

# JIANG ZEMIN IS LIABLE FOR THE WIDESPREAD TORTURE OF FALUN GONG BELIEVERS

By Human Rights Law Foundation

## I. Introduction

Jiang Zemin is responsible for the *douzhang* campaign perpetrated against Falun Gong believers in China that comprises torture (including widespread organ harvesting), genocide, other crimes against humanity, degrading and inhumane treatment, and unlawful arrest and detention/imprisonment. These crimes were carried out pursuant to his orders, strategy, planning, supervision, and management as part of his decision to purge China of Falun Gong. This report looks at Jiang's role in the *douzhang* torture campaign against Falun Gong. A follow up report will examine his role in the perpetration of genocide and the other egregious violations referenced in this paragraph.

## II. Torture: A Test Case

The most commonly accepted definition of torture is that found in the Torture Convention. Article 1 of the Torture Convention defines torture as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him (or a third person) information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when pain and suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or person acting in an official capacity.<sup>1</sup>

The torture of Falun Gong believers in China remains widespread and systematic. Reports of abuse, including photographs and first-hand accounts, continue to be received by HRLF from Falun Gong believers on a daily basis. Torture is used primarily to extract confessions through forced religious conversion practices, as well as to extract information on the whereabouts and activities of other individuals. Virtually all Falun Gong believers who have been subjected to apprehension or detention have been subjected to torture.

### 1. Legal framework

The widespread use of torture against Falun Gong believers is a direct violation of numerous articles of both Chinese and international law. These include Articles 43 of the PRC Criminal Procedural Law, which prohibits collecting evidence or extorting a confession through torture or threat, enticement or deceit; and Article 247 of the Criminal Law, and the Convention Against Torture, ratified by the PRC in 1988.<sup>2</sup> Although the use of torture

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<sup>1</sup> Torture Convention, at art. 1(1). *Cf.* Torture Victim Protection Act, 28 U.S.C. Sec. 1350 note (Supp. V 1993).

<sup>2</sup> *See also* Articles 248, 234, and 308 of the Criminal Law.

against Falun Gong practitioners is a violation of Chinese law, it is consistent with CCP security forces' manner of handling of groups deemed as the Party's ideological enemies. This status is indicated via Jiang Zemin-instigated propaganda calling for the “*douzheng*” violent suppression of Falun Gong, and the use of various forms of ideological justification and approving rhetoric to tacitly or explicitly encourage the use of torture against all believers. All levels of the CCP hierarchy have engaged in such calls to torture pursuant to the orders, plans, strategy, and instructions of Jiang Zemin.<sup>3</sup> As the Party is above all legal restraint in China, anti-torture provisions do not effectively constrain its security forces' treatment of Falun Gong (or for that matter of other prisoners of conscience in China).

## 2. Conditions in China

### 2.1 Widespread torture of Falun Gong in China

Since 1999, over 70,000 individual reports of torture and abuse in custody of Falun Gong adherents have been relayed from sources within China. Since 2009, HRLF has surveyed hundreds of formerly detained Falun Gong practitioners. Virtually all respondents reported being tortured in detention. These findings are consistent with accounts of Chinese lawyers working with HRLF, who report that of the dozens of Falun Gong cases they have handled, all of their clients were subjected to torture. Direct reporting from sources in China to the Minghui website has named 1,680 Falun Gong adherents tortured during 2010, suggesting that a minimum of 7,000 to 8,000 Falun Gong practitioners were tortured between 2009 and 2013. Given the difficulty of reporting such incidents in China's censorship environment, the actual numbers are undoubtedly higher, reaching at least several million.

These findings are consistent with reports by other human rights observers and the U.N. Special Rapporteur for Torture, who in 2005 reported that 66 percent of the torture complaints submitted to his mandate involved Falun Gong victims.<sup>4</sup> In March of 2006, UN Special Rapporteur Dr. Manfred Novak reaffirmed findings that torture remained widespread.<sup>5</sup> UN Special Rapporteur, Sir Nigel Rodley, has reported that “[p]ractitioners are subjected to public humiliation for their membership in Falun Gong . . . [m]any are said to have suffered torture or ill treatment.”<sup>6</sup>

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<sup>3</sup> See “Jiang Zemin and the Party's Douzheng Campaign against Falun Gong,” available in English at: <http://en.minghui.org/html/articles/2015/5/6/150033.html>.

<sup>4</sup> Manfred Nowak, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to China,” March 10, 2006, E/CN.4/2006/6/Add.6, pgs. 12-14

<sup>5</sup> See March 10, 2006, “Mission to China” Report, available at [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=103](http://ap.ohchr.org/documents/dpage_e.aspx?m=103). See also 2001 Report, United Nations Economic and Social Council, Commission on Human Rights Report, “Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women,” 57<sup>th</sup> Sess., E/CN.4/2001/73/Add.1 (13 February 2001) (reporting that Falun Gong practitioners are subjected to physical abuse, shocked with electric batons, including on the breasts and genitals of female practitioners, detained in solitary confinement and assigned intensive labor); 2001 Report of the Special Rapporteur of the UN, in issues of violence against women, Office of the High Commissioner on Human Rights, 57<sup>th</sup> Session, document number E/CN.4/2001/73/Add.1 at ¶¶ 15-16 (expressing grave concern at reported use of violence against women in China and in particular female Falun Gong practitioners (the vast majority of Falun Gong practitioners are women)).

<sup>6</sup> UN Special Rapporteur, Sir Nigel Rodley, E/CN.4/2001/66, January 2001, at ¶¶ 237, 238, ¶ 246.

The United States Department of State has similarly described the widespread use of torture to coerce Falun Gong believers to renounce their religious beliefs. According to the US Department of State 2006 Human Rights Country Report,<sup>7</sup> “[t]he government continued its use of [torture] . . . to force practitioners to renounce Falun Gong.”

Several United States courts have indicated that torture is a widespread ongoing measure used against Falun Gong believers. For example, the Seventh Circuit has made clear that membership in Falun Gong is a basis for fear of future persecution if deported to China. In particular, the Seventh Circuit Court of Appeals found that “the [US] government acknowledges that China persecutes adherents to Falun Gong . . . [and that] the Chinese government’s determination to eradicate it root and branch is mysterious, but undeniable.” *See Iao v. Gonzales*, C.A. 7, 2005 (No. 04-1700).

U.S. courts have even found high-ranking Chinese officials liable for widespread persecutory campaigns that deprived Falun Gong practitioners of their right to be free from torture in China. In *Doe v. Liu Qi*, 349 F.Supp.2d 1258, 1334 (N.D. Cal. 2004), the court concluded that “the People’s Republic of China appears to have covertly authorized but publicly disclaimed the alleged human rights violations caused or permitted by Defendants . . . Defendants Liu and Xia are responsible respectively for violations of the rights of [plaintiffs] to be free from torture . . . cruel, inhuman, or degrading treatment . . . [and] arbitrary detention.” Similarly, in *Wei Ye et al. v. Jiang Zemin et al.*, 383 F.3d 620 (7th Cir. 2004), the Seventh Circuit Court of Appeals affirmed plaintiffs’ widespread allegations of torture and ill treatment at the hands of Jiang Zemin. Although the court ultimately dismissed the case on head-of-state immunity grounds, it made several findings of fact supporting plaintiffs’ allegations: “On June 10, 1999, President Jiang established, as part of the Party’s apparatus, the Falun Gong Control Office. The office is known as ‘Office 6/10’ after the date of its creation. In July 1999, President Jiang issued an edict outlawing Falun Gong. This edict was followed by mass arrests . . . torture, ‘re-education,’ and the killing of members.” *Id.* at 622.

On July 15, 2008, the Israeli Rabbinical Council likewise found that “on the basis of the accumulation of the various testimonies and indirect evidence . . . there were unnumbered cases of killing of innocent Falun Gong practitioners through torture.” Indictments issued by courts in Spain and Argentina have reached similar conclusions.<sup>8</sup>

## 2.2 Severity of the torture

Common torture methods are severe and include beatings, shocking with electric batons, suspension upside down in stress positions, breaking of limbs, violent force-feedings, prolonged sleep deprivation, injections with psychotropic drugs, medical experimentation, organ harvesting, forced sterilization, rape and sexual assault, and humiliation. Former detainees in labor camps who are not Falun Gong practitioners have confirmed that Falun Gong believers in the camps are singled out for torture and abuse.<sup>9</sup>

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<sup>7</sup> Available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78771.htm>.

<sup>8</sup> These official documents are available upon request.

<sup>9</sup> Human Rights Watch, “We Could Disappear at Any Time: Retaliation and Abuses Against Chinese Petitioners,” Dec 7 2005; Chinese Human Rights Defenders, “Re-education Through Labor Abuses Continue Unabated,” Feb 4 2009.

The severity of the torture endured by Falun Gong practitioners and their supporters, at both the national and local levels throughout China has been confirmed and extensively documented by the U.S. government in its Country Reports on Human Rights Practices and its Annual Reports on International Religious Freedom, as well as in reports issued by independent human rights groups such as Amnesty International and Human Rights Watch.

For example, the Annual Report on International Religious Freedom for 2001, issued by the U.S. Department of State in December 2001, includes numerous specific references to the major human rights abuses and violations being committed against Falun Gong practitioners in an effort to eliminate them and totally eradicate the presence of Falun Gong in China. The report describes the “crackdown” against the Falun Gong as tied to the authorities’ effort “to control and regulate religious groups to prevent the rise of groups or sources of authority outside the control of the Government and the Chinese Communist Party.” (Page 122) It noted in 2001 that “approximately 100 or more Falun Gong adherents have died in detention since 1999” (p.122); that “many of their bodies reportedly bore signs of severe beatings and/or torture;” that “police often used excessive force when detaining peaceful Falun Gong protesters, including some who were elderly or who were accompanied by small children;” and that “torture (including by electric shock and by having hands and feet shackled and linked with crossed steel chains)” was widely reported (page 131).

The continued application of severe torture to those who refuse to renounce their Falun Gong faith has been affirmed in successive reports.<sup>10</sup> The U.S. Department of State’s International Religious Freedom Report for 2006 notes that “Falun Gong practitioners continued to face arrest, detention and imprisonment, and there have been credible reports of deaths due to torture and abuse. Practitioners who refuse to recant their beliefs are . . . subjected to harsh treatment in prisons, reeducation through labor camps, and extra-judicial ‘legal education’ centers, while some who recanted returned from detention.”

The internationally known attorney Gao Zhisheng, who now is imprisoned himself, visited the homes of dozens of Falun Gong practitioners in China. All of these practitioners told him that they were subjected to severe torture in Re-education through Labor facilities, brainwashing centers, and labor camps based solely on their refusal to renounce their belief in the Falun Gong religion. Gao Zhisheng reported “[i]mmoral acts that shocked my soul; the most [being] . . . the lewd yet routine practice of attacking women’s genitals by 610 Office staff and the police. Almost every woman’s genitals and breasts or every man’s genitals have been sexually assaulted during the persecution in a most vulgar fashion. Almost all who have been persecuted, be they male or female, were first stripped naked before any torture. Falun Gong . . . [and m]any are said to have suffered torture or ill treatment.”<sup>11</sup>

### 2.3 Other Types of Torture

#### Organ Harvesting

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<sup>10</sup> See, e.g., the US Department of State 2006 Human Rights Country Report (available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78771.htm>).

<sup>11</sup> See, e.g., Gao Zhisheng, *Why One of China's Top Attorneys Broke with the Communist Party*, THE EPOCH TIMES (Dec. 16, 2005), available at <http://www.theepochtimes.com/news/5-12-16/35876.html>.

The use of organ harvesting against Falun Gong practitioners in China remains widespread and systematic. Reports of abuse, including first-hand accounts, have begun to emerge.<sup>12</sup> Organ harvesting is used primarily to supply China's organ transplant industry. Reports documenting the practice have been published by David Matas and David Kilgour, Ethan Guttmann, and Matt Robinson.<sup>13</sup> Damon Noto, Director of Physicians against Organ Harvesting has also contributed significantly to the debate.<sup>14</sup>

Organ harvesting procedures are part of the more comprehensive pattern of torture abuses that are inflicted upon Falun Gong believers. The organ harvest procedures cannot be separated from the other acts of torture and persecution. They are the "final solution" to Jiang Zemin's *douzheng* campaign of torture and persecution against Falun Gong.

### Legal Framework

Organ harvesting meets the definition of torture under the Torture Convention. The use of organ harvesting is not only a direct violation of the Torture Convention that China ratified in 1988 but also violates Chinese law. Article 234(a) of the Criminal Law of China criminalizes both the selling of organs and their removal without consent.

### Conditions on the ground

Since 2006, there have been persistent reports of Falun Gong prisoners of conscience being killed to supply China's organ transplant industry. Following its review of China's compliance with the CAT in 2008, the UN Committee against Torture expressed concern over "information received that Falun Gong practitioners have been extensively subjected to torture and ill-treatment in prisons and that some of them have been used for organ transplants."<sup>15</sup> It recommended an immediate, independent investigation into the claims and appropriate measures to ensure the prosecution of those responsible.

Chinese authorities have failed to provide information adequately addressing these concerns, such as a transparent accounting of the source of organs, due to high-level involvement in these abuses. A series of phone calls made to several high-level officials has corroborated the widespread use of the practice against Falun Gong. *See, e.g.,* <http://www.theepochtimes.com/n2/china-news/phone-logs-reveal-top-chinese-officials-knowledge-of-organ-harvesting-230616-all.html>. More recently, in September 2014, a high-ranking Chinese official not only corroborated the practice, but also directly implicated Jiang's involvement. According to a secretly recorded telephone conversation, when asked where the orders to harvest Falun Gong practitioners' organs came from, Bai

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<sup>12</sup> A few Falun Gong believers have stated under oath that the removal of their organs was stopped while they were on the operating table due to some unusual medical condition that rendered the removal unviable. These reports are available by request.

<sup>13</sup> *See, e.g.,* David Kilgour and David Matas, "Bloody Harvest: Organ Harvesting of Falun Gong Practitioners in China"; Ethan Guttmann, *The Slaughter: Mass Killings, Organ Harvesting, and China's Secret Solution to Its Dissident Problem*. See also Matt's ET article.

<sup>14</sup> Damon Noto's reports are available upon request.

<sup>15</sup> UN Committee Against Torture, "Concluding Observations: China," November 21, 2008, CAT/C/CHN/CO/4

Shuzhong, former Minister of Health of the People's Liberation Army General Logistics Department, replied, "At the time it was from Chairman Jiang, there was an instruction, an instruction to start this thing, organ transplantation."

See <http://www.theepochtimes.com/n3/1182255-chinese-officer-jiang-zemin-ordered-organ-harvesting/>.

### 3. Rape and gender-based abuse

Gang rape, rape, and other forms of gender-based abuses are used to coerce forced confessions from women who practice Falun Gong in China. According to Gao Zhizheng and several other experts, the practice of attacking women's genitals is routine. Almost all women who have been tortured have been stripped naked first. See *supra* at notes 5 and 11. Elderly women have been raped, as have young unmarried women. Even a nine-year old girl was raped in order to coerce a false confession. See <http://en.minghui.org/html/articles/2013/3/12/138485.html>.

These instances of torture are based on incomplete documentation from China. The numbers of Falun Gong believers subjected to torture-related crimes is far higher.

### **III Jiang Zemin is liable for the torture of Falun Gong under international and Chinese law under a variety of modes of liability.**

As indicated in "Jiang Zemin and the Party's Douzhen Campaign against Falun Gong," when a group or individual is identified as a target of "*douzhen*," the implication is clear: it is imperative to go outside the law and persecute that person or group. The aim is to force the person or group to renounce their group identify and beliefs and "join forces" with the Party to attack other members of the targeted group, using the same methods. To achieve this aim, Jiang Zemin ordered that Falun Gong believers be subjected to "*zhuanhua*" or "forced conversion," i.e., torture. Individuals refusing to be "forcibly converted" are subjected to increasing torture and, in many instances, death.

Jiang Zemin ordered the application of ideological conversion practices as early as July 1999 through a series of official documents that marked the beginning of the persecution. These included a July 1999 notice Jiang issued through the Central Committee of the CCP ordering the *zhuanhua* of CCP) members practicing Falun Gong.<sup>16</sup> On August 6, 1999 notice Jiang issued a second notice through the General Office of CCP Central Committee that provided specific rules and guidelines to enable the effective forced conversion of Party members practicing Falun Gong<sup>17</sup> On August 24, 1999, Jiang expanded his orders to include all Falun Gong believers regardless of their party status and emphasized, for the very first time the pivotal role of effective *zhuanhua* in the *douzhen* campaign against Falun Gong. See "The Destruction of Mind and Body Through Brainwashing" <http://www.upholdjustice.org/node/60>.

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<sup>16</sup> The relevant notice, i.e., "Notice from the Central Committee of the Chinese Communist Party that Forbids Chinese Communist Party Members to Cultivate in Falun Dafa," is available upon request.

<sup>17</sup> The relevant notice, i.e., "The Chinese Communist Party's Central Commission for Discipline Inspection and Organization Department's Opinions on How to Address the Issue of the Party Members Cultivating in Falun Dafa." is also available upon request.

As such, and as is set forth below in detail, Jiang Zemin is criminally responsible for the widespread torture of Falun Gong believers under several liability theories recognized under international and/or Chinese law, including (1) ordering, (2) planning, (3) soliciting or inducing, (4) aiding and abetting, (5) joint criminal enterprise, and (6) command responsibility.

## 1. Ordering

Ordering is well established under customary international law (CIL).<sup>18</sup> See *Krstic*, Trial Judgment ¶ 601; *Akayesu*, Trial Judgment ¶ 483; *Blaskic*, Trial Judgment ¶ 281; *Kordic and Cerkez*, Trial Judgment ¶ 388. Ordering liability occurs when a person in a position of authority uses that position to convince another to commit an offence. *Krstic*, Trial Judgment ¶ 601. Under customary international law, this requires establishing three factors:

### A. A superior-subordinate relationship

A formal superior-subordinate relationship is not required, but it must be established that the accused possessed the authority to order. *Kordic*, Trial Judgment ¶ 388. Both *de jure* and *de facto* superiors in military and civilian hierarchies may be held responsible. See Antonio Cassese, *International Criminal Law* 230 (2008).

As the General Secretary of the Chinese Communist Party, Jiang Zemin was the leading authority within the seven-member Politburo Standing Committee, which has control over the CCP Politburo, which has control over the CCP's Central Committee, which has control over each of the CCP's regional subsidiary committees. Under the authoritarian, single-party system of governance in China, these CCP committees all exercised high levels of control over parallel governing organs at various levels, especially within the security hierarchy. He was also the President of China, thus exerting control over China's state organs, and Chairman of the Central Military Commission, thus exerting control over the military. As such, Jiang possessed the authority to order the torture and persecution of Falun Gong.

### B. Transmission of an order

Ordering has been broadly defined under CIL as involving a person ordering, commanding, or instructing – and thus convincing, persuading, compelling or impelling – another person or persons to commit a crime.<sup>19</sup> It is irrelevant whether a document or statement is referred

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<sup>18</sup> CIL binds all nations. The minimum standard of rights entitled to protection under CIL include (a) genocide; (b) slavery or slave trade; (c) murder or causing the disappearance of individuals; (d) torture or other cruel, inhuman, or degrading treatment or punishment; (e) prolonged arbitrary detention; (f) systematic racial discrimination; or (g) a consistent pattern of gross violations of internationally recognized human rights. The extent to which Chinese courts have jurisdiction over some or all of these crimes will be addressed in a forthcoming analysis.

<sup>19</sup> For 'order,' see *Ntagerura*, Appeal Judgment ¶ 365; for 'command,' see *Blagojevic*, Appeal Judgment at 21; for 'instruct,' see *Galic*, Trial Judgment, ¶ 168; *Brdanin*, Trial Judgment, ¶ 270; *Kordic*, Appeal Judgment ¶ 28; for 'convince,' see *Akayesu*, Trial Judgment ¶ 483; *Krstic*, Trial Judgment ¶ 483; for 'persuade,' see *Rutuganda*, Trial Judgment ¶ 39; *Musema*, Trial Judgment ¶ 121; for 'compel,' see *Bagilishema*, Trial Judgment ¶ 30; *Semanza*,

to as an ‘order’ or not.<sup>20</sup> Nor is it necessary that an order be given in writing or any other format.<sup>21</sup> An ‘order’ may cover directions in the narrow sense as well as general directions.<sup>22</sup> An order may be explicit or implicit. As such, it can be couched in terms that are not clearly obligatory so long as from the context it is clear that the statement constitutes an order.<sup>23</sup> The fact that an order was given can be proven through circumstantial evidence.<sup>24</sup>

The order need not be given directly to the individual executing it. *Id.* at ¶ 282. In addition, if an order to commit an offence issued by a superior authority is passed on by a subordinate authority down the chain of command, individuals passing on the order at intermediate levels of authority may also be held responsible for passing down the illegal order. *See Kupreskic*, Trial Judgment, ¶¶ 827, 862.

The order does not have to be executed in reality for the superior to be held responsible, if the superior intended the order to be executed and knew that the order was illegal, or if the order was manifestly illegal.<sup>25</sup>

Applied to Jiang Zemin, it is clear that Jiang, as the leading authority within the Party, issued illegal orders to ideologically convert and in other ways torture Falun Gong believers through chains of command that reached through the upper echelons of the Party at the Central level, to lower-level Party officials at Provincial, Municipal and other regional levels, who in turn transmitted his orders to Chinese security at brainwashing, re-education through labor and other detention centers and prisons. Integral to the chain of command was the Leading Group for Handling the Falun Gong Issues and the related Office 610, which Jiang established at national and all regional levels to manage and implement the illegal, violent suppression (*douzhen*) and torture (*zhuanhua*) of Falun Gong. The order to establish the “Leadership Group” and Office 610 was transmitted through the very same chain of command.<sup>26</sup>

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Trial Judgment ¶ 382; *Mubimana*, Trial Judgment ¶ 505; for ‘impel,’ see *Kajelijeli*, Trial Judgment ¶ 763; *Kamubanda*, Trial Judgment ¶ 594.

<sup>20</sup> For example, in the *High Command* case, the US Military Tribunal held that whether or not instructions were designated as ‘directives’ was not important. When they were issued by those in a position of authority, e.g., the Armed Forces High Command, they were orders. *See High Command* at 651.

<sup>21</sup> *See Blaskic*, Trial Judgment, ¶ 281; *Kordic*, Trial Judgment, ¶ 388; *Naletilic*, Trial Judgment, ¶ 61; *Galic*, Trial Judgment, ¶ 168; *Bradantin*, Trial Judgment, ¶ 270; *Strugar*, Trial Judgment, ¶ 331; *Mrksic*, Trial Judgment, ¶ 550. Note that in the *Dostler* case, the order was received in the form of a telegram.

<sup>22</sup> See the post-WWII case of *Buck*.

<sup>23</sup> So, for example, in the *Hostage* case, the US Military Tribunal took the view that an order need not be worded in such a way that literal compliance is required. It was immaterial whether an order distributed by the accused was “mandatory or discretionary.” The fact that it *authorized* the crimes was determinative. *Hostage Case* at 1230.

<sup>24</sup> *See, e.g., Blaskic*, Trial Judgment, ¶ 281; *Kordic*, Trial Judgment, ¶ 388; *Naletilic*, Trial Judgment, ¶ 61; *Galic*, Trial Judgment, ¶ 171; *Strugar*, Trial Judgment, ¶ 178; *Mrksic*, Trial Judgment, ¶ 550; *Boskoski*, Trial Judgment, ¶ 400; *Milosevic*, Appeal Judgment, ¶ 265; *Boskoski*, Appeal Judgment, ¶ 160; *Hategekiminan*, Trial Judgment, ¶ 401; *Dordevic*, Trial Judgment, ¶ 1871.

<sup>25</sup> *See, e.g., The German High Command Trial*, 12 Law Reports of Trials of War Criminal 118–23 (1949); *The Hostages Trial* (at 118–23), *Kurt Mayer* (at 98 and 108), *Falkenhorst* (at 18, 23, 29–30), *Hans Wickmann* (at 133).

<sup>26</sup> *See* “The Role of Jiang Zemin in the Persecution of Falun Gong,” Section 3, available in English at: <http://en.minghui.org/html/articles/2015/5/1/149952.html>.

Jiang Zemin additionally ordered the dissemination of propaganda to all Party loyalists in China, including influential members of the government and civil society, to engender fear and hatred of Falun Gong and make clear that they were the latest in a chain of “state enemies” to be subjected to egregious abuse and maltreatment, including torture. As a direct result, flagship media in China spread the word to ensure that Falun Gong would be subjected to persecution and torture as a known Party enemy (and evil cult).<sup>27</sup>

Jiang’s order to upper, mid- and lower echelons of the Party to study the orders he provided in his speeches and especially his June 1999 speech were also followed. Current records found on Party websites demonstrate the extent to which Party Committees across China initiated conferences, seminars, and forums to study the Party Central Committee’s notices containing Jiang’s speeches, which called for the “*douzheng*” against Falun Gong. These committees likewise demonstrated their support for the violent suppression and took significant steps to advance the anti-Falun Gong campaign.<sup>28</sup>

These orders reached Chinese security, who in turned tortured Falun Gong believers in brainwashing, detention and re-education through labor centers and prisons across China.<sup>29</sup>

### C. Mens Rea

The *mens rea* of the person who issued the order is determinative, not the person who carries it out. *Kordic and Cerkez*, Trial Judgment ¶ 388. The requisite *mens rea* is intent: that he “directly or indirectly intended that the crime in question be committed.” *Blaskic*, Trial Judgment ¶278; *Kordic and Cerkez*, Trial Judgment ¶ 386; *Stakic*, Trial Judgment ¶445.

In some cases, even a lawful order may create ordering liability. In *Blaskic*, the defendant ordered artillery fire against some villages and a massacre of civilians ensued. While the Trial Chamber initially found the defendant guilty on a recklessness standard, the Appeals Chamber found that this standard was too low. This is because “any military commander who issues an order would be criminally responsible, because there is always a possibility that violations could occur.” Instead, the Appeals Chamber required “awareness of a substantial likelihood of risk plus a volitional element, namely acceptance that the risk may ensue.” *Blaskic*, Appeal Judgment ¶42. The Appeals Chamber went on to hold that the *mens rea* is the “awareness of the substantial likelihood that a crime will be committed in the execution of that order. . . . Ordering with such awareness has to be regarded as accepting that crime.” *Id.* Because the defendant also issued orders prohibiting criminal conduct and even instructing the identification of soldiers prone to criminal conduct, the Appeals Chamber found that he did not have awareness of a “substantial likelihood” of crimes being committed. *Id.* at ¶¶ 346–48, 443, 465, 480.<sup>30</sup>

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<sup>27</sup> See generally “Jiang Zemin and the Party’s Douzheng Campaign against Falun Gong,” available in English at: <http://en.minghui.org/html/articles/2015/5/6/150033.html>.

<sup>28</sup> *Id.*

<sup>29</sup> See, e.g., “The Role of Jiang Zemin in the Persecution of Falun Gong – a Legal Brief?” at Section 4 (Case Analysis).

<sup>30</sup> It is of interest to note that, while the Trial Chamber found the accused guilty of ordering liability for using “radical words connoting eradication” such as “mop up,” the Appeals Chamber found such evidence unconvincing because there were witness statements that these were “customary terms” used in military terminology. *Blaskic*, Appeal Judgment ¶¶ 549, 558.

It is clear that Jiang Zemin directly intended the forced conversion (*zhuanhua*) of Falun Gong. His direct orders to carry out the “*douzheng*” violent suppression of Falun Gong itself makes this clear, as the final step in a “*douzheng*” campaign is the forced conversion, i.e., torture, of the target group.<sup>31</sup> His intent is also established through his repeated use of labels that make Falun Gong an appropriate target of violent suppression and torture, including such phrases as “state enemy,” and “evil cult.”<sup>32</sup> Jiang’s efforts to ensure that his orders to *douzheng* Falun Gong and his related lies and slander about the spiritual group reached not only Party loyalists in China, including Chinese security, but also heads of foreign states and Chinese loyalists residing abroad,<sup>33</sup> evincing the extent to which Jiang intended torture to occur. Accordingly, he was also clearly aware “of a substantial likelihood of risk” – indeed a certainty – that torture would occur, and accepted this risk. *See Blaskic*, Appeal Judgment ¶42.

## 2. Planning Liability

Planning is well established under customary international law (CIL). *See Krstic*, Trial Judgment ¶ 601; *Akayesu*, Trial Judgment ¶480; *Blaskic*, Trial Judgment ¶ 279; *Kordic and Cerkez*, Trial Judgment ¶ 386. Planning liability occurs when one or more persons design the commission of a crime at both the preparatory and execution phases. *Krstic*, Trial Judgment ¶ 601. Under customary international law, this requires (1) the existence of a plan to commit a crime, and (2) direct or indirect intent that the crime be committed.

### A. A Plan

Planning liability arises when “one or several persons contemplate designing the commission of a crime at both the preparatory and executory phases.” *Krstic*, Trial Judgment ¶ 601. Circumstantial evidence may provide sufficient proof of the existence of a plan. *Blaskic*, Trial Judgment ¶279. Also, as opposed to a joint criminal enterprise, planning may be done by one person and does not require agreement among planners.<sup>34</sup>

Jiang Zemin’s letters and speeches make the existence of a plan to torture Falun Gong clear. This is particularly true of Jiang’s speech of June 7, 1999, wherein he declared the development of Falun Gong “the most significant incident since the political turmoil in 1989” and announced the establishment of the “Leading Group for Handling the Falun Gong Issues” and the 610 Office. This speech carried all the typical features of a plan to forcibly suppress and eliminate Falun Gong through torture and other crimes. Jiang’s specific plans included his decision to subject Falun Gong to *douzheng*, his appointment of Li Lanqing and Lou Gan to head the “Leading Group for Handling the Falun Gong Issues,” his inclusion of

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<sup>31</sup> *See generally* “Jiang Zemin and the Party’s Douzheng Campaign against Falun Gong,” (“This final step is what is referred to as “zhuanhua” or “forced conversion.” Individuals refusing to be “forcibly converted are subjected to ever increasing violence and, in many instances, death.”), available in English at: <http://en.minghui.org/html/articles/2015/5/6/150033.html>.

<sup>32</sup> *See generally* “The Role of Jiang Zemin in the Persecution of Falun Gong,” Section 3, available in English at: <http://en.minghui.org/html/articles/2015/5/1/149952.html>.

<sup>33</sup> *See* “The Role of Jiang Zemin in the Persecution of Falun Gong,” Section 2, available in English at: <http://en.minghui.org/html/articles/2015/5/1/149952.html>.

<sup>34</sup> Both the ICTR and the ICTY only allow prosecution against a conspiracy to commit genocide, but not war crimes or crimes against humanity.

the media and propaganda apparatus in the overall plan to solicit and ensure the support of Party leaders at all levels, his transmission of his speeches and instructions to Party leaders, the Political and Legal Commission, the Party's propaganda apparatus, National People's Congress, the courts and so on.<sup>35</sup>

Jiang Zemin is liable for planning the torture of Falun Gong based on the same grounds used to find Kordic (and other leaders) guilty of the same ordering and planning persecution. Like Kordic, Jiang gave multiple speeches identifying Falun Gong as a serious threat and enemy to the Party and lent himself enthusiastically to the planning and orchestration of torture and persecution of Falun Gong. In fact, Jiang's liability is even clearer because he initiated and launched the campaign rather than merely participating in and advancing the plans of higher-ranking officials. *See Kordic and Cerkez*, Appeal Judgment.

## B. Mens Rea

The mental state required is the same as ordering liability: the offender "directly or indirectly intended that the crime in question be committed." *Blaskic*, Trial Judgment ¶ 278; *Kordic and Cerkez*, Trial Judgment ¶ 386; *Bagilishema*, Trial Judgment ¶ 31; *Brima and Others*, Trial Judgment ¶ 766. Moreover, a person who plans an act "with the awareness of the substantial likelihood that a crime will be committed in the execution of that plan" also satisfies the requisite mental state. *Kordic and Cerkez*, Appeal Judgment ¶ 31.

A still unanswered question is whether planning is punishable *per se* (i.e., regardless of whether it leads to the actual commission of the planned crime), or is punishable only if the crime is actually committed. This question is irrelevant to the case of Jiang Zemin, since the crimes planned by Jiang Zemin were in fact carried out. Some experts have added a requirement that only the planning of serious or large-scale international crimes (e.g. massive war crimes, crimes against humanity, or genocide) can constitute a discrete offence.<sup>36</sup> Again, because there are, at the very least, tens of thousands of cases of torture of Falun Gong, this requirement is met in the case of Jiang Zemin.

Because the required *mens rea* for planning liability is the same as what is required for ordering liability, Jiang Zemin meets this requirement for the same reasons discussed immediately above at section III(1)(C).

## 3. Joint Criminal Enterprise

### Legal Standard

Joint criminal enterprise (JCE) liability is well established under customary international law. In *Prosecutor v. Tadic*, Appeal Judgment, ¶¶193-226 (July 15, 1999), the ICTY surveyed post-

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<sup>35</sup> See "The Role of Jiang Zemin in the Persecution of Falun Gong," (outlining documents authored by Jiang which establish Office 610 and its leaders and call for a "*douzheng*" of Falun Gong, and detailing the direct and indirect recipients of these documents) and "Jiang Zemin and the Party's Douzheng Campaign against Falun Gong," (outlining the context of "*douzheng*" campaigns in Chinese history, detailing what "*douzheng*" campaigns entail, and summarizing Jiang's role in the "*douzheng*" campaign against Falun Gong).

<sup>36</sup> See Antonio Cassese, *International Criminal Law*, 226 (2008).

World War II international tribunals,<sup>37</sup> treaties and conventions, and the law of individual states, and concluded that JCE liability is a well-established rule of customary international law, codified in Article 7(1) of the ICTY Statute. *Tadić*'s recognition of JCE liability has been followed in subsequent ICTY cases,<sup>38</sup> in the ICTR,<sup>39</sup> and in the SCSL.<sup>40</sup> JCE liability has also been recognized by national courts adjudicating international crimes such as the War Crimes Chamber of the Court of Bosnia and Herzegovina, and the East Timorese Special Panel for Serious Crimes, the Special Tribunal for Lebanon, as well as the Extraordinary Chambers in the Courts of Cambodia. These authorities confirm that JCE liability is now firmly established in customary international law. JCE's required elements are discussed below.

### A. Actus Reus

The required *actus reus* elements for JCE liability are (1) a plurality of persons; (2) existence of a common objective, which amounts to or involves the commission of a crime; and (3) participation in the execution of the common plan. *Tadić*, Appeal Judgment, ¶227.

A plurality of persons does not require that the group be organized as a formal military, political, or administrative structure. *Id.*; *Vasiljević*, Appeal Judgment, ¶100. The groups implicated are often quite large and broadly defined, with "core members" identified. For example, in *Krajisnik*, the ICTY found that, in addition to the named members, the "rank and file of the regionally-defined enterprise consisted of local politicians, military and police commanders, paramilitary leaders, and others." *Krajisnik*, Trial Judgment, ¶1079-88.

To demonstrate the existence of a common objective, the *Tadić* Appeals Chamber explained that "[t]here is no necessity for this plan, design or purpose to have been previously arranged or formulated. The common plan or purpose may materialize extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal enterprise." *Tadić*, Appeal Judgment, ¶227; *see also* *Krajisnik*, Trial Judgment, ¶¶883-84. The common criminal purpose can be expressly criminal or can amount to the commission of crimes. For instance, the shared goal to take control of a territory may not be criminal, but it may amount to a criminal purpose if the means to achieve it constitute crimes, e.g., ethnic cleansing. *See* *Brima and Others*, Appeal Judgment, ¶¶ 76-80.

Referring to these first two elements (plurality of persons and a common objective), the ICTY has also endorsed a requirement of "joint action": "it is the common objective that begins to transform a plurality of persons into a group or enterprise, as this plurality has in common the particular objective. It is evident, however, that a common objective alone is not always sufficient to determine a group, as different and independent groups may happen to share identical objectives. *Rather it is the interaction or cooperation among persons – their joint*

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<sup>37</sup> In particular, commentators have described the Nuremberg Trials as a "Grotian Moment" – a transformative development in which new rules and doctrines of customary international law emerge with unusual rapidity and acceptance. Michael P. Scharf, *Seizing the Grotian Moment: Accelerated Formation of Customary International Law in Times of Fundamental Change*, 43 Cornell Int'l L. J. 19 (2010). The modern theory of JCE was crystallized out of the "common plan" or "common design" mode of liability used in these tribunals, and has been widely accepted since then. *See* *Tadić*, Appeal Judgment, ¶¶193-220.

<sup>38</sup> *See, e.g.*, *Vasiljević*, Appeal Judgment; *Kvočka*, Appeal Judgment; *Krnjelac*, Trial Judgment.

<sup>39</sup> *See, e.g.*, *Rwamakuba Decision* ¶¶14-25 (Oct 22, 2004); *Kayishema*, Trial Judgment.

<sup>40</sup> *See, e.g.*, *Taylor*, Appeal Judgment.

*action – in addition to their common objective, that makes those persons a group.”* *Krajisnik*, Trial Judgment, ¶884 (emphasis added).

To demonstrate participation, the “participation need not involve commission of a specific crime . . . but may take the form of assistance in, or contribution to, the execution of the common plan or purpose.” *Tadic*, Appeal Judgment, ¶227. For instance, public statements protected by freedom of speech were considered to be part of the defendant’s contribution to ethnically cleansing Bosnian-Serb territory. *Krajisnik*, Appeal Judgment, ¶¶ 218, 695–96. Liability does not arise merely because an individual is a member of a criminal organization or group. *Stakic*, Trial Judgment, ¶433. The defendant must have taken some action in carrying out the criminal plan. *Id.* A defendant need not, however, physically participate in or be physically present at the crime. *Kvočka*, Appeal Judgment, ¶¶97-99, 112; *Krajisnik*, Trial Judgment, ¶883; *Krnjelac*, Trial Judgment, ¶81. Recent ICTY decisions have stated that while the contribution “need not be necessary or substantial, it should at least be a significant contribution to the crimes.” *Brdanin*, Appeal Judgment, ¶430.

As set forth below, Jiang Zemin created and participated in a joint criminal enterprise to ensure the forcible and permanent suppression of Falun Gong in China through the commission of crimes that include torture.

This joint criminal enterprise was in existence by October 1999, if not earlier, and continues to this day. The individuals participating in this joint criminal enterprise include, *inter alia*, its principal architect and founder, Jiang Zemin, and his close associates, Lou Gan and Li Lanqing, who played major roles in helping Jiang create, design, and implement the campaign to suppress Falun Gong. In addition, key roles were played by such co-perpetrators as Zhou Yongkang, who is now under investigation for crimes of corruption and was Minister of Public Security during the persecution, from 2002 to 2007; Zhao Zhizhen, who served as a major propaganda operative for Jiang Zemin’s propaganda campaign against Falun Gong, beginning as early as 1998; Zeng Qinghong, who served as the head of the Organization Department of the CCP when the persecution started; and Chen Zhili, who served as Minister of Education when the persecution began.

The crime of torture was well within the object of the joint criminal enterprise, as the final step in the “*douzhen*” campaign. As noted above, when a group like Falun Gong is identified as a target of “*douzhen*,” the implication is clear: it is imperative to go outside the law and persecute and forcibly convert, i.e., torture, that person or group, and in this instance, Falun Gong.

This objective is more specifically evidenced by the use of the same Cultural Revolution-style invective, e.g., *douzhen*, *zhuanhua* and *jiēpī*, by Jiang Zemin, Lou Gan, Li Lanqing, Zhou Yongkang, Zhao Zhizhen and other JCE co-perpetrators to signal the onset of the persecution and torture of Falun Gong and its subsequent intensification. In addition, the forced conversion, i.e., torture, of Falun Gong believers is referenced on Party websites as an essential component of the campaign to ensure the forcible and permanent suppression of the spiritual group. Party websites utilize the same Cultural Revolution-style invective to ensure the participation of all Party loyalists, including those charged with the instruction to carry out the torture, i.e., Chinese security stationed at detention centers across China. As just one example, the China Anti-Cult Association, which states as its main mission the

“*douzhen*” of Falun Gong, is replete with articles transmitting Jiang’s order to persecute and, by implication, forcibly convert all known Falun Gong found anywhere in China.<sup>41</sup>

Moreover, as noted above, there is a vast and ever-growing library of anti-Falun Gong misleading materials seeking to convince Chinese audiences that Falun Gong is a dangerous, subhuman threat to society that must be violently suppressed or exterminated. This misinformation has been disseminated by JCE co-perpetrators through the Party’s propaganda apparatus, including China Central Television programs.

In order for the joint criminal enterprise to succeed in its objective, Jiang Zemin worked in concert with or through other individuals in the joint criminal enterprise. Each participant or co-perpetrator within the joint criminal enterprise, sharing the intent to subject Falun Gong to violent suppression (through torture and other crimes), played his or her own role or roles that significantly contributed to achieving the objective of the enterprise, i.e., the forcible and permanent suppression of Falun Gong in China through the commission of crimes that include torture. The roles of the participants or co-perpetrators include, but are not limited to, the following:

1. **Li Lanqing** was member of the Standing Committee of the Politburo of the 15<sup>th</sup> Central Committee of the Chinese Communist Party from 1997 until November 2002. On the 10<sup>th</sup> of June 1999, Li Lanqing was appointed head of the “*Leading Group for Handling the Falun Gong Issues*.” The 610 Office is the executing organ of this group. Therefore, Li Lanqing carries the responsibility for the policy and the execution of this organization since its establishment on the 10<sup>th</sup> of June 1999. Since then and until 2002, Li Lanqing has headed the “Leadership Group” and has thus been directly responsible for the acts of violence committed by this official body for the repression of Falun Gong. He must therefore be considered to be the perpetrator of the daily acts of torture, massacres, disappearances, rapes, pressures, and threats currently carried out by the police services under his direct authority. Legal complaints were lodged against Li Lanqing in, *inter alia*, France, Spain, Germany, and Greece. The case filed in France was derailed when the authorities in China refused to deliver special cross-examination questions (i.e., rogatory questions) to the Defendant.

2. **Luo Gan** was in charge of the Party’s all-powerful Central Political and Legal Affairs Committee when the “*douzhen*” campaign against Falun Gong was initiated. He was appointed, as confidant of the former Chinese head of state, Jiang Zemin, as deputy head of the “Leadership Group,” and is known to carry the main responsibility for persecuting Falun Gong in China. Charges of genocide and crimes against humanity, including torture, were filed against the 610 Office and/or Luo Gan in courts around the world, including the United States (2002), Spain (2003), Finland (2003), Germany (2003), and Argentina (2005). In November 2009, following a two-year investigation, Spanish National Court Judge Ismael Moreno granted a petition to indict the Luo Gan on charges of torture and genocide. In December 2009, following an extensive examination of expert and witness testimony and other evidence, Judge Octavio Lamidrad of Federal Criminal Court issued an arrest warrant for Jiang Zemin and Luo Gan in December 2009. Due to political interference from the Party in China, the indictment and warrant were withdrawn.

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<sup>41</sup> HRLF has a downloaded copy of the entire website, which is available by request.

3. **Zhou Yongkang** served as Minister of Public Security from 2002 to 2007. In that capacity, he exercised executive authority over police and security forces operating nationwide, including authority to set policy, control management of security affairs, and to appoint, remove, and discipline police and detention center security personnel. This includes the operation of all levels of the government and party apparatus in relation to, e.g., police and security guards responsible directly for the torture of Falun Gong adherents in prisons, forced labor camps, and detention centers. From 2007-2012, he served as head of the Party's all-powerful Political and Legal Affairs Committee that played an equally prominent role in Jiang Zemin's anti-Falun Gong persecutory campaign. He must therefore be considered a major co-perpetrator of the daily torture, massacres, disappearances, rapes, pressures, and threats carried out by the police services under his direct authority. A criminal case was filed against Zhou Yongkang in the United States under Title 18, Section 2340. However, due to the Defendant's decision to cancel his US visit, the case could not proceed.

4. **Chen Zhili** served as Minister of Education from 1997 through 2003. In this capacity, Chen Zhili was responsible for making command decisions about curricula, internal education ministry policy, and adherence to Party-set political guidelines/policy implementations within educational institutions. In office at the beginning of the persecution in 1999, she set about ensuring complicity of educational institutions in discovering and reporting Falun Gong practitioners to 610 offices or other relevant authorities, as well as creating and enforcing curricula and other educational content that vilified Falun Gong and furthered its persecution. Under her leadership of the Ministry of Education, and at the instigation of numerous official, unofficial, or semi-official remarks calling for the elimination of Falun Gong, a number of educational institutions and personnel committed grave violations of international law norms against Falun Gong practitioners. Chen Zhili issued many statements calling for the "exposure" of Falun Gong as a "hostile force" and the violent suppression or crackdown of Falun Gong believers. During her term of office, numerous Falun Gong practitioners who were students and teachers at all levels of the Chinese education system were "exposed and criticized" or otherwise discriminated against by others in the education community, for their practice of Falun Gong, and simultaneously required to cease practicing or face being reported to security authorities. Those who were reported to the 610 or state security apparatus were then subjected to numerous violations including torture, arbitrary detention, sexual violence, and in some cases extrajudicial killing.

5. **Zhao Zhizhen** founded and has served as a Leading Standing Committee Member of the Executive Council of the China Anti-Cult Association (CACA) since November 2000, and as the former Chief of Wuhan Radio and TV Broadcasting Bureau (WRTB), as well as the former Executive Director of Wuhan Television Station (WTV), both from 1986 until at least 2003. During his tenure in these offices and in these capacities, Zhao Zhizhen used and continues to use his position as an influential figure in Chinese society, with a mandate of ideological authority from the CCP, to call for sustained *douzhen* persecution of the Falun Gong religion and torture of its adherents until the eradication of the former and the total ideological submission of the latter. Under his leadership of the CACA and at the instigation of his publications and broadcasts, Chinese security committed grave violations of international law norms against Falun Gong practitioners. Zhao Zhizhen personally issued many statements calling for the "*douzhen*," "*zhuanhua*," and "*jiexi*" of Falun Gong. As a major propaganda operative for Jiang Zemin with enormous intellectual and ideological

capital at his disposal, he must be considered a major co-perpetrator of the daily torture, massacres, disappearances, rapes, pressures, and threats currently carried out by security officers and others in China.

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

- In his capacity as the Secretary of the CCCCPC, Jiang Zemin exercised effective control and/or substantial influence over the above-listed Party leaders who participated in the joint criminal enterprise. Acting alone or acting in concert with them and additional known and unknown persons, Jiang Zemin effectively controlled and/or influenced the actions of all Party leaders at all levels and in all capacities, in addition to Chinese security who operated under their control.
- In his capacity as Secretary of the CCCCPC, he was also able to ensure the full cooperation of Chinese armed forces, the People's Courts, the People's Procuratorate, National People's Congress at national and (indirectly) at relevant regional levels. As Jiang Zemin served as President and Secretary of the State and Chairman of the Central Military Commission during roughly the same years, he ensured that these orders, plans and instructions were not blocked, but rather were diligently implemented across China.
- As Secretary of the CCCCPC, Jiang Zemin provided strategic, logistical, and political support to Party Secretaries at all levels. These Party leaders subsequently participated in the JCE through their issuance of orders to those immediately below them to join the JCE to ensure the permanent and violent suppression of Falun Gong.
- As detailed in "Jiang Zemin and the Party's Douzheng Campaign against Falun Gong":<sup>42</sup>
  - Jiang Zemin provided strategic, logistical, and political support to all other Party committees in the persecutory campaign directly and/or indirectly through a chain of command that included the Political and Legal Affairs Committee, the Organization Department, the Central Military Commission, the Department of Propaganda and related flagship media and their counterparts at regional levels.
  - Jiang Zemin provided strategic, logistical, and political support to all other state organs implicated in the persecutory campaign directly and/or indirectly through a chain of command, including the People's Courts and People's Procuratorate, the Ministry of Justice, the Ministry of Public Security, the Ministry of Civil Affairs, the Ministry of Education, the State Administration for Religious Affairs and their counterparts at regional levels.
  - Jiang Zemin provided strategic, logistical, and political support to Chinese security detailed to Chinese brainwashing, re-education through labor, and detention centers, and prisons across China directly and/or indirectly through a chain of command that is set forth in "The Role of Jiang Zemin in the Persecution of Falun Gong – a Legal Brief."<sup>43</sup>

## B. Mens Rea

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<sup>42</sup> Available in English at: <http://en.minghui.org/html/articles/2015/5/6/150033.html>. *See also* HRLF's more detailed 2005 "chain of command" implicating Party committees and State organs at all levels. This document is available upon request.

<sup>43</sup> Available in English at: <http://en.minghui.org/html/articles/2015/5/1/149952.html>.

There are three classes of JCE liability, each with its own *mens rea* requirement. Since the second class is not relevant herein, only the first and the third are included below.

**Basic.** The most basic form of JCE liability is responsibility for acts agreed upon when making the common plan or design. All members of the criminal enterprise possess the same criminal intention to commit the concerted crime, and all members of the JCE are responsible, whatever their role is. *Tadic*, Appeal Judgment, ¶¶196, 228; *Vasiljevic*, Appeal Judgment, ¶9; *Krajisnik*, Trial Judgment, ¶79. The defendant need not have or derive any “enthusiasm, personal satisfaction or personal initiative” in order to have the intent to further the common criminal purpose. *Kvočka*, Appeal Judgment, ¶242. The classic example is a JCE to commit murder, where each of the participants has the specific intent to murder but carries out a different role in effecting the murder. *Tadic*, Appeal Judgment, ¶196.

**Extended.** The third mode of liability concerns those participants who agreed to the main goal of the common criminal design (for instance, the forcible deportation of civilians) but did not share the intent of one or more members of the group to also commit crimes related to the main concerted crime (e.g., abusing or killing some of the civilians in the process). *See, e.g., Tadic*, Appeal Judgment, ¶ 204; *Vasiljevic*, Appeal Judgment, ¶ 99; *Krajisnick*, Trial Judgment, ¶ 881. Extended JCE requires (1) intent to commit the main concerted crime (basic JCE); (2) foreseeability to the defendant that other members of the group might perpetrate another crime; and (3) the defendant willingly took the risk that the foreseeable crime would be committed. *Tadic*, Appeal Judgment, ¶¶ 220, 228; *Kvočka*, Appeal Judgment, ¶ 86; *Krajisnick*, Trial Judgment, ¶ 882.<sup>44</sup> There is some debate as to whether the foreseeability requirement requires the secondary offender to actually, subjectively foresee the likelihood, or instead requires objective foreseeability of that likelihood (i.e. a reasonable person ought to have foreseen the likelihood). It appears that *Tadic*, *Krstic*, and *Stakic*, have generally applied the objective standard, which is a lower threshold.

As indicated above, Jiang Zemin knowingly and willfully participated in the joint criminal enterprise, while being aware of all foreseeable consequences of the enterprise. Therefore he meets the *mens rea* required under both “basic” and “extended” modes of JCE liability.

#### 4. Aiding and Abetting

Aiding and abetting liability is well established in international criminal law. It is recognized in Article 7(1) of the ICTY Statute, Article 6(1) of the ICTR Statute, and Article 6(1) of the SCSL Statute, all of which criminalize “[a] person who . . . aided and abetted in the planning, preparation or execution of a crime. . . .”<sup>45</sup>

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<sup>44</sup> According to some commentators, even *dolus eventualis* or recklessness may suffice to hold all participants criminally liable. For instance, if a group of servicemen decides to deprive civilians of food and water in order to compel them to disclose the names of other civilians who have attacked the military, and some civilians die, the servicemen should all be accountable not only for a JCE to commit the war crimes of intentionally starving civilians, but also of murder because death was the natural and foreseeable consequence of their common criminal plan. *See* Antonio Cassese, *The Proper Limits of Individual Responsibility under the Doctrine of Joint Criminal Enterprise*, 5 J. Int’l Crim. J. 1 (2007).

<sup>45</sup> The terms “aiding” and “abetting” refer to distinct legal concepts: “aiding” means assisting or helping another to commit a crime, while “abetting” means encouraging, advising, or instigating the commission of a crime.” *Semanza*, Trial Judgment ¶384.

As a derivative mode of liability, aiding and abetting first requires establishing the underlying offense by the principal, which the accused is alleged to have aided and abetted. *Simic*, Trial Judgment, ¶161; *Aleksovski*, Appeal Judgment, ¶165. But an aider and abettor can be convicted “even where the principal perpetrators have not been tried or identified,” *Krstic*, Appeals Judgment, ¶145; and the principal need not be aware of the accomplice’s contribution, *Tadic*, Appeal Judgment, ¶229. Generally, aiding and abetting involves a lesser degree of individual criminal responsibility than co-perpetration in a joint criminal enterprise. *Krnjelac*, Appeal Judgment, ¶75.<sup>46</sup> To establish aiding and abetting liability in international criminal law, the ad hoc tribunals have established the following standards for *mens rea* and *actus reus*.

### A. Mens Rea

It is not necessary for the accomplice to share the *mens rea* of the perpetrator. *Furundzija*, Trial Judgment, ¶245. Instead, international tribunals have uniformly held that the aider and abettor need only “knowledge that his actions will assist the perpetrator in the commission of the crime.” See, e.g., *Furundzija*, Trial Judgment, ¶245; *Delalic*, Trial Judgment, ¶321; *Tadic*, Appeal Judgment, ¶229; *Vasiljevic*, Appeal Judgment, ¶102; *Blagojevic and Jokic* Appeal Judgment, ¶127.

There is uncertainty as to how specific the defendant’s knowledge must be. One line of decisions has unequivocally stated, “it is not necessary that the aider and abettor should know the precise crime that was intended and which in the event was committed. If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he . . . is guilty as an aider and abettor. See, e.g., *Blaskic*, Trial Judgment, ¶287; *Furundzija*, Trial Judgment, ¶246; *Kvočka*, Trial Judgment, ¶255; *Naletilic*, Trial Judgment, ¶63. On the other hand, another line of cases, including the *Blagojevic and Jovic*, *Kunarac*, *Krnjelac*, and *Simic* courts, have required that the accused know that his or her actions assist in the commission of a *specific* crime. See, e.g., *Simic*, Trial Judgment, ¶163; *Kunarac*, Trial Judgment, ¶392; *Krnjelac*, Trial Judgment, ¶90.

There is also uncertainty as to how far knowledge should extend beyond the accomplice’s own actions and be concerned with the mental state of the principal. See James G. Stewart, *The End of Modes of Liability for International Crimes*, 25 *Leiden J. Int’l L.* 165, 196 (2012). While this issue has not been fully addressed by international courts, some decisions have suggested that “a volitional element must be incorporated in the legal standard” in order to prevent the knowledge standard from being diluted into a recklessness standard, where

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<sup>46</sup> Like aiding and abetting, JCE requires the commission of an underlying offense because it is not a substantive offense, but a form of liability. But it differs from aiding and abetting in four major ways. First, JCE holds all participants liable as principals, rather than accessories or accomplices. *Tadic*, Appeal Judgment ¶229, *Vasiljevic*, Appeal Judgment ¶102. Second, aiding and abetting does not require proof of a plan or agreement, while JCE does. *Id.* Third, the aider and abettor must provide “substantial assistance,” whereas for JCE, it is “sufficient for the participant to perform acts that in some way are directed to the furthering of the common plan or purpose.” *Tadic*, Appeal Judgment ¶229. In addition, later ICTY decisions have stated that, while the contribution “need not be necessary or substantial, it should at least be a significant contribution to the crimes.” *Brdjanin*, Appeal Judgment ¶430. Fourth, aiding and abetting require a *mens rea* of knowledge; JCE requires the intent to pursue the criminal purpose. *Kvočka*, Appeal Judgment. ¶¶89-90.

“knowledge of any kind of risk” would suffice for the imposition of liability. *Blaskic*, Appeal Judgment, ¶41; *Oric*, Trial Judgment, ¶288; *Blaskic*, Trial Judgment. However, this formulation has not been more widely adopted since *Oric*. In any case, it appears that willing participation, i.e., a “conscious decision to participate” or “the awareness of the substantial likelihood that a crime will be committed . . . has to be regarded as accepting that crime.” *Blaskic*, Appeal Judgment, ¶42; *Tadic*, Trial Judgment, ¶674.<sup>47</sup>

Applied to Jiang Zemin, it is clear that Jiang knew that his orchestration of the persecutory campaign against Falun Gong would substantially and specifically further widespread acts of torture. Because “knowledge” is a lower standard than “intent,” and because Jiang’s intent has been demonstrated for the reasons detailed above in relation to “ordering” liability, Jiang’s knowledge is clearly demonstrated.

## B. Actus Reus

Customary international law requires “practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime.” *Furundzija*, Trial Judgment, ¶235.<sup>48</sup> The relevant act “does not require an actual physical presence or physical assistance,” and “can be geographically and temporally distanced.” *Tadic*, Trial Judgment, ¶¶679, 687. It may occur “before, during or after the act is committed.” *Aleksovski*, Trial Judgment, ¶62. It is unnecessary to prove that a cause-effect relationship existed between the act and the commission of the crime. *Aleksovski*, Trial Judgment, ¶61. The defendant’s assistance “need not constitute an indispensable element, that is, a *conditio sine qua non* for the acts of the principal.” *Furundzija*, Trial Judgment, ¶209.

While there is no definition of “substantial,” the contribution must “ha[ve] an effect on the commission of the crime.” *Tadic*, Trial Judgment, ¶688. The acts of the accomplice need to “make a significant difference to the commission of the criminal act by the principal.” *Furundzija*, Trial Judgment, ¶233. As examples, the *Furundzija* court cited the *Einsatzgruppen* (provision of a list of Communists) and *Zyklon B* (provision of poison gas to a concentration camp) cases. Other examples of assistance satisfying the *actus reus* of aiding and abetting include providing weapons to a principal, taking principals to the scene of a crime and pointing at people to be killed, and providing resources for use in a crime. See *Ntakirutimana*, Appeal Judgment, ¶530, *Krstic*, Appeal Judgment, ¶137.

Tacit approval and encouragement substantially contributing to a crime may fulfill *actus reus* requirements. This form of contribution typically occurs in “presence of superior” cases,

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<sup>47</sup> With respect to the Rome Statute of the ICC, academics generally agree that recklessness is not covered, because it does not have the necessary volitional component required under Article 30, i.e., it does not require the accused to “reconcile” him or herself with the causation of the crime. But it is not clear whether the concept of *dolus eventualis*, which requires awareness of the risk that a crime may result from the accused’s actions but also requires that the accused “reconcile” him or herself with this outcome, is covered. See Sarah Finnin, *Elements of Accessorial Modes of Liability: Article 25(3)(b) and (c) of the Rome Statute of the International Criminal Court*, 170-72.

<sup>48</sup> While a ICTY Appeals Chamber decision in 2013 further required that the defendant “specifically directed” his assistance to the criminal activities, *Perisic*, Appeal Judgment ¶36, the Appeals Chamber has since reversed itself and unequivocally rejected this requirement. *Sainovic*, Appeal Judgment ¶1650.

where even the act of being present on the crime scene as a “silent spectator” can be construed as tacit approval and encouragement. *Brdanin*, Appeal Judgment, ¶277.

Omissions may also suffice, if there is a duty to act, “provided this failure to act had a decisive effect on the commission of the crime and that it was coupled with the requisite *mens rea*.” *Blaskic*, Trial Judgment, ¶284. However, the ad hoc tribunals have not set out the requirements for a conviction based on omission in detail. *Oric*, Appeal Judgment, ¶43. For cases involving omissions, see *Sljivancanin*, Appeal Judgment, ¶¶62-63; *Aleksovski* Trial Judgment, ¶¶87-88.

Jiang Zemin provided the requisite practical assistance, encouragement, or moral support, which had a substantial effect on the perpetration of widespread acts of torture of Falun Gong believers. As discussed in more detail above in relation to JCE liability, Jiang identified Falun Gong as a target of “*douzheng*,” thus creating an imperative to carry out an escalating series of abuses including torture. He used Cultural Revolution-style invective, e.g., *douzheng*, *zhuanhua* and *jiēpī*, to signal the onset of the persecution and torture of Falun Gong and its subsequent intensification. He initiated a misinformation and propaganda campaign resulting in a vast and ever-growing library of anti-Falun Gong materials seeking to convince Chinese audiences that Falun Gong is a dangerous, subhuman threat to society that must be violently suppressed or exterminated. He exercised effective control and/or substantial influence over the Party leaders who carried out the persecution and torture of Falun Gong. And he provided strategic, logistical and political support to Party leaders, committees, propaganda outlets, state organs, and security officials. Thus, not only did Jiang’s assistance have a substantial effect on the torture of Falun Gong, Jiang likely had the *most* substantial effect on this torture of anybody involved in the persecutory campaign.

## 5. Command Responsibility

Command responsibility, also sometimes referred to as superior responsibility, has been well established in international criminal law since the aftermath of the Second World War. See Antonio Cassese, *International Criminal Law*, 236–41 (2008). It is currently recognized in all international tribunals, including Article 7(3) of the ICTY Statute, Article 6(3) of the ICTR Statute, and Article 6(3) of the SCSL Statute, as well as Article 28 of the Rome Statute of the International Criminal Court.

Unlike most other classes of liability, command responsibility is responsibility by *omission*: the person is criminally liable not for an act he has performed, but for failure to perform an act required by international law. Modern international criminal law requires proving the following factors to establish superior responsibility: (i) effective control, (ii) actual or constructive knowledge of criminal activities, and (iii) failure to take necessary and reasonable measures. *Celebici*, Trial Judgment, ¶376.

Jiang Zemin clearly did not use his authority as Party Secretary (much less as President or Chairman of the Central Military Commission) to stop any of the illegal acts perpetrated against Falun Gong believers in China, including widespread torture. On the contrary, these acts were all carried out under his orders and supervision.

#### **IV. Conclusion**

As Secretary of the CCCCPC and through the power and influence that he exercised, Jiang Zemin played the key role in developing, establishing and executing the policies, objectives and strategies of the “*douzheng*” campaign against Falun Gong believers in China. Along with others, he launched, planned, instigated, prepared, ordered, committed and aided and abetted a violent campaign to persecute and terrorize all peaceful law abiding practitioners of Falun Gong. He had the duty and responsibility to prevent the crimes, violations, and abuses, which occurred and were carried out in the campaign. Instead, he publicly advocated the campaign’s goals and encouraged and instigated these acts. As a legal complaint against Jiang Zemin will make clear, he is liable on multiple grounds for these and other egregious crimes against China, the Chinese people, and humanity.