

There have been no domestic legal proceedings because the Government of China is detaining Mrs. Liu under house arrest, without criminal charge or formal arrest.

VI. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER OF POSSIBLE)

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