



HUMAN RIGHTS LAW FOUNDATION

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**The Cases of Jiang Zemin and Chen Kuiyuan: Demonstration of their Responsibility for
Crimes of Genocide and other Major Human Rights Abuses Perpetrated Against Tibetans
in China.**

INTEREST OF HRLF

The Human Rights Law Foundation (HRLF) is a non-profit legal advocacy center that represents survivors seeking redress for acts of torture and extrajudicial killing. Some HRLF cases depend on the Torture Victim Protection Act (“TVPA”), 28 U.S.C. § 1350 (2000) to hold individual perpetrators who have come to the United States accountable under the law as Congress intended.¹ Several of these cases have won favorable judgments in U.S. courts, including *Peng Liang et. al. v. Zhao Zhifei*, Civil Action No. 01 C 6535, U.S.D.C. [S.D.N.Y.], 2001; *Jane Doe I, et. al., v. Liu Qi, et. al*, No. C 02-0672-CW, U.S.D.C. [N.D. Ca.], 2004.

HRLF also has filed two landmark cases under U.S. law, including a pending case regarding the precise parameters of speech that incites or aids and abets criminal conduct (e.g., *Gang Chen et. al. v. Zhao Zhizhen et. al.*, case no. 3:04-cv-1146 RCN). HRLF also collaborates with other human rights attorneys to file not only civil but criminal petitions in the U.S. and abroad against perpetrators of torture. These include not only a landmark case against Bo Xilai currently before the District Court of the District of Columbia, but dozens of human rights cases filed in such countries as the United Kingdom, France, Australia, Korea, Belgium, the Netherlands, Canada, Taiwan and Greece.

Based on HRLF’s legal expertise in the area of human rights including human rights international law coupled with its experience in the litigation of cases involving the responsibility of the first accused, Jiang Zemin, and others, counsel seeks to provide this Court with additional information on their role in the campaign of persecution perpetrated against the complainants and other adherents of Falun Gong in China.

¹ HRLF also brings claims in United States courts under the Alien Tort Statute (“ATS”), 28 U.S.C. § 1350 (2000), for human rights abuses committed abroad.

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I. INTRODUCTION

The extent and severity of the persecution and abuse of Tibetans in China, at both the national level and in provinces and municipalities, continue to be confirmed and extensively documented by the United Nations, human rights organizations including Amnesty International and Human Rights Watch, and the United States government in its Country Reports on Human Rights Practices. These and other third party reports indicate that the Chinese Communist Party (CCP) and the security forces subject to its control are engaged in a widespread pattern and practice of harsh repression, punishment, and intimidation against Tibetans, and that these practices include arbitrary arrest, imprisonment, torture, and even extrajudicial killing.

This report lends support to these findings by its analysis of the nature of the Chinese government in relation to its responsibility for the widespread human rights abuses suffered by Tibetans, as well as the responsibility of two high-ranking individual officials within Chinese governing institutions.

II. THE PERSECUTION OF TIBETANS GENERALLY

Because of widespread calls for more autonomy in Tibet, including the enjoyment of basic human rights such as freedom of speech and religion—as well as the embrace of Buddhism and a cultural identity distinct from Han Chinese—the CCP has denied basic rights to the Tibetan people and has subjected Tibetans to numerous and widespread human rights abuses. These abuses include deprivation of life, enforced disappearance, torture, poor prison conditions, arbitrary arrest and detention, denial of fair public trial, and denial of basic political and religious rights.

The CCP security apparatus has tortured Tibetan detainees and prisoners according to the U.S. State Department. According to a 1965 UN report, China's occupation of Tibet "has been characterized by acts of murder, rape, and arbitrary imprisonment; torture and cruel, inhuman and degrading treatment of Tibetans on a large scale."

Following the Cultural Revolution, villages were ordered to destroy all signs of Tibetan identity in order to enforce Maoist directives. In the 1970s, a campaign began to completely assimilate Tibetans and eliminate Tibetan Buddhism. Throughout the 1970s and 1980s, a violent campaign of persecution spread throughout Tibet, involving the prolonged detention and torture of tens of thousands of Tibetans. Tibetan activists engaged in peaceful protest of these policies were violently suppressed, including through murder, while the Chinese media suppressed reports of these protests and the CCP's responses.

In 1994, the CCP's Central Committee held the "Third Tibet Works Forum." At this meeting, a "strike hard" campaign against Tibetans was launched. The CCP has engaged in such persecutory campaigns against other disfavored groups, such as Falun Gong practitioners or pro-democracy groups. This campaign involved a "re-education" campaign aimed at increasing public support for the persecution of the Tibetan people and silencing pro-Tibetan protests and demonstrations. The campaign also led to legislation legitimizing acts of violence and physical destruction toward Tibetan people and property. This led to an increase in the number of deaths as a result of torture, extrajudicial killing, and other acts of persecution. A "Fourth Tibet Works Forum" was held in 2001, accelerating these policies.

Amnesty International has reported that a large number of detainees in prisons and detention centers in Tibet have died in custody or shortly upon their release due to ill treatment or lack of adequate medical care. Detainees are given electric shocks, chained to walls, beaten, and by other means tortured.

Moreover, the CCP has engaged in extreme family planning policies of forced sterilizations, forced abortions, and infanticides, as a means of engaging in a “cultural genocide” of the Tibetan people. The CCP has strictly enforced a ban on public prayers for the Dalai Lama and in other ways placed significant limits on the practice of Buddhism. Education and propaganda is employed to pressure Buddhists to change their religious beliefs. A central component of the campaign against Tibetan Buddhism is the crackdown on Tibetan monasteries that the CCP claims are used for subversion against the state. In addition, the CCP has stated that it must approve the next Dalai Lama according to “historical conventions.”

While much of the persecution of Tibetans described herein occurs in the territory known as the “Tibetan Autonomous Region” of China, the persecution is not exclusive to this region. Tibetans constitute a small minority of the population throughout China, and they have engaged in peaceful demonstrations and protests, or merely the peaceful spiritual practice of Tibetan Buddhism, across all provinces and regions of China. These Tibetans have been persecuted as harshly as those residing in the Tibetan Autonomous Region.

III. THE ROLE OF DEFENDANTS JIANG ZEMIN AND CHEN KUIYUAN IN THE PERSECUTION OF TIBETANS

This section will discuss the role of two of the defendants, Jiang Zemin and Chen Kuiyuan, in the persecution of the Tibetan population.

More detail on the Chinese system of governance and the role that the CCP and governing organs play in the persecution of Tibetans is provided below. This section will focus on the specific and active roles that defendants Jiang Zemin and Chen Kuiyuan played in the initiation and implementation of the persecutory campaign against Tibetans beginning in the 1990s.

A. JIANG ZEMIN

Jiang Zemin was the highest-ranking official in China during the initiation of a new wave of persecution against Tibetans. Jiang occupied two primary roles relevant to this case: first, he served as General Secretary of the CCP between 1989 and 2002; and second, he served as President of China between 1989 and 2003. He also served as the Chairman of the Central Military Commission between 1989 and 2005, a role that reinforced his power in China as the head of the Chinese military.

As the General Secretary of the CCP, Jiang was the leading authority within the nine-member Politburo Standing Committee, which has control over the CCP Politburo, which has control over the CCP’s Central Committee, which has control over each of the CCP’s regional subsidiary committees, including the CCP committee for the Tibetan Autonomous Region. Under the authoritarian, single-party system of governance in China, these CCP committees all had control over their parallel governing organs.

As President of China, Jiang had official authority over all of China's governing organs, including the Ministry of Family Planning, the Ministry of Public Security, and the Ministry of Justice. These governing organs in turn had control over their subsidiary provincial bureaus (including those for the Tibetan Autonomous Region), which in turn had control over local subdivisions.

During Jiang's years in office, the Tibetan people were frequently and in a widespread manner subjected to torture, extrajudicial killing, arbitrary arrest and detention, and denial of religious and political freedoms. These abuses were the direct result of a renewed persecutory campaign against the Tibetan population. As General Secretary and President, Jiang exercised his authority to set national policy by launching this campaign and directing all subsidiary CCP committees and governing organs to carry it out.

In October 1989, Jiang ran a meeting of the Politburo Standing Committee to hear the report of Hu Jintao, who was at the time the Secretary of the CCP's Tibetan Autonomous Region committee (a position later occupied by defendant Chen Kuiyuan). The recorded minutes of this meeting indicated that the CCP Central Committee, including its General Secretary Jiang Zemin, was satisfied with the work done by the Tibetan Autonomous Region committee following the crackdown on public unrest in the Tibetan regional capital of Lhasa, during which martial law was declared, protesters were killed and subjected to excessive military force, and foreign journalists and tourists were expelled. The CCP Central Committee instructed the Tibetan Autonomous Region committee to focus on two major issues going forward: first, political stability; and second, economic development. Maintaining "political stability" was understood to entail the frequently violent suppression of any Tibetan demonstrations or general unrest.

The Politburo Standing Committee, presided over by Jiang Zemin, therefore ratified and approved of the human rights abuses inflicted on peaceful Tibetan protesters during the unrest in Lhasa, and authorized further such abuses as a way of maintaining "political stability." The committee characterized the unrest in Lhasa as the "continued struggle between separatists and anti-separatists," the "serious political struggle to attempt separating the motherland," "anti-Communist," and an attempt to "overthrow the socialist system carried out by the separatists both at home and abroad and supported by foreign hostile powers." This language provided the ideological justification for extreme measures to be taken against the peaceful Tibetan population.

In December 1989, the Tibetan Autonomous Region committee held a meeting conveying and implementing the instructions to continue the persecution of Tibetans that were given to it by the CCP Central Committee and its General Secretary, Jiang Zemin. From July 20 to 26, Jiang traveled to Tibet personally to inspect this work.

In 1994, under Jiang's authoritarian regime, the so-called "Third Work Forum" on Tibet issued a mandate to "cut off the serpent's head." This term was part of a renewed "strike hard" persecutory campaign against Tibetans. It refers to the goal of stopping the peaceful opposition movement of monks and nuns in support of the Tibetan ethnic identity and the Tibetan people. Jiang pushed a policy of "patriotic re-education" aimed at silencing demonstrations and protests.

Also at the Third Work Forum, Jiang advocated a policy of official Chinese colonization of Tibet, encouraging Han Chinese workers to move to Tibet in order to increase the manpower and participation in new projects located in Tibet. This goal is, of course, plainly incompatible with the strict family planning practices preventing the birth of Tibetan children, unless the CCP has the

specific objective of increasing the manpower of the *Han* population in Tibet and reducing the manpower of the *Tibetan* population.

Jiang's authority as CCP General Secretary and President during the years to set a national policy of a new "strike hard" campaign against the Tibetan population, and to order the implementation of this policy through subordinate CCP committees and governing organs, makes clear that he is responsible for the persecution of Tibetans during this period under the international legal theories of superior responsibility and joint criminal enterprise that are discussed in detail below.

The CCP General Secretary is the leading official in the entire CCP, thus making the General Secretary the highest-ranking and most influential official in China. The General Secretary is one of nine "standing" members of the CCP Central Committee's Politburo, which effectively runs the country and sets all national policies.

The President, meanwhile, is the head of state in China. The office of the presidency was created by the Chinese Constitution in 1982 and is a state organ rather than a component of the political CCP. Since 1993, the President has been the same person as the General Secretary. The presidency grants diplomatic powers, and the President is traditionally responsible for establishing general policy goals and the direction of the state.

Jiang exercised supervisory authority over those directly perpetrating the actual abuses, making him responsible for acts of torture and other major human rights abuses carried out by his subordinates against the Tibetan population. He actively promoted and implemented policies designed to populate the Tibetan Autonomous Region with a Han ethnic majority, to detain thousands of Tibetans for prolonged periods of time, to torture detainees and otherwise subject them to unlawful physical and mental abuse, and to subject Tibetans to discriminatorily enforced family planning policies that included the widespread practice of forced abortions and forced sterilizations.

Even if Jiang had not himself directed others to eradicate, detain and torture Tibetans, he is nevertheless legally responsible for such acts where he had notice the acts were taking place, had authority over the offenders, could have issued orders preventing unlawful acts, and failed to do so. As evidenced by the thousands upon thousands of instances of arbitrary arrest and detention, torture, abuse, forced abortions, forced sterilizations and extrajudicial killings, Jiang did nothing to prevent or punish these abuses despite having the authority to do so as the highest-ranking official in all of China.

Jiang is also responsible as a co-perpetrator or participant in a joint criminal enterprise. Because the "strike hard" campaign against Tibetans and other groups was designed, initiated and implemented as a matter of official Chinese policy, it required the consent and approval of a number of officials. Jiang was, of course, the leading and most important of these officials, as he was the General Secretary of the CCP and President of China, thus leading both China's governing organs and the authoritarian political party that controlled those government organs.

B. CHEN KUIYUAN

Chen Kuiyuan served as Secretary of the CCP's Tibetan Autonomous Region committee from 1992 to 2000. He was, therefore, the highest-ranking CCP official within the Tibetan Autonomous Region. In this position, he had control over all CCP committees within the Tibetan Autonomous Region,

which had control over their parallel governing organs within the various Chinese regional bureaus for the Tibetan Autonomous Region.

Chen dictated measures that included putting an end to Tibet's instability, which had been blamed exclusively on the Dalai Lama. Chen stated that the fight against the Dalai Lama was a "fight to the death." He also identified Buddhism as the root of separatist activities and said that such activities were orchestrated by the Dalai Lama. He warned that monks who did not conform to the socialist religion would be severely punished.

Because the CCP Central Committee had identified the root of numerous demonstrations as being centered in monasteries, Chen ordered the strict control of monasteries. He published official documents that specified repressive guidelines and declared "Democratic Management Committees" the official bodies for carrying out these measures. In 1994, he declared that "the success of our education . . . lies in whether our graduating students oppose . . . the Dalai Clique." He declared the need to "deepen the anti-separatist struggle . . . comprehensively fight back the hostile forces in various fields, disintegrate its basis, and establish a strong wall for the sake of long-term stability for Tibet and China."

Chen also published a book collecting his speeches, articles, and some of the instructions issued during his term in office. In this book, Chen stated that those responsible for "creating chaos and disturbing stability were mainly the monks and nuns. If [we] cannot manage the temples effectively, [we] will not be able to stop the attempt of the Dalai Clique to make trouble for Tibet and China. Tibet will never have peace."

As Secretary of the CCP's Tibetan Autonomous Region committee during the years that the "strike hard" campaign against Tibetans was declared and implemented, Chen played a leading role in this persecutory campaign, particularly as it related to the Tibetan population within the Tibetan Autonomous Region.

The Secretary of the Tibetan Autonomous Region committee is the highest CCP official in the Tibetan Autonomous Region, with authority that even extends over the governor. He is responsible for running the Tibetan Autonomous Region's CCP organization. He exercises executive authority over police and security forces operating throughout the Tibetan Autonomous Region, and he has authority to set CCP policy for the Tibetan Autonomous Region, implement national policy within the Tibetan Autonomous Region, and manage security affairs within the Tibetan Autonomous Region. He also appoints, removes, and disciplines police, detention center and security personnel.

The Secretary of the Tibetan Autonomous Region committee supervises the implementation of CCP policy by officials of governing organs. This includes the operations of police and security forces directly responsible for torture and other human rights violations committed against Tibetans in prisons, labor camps and detention centers.

Police and security officials within the Tibetan Autonomous Region take orders through the CCP hierarchy, with all decisions not made at the national level being made or supervised by the Secretary of the Tibetan Autonomous Region committee.

The Secretary of the Tibetan Autonomous Region committee has a legal duty to ensure that all ranking members within the committee and other persons operating under his control are able to

report any unlawful behavior of other officials, and to request punishment and removal of any officials who violate Chinese law, as provided in Article Four, Chapter One of the Charter of the Communist Party. The Secretary also has a legal obligation to ensure that persons, departments and agencies under his command and authority abide by legal standards of the Chinese Constitution and Chinese law. The Chinese Constitution and various provisions of Chinese law purport to ensure rights to religious freedom, ethnic equality and due process rights.

Chen occupied this position between the years of 1992 and 2000. He routinely gave orders that were unlawful under both international and Chinese law, and he regularly breached his legal duties to protect the rights of Tibetans and prevent or punish abuses committed by his subordinates. In particular, he supervised the Ministry of Family Planning's Tibetan bureau. Thus, officials engaged in the administration of forced sterilizations, forced abortions and infanticides committed against the Tibetan population took their orders from Chen through a chain of command. Police and security officials within the Tibetan Autonomous Region, whether operating in the Ministry of Public Security or Ministry of Justice, all operated under orders from Chen through a chain of command.

Chen took no action to prevent or punish the thousands of incidents of arbitrary arrest and detention, torture, extrajudicial killing, forced abortions, forced sterilizations and infanticides committed within the Tibetan Autonomous Region. Indeed, these acts were all carried out under policies ordered by Chen himself. These were policies that Chen, based on his public and hostile anti-Dalai Lama statements, passionately believed in and advanced. As such, he is liable under the international legal theory of superior responsibility.

Chen is also legally responsible as a participant in a joint criminal enterprise. The persecution of thousands of Tibetans required various levels of the CCP working together. Key to this persecution were the leading CCP officials within the Tibetan Autonomous Region itself. Chen was *the* leading CCP official within the Tibetan Autonomous Region. His participation in the development and implementation of the "strike hard" campaign against Tibetans was therefore extensive and gives rise to criminal liability under international law.

IV. THE CHINESE SYSTEM OF GOVERNANCE

There are two parallel systems of governance in China. The first is the Chinese Communist Party (CCP) and the second are the organs of the Chinese government, with the latter under the control of the former. Mao Zedong articulated the principle that the party controls the government when he founded the CCP. In a May 1957 speech that Mao delivered during a meeting of the CCP Central Committee, with the representatives of the National Congress of the Youth League in attendance, he said, "the Chinese Communist Party is the core leader for all Chinese people; without such a core, socialism will not be victorious."

This principle is reflected in the General Principles of the Charter of the CCP, drafted in 1997, which includes among its "four basic principles" the "insistence on leadership by the CCP." Similarly, section nineteen of the CCP Central Committee's Decisions Regarding the Strengthening of the CCP, passed at the 4th Session of the 14th CCP National Congress in 1994, states, "We must insist on the principle of the party controlling the [government] cadres and we must improve the means by which this occurs."

In addition, China is divided into large, regional provinces, which are divided into smaller localities. Provincial and local CCP departments and government organs all mirror each other and operate under the direction of the CCP departments and government organs at the level above them. For example, the Ministry of Public Security carries out security functions at the national level; bureaus of Public Security carry out security functions at the provincial level and operate at the direction of the national Ministry; and local Public Security stations carry out security functions at the local level and operate at the direction of the provincial bureaus. Simultaneously, a CCP committee called the Political & Legal Committee exercises authority over the Ministry of Public Security and other governing organs that carry out legal functions. This committee is divided in a similar manner at national, provincial and local levels, which each level exercising authority over their parallel governing organs.

Rather than a system of interlocking checks and balances, the Chinese system of governance is more aptly described with the Chinese term “jiquan” (concentrated power government) or “yiyuan” (single source government). In this system, a small ruling elite holds virtually all of the important party and government titles. The CCP Central Committee sets national policy, and central committees at the provincial or local level select and appoint all party officials and governing organ officials at the same level or the level immediately below them. Frequently, important governing organ officials simultaneously occupy positions within CCP committees at the same level. CCP and governing organ officials thus take direction from multiple sources, all of which ultimately answer to the CCP Central Committee, the Politburo, and the small ruling elite that compose the Politburo Standing Committee.

V. THE ROLE OF THE CHINESE COMMUNIST PARTY AND GOVERNING ORGANS IN THE PERSECUTION OF TIBETANS

The nine-member Politburo Standing Committee sits at the top of the CCP Central Committee and wields ultimate authority over Chinese policy. All other CCP committee and department officials operate under the leadership and direction of key officials of the CCP Central Committee. The key function of the Politburo Standing Committee and the broader Politburo and CCP Central Committee is to set national policy, make important decisions and handle recommendations, appointments, removals, rewards, or punishments of party and government actors. The Politburo Standing Committee is able to dictate direct orders to governing organ officials and is empowered to handle any crisis in any region of China, including the Tibetan Autonomous Region.

Within the Politburo, there is a special leadership group called the “Central Group for the Coordination of Tibetan Activities.” While this group is not listed on official CCP websites or documents, its existence is indicated by scattered media reports on official appointments and infrastructure adjustment. It has been reported that this group’s primary responsibility is to “struggle against the Dalai Clique and maintain Tibetan stability.” Other state-level agencies involved in the collection of intelligence, research and analysis, policy recommendations, and so forth include the Department of United Front Work, which houses a Tibet Working Bureau, and the State Administration for Religious Affairs (SARA). Jiang Zemin exercised direct authority over all of these nation-wide departments.

Chinese policies toward Tibet are decided at the level of the Politburo or the Politburo Standing Committee. As stated above, Jiang Zemin controlled the Politburo Standing Committee throughout the 1990’s. Once policy decisions relating to Tibet are made, they are carried out at the level of the

Tibetan Autonomous Region, both through CCP and government organs. As stated above, Chen Kuiyuan was the highest authority within the Tibetan Autonomous Region throughout the 1990's.

There are many CCP committees and governing institutions in the Tibetan Autonomous Region that operate under the direction of the CCP Central Committee leadership and central CCP Tibetan Autonomous Region committee. Following is a discussion of three governing organs that are among the most intimately involved in the persecution of Tibetans.

A. THE MINISTRY OF FAMILY PLANNING

The Ministry of Family Planning is a governing organ in China. As President of China, Jiang Zemin had direct authority over the entire national ministry, and as General Secretary, Jiang Zemin exercised his authority to implement a national policy of renewed persecution of the Tibetan population, in part through policies carried out by the Ministry of Family Planning in the Tibetan Autonomous Region. The Ministry of Family Planning's Tibetan Autonomous Region bureau is run under the authority of the CCP's central Tibetan Autonomous Region committee, which was led by Chen Kuiyuan. Thus, the abuses detailed in this section were carried out primarily at the orders of Jiang Zemin and Chen Kuiyuan through a chain of command.

One of the most important and gruesome forms of persecution of the Tibetan population in China involves forcible restrictions on Tibetan citizens' reproduction and reproductive rights. In 1980, China imposed its notorious "one child policy" throughout the country. Since that time, every family in China has had the right to one child and one child only. The Ministry of Family Planning openly acknowledged in 1990 that local authorities possess discretionary power to apply any measures they deem necessary to regulate this policy.

The methods employed to regulate and enforce China's family planning policies in the Autonomous Region of Tibet include forced abortions in late stages of pregnancy, forced sterilizations and infanticide by the injection of liquid into the heads of newborn babies. The Ministry of Family Planning's bureau for the Tibetan Autonomous Region publically announced in 1987 that 30% of women in the region had been subjected to birth control operations. While Chinese authorities deny that abortions or sterilizations are imposed coercively in Tibet, the United Nations and the European Parliament have both condemned such coercive family planning practices. Tibetan refugees have also testified, in numerous and separate cases, to the practice of forced sterilizations, forced abortions and infanticides.

In July 1990, a team of medical professionals from a maternity and children's hospital visited a remote and impoverished area of the Tibetan Autonomous Region to promote family planning practices. After visiting ten districts, the team found that 1,092 of 2,419 visited women had been sterilized. In 1983, in a district of Gansu Province, which borders the Tibetan Autonomous Region, a team found that 82% of the over two thousand women who had been sterilized there were ethnic Tibetans. Reports have documented mobile teams from the Ministry of Family Planning traveling around the Tibetan Autonomous Region to gather women together for the administration of abortions and sterilizations, including for women in advanced stages of pregnancy.

Importantly, in 1990, then-Prime Minister Li Peng officially announced that family planning policies should not only be quantitative, but "qualitative." Birth control should be pursued, Li Peng stated, to "improve the *quality* of the population," (emphasis added) not just to limit the number of children

being born. This approach, in addition to being used to limit the number of people with hereditary illnesses or deformities having children, is also used to prevent births within the Tibetan population. The Tibetan Autonomous Region accounts for 25% of the total territory of China, but Tibetans constitute only a half of a percent of the total Chinese population. The Tibetan territory, therefore, is extremely sparsely populated as compared to the rest of China.

The Ministry of Family Planning's policies in the Tibetan Autonomous Region are not directed, as is otherwise generally true of China's "one-child" policy, toward reducing overpopulation. Instead, it is simply targeted toward reducing the population of Tibetans as a specific ethnic and religious group. This is made clear by contemporaneously advanced policies initiated by Jiang Zemin directed toward increasing the manpower available for new projects in Tibetan territory through a policy of "Chinese colonization" by the Han ethnic majority. This policy advances an objective incompatible with the reduction of the Tibetan population unless there is a specific goal of increasing the disparity between the populations of the Han majority and the Tibetan minority. Over seven million Chinese settlers now reside in the Tibetan Autonomous Region, now outnumbering the roughly six million native Tibetans. These Chinese settlers occupy the most important posts in the region's government, bureaucracy and businesses.

The International Committee of Jurists for Tibet and the Tibetan Government in Exile have both condemned the collective family planning practices in Tibet as genocide.

B. THE MINISTRY OF PUBLIC SECURITY

The Ministry of Public Security is China's primary security and police enforcement agency. As President of China, Jiang Zemin had direct authority over the entire national ministry, and as General Secretary, Jiang Zemin exercised his authority to implement a national policy of renewed persecution of the Tibetan population, in part through policies carried out by the Ministry of Public Security in the Tibetan Autonomous Region. The Ministry of Public Security's Tibetan Autonomous Region bureau is run under the authority of the CCP's central Tibetan Autonomous Region committee, which was led by Chen Kuiyuan. Thus, the abuses detailed in this section were carried out primarily at the orders of Jiang Zemin and Chen Kuiyuan through a chain of command.

The law enforcement component of the persecution of Tibetans is carried out primarily by officials of the Ministry of Public Security operating in its Tibetan Autonomous Region bureau. Public Security is vitally important, as much of the persecution of Tibetans takes the form of the violent suppression of peaceful protests and demonstrations, as well as the arbitrary arrest, prolonged detention and torture of Tibetans. Public Security officers are given wide discretion to detain anybody suspected of crimes against the state.

Moreover, while most prisons and detention centers in China are operated by the Ministry of Justice (discussed below), prisons and detention centers in the Tibetan Autonomous Region are managed primarily by the Ministry of Public Security. Thus, the thousands upon thousands who have been detained for prolonged periods in Tibetan prisons were being detained at the hands of Public Security officials. As discussed above, thousands of these detainees have died while being detained or shortly after their release, a result of brutal physical torture and other ill-treatment.

Reports are widespread of Tibetans engaged in peaceful demonstration, protest, or spiritual practice being detained and tortured by Public Security officers. For example, in May 1994, five Tibetan nuns

were engaged in a peaceful Buddhist spiritual practice when twenty Public Security officers detained them in a local police station. During their detention, they were interrogated and tortured by Public Security officers. They were subsequently detained in a Ministry of Public Security-operated prison, where they were interrogated daily and routinely tortured by prison officials. When they refused orders to denounce the Dalai Lama, they were beaten to the point of unconsciousness. Following this period, they were subjected to sham trial and lengthy prison sentence, where they were subject to continued torture and forced labor practices. Upon their release, Public Security officials prohibited them from returning to their monastic lives and routinely harassed them to ensure that they knew they were being monitored.

C. THE MINISTRY OF JUSTICE

The Ministry of Justice is responsible for China's judicial process and, outside of the Tibetan Autonomous Region, operates prisons and detention centers. As President of China, Jiang Zemin had direct authority over the entire national ministry, and as General Secretary, Jiang Zemin exercised his authority to implement a national policy of renewed persecution of the Tibetan population, in part through policies carried out by the Ministry of Justice in the Tibetan Autonomous Region. The Ministry of Justice's Tibetan Autonomous Region bureau is run under the authority of the CCP's central Tibetan Autonomous Region committee, which was led by Chen Kuiyuan. Thus, the abuses detailed in this section were carried out primarily at the orders of Jiang Zemin and Chen Kuiyuan through a chain of command.

The Ministry of Justice is essential to the component of Tibetan persecution that involves subjecting Tibetans to sham trials, the denial of due process, and, for those Tibetans who are detained in prisons and detention centers outside the Tibetan Autonomous Region, torture and extrajudicial killing. It also acts to deny any hope of justice or accountability for the abuses inflicted by CCP and governing organ officials, by ensuring that no such complaints would be fairly heard in a Chinese court.

The Ministry of Justice frequently collaborates with officials of the Ministry of Public Security in order to pre-arrange verdicts and sentences for Tibetan defendants, thereby denying Tibetans any effective due process. Indeed, Tibetan detainees are frequently detained without trial at all. If they are given a trial, they are routinely denied a competent attorney and are unable to challenge any evidence presented against them. Only 10% of Tibetans found guilty ever appeal their sentences, due to the economic cost and the futility of any such appeal. None of the 10% that did appeal their sentences ever received a positive result. In some cases, their sentences were even increased. Trials of Tibetans are thus an empty formality.

Tibetans detained in prisons and detention centers outside the Tibetan Autonomous Region are subject to the treatment of Ministry of Justice officials. This treatment is substantially similar to the treatment by Ministry of Public Security officials inside the Tibetan Autonomous Region. That is, Tibetan detainees are routinely and brutally tortured, ordered to denounce the Dalai Lama, and subjected to other forms of cruel, inhuman and degrading treatment. In many cases, detainees have died while in custody or shortly after their release.

VI. VIOLATIONS OF INTERNATIONAL LAW

This section provides a context for the persecution of Tibetans in international law. It discusses the current status of international law regarding the prohibitions against genocide, torture and arbitrary arrest and detention, and it demonstrates that the abuses described above constitute violations of international legal standards. It also discusses the modes of indirect liability, superior responsibility and joint criminal enterprise, that under international law provide for liability against officials who participated in but did not directly perpetrate the violations.

A. GENOCIDE

Winston Churchill, in a live broadcast from London during the Nazi invasion of Russia in 1941, was so horrified at the devastation inflicted on humanity by the invading troops that he described the barbarity of the Nazi occupation in these words: “We are in the presence of a crime without a name.” When the full impact of the Nazi atrocities finally came to light, there was simply no word in the human language that could fully describe it. Thus, a new word – *genocide* – was created.

The activity designated by the new word, coined in 1943 by Raphael Lemkin, was formally prohibited by the Convention on the Prevention and Punishment of Genocide in 1948, which has been ratified to date by 99 countries, including China. The status of genocide under customary international law is also significant because it determines the obligations of all states regarding genocide, whether or not they are a party to the Convention. Most important sources conclude that obligations concerning genocide are part of customary international law. In particular, the International Court of Justice (ICJ) recognized genocide’s status under customary international law when it remarked in the Reservations Case that “the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation.” All versions of the ILC’s Draft Code have used the definition of genocide derived from the Convention. In addition, the ICJ has recognized that obligations concerning genocide are *erga omnes*, and most sources agree that the prohibition has achieved the status of a *jus cogens* norm.

Article 2 of the Genocide Convention defines the term “genocide” to mean:

Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such [by] a) Killing members of the group; b) Causing serious bodily or mental harm to members of the group; c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) Imposing measures intended to prevent births with the group; e) Forcibly transferring children of the group to another group.

This definition thus requires some *harmful conduct* (killing, causing serious bodily harm, preventing births, etc.) committed against a national, ethnic, racial, or religious group, with the *intent to destroy* the group.

There is no dispute that Tibetans constitute a distinct ethnic and religious group. Moreover, as discussed extensively above, it is clear that the CCP and governing organ officials have carried out widespread acts harmful to Tibetans. Tibetans are routinely detained and tortured by Chinese

authorities, and this campaign of persecution has resulted in the deaths of thousands upon thousands of Tibetans. Perhaps most persuasive to the case for genocide are the specific acts related to family planning. Forced abortions, forced sterilizations and infanticides have targeted the Tibetan population specifically. In conjunction with the transfer of the Han ethnic majority into the Tibetan Autonomous Region (“Chinese colonization,” as discussed above), the strict and unlawful enforcement of family planning policies against the Tibetan community is clearly designed to reduce that group’s population and simultaneously increase the population of the Han majority in the region. Indeed, as discussed above, this strategy has been largely successful, as the Han ethnic group now outnumbers the Tibetan population in the Tibetan Autonomous Region.

The public statements of CCP officials further demonstrates the CCP’s intent to destroy the Tibetan population. Defendant Jiang Zemin, for example, called for the renewed “strike hard” campaign against Tibetans. At the Third Working Group for Tibet, he issued a call to “cut off the serpent’s head,” referring to efforts to put a stop to the peaceful movement undertaken by monks and nuns to preserve the Tibetan identity. He has also called for a “patriotic re-education” campaign aimed at silencing pro-Tibetan protests. Simultaneously with these statements, he advanced concrete policies of persecution of Tibetans, rounding them up in prisons and detention centers where they are tortured and routinely murdered, and strictly enforcing family planning policies against them even to the point of forcibly subjecting women to abortions even at late stages of pregnancy, sterilizing them, and at times killing Tibetan infants. Chen Kuiyuan exercised his authority to implement these policies within the Tibetan Autonomous Region.

These statements and acts demonstrate the CCP’s goal of eradicating the Tibetan population and reducing their numbers to minority status even within the Tibetan Autonomous Region. They therefore constitute acts of genocide under international law.

B. TORTURE

The prohibition against torture is recognized in several major international instruments, including the Universal Declaration of Human Rights, adopted in 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 on this matter.

The Convention Against Torture (CAT)—which came into effect internationally on June 26, 1987, and was ratified by China on October 4, 1998—prohibits the intentional infliction of “severe pain or suffering, whether physical or mental” for any purpose, including but not limited to punishment, intimidation, or coercion. The most commonly accepted definition of torture is that found in the CAT. Article 1 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 is also prohibited under Chinese law. While there is no explicit definition of torture in Chinese domestic legislation, basic elements of the CAT definition of torture under CAT are reflected in several provisions of the Criminal Law (CL) which prohibit extortion of a confession under torture by a judicial officer (Criminal Law adopted at the Second Session of the Fifth NPC on July 1, 1979 and Revised at the Fifth Session of the Eighth NPC on March 14, 1997) (art. 247); extraction of testimony by use of force by a judicial officer (art. 247); physical abuse of inmates as well as instigation of detainee-on-detainee violence by a policeman or other officer of an institution of confinement like a prison, detention house or custody house (art. 248).

Notwithstanding these prohibitions, torture has been the prevailing method of choice in the CCP's concerted effort to persecute, suppress and eradicate the Tibetan population. As documented by the United Nations, independent human rights organizations, and widespread media reports, tens of thousands of Tibetans have been physically and mentally tortured while being interrogated by police and security officers and while being detained in prisons and detention centers. This torture includes physical beating, the use of electric batons, prolonged stress positions, sleep deprivation, denial of food and water, and forced feeding. It also includes acts of psychological torture through repeated denigration of Tibetan Buddhism and coercion of detainees into denouncing the Dalai Lama.

C. ARBITRARY ARREST AND DETENTION

Few concepts are more fundamental to the principle of ordered liberty than the right to be free from arbitrary detention. This basic human right has been recognized by almost every multilateral agreement of the twentieth century. The International Covenant on Civil and Political Rights provides, at Article 9(1), 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.” 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 Human Rights Committee has stated that Article 9 is applicable to all deprivations of liberty (General Comment No. 8 (1982)). Several other U.N. organizations have also affirmed the prohibition against arbitrary detention. For example, the U.N. 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.

Detention is arbitrary when it is illegal and unjust. There is a consensus among international law publicists and scholars that arbitrary detention occurs when a person is detained without warrant, probable cause, articulable suspicion, notice of charges, or a trial.

The Working Group established by the U.N. Commission on Human Rights in 1991 to investigate cases of detention imposed arbitrarily, or otherwise inconsistently with relevant international standards, 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);
- (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 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;

- (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.

The prohibition against arbitrary detention is not limited by a temporal component. The Working Group on Arbitrary Detention does not focus on the length of the detention in determining whether a deprivation of liberty is arbitrary. Rather, it considers whether the detention falls within one of the three categories set forth above. Thus, claims of arbitrary detention can be found even in cases lasting less than 24 hours. The Human Rights Committee, for example, has identified violations of Article 9 of the ICCPR in cases where the petitioner was detained for eight hours (*Spakmo v. Norway* (1999)) and eighteen hours (*Tshionga a Minanga v. Zaire* (1993)).

China also guarantees its citizens the right to be free from arbitrary arrest (Art. 37 of the Constitution of the People's Republic of China); the right to be free from search and seizure without warrant or prior approval (Art. 39); the right to be represented by legal counsel (Criminal Procedural Law, Art. 160); and more generally, the right to an independent judicial branch of government (Art. 10).

Nevertheless, all attempts to put an end to the arbitrary arrest and detention of Tibetans have been futile, as the legal system is a part of the CCP apparatus and an instrument of the CCP's power and political control. As such, the judiciary does not operate as an independent branch of government. Tibetans are regularly denied legal counsel, equality before the law, the presumption of innocence, the ability to challenge evidence, the right to be tried in public and before an impartial tribunal, and other basic due process rights. They are arrested and detained without any of these protections, and lack any effective remedy in Chinese courts. This routine practice of arbitrary arrest and detention has been highlighted in various third-party reports, including several by the United Nations Special Rapporteur.

D. CRIMES AGAINST HUMANITY

The prohibition against crimes against humanity was first recognized by the Charter of the International Military Tribunal at Nuremberg. The Nuremberg Charter was adopted to ensure that serious human rights abuses committed during World War II by the military and political leaders of Nazi Germany were punished. Under the Nuremberg Charter, acts constituting crimes against humanity included murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial or religious grounds, or other inhuman acts committed against a civilian population. The International Military Tribunal acknowledged the status of crimes against humanity under international law and convicted several defendants of this crime.

More generally, since the adoption of the Nuremberg Charter, the prohibition against crimes against humanity has been firmly recognized in several international instruments. In 1946, for example, the United Nations General Assembly affirmed the principles set forth in the Nuremberg Charter and the subsequent decision of the International Military Tribunal. These principles were reaffirmed in 1968 with the adoption of a treaty, the Convention on the Non-Applicability of Statutory Limits to War Crimes and Crimes

Against Humanity, to prevent the application of statutory limits, such as statutes of limitation, to crimes against humanity.

Recent developments have affirmed and expanded the scope of crimes against humanity under international law. In 1993, the United Nations Security Council established the International Criminal Tribunal for the former Yugoslavia (“ICTY”) to prosecute serious violations of international law committed in that territory, including genocide, war crimes, and crimes against humanity. The International Criminal Tribunal for Rwanda (“ICTR”) was established by the Security Council in 1994 to prosecute similar violations of international law in Rwanda. Both statutes expanded the list of enumerated offenses for crimes against humanity. These include murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial, and religious grounds, or other inhumane acts.

The International Criminal Tribunals for the former Yugoslavia and Rwanda have affirmed the status of crimes against humanity under international law. In *Prosecutor v. Tadic*, for example, the ICTY noted that “the customary status of the prohibition against crimes against humanity and the attribution of individual criminal responsibility for their commission have not been seriously questioned.”

The Rome Statute of the International Criminal Court similarly recognizes the status of crimes against humanity under international law and provides the most current definition of crimes against humanity. Article 7 of the Rome Statute defines crimes against humanity as any of the following acts when committed as part of a *widespread or systematic attack* directed against any civilian population, with knowledge of the attack:

- (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.

Because of its recent codification in the Rome Statute, Article 7 represents the most authoritative interpretation of crimes against humanity in international law. The Rome Statute requires four elements for establishing a crime against humanity: (1) the commission of one of the enumerated acts; (2) committed as part of a widespread or systematic attack; (3) directed against a civilian population; and (4) knowledge of the attack. Even a single act by an individual, taken within the context of a widespread or systematic attack against a civilian population, can constitute a crime against humanity. As stated in *Prosecutor v. Tadic*, “an

individual perpetrator need not commit numerous offences to be held liable” for a crime against humanity. The knowledge requirement does not require individual knowledge of the entire attack in all of its details.

The required elements for crimes against humanity are satisfied in the case of the CCP’s persecution of Tibetans. First, as is indicated throughout this report, the participants in the concerted effort to eradicate and suppress the Tibetan population violated several of the requisite enumerated acts, including torture, murder, arbitrary arrest and detention, forced conversion, and extermination. In addition, the CCP’s persecutory campaign, comprised of torture and other major human rights abuses, were perpetrated as part of a widespread and systematic attack directed against the entire Tibetan civilian population, thereby satisfying elements two and three under the Statute. Finally, the attack was planned, designed, and quite deliberately set in motion by important CCP officials, including Jiang Zemin and Chen Kuyuan, thereby satisfying element four of the Statute.

E. MODES OF LIABILITY

In addition to the substantive violations of international law described above, it is important to briefly discuss the various modes of establishing liability under international law over indirect participants in criminal acts. Two of the most important modes of liability in the context of the persecution of Tibetans by CCP and Chinese governing officials are superior responsibility and joint criminal enterprise.

(a) Superior Responsibility

The principle of individual criminal responsibility for ordering a crime to be committed is expressly recognized in the Geneva Convention and the ICTY (Article 7(3)) and ICTR (Article 6(3)) Statutes. Superiors have been held equally responsible with their subordinates if the superior knew or had reason to know that a subordinate had committed or was about to commit a crime and failed to take the necessary steps within his or her power to prevent or punish the crime. As Amnesty International makes clear in *The International Criminal Court: Part I*, this latter modality is based upon several principles reflected in Article 6 of the draft Code of Crimes, Article 7(3) of the ICTY Statute, and Article 6(3) of the ICTR Statute: (1) duty to exercise authority over subordinates; (2) equality of responsibility with subordinates; (3) actual knowledge of the unlawful conduct planned or carried out by the subordinate or sufficient information to enable the superior to conclude that such conduct was planned or had occurred; (4) failure to take necessary steps; (5) feasibility of such steps; (6) prevention or repression of the crime.

Importantly, the principle applies to civilian superiors no less than military commanders. This is demonstrated in the ICTY case, *Prosecutor v. Delalic*, and other criminal proceedings emanating out of the ethnic cleansing in the former Yugoslavia. In *Delalic*, the ICTY Trial Chamber held that authority figures, whether military officials or civilian, may be held criminally accountable under the doctrine of command responsibility on the basis of their *de facto* or *de jure* positions as superiors and their supervisory authority over those committing the actual abuses. The Trial Chamber also stated in *Prosecuro v. Kordic and Cerkez* that, in the case of a civilian leader, “evidence that an accused is perceived as having a high public profile, manifested through public appearances and statements, and thus as exercising some authority, may be relevant to the overall assessment of his actual authority...[and to] the accused’s overall behavior towards subordinates and his duties.”

Thus, many high-level CCP or Chinese governing officials may be held liable under principles of superior responsibility for unlawful acts committed against the Tibetan population. This is particularly true of the highest-ranking officials who formulated the policy of persecution, such as Jiang Zemin, and of high-ranking CCP officials in the Tibetan Autonomous Region, such as Chen Kuiyuan.

(b) Joint Criminal Enterprise

International law also recognizes liability for those who “co-perpetrate” or participate in a “joint criminal enterprise,” effectively the international legal analogue of a conspiracy. One of the earliest ICTY analyses of joint criminal enterprise liability was provided in *Prosecutor v. Tadic*. The Trial Chamber had acquitted the defendant Tadic for the murder of five men because no one could testify that they saw Tadic execute them. The Appeals Chamber reversed, holding Tadic liable for murder because he “took part in the common criminal purpose to rid the region of the non-Serb population, by committing inhumane acts,” and because the killing of the non-Serbs in furtherance of this plan was a foreseeable outcome of which he was aware.

As the Appeals Chamber made clear in *Tadic*, “to hold [those who participate with others in a common plan or design] liable only as aiders and abettors might understate the degree of their ...responsibility.” Where a defendant is not only a willing participant in the joint criminal enterprise, but who also acted intentionally to initiate, design, manage, implement, and further that plan, his conduct clearly rises to the level of “co-perpetration” characterized by the ICTY in *Tadic* as “firmly established in customary international law.” Again, this liability will be particularly applicable to the highest-ranking officials responsible for a policy of persecution, such as Jiang Zemin, and in the context of Tibetan persecution, the highest-ranking CCP officials in the Tibetan Autonomous Region, such as Chen Kuiyuan.

VII. CONCLUSION

For the reasons discussed above, it is clear that the Tibetan population has been subjected to a widespread campaign of persecution that includes acts of genocide, torture, arbitrary arrest and detention, and crimes against humanity. It is equally clear that the former highest-ranking official in China, Jiang Zemin, and the former highest-ranking official in the Tibetan Autonomous Region, Chen Kuiyuan, are liable under international legal principles for these unlawful acts.

Respectfully submitted,

/s/ Terri E. Marsh

Terri E. Marsh

Executive Director

Human Rights Law Foundation



HUMAN RIGHTS LAW FOUNDATION

HRLF

**AMICUS CURAE BRIEF SUBMITTED BY HUMAN RIGHTS LAW FOUNDATION
SUBMITTED TO AL JUZGADO CENTRAL DE INSTRUCCION NO 2 DE LA
AUDIENCIA NACIONAL DE ESPAGNE**

Spain, April 10, 2008

**The Cases of Jiang Zemin and Bo Xilai: Demonstration of their Responsibility for
Crimes of Genocide and other Major Human Rights Abuses Perpetrated Against Falun
Gong Adherents in China.**

INTEREST OF HRLF

The Human Rights Law Foundation (HRLF) is a non-profit legal advocacy center that represents survivors seeking redress for acts of torture and extrajudicial killing. Some HRLF cases depend on the Torture Victim Protection Act (“TVPA”), 28 U.S.C. § 1350 (2000) to hold individual perpetrators who have come to the United States accountable under the law as Congress intended.¹ Several of these cases have won favorable judgments in U.S. courts, including *Peng Liang et. al. v. Zhao Zhifei*, Civil Action No. 01 C 6535, U.S.D.C. [S.D.N.Y.], 2001; *Jane Doe I, et. al., v. Liu Qi, et. al.*, No. C 02-0672-CW, U.S.D.C. [N.D. Ca.], 2004.

HRLF also has filed two landmark cases under U.S. law, including a pending case regarding the precise parameters of speech that incites or aids and abets criminal conduct (e.g., *Gang Chen et. al. v. Zhao Zhizhen et. al.*, case no. 3:04-cv-1146 RCN). HRLF also collaborates with other human rights attorneys to file not only civil but criminal petitions in the U.S. and abroad against perpetrators of torture. These include not only a landmark case against Bo Xilai currently before the District Court of the District of Columbia, but dozens of human rights cases filed in such countries as the United Kingdom, France, Australia, Korea, Belgium, the Netherlands, Canada, Taiwan and Greece.

Based on HRLF’s legal expertise in the area of human rights including human rights international law coupled with its experience in the litigation of cases involving the responsibility of the first accused, Jiang Zemin, and others, counsel seeks to provide this Court with additional information on their role in the campaign of persecution perpetrated against the complainants and other adherents of Falun Gong in China.

¹ HRLF also brings claims in United States courts under the Alien Tort Statute (“ATS”), 28 U.S.C. § 1350 (2000), for human rights abuses committed abroad.

ARGUMENT

I. BACKGROUND INFORMATION

In June of 1999, several members of the ruling elite of the People's Republic of China created a plan to purge China of Falun Gong. The methods they deployed were not new and had been used before in the Cultural Revolution in the 1950's and early 1960's, in the crackdown on the pro-democracy movement at Tiananmen Square in 1989, and in the suppression of other outbreaks of protest by labor leaders and other rights activists. In all of these acts of suppression and repression, the leaders of the Chinese Communist Party (hereinafter the "CCP") used non-legal measures to "transform" (aka "forcibly convert") the majority of the participants through re-education techniques that included brainwashing classes, intense interrogation, and where needed, torture. For those who refused to adopt the CCP line and abandon their religious beliefs, far harsher legal sanctions were leveled including lengthy jail terms, forced labor and torture. This policy is sometimes referred to as the 95%/5% approach based on the fact that most Chinese citizens were deterred by the brainwashing and torture applied in brainwashing classes and re-education centers. In the same fashion, the campaign waged against the Falun Gong religion (hereinafter the "Religion") was carried out through the re-education and forced conversion of many of the adherents, and also, where needed, through the application of harsher sanctions that included lengthy prison terms, forced labor, torture and extra-judicial killing.

A. The Concerted Effort to Eradicate the Religion

The plan to eradicate the Falun Gong Religion (the "Religion") was initiated in June of 1999 by the first accused, Jiang Zemin, in concert with key leaders of the Party. By taking advantage of the CCP's organization principle that the entire membership of the Party must be subordinated to the Central Committee in Beijing (a.k.a, the standing committee of the Politburo of the CCP) , Jiang Zemin as Party Chair exploited Party apparatus and the State machinery controlled by the CCP to serve the objective of dissolving and eradicating the Religion. These included but were not limited to: the Ministry of Public Security (aka the police), the Ministry of State Security (aka state security forces), the Central Department of Propaganda (the media), the judicial system (including the courts, public prosecutors, and lawyers), the Ministry of Civil Affairs, the State Administration of Religious Affairs, and the Ministry of Foreign Affairs.

In particular, in late April of 1999, a letter by Jiang Zemin was circulated among the key Party leadership, with an instruction to study and implement its directives. In this letter, the then-President and Party Chair of China characterized the Religion as a state enemy which must be monitored and controlled to protect the safety of the CCP and the "State", the typical designation for the government of China as distinct from the Chinese Communist Party. According to a former high-ranking public security official, immediately after its publication, the Public Security Bureau, the Religious Affairs Bureau and the National Security Bureau began the work of

collecting facts and information about adherents in preparation for the upcoming persecutory campaign. *See*, Hao Fengjun’s “In His Own Words: Hao Fengjun Explains Why He Escaped From China, Party I,” available at URL:

<file:///H:/Active%20Cases/Spain/Hao%20Fenjun%20EET%20interview.htm>.

In May of 1999, Jiang Zemin circulated a memorandum (May 1999 Memorandum) among the key Party leadership, as is evidenced by its transmission from the Central Committee of the Party (in Beijing) to the governing body of the Party in the Province of Hebei, which in turn transmitted it to the governing body of the Party in Langford City in Hebei Province. In his May 1999 Memorandum, Jiang Zemin again characterized the Religion as a threat to the security and stability of the state. In addition, Jiang Zemin invoked the measure used by the Party during the Cultural Revolution to crack down upon thousands upon thousands of Chinese citizens. This approach, typically referred to as the 95/5 percent approach forces a newly demonized group of “outcasts” to confess to an array of so called “crimes” through either re-education (and the brainwashing and other forms of torture it includes) or, where needed, harsh legal sanctions including severe torture, forced labor and prison. Enclosed here are the Hebei provincial and Hebei Langford City municipal Notices. This material is attached as Exhibit 1 to Marsh Declaration.

Soon thereafter, at a June 7, 1999 meeting of the elite Politburo of the Party,² Jiang Zemin delivered his well-known speech, titled “Swiftly Handle and Solve the Falun Gong Problem.” In this speech that would be circulated across China, Jiang Zemin described in graphic detail the initial plan to wipe out the Religion, including objectives, strategy and instructions to include key CCP and government offices at national and regional levels. In particular, in the speech, the then-Party Chief and President announced that 1) the Central Committee of the Politburo had agreed to have one of its key members, Li Lanqing, establish the “Leadership Team to Handle Falun Gong” (“Leadership Team”) to “handle” the “Falun Gong problem, and to direct the Leadership Team and its Office, Office 610, with the support of Vice-directors Lou Gan and Ding Guangem;³ 2) that the Leadership Team and Office 610 would formulate a crack down strategy and help enlist a fully mobilized army of cadres to assist; 3) that all government organs and party committees would work in concert with the Leadership Team and Office 610 to achieve the goal of disintegrating the Religion; and 4) that the Religion would be dissolved in part through its demonization as a “deviant religion” and superstition based on a set of stereotypes that would be reiterated by all media and displayed on all CCP and government websites across China. Describing the threat posed by the Religion as no different than that posed by the pro-democracy rebellion at Tiananmen Square in 1989, Jiang Zemin provided a framework to justify the campaign’s upcoming attack and a well formulated plan as to how to carry it out. This speech was circulated among key leaders of the Party and State at all national and regional levels with instructions (from the Party’s Central Beijing Office) to study and carry out its measures. *See*, June 7, 1999 Speech, attached to Marsh Declaration as Exhibit 2.

Within the month of July 1999:

² The 20-member ruling body of the Central Committee of the Chinese Communist Party.

³ Each of these men managed key Party committees that could in turn enlist the support of other key CCP and government entities

- The Chinese Communist Party privately began to enlist the support of key CCP leaders by launching an intra-Party study campaign to make clear to key party leaders that the elimination of Falun Gong is necessary insofar as the practice posed a threat to survival of the Marxist state.⁴
- Public Security officers throughout China detained numerous Chinese citizens who practiced Falun Gong. Three days of massive protests in thirty cities followed. In Beijing especially, but also in other cities, police held protesters in sports stadium. ⁵*Id.*
- Key officials at the Ministry of Public Security in July of 1999 banned the propagation of the religious practice of Falun Gong in any form and co-extensively, prohibited practitioners from exercising citizen rights of appeal and protest under the Chinese Constitution.⁶ Five of the six reasons offered to justify the official ban of Falun Gong reiterated Jiang Zemin’s characterizations of Falun Gong as a threat to the stability of the P.R.C from various angles.⁷
- Key officials of the Ministry of Public Security, in concert with others issued a circular calling for the destruction of all publications related to the spiritual practice of Falun Gong, and the investigation and punishment of “all units and individuals that have published, printed, copied, and distributed” such materials. *Id.* A few days later, several key government organs reinforced and further publicized Jiang Zemin’s characterizations of Falun Gong by characterizing the Religion on their websites as a form of superstition and a national threat. *Id.*⁸
- Key officials at the Ministry of Justice issued a notice requiring all law firms to seek approval for requests to represent or consult with practitioners of Falun Gong and required that any legal explanations provided to those seeking services be consistent with the central authority’s policies towards Falun Gong.⁹

⁴ See Lizhi He’s “Recollection of a Speech by the Director of State Bureau of Religious Affairs on the State Policy of Religion, Chinascope February/March (2005), available at www.chinascope.org which documents the speech given to CCP insiders as early as August or September of 1999 by Ye Xiaowen, the Director of the State Bureau of Religious Affairs. *See also*, Human Rights Watch, “Defiance and Response: A Chronology,” at p. 2 (PDF version, online at <http://hrw.org/reports/2002/china/China0102-02.htm>) at p. 2.

⁵ Human Rights Watch, “Defiance and Response: A Chronology,” at p. 2 (PDF version, online at <http://hrw.org/reports/2002/china/China0102-02.htm>) at p. 2.

⁶ *See* Human Rights Watch, “Defiance and Response: A Chronology,” at p. 2 (PDF version, online at <http://hrw.org/reports/2002/china/China0102-02.htm>).

⁷ All are disingenuous. For example, and as noted by Human Rights Watch, Falun Gong had tried three times to register as a social organization, though appropriate channels. All applications were denied. *See* Human Rights Watch, *Dangerous Meditation*, “Laws and Regulations Used to Crackdown on Falun Gong” at p.1, available at http://hrw.org/reports/2002/china/China0102-02.htm#P331_49488.

⁸ The CCP set up the China Anti-Cult Web site a year later with the same characterizations of Falun Gong which at one place states, “Let’s call them terrorists, then anything goes.” This and other similar statements from the official Web site have been downloaded and are available upon request.

⁹ This notice violates the rights of citizens to legal counsel of their choosing under international law and is inconsistent with international standards that call on governments to ensure that lawyers are able to perform their professional functions within intimidating or improper interference.

- Throughout this period, key officials at the Ministry of State Security gathered information about Falun Gong practitioners, and created a network of falsified intelligence based directly on the characterizations of Falun Gong provided by the accused in his June 7, 1999 and related speeches. This information was disseminated by the Ministry of State Security to operatives in China and overseas.

Throughout August and September, key CCP leaders engineered a thoroughgoing media and publishing campaign to produce “evidence” of Falun Gong crimes so as to justify the upcoming massive arrests, detention, interrogation, and persecution of Falun Gong, as well as to incite the police and other security forces to subject practitioners of Falun Gong to these unlawful practices, and to mobilize public support of the crackdown. As part of this State-sponsored effort, members of the CCP Office of Propaganda engineered a media and publishing campaign to create evidence of purported Falun Gong crimes so as to justify the upcoming unlawful persecutions, to orchestrate public opinion to support the crackdown, and to “cleanse” China of the Religion and its adherents.¹⁰

By October and November 1999, key officials of the Standing Committee of the National People’s Congress (the legislature) in collaboration with officials of all judicial branches of government formally joined the concerted effort and took a series of steps to make prosecution of Falun Gong practitioners even easier.

In October 1999, key officials at both the People’s Court and the Supreme People’s Procuratorate criminalized the religious belief in Falun Gong by their issuance of “Explanations ... Concerning Laws Applicable to Handling Cases of Organizing and Employing Heretical Cult Organizations to Commit Crimes.” This document defined a “deviated religion” as having the characteristics attributed to Falun Gong by the CCP-controlled media and other Party and government entities, thereby making it possible for Falun Gong practitioners to be brought to trial under the anti-cult law of China’s criminal code. On October 27, the People’s Daily concluded that there was sufficient evidence to prove that Falun Gong was a cult, referencing the same characteristics attributed to Falun Gong by the media and other government entities.¹¹

Now that the government leadership had published its views on Falun Gong as a “deviated religion” rather than a Buddhist School religion, they could ban the religious practice based on that reason alone and not merely because it had not registered, the reason they gave on July 22, 1999 when they initially banned the organization. Thus, on October 30, 1999, key officials of the Standing Committee of the National People’s Congress officially joined the concerted effort and issued its “Decision ... on Banning Cult Organizations”; and in November 1999, Supreme People’s Court officials at the highest levels issued a circular that provided instructions to people’s courts for trying criminal cases brought under anti-cult and related laws. Soon thereafter,

¹⁰ See Human Rights Watch, “Defiance and Response: A Chronology,” at p. 8, available at <http://hrw.org/reports/2002/china/China0102-02.htm>.

¹¹ See “China Party Paper Says Falun Gong is ‘true cult,’” BBC Worldwide Monitoring, October 27, 1999, from Xinhua.

one-day trials of Falun Gong practitioners in Haikou (Hainan Province) Intermediate People's Court initiated the trial and sentencing of Falun Gong practitioners¹²--trials that merely carried out verdicts and sentences decided ahead of time at CCP meetings organized and run by the CCP Political and Judiciary Committee, as indicated in 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."¹³

This is what renowned human rights attorney Gao Zhisheng said about the illegality of the legislation promulgated by the National People's Congress to ban the Religion and the trials that ensued, in his second open letter to China's National People's Congress (available at <http://www.theepochtimes.com/tools/printer.asp?id=39696>:

From the perspective of the existing laws, the sentence and punishment of Falun Gong practitioners completely violates the basic legal principles and modern practices of the rule of law:

1. In any country that adopts statutory law, the applicability of criminal law naturally circumscribes the time frame and the extent to which the regulation of the criminal laws can be applied (including the issue of people, events, and location). Theoretically, the "Criminal Law of the People's Republic of China" (hereafter as "Criminal Law") is no exception. It is a basic principle of our country's "Criminal Law" that its rules do not apply to the past, that is, the "Criminal Law" does not apply to behaviors that took place prior to the legislation of the "Criminal Law." On October 30, 1999, the promulgation by the Standing Committee of the National People's Congress of a "Decision to Eradicate Evil Cult Organizations and to Prevent and Punish Evil Cult Activities" (hereafter as "Decision") served only a matter of formality, making up something that is needed in the legislation of criminal punishment [regarding the said activities]. And thereafter, the majority of the criminal punishment of citizens who practice Falun Gong was directed toward their behavior prior to the promulgation of the "Decision." The sentencing of Huang Wei to re-education through labor in November of 1999 belongs squarely to this situation. This violation of basic principles of our country's "Criminal Law" has been public, sustained, and large scale. That is to say, the majority of the citizens have been thrown into prison in a situation where our country's basic legal principles are violated.

2. Whether a country adopts statutory or common law, criminal law can only regulate (or "attack," a word commonly used in our country) people's action, but not the thoughts or identity of a certain group of people. This is a result of the coming of age of criminal laws

¹² See "Human Rights Watch," *supra* at note 7.

¹³ Section five especially makes clear that 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. This document is available upon request.

around the world. The punishing of many citizens who practice Falun Gong has been due to their identity as Falun Gong practitioners; Huang Wei being sent to a labor camp is a clear example. This is a revolt against modern civilization and the rule of law. Its direct result is rendering universal legal standards arbitrary; causing substantial long term damage to the rule of law that has been affirmed and pursued by our country.

3. The "Decision" has not offered any legal definitions for proper judgments in trials regarding: Falun Gong practitioners; the behavior of Falun Gong practitioners; the relationship between Falun Gong practitioners and Falun Gong as an organization; the relationship between the Falun Gong organization and so called "evil cult organizations; what an evil cult organization is; and in what ways Falun Gong practitioners, the behavior of Falun Gong practitioners, and the Falun Gong organization belong to the category of evil cult crimes. As a result, the majority of the sentencing and punishment of Falun Gong practitioners are based on "using evil cult organizations to obstruct the exercising of state laws." And in the criminal charges, there is a lack of the necessary information about whether there is indeed any evil cult organization that could be used by the person charged with the crimes; whether the person did make use of any evil cult organization; when and where the person charged made use of an evil cult organization; whether the person charged did obstruct the exercising of state laws; and how the person obstructed the state laws. In the two times where Huang Wei was punished (even though [the reason offered] was for administrative purposes—[since no trial was involved]), the reason was simply for "using evil cult organizations to obstruct the exercising of state laws." In this situation, there is no guarantee whatsoever that the criminal punishment is based on concrete evidence and is accurate, leaving the citizens in a dangerous situation without any protection.

[...]

5. The conspiratorial promulgation of these detrimental phenomena on the part of the country and its local governments has directly led to the vicious behavior of legal workers. In Huang Wei's case, the legal workers' irresponsibility and their corrupt, unprofessional conduct have reached an alarming level despised by any civilized society. More terrifying is that they did not consider their behavior shameful. Judges and courts of justice are guardians of legal values, and their professional code of ethics, expert knowledge, and civilized systems should function to raise their instinctual caution over possible deviations from legal values. This is a universal value standard of judges and courts of justice in all of humankind's civilized societies. But in Huang Wei's case, what we see is just the opposite. The judges and the courts of justice, while playing the role of "gate keepers," have not any sense of responsibility and morality in their treatment of state laws and legal principles. They attack, like dogs, anyone who attempts to uphold legal values. They have no respect for the sacredness of their profession, and are doing all they can to generate negative moral and social effects in the state's exercise of power. This really pains me (I assume Chairman Wu Bangguo must feel the same.)”

B. The Implementation: 2000 - 2006

By 2000, there was a 610 Office in the CCP's Central Committee and all the way down to each local CCP party branch. The 610 Office used its delegated power to drive and coordinate a nationwide persecution of Falun Gong. In addition an Office 610 specializing in arrests and intelligence was set up as Bureau 26 of the Ministry of Public Security in Beijing. This Office 610 worked closely and collaboratively with the Ministry of Public Security where it is housed. *See*, Hao Fengjun, "The Office 610 that I witnessed," attached hereto as Exhibit 3. This office has never been mentioned in any formal legal document, government document or public document at the CCP's Central Committee level because it operates in direct violation of current Chinese law. *Id.* However, a secret document regarding its operation has been provided to undersigned counsel by 610 defector Hao Fengjun, and is attached hereto as Exhibit 4.

This well orchestrated collaborative effort is well illustrated in a news article by John Pomfret, *Torture is Breaking Falun Gong*, published in the Washington Post, Aug. 5, 2001 at p. A1, which details how the persecution comprises a highly organized and systematic campaign of not only widespread arrests and torture by police and security personnel, but also the more extensive use of brainwashing techniques and propaganda. First and foremost is the use of police brutality as a method for punishing and intimidating practitioners who refuse to renounce their beliefs. Second, is the more widespread and systematic use of compulsory brainwashing sessions (that include the viewing of brainwashing programs) to force practitioners of Falun Gong to abandon and denounce their beliefs. Third is an intense propaganda campaign geared to incite the police and other security personnel to carry out the arbitrary arrests, detention and torture.

Thus, as one government advisor quoted in the Pomfret article states, "as effective as the conversion and transformation techniques have been in 'persuading' members to quit practicing Falun Gong...[the] high-pressure propaganda campaign against the group, has also been critical." *See Id.* at p. A1. Indeed, "[e]ach aspect of the campaign is critical. ... As Chinese society turned against Falun Gong, pressure on practitioners to abandon their beliefs increased, and it became easier for the government to use violence against those who did not," and vice versa. *Id.*¹⁴

It is also well illustrated by the Vice Premier of China, Li Lanqing, in a speech he delivered to an audience of party and government officials, where he explains that the success of the campaign waged against Falun Gong is based upon and due to the hard work and well orchestrated effort of police officers and security guards, judicial officers, journalists and other members of the media, scientists, academics, teachers, diplomats and many others. *See*, Speech of Li Lanqing, attached hereto, as Exhibit 5.

¹⁴The government advisor continues by referencing the impact of the self-immolation propaganda campaign as follows. The self-immolation of five purported members in Tiananmen Square on Jan. 23 was a turning point. A 12 year old girl and her mother died, and the party made the incident the centerpiece of its campaign to discredit Falun Gong. By repeatedly broadcasting images of the girl's burning body and interviews with the others saying they believed the self-immolation would lead to paradise, the government convinced many Chinese that Falun Gong was an "evil cult."

While it is not possible within the confines of this submission to summarize all the major acts undertaken by the joint criminal enterprise, especially in light of the sheer magnitude of its operation across China, what stands out is the brutality of the measures used to forcibly convert adherents and wipe out the Religion.

The severity of the persecution has been confirmed by several United Nations reports. For example, the Special Rapporteurs on Freedom of Religion or Belief have reported frequently that “State officials in their attempts to force practitioners to renounce their belief in Falun Gong violate their rights to freedom of thought, conscience and religion [under the Chinese Constitution] ... and that these alleged human rights violations against Falun Gong practitioners, include systematic arrest and detention, [and] are part of a pattern of repression against members of this group.”¹⁵ Many other United Nations Special Rapporteur reports have similarly expressed their grave concern over acts of torture, and the murders and disappearances of (especially female) practitioners of Falun Gong. *See*, for example, Report of the Special Rapporteur of the UN, on issues of violence against women (Office of the High Commissioner on Human Rights, 57th Session, document number E/CN.4/2001/73/Add.1), at ¶¶ 15-16, where the Special Rapporteur communicated her grave concern in regard to information received concerning the alleged use of violence against women in China and in particular the ill treatment of female Falun Gong practitioners (the vast majority of Falun Gong practitioners are women). This report details the methods of torture used against women adherents. *See also*, the Report of UN Special Rapporteur, Sir Nigel Rodley, E/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.”¹⁶

More recently, Dr. Manfred Novak, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, has documented the methods of ill treatment of adherents of Falun Gong as including

beatings with sticks and batons; use of electric shock batons; cigarette burns; hooding/blindfolding; guard-instructed or permitted beatings by fellow prisoners; use of handcuffs or ankle fetters for extended periods (including in solitary confinement or secure holding areas); submersion in pits of water or sewage; exposure to conditions of extreme heat or cold; being forced to maintain uncomfortable positions, such as sitting, squatting, lying down, or standing for long periods of time, sometimes with objects held under arms; deprivation of sleep, food or water; prolonged solitary confinement; denial of medical treatment and medication; hard labor; and suspension

¹⁵ *See*, for example, Report of Special Rapporteur on Freedom of Religion or Belief Asma Jahangir (ECOSOC, document number E/CN.4/2005/61/Add.1), March 15, 2005, at ¶¶ 55-73. At ¶ 64, this report further notes that “many are detained and ill-treated in order to force them to formally renounce Falun Gong. Those who refuse are sent to re-education through labor camps, where reportedly torture is used routinely, resulting in many deaths.”

¹⁶ The Report of the International Education Development (Commission on Human Rights, 61st Session, document number E/CN.4/2005/NGO/132, March 2005), at ¶ 3, summarizes several of these reports.

from overhead fixtures with handcuffs. In several cases, the techniques employed have been given particular terminologies, such as the “tiger bench”, where one is forced to sit motionless on a tiny stool a few centimeters off the ground; “reversing an airplane”, where one is forced to bend over while holding legs straight, feet close together and arms lifted high; or “exhausting an eagle”, where one is forced to stand on a tall stool and subjected to beatings until exhaustion.¹⁷

Gao Zhisheng, a civil rights attorney in China who took it upon himself to investigate the persecution of the Religion in China, also known to many as the “conscience of China,” had this 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.”¹⁸

In addition, other sources report that many of the women subjected to these practices, have “been stripped naked and forced into male prison cells where they were then gang raped. Police have inserted live electrical batons and other implements, such as bundled toothbrushes, inside women practitioners’ genitals, and hooked their genitals and other sensitive areas with iron implements.”¹⁹ Women practitioners have also been sent to mental hospitals and injected with psychotropic drugs to force them to renounce their belief in Falun Gong.²⁰

Theo van Boven, the former Special Rapporteur of the United Nations on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has also submitted several reports to China about Falun Gong adherents who have died in police custody and/or been subjected to torture and other crimes against humanity in and across China. These include :

1. **Liu Jie** (female) was reportedly arrested on 6 February 2003 and taken to the Second Detention Centre in Shuangcheng City, where she was allegedly subjected to ill-treatment. It is reported that on 17 February 2003, her family was informed of her death.

¹⁷ See, Mission To China: Report of Special Rapporteur Manfred Novak (General Assembly 62nd Session, document number E/CN.4/2006/6/Add.6, 10 March 2006), at 45.

¹⁸ 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>.

¹⁹ THE EPOCH TIMES, NINE COMMENTARIES ON THE COMMUNIST PARTY 213 (2004).

²⁰ In April of 2004, the World Organization to Investigate the Persecution of Falun Gong investigated over 100 psychiatric hospitals in 15 provinces of China. 83 percent of the psychiatric hospitals questioned admitted that they have “accepted and treated” Falun gong practitioners and more than half of these hospitals also admitted that those practitioners had no mental problems and were admitted merely for the purpose of detaining them to force them to renounce their beliefs. WOIPFG, INVESTIGATIVE REPORTS ON THE PERSECUTION OF FALUN GONG, ch. IV (2004).

2. **Lan Hu** was reportedly arrested in January 2002 and detained in Jiujiang City Detention Centre for nearly a year. He was reportedly sentenced in December 2002 to 11 years in detention to be served at Nanchang City Prison, where he was allegedly forced to work for up to 15 hours a day. On 9 February 2003 his family was reportedly informed of his death and came to the prison where they reportedly found his body emaciated.

3. On 21 May 2003, the Special Rapporteur sent an urgent appeal concerning **Minli Wang** (female), a Falun Gong practitioner, who was reportedly arrested by officers of the Public Security Bureau on 12 May 2003 in Jilin City. She allegedly tried to escape her arrest by jumping out of a window. As a result, two of her ribs were reportedly broken. She was reportedly taken by the police to the City Hospital under strict and constant surveillance. A laryngotomy was reportedly forcefully performed on her allegedly in order to make her stop talking about Falun Gong. As a result, she has reportedly not been able to speak anymore.

4. On 11 June 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on violence against women concerning **Wei Xingyan**, a student, who was reportedly arrested on 11 May 2003 along with a dozen other students and teachers from Chongqing University and China Southwest University of Political Science and Law for hanging banners and balloons commemorating 13 May, the anniversary of the introduction of Falun Gong. According to information received, on 13 May 2003, several policemen took her to a cell in Baihelin Detention Center of Shapingba District, and forced two female inmates to strip her. One of the uniformed policemen reportedly pushed her to the ground and raped her as the other inmates watched. As she engaged in a hunger strike to protest her treatment, police reportedly botched a violent force-feeding attempt, seriously injuring her trachea. This report is available at [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2004.56.Add.1.En?Open](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2004.56.Add.1.En?Open).

The province of Liaoning where the second accused, Bo Xilai, presided as government and deputy secretary of the Liaoning Party from February, 2001 through February 2004, is known to be one of the most repressive and abusive jurisdictions in China as regards the arrest and treatment of Falun Gong adherents. The extent and seriousness of the persecution and abuse that is targeted against Falun Gong practitioners at both the national level, and in local provinces such as Liaoning Province, have 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 non-governmental 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, has numerous specific references to the major human rights abuses and violations being committed against Falun Gong practitioners. The report, which described the “crack down” 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), noted that “approximately 100 or more Falun Gong adherents have died in detention since 1999” (p.122); that “many of their bodies reportedly bore signs of severe beatings and/or torture;” that “many thousands of individuals are 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 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 practitioners. (p. 133).

The abuses committed by police and security forces against practitioners of Falun Gong in Liaoning have been especially widely reported by the third parties. These include the significant number of reports of Falun Gong adherents who have died from torture inflicted in labor camps and detention centers, as well as those who have been subjected to extensive torture and other human rights violations. According to a World Organization to Investigate the Persecution of Falun Gong Report, over 100 adherents died in custody as the result of torture in Liaoning Province from 1999 through March 2004. This report is summarized below at pages 26 -27. More generally, a report issued by the Global Mission to Rescue Persecuted Falun Gong Practitioners (GMR), indicates that 427 adherents were tortured to death from 2000 through 2005 in Liaoning. *See* "MSG Report," attached to Marsh Declaration as Exhibit 6. *See also*, "Excerpts of United Nations Special Rapporteur Reports," attached to this document as Exhibit 7.

Gao Zhisheng, the prominent human rights attorney in China in his third open letter to Hu Jintao and Wen Jiabao (available at <http://www.theepochtimes.com/tools/printer.asp?id=35876>) makes clear the role of key officials in the security system in China, including but not limited to those subjected to arrest, interrogation, detention and torture in Liaoning:

At this moment, with a trembling heart and a trembling pen, I am writing down the tragic experiences of those who have been persecuted in the last six years. Among the true accounts of unbelievable brutality, among the records of the government's inhuman torture of its own people, the immoral acts that shocked my soul the most were the lewd yet routine practice of attacking women's genitals by 6-10 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. No language or words could describe or re-create our government's vulgarity and immorality in this respect. Who with a warm body could afford to stay silent when faced with such truths?

His comments are reinforced by the testimonials provided by complainants and witnesses that have been submitted under separate cover to this Court. Further support is

provided in several third party reports. *See*, for example, Amnesty International Report, “Reports of Torture and Ill-Treatment of Followers of Falun Gong,” at URL: <file:///H:/Active%20Cases/Spain/Aii%20Report%20Liaoning%201999.htm>.

It is also relevant to take note of a July 6, 2006 Kilgour and Matas report suggesting that Falun Gong practitioners have been subjected not only to severe torture, but also to medical procedures that chart their blood and tissue type, so that when their blood and tissue type are needed by a donor recipient, they may be sent to the appropriate hospital for organ removal. *See* David Matas, Esq., and Hon. David Kilgour, Esq., "An Independent Investigation Into Allegations of Organ Harvesting of Falun Gong Practitioners in China," available at david-kilgour.com). Relevantly, the Matas & Kilgour Report further suggests that organs may have been removed from adherents in the province of Liaoning during Bo Xilai’s tenure in office as Governor of the Liaoning Province and Deputy Secretary of its communist party. *Id.*

II. THE CONCERTED EFFORT TO ERADICATE FALUN GONG COMPRISES VIOLATIONS OF INTERNATIONAL LAW PROHIBITING NOT ONLY GENOCIDE BUT ALSO TORTURE, ARBITRARY ARREST AND DETENTION, GENOCIDE AND CRIMES AGAINST HUMANITY IN PROVINCES ACROSS CHINA INCLUDING THE PROVINCE OF LIAONING.

A. Genocide

Winston Churchill, in a live broadcast from London during the Nazi invasion of Russia in 1941, was so horrified at the devastation inflicted on humanity by the invading troops that he described the barbarity of the Nazi occupation in these words: “We are in the presence of a crime without a name.” When the full impact of the Nazi atrocities finally came to light, there was simply no word in the human language that could fully describe it. Thus, a new word – *genocide* – was created.²¹

The activity designated by the new word, coined in 1943 by Raphael Lemkin, was formally prohibited by the Convention on the Prevention and Punishment of Genocide in 1948, which has been ratified to date by 99 countries, including Spain.²² The status of genocide under customary international law is also significant because it determines the obligations of all states regarding genocide, whether or not they are a party to the Convention. Relevantly, most important sources conclude that obligations concerning genocide are part of customary international law. In particular, the International Court of Justice (ICJ) recognized genocide’s status under customary international law when it remarked in the Reservations case that ‘the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation.’²³ All versions of the ILC’s Draft

²¹ *See*, James T. Fussel, “*A Crime without a name*,” Prevent Genocide International (<http://www.preventgenocide.org>).

²² While China has signed the Convention, it has not enacted any domestic genocide law for application. *See*, for example, <http://preventgenocide.org/law/domestic>.

²³ *See*, e.g., Reservations Case, 1951 ICJ at 23; Eichmann, 36 ILR at 11; Akayesu Judgment, para. 495; RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES paras. 404,

Code have used the definition of genocide derived from the Convention. *See, e.g.*, 1954 ILC Report, at 151 (art. 2(10)); *see also*, 1996 ILC Report, (85-87 (art. 17). In addition, the ICJ has recognized that obligations concerning genocide are *erga omnes*, and most sources agree that the prohibition has achieved the status of a *jus cogens* norm.²⁴

Article 2 of the Genocide Convention, 78 U.S.T.S. 277, defines the term “genocide” to mean:

Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such [by] a) Killing members of the group; b) Causing serious bodily or mental harm to members of the group; c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) Imposing measures intended to prevent births with the group; e) Forcibly transferring children of the group to another group.

This definition precisely describes the actions carried out by the nationwide campaign in China to eliminate the Religion and eradicate its adherents through forced conversion, or where needed, extermination.

1. The mens rea element is properly alleged.

The intent or *mens rea* factor of the crime of genocide can be deduced from a number of facts. In *Karadzic and Mladic*, IT-95-5-18 R61, the International Court for the Tribunal of Yugoslavia (“ICTY”) indicated that it considered that the specific intent of the crime of genocide:

may be inferred from a certain number of facts, such as the general political doctrine giving rise to the acts or the repetition of destructive discriminatory acts. Intent may also be inferred from the perpetration of acts which the perpetrators themselves consider to violate the very foundation of the group, acts which are not in themselves covered in the list in article 4, ¶ 2, but which are committed as part of the same line of conduct. ICTY, *Karadzic and Mladic*, IT-95-5-R61 and IT-95-18-R61, July 11, 1996, ¶ 94, available through <http://www.un.org/icty>.

As is made clear *supra* at section I.A, the persecutory acts waged against Falun Gong adherents were specifically geared to bring about the elimination, demise, destruction and eradication of them, their spiritual discipline and its tenets. This goal was first articulated by former Party Chief Jiang Zemin in his June 7, 1999 speech to the elite core of the Chinese Communist Party, in which he called for the creation of an office (Office 610) to implement the “mission of the dissolution of Falun Gong.” *See, Exhibit 2*, at p. 5, attached to Marsh declaration. This speech was sent to all provincial and city Communist Party offices, and served as the basis for the campaign targeted

702 (1987).

²⁴ *See, e.g.*, *Barcelona Traction Light & Power Co. (Second Phase) (Belg. v. Spain)*, 1970 ICJ 3, 32 (Feb. 5); Final Report of the Commission of Experts established pursuant to Security Council Resolution 935 (1994), Dec. 9, 1994, UN Doc. S/1994/1405, at 30.

against the Religion and its adherents. The goal of disintegrating the Religion also is confirmed by several third party reports to be presented to the court at trial. For example, in a CNN article published on its web site as CNN: China's Suppression Carries a High Price, CNN.com, Feb. 9, 2001, it is reported (at page 2) that "Jiang wants to achieve the goal of eradicating the sect before the 80th anniversary of the Communist Party." See, Exhibit 8, attached to Marsh declaration. *also*, "China's Leadership Pushes for Unity," Erik Eckholm and Elisabeth Rosenthal, March 9, 2001, New York Times, available at <http://query.nytimes.com/gst/fullpage.html?res=9F01E2D8173AF93> ("At a crucial time in his political life, Mr. Jiang wanted to make sure that the ruling party remained firmly unified on two divisive issues: the campaign to crush Falun Gong and ...").

2. Falun Gong qualifies as a "religious group" under the Genocide Convention.

Falun Gong adherents are persecuted as members of a "religion" in China.²⁵ The composition of the "group" is based on adherents' shared belief in the spiritual principles of compassion, forbearance and truthfulness and a shared set of tenets that emphasize the importance of becoming spiritually pure through the practice of meditation exercises, a spiritual discipline also described as a "form of self-cultivation" and a shared belief in metaphysical principles. This was recognized in China even by Jiang Zemin, as indicated by his designation of Falun Gong as a (albeit deviated) religion. See discussion *supra* at section I.A.

That Western features like the worship of a single deity are not present is not of significance as the definition of a "religion" cannot be based on some religious practices (e.g., Christianity and Judaism) and not others, such as Buddhism, Hinduism and Falun Gong. As the United States Court of Appeals for the Seventh Circuit states in *Zhen v. Gonzales*, No. 04-1700 (March 2005), "though [Falun Gong] ... is not a religion in the Western sense.... [l]ike other Asian "religions" such as Buddhism and Confucianism – on both of which Falun Gong draws – there is no deity. The emphasis [however] is on spiritual self-perfection." *Id.* at p. 3.

The Seventh Circuit's view comports well with most definitions of religious groups that cover spiritual groups such as Falun Gong, including that of the ICTR ("a group whose members share the same religion, denomination or mode of worship"), ICTR Trial Chamber, *Akayesu*, ICTR-96-4-T, September 2, 1998, cited in complaint at ¶ 515, as well as the Human Rights Committee of the United Nations. The latter has indicated that the concept of religion is to be interpreted broadly and is not limited to already established religions, or to religions with institutional characteristics or practices analogous to traditional forms of religious practice. See, Human Rights Committee, General Comment 22, UN Doc. CCPR/C/21/Rev.1/Add.4 (1993), ¶ 2(1993).²⁶

²⁵ Falun Gong is characterized in China as a "religion," albeit an unsanctioned religion like all religions that do not place the Communist Party above their belief in a deity or other spiritual principles. The term "cult" is a translation of the Chinese term for "deviated religion." Many Catholics, Buddhists, and Tibetans are similarly labeled.

²⁶ See *also* ICTR Trial Chamber, Rutaganda, ICTR-96-3, Dec. 6 1999 ¶ 56 (For purposes of applying the Genocide Convention, the concept of group is subjective rather than objective, requiring that the victim be perceived by the

The means used to accomplish the goal of eradication include torture, widespread arbitrary arrests and detention in forced labor camps, torture, and crimes against humanity. Indeed, the United Nations Special Rapporteurs have “expressed their concern at reports of systematic repression against Falun Gong,” that “reports of arrest, detention, ill-treatment, torture, denial of adequate medical treatment, sexual violence, deaths and unfair trial of members ... are increasing” and “that these allegations may reflect a deliberate and institutionalized policy of the authorities to target ... Falun Gong.”²⁷

B. 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 on this matter.

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.” In *Selmouni v. France*, the European Court concluded that the petitioner was subject to torture as a result of severe and repeated police beatings that left marks on his entire body and as a result of humiliating treatment. *Id.* at 442-443. *See also* *Aydin v. Turkey*, 25 E.H.R.R. 251 (1997) (raping, beating, and blindfolding detainee constitutes torture); *Aksoy v. Turkey*, 23 E.H.R.R. 553 (1997) (stripping detainee with arms tied behind his back and suspending him by the arms constitutes torture).

Relevantly, torture is prohibited not only under Spanish law, but it is also prohibited under Chinese law. The Convention Against Torture—which came into effect internationally on June

perpetrator as a group slated for destruction.)

²⁷ *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).

26, 1987, and was ratified by the Chinese regime on October 4, 1998—prohibits the intentional infliction of “severe pain or suffering, whether physical or mental” for any purpose, including but not limited to punishment, intimidation or coercion. In addition, and while there is no explicit definition of torture in Chinese domestic legislation, basic elements of the definition of torture under CAT are reflected in several provisions of the Criminal Law (CL) which prohibit: extortion of a confession under torture by a judicial officer. (Criminal Law adopted at the Second Session of the Fifth NPC on July 1, 1979 and Revised at the Fifth Session of the Eighth NPC on March 14, 1997) (art. 247).; extraction of testimony by use of force by a judicial officer (art. 247); physical abuse of inmates as well as instigation of detainee-on-detainee violence by a policeman or other officer of an institution of confinement like a prison, a detention house or custody house (*Id.*) (art. 248).

Notwithstanding these prohibitions, torture has been the “instrument” of choice in the campaign’s concerted effort to purge China of the 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).

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 torture, pain and humiliation, geared to coerce the individual women and men who practice Falun Gong to publicly relinquish their beliefs and denounce the practice.

1. China

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. 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*, the Report of Ms. Radhika Coomaraswamy, the Special Rapporteur on Violence against Women, (Office of the High Commissioner on Human Rights, 57th Session, document number E/CN.4/2001/73/Add.1).

As indicated above, many United Nations Special Rapporteur reports have expressed their grave concern over acts of torture, the murders and disappearances of practitioners of Falun Gong. *See*, for example, Report of the Special Rapporteur of the UN, in issues of violence against women (Office of the High Commissioner on Human Rights, 57th Session, document number E/CN.4/2001/73/Add.1), at ¶¶ 15-16, where the Special Rapporteur communicated her grave concern in regard to information received concerning the alleged use of violence against women in China and in particular the ill treatment of female Falun Gong practitioners (the vast majority of Falun Gong practitioners are women). This report details the methods of torture used against women adherents. *See also*, the Report of UN Special Rapporteur, Sir Nigel Rodley, E/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. Nowak 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 non-governmental 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" (p.122); 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 practitioner 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 practitioners. (p. 133).

The continued application of these persecutory practices to those who refuse to renounce their Falun Gong faith has been affirmed in successive reports. The US 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. *See generally*, Amnesty International 2001 Report,” available at URL: <file:///H:/Active%20Cases/Spain/Aii%20Report%20Liaoning%201999.htm>.

The continued and ongoing nature of the campaign against Falun Gong is also made clear by U.S. Department of State’s International Religious Freedom Report for 2006, where, for example, the United States Department of State 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 Courts have indicated that torture is an ongoing measure used against Falun Gong adherents.²⁸ This is especially true where the case involves an asylum petition of an adherent seeking asylum in the United States based upon past bouts of torture based solely upon their practice of the Religion in China. For example, the Seventh Circuit, in an asylum case based on facts similar to the case before this court, made clear that membership in Falun Gong

²⁸ See discussion *infra* at p. 25.

is a basis for fear of future persecution if deported to China. In particular, 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*, C.A. 7, 2005 (No. 04-1700).

It is also relevant to note that 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. His reports provide further support of the third party United States reports, the District Court for the Northern District of California Opinion, and the dozens of sworn affidavits provided to undersigned counsel by Falun Gong survivors of torture in China.

This is what he 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.”²⁹ Falun Gong ... [and m]any are said to have suffered torture or ill treatment.”³⁰

The facts set forth in petition filed with this court invoke and apply these or similar legal standards.

2. Liaoning

As indicated above, Liaoning Province is known to be one of the most repressive and abusive jurisdictions in China as regards the torture and other abuses perpetrated against adherents since the onset of the campaign in 1999.

As early as October, 1999, Amnesty International has been publishing reports of torture of Falun Gong adherents in China. In an Amnesty October 22, 1999 report (“Reports of Torture and Ill-Treatment of Followers of Falun Gong.” (available at <http://asiapacific.amnesty.org/library/Index/ENGASA170541999?op>) Amnesty published an in depth report of alleged instances of torture in several provinces across China, including the below listed:

²⁹ 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>.

³⁰ *See Erturk*, *supra* note 27. *See also Sir Nigel Rodley, Report of the Special Rapporteur on torture*, U.N. ESCOR, 57th Sess., at ¶¶ 237, 238, 246, U.N. Doc. E/CN.4/2001/66 (2001); *Commission on Human Rights, The Report of the International Education Development*, 61st Sess., U.N. Doc. E/CN.4/2005/NGO/132 (2005).

In Dalian city, as in other places, groups of FLG practitioners were arrested on various dates in the past three months for appealing against the ban on the FLG or practicing FLG exercises in public parks. Many were held for 15 days of "administrative" detention - a punishment imposed by police under public order regulations. Some were reportedly tortured or ill-treated in police custody. The following cases concern people detained at the Yaojia Detention Centre, located in Nanganling in Dalian, in late August and September 1999.

Zhang Xiao Hong, a 38 year-old woman from Dalian, was arrested on 30 August 1999, when she was practicing the exercises in Youjia Village of Shahekou District. She was charged with "disrupting social order by using feudal superstition", served with a 15 day detention order and detained at the Yaojia Detention centre. On 9 September, when she asked permission to do FLG exercises, she was reportedly tied to another practitioner with handcuffs and they had to sit back to back on a hard bench for 23 hours. During that period, they were not allowed to eat, sleep or go to the toilet. When they were untied in the evening of 10 September, they were handcuffed individually with their hands tied behind their back, remaining tied in this fashion until 14 September. During that period, they could lie on their sides but could not sleep, because the handcuffs had automatic tightening devices, and tightened and cut into the skin if they fell asleep. They had to rely on the help of fellow inmates to eat and pass stool. On 14 September, the handcuffs were moved to the front. They were released on 15 September.

Sun Lanfang, a 28 year-old woman from Dalian, who was also detained in September at the Yaojia Detention Centre, is reported to have been tortured because she practiced FLG exercises in her cell. She was reportedly shackled in a device known as the "Di Lao" (meaning literally "underground prison"), which includes a pair of handcuffs and foot-shackles linked together with crossed steel chains. Such instruments, which make it very difficult and sometimes impossible to walk or sit down, are known to have been used in prisons in various places in China. In Sun Lanfang's case, the device was reportedly further tied to a steel plate, so that she could not move for about 99 hours.

Zhang Chunqing, a 58 year-old woman from Dalian, was arrested on 3 September 1999 for practicing FLG exercises in a public park and detained for 15 days at the Yaojia Detention Centre for "disturbing public order". While held there, on 5 September, she was reportedly shackled in the "Di Lao" device when she said that she wanted to practice FLG exercises. According to an account she gave after her release, she could not walk with the device and had to crawl back to her cell when it was put on her. She remained shackled in this way for two days and nights and was put in the device again on 9 September when she and other women were found doing the exercises in their cell at night. According to her account, on 10 September, 30 of the women detained were beaten when they started reciting passages from a FLG book. Many of them were handcuffed to window bars in the corridor for many hours, while others were handcuffed in pairs back to back. They were freed from the handcuffs on 11 September.

Sa Yusong, a 36 year-old woman held at the Yaojia Detention Centre in Dalian in September 1999, was reportedly tied with handcuffs to a pipe of the heating system from 11 am on 4 September till 8 am the next day; then she was tied to a window rail until 4 pm on 5 September. Considered by police to be stubborn, she was reportedly handcuffed again with her hands tied behind her back from 9 September until her release on 11 September.

Yi Xingqin, a 34 year-old woman who had also been detained in Dalian on 30 August 1999, was reportedly made to stand up for 21 hours handcuffed to a window rail from 8 to 9 September 1999. She was then tied back to back with another practitioner for about 24 hours on 9-10 September. Following this, she reportedly continued to be handcuffed at night until her release on 15 September.

Yang Xiujian, a 33 year-old woman detained in Dalian on 30 August 1999 and held at the Yaojia detention Centre, was reportedly handcuffed to a window rail on 4 September and made to stand up tied there continuously for about 30 hours, after she told the guard that she wanted to do FLG exercises. As she later repeated the request, on 8 September she was reportedly put in the "Di Lao" device (see above), sitting on bricks in a cell until the evening of 9 September. Her menstrual period started that evening but she was not allowed to change or removed from the "Di Lao" device. Instead, she was reportedly made to walk fast by the guard from one cell to another while wearing the device which poked a hole on her foot. In the evening of 10 September, the "Di Lao" was removed, but she remained handcuffed until she was released.

Zhu Hang, female, an Associate Professor at the Department of Humanity and Social Sciences of Dalian University of Science and Technology, was arrested when practicing the FLG exercises in a park on 30 August 1999, charged with "disrupting social order with feudal superstition" and detained at the Yaojia Detention Centre. She too was reportedly tortured by being shackled in a "Di Lao" device in such a way that she could not move. As a result, she was not able to use the toilet or feed herself. She reportedly started fasting because she did not want to make difficulties for other detained practitioners and there was not enough food for everyone. Seven days later, the detaining authorities apparently started to worry about possible "life accidents", and ordered several guards to force feed her by pricking her mouth open with spoons, which caused severe injury in her mouth. Later, they reportedly installed a pipe in her nose to feed liquid in her. She eventually lost consciousness and was sent to the People's No. 2 Hospital of Dalian City for recovery. Because of the shackles, her left foot had become swollen to almost double its normal size and she had injuries on her right foot. She could not open her mouth properly and had difficulties speaking.

Huang Hongqi, male, a 29 year-old doctorate student from the Dalian Mechanical University in Liaoning province, was taken into police custody with 10 other FLG practitioners on 28 August 1999 for doing exercises in a park in Dalian. He was held without charge for two weeks. In an interview with the news agency Agence France Presse (AFP) after his release, he reported that they were beaten on several occasions in detention. The

first time was on 6 September when they did their exercises at night in their cell. "The guards took our trousers down and gave each of us 15 lashes with a leather whip. Our buttocks were covered in blood," he reported to AFP. According to his account, on 12 September, the guards also forced them to take off their shoes and hit them in the face before handcuffing them to a window for hours. Two days later, they were beaten with rubber coshes, he said. He was released after his university intervened (AFP, Beijing, 6 October 1999).

In a separate account which largely confirms the one above, **Wang Renguo**, male, another FLG practitioner from Dalian who was detained at the same time as Huang Hongqi, reported that he and five other practitioners were beaten with rubber sticks when they tried to talk to the director of the detention centre. They were also slapped on the face with shoes and tied to a window for five hours, he said, while another FLG practitioner held on a different floor was chained for four or five days for doing FLG exercises.

Several United Nations Special Rapporteur Reports are especially illuminating here. For example, according to a 2001 Report (United Nations Economic and Social Council, Commission on Human Rights Report, "Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women," 57th Sess., E/CN.4/2001/73/Add.1 (13 February 2001)), since October 1999, more than 1500 Falun Dafa practitioners have been detained in the Masanjia labor education camp in Liaoning province. Practitioners who refuse to denounce Falun Dafa are subjected to physical abuse, shocked with electric batons, detained in solitary confinement and assigned intensive labor. According to this report, the electric batons are used to shock the breasts and genitals of the female practitioners. *Id.* According to an earlier report submitted to the Commission on Human Rights by Special Rapporteur, Sir Nigel Rodley (United Nations Economic and Social Council, "Civil and Political Rights Including the Questions of Torture and Detention," 57th Sess., E/CN.4/2001/66 (25 January 2001)), three Falun Gong adherents, Wang Wei, Hu Shuzhi and Ning Guiying, were arrested at their homes on September 24, 1999 and detained in the Yuemingshan detention center in Anshan city, Liaoning Province. They were reportedly hung to a heating pipe and beaten for a whole night for declaring they would continue to practice Falun Dafa. In a 2003 report submitted to the Commission on Human Rights by the UN Working Group on Arbitrary Detention (UN Economic and Social Council, "Civil and Political Rights Including the Questions of Torture and Detention," 60th Sess., E/CN.4/2004/3/Add.1 (26 November 2003)), it is again reported that adherents were tortured based upon their refusal to renounce their religious beliefs. Included in the report which was communicated to the Government of China on August 28, 2002, are the below listed allegations:

Zhang Wenfu, male, resident of Dalian city, Liaoning province, was reportedly arrested on 19 January 2002 and sent to Pulandian Detention Centre for 50 days. It was alleged that on 8 March 2002, without any legal procedure, he was transferred to the No. 5 Division of Dalian Labor Camp where he was put under strict supervision for over 40 days. He was not allowed to wash his face or brush his teeth, and was forced to do heavy labor for long periods each day. On 18 April 2002, he was transferred to the No. 8 Division of Dalian Labor Camp. On 28 April 2002, he started a hunger strike to protest

the conditions of his detention. In response, he was allegedly tortured by three team leaders, Li Xuezhong, Li Shaofu and Peng Dahua, and by an inmate, Chi Diandong. His mouth and eyes were sealed with tape, his hands were handcuffed and his head was beaten with a rubber baton. He was also beaten with a wooden board. Torturers used chopsticks to poke inside his mouth, causing it to bleed profusely. Later, he was locked in a compartment, handcuffed and forced to lie on a wooden board for a day.

... **Gai Suzhi**, female, 63 years old, a retired employee of the No. 2 Petrochemical Factory at Fushun city, Liaoning province, was reportedly arrested in August 2001 and sent to the Wujiabao Labor Camp at Fushun city, in spite of the fact that by law, the labor camp is not allowed to detain anyone who is older than 60. To protest her illegal detention, she has gone on hunger strike several times at the camp. She only weighs about 35 kg now and she has become extremely sick. It was alleged that she has been cursed, beaten and tortured very often at the camp. It was further reported that Ms. Gai was first arrested in December 2000, when she went to Beijing to protest against the persecution of Falun Gong. She was detained for more than two months. Subsequently, she was arrested twice more.

Zhu Xiaofei, male, former employee of Lushun 4810 Factory, resident of Lushunkou district, Dalian city, Liaoning province, was reportedly arrested on 26 November 2001 at his workplace by police. He was sent directly to Dalian Forced Labor Camp, in Liaoning province, where the guards allegedly ordered other inmates to monitor him and physically torture him by shocking him with electric batons. He was later transferred to Guanshan Forced Labor Camp in Changtu city, Liaoning province, where he is forced to do hard labor. It was further reported that Mr. Zhu had been previously detained twice at the Lushunkou District Police Station, where police officer Ye Qiang tortured him, choking him with a rope and shocking him with electric batons.

For further allegations of torture submitted by UN Special Rapporteurs to the UN Human Rights Commission, see “UN Reports” attached to Marsh Declaration as [Exhibit 7](#).

U.S. Courts have also found high ranking Chinese officials liable for depriving Falun Gong practitioner plaintiffs of their right to be free from torture in China, including Xia Deren, the Mayor of Dalian, and a city located within the province of Liaoning. In the Report and Recommendation of Judge Edward M. Chen in the related cases of *Jane Doe v. Liu Qi* (case number C-02-0672 CW and *Plaintiff A v. Xia Deren* (case number C-02-0695 CW, (D.C.N.D.CA, June 11, 2003), and in the official Opinion adopting the honorable Judge’s report, the US Federal Court held Xia Deren liable for acts of torture against the named plaintiffs. Thus in its “Conclusion and Recommendations,” the Judge concluded:

Where, as here, the People’s Republic of China appears to have covertly authorized but publicly disclaimed the alleged human rights violations caused or permitted by Defendants ...[and] [o]sidering all the factors established in *Eitel v. McCool*, *supra*, which inform the Court’s discretion in deciding whether to enter default judgments,

particularly the analysis of the merits, consideration of justiciability concerns and the unusual posture of these cases, this Court recommends that default judgments be entered declaring that Defendants Liu and Xia are responsible respectively for violations of the rights of (1) Doe I and Doe II in *Liu* and Plaintiff A and Plaintiff C in *Xia* to be free from torture (emphasis added); (2) Ms. Petit in *Liu* to be free from cruel, inhuman, or degrading treatment; and (3) Doe I and Doe II in *Liu* and Plaintiff A and Plaintiff C in *Xia* to be free from arbitrary detention. /s/ EDWARD M. CHEN United States Judge.

The World Organization to Investigate the Persecution of Falun Gong, a non-for-profit organization established to provide evidence of the persecution of the Religion and to expose the severe measures used by the authorities to eliminate the Religion from China, has also begun to document death cases of practitioners in China. A report summarizing death cases in Liaoning Province from 1999 through March, 2004 indicates that at least 100 adherents have died while being tortured or immediately thereafter. They are:

<u>Fang, LiHong</u> (38,Anshan)	<u>Kou Xiaoping</u> (40,Anshan)	<u>Sun, Yuhua</u> (37,AnShan)
<u>Yuan Zhongyu</u> (47,Anshan)	<u>Zhang, Li</u> (40,Anshan)	<u>Sun, Xueyan</u> (32,BeiPiao)
<u>Qiu Zhiyan</u> (35,Benxi)	<u>Zhang, Cuizhen</u> (66,Benxi)	<u>Mi Zhongsheng</u> (33,Buxin)
<u>Practitioner</u> (Buxin)	<u>Yang Hongyan</u> (42,Buxin)	<u>Li, Hongwei</u> (50,Chaoyang)
<u>Yu Xiuling</u> (32,Chaoyang)	<u>Zhen, Yujie</u> (28,ChaoYang)	<u>Chen Jiafu</u> (41,Dalian)
<u>Chen Yong</u> (34,Dalian)	<u>Chen Zhenli</u> (Dalian)	<u>Chi Yulian</u> (44,Dalian)
<u>Dong Yongwei</u> (52,Dalian)	<u>Li Xiumei</u> (58,Dalian)	<u>Li, Zhongmin</u> (31,DaLian)
<u>Liu Yonglai</u> (36,Dalian)	<u>Practitioner</u> (30,Dalian)	<u>Practitioner</u> (Dalian)
<u>Sun Lianxia</u> (50,Dalian)	<u>Wang Qiuxia</u> (48,Dalian)	<u>Wang Youju</u> (64,Dalian)
<u>Yu, Lixin</u> (26,dalian)	<u>Zeng Xianmei</u> (63,Dalian)	<u>Zheng Wei</u> (Dalian)
<u>Zou Wenzhi</u> (54,Dalian)	<u>Liu, Ming</u> (28,Dandong)	<u>Ly, Huizhong</u> (38,Dandong)
<u>Wang, Xidong</u> (25,Dandong)	<u>Li Yanhua</u> (65,Dashiqiao)	<u>Zhao,Kaisheng</u> (61,DongGang)
<u>Chen Sulan</u> (53,Fushun)	<u>Chen, Min</u> (FuShun)	<u>Han, Fuxiang</u> (66,FuShun)
<u>Huang, Ke</u> (31,FuShun)	<u>Li, Ying</u> (FuShun)	<u>Liang Suyun</u> (36,Fushun)
<u>Liu, Yuqing</u> (40,FuShun)	<u>Practitioner</u> (Fushun)	<u>Practitioner</u> (Fushun)
<u>Sang, Shuqing</u> (63,FuShun)	<u>Wang, Xiuxia</u> (42,FuShun)	<u>Wei, Zaixin</u> (63,Fushun)
<u>Wu Zhanrui</u> (Fushun)	<u>Zhong Yuxiu</u> (27,Fushun)	<u>Zhong, Hongxi</u> (48,FuShun)
<u>Zhou Yuling</u> (Fushun)	<u>Zou Guirong</u> (36,Fushun)	<u>Cao, Fengqiu</u> (48,Huludao)
<u>Jin Lifeng</u> (39,Huludao)	<u>Li Shuyuan</u> (51,Huludao)	<u>Li, Baoxia</u> (48,Huludao)
<u>Liu Liyun</u> (44,Huludao)	<u>Liu, Hongxue</u> (57,Huludao)	<u>Peng, Fengmei</u> (61,Huludao)
<u>Wang Huachen</u> (31,Huludao)	<u>Wu, Guoliang</u> (35,Huludao)	<u>Lin, Zhiping</u> (60,JianPing)
<u>Cao Shufang</u> (61,Jinzhou)	<u>Du Baolan</u> (48,Jinzhou)	<u>Hu, Xiuying</u> (48,Jinzhou)

<u>Liu Zhi</u> (61,Jinzhou)	<u>Shi, Zhongyan</u> (45,JinZhou)	<u>Wang, Wenjun</u> (38,JinZhou)
<u>Zhang, Guizhi</u> (47,JinZhou)	<u>Zhu Shaolan</u> (50,Jinzhou)	<u>Guo Shuyan</u> (38,Liaoyang)
<u>Ma, Xiukun</u> (58,Liaoyang)	<u>Han, Qingcai</u> (62,LiaoZhong)	<u>Wang Hong</u> (39,Liaozhong)
<u>Wang Le</u> (28,Lingyuan)	<u>Wu, Yuan</u> (44,Lingyuan)	<u>Yu, Xiuchun</u> (47,Lingyuan)
<u>Liu Wenping</u> (43,PanJin)	<u>Liu, Dejun</u> (51,PanJin)	<u>Qi Jinsheng</u> (25,Panjin)
<u>Shen, Lizhi</u> (33,Shengyang)	<u>Song Xiangzhen</u> (46,Shengyang)	<u>Sun Hongyan</u> (36,Shengyang)
<u>Zong, Hengjie</u> (34,Shengyang)	<u>Li, Xiaoyuan</u> (50,Shenyang)	<u>Miao Qisheng</u> (36,Shenyang)
<u>Wang Ling</u> (39,Shenyang)	<u>Yang, Sulan</u> (65,Shenyang)	<u>Zou, Qingyu</u> (63,ShenYang)
<u>Chen Dewen</u> (Suizhong)	<u>Fang, Yuqin</u> (78,Tieling)	<u>Bai, Shuzhen</u> (60,WaFangDian)
<u>Wang, Jingyi</u> (56,Wafangdian)	<u>Zhang, Wannian</u> (63,WaFangDian)	<u>Tang Tierong</u> (Xinbin)
<u>Yan, Yongdong</u> (28,Xinmin)	<u>Lu, Guifang</u> (63,Yingkou)	<u>Wang Lixia</u> (46,Zhaoyang)
<u>Shao Shisheng</u> (58,Zhuanghe)		

Since March, 2004, at least another 341 cases have been reported. These cases are now being documented and will be submitted if and when they are available. *See also*, GMC Report, attached as Exhibit 6

C. Arbitrary Arrest and Detention.

Few concepts are more fundamental to the principle of ordered liberty than the right to be free from arbitrary detention. This basic human right has been recognized by almost every multilateral agreement of the twentieth century. 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, *supra*, 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 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 U.N. organizations have also affirmed the prohibition against arbitrary detention. For example, the U.N. 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* U.N. 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, *supra*, at art. 5(1) (“Everyone has the right to liberty and security of the person.”); American Convention on Human Rights, *supra*, at art. 7(3) (“No one shall be subject to arbitrary arrest or imprisonment.”); African Charter on Human and Peoples’ Rights, *supra*, 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.”). Similar findings have been made by the regional tribunals. 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 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 para. 41.

Significantly, the prohibition against arbitrary detention is not limited by a temporal component. For example, the Working Group on Arbitrary Detention does not focus on the length of the detention in determining whether a deprivation of liberty is arbitrary. Rather, it considers whether the detention falls within one of the three categories set forth in its mandate. *See, e.g.*, Report of the Working Group on Arbitrary Detention, U.N. Doc. E/CN.4/2002/77/Add.1 (2001). Thus, claims of arbitrary detention can be found even in cases lasting less than 24 hours. The Human Rights Committee, for example, has identified violations of Article 9 of the ICCPR in cases where the petitioner was detained for a relatively “short” period of time. *See, e.g.*, *Spakmo v. Norway*, Communication No. 631/1995, U.N. Doc. CCPR/C/67/D/631/1995 (1999) (detention of approximately 8 hours); *Tshionga a Minanga v. Zaire*, Communication No. 366/1989, U.N. Doc. CCPR/C/49/D/366/1989 (1993) (detention of approximately 18 hours).

Like Spain, China also guarantees its citizens the right to be free from arbitrary arrest (without approval of or by a decision of the people’s court or procuratorate) (Art. 37 of the Constitution of the People’s Republic of China), the right to be free from search and seizure without warrant or prior approval (Art. 39), the right to be represented by legal counsel (Criminal Procedural Law, Art. 160), and more generally, the right to an independent judicial branch of government (Art. 10). Nonetheless all attempts to put an end to the arbitrary arrest and detention of adherents of Falun Gong in China through China’s legal system have been futile³¹ as the legal system itself is a part of the Chinese Communist Party apparatus and an instrument of its power and political control. As such the judiciary does not operate as an independent branch of government.”³² Indeed the lack of an effective remedy for adherents (and other politically targeted groups in China) — of access to legal counsel and other due process rights, such as equality before the law, the presumption of innocence and the right to a fair and public hearing by a competent, independent and impartial tribunal—has itself been highlighted in several third-party reports, including several by the United Nations Special Rapporteurs dating from the onset of the crackdown on Falun Gong in 1999 through 2006.³³

³¹ *China: Fear for safety as prominent lawyer survives attack*, Amnesty International, January 20, 2006, available at <http://www.amnesty.org.uk/news/press/16742.shtml>.

³² Ronald Dworkin, *Taking Rights Seriously in Beijing*, NEW YORK REVIEW OF BOOKS, September 26, 2002, Vol. 49, No. 14.

³³ *See* Report of Special Rapporteur Asma Jahangir, (General Assembly 59th Session, document number A/59/366, 16

Again, in spite of the prohibitions in Chinese and International Law, adherents have been subjected to arbitrary arrest and detention as a way to achieve Jiang Zemin's most important directive – to eliminate and disintegrate the Religion through the forced conversion of its adherents.

Detention is arbitrary when it is illegal and unjust. As the Restatement (Third) of Foreign Relations Law explains: “Detention is arbitrary if it is not pursuant to law: it may be arbitrary also if ‘it is incompatible with the principles of justice or with the dignity of the human person.’” *See id.* para 702 comment h (1987). More generally, there is consensus among international law publicists that arbitrary detention occurs when a person is detained without warrant, probable cause, articulable suspicion and/or notice of charges and is not brought to trial.³⁴

The Working Group, established by the U.N. 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 the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 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

September 2004), submitted in accordance with General Assembly resolution 58/184 of 22 December 2003.

³³ *See*, the Report of the Office of the High Commissioner for Human Rights (General Assembly, 59th Session, document number A/59/402, 1 October 2004). This report, entitled, Strengthening of the Rule of Law, references a Memorandum of Understanding between OHCHR and the Government of China, established to ameliorate many shortcomings in the Chinese legal system. The report was submitted in accordance with the General Assembly resolution 58/184 of 22 December 2003 which both reiterates 13 b, paragraph (1) of the Charter of the United Nations and also references article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights and paragraph 4 of the United Nations Millennium Declaration. However, as noted in the report of the International Educational Development organization, China has continued to ignore its advice and suggestions. *See infra* at page 8, note 15.. *See also*, *Law and Justice: Reforming the System*, HUMAN RIGHTS IN CHINA, June 2005, No. 2.

³⁴ *See*, Hassan, The International Covenant on Civil and Political Rights: Background and Perspective on Article 9(1), 3 Den. J. Int'l L. & Pol'y 153, 181-83 (1973); Marcoux, Protection from Arbitrary Arrest and Detention Under International Law, 5 B.C. Int'l & Comp.L.R. 345 (1982).

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).

Significantly, the prohibition against arbitrary detention is not limited by a temporal component. For example, the Working Group on Arbitrary Detention does not focus on the length of the detention in determining whether a deprivation of liberty is arbitrary. Rather, it considers whether the detention falls within one of the three categories set forth in its mandate. *See, e.g.*, Report of the Working Group on Arbitrary Detention, U.N. Doc. E/CN.4/2002/77/Add.1 (2001). Thus, claims of arbitrary detention can be found even in cases lasting less than 24 hours. The Human Rights Committee, for example, has identified violations of Article 9 of the ICCPR in cases where the petitioner was detained for a relatively “short” period of time. *See, e.g., Spakmo v. Norway*, Communication No. 631/1995, U.N. Doc. CCPR/C/67/D/631/1995 (1999) (detention of approximately 8 hours); *Tshionga a Minanga v. Zaire*, Communication No. 366/1989, U.N. Doc. CCPR/C/49/D/366/1989 (1993) (detention of approximately 18 hours).

1. China

The practice of arbitrarily and illegally arresting and detaining adherents has been a widespread and ongoing measure used by the Party, the Office 610 and other participants of the effort to eradicate the Religion and its adherents. Of particular concern to China experts, the legal community at large and human rights groups and activities around the globe – including the United Nations Special Rapporteur – has been the extensive use of the form of administrative detention referred to as ‘Re-education through Labor. *See*, “Mission to China: Report of Special Rapporteur Manfred Novak” (General Assembly 62nd Session, document number E/CN.4/2006/6/Add.6, 10 March 2006). *See also*, Special Rapporteur of the Office of the High Commissioner on freedom of religion or belief, “Reeducation Through Labor” where Asma Jahangir explains that this practice always involves detention without charge or trial, and without judicial review, for between one and three years – which could be further extended by one year. Practitioners receiving terms of RTL allegedly had no right of access to a lawyer and there was no hearing where they could defend themselves.”³⁵ As an illustration Mr. Jahangir referred to several individual cases where named adherents were denied such due process rights. *Id.*³⁶

More recently, Dr. Manfred Novak, the United Nations Special Rapporteur on Torture and

³⁵ Report of Special Rapporteur Asma Jahangir, (General Assembly 59th Session, document number A/59/366, 16 September 2004), submitted in accordance with General Assembly resolution 58/184 of 22 December 2003.

³⁶ *See also*, the Report of the Office of the High Commissioner for Human Rights (General Assembly, 59th Session, document number A/59/402, 1 October 2004). This report, entitled, strengthening of the Rule of Law, references a Memorandum of Understanding between OHCHR and the Government of China, established to ameliorate many shortcomings in the Chinese legal system. The report was submitted in accordance with the General Assembly resolution 58/184 of 22 December 2003 which both reiterates 13 b, ¶ (1) of the Charter of the United Nations and also references article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights and ¶ 4 of the United Nations Millennium Declaration. However, as noted in the report of the International Educational Development organization, China has continued to ignore its advice and suggestions.

other Cruel, Inhuman or Degrading Treatment or Punishment, stated in his summary to his Mission To China: Report of Special Rapporteur Manfred Novak (General Assembly 62nd Session, document number E/CN.4/2006/6/Add.6, 10 March 2006),

The criminal justice system and its strong focus on admission of culpability confessions and re-education is particularly disturbing in relation to political crimes and the administrative detention system of “Re-education through Labor.” The combination of deprivation of liberty as a sanction for the peaceful exercise of expression, assembly and religion, with measures of re-education through coercion, humiliation and punishment aimed at the admission of guilt and altering the personality of detainees up to the point of breaking their will, constitutes a form of inhuman or degrading treatment or punishment, which is incompatible with the core values of any democratic society based upon a culture of human rights.

The 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.³⁷ The lack of due process within the judicial system is especially clear from 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.” 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.³⁸

As early as October of 2004 the Office of the High Commissioner for Human Rights brought before the General Assembly a summary report regarding the lack of a rule of law in China and the Office’s most recent attempt to help China ameliorate the situation through a program geared to promote a rule of law in China.³⁹ To date China has continued to ignore the advice and suggestions provided by the Office’s technical assistance program, the mandates of the Commission’s Working Groups and Special Rapporteurs.

Renowned civil rights attorney Gao Zhisheng has provided well-documented evidence of Falun Gong practitioners’ inability to access the due process rights guaranteed to them as

³⁷ *Erturk*, *supra* note 27, at 19.

³⁸ This document is available upon request. *See also*, *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>.

³⁹ U.N. GAOR 59th Sess., U.N. Doc. A/59/402 (2004).

citizens by the Constitution of China. What he describes clearly rise to the level of “arbitrary detention” and arrest. GAO writes:

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.⁴⁰

2. Liaoning Province

As Gao Zhisheng as well as several UN Special Rapporteur reports make clear, the practice of “sentencing” adherents to labor camps without trial or any procedures of defense or appeal no less than the practice of formally charging adherents and subjecting them to unfair trials resulting in lengthy prison sentences are among the measures used by the participants in the concerted effort to forcibly convert adherents and thereby eliminate the religious practice in China. Liaoning Province is no different. This is eminently clear from the fact that all persons sent to labor camps and detention centers have been sent without access to a formal arrest, trial, sentencing or right of appeal.

Several Amnesty International Reports that address the torture of adherents make clear that they were “sentenced” arbitrarily to the labor camps and centers where they were subsequently subjected to forced conversion techniques that included torture. For example, and as is also indicated *supra* at pp. 21 ff., “In Dalian city, groups of Falun Gong practitioners were arrested on various dates for appealing the ban on the Falun Gong for practicing Falun Gong exercises in public parks. Several were held for 15 days of “administrative” detention – a punishment imposed by police under public orders; all were deprived of their due process constitutional right to trial, legal counsel or appeal.⁴¹

Several UN Special Rapportuer reports of torture in detention centers of labor camps in Liaoning Province and elsewhere in China, also make this point especially well. A fairly typical United Nations report was submitted in 2003 to the Commission on Human Rights by the UN

⁴⁰ THE EPOCH TIMES, *An Open Letter to China's National People's Congress* (March 25, 2005) (letter by GAO Zhisheng), available at <http://www.theepochtimes.com/news/6-3-25/39696.html>.

⁴¹ See e.g., the cases of Huang Hongqi, Sa Yusong, Yang Xiujiang, and Wang Renguo. As indicated in greater detail *supra* at pp. 22-24, all were sent to detention centers or labor camps under the system of “administrative” detention by the police, and for that reason, with access to trial, legal defense or appeal.

Working Group on Arbitrary Detention (UN Economic and Social Council, “Civil and Political Rights Including the Questions of Torture and Detention,” 60th Sess., E/CN.4/2004/3/Add.1 (26 November 2003)). In each of the cases cited just below, the adherents were subjected to severe bouts of torture in detention centers or labor camps without trial or any procedures of defense or appeal. A few of these cases are also listed *supra* at pp. 24 ff. as illustrations of the unlawful application of torture to adherents based solely on their religious beliefs.

Zhang Wenfu, male, resident of Dalian city, Liaoning province, was reportedly arrested on 19 January 2002 and sent to Pulandian Detention Centre for 50 days. It was alleged that on 8 March 2002, without any legal procedure, he was transferred to the No. 5 Division of Dalian Labor Camp where he was put under strict supervision for over 40 days. He was not allowed to wash his face or brush his teeth, and was forced to do heavy labor for long periods each day. On 18 April 2002, he was transferred to the No. 8 Division of Dalian Labor Camp. On 28 April 2002, he started a hunger strike to protest the conditions of his detention. In response, he was allegedly tortured by three team leaders, Li Xuezhong, Li Shaofu and Peng Dahua, and by an inmate, Chi Diandong. His mouth and eyes were sealed with tape, his hands were handcuffed and his head was beaten with a rubber baton. He was also beaten with a wooden board. Torturers used chopsticks to poke inside his mouth, causing it to bleed profusely. Later, he was locked in a compartment, handcuffed and forced to lie on a wooden board for a day.

...

Gai Suzhi, female, 63 years old, a retired employee of the No. 2 Petrochemical Factory at Fushun city, Liaoning province, was reportedly arrested in August 2001 and sent to the Wujiabao Labor Camp at Fushun city, in spite of the fact that by law, the labor camp is not allowed to detain anyone who is older than 60. To protest her illegal detention, she has gone on hunger strike several times at the camp. She only weighs about 35 kg now and she has become extremely sick. It was alleged that she has been cursed, beaten and tortured very often at the camp. It was further reported that Ms. Gai was first arrested in December 2000, when she went to Beijing to protest against the persecution of Falun Gong. She was detained for more than two months. Subsequently, she was arrested twice more.

Enclosed in support thereof is a compilation of cases from Liaoning Province reported by the UN Special Rapporteurs from 2000 to 2005. This document is attached to Marsh Declaration as Exhibit 6.

D. Crimes against Humanity

The prohibition against crimes against humanity was first recognized by the Charter of the International Military Tribunal at Nuremberg. *See Restatement (Third), supra*, at § 702, rpt. note 1. The Nuremberg Charter was adopted to ensure that serious human rights abuses committed during World War II by the military and political leaders of Nazi Germany were punished. *See generally* M. Cherif Bassiouni, *Crimes against Humanity in International Criminal Law* (2d ed. 1999). Under the Nuremberg

Charter, acts constituting crimes against humanity included murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial or religious grounds, or other inhuman acts committed against a civilian population. Charter of the International Military Tribunal, August 8, 1945, art. 6(c), 82 U.N.T.S. 284. In its ruling, the International Military Tribunal acknowledged the status of crimes against humanity under international law and convicted several defendants of this crime. *See, The Nurnberg Trial*, 6 F.R.D. 69 (1946).

More generally, since the adoption of the Nuremberg Charter, the prohibition against crimes against humanity has been firmly recognized in several international instruments. In 1946, for example, the United Nations General Assembly affirmed the principles set forth in the Nuremberg Charter and the subsequent decision of the International Military Tribunal. *See* G.A. Res. 95, 1 GAOR U.N. Doc. A/64/Add.1, at 188 (1946). These principles were reaffirmed in 1968 with the adoption of a treaty to prevent the application of statutory limits, such as statutes of limitation, to crimes against humanity. *See* Convention on the Non-Applicability of Statutory Limits to War Crimes and Crimes Against Humanity, Nov. 26, 1968, art. 1(b), 660 U.N.T.S. 195, *reprinted in* 8 I.L.M. 68 (1969). *See also* Principles of International Co-Operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes against Humanity, G.A. Res. 3074, U.N. Doc. A/9039/Add.1 (1973).

Recent developments have affirmed and expanded the scope of crimes against humanity under international law. In 1993, the United Nations Security Council established the International Criminal Tribunal for the former Yugoslavia (“ICTY”) to prosecute serious violations of international law committed in that territory, including genocide, war crimes, and crimes against humanity. *See* Statute of the International Criminal Tribunal for the former Yugoslavia, U.N. Doc. S/RES/827 (1993), *reprinted in* 32 I.L.M. 1192 (1993). The International Criminal Tribunal for Rwanda (“ICTR”) was established by the Security Council in 1994 to prosecute serious violations of international law in Rwanda. *See* Statute of the International Criminal Tribunal for Rwanda, U.N. Doc. S/RES/955 (1994), *reprinted in* 33 I.L.M. 1602 (1994). Both statutes expanded the list of enumerated offenses for crimes against humanity. These included murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial, and religious grounds, or other inhumane acts. There are, however, significant differences between the two statutes. While the Statute for the ICTY requires a nexus between crimes against humanity and armed conflict, the Statute for the ICTR contains no such requirement. Even the ICTY itself has noted that the requirement of a nexus between crimes against humanity and another crime was unique to the Nuremberg Charter (and its own statute) and had been abandoned under customary international law. *Prosecutor v. Tadic*, Case No. IT-94-1, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (Oct. 2, 1995), at para. 140. Thus, crimes against humanity can now occur in the absence of an armed conflict. *See generally* Guénaél Mettraux, “Crimes against Humanity in the Jurisprudence of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda,” 43 *Harvard International Law Journal* 237 (2002).

The International Criminal Tribunals for the former Yugoslavia and Rwanda have affirmed these developments and the status of crimes against humanity under international law. In *Prosecutor v. Tadic*, for example, the ICTY noted that “the customary status of the prohibition against crimes against humanity and the attribution of individual criminal responsibility for their commission have not been

seriously questioned.” *Prosecutor v. Tadic*, Case No. IT-94-1, (May 7, 1997), at para. 623.

The Rome Statute of the International Criminal Court similarly recognizes the status of crimes against humanity under international; and, as indicated below provides the most current definition of crimes against humanity under international law, as does the United States, which in a recent submission to the Trial Chamber of the ICTY argued:

The relevant law and precedents for the offences in question here – genocide, war crimes and crimes against humanity – clearly contemplate international as well as national action against the individuals responsible. Proscription of these crimes has long since acquired the status of customary international law, binding on all states, and such crimes have already been the subject of international prosecutions by the Nuremberg and Tokyo Tribunals.

See, Amicus Curiae Brief of the United States, *Prosecutor v. Tadic*, IT-94-I-T, Motion Hearing (July 25, 1995), *quoted in* Sharon Williams, “The Rome Statute of the International Criminal Court: From 1947 - 2000 and Beyond,” 38 *Osgoode Hall Law Journal* 297, 313 (2000).

The prohibition of crimes against humanity has been recognized by several domestic courts as an established principle of customary international law. *See Mehinovic v. Vuckovic*, 198 F. Supp. 2d at 1352 (“Crimes against humanity have been recognized as a violation of customary international law since the Nuremberg trials and therefore are actionable under the ATCA”); *Wiva v. Royal Dutch Petroleum Co.*, 2002 U.S. Dist. LEXIS at *27 (“In sum, under the definition of ‘crimes against humanity’ provided in Article 7 of the I.C.C. [Rome Statute], plaintiffs must demonstrate (1) violation of one of the enumerated acts, (2) committed as part of a widespread attack against a civilian population, (3) with knowledge of the attack.”); *Cabello v. Fernandez-Larios*, 157 F. Supp.2d at 1360 (*citing* *Princz v. Federal Republic of Germany*, 26 F.3d 1166, 1173 (D.C. Cir. 1994)) (United States recognizes its legal obligation to condemn crimes against humanity); *Quinn v. Robinson*, 783 F.2d 776, 799-800 (9th Cir. 1986); *In re Extradition of Demjanjuk*, 612 F. Supp. 544, 566-8 (N.D. Ohio 1985).

Again, in spite of international legal standards prohibiting the perpetration of crimes against humanity against well defined groups of people, the eradication of the Religion could not have been achieved without waging a widespread and systematic attack against all adherents in China.

The Rome Statute of the International Criminal Court provides the most current definition of crimes against humanity under international law. Article 7 of the Rome Statute defines crimes against humanity as any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (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 as defined in ¶ 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this ¶ 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.

Because of its recent codification in the Rome Statute, Article 7 represents the most authoritative interpretation of crimes against humanity in international law. *See generally Commentary on the Rome Statute of the International Criminal Court* (Otto Triffterer ed., 1999). The Rome Statute requires four elements 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; (3) directed against a civilian population; and (4) with knowledge of the attack. Significantly, even a single act by an individual, taken within the context of a widespread or systematic attack against a civilian population, can constitute a crime against humanity. *See Prosecutor v. Tadic*, Case No. IT-94-1-T, (May 7, 1997), at para. 649 (“Clearly, a single act by a perpetrator taken within the context of a widespread or systematic attack against a civilian population entails individual criminal responsibility and an individual perpetrator need not commit numerous offences to be held liable”). Similarly, the knowledge requirement does not require individual knowledge of the entire attack in all of its details. Indeed, it is not even necessary to demonstrate that the perpetrator knew that his actions were inhumane or rose to the level of crimes against humanity. Knowledge can also be actual or constructive. *Id.* at para. 657.

The elements required by the Rome Statute, the most recent and authoritative codification and authoritative interpretation of crimes against humanity in international law are satisfied here. First and foremost, and as is indicated throughout the enclosed report, the participants in the concerted effort to eradicate Falun Gong violated several of the requisite enumerated acts, including torture, murder, (false or arbitrary) imprisonment, forced conversion and extermination. In addition, the campaign comprising torture and other major human rights abuses were perpetrated as part of a widespread and systematic attack directed against the entire civilian population of Falun Gong adherents in China, thereby satisfying elements two and three

under the Statute. Finally, the attack was planned, designed and quite deliberately set in motion by the first accused, Jiang Zemin, in concert with the central governing body of the Politburo, Li Lanqing, key leaders of the Office 610 and others, thereby satisfying element four of the Statute.

III. UNDER PRINCIPLES OF SUPERIOR RESPONSIBILITY, JIANG ZEMIN AND BO XILAI ARE RESPONSIBLE FOR THE ACTIONS OF SUBORDINATES THAT CONSTITUTE TORTURE AND OTHER MAJOR HUMAN RIGHTS ABUSES.

A. Superiors Are Held Responsible for the Acts of Subordinates under Well-Established Principles of International Law.

The principle of individual criminal responsibility for ordering a crime to be committed is expressly recognized in the Geneva Convention and the Yugoslavia and Rwanda Statutes. See, Art. 7(3) ICTY St. And Art. 6(3) St. It is also recognized in the draft Code of Crimes, which provides that an individual is responsible for a core crime if the individual “orders the commission of such a crime which in fact occurs or is attempted. *See also*, 19 *United States v. Soemu Toyoda*, Official Transcript, at 5005-06.

Superiors have been held equally responsible with their subordinates if the superior knew or had reason to know that a subordinate had committed or was about to commit a crime and failed to take the necessary steps within his or her power to prevent or punish the crime. As Amnesty International makes clear in *The International Criminal Court: Part I* (<http://web.amnesty.org/library/print/ENGIOR400011997>), this latter modality is based upon several principles reflected in Article 6 of the draft Code of Crimes, Article 7 (3) of the Yugoslavia Statute, and Article 6 (3) of the Rwanda Statute: (1) duty to exercise authority over subordinates; (2) equality of responsibility with subordinates; (3) actual knowledge of the unlawful conduct planned or carried out by the subordinate or sufficient information to enable the superior to conclude that such conduct was planned or had occurred; (4) failure to take necessary steps; (5) feasibility of such steps; (6) prevention or repression of the crime.

Importantly, the principle applies to civilian superiors no less than military commanders. *Id.* This is demonstrated in *Prosecutor v. Delalic*, IT-96-21-T at ¶¶ 377-8, and other criminal proceedings emanating out of the ethnic cleansing in former Yugoslavia. In *Delalic*, the ICTY Trial Chamber held that authority figures, whether military officials or civilian, may be held criminally accountable under the doctrine of command responsibility on the basis of their *de facto* or *de jure* positions as superiors and their supervisory authority over those committing the actual abuses. *Id.* at ¶¶197-98; see also *Prosecutor v. Kordic and Cerkez*, IT-95-14/2, Feb. 26 2001 at ¶¶ 405-7. The Trial Chamber stated in *Kordic and Cerkez* that, in the case of a civilian leader,

evidence that an accused is perceived as having a high public profile, manifested through public appearances and statements, and thus as exercising some authority, may be relevant to the overall assessment of his actual authority . . . [and to] . . .

the accused's overall behavior towards subordinates and his duties. (*Id.* at 424).

B. Jiang Zemin Is Responsible for the Actions of Subordinates under Principles of Superior Responsibility

Command responsibility includes the notion of responsibility by omission, that is, a failure of a responsible official to prevent major abuses by his subordinates. Consequently, it is not necessary that the superior actually commit the abuses himself. It is sufficient if he breaches his obligation to prevent or suppress major abuses by subordinates. However, the clearest way for an individual to incur liability for the acts of subordinates would be for him to directly order, or to actively encourage or promote, the abuses. The Soemu Toyoda Japanese World War II military tribunal set forth “the essential elements of command responsibility for atrocities of any commander [as]: 1. That offenses, commonly recognized as atrocities, were committed by troops of his command; 2. The ordering of such atrocities. *See, United States v. Soemu Toyoda*, Official Transcript, at 5005-06.

In the present case, the facts make clear that Jiang Zemin exercised supervisory authority over those committing the actual abuses, making him responsible for acts of torture and other major human rights abuses carried out by his subordinates against the complainants for his acts of commission as well as his acts of omission.

First, as Secretary General (aka “Chair”) of the Chinese Communist Party from September 1997 through March 2002, as Chair of the Central Military Committee and most importantly, as President of China from March 1993 through March 2002, Jiang Zemin exercised his authority to set national policy, launch nationwide campaigns and manage and direct all party and government bodies at all regional and national levels. In these capacities, the accused established the Leadership Team and its Office 610 to eradicate the Falun Gong Religion. In all three capacities, Jiang Zemin made clear to the CCP and the Government of China that the Religion must be eradicated, and that the traditional CCP measures of re-education coupled with harsher legal sanctions must be deployed, where needed. As such, he actively promoted actions designed to force Falun Gong practitioners to give up their spiritual beliefs and to eliminate them from society, and exercised supervisory authority over those who further developed and directly applied these programs as an integral part of the highly abusive campaign of persecution that was designed to force practitioners to give up their beliefs through torture.

In particular, Jiang Zemin initiated the campaign by establishing its policy, issuing directives and creating a special task force (aka the Leadership Team and Office 610) to further design and implement the policies and programs he initiated. As early as his June 7, 1999 speech to the Politburo, Jiang Zemin instructed, *inter alia*, the leaders of all major CCP and government entities that the Religion was the latest in a chain of “state enemies” and that the crackdown against the Religion would follow standard CCP procedures, i.e., through the re-education and forced conversion of adherents, and also where needed, through the application of harsher legal sanctions which included lengthy prison sentences based on sham trials.⁴² In addition, by creating

⁴² *See supra* at section I.A.

the Office 610 in concert with Li Lanqing and other members of the Central Committee of the Politburo, by instructing the Office 610 to eradicate the Falun Gong Religion through the forced conversion of its adherents, by having his letters and speeches sent to all major CCP and government bodies in China with clear instructions to review and implement his directives, it is clear that the accused, in concert with others, created a nationwide campaign to carry out the programmatic elimination of the Religion and its adherents. As such, he exercised supervisory authority over those subordinates in the chain of command who developed and/or used the specific torture and forced conversion techniques as an integral part of the highly abusive campaign designed to force adherents to give up their beliefs. They included, among others, the leaders of Office 610 at national and regional levels, leaders of CCP committees throughout China, other named and unnamed members of the concerted effort, including especially the police and other security guards who unlawfully arrested and detained, tortured, and in other ways abused the adherents of Falun Gong in cities and provinces across China.

Second, command responsibility also includes the notion of responsibility by omission, that is, a failure of a responsible official to prevent major abuses by his subordinates. In this regard, the Soemu Toyoda Japanese World War II military tribunal held that it is not necessary for the superior to issue specific commands of abuse in concrete cases, or to be directly involved in the acts of abuse himself. “In the absence of proof beyond a reasonable doubt of the issuance of orders, then the essential elements of command responsibility are:

- 1 that atrocities were actually committed;
2. Notice of the commission thereof. This notice may be either a. Actual, as in the case of an accused who sees their commission or who is informed thereof shortly thereafter; b. Constructive. That is the commission of such a great number of offenses within his command that a reasonable man could come to no other conclusion than that the accused must have known of the offense or of the existence of an understood and acknowledged authority over the offenders to issue orders to them not to commit illegal acts, and to punish offenders.
3. Power of command. That is, the accused must be proved to have had actual authority over the offenders to issue orders to them not to commit illegal acts, and to punish offenders.
4. Failure to take such appropriate measures as is within his power to control the troops under his command and to prevent acts, which are violations of the laws of war.
5. Failure to punish offenders. (at 5005-06.)

Even if the accused had not himself directed others to eradicate the Religion through the forced conversion, torture and perpetration of other major human rights abuses against its adherents, he is nevertheless responsible for such acts where he had notice that the acts were taking place, he had actual authority over the offenders and could have issued orders to them not to commit illegal acts, he failed to take appropriate measures to control those disseminating and using the implements of torture, and subsequent to the abuses, he failed to punish the offenders.

For example, as Chair of the CCP, Jiang Zemin was obliged by the Charter of the Central Committee of the CCP [hereinafter the “Charter”] (Article 19, section 9.29.) to select

and appoint officials to the most important posts in China, and to manage, supervise and direct their behavior. In addition, the Charter obliges him to criticize and report the unlawful behavior of CCP officials (Art. 4, ch. 1, amended at the 15th National Congress of the CCP). As President of China, Article 80 of the Constitution of China further obliged the first accused to remove government officials who violated Chinese law. In addition, the Preamble to the Constitution requires all government officials, and especially the President, to uphold the Constitution and those provisions that explicitly protect the civil, democratic and other rights and freedoms of the Chinese people.

The first accused has violated all of these legal provisions and principles through his initiation, design, and implementation of the campaign of persecution against Falun Gong. Indeed, it would be disingenuous for Jiang Zemin to claim that he had no knowledge of the commission of torture against Falun Gong practitioners within China when he himself had initiated, designed, and established the campaign in concert with others at the highest levels of the party and the government. Even if he didn't know the name of each and every victim or perpetrator, he was on notice that the campaign he initiated was being carried out in China and that his directives were used as an integral part thereof. Not only did he fail to take such appropriate measures as were within his control and prevent the persecutory acts carried out to eradicate Falun Gong, but as indicated above, he initiated, designed and took all necessary steps in order to force adherents to implement the highly abusive campaign of persecution designed to eradicate Falun Gong in China.

C. Bo Xilai Is Responsible for the Actions of Subordinates under Principles of Superior Authority.

The second accused, Bo Xilai, is responsible for the execution of the plan to eradicate Falun Gong in the province of Liaoning through the illegal detention, torture, extra-judicial killing and other abuses waged against Falun Gong adherents by, among others, the public security system, the prisons, and detention centers in the Liaoning Province.

Again, the clearest way for an individual to incur criminal liability for the acts of subordinates is for him to order or promote the alleged abuses. The Soemu Toyoda Japanese World War II military tribunal set forth “the essential elements of command responsibility for atrocities of any commander as: 1. That offenses, commonly recognized as atrocities, were committed by troops under his command; 2. The ordering of such atrocities.” *Soemu Toyoda*, Official Transcript, at 5005-06.

In his position as Governor of Liaoning, Bo Xilai exercised executive authority over police and security forces operating in Liaoning Province, including authority to set policy, control management of security affairs, and to appoint, remove, and discipline police and detention center security personnel. For example, and *inter alia*, Bo Xilai held power to formulate all important provincial policies and policy decisions, and to supervise, direct, and lead the executive branch of the province, including the operation of several levels of the government and party apparatus such as (but not limited to) police and security guards responsible directly

for the torture of the complainants and other Falun Gong adherents in Forced Labor Camps and Detention Centers in Liaoning.

In addition, in his position as Deputy Secretary, and thus second-in-command of the Liaoning Chinese Communist Party, Bo Xilai also served as one of the key architects of the programmatic elimination of Falun Gong in Liaoning Province. In concert with the Secretary General of the CCP, the second accused guides, leads, directs and supervises all CCP activities within Liaoning Province, including those pertaining to the eradication of Falun Gong. Through the Liaoning Provincial CCP's control of the Office 610 and the all-important CCP Judicial and Legal Committee, Bo Xilai, by himself and in concert with others, formulated policies and policy decisions over the operation of party leaders and cadres responsible directly for the campaign of persecutory acts carried out to eradicate the Religion in Liaoning.

As noted above, command responsibility also includes the notion of responsibility by omission, that is, a failure of a responsible official to prevent major abuses by his subordinates. Consequently, it is not necessary that the superior actually order his subordinates to commit the abuses. It is sufficient if he breaches his obligation to prevent or suppress major abuses by subordinates. For example, the Soemu Toyoda Japanese World War II military tribunal held that it is not necessary for the superior to issue specific commands of abuse in concrete cases, or to be directly involved in the acts of abuse himself. "In the absence of proof beyond a reasonable doubt of the issuance of orders, then the essential elements of command responsibility are:

1 that atrocities were actually committed; 2. [that the defendant had] [n]otice of the commission thereof. This notice may be either a. Actual, as in the case of an accused who sees their commission or who is informed thereof shortly thereafter; b. Constructive. That is the commission of such a great number of offenses within his command that a reasonable man could come to no other conclusion than that the accused must have known of the offense or of the existence of an understood and acknowledged authority over the offenders to issue orders to them not to commit illegal acts, and to punish offenders. 3. Power of command. That is, the accused must be proved to have had actual authority over the offenders to issue orders to them not to commit illegal acts, and to punish offenders. 4. Failure to take such appropriate measures as is within his power to control the troops under his command and to prevent acts, which are violations of the laws of war. 5. Failure to punish offenders. (*See, Soemo Toyoda* at 5005-06.)

Even if it is assumed that the second accused did not personally order or commit specific acts of torture or abuses against the complainants, he is nevertheless responsible for such acts where he had notice that these acts were taking place, he had actual authority over the offenders, and could have issued orders to them not to commit illegal acts, but he failed to take appropriate measures to control those participating in the torture, and he failed to punish the offenders. In this regard, it is eminently clear that Bo Xilai failed to use his authority to stop the unlawful persecution of the complainants and similarly situated persons.

As the Governor of Liaoning Province, he held the power to not only formulate all important provincial policies and policy decisions, but also to supervise, direct, and lead the executive branch of the province, which includes the operation of Public Security Bureaus and Labor Camps and Detention Centers in Liaoning. According to Sections 3 and 6 of Article 59 of the Laws Governing the Organizations of Local People's Congresses and Governments at Various Levels in The People's Republic of China ("LGO"), the Governor, as the head of the government above the county level, has the authority and duty "to alter or annul inappropriate decisions and orders issued by local organs of state administration at various levels, or instructions made by governmental agencies under its administrative power" and "the authority and duty to safeguard . . . citizen's lawful property, social order, protect citizen's human rights, democratic rights, and other rights." In addition, Sections 5 and 6 of Article 59 of the LGO and Chapter 3, Section 5, Article 107 of the Constitution of the People's Republic of China give the Governor the authority and duty "to appoint, remove. . . examine, reward and punish staff members in the state administrative organs" and "to manage. . . civil affairs, public security, judiciary administration, and supervision within [the Governor's] own administrative area."

As the highest level government official and second-in-command of the Liaoning CCP, the second accused, Bo Xilai, was clearly responsible for the supervision and operation of all police bureaus, labor camps, detention centers, all other executive branches of the government, and, in concert with others, the Liaoning branch of the Office 610, and all other CCP committees within the jurisdiction of Liaoning Province. This included virtually all provincial components engaged in the effort to control, suppress and eradicate Falun Gong in that jurisdiction. In spite of his responsibilities under Chinese law, Bo Xilai did not to exercise his executive authority to stop the illegal arrests and torture of citizens who resided in Liaoning Province. As governor and party deputy secretary, he not only did not use his authority and power to stop the illegal persecutory acts, he actively supported and endorsed them. Moreover, it would be highly disingenuous for Bo Xilai to argue that he was unaware of activities he supported and endorsed. Like Jiang Zemin, Bo Xilai knew the persecutory acts were being carried out in his province, had a duty and ability to stop them, but did not.

Indeed, Bo Xilai not only failed to exercise his duty to stop the persecutory acts, he actively endorsed and promoted them. The following quotations of a few of his speeches at key events are illustrative:

1. In February of 2001, at the fourth session of the Ninth Liaoning Province People's Congress, he said "[w]e achieved remarkable success in our battle against the "deviated religion" Falun Gong, through ideology, education, and governance.... Let's continue to strike severely those practitioners who refuse to denounce Falun Gong and transform [them]."
2. Again, on May 2, 2002, at the yearly governor's work conference held at the provincial government, he said, "[w]e must continue to strike the "deviated religion" Falun Gong and vigorously do the transforming work well."⁴³

⁴³ The word "transformation" is a technical term coined during the Cultural Revolution. Its goal is to force people to accept the Communist Party line, irrespective of their true beliefs, and relies especially on an ongoing and severe

In his roles as Governor of Liaoning Province and Deputy Secretary of the Liaoning CCP, Bo Xilai exercised superior authority over those who planned and executed the persecutory acts in the Liaoning Province as part of a genocidal plan to eradicate the Religion and its adherents in the province of Liaoning and across China.

IV. UNDER PRINCIPLES OF CO-PERPETRATION, JIANG ZEMIN AND BO XILAI ARE REponsible FOR THE CRIMES OF THE JOINT CRIMINAL ENTERPRISE THAT CONSTITUTE TORTURE, ARBITRARY ARREST AND DETENTION, GENOCIDE AND CRIMES AGAINST HUMANITY.

A. International Law Imposes Liability on those Who Co-perpetrate or Participate in a Joint Criminal Enterprise.

International law recognizes liability for those who co-perpetrate or participate in a joint criminal enterprise. One of the earliest ICTY analyses of the joint criminal activity principle was provided in *Prosecutor v. Tadic*, Case No. 94-1-A (July 15, 1999). The Trial Chamber had acquitted Tadic for the murder of five men because no one could testify that they saw Tadic execute them. *Prosecutor v. Tadic*, Case No. 94-1-T, at ¶¶ 371-73. The Appeals Chamber reversed, holding Tadic liable for murder because he “took part in the common criminal purpose to rid the region of the non-Serb population, by committing inhumane acts,” and because the killing of the non-Serbs in furtherance of this plan was a foreseeable outcome of which he was aware. *Prosecutor v. Tadic*, Case No. 94-1-A, at ¶¶ 194-220.

As the Appeals Chamber made clear in *Prosecutor v. Tadic*, Case No. 94-1-A, at ¶ 192, “to hold [those who participate with others in a common plan or design] liable only as aiders and abettors might understate the degree of their ...responsibility.” Where as here a defendant is not only a willing participant in the joint enterprise, but also, and as indicated in detail below, acted intentionally to initiate, design, manage, implement and further that plan, his conduct clearly rises to the level of “co-perpetration” characterized by the ICTY as “firmly established in customary international law.” *See, Tadic*, 94-1-T, at ¶ 22.

B. Jiang Zemin Is Responsible for the Actions of a Joint Criminal Enterprise in the People’s Republic of China under Well-Established Principles of Co-Perpetration.

Jiang Zemin not only participated in the common plan to eradicate Falun Gong; as reflected in several of his speeches, he made the policy of religious cleansing official “state” policy in China and created a “joint criminal enterprise” to purge China of the Religion. The crimes enumerated above, i.e., genocide, torture, arbitrary arrest and detention and crimes against humanity, were all within the object of the joint criminal enterprise. In addition, these crimes were the natural and foreseeable consequences of the execution of the object of the joint

torture that is almost impossible to withstand. However, Falun Gong adherents in China have refused to relinquish their beliefs and publicly denounce Falun Gong in spite of days, months or years of such severe abuse.

criminal enterprise and the accused was aware that such crimes were the likely (if not intended) outcome of the execution of the joint criminal enterprise.⁴⁴

In particular, Jiang Zemin, acting alone and in concert with other members of the joint criminal enterprise, participated in the following ways.

On April 25, 1999, the accused, Jiang Zemin, played a pivotal role in the instigation and formation of the joint criminal enterprise when he wrote a letter to the standing committee of the Politburo that was sent to all members of the standing committees of the Party nationwide, requiring that they study the letter and implement its instructions. See discussion *supra* at section I.A. at p. 3.

On May 8, 1999, Jiang Zemin sent a Memorandum to the 20-member Politburo of the Chinese Communist Party which he managed, directed and controlled as General Secretary of the CCP. Immediately thereafter, the General Office of the CCP in Beijing issued a summary of the memorandum to all key CCP leaders at the provincial level in China with instructions to study, examine and implement its directives.⁴⁵ See also, discussion *supra* at section I.A., p. 4. Through the circulation of Jiang Zemin's May 1999 Memorandum, he informed the police, state security forces, media, state-controlled office of religion and the all-important CCP "Committee of Politics and Law" that the Religion was to be regarded as a "deviated" practice that threatened the stability of the state. In addition, and as is discussed in far greater detail above, the accused invoked measures traditionally used by the CCP to crack down on so called "state enemies" by requiring that the adherents of the Religion be subjected first to re-education (which included brainwashing and torture). He further required that those who still refused to renounce their religious practices be subjected to the harsher sanctions used by the CCP (which included sham trials and lengthy terms in jail). Since most of the adherents did not renounce their Religion, the harsh treatment reserved purportedly for the few would eventually be applied to far more. See discussion *supra* at section I.A.

On June 7, 1999, the first accused delivered a speech to the 20-member Politburo, the ruling elite of the Chinese Communist Party, describing the goal, objectives, and modus operandi of the criminal enterprise and, as importantly, set it in motion by enlisting the support of key CCP leaders and their direct participation. See discussion *supra* at section I.A.

In early June, - and upon information and belief - the accused ensured the participation of the Chinese government by appointing high-ranking government officials to serve as team members of the Leadership Team and its 610 Office. This included the appointment of the Minister of the Ministry of Public Security (Jia Chunwang), the Minister of State Security (Xu Yongyue), the chief prosecutor (Han, Zhubin), and the head of the Supreme Court (Xiao, Yang), thereby ensuring the participation of these major government entities in the concerted effort to

⁴⁴ See especially, discussion *supra* at section I.A.

⁴⁵ This document is titled "General Office of CCP Central Committee Official Document [1999]," and is published in the Qinghai Province's Chronicles in "Notice of the General Office of the CCP Central Committee Official Document [1999] #19) It is available upon request.

wipe out and eradicate the Religion.

From June through October, the accused spoke to foreign (US and other) media and governments about the Religion in the very same slanderous terms used to galvanize popular support for the campaign in China.⁴⁶ The impact of these visits and related efforts to influence the western media is well illustrated by the fact that the Religion has been characterized by some western media in terms similar to the images produced to incite violence and terror against it in China.

All of these tactics enabled the accused, alone and in concert with others, to set in motion the persecutory acts described above. While the accused did not directly and physically commit the human rights abuses detailed herein, as the one who planned, instigated, ordered, and, in many respects, designed the campaign of persecution, he is individually responsible for the crimes of the joint criminal enterprise. As the major perpetrator and co-perpetrator without whom these crimes would not have occurred, he clearly bears more responsibility for these crimes than anyone else.

C. Bo Xilai Is Responsible for the Actions of the Joint Criminal Enterprise in Liaoning Province under Well-Established Principles of Co-Perpetration.

It is clear from the analyses above that the persecution comprised a highly organized and systematic campaign of widespread arrests and torture by Chinese Communist Party officials in all provinces across China, including the province of Liaoning. Bo Xilai's agreement to participate in the joint effort is especially clear from his promotion of the persecution in his speeches. What follows are a few excerpts:

1. In February of 2001, at the fourth session of the Ninth Liaoning Province People's Congress, he said "[w]e achieved remarkable success in our battle against the "deviated religion" Falun Gong, through ideology, education, and governance.... Let's continue to strike severely those practitioners who refuse to denounce Falun Gong and transform [them]."
2. Again, on May 2, 2002, at the yearly governor's work conference held at the provincial government, he said, "[w]e must continue to strike the "deviated religion" Falun Gong and vigorously do the transforming work well."⁴⁷

⁴⁶ This included the dissemination of an official government pamphlet on Falun Gong delivered to all foreign dignitaries and leaders at the 1999 APEC meeting in Asia, including the then-President of the United States, Bill Clinton. It included an interview with 60 Minutes ("Jiang Zemin Talks With Wallace," August 31, 2000, CBS.NEWS.com) as well as a well known and influential interview with the French magazine, Figaro (*See*, "President Jiang Zemin Comments on Falun Gong's Harms," available at www.china.embassy.org).

⁴⁷ The word "transformation" is a technical term coined during the Cultural Revolution. Its goal is to force people to accept the communist party line, irrespective of their true beliefs, and relies especially on an ongoing and severe torture that is almost impossible to withstand. However, Falun Gong adherents in China have refused to relinquish

3. In several other speeches, the second accused, Bo Xilai, emphasized the need to intensify the repression against Falun Gong practitioners.

Bo's role in the joint enterprise is equally clear from his dual role of Governor of Liaoning Province and Deputy Secretary of the Liaoning Provincial CCP.

As Governor of Liaoning Province, Bo Xilai was the top government official, at the top of a chain of command which comprised law enforcement and prison management including the operation of the detention facilities and labor camps as well as the actions of the police and prison officials. As Deputy Secretary of the Liaoning Provincial CCP, he was second in charge of a chain of command which included the notorious Office 610, charged by Jiang Zemin with the task of managing, designing, and implementing the goals of the joint criminal enterprise. In addition, as Deputy Secretary, in concert with the governing body of the Liaoning Provincial CCP, Bo Xilai exercised control over the all-powerful Political and Judicial Committee of the Party, which in turn controlled the Public Security Administration responsible for the arrest, interrogation and detention of "suspects" and "criminals," the People's Procuratorate, which exercises prosecutorial power at all levels in Liaoning Province (and across China), the People's Courts which exercise judicial power, the Bureau of Justice which ran the prison, and forced labor camps, as well as the legal bar, and the Bureau of State Security.⁴⁸

In all of these capacities, Bo Xilai clearly played an important role in the management and implementation of objectives and goals carried out by the police, security guards and prison officials, the Office 610, the court system, prosecutors, state security, and lawyers licensed to practice law in China (through the Ministry of Justice-controlled "All China Lawyers Association"). In light of the ongoing and especially severe nature of the crackdown in Liaoning, coupled with the fact that Bo not only failed to stop or prevent these acts from occurring, but delivered speeches promoting and endorsing the campaign, it strains credulity to conclude that he did not participate actively as a major perpetrator of the abuses committed in Liaoning Province to eradicate the Religion through the forcible conversion and, where needed, elimination, of its adherents.

their beliefs and publicly denounce Falun Gong in spite of days, months or years of such severe abuse.

⁴⁸ See, "Foshan Court Net, 2005-07-19," indicating that "the key leadership at the Central PJC held a special working forum ... [where] the secretary of the Public Security Ministry, the Ministry of Justice, the Ministry of State Security, as well as the head of the Supreme People's Court and Supreme Procuratorate report[ed] to the Secretary of the PJC regarding their work assignments". Also relevant is the fact that key officials at the Political and Judiciary Committee hold regular joint meetings with key officials at the People's Procuratorate, the Public Security Bureaus and the People's Courts to collaborate about difficult cases prior to the issuance of warrants for arrest, a trial and imposed sentence. See, Section IV, subdivision (6) of the Supreme People's Court and Supreme People's Procuratorate, "Proposals Concerning Issues Related to the Current Handling of Falun Gong Criminal Cases," (January 14, 2000), available in Chinese and English upon request.

D. Bo Xilai is also Responsible for the Actions of Subordinates under Principles of Aiding and Abetting.

Even if Bo Xilai was not directly involved himself in acts of torture and other abuses to wipe out Falun Gong, his behavior certainly rises to the level of an accomplice, who knowingly assisted in carrying out criminal objectives.

Under international law, courts have held that the essential elements of third party aiding and abetting liability are a “knowing practical assistance, encouragement, or oral support that has a substantial effect on the perpetration of the crime.” See, *Prosecutor v. Furundzija*, Case No. IT-95-17/1-T (December 10 1998) at ¶ 235. Similarly, a U.S. case, *Presbyterian Church of Sudan v. Talisman*, 244 F. Supp. at 323-24,⁴⁹ cites the *Furundzija* case as well as *Prosecutor v. Musema*, ICTR-96-13-T, Jan. 27, 2000 at ¶ 26, as a basis for applying the same legal standard. As the *Talisman* court further notes, the legal standard as articulated under *Furundzija* covers all actions that “substantially contribute” to the alleged abuse. *Prosecutor v. Furundzija* at ¶ 232.⁵⁰ The ICTY has additionally noted that participation in a crime is deemed substantial if the action in question “would most probably not have occurred in the same way had not someone acted in the role that the accused in fact assumed.” *Prosecutor v. Tadic* (Case No. IT-94-1-T), Opinion and Judgment, May 7, 1997, at ¶ 688. The Court held that “providing certain means to carry out crimes constitutes substantial assistance, even if the crimes could have been carried out in some other manner.” *Id.*

As noted by both *Tadic* and *Talisman*, the ICTY has found that it is not necessary for the accomplice to share the same degree of criminal intent as the principal. Rather it is sufficient that the accomplice knows that his or her actions will assist the perpetrator in the commission of the abuse. *Presbyterian Church of Sudan v. Talisman*, 244 F. Supp at 324 (*citing Prosecutor v. Furundzija* at ¶ 232). Such knowledge may be actual or constructive. *Id.* The United States Military Tribunal found, for example, that every person, whether government or military employee or civilian, who was employed in, present in, or residing in the Mauthausen concentration camp, was considered responsible for the criminal activities occurring in the camp without requiring a showing of actual participation or knowledge of specific abuses. *Id.* See also, *Prosecutor v. Tadic* (Case No. IT-94-1-T), Opinion and Judgment, May 7, 1997, at ¶. 677.

Bo Xilai meets the aforementioned legal standards. As indicated above, Bo has furthered the goals of the persecution of Falun Gong practitioners in China by his promotion of the policy to continue to carry out the illegal arrests, torture and other abuses against practitioners of Falun Gong in China. His public endorsement of the persecution and public approval of the goal and objectives of the persecution campaign do not permit a contrary conclusion. His knowledge of its purpose is equally and patently clear. As indicated above, Bo has promoted the persecution of

⁴⁹ This circuit court decision summarizes well the elements of aiding and abetting in customary international law as reflected in several ICTY and ICTR trial and chamber decisions.

⁵⁰ The ICTR has similarly held that the *actus reus* of aiding and abetting is constituted by “all acts of assistance in the form of either physical or moral support” that “substantially contribute to the commission of the crime.” *Prosecutor v. Musema* (Case No. ICTR-96-13-T), Judgment, Jan 27, 2000, at ¶ 126.

Chinese citizens who practice Falun Gong, and encouraged and endorsed police officer participation in its arbitrary arrests, detention and torture.

That Bo Xilai has assisted in these crimes in order to bring them about is equally clear from the fact that he has failed to comply with his responsibility under international and Chinese law to take reasonable measures to stop or prevent the pattern and practice of ongoing human rights violations against the Falun Gong practitioners by party officials in Liaoning. Instead, he has authorized, supported and suborned others to effectuate the harsh crackdown against the Falun Gong in Liaoning.

V. CONCLUSION

For the reasons stated above, the first accused, Jiang Zemin, and the second accused, Bo Xilai, are responsible for the persecutory acts perpetrated against Falun Gong practitioners in China, acts that comprise violations of the prohibitions against genocide, torture, and crimes against humanity.

Respectfully submitted,

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