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GAO ZHISHENG

An Open Letter to China’s National People’s Congress

Gao’s First Letter to Chinese Communist Party Leaders

To the Standing Committee of the National People’s Congress and the
Committee Chairman Wu Bangguo:

As a lawyer, I have recently received from various places many petitions and requests for help regarding the sentencing of Falun Gong practitioners and the plight [of the practitioners being punished by] reeducation through labor. On December 26, my associate and I went to Shijiazhuang City of Hebei Province to offer legal assistance to Huang Wei, who has been subject to so-called reeducation through labor. After taking up the case, in the course of dealing with the administrative and judicial authorities, we discovered a series of phenomena that were beyond the imaginations of people today. These phenomena exist in both the legislative and judicial realms. As an attorney and a citizen of the present era, I feel extraordinarily downcast and saddened in the face of such incredible phenomena. The first thought that came to me after my negotiations with several courts in Shijiazhuang City was that I would express such suffocating depression and sadness by submitting a letter as soon as I could to the Standing Committee of the National People’s Congress and its chairman

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Wu Bangguo. I did so with only some delay, as I spent time and energy trying to decide what exact form the letter should take.

In 2003, in my capacity as a citizen of the People's Republic of China (PRC), I submitted three separate requests, each titled, "Request for Investigation into Constitution Violations," by registered mail to the Standing Committee of the National People's Congress. Based on the Constitution of the PRC (hereafter, the Constitution) and the Legislation Law of the People's Republic of China (hereafter, the Legislation Law), each of the three requests concerns one of the following issues: "Regulations Concerning the Management of Demolition and Relocation of Houses in the City," the policy of private properties expropriated by the state for generating state income, and the obvious constitutional violations by the People's Supreme Court in interpreting the laws regarding the policy. The three requests were met with the same outcome—no reply whatsoever. This time, after painful consideration, I have decided to write an open letter.

Huang Wei, a Shijiazhuang resident with a college education, was sent to a labor camp in 1999 for a three-year term on the charge of "participating in evil cult activities to undermine the implementation of state laws." Upon being released, he was only thirty-four years old, but half of his hair had become gray. With hope for a good life, and through incredible diligence and perseverance, he tried to run a small business and made a promising start. Although he and his family were still rather poor, they were happy and determined to forget the bitter past and to work for a good life ahead. On April 13, 2004, at 7:30 a.m., Huang took his child to the kindergarten as usual. As he stepped out of the kindergarten to go to work, four unidentified people abducted him. He was taken to the National Security office, where he was thoroughly searched, and all his belongings, including his bicycle and cash, were taken away from him. Then he was sent to a detention center. During the whole time, those who arrested him produced no official papers and did not identify themselves.

Later, local authorities got into Huang's apartment by themselves and conducted a search. Thirty-eight days after Huang had been detained, the police, not wanting to be blamed for detaining someone longer than the law allowed, placed him in a detention room of the Public Security office for another fifteen days, during which time, again, no effort to communicate was made, except for "questioning and reporting" by two police officers who refused to identify themselves. (When Huang asked

them their names and the government department to which they belonged, their answer was, “We are interrogating you, not being interrogated by you.”) Since the report did not reflect in the least the conversation in the questioning, Huang refused to sign it. To his utter astonishment, however, one of the officers unhurriedly signed Huang’s name on the report right in front of Huang and put his [Huang’s] fingerprint on it. Huang later figured out that the purpose of the “questioning and reporting” was to extract evidence for sending him to the labor camp. On June 3, Huang Wei was once again given a three-year term of reeducation through labor. On June 4, leaving his “monitored life” in the detention room, he was sent for a second time to the labor camp. Thereafter, each time Huang demanded that the city government review his case or his right to due legal process, he had to go on a hunger strike before his demand would be met. He was on hunger strike for a total of forty-two days. One can imagine how sad and miserable his situation was!

On the morning of December 27, 2004, my associate and I arrived at the labor camp in Shijiazhuang City and, following the proper procedure, requested to meet with Huang Wei. The administration of the labor camp told us that they could approve requests to see any type of inmates except Falun Gong practitioners and that we would need special approval from the “610 Office” in order to see our client. Braving the bitter cold weather, we went back and forth between the “610 Office” under the labor camp administration and the “610 Office” under the Judicial Bureau. It took us more than three hours to get through all the red tape; but in the end we were allowed to see our client for less than three minutes. (Those at the scene jokingly remarked that it was three hours outside the law and three minutes within the law.)

On the afternoon of December 27, the lawyers took all the documents of Huang’s complaint—that Shijiazhuang City government had been ignoring his case—to the Intermediate Court of Shijiazhuang City. They tried to file a case, “The Silence of the Shijiazhuang City government to Huang Wei’s request,” but to no avail. At 8:30 a.m. on December 28, the lawyers went to the same court with the same request and were again rejected. In a meeting with a judge in the court’s administrative chamber, the lawyers were told that the case should be brought to the court at Xinhua District. At 9:20 a.m., the lawyers arrived at the Xinhua District Court. A judge by the last name of Miao in the administrative chamber there looked through the documents and said, “There is instruction from above that no case about Falun Gong should be accepted and that no document would be issued with respect to it.” When the lawyers pointed

out to him the stipulations made in relevant laws, he said the instruction came from “above” and that their job was only to implement them. He suggested the lawyers talk to the judge at the Case Filing Tribunal.

At the Case Filing Tribunal, two female staff members looked through the documents and became rather irritated. They told the lawyers that the court would accept neither cases involving Falun Gong nor issue any document with respect to it, adding that there were documents [directing they do so] from above. The lawyers expressed that the court should base its decision about whether to accept a case or not on state laws, and that if there was a conflict between any relevant documents and the laws, then such documents would be invalid. At this point, a young staff member present at the scene burst into a near scream, “If you think the documents from above are invalid, you can ask the National People’s Congress to amend the laws.” As she finished, a judge whom she addressed as “the chamber chief” came forward saying:

You are probably not party members (referring to the lawyers) and have not studied the essentials of the Party’s National Congress, have you? Did you know lawyers are not allowed to take cases like this? The judicial court belongs to the Chinese Communist Party, so do the laws. Now there are instructions from above not to accept [such cases], that’s it. You may talk to whomever you want and file your case wherever you want.

After that, no further explanations came from anyone. Asked by the lawyers, another judge said the case should be brought to the court of the Chang’an District. At 10:30 a.m., the lawyers arrived at the third court [that day] and were, again, received by a judge from the administrative chamber. As soon as the lawyers stated that the case involved Falun Gong, the judge immediately returned the documents that he was reading to the lawyers and told the same story: the instructions from above stipulate that no Falun Gong cases would be considered, no documents would be issued regarding them, and no document justifying [the way it is handled] would be produced. The judge added, “What you lawyers are doing is very risky. If you continue with this, it will be necessary to write a judicial report (demanding disciplinary actions against you).” That concluded the lawyers’ efforts to file a case in three courts involving two levels in Shijiazhuang City.

In handling the case of Huang Wei’s being sent to a labor camp, I found the following phenomena, which are at odds with modern civil society as well as the rule of law that is advocated, implemented, and sought by the public. These phenomena are much more prominent in the judicial

realm, to such an extent that one feels horrified and in a hopeless situation. As a lawyer and a Chinese, I cannot choose to be silent!

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

1. In any country that adopts statute law, the applicability of criminal law naturally circumscribes the time frame and the extent to which the regulation of the criminal laws can be applied (including the issue of people, events, and location). Theoretically, the “Criminal Law of the People’s Republic of China” (hereafter, Criminal Law) is no exception. It is a basic principle of our country’s Criminal Law that its rules do not apply to the past, that is, the Criminal Law does not apply to behaviors that took place prior to the legislation of the Criminal Law. On October 30, 1999, the promulgation by the Standing Committee of the National People’s Congress of a “Decision to Eradicate Evil Cult Organizations and to Prevent and Punish Evil Cult Activities” (hereafter, the Decision) served only a matter of formality, made up to fulfill a requirement in the legislation of criminal punishment [regarding the said activities]. And thereafter, the majority of the criminal punishment of citizens who practice Falun Gong was directed toward their behavior prior to the promulgation of the Decision. The sentencing of Huang Wei to reeducation through labor in November 1999 belongs squarely to this situation. This violation of basic principles of our country’s Criminal Law has been public, sustained, and large scale. That is, the majority of the citizens have been thrown into prison in a situation wherein our country’s basic legal principles are violated.
2. Whether a country adopts statute law or common law, criminal law can only regulate (or “attack,” a word commonly used in our country) people’s actions, but not the thoughts or identity of a certain group of people. This is a result of the coming of age of criminal laws around the world. The punishing of many citizens who practice Falun Gong has been due to their identity as Falun Gong practitioners; Huang Wei’s being sent to a labor camp is a clear example. This is a revolt against modern civilization and the rule of law. Its direct result renders universal legal standards arbitrary, causing substantial long-term damage to the rule of law that has been affirmed and pursued by our country.
3. The Decision has not offered any legal definitions for proper judgments in trials regarding: Falun Gong practitioners; the behavior of Falun

Gong practitioners; the relationship between Falun Gong practitioners and Falun Gong as an organization; the relationship between the Falun Gong organization and so-called evil cult organizations; what an evil cult organization is; and in what ways Falun Gong practitioners, the behavior of Falun Gong practitioners, and the Falun Gong organization belong to the category of evil cult crimes. As a result, sentencing and punishment of Falun Gong practitioners are for the most part based on “using evil cult organizations to obstruct the exercising of state laws.” The criminal charges lack the necessary information concerning whether, indeed, any evil cult organization could be used by the person charged with the crimes; whether the person made use of any evil cult organization; when and where the person charged made use of an evil cult organization; whether the person charged obstructed the exercising of state laws; and how the person obstructed the state laws. In the two times that Huang Wei was punished (even though [the reason offered] was for administrative purposes [since no trial was involved]), the reason was simply for “using evil cult organizations to obstruct the exercising of state laws.” In this situation, there is no guarantee whatsoever that the criminal punishment is accurate and based on concrete evidence, leaving citizens in a dangerous situation without any protection.

4. The arbitrary sentencing of Falun Gong practitioners to labor camps has reached a painful level in some places, and the reasons used include “refusal to reform” or “refusal to convert.” As I write this letter, a woman from Wuhan, Ms. Du Wenli, who just gave birth to a child three months ago, sent me a fax, describing in desperation her husband Ni Guobin’s frightening experience. Ni was released after a three-year imprisonment, but on July 13 of this year, he was kidnapped on his way to work by some people whose identities were undisclosed. Ten days later, he was sent back with only one breath left. Questioned by 110 policemen, the kidnapers revealed that they were from the State Security Bureau. On December 3, Ni was kidnapped again, and to this day Du has no information about the whereabouts of her husband. What should be pointed out here in particular is that the very existence of labor camps and their sentencing practices have clearly violated Articles 5, 22, 37, and 38 of the Constitution, Article 10 of “The Law of the People’s Republic of China on Administrative Punishment” (which states that administrative laws can issue administrative

punishments other than a person's confinement), and Article 8 of the "Legislative Law." A citizen's personal freedom is deprived for years, and the deprived person is not granted 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 to which the victim is entitled become hypothetical. While in the labor camp, Huang Wei could not make any appeal. Every step in making an appeal entailed the painful cost of many days on hunger strike. All citizens, including policemen, know that the labor camp system violates the constitution, basic laws, and modern legal civilization, but the system has continued, and the country is paying increasingly higher costs for this inhuman and uncivilized behavior. I ask the Standing Committee of the National People's Congress and its chairman Wu Bangguo to please pay attention to this issue.

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

As I began to write this letter, others warned me out of kindness that the Falun Gong issue is taboo and a "political issue." As a lawyer, I am well aware of the special social situation in China. In a society where political powers are used appropriately, there would be no taboos. The

fact that taboos exist demonstrates distortion, illegitimacy, and dishonesty in the use of political power. On the other hand, why are citizens not allowed to comment on political issues? Whose politics is it if it cannot be discussed? Politics that cannot be discussed must be illegitimate. When a society is left with only one voice, what kind of a situation will it become? Emperor Zhu Yuanzhang's era of the Ming Dynasty was too long ago. More recent examples are the Cultural Revolution and the regime in North Korea, one of the "axes of evil," both of which had just one voice. Who wants this to proliferate?

On many international occasions, we have called ourselves a responsible government and a large state. No criterion for a responsible, large state is more honest and valuable than acceptance from its own people. The fact that the government fears citizens' reporting of their survival problems shows how far we are from being a responsible government and a large state.

In summary, writing this letter to the Standing Committee of the People's Congress and Chairman Wu Bangguo of the Standing Committee is not to advocate for a certain group of people, nor is it to "sing a tune opposite of the Chinese Communist Party and the government." I love my country. It is the only thing that inspires me in this era. At the same time, writing this letter is not just an attempt to change the unjust treatment that Huang Wei received. The most important goal of my letter is, through the efforts of the Standing Committee of the People's Congress and Chairman Wu, to try to change the distortion in the current legislation and law-enforcement processes through systematic changes. At the beginning of human civilization, there were great differences between the cultures of each region. However, all the great civilizations, without communicating with each other, chose to invent written languages and establish common rules. In other words, following the rule of law is a methodical choice made by all human civilizations. In today's world, the nations that are against the rule of law are closed, underdeveloped, unstable, and savage. Every citizen's longing and passion for social stability are no less than those of the governing body. The lack of following the rule of law, disguised under the slogan "Stability trumps all," is the greatest source of instability in Chinese society today.

On the issue of Falun Gong, the government, especially those who implement the law, should first admit the practitioners' status as Chinese citizens. On the other hand, on this issue, the government and law

enforcement officials must recognize that they represent the country, and must follow the law in all their actions. If they act outside the boundaries of the law, whose power are they representing? For example, the court did not establish a case, follow any legal procedure, or allow a lawyer to represent the plaintiff in the case of Huang Wei. Even today, his wife and child are denied permission to visit him. These are blatant, unconcealed actions in violation of the rules. Even worse, those who act against the rules are precisely the law enforcement officials whose job it is to protect the implementation of the rules. As time goes on, the law enforcement officials regard violation of the rules as something quite common. They no longer view protecting the rules of the country as their professional responsibility. Continuously, their actions are undermining and destroying morals, culture, and the legitimacy of the government's power. Whose needs are they meeting? Only the needs of the evil people who are the enemies of today's society. We must be extremely alert on this issue!

I hereby wish Chairman Wu Bangguo good health!

Beijing Shengzhi Law Firm
Gao Zhisheng
December 31, 2004