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Solomon Rho

## **Falun Gong: Want to be Stabbed or Shot?**

### **Introduction**

"Religion affects the masses of a billion people".<sup>1</sup> Jiang Zemin, the former president of the People's Republic of China, understood that religion was an unavoidable issue that needed to be addressed in order to promote socialist ideas, unity, and stability. He pushed the need for regulation to adapt religion to socialism.<sup>2</sup>

China has a great interest in controlling religion in order to protect their State's political sovereignty and longevity. There has long been a fear throughout China that the "western" world would use religion in order to infiltrate and subvert China.<sup>3</sup> In addition, domestically, China needs to control religion in order to keep their nation stable and protect the status quo. For example, throughout China's history, there had been rebellions caused by charismatic religious leaders who would use their leadership to appeal to the masses and organize.<sup>4</sup> One such leader was Hong Xiquan, who led the Taiping Rebellion, one of China's most blood rebellions.<sup>5</sup> One of the more infamous disruptions occurred during the Qing Dynasty, when the White Lotus (a Buddhist sect) revolted against the government.

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<sup>1</sup> Pitman B. Potter, *Belief in Control: Regulation of Religion in China*, 174 *China Quarterly*, 317, 321 (2003). This is a view that is held by other top leaders. For example, Zhu Weiqun, another previous member of the Central committee stated, "increasing religious practice among party members is 'threatening our unity and national leadership.'" See, *Top Chinese Official Speaks Out Against Rise of Religion*. *Morning Star*, December 19, 2011. Can be accessed at <http://www.morningstaronline.co.uk/index.php/content/view/full/113315>. [accessed April 24, 2013]

<sup>2</sup> *China's New Regulation on Religious Affairs: A Paradigm Shift?*, Before the Congressional Executive on the Commission on China, 109th Cong. 7 (2005).

<sup>3</sup> Human Rights Watch, *China: State Control of Religion*, October 1, 1997, can be accessed at <http://www.hrw.org/reports/1997/10/01/china-state-control-religion> [accessed March 4, 2013]

<sup>4</sup> Robert Bejesky, *Falun Gong & Re-education Through Labor: Traditional Rehabilitation for the "Misdirected" to Protect Societal Stability Within China's Evolving Criminal Justice System*, *Columbia Jrn'l of Asian Law*, 148, 159 (2004).

<sup>5</sup> Carrie Gracie, *Hong Xiquan: The rebel who thought he was Jesus's brother*, *BBC News*, October 17, 2012, can be accessed at <http://www.bbc.co.uk/news/magazine-19977188> [accessed April 24, 2013].

China's ideology is centered on the idea that the need of the state trumps the needs of the individual. With this in mind, the government sought to balance the rights of the individual and the rights of the collective. However, when the government grants new freedoms—in this case religion—the country could be destabilized through the practice of these rights. For instance, China wants to suppress the Tibetan Buddhists because they give their loyalty to the Dalai Lama; and, China oppresses Islam followers in Xinjiang because some Muslims there use religion to resist political authority.<sup>6</sup>

For those reasons, the Communist Party of China (CCP) does not promote religion per se; however, over the years, they have become more liberal. The CCP issued a summary of their policy on religion in 1982 through "Document 19".<sup>7</sup> This document detailed the CCP's basic policy, as one to respect and protect freedom of religion. However, this document only authorized five religions: "Buddhism, Daoism, Islam, Catholicism, and Protestantism".<sup>8</sup> Although claiming to support religious freedom, the government began to see the need to bring religion under control due to the sheer amount of religious adherents.<sup>9</sup> For example, from 1987 to 1989 there were four riots, in Lhasa, caused by social unrest in Tibet. Tibet wanted political autonomy from the People's Republic of China and the Dalai Lama went to the United States in order to plead for autonomy; spurred by the Dalai Lama's action in the United States, some monks revolted in efforts to show support for the Dalai Lama's cause.<sup>10</sup> Such fear of the religious adherents led, in 1991, to the creation of Document 6.<sup>11</sup> Document 6 increased regulatory control on matters regarding religion by limiting activities in support of religion, such

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<sup>6</sup> See generally Potter, *supra* note 1, at 321.

<sup>7</sup> Mickey Spiegel, *Human Rights Watch/Asia, Freedom of Religion in China*, 43 (1992).

<sup>8</sup> MacInnis, *Religion in China Today*, 385-410 (Orbis Books, 1st ed., 1989).

<sup>9</sup> Potter, *supra* note 5, at 320.

<sup>10</sup> Melvyn Goldstein, *Tibet, China and the United States: Reflections on the Tibet Question*, The Atlantic Council Of The United States' Occasional Paper, 72, 77-79 (1995).

<sup>11</sup> Spiegel, *supra* note 6, at 49.

as fund-raising and recruitment.<sup>12</sup> Furthermore, in 1997 the State Council issued the "White Paper on Freedom of Religious Belief in China"; The CCP stressed the point of adapting religion to society.<sup>13</sup> "Adapt to society" meant that religion needed adhere to law and the socialist belief.<sup>14</sup>

Members of religious organizations that did not adhere to society and law were subdued under the pretext that they were a threat to national security. One such group that has come under very hard oppression, during the last twenty years, is the Falun Gong. In the attempts to punish/detain those associated with the Falun Gong, the government resorted to a detainment system called re-education through labor (RETL). In recent years, the Chinese government has been under enormous pressure from the international committee to abolish their RETL system, for breach of various human rights abuses. Because of these external pressures, there have been rumors, that sometime this year (2013) the Chinese government will abolish RETL.<sup>15</sup>

However, abolishing the RETL will not give Falun Gong practitioners the freedom they desire, nor curb the abuses that they fear. This paper will focus on the Falun Gong and how they, even without the RETL, will be subject to detainment by three methods, and that the best method to possible help these members stems from creating judicial autonomy. This paper will be divided into six sections: 1) the background on Falun Gong and the beginning to their persecution; 2) background and history of the RETL; 3) criminal law and how it is utilized toward the Falun Gong; 4) brainwashing detention centers; 5) psychiatric abuse on the Falun Gong; and, 6) the need for judicial autonomy rather than a sole focus on banning administrative

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<sup>12</sup>*Id.* at 8-13.

<sup>13</sup> *White Paper-Freedom of Religious Belief in China*, October 1997, can be accessed at <http://www.china-embassy.org/eng/zt/zjxy/t36492.htm>. [(February 26, 2013).

<sup>14</sup> *Id.*

<sup>15</sup> Human Rights Watch, *China: Fully Abolish Re-Education through Labor, Human Rights*, January 8, 2013, can be accessed at <http://www.hrw.org/news/2013/01/08/china-fully-abolish-re-education-through-labor> [accessed March 23, 2013].

detention. The government should focus on the rule of law by having the judiciary play a larger role in enforcing laws and regulations, as well as limiting the powers of the police

### **Falun Gong**

Falun Gong was founded in 1992 by Li Hongzhi. This group was part of a movement called the “qigong boom” that occurred in the 1980’s.<sup>16</sup> The “Qigong” movement was so popular that in 1986 the PRC established a state run association called the China Qigong Scientific Research Association (CQSRA).<sup>17</sup> Falun Gong was subsequently credited on August 1993.<sup>18</sup> Out of all the accredited members under the CQSRA, the Falun Gong (Falun Dafa) was one of the more popular members.<sup>19</sup>

Falun Gong is influenced by teachings of both Buddhism and Daoism; members focus on “cultivating energy” in order to improve one’s health and to cure one’s illnesses.<sup>20</sup> However under Li’s guidance, the primary practice of the Falun Gong shifted from methods of cultivating energy to methods of gaining salvation.<sup>21</sup> It was written in Zhuan Falun, a book written by Li, that one could achieve salvation if they followed the three principles of “Truthfulness, Compassion, and Forbearance (Zen-Shan-Ren).”<sup>22</sup>

However, in the early 90’s, the practice of qigong began to decline and the government began to harden their policies against qigong groups; with these factors against him, Li announced the cease of their domestic training on September 1994 and overseas training in

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<sup>16</sup> Michael J. Greenlee, *A King Who Devours His People: Jiang Zemin and the Falun Gong Crackdown: A Bibliography*, 34 Int’l J. Legal Info. 566, 557 (2006).

<sup>17</sup> David Ownby, *A History for Falun Gong: Popular Religion and the Chinese State Since the Ming Dynasty*, 6 Nova Religio 223, 233-34 (2003).

<sup>18</sup> James Tong, *An Organizational Analysis of the Falun Gong: Structure, Communications, Financing*, 171 China Q. 643, 652 (1999).

<sup>19</sup> *Id.*

<sup>20</sup> Maria Hsia Chang, *Falun Gong: The End of Days*, 3, (Yale U. Press) (2004).

<sup>21</sup> Lee Hongzhi, *Zhuan Falun Fajie The Law of Zhuan Falun Explained*, 8, can be accessed at [http://www.falundafa.org/book/eng/pdf/zfl\\_fajie.pdf](http://www.falundafa.org/book/eng/pdf/zfl_fajie.pdf)

<sup>22</sup> *Id.*

1995.<sup>23</sup> On November of 1996, the Falun Gong filed for an official withdrawal from the CQSRA, and was terminated.<sup>24</sup> They failed to reclassify themselves because the government would not approve their plea to reclassify as a non-religious academic organization, and by December 1997 the Falun Gong claimed that they had disbanded.<sup>25</sup> However, even after the “supposed” disbandment the government found that in 1999 there were as many as 39 main stations, 1,900 guidance stations, 28,263 practice sites nation-wide.<sup>26</sup>

### **Crackdown of Falun Gong**

The most official confrontation against the Falun Gong started on April 11, 1999. The *Teenager Science and Technology Outlook* magazine spoke out against the Falun Gong members and called them “bogus”.<sup>27</sup> The magazine would not retract their statement, so on April 11, 6,000 members staged a protest outside the magazines office.<sup>28</sup> As the police were calming the situation, they arrested some followers, and in response, on April 25, 1999 more than 10,000 practitioners gathered outside Zhongnanhai, the CCP’s leadership compound in Beijing.<sup>29</sup>

This demonstration surprised the Chinese government, and on June 20, 1999 the government began to formally arrest Falun Gong members.<sup>30</sup> It was reported that 5,000 to 6,000 members were arrested within the first couple of days.<sup>31</sup> The government officially banned the Falun Gong, labeling them as a cult, on June 22, 1999.<sup>32</sup> With this ban, the government forbade the practice and encouragement of the Falun Gong, distribution of materials related to the Falun

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<sup>23</sup> Tong, *supra* note 17, at 640.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 641.

<sup>26</sup> China Aid Association, *Differences Between Cults and Religions*, 1/no. 3 Chinese Law & Religious Monitor, 27 (2005)

<sup>27</sup> He Zouzi, *I Do Not Approve of Teenagers Practicing Qigong*, 32 Chinese L. & Govt. 95, 97 (1999).

<sup>28</sup> Chang, *supra* note 19, at 6.

<sup>29</sup> Benjamin Penny, *The Life and Time of Li Hongzhi: Falun Gong and Religious Biography*, 175 China Q. 643, 643 (2003).

<sup>30</sup> Tong, *supra* note 19, at 814.

<sup>31</sup> *Id.* at 815

<sup>32</sup> Erin Chlopak, *China’s Crackdown on Falun Gong*, 9 No. 1 Hum. Rts. Brief, 17 (2001).

Gong, and organizing demonstrations. Then on July 29, the government issued a warrant for the arrest of Li Hongzhi along with a \$6,000 reward for those who would provide information that led to his arrest.<sup>33</sup>

A broader sweeping arrest campaign, against the Falun Gong, began on October 1999. The campaign began with the broadening of the criminal code that criminalized cults.<sup>34</sup> Although most of the members were not prosecuted criminally, many were sent to administrative detentions known as the RETL.<sup>35</sup>

### RETL

Re-education through labor (RETL) was developed in 1955 through the 1955 Chinese Communist Party (CCP) Directive.<sup>36</sup> The original purpose of the RETL was to catch those who committed minor criminal offenses that were not serious enough to be treated as a criminal offence. Although RETL was labeled a “quasi-imprisonment”, the government treated it as if it were a prison.<sup>37</sup> In some provinces RETL offenders were attached to prisons in sub-units, and in all provinces RETL offenders and criminal defendants were both forced to work farmland under police control, making it hard to distinguish one from another.<sup>38</sup>

In 1957, the State Council passed the Decision on RETL which “enlarged the scope of [RETL]” and “clarified the scope of [its] application”.<sup>39</sup> The use of RETL could now be used against people in one of these four categories: counter revolutionaries; unemployed people who

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<sup>33</sup> Chang, *supra* note 19, at 6.

<sup>34</sup> *Judicial Explanation on Crimes by Cults*, China Daily, November 1, 1999, can be accessed at <http://www.china-embassy.org/eng/zt/ppflg/t36568.htm> [accessed March 14, 2013].

<sup>35</sup> Michael J. Greenlee, *supra* note 15, at 563.

<sup>36</sup> Fu Hualing, *Re-education Through Labor in Historical Perspective*, 184 China Q. 3 (2005).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

constantly commit minor offenses; former state employees who were expelled and could not get a job; and employees who caused disturbances at work by not doing their assignments.<sup>40</sup>

Right after passing the Decision on RETL the Chinese government launched the anti-rightist campaign.<sup>41</sup> For example, from 1957-1960 in Shandong's RETL Institution out of the 16,695 detainees, 9,858 were political offenders.<sup>42</sup>

During the Cultural Revolution operations of the RETL was in "a state of near suspension" because use of it was seen as being soft on the enemy.<sup>43</sup>

However, in 1979, RETL was restored through the enactment of the State Council Supplementary Rules on RETL.<sup>44</sup> With the reinstatement of RETL the government shifted their focus on the use of RETL to petty criminals instead of the usual counterrevolutionaries. For example, in Shandong First Laojiao Institution, in 1980, 90% of the offenders committed criminal offences such as "theft, fighting in public, or deception".<sup>45</sup> Aside from the shift of the targeted group, the most significant development, at this time, was the implementation of the two to three year term limit for RETL.<sup>46</sup> Furthermore, in 1988, RETL was finally separated from the prison system and the police and put it in the hands of the Ministry of Justice.<sup>47</sup>

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<sup>40</sup> Edward J. Epstein, *Legal Document and Materials on Administrative Detention in the People's Republic of China*, Chinese Law and Government, Vol. 27, no. 5, 61 (1994).

<sup>41</sup> Hualing, *supra* note 35, at 816.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 818.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 819.

<sup>46</sup> Human Rights in China, Reeducation Through Labor (RTL): A Summary of Regulatory Issues and Concerns, HRIC, February 2001, can be accessed at <http://hrichina.org/sites/default/files/oldsite/PDFs/Reports/HRIC-RTL.pdf> [accessed March 14, 2013].

<sup>47</sup> *Id.*



Beginning 1979, the government began expand the list of offences, through regulations, that allowed the use of RETL; one such example is a regulation enacted in 1983 that made RETL open to people who have a “membership in cults or secret societies”.<sup>48</sup>

According to Amnesty International, prisoners in RETL are subject to all kinds of abuse and torture.<sup>49</sup> Couples Zhang Lianying and Niu Jinping, were sent to the RETL for practicing Falun Gong. They recanted stories of their torture to a reporter, after they entered the United States. The wife said that she was suspect to all kinds of various beating. When she would say “Falun Gong is good” officers would beat her in the face with a plank and tie her up.<sup>50</sup> Her husband was taken to a different center where, as he first entered, was subject to electrical shocks.<sup>51</sup> There are also many reports of prisoners being force fed, sleep deprived, and brainwashed.<sup>52</sup>

But now, there are rumors of RETL finally coming to an end, with its long 58 year history. However, even without this system the Falun Gong members still have much to fear. They are in similar situations; the only thing that will change is the form of punishment. For example, Falun Gong members could more likely be subject to criminal prosecution.

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<sup>48</sup>Hualing, *supra* note 35, at 820.

<sup>49</sup> Amnesty International, *China: Abolishing "Re-education through Labour" and other forms of punitive administrative detention: An opportunity to bring the law into line with the International Covenant on Civil and Political Rights*, May 12, 2006, ASA 17/016/2006, can be accessed at: <http://www.refworld.org/docid/447b18ee4.html> [accessed 17 April 2013]

<sup>50</sup> Shaun Tandon, *Fleeing China: Couple Urge Help for Falun Gong*, AFP, Apr, 23, 2011, can be accessed at <http://www.google.com/hostednews/afp/article/ALeqM5hzH5RDTjkIFFXeFt1eRIDTSWFf8w?docId=CNG.2f5a8fbd481f0ab21e58aa4d496db7e.161>. [accessed March 19 2013].

<sup>51</sup> *Id.*

<sup>52</sup> Bu Dongwei, *Blog: My Life Inside a Chinese Labor Camp*, Amnesty International, December 7, 2009, Can be accessed at <http://www.amnesty.org/en/news-and-updates/blog-my-life-inside-chinese-labor-camp-20091207>. [accessed March 19, 2013].

## Article 300 and 296 and use of Criminal Sanctions

One of the criminal laws that Falun Gong practitioners could be held to is Article 296 of China's Code of Criminal Law (CL). Article 296 states:

Where an assembly, a procession or a demonstration is held with no application made in accordance with the provisions of law or no permission granted for the application or where it is held not in accordance with the time for start and stop, venue and routes permitted by the competent authorities, and the order of dismissal is disobeyed and public order seriously disrupted, the persons who are in charge and the persons who are directly responsible for the assembly, procession or demonstration shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights.<sup>53</sup>

However, it is more likely that members will be prosecuted under Article 300 of the Chinese CL.

Article 300 of the CL was enacted on March 14, 1997. This code states:

Whoever forms or uses superstitious sets or secret societies or strange religious organizations or uses superstition to undermine the implementation of the laws and administrative rules and regulations of the State shall be sentenced to fixed-term imprisonment of not less than three years but no more than seven years; if the circumstances are especially serious, he shall be sentenced to a fixed term imprisonment of not less than seven years.<sup>54</sup>

Following the protests of the Falun Gong that took place in April, the People's Supreme Court and the Supreme Prosecutorate issued an interpretation of Article 300 on October 1999.<sup>55</sup> In the interpretation, the government listed six ways that one could violate Section 1 of Article 300: I) gather people to disrupt the work of the government; II) assemble or demonstrate members to disrupt public places; III) continuing activities of banned groups; IV) organize others

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<sup>53</sup> Wei Luo, *The 1997 Criminal Code of the People's Republic of China*, 160 (1998).

<sup>54</sup> *Id.* at 161 (1998).

<sup>55</sup> *Judicial Explanation on Crimes by Cults*, China Daily, November 1, 1999, can be accessed at [http://www.cesnur.org/testi/falun\\_005.htm](http://www.cesnur.org/testi/falun_005.htm) [accessed March 20, 2013].

to stop their legal obligations; V) publish, print, distribute publication and print symbols of the banned sect; VI) other activities that violate law or regulations.<sup>56</sup>

Furthermore, the offense is considered serious, for purpose of sentencing, if it meets any of the following four criteria: I) set up organization or recruiting members; II) collaborating with overseas groups; III) publishing large amounts of banned material and banned sect symbols; and IV) instigating others to violate state law or regulation.<sup>57</sup>

In addition, a person can be charged under Section 2 and 3 of Article 300 if they use the banned sect (Falun Gong) to cause death. Some examples of violations under Section 2 and 3 would be fasting, inflicting wounds upon one's self, self-immolation, and stopping someone from taking medication—all practices of the Falun Gong.<sup>58</sup>

With the conviction rate in China being 99% there is little hope that Falun Gong members would be able to leave unscathed.<sup>59</sup> It also doesn't help that the October 1999 interpretation of Article 300 seems to be geared specifically toward the Falun Gong. For example, Section 1 of Article 300 targets any sects or religious groups who publicly gather or assembly.<sup>60</sup> This interpretation of the Section 1 seems to attack Falun Gong members in efforts to restrain any protests that resemble the one on April 25, 1999.

Furthermore, after the interpretation, it becomes a serious crime when Falun Gong members collaborate with overseas groups.<sup>61</sup> This part of the article targets the members so that they cannot contact or work with any of the members overseas, such as practitioners in America.

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Ian Dobson, *The Criminal Law of the People's Republic of China (1997): Real Change or Rhetoric?*, 11 Pac. Rim L. & Poli'y J. 1, 26, (2002); There are questions as to whether self-immolation is a Falun Gong practice and many practitioners state that it is not; however, there was an incident with the Falun Gong burning themselves at Tiananmen Square on 2001.

<sup>59</sup> Randall Peerenboom, *Out of the Pan and Into the Fire: Well-Intentioned but Misguided Recommendations to Eliminate All Forms of Administrative Detention in China*, 98 Nw. U. L. Rev. 991, 1034 (2004).

<sup>60</sup> *Supra* note 55.

<sup>61</sup> *Id.*

Additionally, the court specifically targets Falun Gong members with the interpretation that states that members cannot lead other members to inflict self-harm. The court went on to list specific Falun Gong practices that met such a rule, such as fasting and not taking medicine.<sup>62</sup> In all, it is arguable that this interpretation creates ten different offences.<sup>63</sup> The government responded by saying that it was clarifying the rule and not creating distinct regulations.<sup>64</sup>

The court further expanded its interpretations on Article 300 on June 2001.<sup>65</sup> The interpretation not only expanded the application of Article 300 but had the lower courts read Article 300 to oppose Falun Gong.<sup>66</sup> For example, the new interpretation banned the use of cults to endanger national security, help members commit suicide/acts of deformity, and spread publication.<sup>67</sup>

However, in reality only a small portion of Falun Gong practitioners are taken to trial. In 1999, out of 2,000 members who were arrested and detained only 40 cases have been tried.<sup>68</sup> Furthermore, in Jiangsu Province, in 2010, out of 117 members, who were detained, only 17 members were taken to trial.<sup>69</sup> In addition, from 1999 to 2011 out of 4,017 arrests only 140 were sentenced to prison, around the Shijiazhuang City area.<sup>70</sup> Even if RETL is abolished, the government will not overlook the Falun Gong practitioners — evidenced by the courts broad interpretation of Article 300. In the end, Falun Gong practitioners may receive longer detainment

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<sup>62</sup> Dobson, *supra* note 58, at 25.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Explanation of the Supreme People's Court and the Supreme People's Procuratorate on Some Issues Concerning the Specific Application of Laws When Handling Criminal Cases of Organizing and Exploiting Heresy Organization*, October 9, 1999, can be accessed at [http://www.novexc.com/sup\\_peop\\_ct\\_heretical\\_cult.html](http://www.novexc.com/sup_peop_ct_heretical_cult.html) [accessed April 1, 2013]

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> James Tong, *supra* note 68, at 816.

<sup>69</sup> *Statistical Summary: Falun Gong Practitioners Persecuted in Jiangsu Province in 2010*, Clearwisdom, January 25, 2011, can be accessed, <http://en.minghui.org/html/articles/2011/1/25/122859.html> [accessed April 20, 2013]

<sup>70</sup> *Statistics and Analysis on the Persecution of Falun Gong Practitioners in Hebei Province*, Clearwisdom, March 25, 2011, can be accessed <http://en.minghui.org/html/articles/2011/3/25/124035.html> [accessed April 20, 2013]

periods because of the ban of RETL. For example, the maximum sentence someone can get from the RETL is four years.<sup>71</sup> However, under Article 300 many of the defendants will be eligible for seven year sentences.<sup>72</sup>

Since the conviction rate in China is somewhere up in the 99% range, many would feel that it is in their best interest to confess, in hopes to be treated more leniently.<sup>73</sup> This problem is made difficult by the fact that many of the members are not “first-time” offenders.<sup>74</sup> Since many are “repeat-offenders”, they will most likely be given a higher sentence.<sup>75</sup>

### **Effects of the 2001 Tiananmen Square Incident and Other Trials**

One of the most infamous cases where Falun Gong members were charged under Article 300 arose from an incident that occurred at Tiananmen Square on January 23, 2001.<sup>76</sup> On the eve of Chinese New Year seven Falun Gong members traveled to Tiananmen Square in order to protest the government’s mistreatment of the Falun Gong. At Tiananmen Square five members set themselves ablaze, but due to police intervention two of the original five members survived. Five of the members went to trial and was sentenced in mid-2001. Here, the applicable law was the court’s 2001 interpretation of Article 300. The interpretation stated that it was illegal for a cult/sect in order to help members commit suicide or self-harm.

All members were found guilty and were sentenced to various degrees, all sentences being higher than RETL’s 4 year limitation. The person considered the mastermind, Liu Yunfang,

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<sup>71</sup> Hualing, *supra* note 35, at 817.

<sup>72</sup> Luo, *supra* note 53, at 161.

<sup>73</sup> Randall Peerenboom, *supra* note 59, at 1034.

<sup>74</sup> *Id.* at 1034.

<sup>75</sup> *Id.*

<sup>76</sup> CNN Report, *Tiananmen Tense after Fiery Protest*, Jan 24, 2001, can be accessed at <http://web.archive.org/web/20070222110517/http://archives.cnn.com/2001/WORLD/asiapcf/east/01/24/asia.falun.03/>. [accessed March 24, 2013].

was given a life sentence. <sup>77</sup>Three members were given sentences ranging from seven to fifteen years.<sup>78</sup>

Furthermore, the first case brought against the Falun Gong was for defying Article 300's provision on obtaining and spreading Falun Gong material. The trial took place November 30, 1999, and the defendants were given sentences ranging two to fourteen years. <sup>79</sup> Even here, just for spreading pamphlets and books the courts gave them a high sentence.

In a second case, that occurred a month later on December 26, 1999 four members of the Falun Gong were given sentences ranging from seven to eighteen years. The defendants were also charged under the broad interpretation of Article 300: obstruction of justice, causing death, obtaining State secrets.<sup>80</sup>

When balancing the RETL with the outcomes of such cases, it seems like the abolishment of the RETL is, if one at all, a hollow victory. The treatment of the stigmatized members of society will not change. In addition, evidenced in these three cases, the government is on a crusade against the Falun Gong and is using their interpretive powers in order to bring in a varying array of charges under the broad umbrella of Article 300. More often than not, Falun Gong members will be subject to prison sentences exceeding detainment time under RETL.

Sentencing is not the only concern. Another backlash to the practitioners is that they are in danger of being stigmatized as a convict for committing a petty offence. With this stigmatization the now convicts will face greater alienation and discrimination from society.<sup>81</sup>

This may actually lead to a never ending cycle of "crime time in prison, release, and then more

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<sup>77</sup> *Id.*

<sup>78</sup> One escaped punishment because she confessed and had only a minor role in the event.

<sup>79</sup> *Imprisonment for Four Falun Gong Cult Members*, Zinhua News Agency, Nov. 12, 1999, can be accessed <http://english.peopledaily.com.cn/special/fagong/1999111600F103.html> [accessed March 15, 2013]

<sup>80</sup> *Key Falun Gong Cult Members Sentenced*, China Daily, 1 (1999)

<sup>81</sup> Randall Peerenboom, *supra* note 59, at 1034.

crime”.<sup>82</sup> Furthermore, for members beyond the reach of criminal sanctions there are other forms of detention/punishment that could be brought against them

### **Torture and the “610” Office**

Criminal sanctions are not the only problem the Falun Gong members need to fear. In fact, there are many other forms of detention facilities throughout China; these facilities are run by the 610 office. These temporary brainwashing centers are the most commonly used methods for dealing with the Falun Gong. In 2001, 50,000 members were held in these temporary detention centers as compared to 10,000 in the RETL.<sup>83</sup> Similar to the RETL, Falun Gong members are subject to all sort of torture, including sleep deprivation, beatings, and brainwashing.<sup>84</sup>

The 610 office was created by the CCP Central Committee (the most powerful group in China) on June 1999.<sup>85</sup> This office was created to oversee all of the Falun Gong activities; they are “above the law, the courts, and the procuratorial centers” and may take any methods necessary to have Falun Gong members renounce their faith.<sup>86</sup> The 610 Office’s response to the Falun Gong is, “no one is to be spared”.<sup>87</sup>

Through torture and other methods to first “break” Falun Gong members, the 610 office gained notoriety among Falun Gong members. They would use any methods to have people renounce their practice. Active members are taken to the RETL first, not as punishment, but as a

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<sup>82</sup> *Id.*

<sup>83</sup> Kelly A. Thomas, *Falun Gong: An Analysis of China’s National Security Concerns*, Pac. Rim. Law. & Policy Jrn’l Association, 471, 482 (2001).

<sup>84</sup> Amnesty International, *China’s Annual Report 2012*, 2012, can be accessed at <http://www.amnesty.org/en/region/china/report-2012>. [accessed April 1, 2013].

<sup>85</sup> Amy S.Y. Cheung, *In Search of a Theory of Cult and Freedom of Religion in China: The Case of the Falun Gong*, 13 Pac. Rim L. & Pol’y J. 1, 23 (2004).

<sup>86</sup> *The 6-10 Office*, The Epoch Times, June 13, 2005, accessed <http://www.theepochtimes.com/news/5-6-13/29476.html>. [accessed March 20 2013]. The 610 office is above the system because they are head by members of the CCP Politburo Standing Committee. See generally, Sarah Cook & Leeshai Lemish, *The 610 Office: Policing the Chinese Spirit*. China Brief 11, 17.(September 16, 2011).

<sup>87</sup> Philip P. Pam, *Torture is breaking the Falun Gong*, Washington Post, August 5, 2001, accessed at <http://spanish.faluninfo.net/article/566/> [accessed March 20, 2013]

way to break them into submission through constant beatings and labor.<sup>88</sup> After torture, Falun Gong practitioners are taken to their local “brainwashing center” and detained until they are rehabilitated. Similar to the RETL, this is not a criminal sanction but an administrative detention. There are no checks on this body and the system is left up to the whim of the police officers in charge.

A practitioner is considered rehabilitated when they produce three statements to the 610 office: “a letter of repentance, a guarantee never again to practice Falun Gong, and a list of names and addresses of all family members, friends and acquaintances who are practitioners”.<sup>89</sup> They then have to complete and prove that they are rehabilitated by joining in steps to “transform” fellow practitioners.<sup>90</sup>

Stories of Falun Gong members going through the “brainwashing”, initiated by the 610 office are all very similar in nature. What the 610 office calls brainwashing is called torture by those who have had to endure. For example, a man by the name of Zhong Zhenfu, from Shandong Province, was arrested on May 4, 2008.<sup>91</sup> He alleged that when he refused to reveal any information regarding the Falun Gong, the police poured boiling water over his neck and body.<sup>92</sup> Later, he further alleges that they shackled him and put him in a metal cage where they tormented him while forcing other inmates to do the same.<sup>93</sup> Another example of tortured members can be seen through the experience of Jiang Yunhong and Lin Xiaoquan.<sup>94</sup> They allege

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<sup>88</sup> *Id.*

<sup>89</sup> *Supra* note 85.

<sup>90</sup> *Id.*

<sup>91</sup> Human Rights Council 11<sup>th</sup> Session, *Summaries of Cases Transmitted to Governments and Replies Received, Agenda*, May 3, 29, 2009, can be accessed <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.2.Add.1.pdf> [accessed on March 13, 2013]

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Crimes Committed by the 610 Office of Brainwashing Center in Sichuan Province*, July 18, 2004, accessed at <http://en.minghui.org/emh/articles/2006/7/18/75619p.html> [accessed at March, 13, 2013]



that they were deprived of sleep and beaten while handcuffed to a chair.<sup>95</sup> Other horrors of torture are evidenced through oral accounts of ex-610 office officers, such as Hao Fengjun.<sup>96</sup> In one account Hao states:

In the beginning of 2002, they authority started arresting people involved in the "103" case. In one day, 79 Falun Gong practitioners were arrested and other two escaped. One of the escaped practitioners was a 13 year-old girl named Xu Ziao. This girl's mother, Sun Ti, was arrested and little Xu hence became homeless at the age of 13. One night in Feb 2002, I received a call asking me to go back to work and accompany a Falun Gong practitioner to see a doctor. I rushed to work and drove with a female officer to the prison of the Nankai Branch of Tianjin Public Security Bureau. When we arrived at the prison located at Erwei Rd., Nankai District, I saw Sun Ti sat on a table in an interrogation room. Sun's eyes were so swollen because of the beating. The police who interrogated Sun was Mr. Mu Ruili, captain of the 2nd division of the 610 Office of the Bureau of State Security. Mu was holding a steel rod (0.6 inch in diameter) with screw thread stained with blood. There was a hi-voltage electric baton sitting on the table. As we entered the room, we asked Mu to leave. Sun burst into tears and was going show us the injuries. I volunteered to leave the room since she was a woman. Sun stopped me and showed me her back. I was terribly shocked. Almost her entire back turned black and there were two cuts about 8 inches long with blood coming out.<sup>97</sup>

In addition to torture, they are bombarded with anti-Falun Gong propaganda, day in and day out.<sup>98</sup> Practitioners like Ms. Liu Ying recalls that she was forced to listen to anti-Falun Gong propaganda every day from 8:30 a.m. to 11:30 a.m., and 2:00 p.m. to 5:30 p.m.

In the end, many practitioners break and sign a prewritten document denouncing their practice of Falun Gong. Furthermore many end up in the hospital or die. The worst aspect of these detention centers are that there are no guidelines limiting the actions of the 610 office. They are more likely to get in trouble for allowing a practitioner to make it to Beijing than killing a practitioner during detainment.<sup>99</sup>

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<sup>95</sup> *Id.*

<sup>96</sup> He was a 610 Officer who defected to Australia after witnessing the horrors committed by the 610 Office.

<sup>97</sup> Oral Account by Hao Fengjun, Hao Fengjun: *Why I Escaped from China (Part II)*, Epoch Times, June 10, 2012, can be accessed <http://www.theepochtimes.com/news/5-6-10/29446.html> [accessed April 25, 2013].

<sup>98</sup> *Practitioner Ms. Liu Ying From Chengdu City, Sichuan Province is tortured to Death*, September 29, 2005, can be accessed at <http://en.minghui.org/emh/articles/2005/12/29/68452.html>. [accessed March 13, 2013]

<sup>99</sup> *Supra* note 84.

## Psychiatric Hospital

Beginning in the 1950's, the Soviet Union introduced forensic psychology to China, and it became highly popular.<sup>100</sup> The reason for the popularity was that psychiatric practitioners did not need to fear the government anymore. Before the introduction of forensic psychology the government targeted many psychiatric practitioners for having a “bourgeois ideology”.<sup>101</sup> But with the introduction of “forensic psychiatry, the psychiatric professionals could practice psychiatry without fear of reprisals.

Since the introduction of the forensic psychiatry, there were three categories of abuse that China committed. These three categories are “hypo-diagnosis”, “hyper-diagnosis”, and severe medical negligence.<sup>102</sup> The most important category, in case of the Falun Gong, is the second case. Hyper-diagnosis is when the psychiatrists over-report people who are not in fact mentally ill; this is the category that the Falun Gong members fall under today.<sup>103</sup>

During the Cultural Revolution, there was immense amount of pressure put on the psychiatrists to practice under the methodology of socialism rather than the science of truth.<sup>104</sup> The use of forensic psychology was limited to rule against counter revolutionaries, rather than see if a person was actually mentally ill. For example, a prisoner “Mr. C” was held to be insane because he was claiming he was sane when conducting his counter-revolutionary actions.<sup>105</sup> The pressures from the government turned psychiatry into a weapon to be used against the counter revolutionaries in order to silence them. Rather than be purged or branded a counterrevolutionary

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<sup>100</sup> Beilin Gao et al., *Forensic Psychiatry in the People's Republic of China*, Vol. 17, No. 2 Journal of Psychiatric Practice, 1 (March 2011).

<sup>101</sup> Robin Munro, *Judicial Psychiatry in China and its Political Abuses*, 14 Columbia, Jrn'l of Asian Law, 3, 18 (2000).

<sup>102</sup> *Id.*

<sup>103</sup> *Id. at 25* (2000)

<sup>104</sup> *Id. at 34* (2000)

<sup>105</sup> *Id. at, 38* (2000)

themselves many doctors turned against their own conscience and made wrongful evaluations.<sup>106</sup> They started to make certain category (counterrevolutionary tendency) of dissident individuals per se “dangerously mentally ill” and had them sent to psychiatric institutes.<sup>107</sup>

Following the Cultural Revolution the government created the Ankang to combat the rise of mental illness in China. Mental illness had risen from seven per thousand to 10.54 per thousand.<sup>108</sup> In order to combat the mental illness problem the government held the First National Public Security Conference on Custody and Treatment of the Mentally Ill on June 1987. It was here that the government created a custodial facility for the mentally ill. Furthermore in 1995 the police were given broad powers to be able to forcibly detain mentally ill patients through Article 14 of the 1995 Law of the People’s Police.

With the new Ankang centers and broad police powers, the psychiatric hospitals were turned into another arsenal in the campaign against the Falun Gong that started in 1999. Even now, many practitioners are held, not because they are mentally ill, but because they choose to follow Falun Gong.

### **Use of Psychiatric Hospitals Against Falun Gong Members**

Since 1999, the government has forced mentally healthy Falun Gong practitioners into psychiatric hospitals.<sup>109</sup> Some members report that they were admitted, not because they had a mental problem, but a political one.<sup>110</sup> There are no legal procedures in order to admit anyone into the psychiatric hospital. Practitioners are easily admitted on the whim of a 610 officer.<sup>111</sup>

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<sup>106</sup>*Id.* at 39(2000)

<sup>107</sup> *Id.*

<sup>108</sup> *Beijing Institute of Forensic Medicine and Science* (Beijing Shi Fating Kexue Jishu Jianding Yanjiusuo), see

<sup>109</sup> Elisabeth Rosenthal, *China is said to Hold Devotees of Sect in a Psychiatric Hospital*, *The New York Times*, January 21, 2000.

<sup>110</sup> Sunny Y. Lu, *Psychiatric abuse of Falun Gong Practitioners in China*, *J Am Acad. Psychiatry Law* 30, 126, 128 (2002).

<sup>111</sup> *Id.*

The practitioners are held anywhere from a few days to one and a half years.<sup>112</sup> Many of the psychiatric hospitals illegally detain Falun Gong member; these hospitals are found in most of the major cities, such as Beijing, Nanjing, and Shanghai.<sup>113</sup>

The main goals of these psychiatric hospitals are not to only detain members from going to Beijing to protest, but also to have them renounce their practice.<sup>114</sup> The scary thing with the psychiatric hospital is that many of the people commit their own family and friends believing that they would be treated better due to the nature of the facility.<sup>115</sup> However, these facilities themselves are as harsh as the RETL itself.

By late 2000, it has been reported that over 600 Falun Gong members were sent to psychiatric hospitals.<sup>116</sup> In order to rehabilitate, these “patients” are subject to drugs and torture; not only that, the abused needs to pay for their board and “treatment”.<sup>117</sup>

Many of those admitted to the hospital are mentally sane. One such patient is Han Jizhen who was held in Nanjing Medical Hospital.<sup>118</sup> Her son accounted that his mother went to Beijing to protest the government actions against the Falun Gong. The officers arrested and beat her. After, they took her to Nanjing Psychiatric Hospital. There she was told she was sent there not because she had a mental problem but because she practiced Falun Gong.<sup>119</sup>

Furthermore, there are accounts of practitioners being drugged as means of interrogation and torture. The patients are so heavily drugged that it causes many illnesses.<sup>120</sup> In one account the practitioner, Jiang Jing, was injected with an unknown drug. She had feeling of dizziness,

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> Munro, *supra* note 96, at 105.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> James D. Seymour, *The Fifth Modernization: China's Human Rights Movement*, 217 (1980).

rapid heartbeat, dryness, and panic. Later on, it was revealed that she was administered a banned drug only tested on rabbits. Furthermore, in the rabbit testing, when given in high doses the drug caused death.<sup>121</sup>

Following the drugging, the practitioners are commonly tortured. Most, if not all, practitioners, in the hospitals, are “tightly bound with ropes in very painful positions, beaten and shocked with electric batons, deprived of food or sleep, force fed through gastric tubing, and shocked with high voltage through acupuncture needles.”<sup>122</sup> All these are conditions that practitioners are subject to whether they are in RETL or other detainment facilities. Similar to the RETL, this is not a criminal sanction, and hence there are no legal checks to the use of these facilities.

### **Possible Better Methods to Curb Detainment: Separation of Judiciary**

#### *A) Judicial Legitimacy*

The reform that China should be seeking is not an abolition of one form of abuse—the RETL. However, China should seek to implement change by focusing on their judiciary. They need to strengthen the judiciary and have the police prove that detainment is necessary. The best way to bring these changes is separating China’s judicial system; this will be the first step for China towards judicial legitimacy and recognition of due process.

The main problem with China is that the Chinese government is “unwilling to enforce policies, decisions, regulations, and laws”.<sup>123</sup> Just by following their laws the Chinese government can curb abuses. China by nature has a “strike hard” approach to their criminal

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<sup>121</sup> Ms. Jiang Jing Tortured in Dungeon and Drugged in Mental Hospital in Chengyang District, Qingdao, Shandong Province, October 5, 2003, can be accessed <http://en.minghui.org/emh/articles/2003/10/5/40987.html> [accessed April 13, 2013]

<sup>122</sup> Lu, *supra* note 106.

<sup>123</sup> Susan Lawrence & Michael Martin, *Understanding China’s Political System*, Congressional Research Services, 7 (March 20, 2013).

justice system.<sup>124</sup> However, according to Jerome Cohen, unlike the United States, China has a police-dominated criminal law system.<sup>125</sup> The judiciary should be completely free from outside influence to promote justice. However the judiciary in China is not independent but intertwined with the Communist Party.<sup>126</sup> The CCP influences the law through the Central Political and Judiciary Committee.<sup>127</sup> Most, if not all, of the 610 Offices are set up within these committees and can steer the judge toward how they should rule.<sup>128</sup>

In most cases, because of these external influences, the courts make decisions that are best for the Communist Party rather than decisions that enforce the law.<sup>129</sup> One case that shows the judiciaries disregard for the law is the case with Fan Qihang. This case came out of a broad sweeping arrest campaign of organized crime initiated by Bo Xilai.<sup>130</sup> The case went all the way up to the Supreme People's Court and evidence was produced showing that Fan was tortured to get the confession.<sup>131</sup> However, the court did not even consider the torture and upheld Fan's death sentence.<sup>132</sup> The Communist Party during this time was running the "strike hard" on crime, and enforcing the exclusion rule would have threatened this campaign.<sup>133</sup>

Because the court chose not to enforce their laws regarding exclusion evidence, the court passed up the chance to take the first step in legitimize their control and power. The court could have taken this opportunity to amend their lack of power and the problem of torture. If the court followed the law and used the exclusionary rule to leave out evidence obtained through torture,

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<sup>124</sup> Amnesty International, *China: 'Strike Hard' Anti-Crime Campaign Intensifies*. July 23, 2002, can be accessed at [http://www.amnesty.org.uk/news\\_details.asp?NewsID=12993](http://www.amnesty.org.uk/news_details.asp?NewsID=12993).

<sup>125</sup> Jerome Cohen, *Police, Party, and Punishment in China*, New York Law Institute (May 9, 2011).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Lawrence & Martin, *supra* note 119, at 7.

<sup>130</sup> Elizabeth Lynch, *China's First Bite of the Exclusionary Rules—A Dog Without a Bite*. *China Law & Policy* (September 30, 2010). Can be accessed at <http://chinalawandpolicy.com/2010/09/30/china%E2%80%99s-first-test-of-the-new-exclusionary-rules-%E2%80%93-a-dog-without-a-bite/> [accessed April 20, 2013].

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> Bo Xilai was running a "strike hard" campaign on the Chinese Mafia and Fan Qihang was a member of the mafia.

they could have “indirectly” asserted their power to curb police abuses. It would have served as a warning that there would be no more leeway for the police to shortcut their duties by torturing defendants. Furthermore, although there is no *stare decisis* in China, the decision could have legitimized the court by showing that they had the authority to stop the prosecutor and police from overstepping their bounds and that no one was above the law. With the legitimization of the court, China could then provide more due process rights to their citizens.

A) *Due Process.*

The problem with due process in China is caused by the broad police powers and the lack of criminal lawyers. For example, the police have broad detention powers given to them by the Public Security Administration Punishment Law (PSAPL).<sup>134</sup> More specifically the law that governs the police power to detain the Falun Gong is Article 27 of the PSAPL.<sup>135</sup> This article allows the police to administratively detain, without judicial interference, for a period up to 15 days anyone who uses “cults/ religious organizations” in order to have others engage in the cult activates or disturb social order by engaging in the name of “religion or qigong”.<sup>136</sup> Furthermore with all kinds of administrative detention—including RETL— there is no judicial check to curb the police abuse of power.<sup>137</sup> The reason for the lack of judicial oversight is that they do not deem actions punishable under administrative detention important enough to require the

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<sup>134</sup> Executive Committee on China, *Falun Gong Practitioners to be Punished Under New Administration Punishment Law*, May 02, 2005, can be accessed <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingl=46470>. [accessed April 21, 2013]

<sup>135</sup> *Id.*

<sup>136</sup> *Law of the PRC on Penalties for Administration of Public Security*, (17th Meeting of the Standing Committee of the Tenth National People’s Congress adopted on August 28, 2005), can be accessed at [http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content\\_21899252.html](http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content_21899252.html)

<sup>137</sup> Patrick Zuo, *China Says It Will Overhaul Sprawling System of Re-education Through Labor*, New York Times, (Jan 7, 2013).

assistance of the judiciary.<sup>138</sup> This lack of oversight leads to many abuses in power such as disappearance of lawyers, torture, and illegal house arrests.<sup>139</sup>

Even in China's psychiatric hospitals, the police are given broad discretion to take anyone to the psychiatric hospitals without judicial oversight. Article 14 of the 1995 law of the People's Police states:

The people's policemen of public security organs may take protective measures to restrain a mental patient who seriously endangers public security or other people's personal safety. If it is necessary to send the patient to a designated institution or place for guardianship, the matter shall be reported for approval to the public security organ of a people's government at or above the county level, and his or her guardian shall be notified without delay.<sup>140</sup>

There are no provisions in the article that states that the Chinese authorities need to attain psychological evaluations for the detained.<sup>141</sup> The only thing that is required, as stated in the article, is that the police officer needs to report the detainment to his superior. This poses many problems in that instead of a clear neutral group overseeing this check, the person that allows the detainment is one with the same goal and thoughts as the detainer. Furthermore, the lack of the judiciary in the process creates the potential for abuse because in cases where the defendant is found competent to stand trial, the police can circumvent the judiciary by not bringing criminal proceedings and then deciding within themselves how to handle the person in question.<sup>142</sup>

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<sup>138</sup> Cohen, *supra* note 121.

<sup>139</sup> *Id.*

<sup>140</sup> *People's Police Law of the People's Republic of China*, 28 February 1995, available at: <http://www.refworld.org/docid/4c3200692.html> [accessed 25 April 2013]

<sup>141</sup> Murano, *supra* note 96, at 17.

<sup>142</sup> *Id.*



Although this is not a paper to compare China with other countries, it would be beneficial for China—if they want to reform this problem—to require checks on the police. Currently, there is no leeway from administrative detention except through the Administrative Litigation Law.<sup>143</sup>

There has been an improvement in the people's use of the Administrative Litigation Law, public security lawsuits rising from 7,863 in 1991 to 13,173 in 2000.<sup>144</sup> However, the data does not reflect fully the thoughts of the people.<sup>145</sup> It seems that people are more likely to sue if they believe they have no other viable option left.<sup>146</sup> This is evidenced in a survey taken by plaintiffs that revealed that 57% sued only because they felt they had no other choice.<sup>147</sup> Easily summarized, “a private citizen could ‘win once but lose the rest of his life’”.<sup>148</sup>

To stop putting the burden on the detained to “prove his innocence”, China should grant the judiciary system power to preempt the police abuse by requiring stricter detainment requirements for the police to follow. In the case for psychological health detainment and Article 14 detainment there is no judicial oversight and it is up to the accused to prove their innocence in administrative appeal. China should implement something similar to the U.S's warrant system. Instead of allowing the police to arbitrarily detain someone for mere suspicion, they should be checked on by a neutral entity instead of one of superiors in the public safety organ. The police should have to write a detailed report and get it approved from the judiciary, and this can come to fruition if courts are able to implement sanctions.

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<sup>143</sup> Vernon Hung, *Improving Human Rights in China: Should Re-education Through Labor be Abolished*, 41 Colum. J. Transnat'l L. 303, 317-18 (2003).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Minxie Pin, *Citizens v. Mandarins: Administrative Litigation in China*, no. 152 China Quarterly, 832,841 (Dec. 1977).

<sup>148</sup> *Id.*

As of now, the courts give sanctions within their own hierarchy for getting cases overturned.<sup>149</sup> However, if the courts are able to use those kinds of sanctions and enforce them on the police, it would be an effective tool. There are many troubles when it is inter-courts. One of the problems that Carl Minzner states is that these incentives force the higher judicial authorities to “handle a myriad of requests for guidance from lower-level courts”.<sup>150</sup> However, a wrong in one case can be right in another. It would be great if this incentive creates requests from the police to the courts for guidance. This guidance will educate the police and hopefully keep them from overstepping their boundaries with handling defendants; this could possibly create something similar to the United States equivalent of a warrant. However, for the courts to gain this kind of power, they must first separate themselves and become autonomous.

### **Conclusion**

If China bans the use of RETL will be more for show than substance. The main problem is that the PRC is bent on crushing the Falun Gong. Whether it be criminally or administratively, China has done everything from interpreting the laws in a very liberal, “anti-Falun Gong” way to using other methods of administrative detention to persecute the practitioners. As this paper outlined there are other detainment methods where the government can do anything from increase the time you spend in jail to “brainwash” you into submission. Practitioners are drugged, beaten, abused, not only through the RETL, but through all the detention facilities. Yes, RETL is a horrendous place for practitioners to get sent to. However, it is not, by all means, the worst place they can go. The other forms of detainment are all equally as harsh as the RETL, and the abolishment of RETL will not make a dent against China’s crusade against the Falun Gong. With

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<sup>149</sup> Carl F. Minzner, *Judicial Disciplinary Systems for Incorrectly Decided Cases: The Imperial Chinese Heritage Lives On*, 39 N.M.L. REV. 63 (2009)

<sup>150</sup> *Id.*

one method out we can expect to see various abuses in many other areas to make up for the “limb” lost.

Rather than appeasing the mass by getting rid on one form of detention, China should focus on the underlying causes of RETL’s abuse, which are a biased judiciary and an overly powerful police. As stated in this paper one possible way to reform will be separating the judiciary away from the grasp of the CCP, which in turn could grant the courts more legitimacy. The courts legitimacy could then in turn become a powerful check on the police.