



Falun Dafa Association of NSW Inc

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

1 August 2005

Dear Committee Secretary

RE: Inquiry into the administration and operation of the Migration Act 1958

Thank you for the opportunity of making a contribution to the inquiry.

This submission will offer comment on the following Terms of Reference in relation to Falun Gong/Falun Dafa practitioners:

- a. DIMIA's processing and assessment of visa applications, migration detention and the deportation of people from Australia;
- b. the activities and involvement of DFAT and any other government agencies in processes surrounding the deportation of people from Australia;
- d. any related matters.

If requested to address the committee we propose to offer testimony relating to the above matters from practitioners who have sought protection and also from volunteers assisting them.

We trust that this submission will be of interest to the committee.

Yours sincerely

John Deller
President
Falun Dafa Association of NSW Inc
Contact: 89A Camden Street Newtown NSW 2042 Email: jdeller@iprimus.com.au Mob: 0410 979 384

In relation to Falun Gong practitioners who are nationals of the PRC and in need of humanitarian protection in Australia, we offer the following information in response to the Terms of Reference, which we believe is of vital import to this Inquiry.

RESPONSE TO TERM OF REFERENCE

a. **the administration and operation of the *Migration Act 1958*, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;**

1. During May 2005, four Falun Gong practitioners were amongst the detainees who were isolated and interviewed by three Chinese officials in Villawood Immigration Detention Centre. A letter asking for an explanation was sent to the Minister for Immigration and Multicultural and Indigenous Affairs on 31 May 2005.

- We received a reply on 27 July 2005 from a Mr Jim Williams, Assistant Secretary, Unauthorised Arrivals and Detention Operations Branch, advising in part that, "All detainees had access to lawyers – they were never refused access. Nobody asked to speak to their lawyer throughout this process".
- However, a Falun Gong practitioner who was interviewed by the Chinese officials confirmed that telephones, visitors, contact with lawyers and going out of the building were not allowed. (see attached letter from [REDACTED])

We are concerned this is another example where DIMIA places great effort in trying to deport Falun Gong practitioners and 'prove' the practitioner is not a refugee – and less effort in understanding the true extent of the persecution practitioners do face in China.

2. Amongst the practitioners that we know of who have applied for protection, only a very small percentage (about 4%) has been approved by DIMIA (see Item 10 - Summary of Issues for Falun Gong Refugee Applicants). The majority of cases have to go to the RRT. Contributing factors to this phenomena are:

a) the references to **inaccurate information on Falun Gong** provided by **DFAT in "country information"**: e.g. only "leaders" attract adverse attention from the authorities, people who do attract attention cannot exit China using real name on the passport, people can practise at home. (Refer to **d) Any Related Matters** for further explanation)

b) many did not bring supporting evidence of persecution experiences in China to Australia, as they were unaware they would have to 'prove' their suffering.

- c) tests on "Falun Gong knowledge" are conducted by those who do not understand what are important or unimportant to the practice (many examples can be provided)
3. DIMIA seems to expect that the applicants should know the existence of Immigration Laws and Migrant Agents / lawyers. Many Chinese refugees, particularly those without friends and family, do not have even this level of basic knowledge and that negatively impacts upon their chance of gaining protection. (Case examples can be provided)
 4. Practitioners can spend all their savings, plus borrowings to escape to Australia, expecting to receive protection and be welcomed in a democratic country because they are fleeing communist persecution.
 5. Language difficulty is also a big barrier. It is not realistic to expect every refugee to know their rights, such as the use of and the existence of the Interpreting Services - who, when, how people can use it. (common in the majority of practitioner's applications)
 6. Unfamiliarity with the processes and not knowing what to expect has lead to technical mistakes on the side of the applicant, e.g. failure to appear at the RRT hearing. (some cases in the early years of the persecution). Also the RRT has found practitioners to be "unreliable" because of cultural differences such as making eye contact (or not) and answering questions directly (or in a long round-about way).
 7. After failing the RRT, the applicant has basically lost the chance of protection because:
 - a) Federal Court review is limited to technical mistakes made by DIMIA or the RRT, rather than focusing on whether the person is a real refugee. As said above, the party who is more likely to make mistakes are the applicants, they do not have full knowledge of the law and the process, and are disadvantaged with language, social, cultural barriers (common in many practitioners applications)
 - b) the process of writing a "letter" to appeal to the Minister again requires legal and DIMIA knowledge. Most letters are rejected if not prepared by lawyers. (quite common)
 8. There is widespread circulation of misinformation regarding protection amongst the local Chinese community. For example: there were practitioners who went into hiding after arrival, because they did not know there is a thing called the "protection visa", or they've been wrongly advised not to seek help or they will be sent back to China. Even some migrant agents say to their client (in earlier years) that "no protection visa application has ever been successful". (Case example can be provided)
 9. Social and cultural differences between mainland China and the world are enormous. Particularly now, due to wide spread corruption and its wide spread acceptance, many things in China are done through money, regardless of whether the person is corrupt. This can lead to wrong expectations of the agents and the application process here in Australia. There are also dishonest Chinese migration agents in Australia. (very common)

10. Summary of Issues for Falun Gong Refugee Applicants

We understand at least 1000 PRC nationals apply for protection each year from and that only 77 were approved last year. Given the grave human rights situation in China, and the experiences of Falun Gong practitioners seeking protection, we have no doubt that a larger number of cases are genuine refugees and should be approved.

Since July 1999, we know of over 100 Falun Gong practitioners who have sought protection in Australia and a brief summary follows. However, we don't know all of the practitioners seeking protection and the real number are expected to be much higher. Without friends or family here, they may not manage or may be reluctant contact us.

- 4 approved by DIMIA
- around 40 approved by RRT after rejection by DIMIA
- around 8 approved by RRT after Federal Court
- around 20 at Federal Courts now
- around 5 at RRT now
- over 10 with the Minister or planning to go to the Minister with s48B/s417
- at least 5 cases now (and in the past) where the applicant did not have an RRT hearing
- at least 20 practitioners in Villawood Detention Centre (refer to attached example)
- about 7 in Baxter Detention Centre
- at least 3 deportations

EXAMPLE OF DETENTION IN AUSTRALIA

Ms W [REDACTED] is a doctor from Guangdong province who is currently in Villawood Detention Centre [REDACTED]. Her case was badly-handled by a migration agent, did not have an RRT hearing and was detained in 2003. She is now preparing an appeal to the Minister. She was also interviewed by the 3 the Chinese officials in Villawood. She began Falun Gong in 1997 and was arrested in December 1999 and detained for 25 days, after which she was under 'house arrest', a form of constant surveillance. She escaped to Australia in 2000 and was advised by a Chinese host family to "hide and not apply for refugee protection or you will be sent back".

EXAMPLE OF DEPORTATION FROM AUSTRALIA

We were unaware at the time, but a practitioner (name withheld here to protect her in now in China) was deported from Baxter Detention Centre in South Australia. She was drafting a letter of appeal to the Minister when the deportation occurred. She is from Tieling City, Liaoning Province and lost her job when the persecution began and her home was ransacked Falun Dafa books and printed materials confiscated. She was arrested in May 2001 and in July 2001 sent to Tieling City Detention Centre (labour camp). In 2002 we understand she came to Australia. We are trying to confirm what has happened to her now and are keen to work with relevant government departments to prevent future deportations.

EXAMPLE OF DEPORTATION OVERSEAS

Mr J [REDACTED], a Falun Gong practitioner who was refused asylum in Germany earlier this year and was deported to China and is now suffering in a labor camp.¹

¹ <http://clearharmony.net/articles/200504/25956.html>

RESPONSE TO TERM OF REFERENCE

- b. **the activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;**

We have heard that DFAT has Falun Dafa listed under their "cults" section for Country Information. If this is correct (and we are endeavouring to clarify that) it would seem to be cooperating with the propaganda that the Chinese communist party uses to maintain the persecution of Falun Gong practitioners.

We feel it may also be reflective of a broader influence where DFAT appears to focus on appeasing the Chinese government's concerns, and as such affecting the ability of DIMIA to make clear and accurate decisions for practitioners seeking protection.

RESPONSE TO TERM OF REFERENCE

- d. **any related matters;**

1) DIMIA's attitude to Falun Gong cases

We know of only 4 practitioners who have received protection by DIMIA and of another 48 who have received protection at the RRT (having been initially rejected by DIMIA). That means that the RRT has found **DIMIA's decision was wrong in over 90%** of these cases.

We find that startling figure demonstrates that DIMIA has either a serious lack of understanding of the severity and nature of the persecution that Falun Gong practitioners face in China - or it signals an intentional policy to not approve Falun Gong practitioner's applications, which may be linked to a policy of appeasement of the Chinese communist regime in (collaboration with DFAT for trade purposes).

We are also aware of a report on the ABC *Lateline* television program that interviewed a former DIMIA official who confirmed that Falun Gong cases were 'put in the bottom drawer'.

The common **incorrect assumptions** DIMIA make in order to refuse practitioners applications are set out briefly below along with further information that we believe is available to DIMIA, but is ignored. We also include brief information on the **6-10 office** set up to eliminate Falun Gong, as we find that DIMIA do not refer to this threat either.

DIMIA Assumption - Only Falun Gong "Leaders" Face Persecution

Typically DFAT sources of Country Information from 1999 to 2001 are referenced which indicate that only leaders or activists are at risk of attracting the adverse attention of the authorities. As the persecution has evolved, 'Leaders' of Falun Gong are no longer the only targets. 'Common practitioners', family, friends and workplaces of practitioners, overseas practitioners, as well as other non-practitioners have also become targets of the persecution

CNN.com Senior China Analyst, Willy Wo-Lap Lam quotes:

"Surveillance and harassment of sect members, who apparently do nothing more than practice their brand of slow breathing exercise at home, have been stepped up. There are reports that understaffed police authorities have recruited unemployed workers in the battle against the Falun Gong."² (*China's Suppression Carries a High Price, 9/02/01*)

As reported by Human Rights Watch report – *Dangerous Meditation*, January 2002:

"Other work units, especially those far removed from Beijing, had for a time overlooked solitary exercise and meditation until controls were tightened nationwide after the January 2001 deaths. Although followers presumably could continue with solitary practice at home, even private practice proved dangerous when it was brought to the attention of the police or to Party officials."

The US Department of State International Religious Freedom Report for 2002 confirms,

"During the period covered by this report, government repression of the Falun Gong spiritual movement continued. There have been thousands of cases of individuals receiving criminal, administrative, and extrajudicial punishment for engaging in Falun Gong practices, admitting that they believed in Falun Gong, or simply refusing to criticize the organization or its founder."³

"After the January 2001 self-immolations of five individuals claiming to be Falun Gong practitioners in Tiananmen Square, the Government initiated a comprehensive effort to round up practitioners not already in custody, and sanctioned the use of high pressure indoctrination tactics against such individuals in an effort to force them to renounce Falun Gong. Neighborhood committees, state institutions (including universities), and companies reportedly were ordered to send all known Falun Gong practitioners to intensive anti-Falun Gong study sessions. Even practitioners who had not protested or made other public demonstrations of belief were forced to attend such classes. Those who refused to recant their beliefs after weeks of intensive anti-Falun Gong instruction reportedly were sent to reeducation-through-labor camps, where, in some cases, beatings and torture were used to force them to recant their beliefs."⁴

The US Department of State Country Reports on Human Rights Practices 2002 (Released in March 2003) confirms:

"Since the Government banned the FLG in 1999, mere belief in the discipline, without any outward manifestation of its tenets, has been sufficient grounds for practitioners to receive punishments ranging from loss of employment to imprisonment, and in many cases, to suffer torture and death."⁵

² <http://www.cnn.com/2001/WORLD/asiapcf/east/02/05/china.willycolumn/index.html>

³ <http://www.state.gov/g/drl/rls/irf/2002/13870.htm> page 6

⁴ <http://www.state.gov/g/drl/rls/irf/2002/13870.htm> page 15

⁵ <http://www.state.gov/g/drl/rls/hrrpt/2002/18239.htm> page 18

DIMIA Assumption - Private Practice of Falun Gong Will Not Lead to Persecution

DIMIA conclude that Falun Gong practitioners can stay home and hide even if their faith is forbidden in their country and then their freedom of expression or belief will not be compromised.

However, this ignores the current and actual nature of the persecution against Falun Gong in China. In September 2003, the Chinese regime has called for a **“fight until the end”** against Falun Gong⁶. This vow was also reported in an AFP article titled, **“China Vows to Intensify Crackdown on Falungong”** which also stressed the Xinhua statement, **“to eradicate the Falungong”**.⁷

This message was again reinforced in **February 2005** by Luo Gan, China's top security official and one of nine members of the communist party's Politburo, in the latest issue of the party's *Qiushi* magazine, where he said it was crucial to **“fight against the Falun Gong”**.⁸

The intention is to eliminate the practice of Falun Gong and forcibly eliminate the beliefs of all practitioners – not just limit them to some form of ‘home practice’.

The following extract from a Washington Post article “Torture is Breaking Falun Gong”, August 2001 confirms that that the persecution is a campaign to eradicate belief and ‘staying home’ is not safe:

*“A university student in Beijing, Alex Hsu said, “They said if they didn’t achieve their goals, if we didn’t give up our beliefs, we’d be taken to the labor camp. **Reeducation through labor is a frightening thing to a Chinese person. We all knew we would be harmed and our lives would be in danger. We all knew someone who had died in the camps.**”⁹*

The **US Department of State Country Reports on Human Rights Practices - 2002** published in March 2003, describes the escalation of the persecution:

*“In 2001 the Government launched a massive anti-FLG propaganda campaign, initiated a comprehensive effort to round up practitioners not already in custody, and sanctioned the use of **high pressure indoctrination tactics in an effort to force practitioners to renounce the FLG.** Neighborhood committees, state institutions (including universities), and companies reportedly were ordered to send all known FLG practitioners to intensive anti-FLG study sessions. Even practitioners who had not protested or made other public demonstrations of belief reportedly were forced to attend such classes. Those who refused to recant their beliefs after weeks of intensive anti-FLG instruction reportedly were sent to reeducation-through-labor camps, where in some cases, beatings and torture were used to force them to recant¹⁰....”*

⁶ http://www.sunherald.com/mid/sunherald/news/breaking_news/6719805.htm
http://news.xinhuanet.com/english/2003-09/07/content_1067641.htm

⁷ AFP China vows to intensify crackdown on Falungong 2003-09-07 22:46 (New York)

⁸ <http://www.thestandard.com.hk/stdn/std/China/GC01Ad08.html>

⁹ “Torture Is Breaking Falun Gong - China Systematically Eradicating Group” by John Pomfret and Philip P. Pan
Washington Post Foreign Service, Sunday, August 5, 2001

¹⁰ page 24 <http://www.state.gov/g/drl/rls/hrrpt/2002/18239.htm>

Establishment of "6-10 offices" throughout China

The systematic and discriminatory nature of the persecution of Falun Gong in China is clearly evidenced by the actions of the "6-10 Office" (named after its date of inception) since June 1999. A description of the power and range held by the 6-10 office is compiled from various sources below:

In his statement before the **US Congressional-Executive Commission on China**, Dr Shiyu Zhou, Ph.D. quotes:

*"The primary mechanism used by Jiang Zemin to persecute Falun Gong is a notorious and unconstitutional organization called the "6-10 Office," which spans multiple levels of government, having absolute power over each level of administration in the Party as well as over the political and judiciary branches. Since its establishment in June of 1999, the 6-10 Office has become nothing short of China's modern day equivalent to the Gestapo, orchestrating a three-year long, horrific persecution against Falun Gong and its practitioners that has resulted in hundreds of thousands of cases of arbitrary detention, false imprisonment, defamation, kidnapping, torture, sexual and psychiatric abuse, disappearance, and murder."*¹¹

As described in the Falun Dafa Information Centre Report, *Jiang Zemin's Personal Crusade*¹²

"To implement the persecution, on June 10, 1999, Jiang established a "6-10 Office" – an illegal, above-the-law entity reporting directly to the Politburo, and with jurisdiction over the entire country. Utilizing a top-down, by-any-means-necessary approach, Jiang has whipped the nation's security apparatus into a frenzied system of bribery, extortion and systematic torture.....It is a system that has transformed regular Chinese cities and towns into "death traps," where "local police regularly torture residents to death," as reported in the Pulitzer-Prize winning series of articles by the Wall Street Journal's Ian Johnson."

"The "610 Office" is responsible for hundreds of thousands of cases of defamation, extortion, expulsion (from school and jobs), beatings, torture (medieval and modern), rape, mutilation, sodomy, forced abortions, electrocution, arbitrary detention, false imprisonment, torture, sexual and psychiatric abuse, disappearance, and murder."

The United States Congress House Resolution No. 188, passed unanimously by a 420-0 vote on July 24, 2002 also exposes the brutal nature of the 6-10 office:

*"[The persecution of Falun Gong] violates the Constitution of the People's Republic of China [...] Jiang Zemin's regime has created notorious government '610' offices throughout the People's Republic of China with the special task of overseeing the persecution of Falun Gong members through organized brainwashing, torture, and murder [...] Official measures have been taken to conceal all atrocities, such as the immediate cremation of victims, the blocking of autopsies, and the false labeling of deaths as from suicide or natural causes"*¹³

¹¹ Statement before Congressional-Executive Commission on China by Dr Shiyu Zhou, Ph. D. University of Pennsylvania & Rutgers University, *Human Rights and Rule of Law in China... or Lack Thereof* www.faluninfo.net

¹² FDI- Jiang Zemin's Personal Crusade: Why the Chinese Communist Party Leader Moved Against Falun Gong and How His Anti-Falun Gong Campaign Has Come to Dominate His Agenda
http://www.faluninfo.net/specialreports/jiangspersonalcrusade/#_ftnref7

¹³ <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2002&m=July&x=20020725140947larocque@pd.state.gov0.8919794&t=xarchives/xarchitem.html>

Conclusion

No Falun Gong practitioner should be returned to China while the current persecution exists.

DIMIA's approach to practitioner's applications for protection should acknowledge the serious harm and systematic and discriminatory nature of the persecution of Falun Gong in China.

To date we know of 2,676 documented cases¹⁴ where practitioners have died following police custody or detention in labour camps, while sources within China and US Ambassador Mark Palmer refer to 10,000 deaths¹⁵.

Unlike other human rights tragedies in Sudan, Iraq or Afghanistan, you won't see any Falun Gong practitioner being tortured in the media. In China, media can not access the labor camps and brain washing centres where Falun Gong practitioners are murdered and tortured in the thousands.

Is there any country, from where we would accept refugees, where our government *does not* speak up publicly to condemn the human rights situation in that country?

Whether it is Nigeria, Zimbabwe, Afghanistan or Iraq - our government does *rightly* condemn human rights abuses. But in the case of China, our government has remained eerily silent.

DFAT and our government should openly condemn the ongoing persecution of Falun Gong.

Tacit acceptance, through silence, sends a message that we in Australia place the highest importance on trade and business, which emboldens the Communist Chinese regime to continue to torture and kill innocent people.

Such compliance is complicity and a further degradation of our morality, and the hardening of our national heart to those is desperate need.

¹⁴ http://www.clearwisdom.net/emh/special_column/death_cases/death_list.html

¹⁵ <http://www.clearharmony.net/articles/200309/14970.html>

Regarding to me being interrogated by Chinese officials and forced lock up situation
(In the Manning Building)

From the 16th of May, 3 Chinese males and 1 female interpreter started interviewing some Chinese detainees being detained in Villawood Immigration Detention Centre; after being interviewed they were all locked up in the Manning building of Stage 2 inside VIDC. On the 18th of May around noon, I was called by a security guard to go into the interview room, where I saw 3 Chinese males, and 1 female interpreter, all wearing identification cards, with photos printed on top. On the table there was a voice recorder which was recording, a photo of me, and a big pile of my materials. The first thing they said was that they were from the People's Republic of China, and were here to visit the Chinese people being detained, helping us to resolve our problems. They wanted me to fill in a form (which was from the Department of Immigration and Multicultural and Indigenous Affairs, printed in both English and Chinese). They asked me about my full Chinese name, birthplace, date of birth and home address, workplace, previous places I worked, names of family members in China, on what visa did I come to Australia on and also my conditions in Australia. I asked them who they represented, the Chinese government or the Australian government. They said they were from neither of the two (but 2 days ago when they were interviewing some other Chinese detainees, they said that they were from the Chinese National Security Bureau). I then asked whether they were migration agents. They said no, they were only middlemen. I said to them, that as I didn't know who they were, I cannot answer any of their questions, besides they already have my files and information. I also said to them, that starting from the 16th, everybody that has been interviewed by them has been locked into a building that was specially used for keeping the Chinese in segregation, in there telephones, visitors, contact with lawyers going out of the building were all not allowed, food was brought in by the security guards; it was just like a zoo. Not only did you (Chinese officials) not help us but have to persecute us, your own people, you should feel ashamed. I also told them that a newspaper has already published this incident on front-page today; they asked which one was it, I said, the Australian Chinese Daily Newspaper. They replied by saying that they will report this situation to the DIMIA. After the interview I was sent to the Manning building like the others before me. In there I went through 15 days of hell. There were 37 people altogether, including 3 other FaLun Gong practitioners. DIMIA told us that we will be locked up for the next 2 or 3 weeks, and that this was a decision made by the Canberra immigration office. Some security guards told us we will be mandatorily sent back on a special plane; they have done this before, and will do it again. In 2004 there was a 6 months pregnant Chinese woman who faked her name in fear of being sent back to China, but in the end she was sent back anyway by DIMIA.

During the interview, even though I did not answer any of their questions, or fill in the form, but they did record my voice, had profile and my picture. (In my written materials submitted to DIMIA, I stated that I fled to Australia due to being persecuted in China.) So I was very afraid of being sent back. At the same time I was afraid that they might inquire into the FaLun Gong activities I was involved in, in Australia, and worried that my relatives living in China will be persecuted again because of me. In those 15 days, I was panic-stricken, deeply worried, was in constant terror of being sent back, and couldn't go to sleep.

Because of practicing FaLun Gong, I received cruel persecutions in China, and so fled to Australia, applied for protection visa, but I didn't get protection from the government and on the contrary was betrayed.

I hope the honest and kind people that read this will give us help and support.