



FREEDOM NOW

Freedom Now Submission on China

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United Nations Committee Against Torture
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I. INTRODUCTION

This submission is intended to provide information to the Committee Against Torture (“the Committee”) on China’s Fifth Periodic Report (“Fifth Report”) – to be discussed at the Committee’s 56th session – in relation to the measures China has taken to implement the provisions of the Convention against Torture (“the Convention”). In particular, this submission focuses on China’s implementation of Article 16 of the Convention.

Freedom Now is a U.S. and U.K.-based non-profit, non-governmental, and non-partisan organization that works to free individual prisoners of conscience through focused legal, political and public relations advocacy efforts. In this context, the term “prisoners of conscience” is used to designate persons detained for their political, religious, or other beliefs or because of their ethnic origin, sex, sexual orientation, color, language, national or social origin, economic status, birth or other status – who have not used or advocated violence. Freedom Now is accredited as a Non-Governmental Organization (NGO) in Special Consultative Status to the UN Economic and Social Council (ECOSOC). Freedom Now was retained by Liu Xia as international counsel to represent her and her husband Liu Xiaobo in mid-2010, a number of months before he was selected to be the recipient of the Nobel Peace Prize.

II. Background

Article 16

The focus of this submission is on the implementation of Article 16 of the Convention, which provides:

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

In order for China to be in compliance with Article 16, the Government must not only enact stronger, more detailed legislation, but also ensure that official policies satisfy the requirements of Article 16 in practice, not just in law.

In the *List of Issues in Relation to the Fifth Periodic Report of China*, the Committee Against Torture specifically asked China to comment on “reports of increased harassment and intimidation, including arrests and detention, of signatories of ‘Charter ’08,’ such as the 2010

Nobel Peace Prize laureate, Liu Xiaobo [and] his wife Liu Xia”¹ In addition, the List of Issues asked about “due process rights with regard to the imposition of . . . solitary confinement.”² This submission provides further information in relation to Liu Xia’s present situation under both a *de facto* house arrest and in solitary confinement.

Liu Xia

There are numerous examples of individuals subjected to torture or cruel, inhuman, or degrading treatment in China, including Liu Xia, wife of imprisoned Nobel Laureate Liu Xiaobo. Liu Xia has also been denied access to adequate medical attention in violation of her right to be free from torture or cruel, inhuman, or degrading treatment.

Liu Xia, an artist in Beijing, has been under *de facto* house arrest and in solitary confinement for five years. She is being punished for exercising her right to free expression when her imprisoned husband, Liu Xiaobo, was awarded the 2010 Nobel Peace Prize and she told “the world that he had dedicated the award to those who died in the 1989 Tiananmen crackdown.”³ She is also being punished for her husband’s exercise of his right to free expression, which he used to promote democratic reform through non-violent means. Liu Xia is being isolated so as to prevent her from expressing anything that the Chinese Government does not want the public to hear, and the Government is using her punishment as a tool of intimidation to silence members of her family as well as members of society who, like Liu Xiaobo, seek reform and democracy in China.

Despite the Chinese Government’s attempts to conceal Liu Xia’s plight, she has been able to get her message out in limited ways, and that message has been consistent and clear: she is under house arrest, the Government has yet to acknowledge or justify her punishment, and she is in dire need of medical attention.

III. The Implementation of the Convention Against Torture in China

The Fifth Report addresses Article 16 in paragraphs 94-100, and reaffirms sections of previous reports therein. Paragraph 94 reaffirms paragraphs 57-64 of the China’s Second State Report, which provides in paragraph 58:

China has passed legislation to prevent any civil servant or person performing an official function from exercising, instigating, consenting to or acquiescing in acts of treatment or of punishment that are cruel, inhuman or degrading.⁴

¹ *List of Issues in Relation to the Fifth Periodic Report of China*, COMMITTEE AGAINST TORTURE, CAT/C/CHN/Q/5/Add.1, Jun. 15, 2015, at paragraph 34.

² *Id.*, at paragraph 19.

³ Video: *Wife of Chinese Nobel Prize Winner Speaks Out*, ASSOCIATED PRESS, Dec. 6, 2012, available at <https://www.youtube.com/watch?v=7PUYqkPRydK>; Isolda Morillo and Alexa Olesen, *AP Exclusive: China Nobel Wife Speaks on Detention*, ASSOCIATED PRESS, Dec. 6, 2012, available at <http://bigstory.ap.org/article/ap-exclusive-detained-china-nobel-wife-speaks-out> [hereinafter video and article cited together as *Wife Speaks Out*].

⁴ *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Second Periodic Reports of States Parties Due in 1993, Addendum: China*, UN COMMITTEE AGAINST TORTURE, Feb. 15, 1996.

While legislation that strives to prevent cruel, inhuman, or degrading treatment or punishment is commendable, the Chinese Government must take steps to ensure genuine implementation of such legislation. This is a necessary prerequisite for the Chinese Government to adequately implement Article 16 – and thus also Articles 10-13 – of the Convention. The highly visible and public case of Liu Xia illustrates the impunity with which the Government violates the Convention in sensitive cases.

Liu Xia’s ongoing repression by the Chinese Government began shortly after the announcement on October 8, 2010, that her imprisoned husband Liu Xiaobo had been selected to receive the 2010 Nobel Peace Prize for his relentless advocacy for reform of China’s one-party system. A short time after the announcement, Liu Xia was placed under a *de facto* house arrest and has been held in this way ever since, in solitary confinement, and without charge or trial.

Liu Xia remains cut off from the world as she battles severe physical and mental health conditions without adequate medical attention. This has been confirmed by her local lawyer Mo Shaoping as well as by close friends and other independent sources who have managed to reach her on rare occasions.⁵ She is living in a nightmare so unimaginable that she has said even “Kafka could not have written anything more absurd and unbelievable.”⁶ Even when she suffered a heart attack in early 2014, those close to her did not know the details of her condition or the location where she was being treated, and she has not received further medical care despite her ongoing heart condition and other health concerns.⁷

In March 2015, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, concluded:

[T]here is substance in the allegations [...] that the Government of China, by failing to protect the physical and psychological integrity of Ms. Liu Xia, including by denying her access to adequate medical attention, has violated her right to be free from torture or cruel, inhuman or degrading treatment, as codified, inter alia in the articles 1 and 16 of the CAT.⁸

The Special Rapporteur also stated that the Chinese Government:

[Did] not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which prompts him to infer that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13, as well as to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or

⁵ See, e.g., Didi Kirsten Tatlow, *Two Prominent Women Under Detention Are Hospitalized*, Feb. 21, 2014, NEW YORK TIMES, available at <http://sinosphere.blogs.nytimes.com/2014/02/21/2-prominent-women-under-detention-are-hospitalized> [hereinafter *Hospitalized*].

⁶ *Wife Speaks Out*, *supra* note 3.

⁷ For example, Liu Xia’s local lawyer Mo Shaoping confirmed with us that he did not know her precise whereabouts or specific information about her condition, and he reiterated this in interviews. See *Hospitalized*, *supra* note 5.

⁸ Juan E. Méndez, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Addendum - Observations on Communications*, A/HRC/28/68/Add.1, Mar. 6, 2015, at paragraph 92.

degrading treatment or punishment, as codified, inter alia, in the Convention against Torture (CAT).⁹

The reply from the Government, referenced by the Special Rapporteur, simply stated that “Liu Xia is a woman of 53 years of age and she originally comes from Beijing, China. **Liu’s current health is fairly good.** The Chinese public security body has not adopted any legal or compulsory measures with regard to her.” This reply is dated February 21, 2014 – very shortly after Liu Xia suffered from her heart attack.¹⁰ And, of course, the reply implicitly acknowledges that the Government is detaining her because how else would it be possible for it to offer comment on the health of a random Chinese citizen in a country of 1.35 billion people?

Yet for over five years, the Chinese Government has continued to deny publicly the house arrest of Liu Xia, employing language such as “no legal enforcement measure has been taken against Ms. Liu Xia.”¹¹ That may technically be true given that the Government is actually holding her illegally. But there can be no mistake the Government has held her under a *de facto* house arrest, in solitary confinement, and subject to enforcement measures. Throughout these years of *de facto* detention, Liu Xia has suffered from severe physical and mental health problems and she has repeatedly been prevented from seeking proper medical care.¹²

Local counsel Mo Shaoping has attested to his own firsthand experience with the severe and illegal restrictions placed on Liu Xia, emphasizing the issue of Liu Xia’s “right of basic survival.”¹³ He has confirmed to Freedom Now that he is likewise unable to reach her or to ascertain crucial information about her condition. Mo has expressed our shared opinion that the Government does not “have an iota of legal justification for what they are doing to her,”¹⁴ and added that he had very little information on Liu Xia’s condition or whereabouts after she was admitted to a hospital following a heart attack in early 2014.¹⁵

Beyond the lack of legal justification for her illegal house arrest, Liu Xia has also been held in solitary confinement for five years in her one-bedroom apartment in Beijing. The Committee Against Torture has repeatedly expressed concern about State practices relating to

⁹ *Id.*, at paragraph 91.

¹⁰ *State Reply to JUA 24/12/2013 Case No. CHN 14/2013 (Allegations concerning the situation of Ms. Liu Xia, Chinese national and wife of Nobel Peace Prize winner, Mr. Liu Xiaobo)*, Feb. 21, 2014, available at [https://spdb.ohchr.org/hrdb/25th/China_21.02.14_\(14.2013\)_Trans.pdf](https://spdb.ohchr.org/hrdb/25th/China_21.02.14_(14.2013)_Trans.pdf) (emphasis added).

¹¹ *Liu Xia v. People's Republic of China*, Opinion No. 16/2011, UN WORKING GROUP ON ARBITRARY DETENTION, A/HRC/WGAD/2011/16, adopted May 5, 2011, at paragraph 9, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/112/32/PDF/G1211232.pdf> [hereinafter “Working Group Opinion”]; On the same day as it adopted this Opinion, the Working Group also adopted Opinion 2011/15, in which it found Liu Xiaobo to be arbitrarily detained in violation of international law. See *Liu Xiaobo v. People's Republic of China*, Opinion No. 15/2011, UN WORKING GROUP ON ARBITRARY DETENTION, A/HRC/WGAD/2011/15, adopted May 5, 2011, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/111/92/PDF/G1211192.pdf>.

¹² See e.g., *Liu Xia's Requests*, Dec. 3, 2013, available at <https://zengjinyan.wordpress.com/2013/12/03/刘霞的要求-liu-xias-requests/>.

¹³ See Andrew Jacobs, *Biden Asked to Raise Case of Jailed Nobel Laureate and Wife*, NEW YORK TIMES, Dec. 3, 2013, available at <http://sinosphere.blogs.nytimes.com/2013/12/03/biden-asked-to-raise-case-of-jailed-nobel-laureate-and-wife/>.

¹⁴ *Id.*

¹⁵ *Hospitalized*, *supra* note 5.

solitary confinement. These concerns should only be heightened when there is not even an attempt by China to justify Liu Xia's arbitrary detention in the first place. Juan Méndez, UN Special Rapporteur on Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment and himself a former torture victim and prisoner of conscience in Argentina, observed the following:

Whatever the name, solitary confinement should be banned by States as a punishment or extortion technique . . . Solitary confinement is a harsh measure which is contrary to rehabilitation, the aim of the penitentiary system . . . Social isolation is one of the harmful elements of solitary confinement and its main objective. It reduces meaningful social contact to an absolute minimum . . . A significant number of individuals will experience serious health problems regardless of the specific conditions of time, place, and pre-existing personal factors . . . Considering the severe mental pain or suffering solitary confinement may cause, it can amount to torture or cruel, inhuman or degrading treatment or punishment when used as a punishment, during pretrial detention, [or] indefinitely.¹⁶

In light of the Government's refusal to acknowledge the reality of Liu Xia's situation or to take any measures to end or prevent the cruel, inhuman, or degrading treatment she faces, the Government is in violation of its obligations under Article 16 of the Convention. It is also in violation of Article 12, covering inhuman treatment as incorporated through Article 16(1) (see above), which provides:

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Despite the existence of reasonable grounds to believe that Liu Xia has been subjected to acts of cruel, inhuman, or degrading treatment throughout the past five years – given the evidence cited to in the Opinion of the UN Working Group on Arbitrary Detention¹⁷ as well as numerous statements and reports by UN officials, foreign governments, NGOs, and Nobel Laureates¹⁸ – the Chinese Government has not carried out or ordered an impartial investigation.

Unfortunately, Liu Xia's case is not an isolated one in China. Another high-profile case of Gao Zhisheng, for example, has been referenced and discussed in various UN reports,¹⁹ and Gao himself has spoken out about his repeated disappearances, torture, mistreatment, and years

¹⁶ *UN Special Rapporteur on Torture Calls for Prohibition of Solitary Confinement*, UNITED NATIONS, Oct. 18, 2011, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11506&>.

¹⁷ Working Group Opinion, *supra* note 11.

¹⁸ See, e.g., *Statement by Secretary Kerry: Fifth Anniversary of Liu Xiaobo's Conviction*, Dec. 24, 2014, available at <http://translations.state.gov/st/english/texttrans/2014/12/20141224312555.html>; *Buzek on Human Rights Day*, Dec. 10, 2011, available at http://www.europarl.europa.eu/former_ep_presidents/president-buzek/en/press/press_release/2011/2011-December/press_release-2011-December-7.html; *Media Release: 12 Nobel Peace Laureates Urge UK Prime Minister to Call for Release of Liu Xiaobo and Wife Liu Xia*, FREEDOM NOW, Oct. 20, 2015, available at <http://www.freedom-now.org/news/media-release-12-nobel-peace-laureates-urge-uk-prime-minister-to-call-for-release-of-liu-xiaobo-and-wife-liu-xia/>.

¹⁹ See, e.g., *China: UN Experts Denounce Secret Detention of Human Rights Lawyer Gao Zhisheng*, UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, Dec. 23, 2012, available at [http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11741&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11741&LangID=E;);

of solitary confinement he faced during his time in detention.²⁰ Yet, the Government has denied any foul play and, unsurprisingly, has not initiated or ordered any investigation. Even though he has been released from prison, Gao remains closely watched under a security cordon in a rural village in the northwestern region of Xinjiang and cannot leave the village to secure required medical care coming from years of torture in Chinese custody.²¹ These are just two of many examples revealing how China fails to follow its own legislation ensuring the prevention of torture, and cruel, inhuman, or degrading treatment.

Thus, despite having created “legislation to prevent . . . acts of treatment or . . . punishment that are cruel, inhuman or degrading” by officials or persons functioning in an official capacity, China is not actually implementing the Convention. Such legislation is merely conciliatory and does not imply genuine implementation on the part of the Chinese Government.

IV. Conclusion

We ask that, when considering China’s compliance with the Convention and in particular its Article 16, the Committee recalls the cases of Liu Xia and others wrongfully detained and subjected to torture or cruel, inhuman, or degrading treatment by the regime. We ask that the Committee urge China to fully comply with the Convention and take measures necessary to ensure that all persons are protected against torture and treatment or punishment that is cruel, inhuman, or degrading.

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²⁰ Isolda Morillo and Didi Tang, *AP Exclusive: Leading China Lawyer Says He Was Tortured*, ASSOCIATED PRESS, Sep. 24, 2015.

²¹ *Chinese Rights Lawyer’s Phone Calls Limited Under House Arrest*, RADIO FREE ASIA, Jan. 8, 2015; *Gao Zhisheng: Chinese Lawyer Describes “Torture,”* BBC NEWS, Sept. 24, 2015.