

**PETITION TO:**

**UNITED NATIONS**

**WORKING GROUP ON ARBITRARY DETENTION**

Chairperson-Rapporteur: Mr. Malick El Hadji Sow (Senegal)

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

Mr. Aslan Abashidze (Russian Federation)

Mr. Roberto Garretón (Chile)

Mr. Mads Andenas (Norway)

**HUMAN RIGHTS COUNCIL  
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

**Gao Zhisheng,**

Citizen of the People's Republic of China

v.

Government of the People's Republic of China

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**URGENT ACTION REQUESTED**

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, and 6/4<sup>1</sup>

*Submitted By:*

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March 9, 2010

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<sup>1</sup> 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. Resolution 6/4, also extending the mandate of the Working Group on Arbitrary Detention, was adopted by the Human Rights Council which, in accordance with UN General Assembly Resolution 60/251, has "assume[d] . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights . . ." G.A. Res. 60/251, ¶ 6 (Mar. 15, 2006).

## **BASIS FOR “URGENT ACTION” REQUEST**

As set forth in the attached Petition, the Chinese government is arbitrarily depriving Gao Zhisheng of his liberty. Given Mr. Gao’s fame in China and previous torture at the hands of Chinese authorities, there is reason to believe that his health and safety are in serious jeopardy while he remains in Chinese custody and barred from communication with the outside world.

Accordingly, it is hereby requested that the Working Group consider this petition pursuant to the “Urgent Action” procedure.<sup>2</sup> 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 Resolution 6/4.

## **QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION**

### **I. IDENTITY**

- 1. Family name:** Gao 高
- 2. First name:** Zhisheng 智晟
- 3. Sex:** Male
- 4. Birth date:** April 20, 1964
- 5. Nationality:** China
- 6. (a) Identity document (if any):**
  - (b) Issued by:** issued in Xinjiang Province
  - (c) On (date):** Not known
  - (d) No.:** Not known
- 7. Profession and/or activity (if believed to be relevant to the arrest/detention):**  
Lawyer
- 8. Address of usual residence:**  
Building 11, Unit 7, Apartment #202  
Xiao Guan Bei Li 小关北里  
Chaoyang District 朝阳区

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

Beijing 100029 北京市  
China

## II. ARREST

- 1. Date of arrest:** February 4, 2009
- 2. Place of arrest (as detailed as possible):**  
Xiao Shi Ban Qiao Village 小石板桥村  
Jia County 佳县  
Shaanxi Province 陕西省  
China
- 3. Forces who carried out the arrest or are believed to have carried it out:**  
According to Mr. Gao's relatives, "at least seven security officials" abducted Mr. Gao from his family home in Shaanxi on February 4, 2009.<sup>3</sup> Witnesses state that these officials included local, Yulin City 榆林市, and Beijing police.
- 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 Mr. Gao, nor cited any legislation relevant to his case. Under Chinese law, arrests are to be made in accordance with Articles 66-71 of the Criminal Procedure Law.

## III. DETENTION

- 1. Date of detention:** February 4, 2009
- 2. Duration of detention (if not known, probable duration):** Over one year.
- 3. Forces holding the detainee under custody:**  
Chinese authorities have not publicly acknowledged holding Mr. Gao under custody, but witnesses have seen Mr. Gao accompanied by security officials in Shaanxi.
- 4. Places of detention (indicate any transfer and present place of detention):**  
Unknown. Witnesses have seen Mr. Gao accompanied by security officials in Shaanxi. After authorities in Beijing told Mr. Gao's brother that Mr. Gao "went missing,"<sup>4</sup> the Chinese Foreign Ministry said on January 21, 2010, that Mr. Gao,

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<sup>3</sup> John Garnaut, "Tip reveals detained lawyer alive but location remains a mystery," *Sydney Morning Herald*, Jan. 20, 2010, available at <http://www.smh.com.au/world/tip-reveals-detained-lawyer-alive-but-location-remains-a-mystery-20100119-mj7c.html>.

<sup>4</sup> Cara Anna, "Brother: Police say China lawyer 'went missing,'" *Associated Press*, Jan. 14, 2010, available at [http://news.yahoo.com/s/ap/20100114/ap\\_on\\_re\\_as/as\\_china\\_missing\\_lawyer\\_1](http://news.yahoo.com/s/ap/20100114/ap_on_re_as/as_china_missing_lawyer_1).

“according to Chinese law, is where he should be.”<sup>5</sup> On February 15, 2010, the Chinese Embassy stated that Mr. Gao was “working in Urumqi,” but his family did not know of this fact and had not heard it from Mr. Gao himself.<sup>6</sup>

**5. Authorities that ordered the detention:** Unknown.

**6. Reasons for the detention imputed by the authorities:**

Chinese authorities have not given any reasons for Mr. Gao’s detention, other than to say, “The relevant judicial authorities have decided this case.”<sup>7</sup> Mr. Gao was previously arrested and detained in 2006 for “inciting subversion.”<sup>8</sup>

**7. Relevant legislation applied (if known):**

Chinese authorities have not cited any legislation relevant to Mr. Gao’s detention. Under Chinese law, detention is to be conducted in accordance with Articles 61-65 of the Criminal Procedure Law.

#### **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 abduction and continuing detention of the Petitioner, as well as the current political climate in China for rights activists and lawyers.

##### **1. CHINA’S RECENT CRACKDOWN ON HUMAN RIGHTS AND THE RULE OF LAW**

During the 1990s, in an effort to repair its global image after the 1989 Tiananmen Square protests and gain admission to the World Trade Organization (WTO), the Chinese government took small steps to soften its treatment of human rights activists and allow gradual expansions of the freedom of speech. The Chinese Communist Party “progressively embraced the rule of law as a key part of its agenda to reform the way the country is governed,” paving the way for the exponential growth of both laws and lawyers while promoting “the idea that common citizens have basic rights.”<sup>9</sup>

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<sup>5</sup> Cara Anna, “China says missing lawyer ‘is where he should be,’” *Associated Press*, Jan. 22, 2010, available at [http://news.yahoo.com/s/ap/20100122/ap\\_on\\_re\\_as/as\\_china\\_missing\\_lawyer\\_1](http://news.yahoo.com/s/ap/20100122/ap_on_re_as/as_china_missing_lawyer_1).

<sup>6</sup> Anita Chang, “China activist lawyer’s wife seeks his whereabouts,” *Associated Press*, Feb. 18, 2010, available at [http://www.google.com/hostednews/ap/article/ALeqM5iMThf6N\\_SL9oW2ediYR0DN57J0XgD9DUDT00](http://www.google.com/hostednews/ap/article/ALeqM5iMThf6N_SL9oW2ediYR0DN57J0XgD9DUDT00).

<sup>7</sup> *Id.*

<sup>8</sup> Michael Bristow, “Mystery of missing Chinese lawyer Gao Zhisheng,” *BBC News*, Jan. 29, 2010, available at <http://news.bbc.co.uk/2/hi/asia-pacific/8482413.stm>.

<sup>9</sup> Human Rights Watch, “Summary,” *Walking on Thin Ice: Control, Intimidation and Harassment of Lawyers in China* (Apr. 28, 2008), available at <http://www.hrw.org/en/node/62248/section/3>.

But outside of the commercial sphere, these modest gains all but vanished since China's accession to the WTO in 2001 and the change of leadership in 2003 that brought President Hu Jintao to power: "Emboldened by China's newfound economic prowess but insecure about its standing at home, the Chinese Communist Party has been tightening Internet censorship, cracking down on legal rights defenders."<sup>10</sup> The period leading up to and immediately following the 2008 Beijing Olympic Games was particularly sensitive for the Chinese leadership as it forcefully suppressed protests in Tibet and reneged on guarantees of press freedom during the Games. This has been followed by a series of disturbing events in which Chinese authorities have forcefully asserted their control over dissidents, including the Petitioner's own disappearance.<sup>11</sup>

Lawyers, in particular, have been targeted by the government when they dare to defend ordinary citizens and assert their freedoms of speech and religion. These *weiquan* 维权, or rights-protection, lawyers "are often openly critical of the deficiencies of the legal system, and in particular of the lack of independence of the judiciary" but work within the legal system to bring about Chinese legal reform.<sup>12</sup> The Chinese government response has nevertheless been one of "surveillance and harassment," where "[p]hysical intimidation is used to encourage lawyers to drop cases, or to warn them against defending certain clients in criminal cases."<sup>13</sup>

For more prominent lawyers such as the Petitioner, government intimidation has taken the form of arbitrary detention. Chen Guangcheng, a blind, self-trained lawyer, exposed abusive family planning measures in Shandong while representing women who had been forced into sterilization and abortion. He was subsequently placed "under house arrest for 10 months" before any formal charges were made and ultimately given a four-year sentence—which he is currently serving—for "destroying property and organizing a mob to disrupt traffic."<sup>14</sup>

One of Chen's own lawyers, Xu Zhiyong—who was himself beaten and prevented from representing Chen in what was a closed trial—has likewise been arbitrarily detained.<sup>15</sup> Xu, despite being known as a gradualist rights-protector who preferred to work within the system, disappeared in July 2009 after authorities accused

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

<sup>11</sup> *Id.*

<sup>12</sup> Human Rights Watch, "China's Legal Profession," *Walking on Thin Ice*, available at <http://www.hrw.org/en/node/62248/section/5>.

<sup>13</sup> Human Rights in China, *About the Issue: Olympics and the Rule of Law* (Feb. 2008), available at <http://www.ir2008.org/02/issue.php>.

<sup>14</sup> Joseph Kahn, "Chinese Court Upholds Conviction of Peasants' Advocate," *New York Times*, Jan. 13, 2007, available at <http://www.nytimes.com/2007/01/13/world/asia/13beijing.html>. Chen's conviction was initially overruled for lack of evidence, but he was then retried and "convicted on identical charges."

<sup>15</sup> Amanda Whitfort, "The Right to a Fair Trial in China: The Criminal Procedure Law of 1996," 2 *Chinese Law & Policy Review* 141, 148 (2007); "China abortion activist on trial," *BBC News*, Aug. 18, 2006, available at <http://news.bbc.co.uk/2/hi/asia-pacific/5262748.stm>.

him of tax evasion.<sup>16</sup> Although Xu was released on bail one month later, his arrest and detention

paint the picture of a government that has become increasingly more alarmed by a more vocal and organized group of lawyers. The government ... has begun to view the development of these non-profit lawyers and legal reform as a threat to its authority and to the one-party rule of the CCP. Recent governmental assaults on the public interest law field are not just a one-off affair. Rather, they show a CCP not looking to embrace the “rule of law,” but instead seeking to contain it.<sup>17</sup>

There is a recognized pattern, familiar to many Chinese lawyers, in which Chinese authorities exploit administrative licensing requirements for lawyers and law firms in order to prevent lawyers from accepting controversial cases.<sup>18</sup> For human rights lawyers in particular, authorities have either threatened to suspend or even withdrawn their professional license to practice, rejected “the mandatory annual registration of licenses,” expelled lawyers from bar associations, or simply terminated “their employment with a registered firm.”<sup>19</sup> Or, as in the case of both Xu Zhiyong and the Petitioner himself, Chinese authorities have simply shut down a human rights lawyer’s entire organization or law firm by citing wholly unrelated administrative violations such as tax evasion or “failure to register in time the change of address of the law firm.”<sup>20</sup>

## 2. GAO ZHISHENG’S BACKGROUND

Gao Zhisheng, 45, is one of China’s best-known *weiquan* lawyers and human rights defenders. A self-taught litigator, Mr. Gao rose to prominence in the 1990s by representing rural Chinese citizens against widespread corruption at the local level. His work on behalf of the poor and disenfranchised garnered national attention, and in 2001, Mr. Gao was named one of China’s ten best lawyers by the Ministry of Justice.<sup>21</sup>

But Mr. Gao quickly lost favor with the Chinese government when he began representing members of persecuted religious groups. Courts refused to accept these politically sensitive cases, so in 2005, Mr. Gao wrote open letters to both the National People’s Congress and the leadership of the Chinese Communist Party, calling for an end to the abuse and torture of religious groups.<sup>22</sup> Chinese authorities responded by revoking Mr. Gao’s license to practice, shutting down his law firm, and placing his family—

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<sup>16</sup> Evan Osnos, “Letter from China: Where is Xu Zhiyong?” *The New Yorker*, July 31, 2009, available at <http://www.newyorker.com/online/blogs/evanosnos/2009/07/where-is-xu-zhiyong.html>; Donald C. Clarke, “Lawyers and the State in China: Recent Developments,” Testimony Before the Congressional-Executive Commission on China, Oct. 7, 2009, at 3.

<sup>17</sup> Elizabeth Lynch, “Xu Zhiyong and What is Detention Means for Rule of Law in China,” *The Huffington Post*, Aug. 17, 2009, available at [http://www.huffingtonpost.com/elizabeth-lynch/xu-zhiyong-and-what-his-d\\_b\\_261440.html](http://www.huffingtonpost.com/elizabeth-lynch/xu-zhiyong-and-what-his-d_b_261440.html).

<sup>18</sup> Human Rights Watch, “Control Over Lawyers’ Licenses,” *Walking on Thin Ice*, available at <http://www.hrw.org/en/node/62248/section/11>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Eva Pils, “Asking the Tiger for His Skin: Rights Activism in China,” 30 *Fordham International Law Journal* 1209, 1223-1224 (2007).

<sup>22</sup> Human Rights Watch, “Violence Against Lawyers,” *Walking on Thin Ice*, available at <http://www.hrw.org/en/node/62248/section/7>.

including his then 12-year-old daughter—under surveillance.<sup>23</sup> These administrative sanctions “reflect[ed] a wider tendency in recent years to strengthen the supervision of legal professionals in China through legal regulation.”<sup>24</sup>

### 3. PREVIOUS DETENTIONS

On July 30, 2006, Mr. Gao was beaten by the police officers monitoring his home. Two weeks later, he was apprehended at his sister's home in Shandong, but authorities did not notify Mr. Gao's family of his arrest until September 21. He was then charged with inciting subversion.<sup>25</sup> During Mr. Gao's detention, his “family continued to be harassed by agents who monitored them around the clock, followed them everywhere, prohibited friends and visitors from coming to see them, and warned them about communicating with anyone about Mr. Gao's case.”<sup>26</sup>

After giving a forced confession in the face of threats against his children, Mr. Gao was convicted in December 2006 and given a suspended four-year sentence with five years' probation, effectively placing him under house arrest.<sup>27</sup> Mr. Gao wrote that during his 54-day detention in 2006, “[h]e was shocked and beaten almost continuously ... or forced to sit motionless, enveloped by blinding lights. By the end, he said, ‘the skin all over my body had turned black.’”<sup>28</sup>

In September 2007, Mr. Gao was again detained after writing an open letter to the United States Congress that detailed human rights violations in China. He was promptly apprehended and tortured for 13 days, during which time authorities beat Mr. Gao with batons, held burning cigarettes to his face, and used toothpicks and electric shocks to pierce his genitals.<sup>29</sup>

### 4. CURRENT DETENTION

On February 4, 2009, “at least seven security officials” abducted Mr. Gao from his ancestral home in Shaanxi.<sup>30</sup>

No warrant was issued, no charges made, and no notice given to Mr. Gao's family about the location of or reason behind his detention. Although witnesses reported seeing

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<sup>23</sup> *Id.*

<sup>24</sup> Pils, at 1260. The surveillance of Mr. Gao included following him to, and intimidating him at, a November 2005 meeting with United Nations Special Rapporteur on Torture Manfred Nowak. Human Rights Watch, “Violence Against Lawyers,” *Walking on Thin Ice*.

<sup>25</sup> Human Rights Watch, “Violence Against Lawyers,” *Walking on Thin Ice*.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Andrew Jacobs, “China's Defiance Stirs Fears for Missing Dissident.”

<sup>29</sup> Human Rights in China, “Torture Account by Missing Rights Defense Lawyer Gao Zhisheng,” Feb. 8, 2009, available at [http://www.hrichina.org/public/contents/press?revision\\_id=126661&item\\_id=126636](http://www.hrichina.org/public/contents/press?revision_id=126661&item_id=126636).

<sup>30</sup> John Garnaut, “Tip reveals detained lawyer alive but location remains a mystery”; see Human Rights in China, “Torture Account by Missing Rights Defense Lawyer Gao Zhisheng.”

Mr. Gao accompanied by security officials in Shaanxi, Chinese authorities refused to comment on Mr. Gao's case for nearly a year after he disappeared.<sup>31</sup>

In January 2010, two weeks short of the anniversary of Mr. Gao's disappearance, the Chinese Foreign Ministry simply stated that, "The relevant judicial authorities have decided this case" and that Mr. Gao, "according to Chinese law, is where he should be."<sup>32</sup> On February 15, 2010, the Chinese Embassy in Washington, D.C., informed the Dui Hua Foundation that Mr. Gao was "working in Urumqi," but his family did not know of this fact, nor had they heard any word from Mr. Gao himself.<sup>33</sup>

At the time we submit this Petition, Mr. Gao's whereabouts remain unknown.

## **B. Analysis**

For the reasons stated below, the detention of Gao Zhisheng is an arbitrary deprivation of his liberty under each of the three categories of arbitrary detention set forth by the Working Group. Mr. Gao's detention falls under:

- Category I because even under Chinese law, the Chinese government cannot—and indeed, has yet to—“invoke any legal basis justifying the deprivation of liberty”<sup>34</sup>;
- Category II because it resulted from Mr. Gao's “exercise of the rights or freedoms guaranteed by”<sup>35</sup> articles 18, 19, and 20 of the Universal Declaration of Human Rights,<sup>36</sup> and articles 18, 19, 21, and 22 of the International Covenant on Civil and Political Rights (ICCPR);<sup>37</sup> and
- Category III because the *incommunicado* detention of Mr. Gao and without charge or notice to his family for over one year constitutes “non-observance of the international norms relating to the right to a fair trial ... of such gravity as to give the deprivation of liberty an arbitrary character.”<sup>38</sup>

Although China has not ratified the International Covenant on Civil and Political Rights, as a signatory it is obliged to refrain from acts that would defeat the treaty's object and

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<sup>31</sup> Amnesty International, “Sighting of Missing Chinese Lawyer: Gao Zhisheng,” Sep. 15, 2009, available at <http://www.amnesty.org/en/library/asset/ASA17/052/2009/en/8ba0a380-45ad-4e4e-8be7-97356b4e23a2/asa170522009en.html>.

<sup>32</sup> Cara Anna, “China says missing lawyer ‘is where he should be.’”

<sup>33</sup> Anita Chang, “China activist lawyer's wife seeks his whereabouts.”

<sup>34</sup> Working Group on Arbitrary Detention, Fact Sheet No. 26, at 4, available at <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf> (“Fact Sheet”).

<sup>35</sup> Fact Sheet.

<sup>36</sup> G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) (“Universal Declaration”).

<sup>37</sup> 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 Mar. 23, 1976 (China signed the ICCPR on Oct. 5, 1998).

<sup>38</sup> Fact Sheet.



purpose.<sup>39</sup> Mr. Gao’s detention also violates the rights established by the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>40</sup>

**1. CATEGORY I: ACCORDING TO CHINESE LAW, THE CHINESE GOVERNMENT CANNOT—AND HAS YET TO—“INVOKe ANY LEGAL BASIS JUSTIFYING THE DEPRIVATION OF LIBERTY.”**

**a. THERE IS NO LEGAL BASIS UNDER CHINESE LAW FOR THE DEPRIVATION OF MR. GAO’S LIBERTY.**

There is no legal basis under Chinese law for the deprivation of Mr. Gao’s liberty. In violation of Chinese law, Mr. Gao has not been formally charged with any offense under the Criminal Law of the People’s Republic of China or any other Chinese law. Further, his current detention is almost certainly in part related to actions for which he was previously detained and tortured—in particular, his advocacy on behalf of persecuted religious groups, and his open letters to the National People’s Congress, the leadership of the Chinese Communist Party, and the United States Congress. Each of these actions constitutes an exercise of the freedoms of speech and association enshrined in the Constitution of the People’s Republic of China.<sup>41</sup> Finally, the Constitution explicitly grants Mr. Gao the right to make statements critical of the government.<sup>42</sup> Although the Constitution limits the exercise of rights to acts which do not “infringe upon the interests of the state,”<sup>43</sup> the Chinese government has made no such determination under the law.

**b. THE PROCESS BY WHICH MR. GAO WAS DETAINED, AND THE CIRCUMSTANCES UNDER WHICH HIS DETENTION CONTINUES, HAVE NO LEGAL BASIS IN CHINESE LAW.**

**i. The Chinese government has not formally arrested Mr. Gao.**

China’s Constitution states that the freedom of its citizens is “inviolable.”<sup>44</sup> The Constitution further prohibits any arrest made without the approval or decision of a

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<sup>39</sup> See Vienna Convention on the Law of Treaties, Article 18 (“A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when ... it has signed the treaty ... subject to ratification ... until it shall have made its intention clear not to become a party to the treaty.”).

<sup>40</sup> G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) (“Body of Principles”).

<sup>41</sup> Constitution of the People’s Republic of China, art. 35 (“Citizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.”).

<sup>42</sup> *Id.*, art. 41 (“Citizens of the People’s Republic of China have the right to criticize and make suggestions to any state organ or functionary ... No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them.”).

<sup>43</sup> *Id.*, art. 51.

<sup>44</sup> *Id.*, art. 37 (“The freedom of person of citizens of the People’s Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a people’s procuratorate or by decision of a people’s court, and arrests must be made by a public security organ. Unlawful deprivation or restriction

People's Procuratorate or People's Court.<sup>45</sup> This constitutional freedom from arbitrary arrest is further safeguarded by the Criminal Procedure Law (CPL) of China, which imposes a 37-day limit on detentions made without formal arrest.<sup>46</sup> At the time we submit this Petition, Mr. Gao has been detained for over one year without formal arrest.

Mr. Gao's detention of over a year without formal arrest thus clearly violates Chinese law. Far from pointing to any decision made by the People's Procuratorate or the people's court, the Chinese government has instead refused to formally acknowledge that Mr. Gao was ever taken into custody,<sup>47</sup> with the exception of several vague statements regarding his whereabouts that indicate Mr. Gao is simply being held without formal arrest or charge in excess of the 37-day limit.<sup>48</sup> Therefore, under Chinese law, Mr. Gao must be released.<sup>49</sup>

**ii. Chinese authorities did not give Mr. Gao's family notice of his detention.**

When government forces detain a person in China, the CPL requires the detaining authority to notify the detainee's family or employer of the detention, the reason therefore, the identity of the detaining authority, and the place of detention.<sup>50</sup> Notification must be made within 24 hours, unless to do so would interfere with the investigation.<sup>51</sup> More than a year after Mr. Gao was taken into custody, his family has still not received notification of his arrest.

**iii. The Chinese government has denied Mr. Gao his right to a defense.**

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of citizens' freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited.”).

<sup>45</sup> *Id.*

<sup>46</sup> Criminal Procedure Law of the People's Republic of China, art. 69.

<sup>47</sup> David W. Chen, “How the Family of a Dissident Fled China,” *The New York Times*, May 9, 2009, available at <http://www.nytimes.com/2009/05/10/world/asia/10dissident.html>.

<sup>48</sup> *See, e.g.*, Donald C. Clarke, “More news about Gao Zhisheng,” *Chinese Law Prof Blog*, Oct. 8, 2009, available at [http://lawprofessors.typepad.com/china\\_law\\_prof\\_blog/2009/10/more-news-about-gao-zhisheng.html](http://lawprofessors.typepad.com/china_law_prof_blog/2009/10/more-news-about-gao-zhisheng.html); Cara Anna, “China says missing lawyer ‘is where he should be’”; Anita Chang, “China activist lawyer's wife seeks his whereabouts.”

<sup>49</sup> Criminal Procedure Law of the People's Republic of China, art. 75 (“If the compulsory measures adopted by a People's Court, a People's Procuratorate or a public security organ exceed the time limit prescribed by law, the criminal suspect or defendant, his legal representatives, near relatives, or the lawyers or other defenders entrusted by the criminal suspect or defendant shall have the right to demand cancellation of the compulsory measures. The People's Court, the People's Procuratorate, or the public security organ shall release the criminal suspect or defendant when the compulsory measures adopted against him have exceeded the time limit prescribed by law, terminate the period for awaiting trial after obtaining a guarantor or for residential surveillance, or take different compulsory measures according to law.”)

<sup>50</sup> Criminal Procedure Law of the People's Republic of China, art. 64.

<sup>51</sup> *Id.*

The Chinese Constitution offers all accused persons a right to a defense in proceedings against them.<sup>52</sup> The CPL further states that after a first interrogation by investigators *or* from the first day of detention persons have the right to select and meet a lawyer.<sup>53</sup> Mr. Gao has not been allowed to exercise these rights. Though the CPL contains an exception to these rights in cases that involve “state secrets,”<sup>54</sup> the Chinese government has not stated that Mr. Gao’s detention involves “state secrets” and cannot therefore legally invoke this exception. This breach of his right to counsel has no basis in Chinese law.

**2. CATEGORY II: THE DETENTION RESULTED FROM MR. GAO’S “EXERCISE OF THE RIGHTS OR FREEDOMS GUARANTEED BY” THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, AND THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.**

**a. THE CHINESE GOVERNMENT DETAINED MR. GAO BECAUSE HE EXERCISED HIS FREEDOMS OF THOUGHT, CONSCIENCE, AND RELIGION.**

The Chinese government’s detention of Mr. Gao violates his “right to freedom of thought, conscience, and religion” protected by Article 18 of both the Universal Declaration and the ICCPR.<sup>55</sup> Mr. Gao’s detention is directly related to the exercise of his own freedom of thought and conscience as well as his determined advocacy to protect other Chinese citizens’ constitutional right to “enjoy freedom of religious belief.”<sup>56</sup> Only when Mr. Gao began representing persecuted religious groups did the Chinese government attempt to curtail his practice of law by revoking his license to practice and

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<sup>52</sup> Constitution of the People’s Republic of China, art. 125 (“All cases handled by the People’s Courts, except for those involving special circumstances as specified by law, shall be heard in public. The accused has the right of defence.”)

<sup>53</sup> Criminal Procedure Law of the People’s Republic of China, art. 96 (“After the criminal suspect is interrogated by an investigation organ for the first time or from the day on which compulsory measures are adopted against him, he may appoint a lawyer to provide him with legal advice and to file petitions and complaints on his behalf. If the criminal suspect is arrested, the appointed lawyer may apply on his behalf for obtaining a guarantor pending trial. If a case involves state secrets, the criminal suspect shall have to obtain the approval of the investigation organ for appointing a lawyer.”).

<sup>54</sup> *Id.* (requiring the approval of the investigation organ before access to a lawyer can be granted in cases where state secrets are at issue).

<sup>55</sup> Universal Declaration, art. 18 (“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”); ICCPR, art. 18 (“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”).

<sup>56</sup> Constitution of the People’s Republic of China, art. 36 (“Citizens of the People’s Republic of China enjoy freedom of religious belief. No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.”).

shutting down his law firm.<sup>57</sup> Although the Chinese authorities will not comment on Mr. Gao's current detention, it is, by all indications, the result of his ongoing advocacy on behalf of those who, like Mr. Gao himself, have been unable to exercise their freedom of thought, conscience, and religion.

**b. THE CHINESE GOVERNMENT DETAINED MR. GAO BECAUSE HE EXERCISED HIS FREEDOMS OF OPINION AND EXPRESSION.**

The Chinese government's detention of Mr. Gao is punishment for his exercising the freedoms of opinion and expression protected by Article 19 of both the Universal Declaration and the ICCPR, which "includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."<sup>58</sup> After being denied recourse for his clients in Chinese courts, Mr. Gao turned to the only other avenue available to prevent the further persecution of religious minorities: the international media. For writing open letters to the Chinese leadership and the international community, Mr. Gao was summarily punished with constant surveillance, detention, torture, and now, his disappearance.

Mr. Gao's current predicament is merely the culmination of a pattern and practice by which the Chinese government has consistently and clearly violated Article 19 of both the Universal Declaration and the ICCPR. Without an arrest warrant to attest otherwise, we can only assume that Mr. Gao's current detention is related to his outspoken criticism of the Chinese government's human rights record relating to religious freedom. Detaining Mr. Gao as punishment for or to prevent his defense of persecuted religious groups is a violation of Article 19(2).

**C. THE CHINESE GOVERNMENT DETAINED MR. GAO BECAUSE HE EXERCISED HIS FREEDOM OF ASSEMBLY AND ASSOCIATION.**

The Chinese government's detention of Mr. Gao's resulted from his asserting the "right to freedom of peaceful assembly and association,"<sup>59</sup> as enshrined in Article 20 of the Universal Declaration and Articles 21 and 22 of the ICCPR. The Chinese

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<sup>57</sup> Human Rights Watch, *Walking on Thin Ice*.

<sup>58</sup> Universal Declaration, art. 19 ("Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."); ICCPR, art. 19 ("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.").

<sup>59</sup> Universal Declaration, art. 20 ("Everyone has the right to freedom of peaceful assembly and association."); ICCPR, art. 21 ("The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.") and art. 22 ("Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.").

government's draconian response to Mr. Gao's exercise of this freedom is especially brazen given the nature of Mr. Gao's peaceful association with religious minorities. Again, without any official warrant or formal charges from the Chinese authorities, we can only assume Mr. Gao was detained because of his representation of persecuted religious groups. To punish Mr. Gao for joining a religious minority would itself be a violation of these fundamental rights; to punish him for merely representing religious minorities is to take guilt by association to an absurd result, akin to jailing criminal defense lawyers for the crimes their clients allegedly committed.

**3. CATEGORY III: THE CHINESE GOVERNMENT'S DETENTION OF MR. GAO *INCOMMUNICADO* AND WITHOUT CHARGE OR NOTICE TO HIS FAMILY FOR OVER ONE YEAR CONSTITUTES "NON-OBSERVANCE OF THE INTERNATIONAL NORMS RELATING TO THE RIGHT TO A FAIR TRIAL ... OF SUCH GRAVITY AS TO GIVE THE DEPRIVATION OF LIBERTY AN ARBITRARY CHARACTER."**

Arbitrary detention falls under Category III "[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out 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."<sup>60</sup> The Chinese government's detention of Mr. Gao *incommunicado* is a clear violation of international norms relating to a fair trial under the Universal Declaration, the ICCPR, and the Body of Principles. Mr. Gao's detention should therefore also be found to be arbitrary detention under Category III of the Working Group.

China has given Mr. Gao neither a trial nor a hearing to adjudicate the legitimacy of his detention, in stark violation of the Universal Declaration, the ICCPR, the Body of Principles, and, as discussed above, Chinese domestic law. Article 10 of the Universal Declaration provides that "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."<sup>61</sup> Similarly, Article 14 of the ICCPR protects the rights "to a fair and public hearing"<sup>62</sup> and "to be tried without undue delay."<sup>63</sup> Mr. Gao has not received any hearing, let alone a fair and public hearing without undue delay.

Article 14(1) of the ICCPR also guarantees anyone accused of a criminal charge "adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing."<sup>64</sup> By denying Mr. Gao access to counsel, the Chinese government is violating Article 14(1). Without access to counsel, a formal arrest, or even

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<sup>60</sup> Fact Sheet.

<sup>61</sup> Universal Declaration, art. 10.

<sup>62</sup> ICCPR, art. 14(1)

<sup>63</sup> *Id.*, art. 14(3)(c).

<sup>64</sup> *Id.*, art. 14(1).

the Chinese government's acknowledgment of Mr. Gao's detention, Mr. Gao has clearly not received a fair trial. The Chinese government's detention of Mr. Gao therefore violates Article 10 of the Universal Declaration and Article 14 of the ICCPR.

The Chinese government's detention of Mr. Gao also violates the various procedural protections guaranteed by Article 9 of the ICCPR and the Body of Principles:

- Article 9(1) of the ICCPR provides that “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”<sup>65</sup> As addressed above, Mr. Gao has been deprived of his liberty without formal arrest far beyond the 37-day limit enumerated in the Chinese Criminal Procedure Law. Mr. Gao's detention therefore violates Article 9(1), as well as Principle 36 of the Body of Principles, which provides that detainees “shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial.”<sup>66</sup>
- Article 9(2) provides that “[a]nyone 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.”<sup>67</sup> Mr. Gao has been detained since February 4, 2009 without notification of the charges brought against him; his detention therefore violates Article 9(2). That the Chinese government has not formally arrested Mr. Gao is a mere formality that should not allow the Chinese government to subvert the purpose of Article 9(2), given that Mr. Gao has been detained since February 4, 2009 and is currently held *incommunicado*.
- Article 9(3) provides that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.”<sup>68</sup> Similarly, under the Body of Principles, “A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.”<sup>69</sup> According to the UN Human Rights Committee, a delay of “over two months violates the requirement...that anyone arrested [or detained] shall be brought ‘promptly’ before a judge.”<sup>70</sup> Mr. Gao's detention of almost 13 months without being brought before a judge therefore severely violates Article 9(3).

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<sup>65</sup> *Id.*, art. 9(1).

<sup>66</sup> Body of Principles, Principle 36.

<sup>67</sup> ICCPR, art. 9(2).

<sup>68</sup> *Id.*, art. 9(3).

<sup>69</sup> Body of Principles, Principle 11(1).

<sup>70</sup> *Berry v. Jamaica*, 330/88 at 11.1.

- Article 9(4) provides that “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”<sup>71</sup> This right stems from the Anglo-American legal principle of habeas corpus and exists regardless of whether deprivation of liberty is unlawful.<sup>72</sup> The Human Rights Committee has stated that *incommunicado* detention renders a *habeas corpus* action impossible, thereby violating Article 9(4).<sup>73</sup> As discussed above, Mr. Gao is indeed being held *incommunicado*. Furthermore, under the Body of Principles, a detainee cannot be denied the right to communicate with his family “for more than a matter of days.”<sup>74</sup>

### C. Conclusion

Given the complete lack of process and *incommunicado* nature of the Chinese government’s year-long detention of Gao Zhisheng, Mr. Gao’s detention is arbitrary and in clear violation of both domestic Chinese law 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 24, 2009, Mr. Gao’s brother, Gao Zhiyi, traveled to the Beijing City Police Petition Office to demand information about Mr. Gao’s whereabouts. Gao Zhiyi said, “I went to the Beijing City Police Petition Office and told them the story, but they had no response; I then had no other strategy. They did acknowledge that there is such a person, but they said, given the situation, I should search in Xinjiang and then come back. They had no other suggestions.”<sup>75</sup>

Numerous individuals and foreign governments have pressed the Chinese government to admit to detaining Mr. Gao, including the United States Department of State and the European Union’s High Representative for Foreign Affairs and Security Policy.<sup>76</sup>

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<sup>71</sup> ICCPR, art. 9(4).

<sup>72</sup> See M. Nowak, CCPR Commentary (N.P. Engel, Kehl, 1993), at 159.

<sup>73</sup> See *Hammel v. Madagascar*, 155/83.

<sup>74</sup> Body of Principles, Principle 15.

<sup>75</sup> Wang Qian, Yi Fan, Fang Liang (Sound of Hope Radio Network), “Gao Zhisheng’s Whereabouts Still a Mystery,” *The Epoch Times*, Dec. 29, 2009, available at <http://www.theepochtimes.com/n2/content/view/27151/>.

<sup>76</sup> See, e.g., David W. Chen, “How the Family of a Dissident Fled China,” (in June 2009, “Laura Tischler, a State Department spokeswoman said that a senior American official discussed the case on March 31 with high-ranking Chinese officials in Beijing, and that State Department officials had raised the case, most recently on April 15, with the Chinese Embassy in Washington. “The United States is deeply concerned

With Mr. Gao's wife's, Geng He, authorization, we have also submitted a petition to the UN Working Group on Enforced or Involuntary Disappearances on February 4, 2010 but have not, as of yet, received a reply.

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

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about the safety and well-being of well-known human rights lawyer Gao Zhisheng,' Ms. Tischler said. 'We have raised our concerns about Mr. Gao's whereabouts and well-being repeatedly, both in Washington and in Beijing.'"); European Union, "Statement by HR Catherine Ashton, on human rights in China," A 15/10, Feb. 9, 2010, available at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/112848.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/112848.pdf) ("Catherine Ashton, High Representative of the Union for Foreign Affairs and Security Policy and Vice President of the Commission, made today the following statement: 'The EU notes with concern that on 4th February 2010, one year passed since the prominent human rights lawyer Mr Gao Zhisheng disappeared from his home town in Shaanxi province. During the last year, the EU has repeatedly called on the Chinese government, at the highest level and including during its bi-annual dialogue on Human Rights, to reveal the whereabouts of Mr Gao, to give Mr Gao access to a lawyer and to allow Mr Gao to maintain contact with his family. The EU is especially concerned at recent reports that Mr Gao has "gone missing". In this context, the EU urges China to clarify without delay the situation of Gao Zhisheng and to open a fully independent and transparent investigation into his disappearance.'").