

How the Communist Party undermines China's legal system to enable human rights abuses

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The history of China's legal system

During the first 30 years of the Chinese Communist Party's (CCP) 62 years in power, there were no real laws that would be recognizable under international standards. It was widely accepted during that period that laws should be drafted in a crude fashion, without detail, though it is unclear where that concept originated or how it became the consensus. Most cases were decided directly by Party Committees. The whole legal system was referred to as "*Gong Jian Fa*," a term that encompasses "the police, the procuratorate and the court," all in one, reflecting the lack of judicial independence from the executive branch.

After the Cultural Revolution, the CCP restored the stature of several top leaders, who had suffered persecution and purging during the chaos of the Cultural Revolution. They decided that one way or another, some form of rule of law should be established. The original idea was that the rule of law would protect them from a repeat of the arbitrariness of the Cultural Revolution. They did not seem to realize at the time, that the rule of law could also cause trouble for them because laws would restrain their power too.

In 1979, the CCP Central Committee (CCPCC) issued an internal document, formally withdrawing the Party Committees from directly making a judgment in cases.¹ However, several months later, the Party decided that it could not afford *not* to control the legal system. So the CCP Central Committee re-established the Political and Judicial Committee to oversee the legal system. Although the Central Political and Judicial Committee was temporally dissolved in 1988, it was immediately reinstated and enhanced after the Tiananmen Square Massacre. When one speaks of the Chinese legal system not being independent, this Political and Judicial Committee is the key to understanding why.

In China, the various entities that carry out work related to law are collectively called the political and judicial system. At the state level, they usually include the Ministry of Public Security (the police), the Supreme Procuratorate, the Supreme Court, the Ministry of Justice, and the Ministry of State Security. They belong to different state organs. The three ministries are under the State Council, while the Supreme Procuratorate and Supreme Court report to the National People's Congress.

So, how does the Political and Judicial Committee oversee these entities?

1. The Political and Judicial Committee exists directly under the CCPCC. Its head is a member of the powerful Standing Committee of the CCPCC, China's most important decision-making body. This means that his rank is higher than any minister's in the Party.
2. The heads of the above-mentioned law-related organizations are all members of the Political and Judicial Committee. Within the Party, they must follow the orders of the Secretary of the

¹ http://news.xinhuanet.com/politics/2011-06/30/c_121603216_4.htm

Political and Judicial Committee.

3. From time to time, the CCPCC or its Political and Judicial Committee will issue internal Party memos, circulars or other documents to direct the work of the law-related organizations. Such memos are not written in accordance with Constitution nor constrained by any other laws. The heads of the above five organizations are not appointed by China's parliament, the National People's Congress or by the executive State Council. Rather, they are chosen by the CCPCC and its Organization Department.
4. In this fashion, when the law-related organs enforce the law, they are influenced by the CCP's policies.
5. When it gets to the level of individual trials, in many so-called "sensitive cases," such as ones relating to political dissidents, human rights, religion, or Falun Gong, the Political and Judicial Committee will organize a meeting. The local heads of the Public Security Bureau, the Procuratorate (which plays the role of public prosecutor), and the court attend the meeting. All details related to the case are discussed and decided at the meeting, including the verdict and length of the final prison sentence.
6. The Ministry of Justice retains control over lawyers, reflecting the legal profession's lack of independence in addition to the judicial system. All lawyers must belong to a CCP-led lawyer's association. Each local association branch operates under the local Bureau of Justice, while the national All China Lawyers Association exists under the Ministry of Justice. This system ensures that lawyers do not take cases that the CCP does not want them to take. In recent years, media reports have often referred to human rights lawyers' licenses being suspended or revoked for taking sensitive cases, like ones involving Falun Gong practitioners, house church Christians, or housing demolition. It is through the above system of oversight that such arbitrary suspension is possible.

Beginning in the 1980s, the NPC started to pass laws. This encouraged a new generation to study law and pass the bar exam, including individuals like prominent human rights lawyer Gao Zhisheng. During that time, a large number of laws were passed, with some even approaching Western and international legal standard. The work of passing laws has not stopped since, as indicated in the newly released "China Socialist Legal System White Paper." And, although the laws were not fully enforced and implemented, until 1999, they were not systematically undermined either. Even after the Tiananmen Square Massacre in 1989, the legal system remained basically intact, though the CCP temporarily declared Martial Law. There was no need to change how the legal system functioned in order to persecute those who lead the student movement. The numbers of people arrested and sentenced was relatively small.

How the Chinese legal system was broken and undermined

The biggest challenge that arose for China's legal system was the launching of the persecution of Falun Gong in 1999. At the time, the CCP faced two challenges. First, a religious belief that it couldn't control; Second, a very large population of practitioners, numbering in the tens of millions. In an instinctual reaction to the perceived threat posed by Falun Gong, the head of the CCP immediately pulled out the Party's tried and trusted method—to initiate a political campaign to suppress the Falun Gong. This had proved effective for suppressing perceived challenges to leaders during the Mao era, why shouldn't work it work now? The difference was that by 1999, there was a legal system that had just been established, for better or for worse, and the rule of law is not compatible with arbitrary political campaigns. The regime therefore had to come up with several measures to bypass the authority of the new laws. The impact of this process is huge and has practically destroyed the legal system. It is responsible for much of the lawlessness we see in China today.

This is a very complex system of tactics. I outlined it in detail at a European Parliament hearing held earlier this year, which is available online. Here I will just mention a few key points.

1. Use of propaganda to give the public and foreigners a false impression that a legal process was in place. I will just give one example. When the Chinese regime says that it “banned” Falun Gong, this is inaccurate. It actually never banned Falun Gong according to law. Two ministries’ documents from July 22, 1999 are often cited as proof of the ban’s legal standing. They were issued on July 22: the “Decision to Ban the Falun Gong Research Society” issued by the Ministry of Civil Affairs,² and the “Notice of Six Prohibitions from the Ministry of Public Security.”³ The first notice targeted the “Falun Gong Research Society” as an administrative organization, rather than Falun Gong itself as a spiritual or religious practice. In 1993, Falun Gong was a subordinate entity of the Chinese Qigong Scientific Research Society and was called the “Falun Gong Research Branch.” In March 1996, the Falun Gong Research Society formally petitioned for withdrawal from the Chinese Qigong Scientific Research Society. When the withdrawal was approved, the Falun Gong branch formally dissolved. Thus, what the Ministry of Civil Affairs banned in July of 1999 was technically an entity that had been dissolved in March of 1996.

As for Falun Gong itself as a spiritual practice, it has no formal organization, hierarchy, membership lists, or dues. The practice consists of performing five meditative exercises, studying spiritual teachings, and seeking to follow the values of Truthfulness, Compassion, and Forbearance in daily life. It is a very fluid and informally structured practice. Even if the Ministry of Civil Affairs could have banned the non-existing “Falun Gong Research Society,” the ban cannot automatically be extended to cover the practice of Falun Gong itself. Therefore, legally speaking, practicing Falun Gong has never been banned.

In addition, the so-called ban has sometimes been claimed to be based on the fact that the Falun Gong Research Society had not registered. Even if this were true, not being registered does not amount to a group being illegal. Moreover, under Chinese law, the Ministry of Civil Affairs has no legal jurisdiction to ban a group.

The “Notice of Six Prohibitions from the Ministry of Public Security” then illegally extended the scope of the Ministry of Civil Affairs’ already groundless decision. Under Chinese law, these two ministries only have the authority to publish regulations within their own departments. They have no legislative or judicial power to decide what is legal or illegal. Thus, both documents well exceeded the ministries’ jurisdiction. In addition, both documents were in direct violation of Article 36 and Article 5 of the Chinese Constitution.⁴ Article 36 grants Chinese citizens the freedom of religious belief and Article 5 holds that all state organs must abide by the Constitution and the law.

As the human rights lawyers have repeated pointed out in their legal defenses, the Chinese government never banned Falun Gong. The persecution is a Communist Party political campaign. It is not based on the rule of law.

2 The Ministry of Civil Affairs of the PRC, 中华人民共和国民政部关于取缔法轮大法研究会的决定, <zhong hua ren min gong he guo min zheng bu guan yu qu di fa lun da fa yan jiu hui de jue ding> “Decision to Ban the Research Society of Falun Dafa by the Ministry of Civil Affairs of the People’s Republic of China,” July 22, 1999 <http://www.people.com.cn/GB/channel1/10/20000706/132286.html>

3 The Ministry of Public Security of the PRC. 中华人民共和国公安部通告（1999年7月22日）<zhong hua ren min gong he guo gong an bu tong gao> “Notice of Six Prohibitions from the Ministry of Public Security.” July 22, 1999 <http://www.people.com.cn/GB/channel1/10/20000706/132280.html>

4 Constitution of the People’s Republic of China, Articles 36 and 5, <http://www.usconstitution.net/china.html>.

Then why is it widely believed that Falun Gong was formally outlawed? It is the effect of the CCP's propaganda, as it has tried to legitimize an illegal political campaign by claiming in newspapers, on television, at conferences, and in speeches that the persecution of Falun Gong has been carried out "according to law."

2. How the regime managed to implement the persecution without any legal basis? There are several ways.

- 1) **Creating a new chain of command outside the realm of the legal system.** This chain of command was initiated by Jiang Zemin and functions through the CCP hierarchy. At its center is "the 6-10 Office." Neither the People's Congress nor the State Council has authorized its actions. Rather, approval and support for its deeds comes from the Communist Party. Today, thousands of 6-10 Office branches remain active throughout China.
- 2) **Using the existing Party system to interfere with the implementation of the law.** In particular, the CCP has made use of the Political and Judicial Committee that I mentioned in my opening remarks. The Political and Judicial Committee is the CCP body most often used to influence law-related organs from behind the scenes.
- 3) **Issuing internal memos, documents, circulars, or oral orders to direct the persecution.** The persecution is mostly carried out by internal documents marked as "classified" or even "top secret." Such documents can be issued at any level, but almost all are modified copies of orders that originated from the CCP Central Committee or its 610 Office.
- 4) **Article 300 of the Chinese Criminal Code, a vague and unconstitutional provision, is used to send Falun Gong practitioners to prison.** The implementation of this law on Falun Gong practitioners is based on Supreme Court and Procuratorate Interpretations, which are out of their jurisdiction to make on such issues, according to Chinese Legislation Law. In practice, almost all sentences are decided before the trials even begin.
- 5) **Depriving Falun Gong practitioners' rights of due process.** Through the above measures, the fate of most Falun Gong practitioners who are brought before a judge is decided before the practitioner even steps foot in the courtroom. Meanwhile, lawyers are forbidden to take Falun Gong cases. Even if lawyers take a case, they are generally prevented from making a full defense statement in court. Lawyers have been beaten up when going to try to interview their client. Others have been disbarred, abducted, or tortured later. Incidents have even occurred of practitioners and their lawyers were being beaten up in the courtroom. Key witnesses of the prosecutors never show up in court. Hearings typically last only a few minutes or hours. Judges have openly claimed on many occasions that they did not make the decision and the judgment. Taken together, these factors render Falun Gong trials a mockery of justice.
- 6) **Using the existing extrajudicial system of Reeducation-through-Labor, as well as mental hospitals and newly established brainwashing centers to jail and torture Falun Gong practitioners without any legal process.**
- 7) **The systematic, illegal use of torture along with impunity for perpetrators.** In China, torture is prohibited by law. In practice, the use of brutal torture tactics on Falun Gong practitioners is widespread and routine. This has been confirmed by the United Nations Special Rapporteur on Torture and many human rights groups. In a 2001 investigation by the *Washington Post*, a high ranking Chinese official acknowledged that violence used against Falun Gong practitioners was

part of a well-designed strategy.

3. What is the current status of China's legal system?

Given the large size of the victimized Falun Gong population, and the lengthy ongoing twelve-year campaign to suppress this group, the impact of the above-mentioned tactics on the rule of law in China has been significant. The CCP's well-established, sophisticated anti-Falun Gong tactics, including breaking the law to achieve its political goal, are easily applicable to other individuals and groups. As such, we are now seeing the following trends emerging, for which more specific examples are detailed in my European Parliament statement:

1) **Expanding the use of extralegal detention facilities and abductions.** For years, Falun Gong practitioners have been subjected to illegal abductions, arbitrary detentions, confiscation of property and computer equipment, and enforced disappearance. All of these measures have also become a feature of the crackdowns on human rights lawyers and activists, including the one in early 2011 after antigovernment protests in the Middle East ousted dictators. In addition, mental hospitals—whose political use was first intensified for Falun Gong—are now being used more and more frequently on non-Falun Gong petitioners, victims of housing demolition, and grassroots activists. The notorious “black jails” used to hold petitioners are similar and very likely originated from the brainwashing centers for Falun Gong.

2) **The expansion of police brutality and impunity.** Human rights lawyers like Gao Zhisheng and Teng Biao have reportedly being told that torture methods that were being used or could be used against them were initially devised for use against their Falun Gong clients.

3) **Falsely labeling other petitioners and activists as Falun Gong.** Since the regime established an exception to the rule of law for the Falun Gong group, it is easy now for local authorities to avoid responsibility and the punishment for social unrest, simply by labeling the victims as Falun Gong practitioners.

4. New Stage: Making the Bad Laws

Since all of the measures applied to Falun Gong practitioners, human rights activists, human rights lawyers, and artists like Ai Weiwei are against China own laws, the regime has drawn a lot of criticisms at home and abroad for its behavior. So, now the process has come to a new stage, whereby the CCP does not correct its wrongdoings but rather, amends existing laws to encompass its illegal activities.

For instance, the CCP has proposed an amendment to the Criminal Procedure Law, one that would effectively legalize the enforced disappearance.⁵ Although enforced disappearances have been widely used to persecute Falun Gong practitioners, the phenomenon only made international headlines with the disappearance of prominent artist and blogger Ai Weiwei. In response, rather than investigating and punishing those responsible, the CCP announced these amendments to the Criminal Procedure Law, which attempt to legalize enforced disappearance. Then, international and local critics can no longer claim the regime is violating its own law.

In addition, the regime is making several amendments and new definitions to other existing laws, changes that extend police power and makes the country further resemble a police state. One law is a newly release draft of an amendment to the Resident Identity Cards Law.⁶ The amendment was

⁵ <http://www.hrw.org/news/2011/09/01/china-don-t-legalize-secret-detention>

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discussed last week at the NPC Standing Committee. Two proposed changes caused controversy: adding fingerprints to residents' identity cards under the name of preventing counterfeiting and terrorism, as well as allowing police to check people's identity documents at train stations, airports and major events. To date, the police have only been allowed to citizens' ID card in an emergency or if the person is suspected of having committed a crime.

Even more recently, on Monday, the Standing Committee of the National People's Congress (NPC) passed a draft resolution on strengthening anti-terrorism efforts. The draft resolution defines a terrorist act, terrorist organization, and terrorist force for the first time in China's legal documents. However, the definition is extremely broad in scope, rendering it easy to persecute people for political or religious reasons under the rubric of anti-terrorism efforts.⁷

Why is the regime openly passing such bad laws? This is simply how the CCP is responding to criticism that it isn't following its own laws. Rather than changing its poor behavior to observe the law, it is changing the laws to legitimize the bad behavior.

Progress?

I would like to quote here Clive Ansley, a Canadian expert on the Chinese legal system:

Chinese officials most common tactic for diverting criticism of violations in the Chinese "judicial" system is to assert that Beijing's "legal" system, while not perfect, is moving in the right direction. The implication is that although it will take years to educate hundreds of thousands of police, prosecutors, and judges throughout the country to follow the law, the leadership is determined to do so. The leadership is committed to protecting human rights and implementing the "Rule of Law," so they claim.

The reality, however, is that the leadership in Beijing is *not* committed to implementing the "Rule of Law" in either the short term or the long term. On the contrary, China's unelected leaders are taking various measures to ensure that the 'Rule of Law' is never implemented in China under their watch—ever.

Conclusion

It is no secret that China is not a democratic country and that the political system is under the control of the Chinese Communist Party (CCP). Party Committees influence every government body. The legislative body, the National People's Congress, is just a rubber stamp for approving decisions already made by the Party. But how the CCP undermines and controls the legal system is not well known. I tried to explain is how this dynamic works and why China is actually a lawless state.

To conclude, in examining human rights abuses in China, it is important to keep in mind that we are not dealing with a state where the legal system is established and now needs to be perfected. We are dealing with a regime that does not respect its own laws. Instead, it systematically and intentionally breaks them and designs measures to circumvent the legal rights guaranteed to citizens.

<http://www.google.com/hostednews/afp/article/ALeqM5hyNGmpAHQvmBtQWQVEivOatVQWEw?docId=CNG.e953307fb21b1766114179006e2d47a2.531>

⁷ <http://www.globaltimes.cn/NEWS/tabid/99/ID/680840/Anti-terror-legal-dilemma-in-rights-and-security.aspx>