



1615 L Street NW, Suite 1100, Washington DC, 20036

Office: (202) 697-3858 * Fax: (202) 355-6701

* Email: Terri.marsh.hrlf@gmail.com

* Website: www.hrlf.net

ATROCITY AND OTHER CRIMES PERPETRATED
BY THE PEOPLES REPUBLIC OF CHINA
AGAINST TARGET GROUPS.

As Nuremberg Tribunal Justice Jackson stated in his opening remarks, see <http://www.famous-trials.com/nuremberg/1897-jacksonopen>, the perpetration of Nazi era crimes was “so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.” Fundamentally different from other international crimes by virtue of the “depths of depravity the conduct encompasses, the countless toll of human suffering the misdeeds inflict upon their victims and the consequential disruption of the domestic and international order they produce (*see, e.g. Presbyterian Church of Sudan v. Talisman Energy Inc. and the Republic of Sudan*, 244 F. Supp. 2d 289 (S.D.N.Y. 2003)), these crimes have been firmly recognized in several international instruments including the Nuremberg Charter as “crimes against humanity.” See, e.g., G.A. Res. 95, 1 GAOR U.N. Doc. A/64/Add.1, at 188 (1946). Under the Rome Statute of the International Criminal Court, which represents the most authoritative interpretation of the parameters of such crimes (*see Commentary on the Rome Statute of the International Criminal Court* (Otto Triffterer ed., 1999)), four elements are required for establishing a crime against humanity: (1) a violation of one of the enumerated acts; (2) committed as part of a widespread or systematic attack;¹ (3) directed against a civilian population; and (4) with knowledge of the attack. Among the enumerated acts are: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. ICC Statute, Art. 7. Under this framework, the PRC’s widespread violent suppression campaigns against civilian populations qualify as crimes clearly qualify as crimes against humanity, including members of faith-based communities in China.

Religious groups that reject subordination to state-run “patriotic” organizations, and the Communist Party bureaucracy that manages their affairs and decides their “religious” content, are unrecognized and subjected to various forms of pressure from security forces. For Christians, this can range from the removal of publicly-displayed crosses, church demolition campaigns, punishment of state-sanctioned leaders and the

¹ A “widespread attack is one conducted on a large scale against many people, while a systematic attack is an organized effort to engage in violence.” *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 453 F. Supp.2d 633, 670 (S.D.N.Y. 2006).

arrest of human rights lawyers who take up Christian cases. *See* Fox News, “China ramps up persecution of Christians and other religious groups, February 18, 2017, attached as Ex. 1. The arrest and prosecution of Christians has not been limited to Christian sects with tangential links to mainstream Protestantism. Mainstream Protestant leaders and congregants have also been charged and sentenced. (Freedom House, “The Battle for China’s Spirit,” § II, especially at page 48, attached as Ex. 2. It is not yet clear how the recent discussions between the Vatican and Beijing will protect the religious practice of members of the Catholic Faith. For other religious groups, including Falun Gong believers, Tibetan Buddhists, and Muslim Uyghurs, the sanctions routinely encompass wrongful imprisonment, persecution based on religious affiliation, torture, extrajudicial killings or murder, enforced disappearance, and organ harvesting.

Wrongful Detention

Few concepts more fundamental to ordered liberty than the right to be free from arbitrary or wrongful detention, i.e., detention in the absence of incarceration pending trial or other disposition of a criminal charge. This principle can be traced to the Magna Carta and has been recognized by virtually every multilateral and regional human rights instrument of the twentieth century. *See, e.g.*, the Universal Declaration of Human Rights (“UDHR”), G.A. Res. 217A (III), U.N. Doc. A/810- at 71 (1948). The International Covenant on Civil and Political Rights (“ICCPR”) formally codifies the prohibition against arbitrary or wrongful detention under international law. *See* International Covenant on Civil and Political Rights, Dec. 16, 1996, 999 U.N.T.S. 171. Article 9 (1) provides that no one shall be subjected to arbitrary arrest or detention. Article 14 provides (1) [...] “In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;” (2) “Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law;” (3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; and (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing. Arbitrary or wrongful detentions qualify as a crime against humanity, under Article 7 of the ICC Statute where a perpetrator imprisons one or more persons or otherwise severely deprived such persons of physical liberty; where the conduct violates such due process international law protections (as described just above); where the perpetrator was aware of the factual circumstances that established the gravity of the conduct; and where the conduct was committed as part of a widespread or systematic attack against a civilian population. Article 7 of the ICC Statute is attached here as Ex. 3. *See* especially pages 3-4.

In spite of these prohibitions, members of faith-based communities continue to be subjected to arbitrary arrest and detention in regions across China through the Re-education through Labor (“RTL”) and prisons systems without any of the due process rights enumerated under international law. Generally, the “[t]he recipient of a reeducation through labor sentence has no right to a hearing, no right to counsel, and no right to any kind of judicial determination of his case.” *See* Human Rights Watch, “Reeducation Through Labor,” attached here as Ex. 4. *See* especially page 1. In a similar vein, in sensitive or “political” cases, such as the trials that followed the Tiananmen tragedy of June 4, 1989 or that have dealt with Falun Gong or Muslim Uyghurs, prison sentences meted out after a trial fail to meet even the most minimal of international (due process) standards.

See Jerome Cohen, “The Plight of Criminal Defense Lawyers,” July 26, 2002, CECC Roundtable, attached here as Ex. 5. See especially § 4 (Trials and Tribulations).²

Since 1999, Falun Gong believers have wrongfully been detained labor camps in RTL centers across China. See, e.g., UN Special Rapporteur Report, General Assembly 59th Session, document number A/59/366, 16 September 2004, “Elimination of all forms of religious intolerance” ¶¶ 18-19 (referencing 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), attached as Ex. 6. Based upon on-sight visits, the UN Report of Special Rapporteur Manfred Novak (General Assembly 62nd Session, document number E/CN.4/2006/6/Add.6, 10 March 2006) offers the conclusion that 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. See Commission on Human Rights, Report of the Special Rapporteur on torture, Manfred Nowak, Mission to China, U.N. ESCOR, 62nd Sess., UN Doc. E/CN.4/2006/6/Add.6 (2006), attached as Ex. 6 (a). Falun Gong adherents who refuse to recant in RTL (or other detention) centers are usually sent to prison via the Chinese criminal justice system, which as Jerome Cohen notes, does not provide more than the veneer of justice in “sensitive” or “political” cases. A 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,” attached as Ex. 7, illustrates this point well. 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 Another notice similarly requires Chinese Communist Party-appointed and other Falun Gong lawyers to enter a plea of “guilty” at the outset of trial, judges to reach a “guilty” verdict at the trial’s conclusion, and Party agents to meet with judge and prosecutors pretrial to ensure that they crackdown severely on believers. See, e.g., Requirements Regarding Prevention and Control of Enemy Situations,” attached here as Ex. 8. Based on these and additional observations, U.S federal courts have found high-ranking Chinese officials liable for depriving Falun Gong practitioners of their right to be free from arbitrary or wrongful detention. See, e.g., *Doe v. Liu Qi*, 349 F.Supp.2d 1258 (N.D. Cal. 2004), where the court held the high-ranking Chinese officials Xia Deren and Liu Qi liable for acts of arbitrary/ wrongful detention (in addition to torture) against the plaintiffs.

Tibetan Buddhists are similarly detained through the RTL or prison systems without formal arrest, notice of charges, access to counsel, much less a fair and public hearing. According to the International Campaign for Tibet, Tibetan writer Kunsang Dolma’s account of the detention of a relative typifies this widespread practice in Tibet:

“[My cousin’s son] was never formally charged with any crimes, did not receive a trial, and no explanation was given to his family about what was happening or when he would get out. The family didn’t know whether he was dead or alive. [...] [He] was released six months after he disappeared. He came out a shell of the person he used to be. While in jail, he had been kept

² See also, Jerome Cohen, Wu Gan’s “Trial” – Yet Another Sad Example of China’s Political Justice,” at <http://www.jeromecohen.net/jerrys-blog/2017/8/11/wu-gans-trial>.”

in a front room where the police repeatedly questioned him about the identities of other people at the protest, to which he only answered that he wasn't there and didn't know who was. He [...] was nearly dead from the brutality when he got out. [...] He was only seventeen years old.”

See International Campaign for Tibet, ICT Special Report, February 26, 2015, “Torture and Impunity: 29 Cases of Tibetan Political Prisoners,” especially pages 3-4. This document is attached as Ex. 9. According to Human Rights Watch, the repression of Tibetan Buddhists is directly carried out through such wrongful detention practices, including the formal detention of individuals deemed likely to commit an offense in the future, even if they had not carried out an offense so far, as well as the use of informal or extralegal detention of people who had not committed a formal offense in order to submit them to “legal education.” See Human Rights Watch, “Relentless: Detention and Prosecution of Tibetans under China’s “Stability Maintenance,” at pages 19-23, attached as Ex. 10. Indeed, in the early part of 2012, an estimated 2,000-3,000 Tibetans were detained and subjected to various forms of political re-education for two to three months in schools, hotels, army camps, and other ad hoc premises after returning from religious teachings given by the exiled Dalai Lama in India. *Id.* Several official reports detail the wrongful detentions of Muslim Uyghurs in Xinjiang. A 1999 Amnesty International Report provides a long list of untried Muslim Uyghurs (and other) detainees and convicted prisoners who are believed to have been jailed solely for the peaceful exercise of fundamental human rights, in violation of international standards. See 1999 Amnesty International, “Gross Violations of Human Rights in Xinjiang Autonomous Region,” at 26 et seq., available at <https://www.amnesty.org/en/documents/ASA17/018/1999/en/>. Such practices continue to the present. According to a more recent United States Commission on International Religious Freedom (“USCIRF”), Muslim Uyghurs are “presumed guilty if they are found practicing ‘illegal’ religious activities, including praying or possessing religious materials in their own homes. See 2017 United States International Religious Freedom Report, at page 34, attached here as Ex. 11, and as a result, are subjected to unfair trials that result in wrongful sentences in prisons.

Persecution as a Crime Against Humanity (CAH)

The international crime of persecution, defined under international law as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity,” is a crime against humanity when it is “committed as part of a widespread or systematic attack directed against any civilian population.” ICC Statute, 37 I.L.M. 999 (1998), art. 7(h). International tribunals have found defendants guilty of this crime where he or she “located, evaluated and turned over lists of communists aware that the persons listed would be executed when found,” (*United States v. Oblendorf* (“The Einsatzgruppen Case”), 4 T.W.C. 568, 569 (1948)), “provided a list to identify refugees to the perpetrators where the list substantially contributed to the commission crimes” *Prosecutory v. Rokundo*, No. ICTR-2001-60-A, ¶ 176 (ICTR Oct. 20, 2010), or collaborated with the police to “maintain a system of unlawful arrests and detentions, see *Prosecutor v. Simic*, IT-95-9-A (ICTY November 28, 2006) ¶ 116. Here the PRC’s use of highly invasive surveillance technology to identify, locate, apprehend and wrongfully detain Falun Gong, Tibetan Buddhist and Muslim Uyghurs meets the elements of the heightened crime of persecution, i.e., persecution as a CAH. See Declaration of Dr. Sun, attached as Ex. 12. Legislation and additional informal rules that are directed against these groups based on their religious practice make clear that they are being targeted by reason of their religious identity. According to Freedom House, a wide array of Uighur religious practices, including religious attire and appearance, the observance of religious holidays, and the practice of informal prayer are targeted. See Freedom House, “The Battle for China’s Spirit,” § III at pages 70-73, Ex. 13. Uighurs have received harsh prison sentences for publishing or circulating information on religious

affairs or human rights abuses. In recent years, a growing number of Uighurs—including teenage boys—have been harshly punished for simply consuming banned religious content, in some cases without realizing it was even forbidden. *Id.* at page 72. According to several sources, Tibetan Buddhists are routinely arrested and detained merely for practicing their religion or protesting its persecution. The CECC’s Commission’s Political Prisoner Database (PPD) contained as of September 2009 a total of 670 records of Tibetans detained in 2008, on or after March 2008—a figure certain to be incomplete—for exercising rights such as the freedoms of speech, religion, assembly, and association. See 2009 CECC Annual Report, “Findings,” available at <https://www.cecc.gov/publications/issue-papers/cecc-special-topic-paper-tibet-2008-2009>. See also, “18 Years in Prison for Dalai Lama Picture,” Free Tibet, April 1, 2014, <https://freetibet.org/news-media/na/18-years-prison:dalai-lama-picture> (documenting the imprisonment of Tibetan Buddhists for holding pictures of the Dalai Lama). The guidelines and notice that specifically deprive Falun Gong believers of access to fair hearings and other due process protections, *see supra*, the widespread use of summary hearings that sentence believers to lengthy prison terms based solely on their practice of Falun Gong, see 2018 Freedom House Report, “The Battle for China’s Spirit,” § V, especially at page 119, and attached as Ex. 14, in addition to surveillance identification processes geared to identify Internet Users as Falun Gong, Dr. Sun Declaration, similarly underscore the extent to which this group is also subjected to unlawful apprehension and detention by reason of their religious identity.

Torture

Few international norms are more firmly established than the prohibition against torture. This prohibition is recognized in every major human rights instrument, including treaties ratified under international law. *See, e.g.*, Universal Declaration of Human Rights, art. 5, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948); International Covenant on Civil and Political Rights (“ICCPR”), art. 7, Dec. 16, 1966, 999 U.N.T.S. 171; Geneva Convention Relative to the Treatment of Prisoners of War, arts. 3, 13, 130, Aug. 12, 1949, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, arts. 3, 32, 147, Aug. 12, 1949, 75 U.N.T.S. 287. The prohibition against torture is most clearly defined in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention against Torture”), Dec. 10, 1984, 1465 U.N.T.S. 85, a treaty ratified by China.³ Article 2(1) provides that “[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” Moreover, Article 2(2) adds that “[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” The Convention against Torture offers additional language in support of the prohibition against torture. Article 4(1), for example, provides that “[e]ach State Party shall ensure that all acts of torture are offences under its criminal law.

In spite of its ratification of the Convention against Torture and other Chinese laws prohibiting the application of torture,⁴ “torture is still deeply entrenched in the [Chinese] criminal justice system.” (United

³ China ratified the Convention against Torture in 1988.

⁴ 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

Nations Committee Against Torture 2015, attached here as Ex. 15). A cursory review of official third-party reports makes this clear. In 2006, former U.N. Special Rapporteur on torture, Manfred Nowak, following a mission to China, reported that, of the cases of alleged torture he received in China, 66% involved the torture of Falun Gong practitioners. See Ex. 6 (b) ¶ 42. He further noted that methods of torture include, among others: use of electric shock batons; cigarette burns, submersion in pits of water or sewage, suspension from overhead fixtures with handcuffs, “tiger bench” denial of medical treatment and mediation. Id. ¶ 46. Specific measures of torture widely used on Falun Gong practitioners are summarized by a Minghui correspondent in Liaoning Province, China.⁵ The entire article is attached here as Ex. 16. These findings were consistent with the statements of previous Special Rapporteurs that had addressed the issue. The previous Special Rapporteur on torture, Nigel Rodley, reported in 2001 that many Falun Gong practitioners “are said to have suffered torture or ill treatment.”⁶ The Special Rapporteur on violence against women likewise expressed concern about the use of violence against female Falun Gong practitioners.⁷ The findings of international non-governmental organizations, such as Amnesty International, provide further evidence of the torture of the Falun Gong. For example, Amnesty International has reported that Falun Gong practitioners have been tortured in labor camps by fellow inmates, acting at the behest of camp guards, for attempting to practice their religion.⁸

There are similar such reports on Tibetan Buddhists and Uyghurs. The Tibetan Centre for Human Rights and Democracy reports that Shonu Palden, a Tibetan man who organized protests in 2008, was arrested without explanation at a tea stall in the Gannan Tibetan Autonomous Prefecture, Gansu Province. Then, he was “held incommunicado at Machu County Detention Centre for two and a half months during which he was subjected to rigorous interrogation and severe beatings and torture. He was later sentenced to two years and nine months for spearheading the protests of March 2008 in Machu County.”⁹ In October 2017, on the brink of death due to abuse and torture in custody, Palden was released by the authorities. See, e.g., the United States Department of State Report, available at <https://www.state.gov/documents/organization/265540.pdf>, at pp. 6-8; the UN Committee against Torture, “Concluding Observations on the Fifth Periodic Report of China,” adopted by the Committee at its 1391st and 1392nd Meetings (2–3 December 2015), CAT/C/CHN/CO/5, 3 February 16, 11 at p. 13, UN Special Rapporteur Reports (torture), available at https://dfoh.org/wp-content/uploads/UN-Special-Rapporteur-Manfred-Nowak_Mission-to-China_2006.pdf

Numerous other Tibetans were taken into captivity and severely tortured for participating in or organizing protests in 2008, including Gonpo Thinley, a young man who participated in demonstrations against PRC government-imposed martial law conditions. In 2008, after he was detained, he writes: “They tortured us for about a month and a half. I and many others were severely beaten during the first two days. Our eyes turned blue and our noses were running. I couldn’t even

⁵ Minghui.org, is a news platform run by Falun Gong believers who investigate on-the-ground conditions especially from China.

⁶ Commission on Human Rights, Report of the Special Rapporteur, Sir Nigel Rodley, U.N. ESCOR, 57th Sess., UN Doc. E/CN.4/2001/66 (2001).

⁷ Commission on Human Rights, Report of the Special Rapporteur on violence against women, Yakin Erturk, U.N. ESCOR, 61st Sess., UN Doc. E/CN.4/2005/72/Add.1 (2005).

⁸ Amnesty International, Annual Report 2010, available at URL: <http://www.amnestyusa.org/research/reports/annual-report-china-2010>.

⁹ staff, TIBETAN MAN BEDRIDDEN FOR YEARS DUE TO TORTURE INJURIES WHILE CHINESE AUTHORITIES REFUSE SCHOOL ADMISSION TO HIS DAUGHTER - TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY, <http://tchrd.org/tibetan-man-bedridden-for-years-due-to-torture-injuries-while-chinese-authorities-refuse-school-admission-to-his-daughter/> (last visited Feb 27, 2018).

walk by myself and two guards carried me to the cell. Our eyes remained black for many days. They beat us with batons. When I started to feel a little better, they would leave me a day or two without torture and then continue with the beatings and torture... They tortured us using electric batons, metallic water pipes and handcuffs. They would also tie our hands back, one going above the shoulder and one from below. Sometimes they put beer bottles in between, causing a lot of pain.”¹⁰

Muslim Uyghurs report identical levels of abuse. Ilham Tohti, the renowned Uyghur professor of economics at the Minzu University in Beijing who was sentenced to life imprisonment in September 2014, was starved for 10 days and put in shackles for three weeks following his arrest in March 2014. After unrest in Urumqi, 2009, Chinese authorities detained numerous Uyghurs, subjecting them to torture. These cases include that of 15-year-old Almas, hooded and abducted by police outside his home, then tortured for 72 hours in custody, including by the application of an electric baton on his genitals. Mirzahid Amanullah Shahyari, an 11-year-old boy detained for studying Islamic prayer, was tortured and died in police custody in May 2012. Police described his death as a suicide, censored information about it, and detained his uncle for discussing the death with foreign media. See, e.g. 2018 Uyghur Human Rights Project submission to United Nations, available at http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CHN/INT_CAT_CSS_CHN_22111_E.pdf, at 8-12.

The use of torture to force religious adherents to renounce their beliefs is especially widespread. The Congressional-Executive Commission on China (CECC) 2012 Annual Report states that China is currently in the midst of an “extensive, systematic” campaign to use mental and physical torture to force Falun Gong adherents to renounce their beliefs. The United Nations Special Rapporteurs have similarly expressed their grave concern over acts of torture, of (especially female) practitioners of Falun Gong. According to the Report of UN Special Rapporteur, “[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.” See Ex. 6, “UN Special Rapporteur Reports,” at ¶¶ 237, 238, and especially at ¶ 246. In 2013, the PRC launched a two-year nationwide campaign titled the “final battle on education and transformation.” Notices of the campaign appeared on government websites throughout China and included quotas on the percentage of local Falun Gong residents who “must undergo education-study classes” each year. See “The Battle for China’s Spirit, Freedom House Report,” § V (Falun Gong), attached as Ex. 14 at p. 114. Despite the abolition of the “reeducation through labor” (RTL) camp system in 2013, large numbers of Chinese citizens known to the authorities to practice Falun Gong remain at risk of incarceration, either through the normal court system or in extralegal detention facilities where forced renunciation sessions are conducted. *Id.* The ideological education campaigns targeting Tibetan Buddhists have been conducted sporadically since the 1990s, but they have become more frequent and lengthy since 2008. They have increasingly been extended beyond monasteries to Tibet’s general population, forcing students, civil servants, farmers, and merchants to participate in discussions, singing sessions, and propaganda film screenings. See Freedom House, “The Battle for China’s Spirit,” § IV (Tibet), at 95-96, attached as Ex. 14 (a) Tibetan monks are routinely forced to learn relearn reinterpretations of Buddhist doctrine during a “patriotic reeducation” sessions. *Id.* In the Xinjiang Uyghur Autonomous Region, so called political re-education camps have been proliferating in the lead up to the 19th Communist Party Congress. Since April 2017, around 120,000 ethnic Uyghurs were held in political Camps in Kashgar (in Chinese, Kashi) prefecture of northwest China’s Xinjiang region alone (Radio Free Asia, “Around 120,000

¹⁰ TIBET WATCH, TORTURE IN TIBET: SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE IN ADVANCE OF THE EXAMINATION OF THE STATE PARTY REPORT FOR THE PEOPLE’S REPUBLIC OF CHINA AT THE 56TH SESSION (2015), http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CHN/INT_CAT_CSS_CHN_22117_E.pdf.

Uyghurs Detained for Political Re-Education in Xinjiang's Kashgar Prefecture," attached as Ex. 17." As Human Rights Watch notes, these sites are "education and transformation training centers," where, detainees are required to watch pro-government propaganda videos, and to renounce their ethnic and religious identities, reciting slogans such as "religion is harmful," and "learning Chinese is part of patriotism." Human Rights Watch, "Free Xinjiang 'Political Education' Detainees," attached as Ex. 18. According to Maya Wang, Senior Researcher, Asia Division at HRW, "It is fair to say that the Chinese government has heightened the repression and discrimination against [...] this particular ethnic group to an extent that seems quite unprecedented." *Id.* Radio Free Asia (RFA) has reported that officers in Xinjiang's Hotan, largely populated by Uyghurs, have confirmed authorities gave them a target of sending nearly half the area's residents to re-education camps, which have been registered as 'career development centers,' to circumvent legal problems and hold 3,600 detainees. *See* Chinese Human Rights Defenders, "Re-education camps make a comeback in China's far-west," October 24, 2017, attached here as Ex. 19.¹¹ RFA also reported that re-education camps throughout Xinjiang have been registered as "career development centers"

Murder, Extermination and Enforced Disappearances

The Nuremberg Tribunals established that crimes against humanity further encompasses: such atrocities as murder and extermination. Control Council Law No. 10, Art. II(1)(8) (1945), quoted in *United States v. Flick*, 6 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, 1191 (1949) (emphasis added). These crimes have been designated crimes against humanity by the international community. Charter of the International Military Tribunal, Art. 6(c), in *The Nurnberg Trial*, 6 F.R.D. 69, 130 (*Int'l. Milit. Trib. 1946*); Statute of the International Tribunal for Rwanda, Art. 3, S/RES/955/Ann.1, 33 I.L.M 1602, 1603 (Nov. 8, 1994); Statute of the International Tribunal for the Former Yugoslavia, Art. 5, S/25704/Ann.1, 32 I.L.M. 1192, 1194, adopted S/Res/827, 32 I.L.M. 1203 (May 25, 1993). The ICC Statute further recognizes murder, extermination, and enforced disappearance as crimes against humanity: Where a person has caused the death of one or more persons as part of a widespread or systematic attack directed against a civilian population and is aware that the conduct was part of or intended the conduct to be part of the widespread/systematic attack, he or she is guilty of the crime of murder as a crime against humanity. Where a person has caused the death of one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population, either directly or indirectly as part of a widespread or systematic mass killing of members of a civilian population, with awareness that the conduct was part of or intended the conduct to be part of a widespread or systematic attack, he or she is guilty of the ore egregious offense, extermination as a CAH. Where a perpetrator has arrested, abducted, or detained one or more persons , refused to acknowledge the arrest, abduction or detention, or to give information on the whereabouts of such person or persons, where the perpetrator was aware that such arrest, abduction or detention would be followed by a refusal to acknowledge that deprivation of freedom or the providing of information on the whereabouts of such person or persons, where the arrest, abduction or detention was carried out as part of a widespread attack with authorization, support or acquiescence of the state, the perpetrator is guilty of disappearance as a CAH. *See* Cherif Bassiouni, *Crimes Against Humanity*, "Specific Contents," attached here as Ex. 22 ("Excerpts from Crimes Against Humanity").

¹¹ Despite the abolition of the "reeducation through labor" (RTL) camp system in 2013, large numbers of Chinese citizens known to the authorities to practice Falun Gong remain at risk of incarceration, either through the normal court system or in extralegal detention facilities where forced renunciation sessions are conducted.⁴⁷

While it is difficult to quantify the total number of religious adherents subjected to murder, extermination and/or enforced disappearance in China, it is clear that a significant number of Falun Gong, Muslim Uyghur and Tibetan Buddhist adherents have died in custody as a result of persecution and that, many of the disappeared have been subjected to organ harvesting. The U.S. State Department has provided useful documentation. In its 2009 Human Rights Country Report for China, the State Department observed, “Falun Gong sources estimated that since 1999 . . . almost 3,000 [practitioners] had died from torture while in custody.”¹² Excerpts from U.S. DOS reports are attached here as parts of Ex. 21. Similar figures appear in almost every human rights report issued on China since 2006.¹³ The U.S. State Department has also reported on individual cases of death from torture. See, e.g., 2003 DOS Country Report on Human Rights Practice, at 4-5 attached as Ex. 21. The Congressional-Executive Commission on China, in its Annual Report for 2010, offered the conclusion that the crackdown on Falun Gong has led, in many cases, “to torture and death.”¹⁴ The U.S. State Department report has similarly concluded that the suppression of Tibetan Buddhists has resulted in their arbitrary or unlawful deprivation of life. See *id.* at 2. See also, 2015 Department of State Country Reports, “Executive Summary, April 13, 2016, at 2-3, available at <https://www.state.gov/j/drl/rls/hrrpt/2015/eap/252757.htm>. See Ex. 21 (a). Radio Free Asia reports continue to document individual cases. See, e.g., “Tibetan Activist Dies After Suspected Beating Torture in Jail,” December 7, 2012, available at <https://www.rfa.org/english/news/tibet/torture-12072014192110.html>; “Human Rights Watch has reported that “[d]eaths and ill-health of detainees also continued to be a serious problem in the period covered by this study. Fourteen of those detained, 2.9 percent of the total, were reported to have died in custody or shortly after release, allegedly as a result of mistreatment.” See Human Rights Watch, “Relentless,” attached here as Ex. 10 at 4. Freedom House’s 2018 report similarly observes that torture, along with various forms of medical neglect, contribute to the reported deaths in custody of several Tibetan prisoners of conscience each year, including religious leaders. See Freedom House, Special Report, “The Battle for China’s Spirit,” § IV (Tibet), attached here as Ex. 14a. Incidents of security forces opening fire on Uyghur civilians have become more common. See Ex. 13 at 66-67. On several occasions since November 2012, police have opened fire on Uyghur civilians, both during clashes with protesters and while conducting house searches. *Id.* at 73. The use of live ammunition has resulted in the injury or death of bystanders, including children. *Id.* Police have resorted to deadly force at the first sign of an altercation and in situations that would not draw such a heavy-handed response if they occurred in Han-populated areas. *Id.* See also, U.S. Department of State, 2009 Country Reports on Human Rights Practices, at 2-3, attached as Ex. 23.

One of the gravest forms of extrajudicial killing or murder carried out by the Chinese Party-State against targeted religious minority populations is organ harvesting. China’s organ transplantation industry began a period of exponential growth in the year 2000, with Chinese transplant surgeons calling it a “watershed” year.¹⁵ The government began subsidizing the development of the domestic

¹² U.S. Department of State, 2009 Country Reports on Human Rights Practices, China (March 11, 2010), available at URL: <http://www.state.gov/j/drl/rls/hrrpt/2009/eap/135989.htm>.

¹³ U.S. Department of State, Country Reports on Human Rights Practices, available at URL: <http://www.state.gov/j/drl/rls/hrrpt/index.htm>.

¹⁴ Congressional-Executive Commission on China, 2010 Annual Report, available at URL: <http://www.cecc.gov/publications/annual-reports/2010-annual-report>.

¹⁵ Su Ling, 器官捐献迷宫 [THE ORGAN DONATION MYSTERY] SOUTHERN WEEKEND (2010), <http://news.163.com/10/0326/10/62MP5K0G00011SM9.html> (last visited Feb 21, 2018).

immunosuppressant drugs,¹⁶ enhancing the clinical training of surgeons and nurses,¹⁷ establishing major transplant centers in hospitals,¹⁸ and expanding the cooperation between the hospital system and the security and judicial apparatus,¹⁹ who supplied the organs. Chinese hospitals began advertising waiting times for organs of merely weeks,²⁰ and a large portion of liver transplants began to be performed ‘on-demand,’²¹ indicating a population of captives who had been blood-typed and were able to be killed at will for their organs. The growth in the transplant industry occurred even as use of the death penalty declined,²² and in particular through the Supreme People’s Court’s recentralization of death penalty review in 2007.²³ Through the period in question (2000-2015), experts estimate that China has performed on average tens of thousands of transplants annually.²⁴

China’s official explanation — that death row prisoners supplied the organs until 2015 — is plainly contradicted by the absolute numbers of transplants performed (tens of thousands; more than the number of death row prisoners by any estimate), the opposing trajectories of death penalty decline and organ transplantation increase, the on-demand nature of organ availability (incommensurate with the established, summary application of death penalty sentences in China), and the persistence of organ transplant growth through 2007.

Instead, the growth of the organ transplantation industry is readily explicable by the use of prisoners of conscience. The following facts establish this correlation for the largest group of prisoners of conscience, Falun Gong. 1) Falun Gong practitioners were targeted in an eliminationist political campaign in July 1999, six months before the organ transplant industry began its explosion; 2) Falun Gong prisoners are targeted for repeated blood-tests (consistent with HLA cross-matching) and detailed physical examinations directed at the abdominal and thoracic organs (EKGs, ultrasounds, chest X-Rays)²⁵; 3) Refugees report seeing prisoners disappear in custody after such tests, never to be seen again²⁶; 4) Refugees report receiving verbal threats from camp guards that they will be killed for their organs unless they obey commands²⁷; 5) Chinese doctors have admitted to having access to organs from Falun Gong donors when pressed by telephone investigators posing as potential

¹⁶ CHINA DATA CENTER FOR FOOD & DRUG ADMINISTRATION, 大趋势 - 中国医药市场调研报告集 (2008 版) [MAJOR TRENDS: STUDY REPORT ON CHINA’S PHARMACEUTICAL MARKET (2008 VERSION)] (2008). p. 679.

¹⁷ David Kilgour, Ethan Gutmann & David Matas, *Bloody Harvest/The Slaughter: An Update* (June 22, 2016; revised April 30, 2017), <http://endorganpillaging.org/an-update/>. pp. 81-253

¹⁸ *Ibid.* pp. 16-79

¹⁹ *Ibid.* p. 258, 386; 《国际移植(中国)网络支援中心》中国脏器移植实际情况 [China International Transplantation Network Assistance Center (CITNAC) Actual Situation] (Oct 2004).

<https://web.archive.org/web/20041023185232/http://zoukiishoku.com/cn/shixiang/index.htm> (last visited Feb 21, 2018)

²⁰ Introduction to Fudan University Organ Transplant Center. (July 2014)

<https://web.archive.org/web/20140726202428/http://www.transplantation.com.cn/About.Asp> (last visited Feb 21, 2018)

²¹ China Liver Transplant Registry: 2005 Annual Report. (Feb 12, 2006). p. 22; China Liver Transplant Registry: 2006 Annual Report. p. 43.

²² China Executed 2,400 People in 2013, Dui Hua, THE DUI HUA FOUNDATION (2014), https://duihua.org/wp/?page_id=9270 (last visited Feb 21, 2018).

²³ Xuanguo Xiong, 6. *Death Penalty System Reform in China*, in THE CHINA LEGAL DEVELOPMENT YEARBOOK, VOLUME 3 83-94 (2009).

²⁴ David Kilgour, Ethan Gutmann & David Matas (2016). pp. 355-366.

²⁵ ETHAN GUTMANN, THE SLAUGHTER: MASS KILLINGS, ORGAN HARVESTING, AND CHINA’S SECRET SOLUTION TO ITS DISSIDENT PROBLEM (2014). pp. 186, 283, 317-322

²⁶ 【活摘器官_法轮功真相】生死之间 2013 版 (4) 【世事关心】 , [Interview with Falun Gong refugee Yu Xinhui] (2013), <https://www.youtube.com/watch?v=jfkxshiw08I> (last visited Feb 21, 2018).

²⁷ Gutmann (2014) p. 301.

transplant recipients²⁸; 6) Some transplant surgeons are involved in the anti-Falun Gong political campaign²⁹, and some members of the security services, focused on anti-Falun Gong work, have established organ transplantation research laboratories and been awarded for their work.³⁰

This clear and consistent fact pattern indicates that this population has been exploited as a source of raw human material for fueling the growth of China's organ transplantation industry. The above concerns and fact pattern are relevant for considering current mass incarcerations and DNA testing of Muslim Uyghurs in Xinjiang,³¹ with evidence indicating they have been subjected to this abuse.³²

In addition to the above targets, the PRC has subjected rights lawyers to virtually identical practices, short of murder or enforced disappearance. See <https://www.amnesty.org/en/latest/campaigns/2016/07/one-year-since-chinas-crackdown-on-human-rights-lawyers/>.

²⁸ DAVID MATAS & DAVID KILGOUR, BLOODY HARVEST : THE KILLING OF FALUN GONG FOR THEIR ORGANS (2009).

²⁹ 我校 2010 年反邪教暑期社会实践团荣获省级表彰 [University 2010 Anti-Evil Religion Summer Summer Break Social Group Awarded Provincial Honors], ZHEJIANG UNIVERSITY OF WATER RESOURCES AND ELECTRIC POWER (2010), <https://archive.is/TtBf> (last visited Oct 14, 2017).

³⁰ The Speech of Secretary-General Ren Jinyang at the Award Ceremony of “China Guanghua Science and Technology Development Foundation Special Innovation Contribution Award,” BEIJING GUANGHUA SCIENCE & TECHNOLOGY DEVELOPMENT FOUNDATION (2006), <https://web.archive.org/web/20090203134248/http://ddfchina.org/71/109-2008-07-07-03-11-47.html> (last visited Feb 21, 2018).

³¹ China: Minority Region Collects DNA from Millions, HUMAN RIGHTS WATCH (2017), <https://www.hrw.org/news/2017/12/13/china-minority-region-collects-dna-millions> (last visited Feb 21, 2018).

³² Rfa Staff, ORGANS SEIZED FROM UYGHURS RADIO FREE ASIA (2013), <https://www.rfa.org/english/news/uyghur/seized-01092013163346.html> (last visited Feb 21, 2018).