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**THE PERSECUTION OF FALUN GONG PRACTITIONERS IN CHINA:
SPECIFIC POINTS AS REGARDS THE ROLE OF THE CHINESE COMMUNIST
PARTY AND THE CHINESE STATE IN THE PERSECUTORY CAMPAIGN.**

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PART TWO

SPECIFIC POINTS AS REGARDS THE ROLE OF THE CHINESE COMMUNIST PARTY AND THE CHINESE STATE IN THE PERSECUTORY CAMPAIGN.

INTRODUCTION

Since its inception, the Communist Party has initiated systematic and widespread attacks against targeted civilian populations to secure and maintain financial and social control over the Chinese people. In the 1950s, Party operatives paraded members of the landlord class before the Chinese people, publicly criticized and isolated them, and beat and executed at least 2 million people in one campaign. In 1957, the Party characterized the intellectual class as a “right wing” threat to state security and sent intellectuals to labor camps where they were tortured and forcibly converted or killed. Again, during the well-known Cultural Revolution of the 1970s, the persecution was so bad that many members of the targeted groups committed suicide to avoid the humiliation, torture, and execution they would otherwise have faced. In June of 1989, the Party and its extrajudicial security agents opened fire on the streets of Beijing, killing hundreds of pro-democracy students and activists, while others were rounded up later and sent to labor camps and prisons where they were subjected to forced labor, torture, and, in some cases, execution. In 1999, the Chinese Communist Party initiated yet another persecutory campaign, this time against members of the religion of Falun Gong.

This report, the second in a series, looks at the role of the Chinese Communist Party in the persecutory campaign against Falun Gong, and argues that (1) the Chinese Communist Party initiated, supervised, and managed the campaign to torture and annihilate Falun Gong believers in China, (2) the persecutory acts that comprise the campaign are *ultra vires*, unofficial acts, (3) the persecution is not based on official state policy, and (4) all states may exercise a jurisdiction over acts such as these.

BACKGROUND INFORMATION

The Party and the State

1. The Chinese Communist Party (hereinafter “CCP” or “Party”) and the government, usually referred to in China as “the State,” are organizationally and constitutionally distinct. Government officials may or may not hold posts within the CCP, and vice versa. A CCP member is not a “government official” by virtue of his or her position in the Party and is not considered a “government official” absent a government position.
2. The distinction between Party officials and government officials can be seen in a number of ways. On the most fundamental level, the Chinese Constitution recognizes the distinction between the Party and the government. Although the Constitution’s Preamble refers generally to CCP leadership, it does not provide any specific role for the Party in the government. It makes all political parties equally subject to the Constitution and laws: “All state organs, the armed forces, *all political parties* and public organizations...must abide by the Constitution and the law” (emphasis added). The CCP is not the only political party in China. Eight minority parties are also recognized and function in the country.
3. Importantly, the United States, in its official dealings with China, clearly distinguishes between the Party and the State. The United States Government treats the Party as the Party, and the government as the government, and establishes counterpart relationships with Chinese officials based on their positions in the government, and not based on their status in the Party.
4. Yes, the Party does influence government appointments and policies in ways that resemble the influence of lobbyists on the U.S. Congress (at one end of the spectrum) and perhaps also through illegal (Mafia-like) forms of coercion (at the other end of the spectrum). However, Party advice regarding appointments and promotions in government agencies must be promulgated by national or local government agencies in order to be implemented. These agencies, i.e., the People’s Congresses, may enact Party advice as regards major policies, and only then do these policy suggestions take on the force of law.
5. The State has not delegated its law-making and official policy-making functions to the Party. Acts that are carried out by the Party, no matter how widespread or well coordinated, do not qualify as official public policy.
6. In sum, the acts and deeds of the Party are political in nature and not the equivalent of nor a proxy for sovereign acts of the State.

The Purpose and Nature of the Persecution

7. On June 10, 1999, the Executive Committee of the Party’s Politburo (also known as the Politburo Standing Committee) created the extrajudicial Office 610 as a subdivision of the Party to coordinate, manage, and implement widespread attacks against members of the Falun Gong religion.
8. The purpose of the ongoing persecutory campaign is to purge China of Falun Gong through the forcible conversion or murder of Falun Gong believers. See, for example, Party Secretary Jiang Zemin’s June 7, 1999, speech to the Politburo (hereinafter “Jiang Zemin, June 7, 1999, Speech”).

9. Since the onset of the persecution, Office 610 and the Party have collaborated with police officers and a select group of government officials to carry out the persecutory campaign against Falun Gong believers in direct violation of Chinese Law and policy.
10. The persecutory campaign includes widespread acts of torture, summary execution, rape, enforced disappearance, forced labor, and other human rights abuses.
11. All of these acts are *ultra vires* and beyond any lawful authority regardless of the (private or governmental) status of the actors.
12. The campaign is not only unlawful but also violates and is inconsistent with official government policies that prohibit torture, arbitrary arrest and detention, and so on.
13. Many of the crimes perpetrated against Falun Gong believers in China violate *jus cogens* norms, which constitute violations of obligations owed to all persons. All states may exercise jurisdiction over these crimes, e.g., torture and genocide.

ANALYSIS

I. The Major Perpetrators

14. The Party, which has a large membership, clear purposes, and coordinated means of action, has made no secret of its criminal campaign to persecute and eradicate Falun Gong religious believers in China. See *supra*, Jiang Zemin, June 7, 1999, Speech.
15. As the major force behind the persecutory campaign, Jiang Zemin implemented the campaign in his capacity as head of the Communist Party. In this capacity, he created the 610 Office as an operating entity of the Central Committee of the Party. See, *supra*, Jiang Zemin, June 7, 1999, Speech.
16. As former 610 officer Hao Fengjun has made clear, the Party's Office 610 is an illegal organization that operates at national and local levels as a subdivision of the Party. Office 610 has branches within each province and city of China.
17. The Public Security is the principal police authority in China. Office 610 also has special offices within the Public Security where it specializes in Falun Gong (and other disfavored group) arrests and intelligence. Office 610 collaborates closely with the Chinese police to persecute Falun Gong outside of and in direct violation of China's laws.
18. Major perpetrators of the campaign to eradicate Falun Gong also include a select group of government officials who have played active leadership roles in the widespread criminal campaign waged against Falun Gong believers in China.

II. The Persecutory Acts Are *Ultra Vires* Unofficial Acts.

A. Torture, Summary Execution, Crimes that include Torture.

19. Acts that are perpetrated outside a government official's or body's legal power or authority are *ultra vires* acts. They are not authorized by the State and may even be specifically prohibited.
20. Torture and the other persecutory acts that are carried out against Falun Gong believers in China are *ultra vires* acts.

21. Torture, and therefore summary execution, rape, and other crimes that include torture, are also violations of Chinese Law. The Convention Against Torture—which came into force internationally on June 26, 1987, and was ratified by the Chinese regime on October 4, 1998—prohibits the intentional infliction of “severe pain or suffering, whether physical or mental” for any purpose including, but not limited to, punishment, intimidation, or coercion. See, also, Criminal Law of the People’s Republic of China, §§ 247-48 (1977).
22. Summary execution also violates the Criminal Procedure Law of China, §§ 199-202.
23. The government of China has publically stated that physical violence, torture, and cruel, inhuman, and degrading treatment are *ultra vires* in that they are not tolerated or condoned in the treatment of detained or arrested persons including Falun Gong. See below, at Para 37.
24. As acts that have been perpetrated in excess of the legal power or authority of any official or government entity in China, the torture, rape, summary execution, and other crimes against humanity persecution of Falun Gong believers are *ultra vires* acts that the state does not authorize and prohibits.
25. As *ultra vires* acts beyond or in violation of state authority, they do not qualify as official or sovereign acts. For further discussion, see brief filed by the Human Rights Law Foundation to the U.S. Supreme Court in Support of a Grant of Certiorari, in *Does A-E v. Zemin*, available at <http://hrlf.net/JiangZemin.html>.

B. Arbitrary Arrest and Detention

26. The Chinese Constitution provides that the freedom of the person of every Chinese citizen is inviolable and may not be abridged except under relevant standards of Chinese Law. Article 37 of the Constitution states in part that “no citizen may be arrested except with the approval or by decision of the procuratorate or by decision of a people’s court, and arrests must be made by a public security organ;” and that “unlawful deprivation or restriction of citizens’ freedom of person by detention or other means is prohibited.” In direct violation of Chinese legal standards and their due process rights under the Chinese constitution and Chinese law, virtually all of the Falun Gong believers who have been arrested have been subjected to arrests without approval of the procuratorate or decision of the people’s court. Many have also been apprehended by special extrajudicial agents instead of by members of the public security.
27. The detentions of Falun Gong believers in China have been carried out through the Re-education through Labor System as well as through the criminal justice system. Both forms of detention have been carried out arbitrarily and wrongfully.
28. The practice of sending Falun Gong believers (or others) to labor camps through the Re-education through Labor System in China violates Articles 5, 22, 37, and 38 of the Chinese Constitution, Article 10 of the Law of the People’s Republic of China on Administrative Punishment, and Article 8 of the Legislative Law of China. See also Article 251 of China’s Criminal Law (“Any functionary of a State organ who unlawfully deprives a citizen of his or her freedom of religious belief ... if the circumstances are serious, shall be sentenced to a fixed-term imprisonment of not more than two years of criminal detention.”).
29. The prohibition against detention in the absence of incarceration pending trial or other disposition of a criminal charge is also recognized in several provisions of

China's Criminal Procedure Law ("CPL"). See especially, Article 12 (no one may be convicted of an offense without a verdict rendered by a people's court according to law) and Article 162 (a guilty or not-guilty verdict must be based on facts that are clear and evidence that is verified and sufficient under the legal standards of the charge and based solely on the law). The right of access to legal counsel is recognized and affirmed in Article 96 of the CPL. Article 38, more particularly, prohibits the use of the law to falsely charge or frame the Chinese people.

30. Nonetheless, all Falun Gong believers whose liberty has been curtailed through the criminal justice system have been subjected to sham trials, usually without legal counsel. In some instances, lawyers have been permitted to participate. However, they have not been permitted to mount a defense on behalf of Falun Gong clients. See, Human Rights Law Foundation report, "In Defense of Jane and John Doe," available at <http://hrhf.net/publications.html>.
31. The Constitution also prohibits discriminatory treatment of the citizens of China based on stated religious affiliation or creed.
32. The arbitrary arrest and detention of Falun Gong believers in China has been perpetrated in direct violation of the Chinese Constitution and Law, and thus exceeds the legal power or authority of the arresting officers and all other participants. As such these are also *ultra vires*, unofficial acts.
33. In addition, several of the abusive measures carried out against Falun Gong qualify as crimes under Chinese Law. These include the extraction of confessions through torture, other forms of torture or extrajudicial killing, and the deprivation of freedom of religion or belief in forced labor camps or other types of detention centers.

C. The Government Status of Participants is Irrelevant to the *Ultra Vires*, Non-sovereign Nature of their Conduct.

34. The fact that the Communist Party and its 610 special agents have ordered, instructed, or participated in the persecutory conduct waged illegally against Falun Gong believers in China serves to underscore the unofficial nature of the campaign. The Party and its special agents are not state actors and do not have the authority to bind the State or to delegate such authority to others. The Party is not the State and party officials do not act for or on behalf of the State, especially, but not only, when their acts are unlawful and *ultra vires*.
35. That the Party has enlisted the support of many Chinese police officers in no way justifies or alters the nature of the crimes perpetrated against Falun Gong in China. The police are not above the law. They do not enact new law by violating the existing law. When they engage in illegal or even criminal conduct, they are subject to sanctions that arguably include arrest and criminal prosecution under the Law of China.
36. That a select group of government officials elected to participate in the Party's criminal campaign against Falun Gong similarly does not change the nature of their conduct. If an official acts outside the scope of the authority delegated to him by the State or directly violates the laws enacted by the State, his conduct is *ultra vires*, individual, and non-sovereign.

III. The Persecutory Campaign is not based on Official State Policy

37. As indicated above, the Government of China has publically stated that the use of torture and other cruel, inhuman, or degrading treatment or punishment is inconsistent with the official policy of the Chinese State. In its most recent report to the United Nations Committee Against Torture, the Government of China stated that no form of physical violence is tolerated or condoned in the treatment of detained and arrested persons. The report also stated that torture and other cruel, inhuman, or degrading treatment or punishment is strictly prohibited. Furthermore, as stated in the report, “It is strictly forbidden to use torture in a prison. No one is ever permitted to torture prisoners under any circumstances or for whatever reason.” In a letter the Government of China sent to the United States District Court of the Northern District of California, it likewise stated, “Prohibition of torture has always been a consistent position of the People’s Republic of China.” Statement of the People’s Republic of China on “Falun Gong” Unwarranted Lawsuits, http://www.cja.org/downloads/LiuQi_Notice_of_Filing_of_Statement_by_Chinese_Government_43.pdf.
38. In addition, the Government of China has publically denied discrimination against the Falun Gong religion. This means that the government feels that it is necessary to cover up its unlawful conduct. But it also shows that arbitrary arrests and detentions carried out against Falun Gong contravene State policies.

IV. All States May Exercise Jurisdiction Over Acts Such As These.

39. The persecutory campaign waged against Falun Gong believers in China comprises conduct manifestly in violation of the most basic norms of civilized conduct. The acts of torture, summary execution, and crimes against humanity are not merely *ultra vires*. These crimes also violate *jus cogens* norms, i.e., norms that are accepted and recognized by the international community of states as a norm from which no derogation is permitted. “Derived from values taken to be fundamental by the international community rather than from the ... choices of nations,” they are binding on all nations. “*The Barcelona Traction, Light & Power Co. (Belgium v. Spain)*” 1970 I.C.J. 3, 32.
40. Violations of *jus cogens* norms of international law constitute violations of obligations owed to all (“*erga omnes*”). See, Restatement (Third) of Foreign Relations, Section 702 cmt. O (1987). See also *id.* at section 404. These crimes are crimes against all people. All states may exercise universal jurisdiction over acts such as these. In other words, all states may exercise universal jurisdiction over these crimes.
41. As the United States District Court stated in *Presbyterian Church of Sudan v. Talisman Energy Inc.*, 244 F. Supp. 2d 289 (S.D.N.Y. 2003):

[S]tates may exercise universal jurisdiction over acts committed in violation of *jus cogens* norms.

. . . . These acts are offenses of universal concern by virtue of the “depths of depravity the conduct encompasses, the often countless toll of human suffering the misdeeds inflict upon their victims, and the

consequential disruption of the domestic and international order they produce.” *Tachiona v. Mugabe*, 234 F.Supp.2d 401, 415-16 (S.D.N.Y. 2002).

CONCLUSION

Religious freedom is a critical cornerstone of a free society. It enables people to take different approaches to life’s mysteries, to explain life’s meaning and import based on different accounts of universal truth and religion, and to follow diverse paths in fulfilling and responding to their different beliefs and explanations

Falun Gong believers in China are being deprived of their right to religious freedom. They have not committed any crimes. Nonetheless, they are being subjected to torture, forcible conversion practices, and other egregious forms of ill treatment and persecution.

We at Human Rights Law Foundation call upon all the good people of the world to do whatever they can to ensure the release of all Falun Gong believers detained in Re-education through Labor Centers and other persecutory camps in China based solely on their practice and promotion of their religion.