

Conviction of Liu Xiaobo for Incitement to Overthrow State Power, December 25, 2009

Chinese text follows the full English translation. Errors in spelling in the Chinese language transcription of the court verdict text that appeared on-line are corrected in the translation.

Chinese text from <http://freemorenews.com/2009/12/26/liu-xiaobo-first-instance-verdict/>

Beijing Municipality First Intermediate People's Court Verdict in Criminal Case

(2009) First Intermediate Court No. 3901

Public Prosecutor: Beijing Municipality People's Procuratorate First Branch.

The accused, Liu Xiaobo, male, 53 years old (born December 28, 1955), Han nationality, born in Changchun City, Jilin Province, doctoral student level education, unemployed, household registration at Qingchun Street No. 5, 2-1-2, Xigang District, Dalian City, Liaoning Province. Resides temporarily at No. 7 Xiancun, Bank of China dormitory Building 10, Unit 1, No. 502 in the Haidian District of Beijing Municipality. In January 1991, he committed the crime of making counter-revolutionary propaganda but escaped criminal punishment; in September 1996 because he disturbed the social order, he was sent to re-education through labor for three years. He was summoned for detention on December 8, 2008 on suspicion of incitement to overthrow state power and on December 9 put under residential surveillance. On June 23, 2009 he was arrested. He is now confined to Beijing Municipality Detention Center No. 1.

- Defense counsel: Ting Xikui, a lawyer at the Beijing Mo Shaoping Law Office
- Defense counsel: Shang Baojun, a lawyer at the Beijing Mo Shaoping Law Office

Beijing Municipality People's Procuratorate First Branch in Beijing Procuratorate First Branch Criminal Prosecution Indictment (2009) 247 charged the accused Liu Xiaobo of the crime of incitement to overthrow state power and on December 10, 2009 filed the indictment in this court. This court according to law assembled the court and held an open court session to try the case. The Beijing Municipality People's Procuratorate First Branch sent Prosecutor Zhang Rongge and Deputy Prosecutor Pan Xuechu to sustain the indictment. The defense counsel for the accused Liu Xiaobo, Ding Xikui and Shang Baojun came to court to participate in the hearing. The trial has now already concluded.

The Beijing Municipality People's Procuratorate First Branch incitement accuses the defendant Liu Xiaobo has, due to his dissatisfaction with the people's democratic dictatorship state power system and socialist system of our country, since 2005, through various Internet websites such as "Observe China" and the "BBC Chinese Net" published articles such as "The Dictatorial Patriotism of the Chinese Communist Party", "How Can it be that Only Party-Guided Democracy is Suitable for the Chinese People?", "Change the Political Regime by Changing Society", "The Many Faces of the Chinese Communist Dictatorship", "The Negative Effect of the Rise of a Dictatorship on World Democratization", "Inquiring Further into the Case of the Child Slaves of the Black Kilns", and other inflammatory articles. The articles instigate rumors and libels such as "Since the Communist Party took power, the top priority of Communist dictators has been their own power and what they care least about is human life"; "The Chinese communist dictatorial state power promotes patriotism for officials, and the absurd theory of a party that takes the place of the state. What patriotism has become in effect is the call the people to love the dictatorial government power, to love the dictatorial party, to love the

dictator. This is simply stealing the name of patriotism to create a reality that brings calamity to the country and to the people. "; "All the methods of the Chinese communists are based on a plan to support the rule and interests of the dictators, but there is no hope for them to continue for long since countless cracks have already appeared in the edifice of their dictatorship." "Expecting a free China to appear from the "new policies" of the rulers is far less likely than hoping for it to come through the steady expansion of 'new forces' among the people." Just as strong are these incitements: "Change the Society to Change the Regime", and "Expecting a free China to appear from the "new policies" of the rulers is far less likely than hoping for it to come through the steady expansion of "new forces" among the people."

Between September and December 2008, the defendant Liu Xiaobo colluded with others to draft and concoct the "Charter 08", that proposed views such as "eliminate the monopoly of one party on the exercise of political power", "to create a Chinese federation under the framework of democratic constitutional system of governance", seeking to incite the overthrow of state power. Liu Xiaobo collected the signatures of over 300 people and sent "Charter 08" together with the signatures in an email to websites outside of the borders of mainland China publish it on websites outside the borders of mainland China such as "Democratic China" and "The Independent Chinese Pen Association".

After Liu Xiaobo committed this offense, he was tracked down and brought to justice.

The Beijing Municipality Procuratorate First Branch provided to this court testimony of witnesses as to the guilt of the defendant Liu Xiaobo. This included evidence such as the on scene investigation, the record of the investigation and electronic data that had been verified by the experts. The Beijing Municipality Procuratorate First Branch was convinced that the defendant Liu Xiaobo's behavior violated section 105 part two of the "Criminal Code of the PRC", and constituted incitement to the overthrow of state power, a serious offense. The Procuratorate handed the case over to this court for judgment according to the law.

The defendant Liu Xiaobo during the trial said that he was not guilty and that he was merely exercising the constitutional right of all citizens to free speech. The criticisms he expressed did not any actual harm to anyone and is not incitement to overthrow state power.

Counsel for the defendant Liu Xiaobo argued that the six articles written by Liu Xiaobo mentioned in the indictment and "Charter 08" did not create rumors or libels and did not insult anyone. Moreover, said counsel, the articles published by Liu Xiaobo fall within the scope of the free speech of a citizen, expressing personal opinions and do not constitute incitement to overthrow state power.

During the trial it became clear that the defendant Liu Xiaobo, due to his dissatisfaction with the people's democratic dictatorship and socialist systems of our country, between October 2005 and August 2007, at his temporary residence at No. 7 Xiancun, Bank of China dormitory Building 10, Unit 1, No. 502 in the Haidian District of Beijing Municipality, wrote and published articles on websites such as "Observe China" and "BBC Chinese Language Net". On multiple occasions, he incited the overthrow of our country's political system and the socialist system. Liu Xiaobo in his articles "The Dictatorial Patriotism of the Chinese Communists", "How Could it Be That the Chinese People Are Only Suited to 'Party-Guided Democracy'", "Change the Political Regime by Changing Society", "The Many Faces of the Chinese Communist Dictatorship", "The Negative Effect of the Rise of a Dictatorship on World Democratization", and "Inquiring Further into the Case of the Child Slaves of the Black Kilns" slandered the Chinese Communist Party. He made statements in these articles such as "Since the Communist Party took power, the top priority of Communist dictators has been their own

power and what they care least about is human life"; "The Chinese communist dictatorial state power promotes patriotism for officials, and the absurd theory of a party that takes the place of the state. What patriotism has become in calling on the people to love the dictatorial regime, to love the dictatorial party, and to love the dictator. This is simply stealing the name of patriotism to create a reality that brings calamity to the country and to the people. "; "All the methods of the Chinese communists are based on a plan to support the rule and interests of the dictators, but there is no hope for them to continue for long since countless cracks have already appeared in the edifice of their dictatorship." Equally as inciting are the statements "Expecting a free China to appear from the "new policies" of the rulers is far less likely than placing hope in its emergence through the steady expansion of "new forces" among the people."

Between September and December 2008, the defendant Liu Xiaobo colluded with others to draft a document entitled "Charter 08". That document proposed to "eliminate the monopoly of one party on the exercise of political power", "to create a Chinese federation under the framework of democratic constitutional system of governance" and other incitements. Liu Xiaobo colluded with others to collect the signatures of 300 people and then sent "Charter 08" together with the signatures in an email to websites outside of the borders of mainland China and released it on websites outside the borders of mainland China such as "Democratic China" and "The Independent Chinese Pen Association". The documents mentioned above that Liu Xiaobo put on websites were linked to and copied to other websites and viewed by many people.

The accused Liu Xiaobo after he committed this crime was investigated and brought to justice.

The facts above were proved during the trial. The evidence presented has been shown to be true and this court affirms that the following has been demonstrated to be true:

1. The testimony of the witness Liu Xia proves: She is the wife of Liu Xiaobo and lived together with him at No. 7 Xiancun, Bank of China dormitory Building 10, Unit 1, No. 502 in the Haidian District of Beijing Municipality, that there are three computers in the home, one a desktop and other two are notebooks. Because she doesn't understand anything about computers. Liu Xiaobo uses the computer mainly to write articles and to go on-line. Only two people, herself and Liu Xiaobo, live in the home, no-one lives with them. Only very seldom do guests come to visit -- when Liu Xiaobo participates in a meeting, it is almost always outside his home. She doesn't know how the computer connects to the Internet. Liu Xiaobo arranged for the Internet connection in late 2001. Their income comes chiefly from what Liu Xiaobo earns from his writings. Liu Xiaobo opened an account at the bank in her name. Deposits to the account for Liu Xiaobo's writings come irregularly. Every month she goes to the bank at irregular intervals to withdraw money.
2. The Beijing and Muxi branches of the Bank of China, Ltd. provided the "evidence of opening an account" and "bank money order receipt" that prove that Liu Xiaobo's wife Liu Xia went to the bank to receive and withdraw money orders (in foreign currency) coming from outside the borders of mainland China.
3. China United Network Communication Co., Ltd. Beijing subsidiary provided a "Reply to a request for assistance in conducting an examination of digital data". This proves: Liu Xiaobo used an ADSL account, and a record of his having gone on-line.
4. The testimony of the witness Zhang Zuhua proves: she together with Liu Xiaobo at the end of 2008 drafted and completed "Charter 08". She also collected signatures. Thereafter, Liu Xiaobo published

"Charter 08" on websites outside the borders of mainland China.

5. The testimony of the witness He Yongqin proves: in early December 2008, he received an email from Liu Xiaobo contained "Charter 08". Liu Xiaobo let him see it and sign it if he wants. After reading the email, he replied to Liu Xiaobo that he agreed to sign it.

6. The testimony of the witness Zhao Shiyong proves: that in October 2008, Liu Xiaobo sent "Charter 08" to him through the Internet and asked for his advice on revising it, and asked that he find other people willing to sign it. At a meeting, Zhao showed "Charter 08" to over ten people. Four of them said that they were willing to sign it. Liu Xiaobo through the Internet also asked him to go to Guangzhou to collect signatures. In Guangzhou, he collected five signatures.

7. The testimony of the witness Yao Bo proves: that in October 2008, when Liu Xiaobo met him, and discussed the charter with him, and he agreed to sign it.

8. The testimony of the witness Zhou Duo proves: that one day in November 2008, Liu Xiaobo went to his home to show him the draft of "Charter 08", and asked for his help in revising it. After Liu Xiaobo left, he looked over the draft but did not revise it. He did not sign at that time, but later he saw the Charter on-line had his signature.

9. The testimony of the witness Fan Chunsan proves: that in late October 2008, when he was eating with Liu Xiaobo and others, Liu Xiaobo took out a copy of "Charter 08" for him to read. When Liu Xiaobo asked him whether or not he would sign it, he agreed to sign it. He knew that Liu Xiaobo has published this document already on websites outside the borders of mainland China such as "Boxun", "The Independent Chinese Pen Association". He had also read it on-line and knew that the Liu Xiaobo's document was of the kind that criticized contemporary politics.

10. The testimony of the witnesses Xu Junliang, Zhi Xiaomin and Teng Biao prove: that in November and December 2008, they received in their e-mail mailboxes "Charter 08" but did not know who had sent it. They each signed "Charter 08" and sent it back to the mailbox they had received it from.

11. The testimony of the witness Wang Zhongxia proves: that in December 2008, after reading "Charter 08" on-line, he found that he agreed with it and signed it. Later, he had printed some "Charter 08" shirts and wore it himself and gave to other people to wear in order to publicize "Charter 08".

12. The "investigation record" of Public Security organs and material evidence photographs of December 8, 2008 prove: that relying on the testimony of witnesses, Public Security searched Liu Xiaobo's residence at No. 7 Xiancun, Bank of China dormitory Building 10, Unit 1, No. 502 in the Haidian District of Beijing Municipality, found and took into custody the tools that Liu Xiaobo used to write the documents and to send them to websites -- two notebook computers, one desktop computer, and one copy of a printed document "Charter 08 -- Request for Comments".

13. The Beijing Municipality Networking Industry Association Forensic Electronic Data Center provided a "Judicial Testimony Opinion Document" proves: that on December 13, 2008, according to a forensic examination of the data stored on the three computers that authenticated the discovery of the electronic documents "The Dictatorial Patriotism of the Chinese Communist Party", "How Can it be that Only Party-Guided Democracy is Suitable for the Chinese People?", "Change the Political Regime by Changing Society", "The Many Faces of the Chinese Communist Dictatorship", "The Negative Effect of the Rise of a Dictatorship on World Democratization", "Inquiring Further into the Case of the

Child Slaves of the Black Kilns" and "Charter 08". In the records of the software "Skype" on his computer were found and recorded from the software a record of multiple emails that he sent from November to December 8, 2008 multiple emails were sent containing "Charter 08" and the "request for comments" document.

14. The on the scene investigation by the Public Security organs, and record of the investigation and the explanation of the work proves:

1. The Beijing Municipality Public Security Public Information Network Security and Supervision Office First Detachment on December 19 - 23 discovered and downloaded the document signed "Liu Xiaobo" entitled "Liu Xiaobo The Dictatorial Patriotism of the Chinese Communist Party". The document resided on a website with the domain name epochtimes.com. The website server is outside the borders of mainland China. The document was marked as having been published on October 4, 2005. That document as of December 23, 2008 links were found to five websites that had either published or republished that document.
2. Between December 19, 2008 and August 3, 2008, Beijing Municipality Public Security Public Information Network Security and Supervision Officer First Detachment founded and downloaded from the Internet a document signed "Liu Xiaobo" entitled "Liu Xiaobo How Can it be that Only 'Party Guided Democracy' is Suitable for the Chinese People?". That document resided on the websites with the domain names epochtimes.com (The Epoch Times) and www.observechina.net (Observe China). Both website servers are outside the borders of mainland China. The document is marked published on January 5, 2006 and January 6, 2006. This document as of December 23, 2008 had been published or republished on five websites and had a total of 402 hits.
3. Between December 19, 2008 and August 3, 2008, Beijing Municipality Public Security Public Information Network Security and Supervision Officer First Detachment founded and downloaded from the Internet a document signed "Liu Xiaobo" entitled "Liu Xiaobo Change the Political Regime by Changing Society". That document resided on the websites with the domain names epochtimes.com (The Epoch Times) and www.observechina.net (Observe China). Both website servers are outside the border of mainland China. The document is marked published on February 26, 2006 and February 27, 2006. This document as of December 23, 2008 had been published or republished on five websites and had a total of 748 hits.
4. Between December 19, 2008 and August 3, 2008, Beijing Municipality Public Security Public Information Network Security and Supervision Officer First Detachment founded and downloaded from the Internet a document signed "Liu Xiaobo" entitled "Liu Xiaobo The Many Faces of the Chinese Communist Dictatorship". That document resided on the websites with the domain names www.secretchina.com (Secret China) and www.observechina.net (Observe China). Both website servers are outside the border of mainland China. The document is marked published on March 13, 2006. This document as of December 23, 2008 had been published or republished on six websites and had a total of 512 hits.
5. Between December 20, 2008 and August 3, 2008, Beijing Municipality Public Security Public Information Network Security and Supervision Officer First Detachment founded and downloaded from the Internet a document signed "Liu Xiaobo" entitled "Liu Xiaobo The Negative Effect of the Rise of a Dictatorship on World Democratization". That document resided on a website with the domain name www.secretchina.com (Secret China). The website

server is outside the borders of mainland China. The document is marked published on May 7, 2006. This document as of December 23, 2008 had been published or republished on seven websites and had a total of 57 hits.

6. Between December 20, 2008 and August 3, 2008, Beijing Municipality Public Security Public Information Network Security and Supervision Officer First Detachment founded and downloaded from the Internet a document signed "Liu Xiaobo" entitled "Liu Xiaobo Persisting with a Deeper Inquiry into the Case of the Child Slaves of the Black Kilns". That document resided on websites with the domain names www.minzhuzhongguo.org (Democratic China) and www.renyurenquan.org (Human Rights in China). Both website servers are outside the border of mainland China. The document is marked published on August 1, 2007. This document as of December 23, 2008 had been published or republished on eight websites and had a total of 488 hits.
7. On December 11, 2008, Beijing Municipality Public Security Public Information Network Security and Supervision Officer First Detachment founded and downloaded from the Internet a document entitled "Charter 08". That document resided on the website with the domain name www.chinesepen.org (The Independent Chinese Pen Center). The website server is outside the borders of mainland China. The document is marked published on December 9, 2008 and is signed by a group of people. The same day, a document entitled "Chinese People From All Walks of Life Join Together to Issue Charter 08" was found and downloaded from the websites with the domain names boxun.com and www.minzhuzhongguo.org (Democratic China). Both of the website servers are located outside the boundaries of China and show publication dates of December 8, 2008 and December 12, 2008. This document as of December 12, 2008 had been published or republished on 33 websites including 19 outside the borders of mainland China and had a total of 5154 hits and 158 replies. On December 9, 2008, it was found that the website with the domain name www.2008xianzhang.info (Charter 08) had as of December 9, 2009 the signatures of 10,390 people who had signed "Charter 08".
8. The Beijing Municipality Public Security Public Information Network Security and Supervision Office investigated Liu Xiaobo's e-mails and as a result of that examination found that Liu Xiaobo's email mailbox is located outside the borders of mainland China. After using a password to get into that mailbox to check it, it was found that the earliest email sent from that mail box was dated November 25, 2008 and that 30 of the sent emails included "Charter 08".

15. Liu Xiaobo's signature in acknowledgement proves: that Liu Xiaobo confirmed the authenticity of documents downloaded and saved by the Public Security network monitoring and control departments "Liu Xiaobo The Dictatorial Patriotism of the Chinese Communist Party", "Liu Xiaobo How Can it be that Only Party Democracy is Suitable for the Chinese People?", "Liu Xiaobo Change the Political Regime by Changing Society", "Liu Xiaobo The Many Faces of the Chinese Communist Dictatorship", "Liu Xiaobo The Negative Effect of the Rise of a Dictatorship on World Democratization", "Liu Xiaobo Enquiring Further into the Case of the Child Slaves of the Black Kilns". Liu Xiaobo acknowledges that the documents in question were written by him and then published on the Internet. The evidence presented about demonstrate that those documents acknowledged by Liu Xiaobo contain inciting speech.

16. The defendant Liu Xiaobo's deposition proves: that Liu Xiaobo deposes that he used his computer to write and then publish on the Internet the documents described above. Liu Xiaobo and the evidence presented above are mutually confirmatory.

17. The account that the Public Security organs provided on the progress of the case proves: that Public Security on the evening of December 8, 2008 went to Liu Xiaobo's residence at No. 7 Xiancun, Bank of China dormitory Building 10, Unit 1, No. 502 in the Haidian District of Beijing Municipality in order to arrest Liu Xiaobo.

18. The previous "criminal verdict document" issued by the Beijing Municipality Intermediate Court (1990) Criminal Case 2373, the Beijing Municipality People's Government Re-education Through Labor Management Committee (96) Beijing Labor Case No. 3400 "Decision on Re-education Through Labor", proves: that Liu Xiaobo on January 26, 1991 although he committed the crime of making counter-revolutionary inciting propaganda was not given a criminal punishment; and that on September 26, 1996 because he had disturbed social order, his case was handled by giving him three years of re-education through labor.

19. Identification provided by the Public Security organs prove: that the name, residence and other information of the defendant Liu Xiaobo.

This court believes that the defendant Liu Xiaobo with the purpose of incitement to overthrow our country's people's democratic dictatorship system and socialist system, used the Internet to distribute his document because of its rapid speed, great scope, large social influence and the attention to which the people pay to it. He wrote the documents and used the Internet to publish it in order to slander and urge other people to overthrow our country's people's democratic dictatorship system and socialist system. This conduct already constitutes the crime of incitement to overthrow state power. Moreover, he has been committing this crime for a long while and the subjective evil caused is great. The published documents have been spread through links and republishing. People read them and they have a bad effect. This is the crime of a major criminal and should be severely punished according to law.

The Beijing Municipality First Intermediate Court First Branch believes that the facts are clear and the evidence has been confirmed that the defendant Liu Xiaobo committed the crime of incitement to overthrow and so he is found guilty of the crime for which he has been charged. As for the views presented by Liu Xiaobo and his defense counsel in court, the court found through its examination that the facts and evidence are sufficiently prove that Liu Xiaobo made use the characteristics of the Internet as a communications medium, by publishing slanderous documents on the Internet, to carry out his action of inciting the overthrow of our country's people's democratic dictatorship system and the socialist system. The actions of Liu Xiaobo are beyond the scope of freedom of speech and constitute a crime. Therefore, the pleas presented by Liu Xiaobo and his defense counsel cannot be established and this court does not accept them. According to the facts and nature of the crime committed by the defendant Liu Xiaobo, the circumstances, and the harm that has been done to society, this court according to Chapter 105, Section two; Chapter 55, Section one; Chapter 56, Section one, and Chapter 64 of the Criminal Code of the PRC, makes the following verdict:

1. The defendant Liu Xiaobo, for the crime of incitement to overthrow state power, is sentenced to prison for eleven years and deprivation of political rights for two years. (The sentence is to be served from the day of sentencing, with deduction for time in confinement on a day for day basis, that is from June 23, 2006 to June 21, 2020.)
2. All the materials that Liu Xiaobo used to commit the crime are to be confiscated (list follows).
3. If the defendant does not accept this judgment, an appeal can be made between two days and

ten days after the issuance of this verdict, either through this court or directly to the Beijing Municipality Superior Court. The appeal should be accompanied by an original of this verdict together with two copies.

Jia Lianchun, Chief Judge
Bang Jiaowei, Assistant judge
Zhai Changxi, Assistant judge

December 25, 2009

Gu Xin, Court Clerk

The items confiscated when taken into custody are to be forfeited:

1. Notebook computer (IBM model T43), one
2. Notebook computer (Lianxiang model Chaoyang 700 CFe), one
3. Desktop computer (Lianxiang model Jiayue), one
4. "Charter 08 request for comments draft (sealed together with the court papers), 7 pages+

<http://freemorenews.com/2009/12/26/liu-xiaobo-first-instance-verdict/>

北京市第一中级人民法院刑事判决书

（2009）一中刑初字第 3901 号

公诉机关北京市人民检察院第一分院。

被告人刘晓波，男，53 岁（1955 年 12 月 28 日出生），汉族，出生土吉林省长春市，博士研究生文化，无业，户籍所在地辽宁省大连市西岗区青春街 5 号 2-1-2 号，暂住北京市海淀区七贤村中国银行宿舍 10 号楼 1 单元 502 号。1991 年 1 月因犯反革命宣传煽动罪被免于刑事处罚；1996 年 9 月因扰乱社会秩序被处劳动教养三年。因涉嫌犯煽动颠覆国家政权罪于 2008 年 12 月 8 日被拘传，12 月 9 日被监视居住，2009 年 6 月 23 日被逮捕。现羁押在北京市第一看守所。

辩护人丁锡奎，北京莫少平律师事务所律师。

辩护人尚宝军，北京莫少平律师事务所律师。

北京市人民检察院第一分院以京一分检刑诉（2009）247 号起诉书指控被告人刘晓波犯煽动颠覆国家政权罪，于 2009 年 12 月 10 日向本院提起公诉。本院依法组成合议庭，公开开庭进行了审理，北京市人民检察院第一分院指派检察员张荣革、代理检察员潘雪楮出庭支持公诉，被告人刘晓波及其辩护人丁锡奎、尚宝军到庭参加诉讼。现已审理终结。

北京市人民检察院第一分院起诉书指控，被告人刘晓波出于对我国人民民主专政的国家政权和社会主义制度的不满，自 2005 年以来，通过互联网先后在“观察”、“BBC 中文网”等境外网站上发表《中共的独裁爱国主义》、《难道中国人只配接受“党主民主”》、《通过改变社会来改变政权》、《多面的中共独裁》、《独裁崛起对世界民主化的负面效应》、《对黑窑童奴案的继续追问》等煽动性文章。在文章中造谣、诽谤：“自从中共掌权以来，中共历代独裁者最在乎的是手中的权力，而最不在乎的就是人的生命”；“中共独裁政权提倡的官方爱国主

义，是‘以党代国’体制的谬论，爱国的实质是要求人民爱独裁政权、爱独裁党、爱独裁者，是盗用爱国主义之名而行祸国殃民之实”；“中共的这一切手段，都是独裁者维持最后统治的权宜之计，根本无法长久地支撑这座已经出现无数裂痕的独裁大厦”。并煽动：“通过改变社会来改变政权”；“自由中国的出现，与其寄希望于统治者的‘新政’，远不如寄希望于民间‘新力量’的不断扩张”。

2008年9月至12月间，被告人刘晓波还伙同他人起草、炮制了《零八宪章》，提出“取消一党垄断执政特权”、“在民主宪政的架构下建立中华联邦共和国”等多项主张，试图煽动颠覆现政权。刘晓波在征集三百余人签名后，将《零八宪章》及签名用电子邮件发给境外网站，在“民主中国”、“独立中文笔会”等境外网站上公开发表。

被告人刘晓波作案后被查获归案。

北京市人民检察院第一分院向本院移送了指控被告人刘晓波犯罪的证人证言，现场勘验、检查笔录，电子数据司法鉴定意见书等证据。认为被告人刘晓波的行为触犯了《中华人民共和国刑法》第一百零五条第二款之规定，已构成煽动颠覆国家政权罪，罪行重大。提请本院依法判处。

被告人刘晓波在法庭审理中辩称：自己无罪，自己只是行使宪法赋予公民言论自由的权利，自己所发表的批评性言论，并未给他人带来实际损害，也没有煽动颠覆国家政权。

被告人刘晓波的辩护人在法庭审理中提出的辩护意见是：公诉机关指控刘晓波撰写的六篇文章及《零八宪章》没有造谣、诽谤、诬蔑的内容。刘晓波所发表的文章属于公民言论自由、表达个人观点的范畴，不构成煽动颠覆国家政权罪。

经审理查明，被告人刘晓波出于对我国人民民主专政的国家政权和社会主义制度的不满，于2005年10月至2007年8月间，在其暂住处北京市海淀区七贤村中国银行宿舍10号楼1单元502号，以撰写并在互联网“观察”、“BBC中文网”等网站发表文章的方式，多次煽动他人颠覆我国国家政权和社会主义制度。刘晓波在发表的《中共的独裁爱国主义》、《难道中国人只配接受“党主民主”》、《通过改变社会来改变政权》、《多面的中共独裁》、《独裁崛起对世界民主化的负面效应》、《对黑窑童奴案的继续追问》文章中诽谤：“自从中共掌权以来，中共历代独裁者最在乎的是手中的权力，而最不在乎的就是人的生命”；“中共独裁政权提倡的官方爱国主义，是‘以党代国’体制的谬论，爱国的实质是要求人民爱独裁政权、爱独裁党、爱独裁者，是盗用爱国主义之名而行祸国殃民之实”；“中共的这一切手段，都是独裁者维持最后统治的权宜之计，根本无法长久地支撑这座已经出现无数裂痕的独裁大厦”。并煽动：“通过改变社会来改变政权”；“自由中国的出现，与其寄希望于统治者的‘新政’，远不如寄希望于民间‘新力量’的不断扩张”。

2008年9月至12月间，刘晓波又伙同他人撰写了题为《零八宪章》的文章，提出“取消一党垄断执政特权”、“在民主宪政的架构下建立中华联邦共和国”等多项煽动性主张。刘晓波伙同他人征集三百余人对文章的签名后，将《零八宪章》及签名用电子邮件发给境外网站，在“民主中国”、“独立中文笔会”等境外网站上公开发布。刘晓波在互联网发布的上述文章，被多家网站链接、转载并被多人浏览。

被告人刘晓波作案后被查获归案。

上述事实，有下列经庭审举证、质证的证据在案证实，本院予以确认。

1、证人刘霞的证言证明：她是刘晓波的妻子，与刘晓波共同居住在北京市海淀区七贤村中国银

行宿舍 10 号楼 1 单元 502 号，家中一共有三台电脑，其中一个台式机，两个笔记本电脑。因为她根本不懂电脑。刘晓波使用电脑主要是写文章和上网，家里只有她和刘晓波两个人单独住，没有其他人，平时家里也不怎么来客人，刘晓波有聚会也基本都是到外面去。家里的电脑以什么形式上网她不清楚，是 2001 年底刘晓波联系安装的。她和刘晓波平日的的生活来源就是刘晓波写东西的稿费，刘晓波在银行以她的名字开户，稿费不定期的汇到帐户里，她每月不定期的去银行取钱。

2、中国银行股份有限公司北京市分行和木樨地支行出具的《开户证明》和《银行汇款单据》证明：刘晓波的妻子刘霞的银行账户接收和支取过境外汇款（外币）。

3、中国联合网络通信有限公司北京市分公司出具的《关于协助对相关数据进行调查的复函》证明：刘晓波使用的 ABSL 账号，有上网记录。

4、证人张祖桦的证言证明：他与刘晓波于 2008 年年底共同制作完成了《零八宪章》，他也征集了签名，后刘晓波将《零八宪章》发表在境外网站。

5、证人何永勤的证言证明：2008 年 12 月初，他收到刘晓波发的《零八宪章》的电子邮件，刘晓波让他看后签名，他看后以电子邮件形式回复刘晓波，表示同意签名。

6、证人赵世英的证言证明：2008 年 10 月份，刘晓波通过网络向他传送了宪章，并征求他的修改意见，让他寻找别人签名，他在一次聚会上拿出宪章给聚会的十多人传看，有四人表示愿签名。刘晓波还通过网络让他到广州征集签名，他到广州征集了五人签名。

7、证人姚博的证言证明：2008 年 10 月份，刘晓波在一次与他见面时，跟他说了宪章的事，他同意在宪章后签名。

8、证人周舵的证言证明：2008 年 11 月份的一天，刘晓波到他家给他看了《零八宪章》的文稿，让他帮助修改。刘晓波走后他看了文稿，但没修改。当时没谈签名的事，可后来在网上看到宪章时有他的签名。

9、证人范春三的证言证明：2008 年 11 月底，他和刘晓波等人一起吃饭时，刘晓波拿出《零八宪章》给他看了，刘晓波问他是否签名，他同意签名。他知道刘晓波在境外的“博讯”、“独立中文笔会”等网站上发表文章，也在网上看到过，刘晓波写的文章内容都是时政评论类的。

10、证人徐君亮、智效民、滕彪的证言证明：2008 年 11 月至 12 月间，他们的电子邮箱先后接收到电子邮件《零八宪章》，不知是谁发给他们的，他们分别签名后将《零八宪章》发回了原邮箱。

11、证人王仲夏的证人证言证明：2008 年 12 月份，他在网上看到了《零八宪章》，他认同文章内容签了名。后他印制了一些《零八宪章》的文化衫，想自己穿和送给别人穿，宣传《零八宪章》。

12、公安机关出具的《搜查笔录》及物证照片证明：2008 年 12 月 8 日，公安机关在见证人的见证下，对刘晓波的居住地北京市海淀区七贤村中国银行宿舍 10 号楼 1 单元 502 号进行了搜查，发现并扣压了刘晓波撰写并发送文章到互联网上的工具二台笔记本电脑、一台台式电脑和一份《零八宪章》（征求意见稿）的打印件。

13、北京市网络行业协会电子数据司法鉴定中心出具的《司法鉴定意见书》证明：2008 年 12 月 13 日对搜查起获的刘晓波的三台电脑内存储的数据进行了电子数据司法鉴定，鉴定中发现、提取到电子文本《中共的独裁爱国主义》、《难道中国人只配接受“党主民主”》、《通过改

变社会来改变政权》、《多面的中共独裁》、《独裁崛起对世界民主化的负面效应》、《对黑窑童奴案的继续追问》和《零八宪章》。

在电脑中的SKYPE聊天软件记录信息中，发现、提取该软件自2008年11月至12月8日间多次发送《零八宪章》及其“征求意见文本”的记录。

14、公安机关出具的现场勘验、检查笔录及工作说明证明：

(1) 2008年12月19日至2008年12月23日，北京市公安局公共信息网络安全监察处一大队，在互联网上发现并下载了署名“刘晓波”的文章《刘晓波：中共的独裁爱国主义》，该文章存在于域名為epochtimes.com（大纪元）的网站，该网站服务器位于境外。文章显示发布时间為2005年10月4日。该文章截止至2008年12月23日，在互联网上存在登载或转载该文章的网页链接共计5个。

(2) 2008年12月19日至2009年8月3日，北京市公安局公共信息网络安全监察处一大队，在互联网上发现并下载了署名“刘晓波”的文章《刘晓波：难道中国人只配接受“党民主主”》，该文章存在于域名為epochtimes.com（大纪元）和域名為<http://www.obseruechina.net/>（观察）的网站，网站服务器均位于境外，文章显示发布时间為2006年1月5日和2006年1月6日。该文章截止至2008年12月23日，在互联网上共存在登载或转载该文章的网页链接共计5个，总点击率402次。

(3)、2008年12月20日至2009年8月3日，北京市公安局公共信息网络安全监察处一大队，在互联网上发现并下载了署名“刘晓波”的文章《刘晓波：通过改变社会来改变政权》，该文章存在于域名為epochtimes.com（大纪元）和域名為<http://www.obseruechina.net/>（观察）的网站，网站服务器均位于境外，文章显示发布时间為2006年2月26日和2006年2月27日。该文章截止至2008年12月23日，在互联网上存在登载或转载文章的网页链接共计5个，总点击率748次。

(4) 2008年12月20日至2009年8月3日，北京市公安局公共信息网络安全监察处一大队，在互联网上发现并下载了署名“刘晓波”的文章《刘晓波：多面的中共独裁》，该文章存在于域名為<http://www.secretchina.com/>（看中国）和域名為<http://www.obseruechina.net/>（观察）的网站，网站服务器均位于境外，文章显示发布时间為2006年3月13日。该文章截止至2008年12月23日，在互联网上存在登载或转载文章的网页链接共计6个，总点击率512次。

(5) 2008年12月20日至2009年8月3日，北京市公安局公共信息网络安全监察处一大队，在互联网上发现并下载了署名“刘晓波”的文章《刘晓波：独裁崛起对世界民主化的负面效应》，该文章存在于域名為<http://www.secretchina.com/>（看中国）的网站，网站服务器位于境外，文章显示发布时间為2006年5月7日。该文章截止至2008年12月23日，在互联网上存在登载或转载该文章的网页链接共计7个，总点击率57次。

(6) 2008年12月20日至2009年8月3日，北京市公安局公共信息网络安全监察处一大队，在互联网上发现并下载了署名“刘晓波”的文章《刘晓波：对黑窑童奴案的继续追问》，该文章存在于域名為<http://www.minzhuzhongguo.org/>（民主中国）和域名為<http://www.renyurenquan.org/>（人与人权）的网站，网站服务器均位于境外，文章显示发布时间為2007年8月1日。该文章截止至2008年12月23日，在互联网上存在登载或转载文章的网页链接共计8个，总点击率488次。

(7) 2008年12月11日北京市公安局公共信息网络安全监察处一大队，在互联网上发现并下载

了标题為《零八宪章》的文章，该文章存在于域名为<http://www.chinesepen.org/>（独立中文笔会）的网站，该网站服务器位于境外，显示网络发布时间為2008年12月9日，作者署名為公民群体。同日在域名为[boxun.com](http://www.boxun.com)（博讯）和域名为<http://www.minzhuzhongguo.org/>（民主中国）的网站，发现并下载了标题為《中国各界人士联合发布<零八宪章>》，网站服务器均位于境外，文章显示发布时间為2008年12月8日和2008年12月9日。上述文章截止至2008年12月12日，在互联网上存在登载或转载该文章的网页链接共计33个，其中境外网站19篇，总点击率5154次，回復158篇。2009年12月9日，在域名为<http://www.2008xianzhang.info/>（零八宪章）的互联网站发现该网站首页显示截止至2009年12月9日，《零八宪章》签名共计10390人。

（8）、2009年8月14日北京市公安局公共信息网络安全监察处对刘晓波使用的电子邮件进行了核查，经查，刘晓波使用的邮箱属境外，通过密码登录邮箱中核实，邮箱发件箱中最早发件时间为2008-11-25，发送的邮件中有30封涉及发送《零八宪章》。

15、刘晓波签字确认的文章证明：刘晓波对公安机关网络监管部门下载、保存的文章《刘晓波：中共的独裁爱国主义》、《刘晓波：难道中国人只配接受“党主民主”》、《刘晓波：通过改变社会来改变政权》、《刘晓波：多面的中共独裁》、《刘晓波：独裁崛起对世界民主化的负面效应》、《刘晓波：对黑窑童奴案的继续追问》、《零八宪章》及从其电脑中提取的电子文本《中共的独裁爱国主义》、《难道中国人只配接受“党主民主”》、《通过改变社会来改变政权》、《多面的中共独裁》、《独裁崛起对世界民主化的负面效应》、《对黑窑童奴案的继续追问》进行了辨认，刘晓波确认辩论的文章是其撰写并发布到互联网上的文章。刘晓波辨认并签字确认的文章，有上述事实认定的煽动性言论。

16、被告人刘晓波的供诉证明：刘晓波供认其使用电脑撰写上述文章并发布在互联网上，刘晓波的供述与上述证据可相互印证。

17、公安机关出具的到案经过证明：北京市公安局于2008年12月8日晚，到刘晓波的住处北京市海淀区七贤村中国银行宿舍10号楼1单元502号将刘晓波抓获。

18、原北京市中级人民法院（1990）中刑字第2373号《刑事判决书》、北京市人民政府劳动教养管理委员会（96）京劳省字第3400号《劳动教养决定书》证明：刘晓波于1991年1月26日因犯反革命宣传煽动罪被免于刑事处罚；1996年9月26日因扰乱社会秩序被处劳动教养三年。

19、公安机关出具的身份证明材料证明了被告人刘晓波的姓名、住址等身份情况。

本院认为，被告人刘晓波以推翻我国人民民主专政的国家政权和社会主义制度為目的，利用互联网传递信息快、传播范围广、社会影响大、公眾关注度高的特点，采用撰写并在互联网上发布文章的方式，诽谤并煽动他人推翻我国国家政权和社会主义制度，其行為已构成煽动颠覆国家政权罪，且犯罪时间长，主观恶性大，发布的文章被广為链接、转载、瀏覽，影响恶劣，属罪行重大的犯罪分子，依法应予从严惩处。北京市人民检察院第一分院指控被告人刘晓波犯煽动颠覆国家政权罪的事实清楚、证据确实、充分，指控罪名成立。对于被告人刘晓波在法庭审理中提出的辩解及其辩护人发表的辩护意见，经查，本案庭审查明的事实和证据，已充分证明刘晓波利用互联网的传媒特点，以在互联网上发表诽谤性文章的方式，实施煽动颠覆我国国家政权和社会制度的行為，刘晓波的行為显已超出言论自由的范畴，构成犯罪。故刘晓波的上述辩护及其辩护人发表的辩护意见均不能成立，本院不予采纳。根据被告人刘晓波犯罪的事实、性质、情节和对于社会的危害程度，本院依照《中华人民共和国刑法》第一百零五条第二款、第五十五条第一款、第五十六条第一款、第六十四条之规定，判决如下：

一、 被告人刘晓波犯煽动颠覆国家政权罪，判处有期徒刑十一年，剥夺政治权利二年。

（刑期从判决执行之日起计算，判决执行以前先行羁押的，羁押一日折抵刑期一日，即自 2009 年 6 月 23 日起至 2020 年 6 月 21 日止。）

二、 随案移送的刘晓波犯罪所用物品予以没收（请担负后）。

如不服本判决，可在接到本判决书的第二日起十日内，通过本院或直接向北京市高级人民法院提出上诉。书面上诉的应提交上诉状正本一份，副本二份。

审判长贾连春代理审判员郑文伟翟长璽

二零零九年十二月二十五日

书记员顾昕

扣押物品处理清单

先烈物品予以没收：

- 1、 笔记本电脑（IBM 牌 T43 型）1 台
- 2、 笔记本电脑（联想牌朝阳 700Cfe）1 台
- 3、 台式电脑（联想牌家悦型）1 台

《零八宪章》征求意见稿（随案卷封存）7 页