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**THE PERSECUTION OF FALUN GONG PRACTITIONERS IN CHINA:
SPECIFIC POINTS IN DEFENSE OF JANE AND JOHN DOE
AND PERSONS SIMILARLY SITUATED IN CHINA**

THE PERSECUTION OF FALUN GONG PRACTITIONERS IN CHINA

PART ONE

Specific Points in Defense of John and Jane Doe and Persons Similarly Situated in China

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 severe 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 first in a series, examines the legality and legitimacy of the persecutory campaign waged against members of the Falun Gong religion in China and argues that the punitive measures carried out against them are (1) without legal basis, justification, or merit under Chinese law, (2) inconsistent with international human rights norms and directly violate international human rights law, and (3) qualify as crimes under Chinese law.

The second report in this series will look at the role of the Chinese Communist Party in the anti-Falun Gong persecutory campaign, and argues that (1) the Party initiated this and other persecutory campaigns in spite of objections from Chinese government leaders and officials who, to the extent that they participated, (2) did so under duress and without legal authority since they acted (a) outside of the powers and authority reserved for the different branches of government in China and (b) violated the individual rights reserved for the Chinese people. Related reports will provide a legal defense of the acts of Falun Gong believers who are detained and persecuted in China based on their practice or promotion of their religious beliefs.

BACKGROUND INFORMATION

The Chinese Constitution enumerates clearly those rights that are reserved for the people of the People’s Republic of China. Articles 35-36 set forth the individual rights of the Chinese people and include freedom of religion and freedom of belief. Article 36 of the

Constitution, which has been interpreted to prohibit the enactment of laws that demonstrate bias toward any religions or religious beliefs and to protect religious believers' right to both practice and promote their religion, states: "The Citizens of the People's Republic of China enjoy freedom of religious belief. No state body, social group or individual may force citizens to believe or not believe in any religion, or discriminate against any citizen based upon his or her religious or non-religious beliefs."

The Chinese Constitution additionally reserves different powers to the different branches of government. In this regard, Articles 58, 62 and 67 of the Constitution reserve the lawmaking powers of the government to the National People's Congress (hereafter NPC) and its Standing Committee. In addition, Article 8(v) of the Legislation Law adopted by the NPC states that only the NPC or the NPC Standing Committee may pass laws that deprive Chinese citizens of their civil or political rights or which coercively restrict their fundamental freedoms. While the NPC Standing Committee issued a resolution in 1981 titled the "Resolution to Strengthen Judicial Interpretations," that resolution limited judicial interpretations to the judiciary's adjudicative functions and prohibited the judiciary's making of secondary or new laws through its interpretative operations. See, Jianfu Chen, *Chinese Law: Context and Transformation*, Martinus Nijhoff Publishers, Seiden 1999, p. 106 ff.

Chinese law includes several other legal codes. These include the Criminal Law and Criminal Procedure Law (CPL). According to the CPL, persons accused of crimes are protected from arbitrary treatment under the law through a set of provisions that protect the right of the Chinese people to be free from detention in the absence of an incarceration pending trial or other disposition of a criminal charge. Moreover, criminal sentences and guilty verdicts must be based on evidence that is verified and sufficient under the legal standards of the offense and based solely on the law. See, Articles 12 and 162 of the CPL, respectively. There is no provision under the Criminal Law or the CPL that permits judges to decide cases based on orders issued by the Chinese Communist Party or by any other entity, governmental or otherwise. Nor are there provisions permitting the deprivation of liberty through the Re-education through Labor System.

According to the Criminal Law, all state personnel are legally obliged to act within the scope of their authority under the law. Acts taken outside of the scope of their legal authority are not only unlawful but in some circumstances in violation of the Criminal Law. For example, Article 251 of the Criminal Law states: "State functionaries who deprive citizens of their freedom of religious belief ... will be sentenced to criminal detention or imprisonment."

Notwithstanding the provisions of the Chinese Constitution and Chinese law, the Chinese Communist Party, through its political-legal committees and through organizations within every law enforcement agency and court, controls the operations of official law enforcement at every level of the government. See, 2006 "Written Statement of Jerome Cohen," delivered at Congressional-Executive Commission on China, and available at <http://www.cecc.gov/pages/hearings/2006/20060920/cohen.php>. Even the criminal defense bar in China is monitored and controlled by the authorities to ensure that they do not accept politically sensitive cases, that they discuss all large cases in advance with "relevant judicial departments," including court officers, prosecutors and the police,

“honestly report the situation to them,” and “actively assist the [aforementioned] judicial organs to clarify the facts” of the case before proceeding to trial. See, *id.*

This is all the more true in politically sensitive cases like those of Falun Gong believers, where the Party’s Political and Judicial Committee typically hosts pre-arrest meetings to determine ahead of time the nature of the charge, the verdict, sentence and method of punishment (see discussion *infra*, at pages 4-6). Furthermore, defense counsel are forbidden to accept Falun Gong cases or else required to assist the prosecution by creating the appearance of a defense (see discussion *infra*, at pages 4-6). In these cases, the legal bases of the punitive measures and sanctions are overly vague and contain no clear standard of proof – and deliberately so, as many China legal experts have also observed. See, e.g., “China’s Death Penalty Reforms: an HRIC Issues Brief, available at www.hrichina.org/public/PDFs/CRF.2.../CRF-2007-2_Penalty.pdf

ANALYSIS

I. The Punitive Measures Carried Out against Falun Gong Believers in China Are without Legal Basis, Justification or Merit under Chinese Law.

The punitive measures carried out against Falun Gong believers in China include arbitrary arrest and detention, torture, disappearance and/or extrajudicial killing.

As the Falun Gong case records make clear, the Chinese Communist Party itself or through agents in the people’s courts and prosecutorial offices have defended the arrests and detention of Falun Gong believers as based upon the following documents:

(1) Article 300 of the Criminal Law, revised in 1997.

(2) The October 30, 1999 Decision of the NPC Standing Committee, classified under the “Information System of China’s Laws and Regulations.”

(3) The October 8 and 9, 1999 interpretation by the Supreme People’s Court and Procuratorate of Article 300 of the Criminal Law, entitled “Interpretation by Supreme People’s Court and Supreme People’s Procuratorate.”

(4) The July 22, 1999 Ministry of Civil Affairs “Decision to Ban the Research Society of Falun Dafa.”

(5) The July 22, 1999 Ministry of Public Security “The Announcement of the Ministry of Public Security.”

In addition, the Chinese Communist Party has relied on the following internal memorandum or notices in its application of the above referenced punitive measures:

(1) The July 1999 Ministry of Justice Notice requiring all law firms to seek approval for requests to represent or consult with Falun Gong believers and requiring that any legal defense provided to those seeking services be consistent with the Chinese Communist Party’s policies towards Falun Gong.

(2) The Supreme People's Court and Supreme People's Procuratorate January 14, 2000 "Proposals Concerning Issues Related to the Current Handling of Falun Gong Criminal Cases," which required that key officials at the Party's Political and Judicial Committee hold regular pre-arrest meetings with key officials at the People's Procuratorate, the Public Security Bureau and the People's Courts to discuss and decide the charges to be brought, if any, the appropriate form of detention, and other aspects of a Falun Gong-practicing citizen's sentence, prior to his apprehension and the imposition of sanctions.

Importantly, as indicated just below, all of these documents deprive Falun Gong believers of rights guaranteed to them under Chinese law, pose serious jurisdictional obstacles and/or contravene the lawmaking functions of the National People's Congress.

First, Article 300 of the Criminal Law, which does not mention the Falun Gong religion by name, on its face violates Article 36 of the Chinese Constitution by treating practitioners of some religions, and most notably Falun Gong, as not entitled to the constitutionally guaranteed freedom of religion. In the relevant section, Article 300 says that anyone who uses a "deviated religion" or a "superstition" or a "secret or superstitious sect" to undermine the enforcement of the law, will be subjected to punitive sanctions that include terms of isolation, torture and forced labor in China's most severe persecutory camps, i.e. its so called prisons.

In addition to violating Article 36 of the Chinese Constitution, Article 300 does not provide any definition of such terms as "deviated religion," "superstition," "secret sect," or "superstitious sect." These terms by themselves have no definitional value or precision. Nor does Article 300 explain what it might mean to practice a deviated religion for the sole purpose of undermining the enforcement of Chinese law, nor what determinants might distinguish those whose practice of their religion serves spiritual ends from those whose religious practice is intended to undermine the enforcement of Chinese law. As Attorney Wang Yonghang has aptly noted in his paper entitled "To the Highest Judicial Organ People's Supreme Procuratorate and the People's Supreme Court," (available at <http://www.epochtimes.com/gb/8/8/20/n2198340.htm>), Article 300 does not meet any of the requirements of a legal document under Chinese law insofar as it is lacking in rigor, lacking in clarity, and precision, and is for those reasons, vague. As such it is not enforceable as it can be applied to virtually anyone who exhibits any sort of religious or spiritual inclination or affinity in China.

Second, the October 30, 1999 Decision of the National People's Congress Standing Committee is similarly unconstitutional. Like Article 300 of the Criminal Law, it was established to punish what it calls the crime of "using a cult organization to undermine national laws." Thus, it also violates Article 36 of the Constitution. In addition, as Attorney Wang Yonghang has also noted in his paper entitled "To the Highest Judicial Organ People's Supreme Procuratorate and the People's Supreme Court," although it was passed by the National People's Congress Standing Committee as an "interpretation of the law," it does not interpret the law, but rather repeats the vague provisions of Article 300 with a few slogans that underscore the political and ideological purpose of the "October 30, 1999 Decision. Thus, it also fails to provide any definition of such terms as "deviated religion," "superstition," "secret sect," or "superstitious sect." Nor does it explain what it might mean

to practice a deviated religion for the sole purpose of undermining the enforcement of Chinese law, nor what determinants might distinguish those whose practice of their religion serves spiritual ends from those whose religious practice is intended to undermine the enforcement of Chinese law.

As such it is not enforceable as it too can be applied to virtually anyone who exhibits any sort of religious or spiritual inclination or affinity in China.

Third, the October 8 and 9, 1999 Supreme People's Court and Supreme Procuratorate's interpretation of Article 300 of the Criminal Law, entitled "Judicial Explanations on Crimes by Cults," similarly violates Article 36 of the Chinese Constitution as it also purports to criminalize the practice of one of China's major and popular religions, thereby denying Chinese citizens who practice the religion of Falun Gong access to rights and protections guaranteed to them by the Chinese Constitution. In addition, by adding new provisions to Article 300 that restrict the fundamental freedoms and rights of religious believers in China, the Court and Procuratorate are making new laws and usurping the lawmaking powers reserved to the National People's Congress and its Standing Committee, which alone may pass laws that coercively restrict the fundamental freedoms of the Chinese people. As new or secondary law created outside of and beyond the jurisdictional authority ceded to the Supreme People's Court under Chinese law, the October 8 and 9, 1999 "Judicial Explanations," may not serve as legal grounds for punitive measures carried out against members of the religion of Falun Gong or of any other so-called disfavored religion in China.

Fourth, the July 22, 1999 Ministry of Civil Affairs "Decision to Ban the Research Society of Falun Dafa" not only violates Article 36 of the Chinese Constitution by treating Falun Gong believers as not entitled to the same rights and protections available to other Chinese citizens under the Constitution, but it raises serious jurisdictional problems in that the Ministry of Civil Affairs' authority does not include the banning of public or private entities including, but hardly limited to, the Research Society. Moreover, insofar as the ban of the Research Society characterizes its activities as "illegal," the Ministry is usurping the lawmaking function reserved for the National People's Congress under its "Legislative Law," which states that only the NPC and its Standing Committee may pass laws that deprive Chinese citizens of their civil or political rights. As an unconstitutional and illegal ban, it may not serve as a legal basis for punitive measures carried out against members of the Falun Gong religion in China.

Fifth, the July 22, 1999 Ministry of Public Security "Announcement of the Ministry of Public Security," itself similarly violates Article 36 of the Chinese Constitution by treating Falun Gong believers as not entitled to the same rights and protections available to all other religious believers. Moreover, it also raises serious jurisdictional questions insofar as it likewise usurps the lawmaking authority reserved for the National People's Congress, as indicated in the preceding paragraph. As a result, it is similarly unconstitutional and unlawful and may not serve as a legal basis for punitive measures carried out in China against members of the religion of Falun Gong.

In addition, the internal notices that the Chinese Communist Party and its agents have relied upon, as guidelines for their application of the punitive and persecutory measures against Falun Gong believers, similarly violate Chinese law:

(1) The July 1999 and subsequent restrictions placed on Falun Gong practitioners' right to select their own legal counsel is based solely on their practice of their religion. Consequently, it violates not only their right to legal counsel under Article 96 of the CPL, but also violates their right to freedom of religion under Article 36 of the Constitution.¹

(2) The January 14, 2000 Notice promulgated by the Supreme People's Court and Supreme People's Procuratorate not only violates Falun Gong believers' right to religious freedom under Article 36 of the Constitution, but violates their right under Article 134 of the Chinese Code of Criminal Procedure to have the decisions to arrest or release, to indict, to prosecute, or to dismiss their cases made by an independent-minded prosecutor and based upon purely legal considerations without interference or intimidation from the Party's Political and Judicial Committee or other Party leaders.

Since the range of punitive actions that have been carried out against Falun Gong believers, including those discussed *supra*, at page 4, had their basis in decisions and provisions that violate Chinese law, these punitive measures are equally without legal basis, justification, or merit.²

II. The Punitive Measures Carried Out against Falun Gong Believers in China are Inconsistent with International Human Rights Norms and Chinese Law.

The punitive measures carried out against Falun Gong believers in China, including torture, arbitrary and wrongful detentions, sham trials, forced disappearances and extrajudicial killing, are inconsistent with and violate international norms and Chinese law.

A. The Application of Torture

The prohibition against torture is recognized in major international instruments including the Universal Declaration of Human Rights, Dec. 10, 1948, art. 5, G.A. Res 217A (III), U.N. Doc. A/810, at 71 (1948) ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."); and the International Covenant on Civil and Political Rights ("ICCPR"), adopted in 1966. Similarly, the U.N. Special Rapporteur on Torture, established by the U.N. Commission on Human Rights, has issued many official statements condemning instances of torture.

¹ The Chinese Communist Party also and regularly deprives citizens of their right of access to legal counsel through the "state secret exception" which deprives disfavored groups in China of the rights guaranteed to the Chinese people under their Constitution.

² China has not attempted to justify its reliance on forced conversion processes, other forms of torture, forced disappearance or extrajudicial killing to eradicate the religion in China. Instead, as indicated *infra* at page 8, in its most recent report to the United Nations Committee Against Torture, and elsewhere in the public domain, China has stated that no form of physical violence is tolerated or condoned in the treatment of detained or arrested people.

In addition, the European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”), which has been ratified by 43 states, provides that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.” European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 3, 213 U.N.T.S. 221. See also, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Nov. 26, 1987, E.T.S. No. 126. The European Court of Human Rights, which reviews compliance with the European Convention, has indicated that the prohibition against torture is one of the most fundamental values of a democratic society. This norm is non-derogable. As the European Court noted in *Selmouni v. France*, 29 E.H.R.R. 403, 440 (1999), “[e]ven in the most difficult circumstances, such as the fight against terrorism and organized crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment.”

Torture is also illegal under Chinese law. China ratified the Convention against Torture in 1981. In its most recent report to the United Nations Committee Against Torture, the PRC stated that no form of physical violence is condoned in the treatment of detained and arrested persons.³ The report also stated that torture and other cruel, inhuman or degrading treatment or punishment is strictly prohibited.⁴ Furthermore, the report states “[i]t is strictly forbidden to use torture in a prison. No one is ever permitted to torture prisoners under any circumstances or for whatever reason.”⁵

Ironically, the public pronouncements of the PRC appear consistent with these international legal standards. In the PRC’s letter to the United States District Court of the Northern District of California, it likewise stated, “[p]rohibition of torture has always been a consistent position of the People’s Republic of China.” Statement of the Gov’t of the P.R.C. on “Falun Gong” Unwarranted Lawsuits, at 3.19.⁶ However, notwithstanding these public pronouncements and legal prohibitions, torture has been the “instrument” of choice in the campaign’s concerted effort to purge China of the Falun Gong religion and its adherents.

The most commonly accepted definition of torture is that found in the Torture Convention. Article 1 of the Torture Convention defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him (or a third person) information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when pain and suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or person acting in an official capacity. Torture Convention, at art. 1(1). *Cf.* Torture Victim Protection Act, 28 U.S.C. Sec. 1350 note (Supp. V 1993).

³ See, *Third Periodic Reports of States Parties Due in 1997: China*, U.N. Comm. Against Torture, 24th Sess., at ¶ 155, U.N. Doc. CAT/C39/Add.2 (2000).

⁴ *Id.* ¶ 158.

⁵ *Id.* ¶ 29.

⁶ See, *Doe v. Qi*, 2004 WL 2901626 [(N.D.Cal.2004)].

As documented and reported extensively by the U.S. Department of State and other highly credible sources, Falun Gong adherents have been subjected to torture on a regular basis as part of an ongoing campaign initiated in 1999 to eliminate the practice of Falun Gong in China. Indeed, as indicated below, notwithstanding the universal nature of the prohibition against torture and its illegality under Chinese law, the most commonly used form of persecution against persons of the Falun Gong faith is torture—the application of intense and ongoing physical and psychological pain and humiliation, geared to coerce the individual women and men who practice Falun Gong to publicly relinquish their beliefs and denounce the practice.

Among the methods of torture deployed to force especially female Falun Gong practitioners to relinquish their belief or religion are: “police beatings of female practitioners’ breasts and genital areas; and the rape and gang rape of female practitioners. It should be noted that the vast majority of Falun Gong practitioners are women. In addition, police have stripped off their clothes and thrown them into prison cells filled with male prisoners who have then raped them. They have inserted electrical batons into practitioners’ vaginas to shock them. They have bundled four toothbrushes and inserted them into female practitioners’ vaginas and rubbed and twisted the toothbrushes, and hooked female practitioner’s private parts with iron implements.” See, Report of Ms. Radhika Coomaraswamy, the Special Rapporteur on Violence against Women, (Office of the High Commissioner on Human Rights, 57th Session, See also, Report of UN Special Rapporteur, Sir Nigel Rodley, (document no. E/CN.4/2001/73/Add.1E/CN.4/2001/66, January 2001), at ¶¶ 237, 238, and especially at ¶ 246 which states that “[p]ractitioners are said to be put under pressure to renounce their beliefs... [they] are subjected to public humiliation for their membership in Falun Gong... [m]any are said to have suffered torture or ill treatment.”).

Even more recently in March of 2006, UN Special Rapporteur Dr. Manfred Novak reaffirmed earlier findings that torture remained widespread. Novak reported that beatings with fists, sticks and electric batons continued to be the most common forms of torture. He also found that prisoners continued to suffer cigarette burns, prolonged periods of solitary confinement, and submersion in water or sewage, and that they were made to hold positions for long periods, were denied medical treatment, and were forced to do hard labor. According to Novak, officials specifically targeted house church groups, Falun Gong adherents, Tibetans, and Uighur prisoners for abuse. See, March 10, 2006, “Mission to China” Report (available at http://ap.ohchr.org/documents/dpage_e.aspx?m=103).

The extent and seriousness of the persecution and abuse that is targeted against Falun Gong practitioners, and their supporters, at both the national level and local levels throughout China has also been confirmed and extensively documented by the U.S. Government in its Country Reports on Human Rights Practices, and most especially in its Annual Reports on International Religious Freedom, as well as in reports issued by nongovernmental human rights monitoring groups such as Amnesty International and Human Rights Watch. For example, the Annual Report on International Religious Freedom for 2001, issued by the U.S. Department of State in December, 2001, includes numerous specific references to the major human rights abuses and violations being committed against Falun Gong practitioners in an effort to eliminate them and totally eradicate the presence of Falun Gong in China. The report describes the “crackdown” against the Falun Gong as tied to the government of China’s effort “to control and regulate religious groups to prevent the rise of groups or sources of authority outside the control of the Government and the

Chinese Communist Party.” (Page 122.) It notes that “approximately 100 or more Falun Gong adherents have died in detention since 1999” (id.); that “many of their bodies reportedly bore signs of severe beatings and/or torture;” that “many thousands of individuals have been serving sentences in reeducation-through-labor camps;” that “hundreds of its practitioners have been confined to mental hospitals;” that “there have been numerous credible reports of unrepentant Falun Gong practitioners being confined in psychiatric institutions;” that “police often used excessive force when detaining peaceful Falun Gong protesters, including some who were elderly or who were accompanied by small children;” and that “torture (including by electric shock and by having hands and feet shackled and linked with crossed steel chains)” was widely reported (page 131). The State Department Report also notes that in “September 2000 the Secretary of State designated China a country of particular concern under the International Religious Freedom Act for particularly serious violations of religious freedom,” including its treatment of Falun Gong practitioner (page 133).

The continued application of these persecutory practices to those who refuse to renounce their Falun Gong faith has been affirmed in successive U.S. Department of State human rights reports. The U.S. Department of State 2006 Human Rights Country Report (available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78771.htm>) had this to say about the ongoing nature of the torture and persecution of detainees in China, including especially those of the Falun Gong religion or faith:

Police continued to detain current and former Falun Gong practitioners and place them in reeducation camps. Police reportedly had quotas for Falun Gong arrests and targeted former practitioners, even if they were no longer practicing. The government continued its use of high-pressure tactics and mandatory anti-Falun Gong study sessions to force practitioners to renounce Falun Gong. Even practitioners who had not protested or made other public demonstrations of belief reportedly were forced to attend anti-Falun Gong classes or were sent directly to reeducation-through-labor camps. These tactics reportedly resulted in large numbers of practitioners signing pledges to renounce the movement.

The abusive nature of the campaign against Falun Gong is also made clear by the U.S. Department of State’s International Religious Freedom Report for 2006, where, for example, it notes emphatically that “Falun Gong practitioners continued to face arrest, detention and imprisonment, and there have been credible reports of deaths due to torture and abuse. Practitioners who refuse to recant their beliefs are ... subjected to harsh treatment in prisons, reeducation through labor camps, and extra-judicial “legal education” centers, while some who recanted returned from detention.”

Several United States Circuit Courts have found that torture is an ongoing measure used against Falun Gong adherents. For example, the 7th Circuit Court of Appeals based its decision to grant asylum to petitioner Falun Gong practitioner Iao on the fact that “the [US] government acknowledges that China persecutes adherents to Falun Gong ... [and that] the Chinese government’s determination to eradicate it root and branch--is mysterious, but undeniable.” See, *Iao v. Gonzales*, 400 F. 3d 530 (7th Cir. 2005).

Relevantly, in one of the few Falun Gong cases to reach a consideration of the liability of a defendant implicated in the persecution, the U.S. district court judge found that Liu Qi, the former mayor of Beijing, was responsible for the torture of two of the plaintiffs.⁷ The legal ruling reached by the court against defendant Liu Qi was based on the plaintiffs' claim that 1) they were subjected to torture while under the physical custody of the PRC police and security forces, (2) they were also subjected to severe pain and suffering, and (3) the acts were perpetrated for such purposes as obtaining information, intimidation, punishment or discrimination.

In addition, the internationally well-known attorney Gao Zhisheng visited the homes of dozens of Falun Gong practitioners in China who told him of their subjection to severe torture in re-education centers, brainwashing centers and labor camps based solely on their refusal to renounce their belief in the Falun Gong religion. This is what the man known as the "conscience" of China had to say about these practices:

Immoral acts that shocked my soul; the most [being] ... the lewd yet routine practice of attacking women's genitals by 610 Office staff and the police. Almost every woman's genitals and breasts or every man's genitals have been sexually assaulted during the persecution in a most vulgar fashion. Almost all who have been persecuted, be they male or female, were first stripped naked before any torture.⁸

The facts set forth in all the testimonials provided by Falun Gong targets of persecution in China include similarly graphic descriptions of applications of torture to force them to renounce their religious beliefs and publicly denounce the Falun Gong religion. These testimonials are available upon request from the Human Rights Law Foundation.

B. Arbitrary Arrest and Detention.

Few concepts are more fundamental to the principle of ordered liberty than the right to be free from arbitrary detention. It affirms an individual's right to liberty and restricts the government's ability to infringe on that liberty interest. This prohibition is not only a core feature of the United States Constitution; it has been affirmed in the constitutions and laws of nations around the world including the constitution and law of China.

The Constitution of the People's Republic provides that the freedom of the person of Chinese citizens is inviolable and may not be abridged inconsistently with relevant standards of Chinese law. Article 37 of the Chinese 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

⁷ See, *id.* at note 6.

⁸ THE EPOCH TIMES, *Why One of China's Top Attorneys Broke with the Communist Party*, (December 16, 2005) (letter by Gao Zhisheng), available at <http://www.theepochtimes.com/news/5-12-16/35876.html>.

prohibited.”). Article 38, more particularly, prohibits the use of the law to falsely charge or frame the Chinese people.

Significantly, the prohibition against a 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, evidence that is verified and sufficient under the legal standards of the charge and based solely on the law). In addition, the Law of the People’s Republic of China on Administrative Punishment, which permits the extrajudicial application of a limited range of penalties, strictly prohibits the use of China’s (extrajudicial) administrative system to restrict the personal freedom or liberty of the Chinese people, thereby emphasizing the prohibition against a detention in the absence of a pending trial or based on a post-trial conviction and sentence. See, e.g., Article 10. Equally significant is the right to access to legal counsel that is recognized and affirmed in Article 96 of the CPL.⁹

This basic human right has also been recognized by almost every multilateral agreement of the twentieth century.¹⁰ The International Covenant on Civil and Political Rights provides that “[e]veryone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” ICCPR, at art. 9(1). Significantly, Article 9(5) adds that “[a]nyone who has been the victim of an unlawful arrest or detention shall have an enforceable right to compensation.” The UN Human Rights Committee has stated that Article 9 is applicable to all deprivations of liberty. Human Rights Committee, General Comment No. 8 (1982). Several other UN organizations have also affirmed the prohibition against arbitrary detention. For example, the UN Commission on Human Rights established a Working Group on Arbitrary Detention in 1991 to investigate cases of detention imposed arbitrarily or otherwise inconsistently with relevant international standards. See, UN Commission on Human Rights Res. 1991/42.

The prohibition against arbitrary detention is recognized in each of the regional human rights systems. See, European Convention for the Protection of Human Rights and Fundamental Freedoms, at art. 5(1) (“Everyone has the right to liberty and security of the person.”); American Convention on Human Rights, at art. 7(3) (“No one shall be subject to arbitrary arrest or imprisonment.”); African Charter on Human and Peoples’ Rights, at art. 6 (“Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”). The regional tribunals have made similar findings. In *Quinn v. France*, 21 E.H.R.R. 529 (1995), for example, the petitioner was detained by French authorities for a period of 11 hours in the absence of lawful authority. The European Court determined that this detention was in violation of Article 5 of the European Convention. See also, *Litwa v. Poland*, 33 E.H.R.R. 1267 (2000) (detention of six hours and thirty minutes constitutes a violation of Article 5 even where detention was a “lawful” option under domestic law, but unnecessary under the

⁹ See qualification indicated *supra*, at note 1.

¹⁰ William J. Aceves, “Arbitrary Detention in the United States and the United Kingdom – Some Post 9/11 Developments,” *ACLU International Civil Liberties Report*.

circumstances). The Inter-American Commission on Human Rights has made similar determinations. In *Loren Laroye Riebe Star v. Mexico*, three individuals residing in Mexico were detained without access to a lawyer or judicial remedies, each for periods of less than 24 hours. They were then summarily removed from Mexico. The Inter-American Commission determined that these acts constituted arbitrary detention in violation of Article 7 of the American Convention. *Loren Laroye Riebe Star v. Mexico*, Case 11.610, Inter-Am. C.H.R. Report No. 49/99 (1999), at paragraph 41.

The Working Group on Arbitrary Detention, established by the UN Commission on Human Rights in 1991 to investigate cases of detention imposed arbitrarily or otherwise inconsistently with relevant international standards (See, U.N. Commission on Human Rights Res. 1991/42) classifies cases of arbitrary detention in the following three legal categories:

- (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);
- (b) When the deprivation of liberty results from people exercising the rights or freedoms guaranteed by Articles 7 (equal protection before the law), 13 (freedom of travel), 14 (freedom of asylum), 18 (freedom of thought, religion and conscience), 19 (freedom of opinion and expression), 20 (freedom of peaceful assembly and association) and 21 (right to suffrage and participation in governance) of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
- (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III). Report of the Working Group on Arbitrary Detention, U.N. Doc. E/CN.4/1998/44 (1997).

Despite such consensus, and as is indicated below, members of the Falun Gong religion (and of other disfavored groups in China) have been detained in Re-education through Labor camps, without access to counsel, trial or any sort of hearing, or any other legal protections guaranteed to the Chinese people under the Constitution and law of China. In addition, those Falun Gong believers who have been detained through the so-called “judicial” system have similarly been deprived of access to the fundamental right of all people to be free from arbitrary or wrongful detention.

1. Re-education Through Labor

Of particular concern to China experts, the legal community at large and human rights groups around the world – including the United Nations Special Rapporteurs – has been the extensive use of the form of administrative detention referred to as “Re-education through Labor.”

This practice clearly meets the definition of “arbitrary detention” under Chinese and International legal standards.

Under international legal standards, it violates the first, second and third categories of the UN Working Group classification system: (1) the deprivation of liberty is always without basis in law; (2) the detention always results from the detainees’ exercise of their rights of freedom of thought, conscience and religion (Article 18 of the Universal Declaration of Human Rights), freedom of opinion and expression (Article 19 of the UDHR), and their right to freedom of peaceful assembly and association (Article 20 of the UDHR); and (3) the detainee is always deprived of his right to a trial or a hearing of any sort (a category III violation). Under Chinese law, it violates all legal prohibitions against arbitrary arrest and detention under the Constitution, the CPL and the Law of the People’s Republic of China on Administrative Punishment.

Indeed, as noted above, renowned civil rights attorney Gao Zhisheng has made clear in his comments about the practice of sending Falun Gong practitioners to labor camps through the “Re-education through Labor System” in China how this practice not only violates Chinese law, but also meets the definition of “arbitrary detention” under all three UN classifications. The practitioners’ deprivation of liberty is without legal justification since it (1) is carried out without any legal basis or justification in direct violation of the Chinese Constitution and other provisions of the domestic law of China, (2) is based upon the individual’s expression of his or her right to religious freedom, belief and conscience, and (3) provides no access to any sort of trial or hearing whatsoever:

The arbitrary sentencing of Falun Gong practitioners to labor camps in some places has reached a painful level, and the reasons used include ‘refusal to reform’ or ‘refusal to convert.’... What should be pointed out here in particular is that the very existence of labor camps and their sentencing practices have clearly violated Articles 5, 22, 37, and 38 of the Constitution, Article 10 of the Law of the People's Republic of China on Administrative Punishment, and Article 8 of the Legislative Law. A citizen's personal freedom is deprived for years, and the deprived is not given any procedures for appeal, defense, or trial. The person is sent to labor camps after receiving a sentencing decision. This is unthinkable in a lawful, civilized society. With freedom deprived, all channels of assistance that the victim is entitled to have become hypothetical.... As time goes on, the law enforcement officials regard violation of the rules as something quite common.

See also, Report of Special Rapporteur Asma Jahangir (General Assembly 59th Session, document number A/59/366, 16 September 2004, which references several cases where Falun Gong believers were subjected to arbitrary detention without formal notice of the charge, access to a trial or hearing, legal counsel, or judicial review under China’s Re-education through Labor System. See, in addition, Report of Special Rapporteur Manfred Novak (General Assembly 62nd Session, document number E/CN.4/2006/6/Add.6, 10 March 2006), which notes in graphic detail how the Re-education through Labor System in China operates as a deprivation of liberty through sanctioning the peaceful exercise of expression, assembly and religion without access to any sound legal basis or justification.

2. Sham Trials and Sentencing Procedures

Those Falun Gong believers who do not recant in Re-education through Labor (“RTL”) camps are sent by the Party’s Political-Legal Committee to persecutory camps where they are subjected to torture, forced labor and other forms of ill treatment. That this is carried out with the assistance of the people’s courts and prosecutors permits the Party to provide the appearance of due process notwithstanding its conspicuous absence in all of these “show” or “sham” trials and “sentencing” procedures.

The lack of due process within the more punitive “judicial” system is especially well illustrated by the January 14, 2000 Supreme People’s Court and Supreme People’s Procuratorate “Proposals Concerning Issues Related to the Current Handling of Falun Gong Criminal Cases.”¹¹ Section five of this document makes clear that the key officials of the prosecutorial and judicial branches must “exchange opinions and cooperate with each other in handling these cases ... agreement on facts, witnesses and charges shall be reached beforehand. Different opinions shall be submitted to the Political and Judicial Committee for coordination to ensure that disagreements are resolved before prosecution and trial.” In addition, this circular makes clear that the criminal conduct of Falun Gong practitioners amounts to no more than the practice of their religious and spiritual beliefs.¹²

The lack of any type of due process protections for Falun Gong believers under this system is also clear from other Party-mandated orders that state (1) that defense lawyers may not enter pleas of “not guilty,” attempt to dispute the Party’s characterization of the religion as an “evil cult,” and instead must limit their legal representation to a few questions about minor details of evidence that in no way obstruct or interfere with the prosecutor’s case;¹³ and (2) that judges must enter rulings of guilt in all Falun Gong cases.¹⁴

Thus, several human rights groups and UN Special Rapporteurs have not only expressed concerns over reports indicating that few Falun Gong practitioners have been brought to trial and formally charged; they have additionally expressed concerns that those who have been formally charged have been subjected to unfair trials resulting in lengthy prison sentences.¹⁵

¹¹ This internal document is available upon request.

¹² See, *Dangerous Meditation*, “Laws and Regulations Used to Crackdown on Falun Gong” at p.5, where Human Rights Watch makes make clear that no Falun Gong practice, no matter how limited or seemingly innocuous, could escape punishment. The Human Rights Watch report is available at <http://hrw.org/reports/2002/china/China0102-02.htm>.

¹³ The authority for this regulation is available upon request. It is also referenced in Chinese in an article, entitled, 辽宁丹东市法院阻挡律师辩护, that is available at <http://www.minghui.ca/mh/articles/2009/7/29/205530.html>.

¹⁴ See, “Requirements Regarding Prevention and Control in Response to the Development of Threatening Situations.” It is available at <http://www.zhuichaguoji.org/cn/case/LiaoNingShenYang610.htm>.

¹⁵ See, for example, *Yakin Erturk, Report of the Special Rapporteur on Violence Against Women*, U.N. ESCOR, 61st Sess., Provisional Agenda Item 12, at 18, U.N. Doc. E/CN.4/2005/72/Add.1 (2005) at 19.

All of the Falun Gong refugees who have reported periods of detention or incarceration to the Human Rights Law Foundation, regardless of whether they were detained through the Re-education through Labor System or the criminal justice system, experienced detentions that are arbitrary under international legal standards. A few of their accounts follow:

Lizhi He survived torture and a three-and-a-half year prison term. He was arrested several times before he was imprisoned. His crime was simply having admitted he practiced Falun Gong and refusing to give it up. In prison he was tortured, forced to watch other practitioners being tortured, and experienced intense brainwashing methods based solely on his refusal to abandon his belief in the tenets of the religion of Falun Gong. Below is his account of the first detainment:

“On March 4, 2000, one day before the National Conference of People’s Congress, my wife went to Tiananmen Square to appeal for Falun Gong. She did not return. I was worried about her safety and went there to find her. I was detained upon my entrance to the Square after I replied “Yes” when a policeman queried if I was a Falun Gong practitioner.

I was held in a detention center without formal charging papers – purportedly for “disturbing social order and security” until the national conference finished two weeks later. Despite such arbitrary abduction and 14 day physical torture during detention intended to force me to give up Falun Gong, I refused to state that I would no longer go to Tiananmen Square or appeal for Falun Gong. As a result, I was transferred to my workplace for extended detention leading to a one-week-long house arrest.”

Wang Yuzhi was detained three times: in Harbin Second Detention Centre, Harbin Wanjia Forced Labor Camp (one of the most notorious in persecuting Falun Gong practitioners, and with the highest death rate during detention) and Harbin Wanjia labor Camp’s Hospital. During the detention she was beaten, tortured, brainwashed, and force fed to the point where her eyes and nose were covered with blood and pus, which caused her to lose sight in one of her eyes.

“All practitioners detained in the labor camp had to endure forced brainwashing. Every day, they try to teach us “Falun Gong is evil.” We had to sit in one position while forced to watch the propaganda on a TV screen, or listen to the guards for more than 8 hours, without being allowed any movement. Sometimes, a brainwashing session would last for days and we were not allowed to sleep for the entire period. Often, we’re not even allowed to use the restroom. The beating was a daily routine. The purpose was to force us to give up the practice of Falun Gong.”

Jing Cai and her sister **Jing Tian** were detained in detention centers and forced labor camps several times. They were kidnapped and kept without their family knowing their whereabouts. The torture in these places caused their medical situation to deteriorate so they were detained at the hospital at times. In a show trial in 2002, both of them as well their brother and other practitioners were given long prison sentences.

“On October 25, 2002, the People’s Court of Shenyang High-Tech Park illegally tried us in secret at the Middle Court of Shenyang (because as a new district Shenyang High-Tech Park had no office building for its court at that time). The six practitioners in the illegal trial were: Zhang Huiyu, Jin Dengei, Jing Tian, Jing Cai, Jing Yu, and Guan Yuling. No family members were allowed to sit in, although they had been promised the choice to be present in the proceedings. The public gallery was filled up by officials from the

police, inspecting organization, courthouse, and judicial organizations. Lawyers were forbidden to plead not guilty and could only plead guilty. Therefore, I denied the so-called defense. They illegally sentenced me to 13 years of imprisonment, Zhang Huiyu to 15 years, Jin Dewei to 14 years, Jing Tian to 13 years, Jing Yu to 10 years, and Guan Yuling to 8 years. The trial was only a show, as the sentences had been predetermined, and we were not allowed to defend ourselves. When we tried to defend ourselves, we were frequently stopped, and our refusal to admit guilt was regarded as contempt of the court.”

In addition, several of those who have reported to the Human Rights Law Foundation periods of detention or incarceration were also detained arbitrarily under Chinese law. These include several individuals who served as plaintiffs in the aforementioned lawsuit filed against the former major of Beijing, Liu Qi. In addition to finding the defendant responsible for torture, the U.S. district court judge found that Liu Qi was responsible for the arbitrary detention of several plaintiffs based on their claims that they suffered prolonged detention without being charged and without an opportunity to obtain counsel, in addition to their being detained under cruel and torturous conditions.¹⁶

3. Forced Disappearance

A forced disappearance occurs when force is used by, for example, agents of a state to cause a person to vanish from public view, followed by a refusal to acknowledge the deprivation of liberty (and/or by concealment of the fate or whereabouts of the disappeared person), thereby placing the victim outside the protection of law.

According to the Rome Statute of the International Criminal Court, which came into force on July 1, 2002, a “forced disappearance” that is committed as part of a widespread or systematic attack directed at any civilian population qualifies as a crime against humanity, and thus is not subject to a statute of limitation. On December 20, 2006, the United Nations General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance.

In China, where Falun Gong practitioners have disappeared by the thousands, a forced disappearance often implies murder. As in Chile and Argentina, where the infamous “death flights” were used during Operation Condor by the military juntas to dispose of the victims' bodies at sea, several reports indicate that Falun Gong victims who refuse to reveal or disclose their identity to the police are illegally detained, often tortured, imprisoned and then killed by the removal of their vital organs. Similarly, as in the case of the victims of the military juntas where the murder is surreptitious, the party committing the murder has deniability, as there is no body to prove that the victim is actually dead. The perpetrators of disappearance go to great lengths to obscure or eliminate all mention of the disappeared by altering the historical record and encouraging the silence of surviving relatives. Many have argued persuasively that a large number of Falun Gong practitioners who have disappeared have been murdered through the harvesting of their organs, notwithstanding the difficulty of proving the crime through tangible remains or eyewitness testimony.¹⁷ David Matas and David Kilgour in their report “Bloody Harvest,” which investigates allegations of organ

¹⁶ See, *Doe v. Qi*, 2004 WL 2901626 (N.D.Cal.2004).

¹⁷ See, *Forti v. Suarez-Mason*, 694 F. Supp. 707, 711 (N.D. Cal. 1988) where the U.S. District Court found state officials and their agents liable “for their refusal to acknowledge the abduction or disclose the detainee’s fate.”

harvesting of Falun Gong practitioners in China persuasively argue that organ harvesting has been used in China as a mechanism of persecution against Falun Gong adherents.¹⁸

III. Many of These Punitive Measures also Qualify as Crimes under Chinese Legal Standards.

According to several highly-esteemed lawyers in China, several of the punitive measures carried out against Falun Gong believers are not only egregiously abusive, but also qualify as crimes under Chinese law. These include (1) the deprivation of freedom of religion or belief through forced ideological conversion practices and detention in forced labor camps, (2) the restriction of citizens' freedoms based on invalid laws or illegal regulations, (3) the extraction of confessions through torture, and (4) other forms of torture or extrajudicial killing. See, "Wang Bo's Defense: the Supreme Authority of the Constitution and Freedom of Belief; A precious Record," [hereafter, Defense of Wang Bo].¹⁹

For example, as defense counsel make clear in their Defense of Wang Bo, under Article 251 of China's Criminal Law, the deprivation of a citizen's freedom of religious belief through the application of surveillance, tracking, tapping of telephones, house raids, apprehending, fining, forced ideological conversion (through torture), and forced labor constitute criminal acts. In addition, these lawyers submit that the forced-labor system itself and more general restrictions of citizens' freedoms based on invalid laws or regulations constitute crimes under Chinese law, as do the flawed prosecutory and trial practices discussed above, especially at pages 9-13.

In view of China's ratification of the Torture Convention on April 18, 1983, and the assurances it has publicly stated in, for example, materials it sent the U.S. District Court of Northern California claiming that it does not torture Falun Gong believers, the application of torture to extract confessions is a clear violation of Chinese law and arguably constitutes criminal conduct not only under international legal standards but also under the domestic criminal law of China.

IV. SPECIFIC POINTS IN DEFENSE OF JOHN AND JANE DOE

While John Doe was deprived of his liberty through the "Re-education through Labor System," by the police, Jane Doe was detained through the "judicial" system. However, as indicated *supra* at pages 12-14, the deprivation of the liberty of Falun Gong believers in China always results from arbitrary practices and procedures regardless of how it is carried out.²⁰ Those who are deprived of their liberty through the Re-education through Labor System and those who are detained instead through the so-called judicial system are all

¹⁸ David Matas and David Kilgour, "Bloody Harvest: Revised Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China," January 2007.

¹⁹ Wang Bo's Defense is available in the original Chinese and in English upon request.

²⁰ John Doe and Jane Doe are real persons whose names and related details are omitted here to protect their safety and that of their families. They were selected because the circumstances of their apprehension and detention are typical of the apprehension and detention of most persons of the Falun Gong faith in China.

subjected to arbitrary detentions that violate the fundamental right of the Chinese people to be free from arbitrary or wrongful detentions.

The facts of the case against John Doe are as follows:

- a) John Doe, due to his practicing Falun Gong, was apprehended by secret 610 Office Chinese Communist Party agents.
- b) John Doe continued to practice Falun Gong even after he was sent to a brainwashing class.
- c) John Doe used the Internet to download Falun Gong propaganda materials from Falun Gong websites, and copied, printed, and distributed the information to other persons in China.

Like other persons similarly situated in China, John Doe was apprehended and tortured by the police and Communist Party agents based on information about his practice and promotion of his religion that was stored about him in special Internet digital databases. These databases contain sensitive information about all Falun Gong believers in China in a network designed to enable Communist Party operatives and agents to monitor, track and apprehend members of the Falun Gong religion in China. Because John Doe refused to renounce his belief in the tenets and principles of Falun Gong and to denounce the religion in public, he was sent to a Re-education through Labor Camp for a term of three years without access to legal counsel, without a hearing of any sort, and/or without any other due process rights guaranteed to the Chinese people under Chinese law. In the Re-education through Labor camp, John Doe was subjected to harsh forced conversion techniques, forced labor and other forms of torture based solely on his practice and promotion of his religion.

The so-called facts of the charges against Jane Doe are as follows:

- a) Jane Doe, due to her practicing Falun Gong, affronted other people.
- b) Jane Doe continued to practice Falun Gong even after she was sent to a brainwashing class.
- c) Jane Doe continued to practice Falun Gong even after she was released from a three-year term at a Re-Education through Labor Center in China.
- d) Jane Doe used the Internet to download Falun Gong propaganda materials from Falun Gong websites, and copied, printed, and distributed the information to other persons in China.

Like other persons similarly situated in China, Jane Doe was apprehended and tortured by the police and Communist Party agents based on information about her practice and promotion of her religion that was stored in special Internet digital databases. As noted just above, these databases contain sensitive and personal information about virtually all Falun Gong believers in China in a network designed to enable Communist Party secret agents and police officers to monitor, track and apprehend members of the Falun Gong

religion in China. Because Jane Doe refused to renounce her belief in the tenets and principles of Falun Gong and to denounce the religion in public, after her release from a three-year term at a Re-education through Labor Camp, a pre-trial decision was made to send her to a term of prison for seven years through the court system. Jane Doe was subjected to a sham trial without a lawyer of her own selection. Her lawyer entered a plea of “guilty,” thereby adopting the view of the prosecutor and depriving his client of her right to access to an even minimally adequate defense. In addition, he never questioned the prosecutor’s characterization of the religion as “evil” or “deviated.” Indeed, he merely questioned a few of the less relevant details of the prosecutor’s case.

Based on the above so-called incriminating acts and evidence, the court found Jane Doe to be in violation of Article 300 of the Criminal Code of the PRC, which is so vague as to be unenforceable. As indicated *supra*, at page 4, it can be applied to virtually anyone who exhibits any sort of religious or spiritual inclination or affinity in China

The identification of the above behavior as criminal is unsound. Neither the practice nor promotion of one’s religion poses a threat to Chinese society. Indeed, they are perfectly lawful acts. The practice of one’s religion in China is a right guaranteed to Chinese citizens under Article 36 of the Constitution. The sharing of information about one’s religion is a rightful exercise of one’s right to expression. Thus, Falun Gong believers have a constitutional right in China to express and talk about their faith.

Jane and John Doe were additionally deprived of their legal rights under other provisions of the Constitution and Chinese law including those guaranteed under Article 38 of the Constitution (prohibiting the use of the law to impose false charges), Article 12 of the CPL (prohibiting the issuance of extrajudicial convictions) and Article 10 of the Law of the People’s Republic of China on Administrative Punishment (prohibiting the detention of individuals through extrajudicial procedures or practices). For Jane Doe and persons similarly situated, the deprivation of liberty additionally violated several provisions of the CPL, including provisions in Article 162 that require the people’s courts to base a guilty verdict on facts that are clear, evidence that is verified and sufficient under the legal standards of the charged offense and based solely on the law.

V. 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

John Doe, Jane Doe, and persons similarly situated have only practiced their constitutional rights. They did not commit any crime. These cases might superficially appear to be ordinary criminal cases, but they are actually constitutional cases concerning Falun Gong believers’ fundamental freedom of religion. In the case of Jane Doe and persons similarly situated, Chinese citizens are not permitted to select their own lawyers. As the verdict in her case, as in similar Falun Gong cases, makes clear, court-appointed attorneys are not permitted to enter a plea of not guilty, but must adopt the view of the prosecutor

and admit their client's guilt at the outset of the trial. In addition, they may not question the nature of the religion. Indeed all they may do is quibble over a few irrelevant details. In the case of John Doe and others deprived of their liberty through the Re-education through Labor System, their personal freedom is deprived for years without any due process safeguards and protections whatsoever!

In all of these cases, Falun Gong believers are deprived of their liberty in spite of their innocence. Their detentions are without legal basis, justification or merit. They are inconsistent with the law of China, international legal standards and especially basic rule of law protections and practices. They trample on the principles and values that all people hold dear: the right to religious freedom and belief, the right to due process of law and proof of criminal conduct as a condition precedent to the loss of liberty, and the right to be free from torture, forcible conversion practices and other egregious forms of ill treatment and persecution.

We at the Human Rights Law Foundation call upon the leaders of all nations 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 the practice and promotion of their religion. We look forward to the day when all individuals in China can regain the legal rights and human dignity so long deprived them by the Chinese Communist Party.