

## Free Lui Xiaobo

Monday, 15 December 2008

As human rights supporters throughout the world were preparing to celebrate the 60th Anniversary of the International Declaration of Human Rights, Liu Xiaobo, one of China's most prominent human rights activists was arrested in his home in Beijing. His telephone and internet lines were cut, and his personal papers, books and computers were seized.

The day before the anniversary, a document called Charter 08 was released to the world. Charter 08 was based on Charter 77, a human rights manifesto, which challenged Soviet rule and was originally signed by about two hundred writers and intellectuals in Czechoslovakia in 1977. One of the signers of Charter 77 was playwright Vaclav Havel who later became the first President of democratic Czechoslovakia after the 1989 "velvet revolution".

Charter 08 reiterated many of the rights as set forth in the Universal Declaration of Human Rights. It calls for democratic reform in China and it calls for change in 19 areas, including a new constitution, an independent judiciary, freedom of assembly, election of public officials and stronger guarantees for personal freedoms; it expresses a sense of urgency for the future and destiny of China. The document was signed by more than 300 Chinese intellectuals and human rights activists in China including lawyers, journalists, dissidents, artists and rural leaders, from every corner of the country.

One of the signers of Charter 08 was Liu Xiaobo who is also suspected by the government as the initiator of the document.

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December 09, 2008

A group of 303 Chinese writers, intellectuals, lawyers, journalists, retired Party officials, workers, peasants, and businessmen have issued an open letter -- the "08 Charter" -- calling for legal reforms, democracy and protection of human rights in China. An English translation of the Charter by Human Rights in China is below.

"08 Charter"

Preamble

This year is the 100th year of China's Constitution, the 60th anniversary of the Universal Declaration of Human Rights, the 30th anniversary of the birth of the Democracy Wall, and the 10th year since China signed the International Covenant of Civil and Political Rights. After experiencing a prolonged period of human rights disasters and a tortuous struggle and resistance, the awakening Chinese citizens are increasingly and more clearly recognizing that freedom, equality, and human rights are universal common values shared by all humankind, and that democracy, a republic, and constitutionalism constitute the basic structural framework of modern governance. A "modernization" bereft of these universal values and this basic political framework is a disastrous process that deprives humans of their rights, corrodes human nature, and destroys human dignity. Where will China head in the 21st century? Continue a "modernization" under this kind of authoritarian rule? Or recognize universal values, assimilate into the mainstream civilization, and build a democratic political system? This is a major decision that cannot be avoided.

The monumental historic transformation in the mid-19th century exposed the decay of the traditional Chinese despotic

system and ushered in the most “unprecedented and cataclysmic change in several thousands of years” in all of China. The Self-strengthening Movement (c 1861-1894) sought the improvement of China’s technical capacity. The defeat in the first Sino-Japanese War (1894-1895) once more exposed the anachronism of the political system. The Hundred Day Reform touched upon institutional innovations, but was a failure in the end because of the cruel suppression of the die-hard clique. On the surface, the Xinhai Revolution (1911) buried the imperial system that had lasted for more than 2,000 years and established Asia’s first republic. But, limited by the historical factors determined by internal trouble and external aggression, the republican political system lasted only for an instant, and despotism quickly returned.

The failure of imitating mechanical innovation and institutional renewal prompted deep reflection among the people of the nation on the roots of this cultural sickness, which resulted in the “May 4” new culture movement under the banner of “science and democracy.” Because of frequent civil wars and invasions by external enemies, the course of China’s political democratization was forced to stop. The course of a constitutional government was initiated again after the victory in the War of Resistance against Japan (1937-1945), but the result of the civil war between the Kuomintang (the Nationalist Party) and the Communist Party caused China to sink into the abyss of the totalitarianism of the modern era. The “New China” established in 1949 is a “people’s republic” in name only. In fact, it is under the “Party’s” dominion. The ruling power monopolizes all the political, economic and social resources. It created a string of human rights catastrophes such as the Anti-Rightist Campaign, the Great Leap Forward, the Cultural Revolution, June 4, and attacks on non-governmental religious activities and on the rights defense movement, causing tens of millions of deaths, and exacted a disastrous price on the people and the country.

The “reform and opening up” of the late 20th century extricated China from the pervasive poverty and absolute power in the Mao Zedong era, and substantially increased private wealth and the standard of living of the masses. Individual economic freedom and social privileges were partially restored, a civil society began to grow, and the calls for human rights and political freedom among the people increased by the day. Those in power, as they were implementing economic reforms aimed at marketization and privatization, also began to move from a position of rejecting human rights to one of gradually recognizing them. In 1997 and 1998, the Chinese government signed two important international human rights treaties. In 2004, the National People’s Congress amended the Constitution to include language to “respect and safeguard human rights.” And this year, [the government] has promised to formulate and implement a “National Human Rights Action Plan.” However, this political progress stops at the paper stage. There are laws but there is no rule of law. There is a constitution but no constitutional governance. And there is still the political reality that is obvious for all to see. The power bloc continues to insist on maintaining the authoritarian regime, rejecting political reform. This has caused corruption in officialdom, difficulty in establishing rule of law, and no protection of human rights, the loss of ethics, the polarization of society, warped economic development, damages in the natural and human environments, no systematic protection of the rights to property and the pursuit of happiness, the accumulation of countless social conflicts, and the continuous rise of resentment. In particular, the intensification of hostility between government officials and the ordinary people, and the dramatic rise of mass incidents, illustrate a catastrophic loss of control in the making, and the anachronism of the current system has reached a point where change must occur.

## II. Our Fundamental Concepts

At this historical juncture of the future destiny of China, it is necessary to rethink the last 100 years of modernization and reaffirm the following concepts:

**Freedom:** Freedom is at the core of universal values. The rights of speech, publication, belief, assembly, association, movement, and to demonstrate are all the concrete realizations of freedom. If freedom is not flourishing, then there is no modern civilization of which to speak.

**Human Rights:** Human rights are not bestowed by the state, but are rights that each person is born with and enjoys. To ensure/guarantee human rights must be the foundation of the first objective of government and lawful public authority, and is also the inherent demand of “putting people first.” The past political calamities of China are all

closely related to the disregard of human rights by the ruling authorities.

**Equality:** Each individual, regardless of social status, occupation, gender, economic situation, ethnic group, skin color, religion, or political belief, is equal in human dignity and freedom. The principle of equality before the law and a citizen's society must be implemented; the principle of equality of economic, cultural, and political rights must be implemented.

**Republicanism:** Republicanism is "governing together; living peacefully together," that is, the decentralization of power and balancing of interests, that is comprised of diverse interests, different social groups, pluralistic culture and groups seeking religious belief, on the foundation of equal participation, peaceful competition, public discussion, and peaceful handling of public affairs.

**Democracy:** The most basic meaning is that sovereignty resides in the people and the people elect government. Democracy has the following basic characteristics: (1) the legitimacy of government comes from the people, the source of government power is the people; (2) government must be chosen by the people; (3) citizens enjoy the right to vote, important civil servants and officials of all levels should be produced through elections at fixed times; (4) the decisions of the majority must be respected while protecting the basic rights of the minority. In a word, democracy will become the modern tool for making government one "from the people, by the people, and for the people."

**Constitutionalism:** Constitutionalism is the principle of protecting basic constitutionally-guaranteed freedoms and rights of citizens through law and a rule of law, delimiting the boundaries of government power and actions, and providing corresponding systemic capacity.

In China, the era of imperial power has long passed and will not return; in the world, authoritarian systems are approaching the dusk of their endings. The only fundamental way out for China: citizens should become the true masters of the nation, throw off the consciousness of reliance on a wise ruler or honest and upright official, make widely public civic consciousness of the centrality of rights and the responsibility of participation, and practice freedom, democracy, and respect for law.

### III. Our basic standpoint

In line with a responsible and constructive citizens' spirit towards the country's political system, civil rights and various aspects of social development, we put forward the following specific standpoints:

- **Amend the Constitution:** Based on the aforementioned values and concepts, amend the Constitution, abolishing the provisions in the current Constitution that are not in conformity with the principle that sovereignty resides in the people so that the Constitution can truly become a document for guaranteeing human rights and [appropriate use of] public power. The Constitution should be the implementable supreme law that any individual, group or party shall not violate, and lay the legal foundation for the democratization of China.

- **Separation and balance of power:** A modern government that separates, checks and keeps balance among powers guarantees the separation of legislative, judicial, and administrative power. The principle of governing by laws and being a responsible Government shall be established. Over-expansion of executive power shall be prevented; the Government shall be responsible to the taxpayers; the separation, checking and keeping balance of powers between the central and local governments shall be set up; the central power authority shall be clearly defined and mandated by the Constitution, and the local governments shall be fully autonomous.

- Democratize the lawmaking process: All levels of the legislative bodies shall be directly elected. Maintain the principles of fairness and justice in making law, and democratize the lawmaking process.

- Independence of the judiciary: The judiciary shall be nonpartisan, free from any interference. Ensure judicial independence, and guarantee judicial fairness. Establish a Constitutional Court and a system of judicial review; maintain the authority of the Constitution. Abolish as soon as possible the Party's Committees of Political and Legislative affairs at all levels that seriously endanger the country's rule of law. Avoid using public tools for private objectives.

- Public institutions should be used for the public: Realize the nationalization of the armed forces. The military shall be loyal to the Constitution and to the country. The political party organizations in the armed forces should be withdrawn. The level of military professionalism should be raised. All civil servants including the police shall remain politically neutral. Discrimination in employment of civil servants based on party preference should be eliminated and equal employment without any party preference should be adopted.

- Protect human rights: Protection of human rights should be effectively implemented and human dignity should be safeguarded. A Commission on Human Rights shall be established that is responsible to the highest level of authority representing public opinion. [This Commission] will prevent government abuse of public power and violation of human rights, and especially protect the personal freedom of citizens. All persons should be free from unlawful arrest, detention, summons, interrogation, and punishment. The system of Reeducation-Through-Labor should be abolished.

- Election of public officials: The democratic electoral system should be fully implemented, with the realization of the equal voting right of one person one vote. Direct election of all levels of administrative heads should be institutionalized step by step. Free competition in the elections on a regular basis and citizen participation in the election of public officials are inalienable basic human rights.

- Urban and rural equality: The current urban-rural household registration system should be repealed. The equal rights for all citizens guaranteed by the Constitution should be implemented. The freedom of movement for citizens should be protected.

- Freedom of association: Citizens' right to freedom of association shall be safeguarded. The current system for registration and examination before approval for civil society organizations should be changed to a registration and recording system. The ban on freely organizing political parties should be lifted. All activities of parties should be regulated by the Constitution and law. One-party monopolization of ruling privileges should be abolished. The principle of freedom of activities of political parties and fair competition should be established. The normalization of party politics and a rule by law should be realized.

- Freedom of assembly: Peaceful assembly, protest, demonstration and freedom of expression are fundamental rights guaranteed by the Constitution. They should not be subject to unlawful interference and unconstitutional restrictions by the ruling party and the government.

- Freedom of expression: The freedom of speech, freedom of the press and academic freedom should be implemented. Citizens' right to know and to monitor supervise should be protected. A press and publication law should be promulgated. The ban on freely publishing newspapers should be lifted. The current provision of "inciting subversion of state power" in the Criminal Law should be repealed and criminal punishment for speech should be eliminated.

- Freedom of religion: Freedom of religion and freedom of belief should be protected. Religion and politics should be separated. Religious activities should be free from government interference. All administrative regulations, administrative rules and local regulations and rules that restrict or deprive citizens' freedom of religion should be reviewed and repealed. Management of religious activities by administrative legislature should be prohibited. The current prior approval system in which religious groups (including places of worship) must be registered before obtaining legal status should be abolished, and instead, a new record-keeping system for religious groups and their worship places should replace the current one.

- Citizen Education: Abolish political education and examinations that are deeply ideological and serve one-party rule. Promote citizen education that encompasses universal values and civil rights, establishes civil consciousness, and promotes the civil virtue of serving society.

- Property Protection: Establish and protect private property rights, implement a free and open market economy, protect the freedom of entrepreneurship, and eliminate administrative monopoly; set up a state-owned property management committee that is responsible to the highest legislative agency, initiate property rights reforms legally and orderly, make clear the property rights of owners and obligors, initiate a new land movement, advance land privatization, and strictly protect citizens', in particular, farmers', land rights.

- Fiscal Reforms: Firmly establish democracy in finance and protect taxpayers' rights. Build a public finance system and operational mechanisms in which powers and obligations are clear, and create a reasonable and effective division of power in finance among all levels of government; implement major reforms in the tax system to reduce the tax rate, simplify the tax system, and achieve tax equity. The administrative departments should not be allowed to increase tax or create new tax arbitrarily without a social public choice and resolutions of the legislative agencies. Pass reforms on property rights, introduce diverse market subjects and competition mechanisms, lower the market-entry threshold in banking, and create conditions for the development of privately-owned banking to energize the financial system.

- Social Security: Build a social security system that covers all of the citizens, and provide them with fundamental protections for education, medical care, elderly care and employment.

- Environmental Protection: Protect the ecological environment, promote sustainable development, and take up responsibility to future generations and humanity; enforce the respective responsibilities of the state and government officials of all levels; perform the function of participation and supervision by civil organizations on environmental protection.

- Federal Republic: Participate in and maintain regional peace and development with an equal and fair attitude, and create an image of a responsible great country. Protect the free systems of Hong Kong and Macao. Under the precondition of freedom and democracy, seek a settlement resolution on cross-strait relations by way of equal negotiation and cooperative interaction. Explore possible ways and an institutional design to promote the mutual prospects of all ethnicities with great wisdom, and to establish China's federal republic under the structure of democracy and constitutionalism.

- Transitional Justice: Rehabilitate the reputation of and give state compensation to the victims who suffered political persecution during past political movements as well as their families; release all political prisoners, prisoners of conscience, and people who are convicted because of their beliefs; establish a truth commission to restore historical truth, to pursue accountability and to fulfill justice; seek a settlement of the society on this foundation.

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#### IV. Conclusion

China, as a great nation of the world, one of the five permanent members of the United Nations Security Council, and a member of the Human Rights Council, should contribute to peace for humankind and progress in human rights. But to people's regret, among the great nations of the world, China, alone, still clings to an authoritarian political way of life. As a result, it has caused an unbroken chain of human rights disasters and social crises, held back the development of the Chinese people, and hindered the progress of human civilization. This situation must change! The reform of political democratization can no longer be delayed.

Because of this, we, with a civic spirit that dares to act, publish the "08 Charter". We hope that all Chinese citizens who share this sense of crisis, responsibility and mission, without distinction between the government or the public, regardless of status, will hold back our differences to seek common ground, actively participate in this citizens' movement, and jointly promote the great transformation of the Chinese society, so that we can establish a free, democratic and constitutional nation in the near future and fulfill the dreams that our people have pursued tirelessly for more than a hundred years.