



HUMAN RIGHTS LAW FOUNDATION

HRLF

**REPORT SUBMITTED BY HUMAN RIGHTS LAW FOUNDATION
TO INTERNATIONAL RELIGIOUS FREEDOM COMMISSION
AND THE CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA**

**THE PERSECUTION OF FALUN GONG:
SURVIVOR ACCOUNTS AND LEGAL COMMENTARY**

SUMMARY

In the past decade, human rights violations in China have been an issue of concern for the United States Department of State, which has documented these violations extensively in its Country Reports on Human Rights Practices as well as its International Religious Freedom reports. These reports have included the use of torture by the police to extract confessions, the use of Re-education through Labor (RTL) to detain individuals for a period of up to four years, without formal charges or trial, and the arbitrary and unlawful detention of lawyers, journalists, Tibetans, and Falun Gong adherents. There is additional documentation from other sources, including not only Special Rapporteurs of the United Nations Human Rights Council (UNHRC), Amnesty International and Human Rights Watch, but also recent reports by David Matas (Human Rights Attorney and China Expert) and David Kilgour (retired Member of Parliament, Canada), which provide convincing proof of the extermination of thousands of Falun Gong adherents through the harvesting of their vital organs.¹

All attempts to ameliorate the situation through China's legal system have been futile, as it is part of the Chinese Communist Party (hereinafter "CCP") machinery and is an instrument of CCP political and financial control. As such the courts prosecutors and police

¹ See, U.S. Department of State, *2007 Country Reports on Human Rights Practices – China* (March 11, 2008); David Matas and David Kilgour, "Bloody Harvest: Revised Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China," January 2007.

are subject to the dictatorship of the CCP and its Political-Legal Committee, which consists of the heads of the public security organ, the state security organ, the procuratorate, the court, and the judicial administrative organ for civil affairs on the same level. The CCP's control of law enforcement officials has facilitated, among other things, the application of torture by police and prison security personnel to extract false confessions, the reliance on sham trials to justify lengthy prison terms, and the use of several interpretative regulations on the application of the criminal law to Falun Gong adherents issued by the Supreme People's Court, the Supreme People's Procurator, the Ministry of Public Security, the Ministry of Justice and local authorities which incorporate conflicting rules that allow for an arbitrary application of the law.

This report provides an account of the crimes committed by the CCP regime through the personal accounts of the survivors. By combining a short legal analysis with excerpts from personal accounts of the survivors, it illustrates that the statistics, tables and plain facts represent men, women, and children who were tortured, killed and in other ways persecuted. But more importantly it (1) exposes the way law enforcement officials and operatives support the persecution of "disfavored groups;" and (2) illustrates the actual impact this has had on the personal lives of members of the disfavored group of Falun Gong practitioners in China.

INTRODUCTION

Systematic attacks against specific civilian populations have been a feature of the People's Republic of China (hereinafter the "PRC"), which the CCP operates as a police state for the purpose of securing and maintaining its hold on political power and wealth. In particular, the CCP has used the criminal justice system and other state apparatus, illegitimately and in direct violation of the Constitution and domestic law of the PRC, to launch systematic and widespread attacks directed against targeted civilian populations, such as the landlord and intellectual classes in the 1950s and the pro-democracy advocates in 1989.² In the 1950s, for example, Party operatives paraded members of the landlord class before the Chinese people, publicly criticized and insulted them, and beat and executed at least 2 million people in one campaign. In 1957, the Party characterized the intellectual class as a "right wing" threat to state security and sent many of them to labor camps where they were tortured and/or killed. Again, during the well-known Cultural Revolution, the persecution was so bad that many members of the targeted groups committed suicide to avoid the torture and execution they would have otherwise faced in the 1960s and 1970s. In June of 1989, the Chinese army opened fire on the streets of Beijing, killing hundreds of students and civilians, while others were rounded up later and sent to labor camps and prisons where they were subjected to forced labor, torture, and, in some cases, execution. In all of these violent assaults and massacres, the victims are demonized as threats to state security and stability, the goal is the elimination of the group and/or their beliefs, the mechanisms are arrest, detention, torture and execution, and the justification is social order

² See, e.g., Li Zhensheng, *Red-Color News Soldier Bringing the Revolution Home*. Phaidon Press (October 2003).

and state security. The phrase used in China to describe the process is the Chinese term *douzheng* [斗争].³

More recently, in July of 1999, Party Chief and President, Jiang Zemin used the apparatus of the Chinese Communist Party (CCP) to launch a nationwide attack against members of the Falun Gong religion in China. Initiated at the highest levels of the CCP, with Jiang issuing the initial order that banned the religion, Chinese authorities declared Falun Gong and its practitioners unlawful. As with the landlord and intellectual classes in the 1960s and 1970s, and the pro-democracy advocates in the 1980s, the CCP, under Jiang's leadership, fueled the persecution through, among other things, the production and dissemination of hate propaganda that portrayed Falun Gong practitioners as a violent and fanatical threat to humankind, action caused by Jiang's fear that he and the CCP would lose support as the principal supervising authority and ideological organization in the People's Republic of China.

In particular, as several sources have confirmed, the standing committee of the Politburo collaborated with Jiang Zemin to create an extrajudicial security apparatus, called by many in China the Office 610, to handle the Falun Gong persecution.⁴ Since its establishment, the secret Office 610 agents and Chinese police officers have collaboratively implemented widespread and systematic attacks against Falun Gong adherents. By 2000, there was a secret Office 610 branch in the Party's Central Committee and all the way down to each local CCP party unit. One Office 610 specializing in arrests and intelligence-gathering was set up inside the Ministry of Public Security in Beijing and called Bureau 26. Similar arrest and intelligence gathering offices were set up across China to carry out what Chinese insiders have described as a highly organized and systematic campaign of persecution against the religion of Falun Gong and its membership, including widespread use of torture and other crimes against humanity.⁵

In spite of diplomatic inquiries and intervention by the United States Executive Branch, the well-documented reports issued by Amnesty International, Human Rights Watch, the United Nations, and a legal campaign created by international human rights lawyers the world over with the support of international legal scholars who have filed numerous amicus curiae briefs, July 21, 2009 will mark the 10th anniversary of the persecution of the Falun Gong religion and its members. This persecution has been

³ According to China expert, Professor Perry Link, this is a "Mao-era usage that implies things like isolation, taunting, torture, and all the way to killing, with a final goal of "annihilation" of a group or a way of thinking."

⁴ These sources are referenced in several legal complaints filed by Human Rights Law Foundation ("HRLF"). An Amicus Curiae Brief submitted to O AL JUZGADO CENTRAL DE INSTRUCCION NO 2 DE LA AUDIENCIA NACIONAL DE ESPAGNE, on April 10, 2008, by HRLF describes the initiation and implementation of the persecution with detailed references to the several insider documents that support that provide ample support for these characterizations. It is available from HRLF upon request.

⁵ HRLF Interview of former 610 police agent, Hao Fengjun. It is available from HRLF upon request. See also, a World Organization to Stop the Persecution of Falun Gong Report on Office 610 that provides additional detail as regards the operation of the Office 610. It is available at <http://www.zhuichaguoji.org/en/index2.php?option=content&task=view&id=16&pop=1&page=0>.

aggressively facilitated and supported by Chinese law enforcement operatives, including prosecutors and officers of the court.

SELECT AREAS OF HUMAN RIGHT ABUSE

Since the so-called Mao revolution in China, the CCP has relied on security and law enforcement apparatus to persecute so called disfavored groups.⁶ Initiated by Mao Zedong, this practice has been continued and, more recently, upgraded by Mao's successors.⁷ Several factors enable the Chinese law enforcement officers and operatives to support and facilitate the persecution of "disfavored groups," including not only Falun Gong religious adherents, but Tibetan monks, independent minded journalists and lawyers and rights activists with impunity. These factors include 1) the use of propaganda to establish a framework that justifies and encourages the persecutory treatment of members of the group; 2) the promulgation of ex post fact legal rules, in the form of administrative orders, and legislation, to deprive members of disfavored groups the rights afforded to other Chinese nationals;⁸ (3) the use of torture by the police to extract confessions, (4) the use of arbitrary detention and false imprisonment to forcibly convert adherents; and (5) the use of disappearances and murder to eliminate those who refuse to confess and recant.

1. Propaganda

Many have addressed the role propaganda has played as both justification for and incitement of campaigns of genocide and ethnic cleansing. For example, as Joseph Goebbels noted in his 1934 Nuremberg Rally speech, "Germany could only eliminate the Jewish danger in [their] culture because the people [perceived it as such] as a result of Nazi propaganda." Similarly, as international affairs writer and former editor of Radio Free Europe, Peter Zvagulis observes, "[r]epetition and de-humanization of the intended victim are the main techniques of hate propaganda.... The name of the 'enemies' may vary from one ... country to another, but the rules of the game remain the same. [I]n Yugoslavia against the Bosnians, in Rwanda against the Tutsi minority, and more recently in China against Falun Gong, not only is the message always the same (destroy them or they will destroy you), but the name of the mass crime that follows is genocide or ethnic cleansing."⁹

These observations are especially well illustrated not only by the International Criminal Tribunal for Rwanda's conviction of three men for inciting and mobilizing Rwanda's Hutu to commit torture and genocide against the Tutsi using a radio station and newspaper, but by the use of propaganda as a major mechanism for the persecution of Falun Gong in China. An August 2001 *Washington Post* New Service article entitled, *Torture is Breaking Falun*

⁶ See, *supra* at note 2.

⁷ See, HRLF Report, "High Tech Persecution of Falun Gong (Part I)", at <http://internetfreedom.org/The-High-Tech-Persecution-of-Falun-gong-in-China>.

⁸ See, Statement Presented to the Congressional-Executive Commission on China, "The Rule by Law in China," available at <http://www.cecc.gov/pages/roundtables/090803/marsh.php>.

⁹ See *The CCP's Hate Propaganda*, The Epoch Times, July 7, 2005, available at <http://en.epochtimes.com/news/5-7-7/30115.htm>.

Gong,” shows how propaganda operates as one of the most important mechanisms in the campaign waged against the Falun Gong religion because as “Chinese society turn[s] against [the targeted group] ... the pressure on them to abandon their beliefs increase[s] and it bec[omes] easier for the government to use violence against those who d[o] not.”¹⁰ The China Anti-Cult Association is a private association that assists the CCP regimes persecutory campaign in numerous ways that include a visual display of virtually all the media-related anti-Falun Gong propaganda issued in China. Among other things, it includes instruction such as: “I say that we first define Falun Gong evil cult as terrorist. Then any measures are perfectly justified.”¹¹

Wang Bin a survivor of torture and a three-year prison term describes below how the propaganda in the mass media in China changed the attitude toward Falun Gong adherents and subsequently increased the severity and the brutality of their persecution:

“On or around late of January 2001, the self-immolation video was aired on all local and national television stations, including WRTB TV. Immediately after the program was aired, people’s attitude toward me and the other practitioners changed dramatically. Even my family treated me differently. Everyone in China began to hate Falun Gong practitioners because they now thought we belonged to a terrorist organization. The Chinese Communist Party used video to compare Falun Gong to terrorist organizations like those in the US, and Japan. Many scholars and professors used this program to compare Falun Gong to terrorists at the behest of the Chinese Communist Party. The persecution of Falun Gong practitioners increased dramatically as the situation in China had changed. Before the airing of self-immolation, many police still questioned the treatment of Falun Gong by the Chinese Communist party. But now almost all police and security officers took strong measures to control our activities. Thousands of practitioners were thrown into labor camps and detention centers because there was a fear that they too would self-immolate themselves. We were tortured more brutally to convince us to give up our beliefs.

After the self-immolation I was abducted by the police in Beijing, detained without trial for a year, and sentence to three years in prison where I was severely tortured.”

2. Ex Post Facto Legal Rules

In October 1999, after the media had begun to characterize Falun Gong adherents as a hostile Western force and a “deviant religion,” the courts issued a notice defining a “deviant religion” as possessing the characteristics attributed to Falun Gong by the Communist Party, thus allowing for the arrest and sentencing of Falun Gong practitioners across the country.¹² As Human Rights Watch has reported, these and other notices and regulations made criminal all aspects of the religion of Falun Gong – including the double lotus meditation depicted in Eastern religious sculpture and art as a way to reach inner peace and wisdom – such that no Falun Gong activity, no matter how limited or seemingly innocuous, could

¹⁰ See, *The Washington Post*, “Torture is Breaking Falun Gong,” August 5, 2001, available at <http://www.washingtonpost.com/ac2/wp/dyn?pagename=article¬de=&contentID=A33055-2001Aug4>.

¹¹ See, <http://www.anticult.org/article.htm?id+5431>.

¹² See, *supra* at note 4.

escape punishment.¹³ As Gao Zhisheng has reported, these notices were passed secondarily, and as ex post facto rules, have limited (if any) validity under Chinese law.¹⁴

The many rules and notices that attempt to recast the persecution as a series of legitimate actions against “criminals,” and not religious followers are also illegitimate under international customary law insofar as they are an attempt to limit the fundamental right of freedom of belief, i.e., criminalizing what the Chinese call the fallacies of idealism, feudalism and superstition.¹⁵ In addition, in light of the lack of any empirical evidence or verification of any of the cult theories the Chinese have alleged with regard to Falun Gong, e.g., use of mind control techniques, use of deception to recruit, pyramid structure with authority at the top, China’s promulgation of anti-cult notices and legislation should be viewed with skepticism, and as a limitation on religious freedom.¹⁶

3. The Application of Torture

The Convention Against Torture—which came into effect internationally on June 26, 1987, and was ratified by the Chinese regime on October 4, 1998—prohibits the intentional infliction of “severe pain or suffering, whether physical or mental” for any purpose including, but not limited to, punishment, intimidation or coercion. Furthermore, torture is prohibited absolutely as a *jus cogens*¹⁷ norm and in other international instruments and treaties, including Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights.

Ironically, the public pronouncements of the PRC appear consistent with these international legal standards. In its most recent report to the United Nations Committee Against Torture, the PRC stated that no form of physical violence is tolerated or condoned in the treatment of detained and arrested persons.¹⁸ The report also stated that torture and other cruel, inhuman or degrading treatment or punishment is strictly prohibited.¹⁹ Furthermore, as stated in the report, “[i]t is strictly forbidden to use torture in a prison. No one is ever permitted to torture prisoners under any circumstances or for whatever reason.”²⁰ In the PRC’s letter to the United States District Court of the Northern District of California, it likewise stated, “[p]rohibition of torture has always been a consistent position of the People’s Republic of China.” Statement of the Gov’t of the P.R.C. on “Falun Gong”

¹³ 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>).

¹⁴ Gao Zhisheng, described by many as the conscience of China, has defended several disfavored groups in China, including members of the Falun Gong religion. He has been subjected to illegal arrests, torture and imprisonment by the Chinese authorities because he has refused to give up his advocacy of Falun Gong and other dissident groups. He has also devoted much time to helping China become a nation of laws and not a rule by men. See, e.g., 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/tools/printer.asp?id=39696>).

¹⁵ Edelman, Bryan and James T. Richardson (2005) “Imposed Limitations on Freedom of Religion in China.” *Journal of Church & State*. 47:243-268.

¹⁶ HRLF report, “Falun Gong is a Religion under U.S. Law,” is available from HRLF upon request.

¹⁷ Restatement (Third) of Foreign Relations Law § 702(d).

¹⁸ See, *Third Periodic Reports of States Parties Due in 1997: China*, U.N. Comm. Against Torture, 24th Sess., at ¶ 155, U.N. Doc. CAT/C39/Add.2 (2000).

¹⁹ *Id.* ¶ 158.

²⁰ *Id.* ¶ 29.

Unwarranted Lawsuits, at 3.19.²¹

Nonetheless, the most common form of abuse used in China against Falun Gong adherents is torture. Indeed, several United Nations Special Rapporteurs have detailed torture methods used against Falun Gong adherents who “are said to be put under pressure to renounce their beliefs. [They] are subjected to public humiliation for their membership in Falun Gong ... [and m]any are said to have suffered torture or ill treatment.”²² Thus, in one of the few Falun Gong cases to reach a consideration of the liability of a defendant implicated in the persecution, the U.S. district court judge found that Liu Qi, the former mayor of Beijing, was responsible for the torture of two of the plaintiffs.²³ The legal ruling reached by the court against defendant Liu Qi was based on Plaintiffs’ claim that 1) they were subjected to torture while under the physical custody of the PRC police and security forces, (2) they were also subjected to severe pain and suffering, and (3) the acts were perpetrated for such purposes as obtaining information, intimidation, punishment or discrimination.

All of these facts are present in numerous eyewitness reports provided to HRLF as indicated by a few sample cases.

Jennifer Zeng was kidnapped and detained several times before being sent to the Beijing Labor Camp in Da Xing County on June 1, 2000 where she suffered from inhuman physical and mental torture. She was forced to work from 5:30 A.M. until 2:00 or 3:00 A.M. of the following day to deliver products on time.

“On 18 February 2000 I was again arrested by police officers from Public Security Bureau in Chongwen District, Beijing. In order to get a confession from me, Ma Haiying and Zhang Zhongqiang, police officers from Public Security Bureau in Chongwen District, interrogated and physically tortured me for five days, including not allowing me to use the toilet, and threatening me with the safety of my husband and daughter. They even brought my husband, who was not a Falun Gong practitioner, to the detention site, to have him see me being tortured and threatened to arrest and detain him as well if I did not tell them the address of the gathering of Falun Gong practitioners or the organizers’ names.”

Some of the specific methods used on Jennifer per her account include:

“I was under endless pressure to sign a statement to denounce Falun Gong as soon as I arrived. I was

watched twenty-four hours a day by criminal inmates, who were given the power to do anything they liked to me in order to make me sign [a confession].

²¹ See, *Doe v. Qi*, 2004 WL 2901626 [(N.D.Cal.2004)]. It is also noteworthy that the domestic law of China defines torture far more narrowly than does the CAT creating yet another inconsistency within the body of Chinese law and thereby permitting, if not encouraging, an arbitrary and capricious application.

²² See, e.g., 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).

²³ See, *supra* at note 21.

"I was forced to squat motionlessly and continuously under the scorching sun when the temperature of the ground was over fifty degrees Celsius. The longest period lasted more than fifteen hours. I was beaten, dragged along the floor and shocked with two electric batons until I lost consciousness when I insisted on my right to ask for a review of my labor camp sentence.

Dai Ying and her husband were both detained several times. Their fourteen-year daughter had no one to take care of her at home. During the time Dai Ying was detained at the Futian District Detention Center she experienced numerous beatings, force-feeding, brainwashing and forced labor for fourteen hours a day. The torture left her with a blind eye while she was still forced to work to meet her quota.

Below is her painful account of how she lost one eye:

"A few days later, around 10:00 PM, Secretary Lin and three prisoners with heavy sentences came in and dragged me to a basement. The three prisoners pressed me into the ground and held me so tight I could not move. Secretary Lin began to shock me with an electric baton. She pressed it onto my acupuncture points and sensitive spots, including my temples, the Renzhong acupuncture point (philtrum), the central nervous system at my cervical vertebra and other places. I cried out in pain. It felt like my head had split open from the shocks. I could hardly endure the pain that permeated my body. After thirty to forty minutes of this torture, I could no longer stand. The morning after, I found my vision to be blurry."

Due to their deprivation of their constitutional right of appeal and other due process PRC constitutional rights, many Falun Gong practitioners chose hunger strike as a way to protest. As a direct result and consequence, they were tortured through the well-known and highly painful Chinese form of force-feeding. It was designated the "monstrous torture method," by those Falun Gong practitioners forced to endure the process. Dai Ying's account below demonstrates it clearly.

"To continue protesting the persecution, I had no choice but to go on hunger strike. During my third day of the hunger strike, the guards at the detention center began to force feed me. They dragged me out of my cell. Four or five people pressed me against the ground to prevent me from moving. They inserted a very thick rubber tube into my nostril, causing my nose to bleed. When the tube failed, they used a screwdriver to pry open my teeth and inserted a thick, sharpened bamboo tube into my mouth. It hurt so much that I felt as if they were splitting my mouth open. This force-feeding consisted of either food or dense salt water. I felt suffocated. Food and blood kept spurting from my mouth and nose. Every time they finished, I felt as if I had died. They force-fed me every two or three days, not out of concern for my life, but for the purpose of torturing and devastating me. Once I gritted my teeth and tightly closed my mouth, Doctor Zhou in the detention center used the largest screwdriver to pry open my teeth. My two front teeth were pried off, and the rest of my upper and lower front teeth were pried loose."

Zhang Mengye was kidnapped together with his wife and moved to several detention centers and labor camps and finally was detained for two years and 37 days at the Guangzhou City No. 1 Forced Labor Camp, located in China Town, Huadu District, Guangzhou. The length of the detention was the result of extensions due to his persistence not to be "reformed" and give up practicing. While in detention, he was tortured, deprived of sleep and put in isolation several times. Even after release on February 10, 2002, he had no freedom, as he was often threatened, harassed, and monitored, controlled, and again

experienced several kidnapping attempts. As a result, he lost his job, wages and bonuses, and all social security entitlements. This is how Zhang Mengye describes some of these injuries:

“At 2:00 on December 29, 2000, I was meditating on my bed. Upon seeing me, the guard on duty beat and cuffed me to the steel door until dawn. At 9:00 A.M. while I was working in the workshop, instructor Li Guomin suddenly appeared and pulled my collar from behind. He pulled so hard that I felt as if I was suffocating. The buttons broke and the collar tore off. I fell off my stool to the ground. Then he grabbed me by my shirt and dragged me out of the workshop. He dragged me over the rough stone floor for at least 30 to 40 meters. I could only hear Li Guomin roaring, and felt somebody hitting my head. I could not see him clearly. I was then cuffed to a tree. With both arms wrapped around the big tree, I could not stand up or squat down. My entire body felt as if it was being pulled apart. I was in pain and exhausted. The handcuffs were so tight, that both of my hands were in excruciating pain and became swollen. Even the prisoners who supervised me were unable to watch it any longer and felt pity for me. Therefore, the prisoners asked the police to loosen the handcuffs a bit. However, the police cuffed my hands even tighter until it could be tightened no more. It cut deep into my flesh and it hurt like a knife cutting my body. Although it was cold winter, I was soaked in sweat because of the pain and I almost passed out. The police cuffed me like that for three days in a row.”

4. Arbitrary (or Wrongful) Detention or Imprisonment

One of the most fundamental liberties is the prohibition against arbitrary detention. It affirms an individual’s right to liberty and restricts the government’s ability to infringe on that liberty. It is one of the core features of not only the United States Constitution, but it is also affirmed in national constitutions around the world. It has also been recognized by virtually all multilateral human rights instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights.

The International Covenant on Civil and Political Rights (“ICCPR”) has formally codified the prohibition against arbitrary detention. *See* International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171. Article 9(1) 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.” According to the *travaux préparatoires*, the term “arbitrary” meant far more than “illegal.” Cases of deprivation of liberty provided for by law must not be disproportionate, unjust, or unpredictable. Thus, “[i]t is not enough for deprivation of liberty to be provided for by law. The law itself must not be arbitrary, and the enforcement of the law in a given case must not take place arbitrarily.”²⁴

Virtually all other international instruments and national constitutions specify that arbitrary means far more than illegal. Under US legal standards, for example, a detention is arbitrary if it is unlawful or if it is “incompatible with the principles of justice or with the

²⁴ Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary 172 (1993).

dignity of the human person.” *Martinez*, 141 F.3d at 1384 (*quoting* the Restatement § 702 cmt. h). In this regard, along with the factors referred to in the Restatement § 702 cmt. h (*e.g.* failure to notify detainee of charges, permit an early opportunity to communicate with family or consult with counsel), the conditions of confinement may be a factor. Where the detainee is subject to torture, courts have found the detention arbitrary. *See, e.g. Xuncax*, 886 F. Supp. at 169-70; *Paul v. Avril*, 901 F. Supp. 330, 335 (S.D. Fla. 1994).

China has not ratified the ICCPR to date. While the domestic law of China prohibits arbitrary detention, it is defined far more narrowly. According to Article 37 of the Constitution of the PRC, no citizens may be arrested except with the approval or by decision of the people’s procuratorate or by decision of the people’s court. Various laws limit periods of detention without charge to 24 hours, which under certain conditions, might be prolonged to 48 hours with the approval from public security. *See, e.g.,* Article 9 of the Police Law, and Article 65 of the PRC Criminal Procedure Law.

Virtually all Falun Gong adherents who have been detained in prisons, jails, labor camps or even police stations, have been detained arbitrarily based on U.S. and international legal standards. Many have been detained arbitrarily in violation of Chinese law.

a. Administrative Sanctions

Administrative sanctions have been of particular concern to China experts, the legal community at large and human rights groups and activists around the globe – including the United Nations Special Rapporteur – has been the extensive use by the police of the form of administrative detention referred to as ‘Re-education Through Labor’ in China to restrict the freedom of religion or belief of Falun Gong adherents. As Asma Jahangir, the Special Rapporteur of the Office of the High Commissioner on Freedom of Religion or Belief, stated in a recent report, “Reeducation Through Labor 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.”²⁵ Civil rights attorney Gao Zhisheng has also provided well-documented evidence of the use of forms of administrative detention referred to as “Re-education Through Labor (RTL) in his March 25, 2005 “Open Letter to China’s National People’s Congress,” where he additionally notes that the practice of RTL is inconsistent with several other provisions of Chinese law including 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. As he states, “[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.”²⁶

²⁵ 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.

²⁶ 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>.

b. Criminal Justice Sanctions

Those practitioners who do not recant in RTL camps are formally arrested and handled through the criminal justice system, which is deliberately set up to facilitate the sentencing of members of dissident or disfavored groups like Falun Gong to lengthy prison terms. This is accomplished through largely through defects in the PRC legal system itself which not only permits, but additionally, relies upon the lack of procedural guarantees to a fair trial, lack of a presumption of innocence, the intimidation of criminal defense lawyers, and the elimination of other significant due process guarantees to secure the confinement of individuals who qualify as members of disfavored or dissident groups in China. This is well reflected in the CCP's exercise of control of the process through its Political-Legal Committee, which in turn controls the entire system of law enforcement through, among other things, pre-trial meetings that decide ahead of time the charge, the verdict and the sentence.

These defects have also been addressed by several UN Special Rapporteurs who have expressed concern over the fact that RTL is used to try to extract confessions from members of the religion. They have additionally expressed concerns that those who have been formally charged have been subjected to unfair trials resulting in lengthy prison sentences.²⁷ The lack of due process within the judicial system was further cemented by the January 14, 2000 Supreme People's Court and Supreme People's Procuratorate "Proposals Concerning Issues Related to the Current Handling of Falun Gong Criminal Cases." Section five of this document specifies 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.²⁸

All of the Falun Gong refugees who have reported periods of detention or incarceration to HRLF, regardless of whether they were detained through RTL or the criminal justice system, experienced detentions that are arbitrary under U.S. and International legal standards. A few of their accounts follow:

Lizhi He survived torture and a three-and-a-half year prison term. He was arrested several times before he was imprisoned. His crime was simply having admitted he practiced Falun Gong and refusing to give it up. In prison he was tortured, forced to watch other practitioners being tortured and experienced intense brainwashing methods based solely on

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) at 19.

²⁸ See, *Dangerous Meditation*, "Laws and Regulations Used to Crackdown on Falun Gong" at p.5, where Human Rights Watch makes make clear that no Falun Gong practice, no matter how limited or seemingly innocuous, could escape punishment. The Human Rights Watch report is available at <http://hrw.org/reports/2002/china/China0102-02.htm>.

his refusal to abandon his belief in the tenets of the religion of Falun Gong. Below is his account of the first detainment:

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

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

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

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

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

“On October 25, 2002, the People’s Court of Shenyang High-Tech Park illegally tried us in secret at the Middle Court of Shenyang (because as a new district Shenyang High-Tech Park had no office building for its court at that time). The six practitioners in the illegal trial were: Zhang Huiyu, Jin Dewei, Jing Tian, Jing Cai, Jing Yu, and Guan Yuling. No family members were allowed to sit in, although they had been promised to be able to be present in the proceedings. The public gallery was filled up by officials from the police, inspecting organization, court house, and judicial organizations. Lawyers were forbidden to plead not guilty but only guilty. Therefore, I denied the so-called defense. They illegally sentenced me to 13 years of imprisonment, Zhang Huiyu to 15 years, Jin Dewei to 14 years, Jing Tian to 13 years, Jing Yu to 10 years, and Guan Yuling to 8 years. The trial was only a show as the sentences had been predetermined, and we were not allowed to defend ourselves. When we tried to defend ourselves, we were frequently stopped, and our not accepting of being guilty was regarded as contempt to court.”

In addition, several of those who have reported periods of detention or incarceration to HRLF were also detained arbitrarily under Chinese law. These include several individuals who served as plaintiffs in the aforementioned case filed against the former mayor of Beijing, Liu Qi. In addition to finding the defendant responsible for torture, the U.S. district court judge found that Liu Qi, the former mayor of Beijing, was responsible for the arbitrary detention of several plaintiffs based on their claims that they suffered prolonged detention without being charged and without an opportunity to obtain counsel, in addition to their being detained under cruel and tortuous conditions.²⁹

5. Disappearances

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

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

In China, where Falun Gong practitioners have disappeared by the thousands, a forced disappearance often implies murder. As in Chile and Argentina, where the infamous “death flights” were used during Operation Condor by the military juntas to dispose of the victims’ bodies at sea, several reports indicate that Falun Gong victims who refuse to reveal or disclose their identity to the police are illegally detained, often tortured, imprisoned and then killed by the removal of their vital organs. Similarly, as in the case of the victims of the military juntas where the murder is surreptitious, the party committing the murder has deniability, as there is no body to prove that the victim is actually dead. The perpetrators of disappearance go to great lengths to obscure or eliminate all mention of the disappeared by altering the historical record and encouraging the silence of surviving relatives. Many have argued persuasively that a large number of Falun Gong practitioners who have disappeared have been murdered through the harvesting of their organs, notwithstanding the difficulty of proving the crime through tangible remains or eyewitness testimony.³⁰ David Matas and David Kilgour in their report “Bloody Harvest” which investigates allegations of organ harvesting of Falun Gong practitioners in China persuasively argue for the use of organ harvesting as a mechanism of persecution against Falun Gong adherents.

According to David Matas, he had decided to take the responsibility to do an investigation on the issue after having heard the allegations from a medical doctor's wife,

²⁹ See, *supra*, note 21.

³⁰ See, *supra* at note 1. See also, *Forti v. Suarez-Mason*, 694 F. Supp. 707, 711 (N.D. Cal. 1988) where the U.S. District Court found state officials and their agents liable “for their refusal to acknowledge the abduction or disclose the detainee’s fate.”

under the alias of "Annie" back in 2006, that Falun Gong practitioners were being killed for their organs.³¹

The report David Matas authored with the Honorable David Kilgour states:

Basically, in a nutshell, what we came up with was that every evidentiary trail that we could think of, that could have disproved the allegations, went nowhere. Every evidentiary trail that proved the allegations gave us something. The result of which is, putting it all together, that 'standing back from the pile,' so to speak, we came to the conclusion that this was true. That what Annie had said was true. Not just for corneas, but for all organs. Not just for 2002 to 2003, like she [Annie discussed], but from 2001 till when our reports came out. Not just in Sujian [province], but in all of China," said Matas.

The families of many of the disappeared Falun Gong practitioners have provided their names to HRLF. A list of some of their names is also included as Appendix 12 in the Matas/Kilgour report.³²

CONCLUSION

The survivor reports included here represent a fraction of the narratives compiled by Human Rights Law Foundation (HRLF) from refugees from China who live in the United States and elsewhere around the world. The testimonies of others are now being compiled to permit the survivors to tell of the actual impact persecution has had on their personal lives and to help audiences learn more about a period of contemporary history that is still largely hidden from the public eye, here and in China.

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³¹ Annie is the pseudonym used by a woman who claims that her husband confessed to removing organs from Falun Gong practitioners while alive. According to her testimony (which is available from HRLF upon request), "my ex-husband had the habit of keeping a diary. There is an entry in his diary [stating:] when a patient lost consciousness, he opened her clothes with a scissor. A package fell out of the pocket of her clothing. My husband opened it and found a small box inside. Inside the box, there was a lucky charm with a Falun Gong symbol and a note. It said, "Mommy, Happy Birthday."

³² See, Appendix 12 of their report, which can be found at <http://www.organharvestinvestigation.net>.