

**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

**Chen Kegui,**

Citizen of the People's Republic of China

v.

Government of the People's Republic of China

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**URGENT ACTION REQUESTED**

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16<sup>1</sup>

*Submitted By:*

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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. 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, 15/18, and 20/16.

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

As set forth in the attached Petition, the Chinese government is arbitrarily depriving Chen Kegui of his liberty. Chen Kegui is the nephew of human rights advocate Chen Guangcheng.

There is reason to believe that Chen Kegui’s life and health may be in serious danger. During his time in custody, government officials have subjected Chen Kegui to severe beatings, deprived him of food and sleep, and threatened to kill members of his family. Most alarmingly, in past months he has suffered from what is believed to be appendicitis. The government denied him the right to visit a hospital for nearly a month, despite reports that his appendix had begun to rupture. He has not received surgery for his serious condition, instead having to rely only on antibiotics for treatment.

The Chinese government has a long history of using dissidents’ family members as leverage against them through physical intimidation and detention. Chen Guangcheng’s case has been a sensitive issue for the government because of his public dispute with the government over his legal advocacy, his subsequent imprisonment, and his highly-publicized escape from house arrest in 2012—all of which put him in the international spotlight. In the wake of these events, the government has continued to harass his family members.

Accordingly, it is hereby requested that the Working Group consider this petition pursuant to its “Urgent Action” procedure.<sup>2</sup> In addition, it is 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, 15/18, and 20/16.

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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 ¶ 22-24.3

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

**I. IDENTITY**

**1. Family name:** Chen

**2. First name:** Kegui

**3. Sex:** Male

**4. Birth date:** June 10, 1979

**5. Nationality:** People's Republic of China

**6. (a) Identity document (if any):** N/A (but available if helpful)

**(b) Issued by:** N/A

**(c) On (date):** N/A

**(d) No.:** N/A

**7. Profession and/or activity (if believed to be relevant to the arrest/ detention):**  
Nephew of prominent Chinese rights advocate Chen Guangcheng

**8. Address of usual residence:**

Dongshigu Village, Shuanghou Town, Jinan County, Shandong Province, China

**II. ARREST**

**1. Date of arrest:** April 29, 2012

**2. Place of arrest (as detailed as possible):** Jinan County Detention Center

**3. Forces who carried out the arrest or are believed to have carried it out:**  
Criminal Police

**4. Did they show a warrant or other decision by a public authority?**  
Formal arrest warrant was not issued until May 9, 2012.

**5. Authority who issued the warrant or decision:** County Prosecutor

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

Article 61 of the Criminal Procedure Appeal Law of the People's Republic of China

**III. DETENTION**

**1. Date of detention:** April 29, 2012

**2. Duration of detention (if not known, probable duration):**

Combined total of more than 14 months: 7 months (April 29, 2012- November 30, 2012) in pretrial detention, and more than 7 months so far (November 30, 2012- present) in prison

**3. Forces holding the detainee under custody:**

Jinan County police and prison officials and/or workers

**4. Places of detention (indicate any transfer and present place of detention):**

He was detained at the Jinan County Detention Center from April 29, 2012 until his trial on November 30, 2012, after which he was convicted and sentenced to 3 years and 3 months in Linyi Prison, where he remains today.

**5. Authorities that ordered the detention:** Criminal Police

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

Charged with “intentional homicide” (because of his actions in self-defense)

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

Charged initially with “intentional homicide” and later with “intentional infliction of injuries,” ostensibly under the Criminal Law of the People’s Republic of China, Part 1, Ch. II, § 1, Art. 17

**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<sup>3</sup>**

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

Despite recent economic progress, the human rights situation in China remains bleak and is worsening in some areas.<sup>4</sup> In particular, the Chinese government has escalated its detention and harassment of human rights activists, political dissidents, and their families. In this climate, government forces have resorted to internet controls, home surveillance, arbitrary arrests, and

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<sup>3</sup> Throughout this section, *see generally* Freedom Now, Urgent Appeal Request: Situation of Chen Kegui / People’s Republic of China, April 29, 2013, <http://www.freedom-now.org/wp-content/uploads/2013/04/Chen-Kegui-China-Urgent-Appeal-to-Special-Rapporteur-on-Torture-4-29-13.pdf>. *See also* Freedom Now, Petition To: United Nations Working Group on Arbitrary Detention, In the Matter of Liu Xia, Citizen of the People’s Republic of China, November 4, 2010, *available at* <http://www.freedom-now.org/wp-content/uploads/2010/11/Press-Release-and-Petitions-for-Liu-Xiaobo-and-Liu-Xia-to-UNWGAD1.pdf> [hereinafter Liu Xia UNWGAD Petition]. *See also* Communication with Chen Guangcheng, on file with the author.

<sup>4</sup> *Ex-Mayor of Beijing Linked to Tiananmen Crackdown Dies*, B.B.C. NEWS, June 4, 2013, *available at* <http://www.bbc.co.uk/news/world-asia-china-22773481>.

enforced disappearances to silence peaceful criticism of its policies.<sup>5</sup>

Chinese law facilitates the arbitrary deprivation of liberty by authorizing long periods of administrative detention. The police are legally permitted to detain individuals without arrest or charge for up to 37 days.<sup>6</sup> Individuals may also be subjected to upwards of six months of “residential surveillance”—a *de facto* form of house arrest—regularly used to confine activists.<sup>7</sup>

The Chinese government has increasingly targeted the family members of human rights defenders, not only to force their silence, but also to put pressure on the activists themselves. For instance, Liu Xia, the wife of imprisoned Nobel Peace Laureate Liu Xiaobo, has been under house arrest since 2010, even though she has never been charged with any crime.<sup>8</sup> In 2006, security officials extracted a public “confession” from the prominent human rights lawyer Gao Zhisheng by making threats against his children.<sup>9</sup> Imprisoned activist Hu Jia called attention to the immense “mental and life pressure” on dissidents’ families in China after authorities placed his own family under house arrest.<sup>10</sup> Family members continue to receive harsh punishments simply because they are related to human rights defenders.<sup>11</sup>

## 2. Background of Chen Guangcheng

Chen Guangcheng, Chen Kegui’s uncle, is a prominent Chinese rights advocate. As a blind, self-taught lawyer, he was initially praised by the government for his work in cases dealing with women’s rights, land rights, and the rights of the poor. However, he fell out of the government’s favor in 2005 when he defended a group of women who were forced by government officials to undergo abortions and sterilizations.<sup>12</sup> He was kidnapped and placed under house arrest for 10 months before being sentenced to jail.

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<sup>5</sup> U.S. State Dep’t. Country Reports on Human Rights, *China (includes Tibet, Hong Kong, and Macao) (2012)*, Apr. 19, 2013, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dlid=204193> [hereinafter Country Reports].

<sup>6</sup> Country Reports, *supra* note 5, at § 1(d).

<sup>7</sup> Country Reports, *supra* note 5, at § 1(d).

<sup>8</sup> Liu Xia UNWGAD Petition, 4-7.

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

<sup>10</sup> 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), available at <http://advocacy.globalvoicesonline.org/2008/01/30/china-hu-jias-state-secrets>.

<sup>11</sup> See *Beijing’s Family Values: The Regime’s Playbook For Hounding the Wives and Children of Dissidents*, WALL STREET JOURNAL, May 31, 2013, available at [http://online.wsj.com/article/SB10001424127887324412604578514442600512824.html?mod=WSJ\\_Opinion\\_LEFT\\_TopBucket](http://online.wsj.com/article/SB10001424127887324412604578514442600512824.html?mod=WSJ_Opinion_LEFT_TopBucket) [hereinafter *Beijing’s Family Values*].

<sup>12</sup> Andrew Jacobs, *China Accused of Denying Care to Dissident’s Imprisoned Nephew*, N.Y. TIMES, May 2, 2013, available at [http://www.nytimes.com/2013/05/03/world/asia/china-accused-of-denying-care-to-relative-of-chen-guangcheng.html?\\_r=1&](http://www.nytimes.com/2013/05/03/world/asia/china-accused-of-denying-care-to-relative-of-chen-guangcheng.html?_r=1&).

The government imprisoned Chen Guangcheng for four years and three months for his legal advocacy, followed by 20 months of extra-judicial house arrest for him, his wife, and their young daughter. During the house arrest, the authorities beat Chen Guangcheng and his wife, cut the family off from the outside world, and aggressively prevented visitors from seeing them.<sup>13</sup> In April 2012, he escaped from house arrest and fled to the US Embassy in Beijing. As a result of Chen Guangcheng's highly-publicized escape, the government refocused its attention on members of his family—including including his nephew Chen Kegui.

### 3. Detention of Chen Kegui

In the early hours of April 27, 2012, shortly after news of Chen Guangcheng's escape surfaced, Zhang Jian, the local deputy party secretary of Shuanghou Village, Jinan County, alongside several party officials and dozens of hired thugs, illegally broke into the four-unit compound occupied by members of Chen Guangcheng's extended family. They stormed the home of Chen Guangfu, Chen Guangcheng's older brother, where he lived with his wife, Ren Zongju, and their son, the 33-year old Chen Kegui. The thugs scaled the walls of the compound, and, once inside, broke the locks of four exterior doors to let the others in.

Without presenting a search or arrest warrant or any other legal documentation, Zhang Jian, the thugs, and other party officials entered the home, carrying clubs and flashlights. As soon as they found Chen Guangfu lying in his bed, they placed a hood over his head and forcibly took him from the home without giving him the opportunity to get fully dressed. They then took Chen Guangfu to an "administrative investigation unit," where police beat and tortured him over the course of a 50-hour detention.

About 30 minutes later, Zhang Jian and ten or more of the thugs returned to the home, and they continued to search the premises without a warrant or other legal documentation. The thugs entered each of the four units in the compound and began confiscating various items including cash, cell phones, and contract records. Armed with wooden clubs reportedly as "thick as bottled spring water," several thugs restrained the residents while others began to "beat and steal,"<sup>14</sup> destroying a television set, a sewing machine, and other furniture. At the time the thugs reentered the compound, Chen Kegui was in his room. As soon as they entered the room, the thugs went after Chen Kegui. One thug tried to strike him with a club, but Chen Kegui moved and the club struck a television instead. The thug swung the club so hard that it broke from the force of the impact, completely destroying the television. The thugs proceeded to beat Chen Kegui on his head, face, arms, and neck. In the midst of the struggle, Chen Kegui and the others ended up in the courtyard in the center of the compound. His mother, Ren Zongju, who was being held in one of the ransacked units, heard one of the thugs yell "Kill him, kill him!" Ren Zongju observed that "So many people were beating him. His face was bleeding, and his legs. His trousers were ripped."<sup>15</sup> In an effort to protect her son, she ran into the courtyard to find the

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<sup>13</sup> Steven Jiang, "Batman" Star Bale Punched, Stopped from Visiting Blind Chinese Activist, CNN, Dec. 17, 2011, available at [http://edition.cnn.com/2011/12/15/world/asia/china-bale-activist/index.html?hpt=hp\\_c2](http://edition.cnn.com/2011/12/15/world/asia/china-bale-activist/index.html?hpt=hp_c2).

<sup>14</sup> This phrase is commonly used to describe such actions by the authorities.

<sup>15</sup> *Blind Activist Chen Guangcheng's Brother Flees Village*, BBC NEWS, May 24, 2012, available at <http://www.bbc.co.uk/news/world-asia-china-18186095>.

thugs beating him with wooden clubs and a child's tricycle. The thugs then turned their attention to Ren Zongju, beating her and pulling her hair. In the chaos of the attack on his home, Chen Kegui grabbed a kitchen knife to defend himself from the onslaught. Zhang Jian told the thugs to "take [Chen Kegui] down." When they rushed toward him, Chen Kegui attempted to defend himself, lightly injuring Zhang Jian and two of the thugs.<sup>16</sup>

The intruders subsequently left the home. As soon as they departed, Chen Kegui escaped to a nearby field, where he used a cell phone to call the Jinan County Police. He also received a phone call from a friend, who he instructed to call his parents, and have them hire a lawyer in the event of his arrest.

After 40 to 50 minutes, as Chen Kegui waited at the edge of the field, several of the same thugs from the home invasion, alongside the police and a number of party officials, returned to the compound, armed with helmets and flashlights. When they arrived, Ren Zongju was sitting on her bed, mixing medicine in a bowl for Chen Kegui's three-year-old son, who was also in the room. When the authorities entered the room, they knocked the medicine out of her hands, pulling her off the bed and onto the ground by her hair, and began severely beating her. She screamed as she was being beaten, but the authorities continued to beat her in hope that she would stop screaming. As they were beating her, the Jinan County Police Department employees attempted to coerce her into admitting that she was harboring a criminal. She was beaten for approximately 25 minutes in the presence of her grandson. Neighbors heard Ren Zongju's screams and came outside to see what was happening. They saw the thugs standing outside the family compound, carrying clubs, and preventing anyone from approaching.

After they beat Ren Zongju, the authorities remained at the residence for the next two days. Approximately 10 hours after the first group arrived, a new group of 15 or more individuals arrived, installing surveillance equipment and taking positions inside and outside the home. They stayed until April 29, sleeping in the family's beds and lounging on their couches.

Authorities also detained Ren Zongju following the attack on the family compound. On the morning of April 27, Ren Zongju took her grandson to the hospital for an injection and to be seen by a medical professional. Before the treatment was completed, police seized Ren Zongju at the hospital and took her to the Linyi Detention Center, leaving the child in the care of his mother. Yinan County Police Department employees then beat and tortured her, again attempting to coerce her into admitting that she had harbored a criminal. Although police allowed Chen Guangfu to return home on April 29, the authorities held Ren Zongju until May 5<sup>th</sup>.

After the attacks on April 27, Chen Kegui fled to the home of another uncle and then visited a "barefoot doctor" to seek treatment for injuries he sustained during the beating. At some point after his escape, Chen Kegui was captured by the police, who took him to the Jinan County Detention Center on April 29. After he was taken into custody, Chen Kegui reported that he was forced to confess to the charges and admit his guilt. He was held *incommunicado* until sometime

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<sup>16</sup> After this encounter, the injured intruders left without assistance. *Testimony of Jared Genser, Founder of Freedom Now and International Pro Bono Legal Counsel to the Chen and Gao Families*, Hearing of the House Committee on Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, April 9, 2013, *available at* <http://docs.house.gov/meetings/FA/FA16/20130409/100604/HHRG-113-FA16-Wstate-GenserJ-20130409.pdf>.

in early May, when his family was finally notified that he was in “criminal detention.” On May 9, the prosecutor issued a formal arrest warrant for “intentional homicide.”

In May, the family hired Ding Xikui and Si Weijiang, lawyers from Beijing and Shanghai, to defend Chen Kegui.<sup>17</sup> They also attempted to hire a lawyer from Jinan, the capital of Shandong province, but the local judicial bureau threatened lawyers with disbarment if they took the case. Chen Kegui’s supporters paid for the lawyers’ travel expenses, but their work on the case was *pro bono*. The authorities prohibited Messrs. Ding and Si, as well as his family, from seeing their client prior to his conviction. After the lawyers demanded that they had a right to see their client, the police invited them to visit the detention center. However, upon their arrival, the lawyers were informed by the local Public Security Bureau that legal aid lawyers from the county judicial bureau had been appointed to represent Chen Kegui. The government claimed that Chen Kegui had personally requested the legal aid lawyers; however, Messrs. Ding and Si found this claim highly unlikely in light of Chen Kegui’s earlier request that the family hire a lawyer on his behalf.<sup>18</sup> Messrs. Ding and Si wrote a letter, appealing the bureau’s decision to appoint the legal aid lawyers. Meanwhile the family continued to support their efforts, spurring Chen Guangfu to travel from his heavily guarded village to meet with Mr. Ding in Beijing on May 24.<sup>19</sup>

Although the government issued a formal arrest warrant on May 9, it did not issue the indictment until October. Copies of the indictment were not made available prior to the trial. On November 30, legal aid informed Chen Kegui’s family and Messrs. Ding and Si that the trial was to begin in two hours. At the time, Messrs. Ding and Si were in Beijing, and could not make it to the trial in time, given such short notice. His mother and father managed to arrive in time, since they lived an hour-and-a-half away from the location where the trial was held. However, as soon as the family arrived, they were barred by officials from observing the proceedings on the grounds that they were witnesses, who could only see the trial once they testified. However, Chen Kegui’s parents were never called to testify and were instead detained by authorities in a police vehicle from 2:00 pm until 5:00 pm while the proceedings were taking place. The government allowed one of Chen Guangcheng’s brothers and one of Chen Kegui’s maternal uncles to attend the proceeding because they had connections with the Communist Party and officials were trying to fill the stands, but these family members were told not to discuss what happened. Only local, state-controlled media organizations were admitted into the trial.

During the proceedings, only written witness statements, including that of Zhang Jian, were used. None of the witnesses were available for cross-examination. The Court also failed to consider Chen Kegui’s right to self-defense under Chinese and international law, an action taken to repel the prospectively fatal attack against him and his family members by strangers who had

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<sup>17</sup> Andrew Jacobs, *Brother of Chinese Dissident Escapes Guarded Village*, N.Y. TIMES, May 24, 2012, available at [http://www.nytimes.com/2012/05/25/world/asia/brother-of-chen-guangcheng-escapes-guarded-village.html?\\_r=1&](http://www.nytimes.com/2012/05/25/world/asia/brother-of-chen-guangcheng-escapes-guarded-village.html?_r=1&).

<sup>18</sup> *See id.*

<sup>19</sup> *Blind Activist Chen Guangcheng’s Brother Flees Village*, B.B.C. NEWS, May 24, 2012, available at <http://www.bbc.co.uk/news/world-asia-china-18186095>. *See also* Didi Tang and Gillian Wong, *Chinese Activist’s Brother Flees Guarded Village*, WASHINGTON TIMES, May 24, 2012, <http://www.washingtontimes.com/news/2012/may/24/chinese-activists-brother-flees-guarded-village/>.

illegally broken in to their home. Moreover, the government never charged the individuals who forcefully entered and attacked its inhabitants with any offense. Instead, the court allowed the statements of several co-perpetrators, including a thug named Wang Yunqing. The court also admitted into evidence a coerced confession from Chen Kegui. At the end of the three-hour trial, the court convicted Chen Kegui of “intentional infliction of injury” under Article 234 of the Criminal Code and sentenced him to three years and three months in Linyi Prison.<sup>20</sup>

Chen Guangfu described the verdict as “absolutely unjust” and said he had “lost hope in the law.”<sup>21</sup> Chen Kegui told his father that members of the Public Security Bureau threatened him with life in prison if he filed an appeal or did not cooperate with party authorities.<sup>22</sup> Additionally, the legal aid lawyers failed to file an appeal within the 10-day deadline. Messrs. Ding and Si attempted to file an appeal on Chen Kegui’s behalf, but the court rejected it, claiming that their submission was invalid, because they were “not his lawyers.”

After the conviction, Chen Kegui’s family attempted to visit him, but prison authorities denied them access. Initially, the family was unable to obtain a copy of the verdict, but they eventually received a copy after the family’s lawyers went to the court to demand it in accordance with Chinese law.<sup>23</sup> Sometime between December 12 and 14, Chen Guangfu was summoned to the police station, where two court judges and two court police were waiting to give him a statement, purportedly written by Chen Kegui, alleging that he had admitted guilt and did not want to appeal the verdict. However, his family maintained that the handwriting in the statement was not Chen Kegui’s—indicating the document had been forged. Accordingly, the family filed a motion on behalf of Chen Kegui to have the case reconsidered, but after nearly two months, they have received no reply from the government.

Since Chen Kegui was imprisoned, officials have allowed one visit per month by one family member, beginning in January 2013. Each visit lasts no more than 20 minutes. Chen Guangfu has reported that the authorities tortured Chen Kegui in prison, including severe beatings and sleep and food deprivation. Chen Kegui also reported that when he was in detention, the authorities threatened to harm or kill his family, including his child, if he did not cooperate. The family has seen visible signs of the abuse he has suffered. Chen Kegui has lost about 20 pounds since his detention, and he shows signs of physical injury and emotional distress. He is extremely pale, seems cowed, and has said that “Chinese law is dead.” As far as

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<sup>20</sup> Michael Martina and Ben Blanchard, *Blind China Activist’s Nephew Gets Three Years in Jail*, REUTERS, November 30, 2012, available at <http://www.reuters.com/article/2012/11/30/us-china-dissident-idUSBRE8AT0C320121130>.

<sup>21</sup> *See id.*

<sup>22</sup> *Written Testimony of Mr. Chen Guangcheng*, Hearing of the House Committee on Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, April 9, 2013, <http://docs.house.gov/meetings/FA/FA16/20130409/100604/HHRG-113-FA16-Wstate-GuangchengC-20130409.pdf>.

<sup>23</sup> Criminal Procedure Code of the People’s Republic of China, at art. 105, available at <http://www.china.org.cn/english/government/207319.htm> [*hereinafter* Criminal Procedure Code] (“Summons, notices, and other court documents shall be served upon the addressee personally; or, if the addressee is absent, may be received on his or her behalf by an adult member of his or her family or a responsible person of his or her employer.”).

the family knows, he has never been given any medical treatment for injuries he sustained as a result of the beatings. The precise details of the conditions of Chen Kegui's detention are scarce, due to the tight prison controls and numerous threats made against him to prevent him from sharing information. Prison guards have warned him that he will never see his family or young child again if he does not cooperate with authorities.

The government has continued to harass and intimidate the Chen family. During the anniversary of Chen Kegui's arrest, police arrested and interrogated his mother and another uncle. Individuals have repeatedly thrown dead birds, rocks, and bottles at the family's home.<sup>24</sup> Government officials have also threatened to abduct Chen Kegui's son from his preschool.<sup>25</sup> Police also detained Chen Guangfu twice in August during a trip to Shanghai.

Recently, Chen Kegui has been in critical medical condition. On April 25, 2013, his father, Chen Guangfu, traveled to the prison for a monthly visit. Although the visit was initially scheduled for that morning, Chen Guangfu was turned away as soon as he arrived. He was told by prison officials that he could not see his son, who was presently receiving a round of antibiotics for what the officials claimed was appendicitis. When Chen Guangfu finally saw Chen Kegui later that afternoon, his son reported that he was experiencing extreme pain in his abdomen and stated he had been given antibiotics. He was also informed that he was suffering from appendicitis based on a diagnosis by a fellow prisoner, who allegedly had some level of medical training.<sup>26</sup> On the morning of April 29, Chen Guangfu returned to the prison to see Chen Kegui, demanding that his son be taken to a hospital and given proper medical treatment. The prison denied his request and prohibited him from seeing his son. A prison contact later told him that the authorities at the prison believed the appendix was in the process of rupturing. On May 30, Chen Kegui was finally able to speak with his father, and told him that he had visited a hospital from May 17-21, but only received medicine, not surgery, for his condition.<sup>27</sup> Unfortunately, reports from the family now indicate that the government has cased treatment.

## B. Legal Analysis

For the reasons set forth below, the detention of Chen Kegui constitutes an arbitrary deprivation of his liberty<sup>28</sup> under Category II and Category III, as set forth by the United Nations

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<sup>24</sup> Chris Buckley, *Chinese Officials Order Questioning of Exiled Activist's Relatives*, N.Y. TIMES, April 24, 2013, available at <http://www.nytimes.com/2013/04/25/world/asia/chinese-officials-order-questioning-of-chen-guangchens-relatives.html>.

<sup>25</sup> *Written Testimony of Mr. Chen Guangcheng*, *supra* note 22.

<sup>26</sup> *Written Testimony of Mr. Chen Guangcheng*, *supra* note 22.

<sup>27</sup> *See Beijing's Family Values*, *supra* note 11.

<sup>28</sup> 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.

Working Group on Arbitrary Detention (Working Group).

### 1. Category III: Due Process Rights

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 [(Universal Declaration)] 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>29</sup> 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).<sup>30</sup> Because the Chinese government violated a litany of procedural requirements under domestic and international law in this case, the continued detention of Chen Kegui is arbitrary under Category III.

#### a. The Chinese Government Tortured Chen Kegui

##### i. Violations of International Law

Article 5 of the Universal Declaration and Article 7 of the International Covenant on Civil and Political Rights (ICCPR)<sup>31</sup> both state that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>32</sup> Principle 24 of the Body of Principles further elaborates that “medical care and treatment shall be provided whenever necessary” to persons who are detained or imprisoned.<sup>33</sup> The Working Group may consider mistreatment “insofar as it is used to obtain a confession of guilt of the pretrial detainee or otherwise impairs

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47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [hereinafter Body of Principles].

<sup>29</sup> 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].

<sup>30</sup> Fact Sheet No. 26, *supra* note 29, pt. IV(B).

<sup>31</sup> Though China has yet to ratify the ICCPR, it is a signatory and therefore is obligated to refrain from acts that would defeat the treaty’s “object and purpose.” 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>; 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).

<sup>32</sup> Universal Declaration, *supra* note 28, at art. 5; ICCPR, *supra* note 28, at art. 7.

<sup>33</sup> Body of Principles, *supra* note 28, at Principle 24. The UN Human Rights Committee also cautions against the use of “statements or confessions obtained through torture.” UN Human Rights Committee (HRC), *General Comment no. 20: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Art. 7)*, ¶ 12, March 10, 1992, *available at* [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument). Similarly, several provisions of Article 14 of the ICCPR outline procedural rights that may not be taken away through the coercive use of torture, including Article 14(3)(g), which specifies the right of a person “[n]ot to be compelled to testify against himself or to confess guilt.” ICCPR, *supra* note 28, at art. 14(3)(g).

his or her exercise of the right to a proper defense.”<sup>34</sup>

The Chinese government’s brutal beating of Chen Kegui at his home was clearly a violation of these international standards. After he was detained, officials continued to torture Kegui, which included deprivation of food and sleep. Members of the Public Security Bureau have continuously threatened him with more torture, including threats that he will never see his family again if he does not cooperate or if he attempts to appeal his sentence.<sup>35</sup> In addition, the authorities’ delay and denial of medical care and treatment for his injuries, including those inflicted by torture, violated the international ban on the use of torture.

## ii. Violations of Domestic Law

Chinese law specifically prohibits the mistreatment of detainees by law enforcement<sup>36</sup> and imposes criminal liability where that prohibition is violated. Article 247 of the Chinese Criminal Code stipulates that a public security official who uses torture or violence to obtain a confession from a criminal suspect may be sentenced to up to three years in prison.<sup>37</sup> If the resulting injury is severe, that official may be sentenced anywhere from three years to 10 years in prison; if the resulting injury ends in death, or if particularly cruel methods were used in carrying out the injury, and the injury results in severe disability, the official may even be sentenced to life in prison without parole or the death penalty.<sup>38</sup> In addition to imposing criminal penalties against officials who engage in torture, the Chinese Criminal Procedure Code specifically prohibits the use of evidence obtained through torture. Article 54 provides that “[a] confession of a criminal suspect or defendant extorted by torture or obtained by other illegal means... shall be excluded.”

Despite the prohibition on the use of torture under Chinese law, authorities attacked Chen Kegui at his home and then subjected him to torture after his detention. The government also failed to investigate and prosecute those responsible for the mistreatment of Chen Kegui. Finally, the court reportedly allowed the use of a confession by Chen Kegui that was obtained through torture during the criminal proceeding against him—a flagrant violation of his procedural rights under domestic law.

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<sup>34</sup> “The Working Group has repeatedly held that investigation of allegations of ill-treatment inflicted upon detainees in violation of the prohibition of torture and the right to physical integrity generally falls within the scope of its mandate only insofar as it is used in order to obtain a confession of guilt of the pretrial detainee or otherwise impairs his or her exercise of the right to a proper defense.” Communication No. 16/2008.

<sup>35</sup> Insofar as the authorities mistreated Chen Kegui to extract a confession, the government is in violation of Article 14(3)(g) of the ICCPR (*see* note 31 above). Additionally, insofar as the authorities used torture to prevent him from exercising his right to appeal, the government is in violation of Article 14(5) of the ICCPR, which preserves the “right to his conviction and sentence being reviewed by a higher tribunal according to the law.” ICCPR, *supra* note 28, at art. 14(3)(g) and 14(5).

<sup>36</sup> Article 50 of the Criminal Procedure Code, *supra* note 23, provides that “It shall be strictly prohibited to extort confessions by torture, gather evidence by threat, enticement, deceit, or other illegal means, or force anyone to commit self-incrimination.”

<sup>37</sup> Criminal Code of the People’s Republic of China (Criminal Code) at art. 247, *available at* <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=C0000001>.

<sup>38</sup> Criminal Procedure Code, *supra* note 23, at art. 247.

## **b. The Chinese Government Conducted an Illegal Search and Arrest**

### **i. Violations of International Law**

Article 9(2) of the ICCPR and Principle 10 of the Body of Principles require that “[a]nyone who is arrested shall be informed, at the time of the arrest, of the reasons for his arrest and shall promptly be informed of any charges against him.”<sup>39</sup> It appears from the facts of the case that the government failed to inform Chen Kegui of the reason for his arrest at the time he was detained on April 29. Instead, the government waited until May 9 to issue a formal arrest warrant outlining the charges against him. Such an unreasonably long period of time failed to meet the requirement of international law.

### **ii. Violations of Chinese Law**

Under the Criminal Procedure Code, Zhang Jian, as well as several party officials and hired thugs, committed a number of procedural violations when they (1) unlawfully entered the family compound of Chen Guangfu on the morning of April 27, 2012 and (2) ordered the arrest of Chen Kegui without presenting a warrant or legal documentation. According to Article 245 of the Criminal Procedure Code, anyone who illegally searches a person's body or domicile, or illegally enters a person's domicile, is subject to a sentence of up to three years in prison or detention.<sup>40</sup> Under Articles 3, 83, and 91 of the Criminal Procedure Code, public security authorities are legally required to produce a search warrant when arresting or detaining suspects.<sup>41</sup> Additionally, Articles 109 (reports on criminal suspects and accusations) and 111 (failure to open a case for criminal investigation) of the Criminal Procedure Code, as well as Article 178 of the Rules and Regulations for Criminal Procedure Law for People's Prosecutor's Office, mandates that public security officials present a search warrant.<sup>42</sup>

Although Chinese law specifically requires warrants when police conduct searches and arrest suspects, Zhang Jian, alongside several party officials and hired thugs, stormed the family compound, violently beating its inhabitants, and destroying several of the family's personal belongings. Indeed, it appears that the individuals involved took no steps to ensure that their actions complied with the requirements of domestic law.

## **c. The Government Failed to Promptly Notify Chen Kegui's Family of His Detention**

### **i. Violations International Law**

Principle 16(1) of the Body of Principles states that “a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or

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<sup>39</sup> ICCPR, *supra* note 28, at art. 9(2); Body of Principles, *supra* note 28, at Principle 10.

<sup>40</sup> Criminal Procedure Code, *supra* note 23, at art. 245.

<sup>41</sup> Criminal Procedure Code, *supra* note 23, at art. 3, 83, and 91.

<sup>42</sup> Criminal Procedure Code, *supra* note 23, at art. 109, 178; Rules and Regulations for Criminal Procedure law for People's Prosecutor's Office, at art. 178.

other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody,” and that this notification should occur “promptly after arrest and after each transfer from one place of detention or imprisonment to another.”<sup>43</sup> Principle 16(4) further clarifies that notification “shall be made or permitted to be made without delay,” unless exceptional circumstances require it to be delayed “for a reasonable period.”<sup>44</sup> However, despite a clear lack of exceptional circumstances, the government failed to inform Chen Kegui’s family of his arrest for a number of days—far exceeding the “reasonable period” allowed under international law.

## **ii. Violations Chinese Law**

Article 64 of the Criminal Procedure Code provides that “[w]ithin 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.”<sup>45</sup>

In this case, the government ignored this unambiguous requirement under its own law. Officials held Chen Kegui *incommunicado* at Jinan County Detention Center beginning on April 29, 2012 and did not notify his family of his detention until several days later. This is a direct violation of Article 64. Additionally, the government continued to violate this requirement under the Criminal Procedure Code when it continued to deny the requests of Chen Kegui’s family to visit him during the entire pretrial detention period.

## **d. The Chinese Government Restricted Chen Kegui’s Access to Legal Counsel of His Own Choosing During His Detention and Trial**

### **i. Violations International Law**

Article 14(3) of the ICCPR ensures the right of an individual “[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” and “(d) to defend himself in person or through legal assistance of his own choosing.”<sup>46</sup> 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.”<sup>47</sup> While the Body of Principles does not specifically identify when access to counsel must be granted, Principle 15 notes that, notwithstanding 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

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<sup>43</sup> Body of Principles, *supra* note 28, at Principle 16(1).

<sup>44</sup> Body of Principles, *supra* note 28, at Principle 16(4).

<sup>45</sup> Criminal Procedure Law (P.R.C.) (adopted Jan. 1, 1997), at art. 64, *available at* <http://www.cecc.gov/pages/newLaws/criminalProcedureENG.php>.

<sup>46</sup> ICCPR, *supra* note 28, at art. 14(3)(b),(d).

<sup>47</sup> Body of Principles, *supra* note 28, at Principle 18(1).

more than a matter of days.”<sup>48</sup> Additionally, the United Nations Human Rights Committee has noted that “[t]he accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defenses and the right to challenge the conduct of the case if they believe it to be unfair.”<sup>49</sup>

In this case, the government prevented Chen Kegui from accessing his chosen legal counsel during his pretrial detention period and during the trial proceedings. Despite the protections contained in the ICCPR and the Body of Principles, Chinese authorities disregarded Chen Kegui’s request and the family’s clear choice of legal representation and instead appointed legal aid lawyers on his behalf. Though the lawyers appointed by the family made repeated efforts to contact and represent their client, the government consistently prevented them from seeing Chen Kegui or obtaining information necessary to prepare a defense. Chinese authorities then concealed the trial date from Kegui’s family and lawyers until mere hours before it was scheduled to take place, all but ensuring that the only legal counsel representing him would be the government-appointed legal aid lawyers—who by all accounts handled the case extremely poorly and failed to even attempt to appeal the sentence.

The government limited his access to chosen counsel during pretrial detention from April 29, 2012 through the trial on November 30, 2012. Such a period clearly exceeds the outer limits of a “matter of days.” Further, there are no “extraordinary circumstances” that would justify limiting Chen Kegui’s access to counsel during this extended period. The Chinese government’s failure to grant Chen Kegui access to his chosen counsel in these circumstances, therefore, failed to satisfy its obligations under international law.

## ii. Violations of Chinese Law

Under the Criminal Procedure Code, the Jinan County Police Department, Jinan County Prosecutors Office, and the Jinan County Court committed a number of procedural violations when they (1) prohibited Chen Kegui from seeing the lawyers hired by his family, and (2) assigned him a legal aid defender, despite his not meeting any of the requirements for one. According to Article 33 of the Criminal Procedure Code, a criminal suspect has the right to retain legal counsel as soon as he is first interrogated by public security officials or as soon as a compulsory measure is taken against him.<sup>50</sup> The suspect has the right to request legal defense at any time and a guardian or close relative may also act as a lawyer on behalf of the suspect.<sup>51</sup> As soon as the People’s Investigative Bureau receives the case documents for an application for appeal, it has three days to inform the suspect of his right to legal counsel.<sup>52</sup> If the suspect requests a lawyer at any time during his detention, the People’s Court, the People’s Prosecutor’s

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<sup>48</sup> Body of Principles, *supra* note 28, at Principle 15.

<sup>49</sup> UN Human Rights Committee (HRC), *General Comment no. 13, Article 14: Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law*, ¶ 11, April 13, 1984, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bb722416a295f264c12563ed0049dfbd?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?Opendocument).

<sup>50</sup> Criminal Procedure Code, *supra* note 23, at art. 33.

<sup>51</sup> *See id.*

<sup>52</sup> *See id.*

Office, and the Police Department must all comply with his request in a timely manner.<sup>53</sup>

Despite this protection, the government prevented Chen Kegui from exercising his lawful right to retain legal counsel by preventing him from benefiting from the assistance of the lawyers hired by the family at his request. Instead, the government appointed legal aid lawyers on his behalf—representatives who failed to adequately protect the legal interests of Chen Kegui—even though such an appointment was not authorized under Chinese law.

Article 34 of the Criminal Procedure Code provides that a suspect or close family member may apply to a legal aid organization for assistance—if he has not yet commissioned someone to act in his defense—as the result of personal economic hardship, or other legitimate reasons.<sup>54</sup> Under Article 11 of Regulations for Legal Assistance, a suspect can apply to a legal aid organization for legal counsel in his criminal suit in two possible situations. First, if the suspect suffers from physical or mental disabilities impairing his ability to independently make personal decisions, and has not hired a lawyer as a result, the government should notify a legal aid organization to appoint a lawyer to act on his behalf.<sup>55</sup> Second, if the suspect may be sentenced to life without parole, or receive the death penalty, and does not have legal counsel, then the authorities should instruct a legal aid organization to appoint a representative.<sup>56</sup>

The circumstances of Chen Kegui’s detention do not meet the conditions established under Chinese procedural law for the appointment of legal aid. First, the family was able to retain the assistance of Messrs. Ding and Si who agreed to work on the case *pro bono*. As such, no economic hardship necessitated the appointment of legal aid lawyers. Further, neither of the two additional triggers applied in this case: Cheng Kegui did not suffer from any physical or mental ailments that would impair the exercise of his mental faculties and he was not facing the possibility of either a life sentence or the death penalty.

#### **e. The Chinese Government Restricted Chen Kegui’s Right to Examine Witnesses During His Trial**

##### **i. Violations of International Law**

Article 14(3)(e) of the ICCPR clearly establishes a person’s right “[t]o examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”<sup>57</sup> However, the Chinese government did not allow Chen Kegui to examine any witnesses at his trial. In fact, there were

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<sup>53</sup> *See id.*

<sup>54</sup> Criminal Procedure Code, *supra* note 23, at art. 34.

<sup>55</sup> UN Secretary General’s Database on Violence Against Women, Regulations of the People’s Republic of China on Legal Aid, art. 11, Jul. 10, 2009, *available at* <http://sgdatabase.unwomen.org/searchDetail.action?measureId=24344&baseHREF=country&baseHREFId=346>.

<sup>56</sup> UN Secretary General’s Database on Violence Against Women, Regulations of the People’s Republic of China on Legal Aid, art. 11, Jul. 10, 2009, *available at* <http://sgdatabase.unwomen.org/searchDetail.action?measureId=24344&baseHREF=country&baseHREFId=346>.

<sup>57</sup> ICCPR, *supra* note 28, at art. 14(3)(e).

no live witnesses at the trial at all; as the prosecution used only written witness statements, and none of the witnesses were available for cross-examination, which constituted a clear violation of the right to cross-examine witnesses under international law.

## **ii. Violations of Chinese Law**

Article 47 of the Criminal Procedure Code provides that the “testimony of a witness may be used as a basis in deciding a case only after the witness has been questioned and cross-examined in the courtroom by both sides...”<sup>58</sup> However, as outlined above, the government violated this basic procedural right by only considering witnesses statements taken before the trial and failing to make those witnesses available for cross-examination. This admission of statements by individuals who participated in the attack on the Chen family compound, without providing an opportunity to cross-examine, is a particularly striking violation in light of the fact that the government excluded Chen Kegui’s parents from the court room even though they were present during the events in question.

## **f. The Chinese Government Denied Chen Kegui a Fair and Public Trial**

### **i. Violations of International 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>59</sup> Article 14(1) of the ICCPR further elaborates on this right, adding that “any judgment rendered in a criminal case or in a suit at law shall be made public” with limited exceptions relating to juveniles.<sup>60</sup> Article 14(1) also notes that the government may exclude members of the press and the public from attending a trial in person for any of several reasons, including “morals,” “public order,” “national security,” “the interest of the private lives of the parties,” or “in special circumstances where publicity would prejudice the interests of justice.”<sup>61</sup> However, the United Nations Human Rights Committee has cautioned that these reasons for exclusion should not be applied too broadly, noting that “apart from such exceptional circumstances, the Committee considers that a hearing must be open to the public in general, including members of the press, and must not, for instance, be limited only to a particular category of persons.”<sup>62</sup>

The government excluded Chen Kegui’s parents from his trial, despite the fact that there were no exceptional circumstances under which justice would be better served by excluding members of his family. Under the Committee’s jurisprudence, Chen Kegui’s trial should have been “open to the public in general;” however, the government failed to observe that internationally mandated requirement in this case.

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<sup>58</sup> Criminal Procedure Code, *supra* note 23, at art. 47.

<sup>59</sup> Universal Declaration, *supra* note 28, at art. 10.

<sup>60</sup> ICCPR, *supra* note 28, at art. 14 (1).

<sup>61</sup> ICCPR, *supra* note 28, at art. 14 (1).

<sup>62</sup> General Comment no. 13, *supra* note 49, at ¶ 6.

## ii. Violations of Chinese Law

Under Article 183 of the Criminal Procedure Code, a court of first instance must hold trials publicly, unless the case before the court involves matters concerning national security or personal privacy.<sup>63</sup> In such cases, the trial will not be made public as long as one of the parties concerned has already filed an application for a closed trial. If a trial is closed to the public, the court must announce the reasons for conducting the trial *in camera*.<sup>64</sup> The prosecution of Chen Kegui—on standard criminal charges of causing the injury of another individual—did not involve any questions of national security or personal privacy. Despite this, the government only notified the family and their legal team two hours before the proceedings began and prevented certain family members and independent journalists from observing the proceedings. It appears their actions were taken without any request by either party to the litigation.

Throughout the arrest, detention, and prosecution of Chen Kegui, the Chinese government repeatedly violated domestic and international due process protections—including the prohibition on torture and use of coerced confessions, the warrant requirement for searches and arrests, the right to be informed of the reason for arrest and family notification, the right to a lawyer of one’s own choosing, the right to examine witnesses, the right to family visitation, and the right to a fair and public trial. When taken together, these striking violations of Chen Kegui’s procedural rights render his detention arbitrary pursuant to Category III.

### 2. Category II: Substantive Fundamental Rights

An arbitrary detention falls under Category II when detention results from the exercise of fundamental rights protected by international law.<sup>65</sup> Among these most basic protections is the right of freedom of association.<sup>66</sup> Chen Kegui’s detention is arbitrary under Category II because it resulted from his exercise of this fundamental freedom.

#### a. The Chinese Government Detained Chen Kegui Because He Exercised the Right to Freedom of Association

Article 20(1) of the Universal Declaration provides that “[e]veryone has the right to freedom of peaceful assembly and association.”<sup>67</sup> Further, Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others...”<sup>68</sup> Similarly,

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<sup>63</sup> Criminal Procedure Code, *supra* note 23, at art. 183.

<sup>64</sup> Criminal Procedure Code, *supra* note 23, at art. 183.

<sup>65</sup> 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, 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.” Fact Sheet No. 26, *supra* note 46.

<sup>66</sup> Universal Declaration, *supra* note 28, at art. 20(1); ICCPR, *supra* note 28, at art. 22(1).

<sup>67</sup> Universal Declaration, *supra* note 28, at art. 20(1).

<sup>68</sup> ICCPR, *supra* note 28, at art. 22(1).

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."<sup>69</sup>

Despite these protections, it is evident that the government singled out Chen Kegui because of his association with his uncle, Chen Guangcheng; this violates his right to freedom of association under international and Chinese law and renders his detention arbitrary under Category II. Though Chen Kegui is decidedly non-political, the government came to his home to beat and threaten Chen Kegui and his family. This occurred immediately after his uncle's escape from house arrest, and the individuals who attacked the home claimed to be looking for Chen Guangcheng. The government then used Chen Kegui's act of self-defense as an excuse to imprison him in retaliation for his uncle's activities. The government is simply detaining Chen Kegui because of his association with his uncle, a clear violation of his right to freedom of association under domestic and international law.

## **b. Chen Kegui's Actions In Self-Defense Do Not Limit His Right to Freedom of Association in this Case**

### **i. Self-Defense Under International Law**

Article 22 of the ICCPR is subject to limited exceptions; however, these exceptions are meant to be construed narrowly and do not affect Chen Kegui's right to freedom of association in this case. Article 22(2) of the ICCPR specifies the limited restrictions that may be placed on freedom of association, namely, "those [restrictions] which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."<sup>70</sup> Even taking these limited restrictions into account, the right to self-defense must be upheld as "a fundamental norm in civil society."<sup>71</sup> To be clear, this petition is not asking the Working Group to determine whether or not Chen Kegui properly exercised his right to self-defense. Instead, it provides this additional context for his actions and makes clear the exceptions limiting the right to freedom of association cannot be applied in this case. Although no universal understanding of the right to self-defense currently exists, the right to life is well established under international law.

Under Article 6 of the ICCPR and Article 3 of the Universal Declaration, all individuals have the inherent right to life, which must be protected by law.<sup>72</sup> No one may be arbitrarily

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<sup>69</sup> XIAN FA art. 35 (1982) (P.R.C.) *available at* <http://www.cecc.gov/pages/newLaws/constitutionENG.php?PHPSESSID=a87bd0448bea46b35a7c1a60ee1de976> (last visited Jun. 11, 2013).

<sup>70</sup> ICCPR, *supra* note 28, at art. 22(2).

<sup>71</sup> Hannah Tonkin, *Defensive Force Under the Rome Statute*, 6 MELBOURNE J. INT. LAW at 3 (2005), *available at* <http://www.law.unimelb.edu.au/files/dmfile/download0b0f1.pdf>.

<sup>72</sup> ICCPR, *supra* note 28, at art. 6; Universal Declaration, *supra* note 28, at art. 18.

deprived of this right.<sup>73</sup> Domestic legal systems have long recognized the principle that the right to life must override the social duty to abstain from using force where conflict between the two principles is unavoidable. The right to self-defense acts a legal justification for the use of force, which is otherwise prohibited to maintain public order. The right to life has no independent significance unless legal systems permit exceptions for self-defense. Nevertheless, legal systems pragmatically restrict the right to self-defense, so that the type and scale of the force used against the attacker is reasonable and proportional to the danger posed by the attack. Additionally, an individual has the social duty to avoid conflict, but most legal systems recognize that a criminal that attacks someone on his or her private property accordingly forfeits the “maximum protection” of the right to life, as well as the full protection of the law.<sup>74</sup> The victim of the attack has a duty to withdraw or avoid the attack, but may legally use force to ward off the attack if retreat is not a viable option.<sup>75</sup>

As an international legal document of great import, the Rome Statute of the International Criminal Court (Rome Statute) informs the discussion on the right to self-defense in this context. The individual right to self-defense is codified in Article 31(1) of the Rome Statute as follows: “[A] person shall not be criminally responsible if, at the time of that person’s conduct... (c) [t]he person acts reasonably to defend himself or herself or another person ... against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person.”<sup>76</sup> Therefore, the internationally recognized right to self-defense, as described in the Rome Statute, must satisfy three conditions: (1) “there must be a certain danger to a person or property from an imminent and unlawful use of force,” (2) “the defendant must act reasonably and proportionately against this use of force,” and (3) “an implicit mental element: the defendant must act with the purpose of repelling the attack.”<sup>77</sup>

As described in further detail below, the facts surrounding the attack on Chen Kegui and his limited use of proportionate force to repel that imminent threat to his life was entirely reasonable.

## ii. Self-Defense Under Chinese Law

Chinese law also recognizes the right to self-defense. Article 20 of the Chinese Criminal Code states that to prevent unlawful harm to an individual, another person, private property, or other rights, a victim may defend himself or herself against a perpetrator, and make a legitimate

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<sup>73</sup> UN Office of the High Commissioner for Human Rights, 16<sup>th</sup> Session, *General Comment No. 06: The Right to Life (Art. 6)*, CCPR General Comment No. 6 (Apr. 30, 1982). The inherent right to life may not be restricted, even in the event of national emergency. Instead, states must take positive measures to affirm this right.

<sup>74</sup> A.J. Ashworth, *Self-Defense and the Right to Life*, 34 *CAMBRIDGE L. J.* 282, 293 (1975).

<sup>75</sup> Ashworth, *supra* note 74, at 294.

<sup>76</sup> Rome Statute of the International Criminal Court, UN Doc. A/CONF. 183/9, *entered into force* 1 July 2002, at art. 31(1) [hereinafter Rome Statute]. Although Article 5 of the Rome Statute gives the International Criminal Court jurisdiction over only “(a) [t]he crime of genocide; (b) [c]rimes against humanity; (c) [w]ar crimes; [and] (d) [t]he crime of aggression,” the standard for self-defense laid out in Article 31(1)(c) nevertheless reflects an overall principle in international law that applies to all individuals. *See also* Tonkin, *supra* note 71, at 3.

<sup>77</sup> Tonkin, *supra* note 71, at 7.

claim for self-defense, and is not subject to criminal responsibility for the use of force.<sup>78</sup> Acts that may justify the use of self-defense include on-going assault, murder, robbery, rape, kidnapping, or any other violent crimes that seriously endanger the victim's personal safety.<sup>79</sup> A legitimate claim of self-defense must meet the following criteria: (1) the injury is imminent, (2) the injury is about to occur, (3) the perpetrator possesses intent to cause harm, and (4) the actions of the person claiming self-defense are reasonable based on the scale and the nature of the threat.<sup>80</sup>

In this case, the government failed to consider whether Chen Kegui's actions met the domestic and international standards for self-defense. In fact, his actions met the standard set forth in the Chinese Criminal Code, because Chen Kegui was solely using non-deadly force to defend against a potentially life-threatening attack.<sup>81</sup> At the time, he was defending himself from the attackers who had illegally entered his home without a warrant to retaliate against his uncle's escape. The attackers, which included local government officials, were beating him with wooden clubs and a child's tricycle when one of them shouted "Kill him! Kill him!" This satisfies the first two conditions for self-defense under Chinese law, as Chen Kegui was defending himself from an imminent and unlawful use of force.<sup>82</sup> The third condition is also met, since the attackers clearly meant to seriously harm or kill Chen Kegui based on their actions and verbalized threats, as well as evidence that they used excessive force when they attacked Chen Kegui and members of his family earlier that morning. Finally, the fourth condition is satisfied, since the minor injury that Chen Kegui inflicted on his attackers was reasonable and proportionate compared to the overwhelming force used against him.<sup>83</sup> Moreover, Chen Kegui possessed the intent required for self-defense—solely using non-deadly force to repel the potentially deadly attack.<sup>84</sup>

Based on the above, Chen Kegui's actions satisfied the conditions of acceptable self-defense, as defined by Chinese law, and were taken to protect his inherent right to life under Articles 3 and 6 of the UDHR and the ICCPR, respectively. Consequently, Chen Kegui was justified in using proportionate force against the attackers to defend himself and his family from the threat of serious bodily harm and death. In light of the above, the exceptions to the right to freedom of association listed in Article 22(2) of the ICCPR cannot be applied.<sup>85</sup> This renders Chen Kegui's detention arbitrary pursuant to Category II.

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<sup>78</sup> Criminal Procedure Code, *supra* note 23, at art. 20.

<sup>79</sup> *See id.*

<sup>80</sup> *See id.*

<sup>81</sup> *See id.*

<sup>82</sup> *See id.*

<sup>83</sup> *See id.*

<sup>84</sup> *See id.*

<sup>85</sup> Rome Statute, *supra* note 81, at art. 31(1)(c); ICCPR, *supra* note 28, at art. 22.

**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.<sup>86</sup>**

On November 30, 2012, Chen Kegui's trial took place in Jinan County. After seriously flawed proceedings that only lasted three hours, the court found Chen Kegui guilty of "intentional infliction of injuries" and sentenced him to three years and three months in Linyi Prison.

Public Security Bureau officials threatened Chen Kegui with life in prison if he appealed his sentence. The government-appointed legal aid lawyers did not file an appeal within the ten-day deadline and the court rejected the appeal filed by the legal team retained by the family.

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

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<sup>86</sup> See Statement of Facts above for additional details.