

# **SUBMISSION TO THE SENATE INQUIRY INTO ASYLUM AND PROTECTION VISAS FOR CONSULAR OFFICIALS**

## ***Introduction***

1. I thank the Committee for the invitation extended to make a submission in relation to the following terms of reference:
  - (a) The response of Department of Immigration Multicultural and Indigenous Affairs, Department of Foreign Affairs and Trade, Attorney-General's Department and their respective Ministers to Mr. Chen Yonglin's approaches or requests to the Australian Government for asylum and/or a protection visa;
  - (b) The application of the Migration Act 1958, its regulations and guidelines concerning the maintenance of confidentiality for any consular officials or staff (including Mr. Chen Yonglin, and any other former consular officials or staff) who were applicants for territorial asylum and/or protection visas by Department of Immigration Multicultural and Indigenous Affairs, Department of Foreign Affairs and Trade and their respective Ministers;
  - (c) The involvement of Department of Foreign Affairs and Trade and the Minister in the deportation, search and discovery of Vivian Solon, and;
  - (d) any related matters
2. This submission addresses paragraphs (a), (b) and (d) of the Committee's Terms of Reference.
3. All clients quoted in this submission have, with the exception of now uncontactable West Papuan clients, expressly allowed me to quote or cite their experiences. In every case, except for Mr Chen Yong Lin and Ms Chen Hong, those persons were, or are, my clients and, as such, any waiver of legal professional privilege with respect to their statements is limited only to that divulged in this submission. Chen Yong Lin who is providing testimony in support of related Falun Gong legal proceedings has approved of my references to him, likewise Chen Hong.

## ***Summary***

4. The controversy over Chen Yong Lin's defection opens a window into the legal vacuum common to all defections. Sensitive asylum approaches are not treated as conventional protection visa applications.

5. In 1982 the then Departmental Head of the Immigration Department, John Menadue, called for a review of Australia's refugee and asylum procedures. I conducted that review. So far as asylum and defection is concerned, the recommendations of the review were not implemented.
6. A review of classified archival material, embracing the years 1937-1982, revealed that the Australian Government never had a coordinated or humane mechanism for responding to "sensitive" requests for asylum, be it from fleeing Jews or individual asylum seekers. The Lyons Government response to the secret reports of His Majesty's Ambassador to Berlin forwarded by the British Foreign Office with requests for advice from Australia on the question of Jewish refugees exhibited a moral weakness alive to this day. In 1937/8 Prime Minister Lyons rejected on several occasions suggestions that he should protest to the German Government over the persecution of Jews.<sup>1</sup>
7. Foreign policy in relation to asylum and regime change is muddled by *ad hoc* assessments and is shrouded in secrecy. Due to a pervasive diplomatic empathy within line departments' handling sensitive protection visa requests, indefensible decisions on protection have been made. This has been compounded by bureaucratic sycophancy and questionable appointments to the Refugee Review Tribunal (RRT), whose members lack independent tenure.
8. Ephemeral concerns in bilateral relations overshadow moral imperatives. Important lessons learned from our 1937-39 shame and the intelligence defeats during the Cold War have been ignored in the Australian asylum context. As with the twenty-five year *travail* of East Timorese asylum seekers, the Australian Foreign Ministry appears incapable of formulating a policy response to crimes against humanity in China. There is an absence of any sense of taking Ministerial responsibility for foreign policy issues of moral concern affecting China. Asked by journalist Sarah Ferguson how many Falun Gong were in Chinese labour camps, Foreign Minister Downer shrugged off the question: "The Americans have the figures but I can't confirm or deny them."<sup>2</sup>
9. Australian policy on China is often reactive and rarely proactive. The failure to constructively position Australian interests in terms of possible regime change includes the ungenerous treatment of high profile asylum seekers.
10. Coming after failed foreign policy advising before and during the Vietnam War, belated policy shifts during the anti-apartheid struggle in South Africa, in Indonesia-Australia relations over East Timor, West Papua and the

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<sup>1</sup> H.G. Wells, writing of his 1939 visit to Australia, described the Australian response to Hitler as illustrating, "...all that is most indecisive, disingenuous and dangerous...".

<sup>2</sup> Channel Nine's Sunday Program, July 17, 2005.

environment and the failure twice to predict regime change in Fiji, the Australian Foreign Ministry compared with counterparts in democracies such as Norway, Denmark, Sweden and New Zealand is hesitant when the moral choice is clear. DFAT's relationship with the Central Committee of the Chinese Communist Party is more of the same.

11. An overview of the Australian asylum / refugee experience suggests that the initiative for reform may not come from within government. Asylum requests should be seen first as a humanitarian obligation and not as a nuisance or opportunity. Requests for protection should be assessed from an ethical perspective and a proper balance should be drawn between the ephemeral *national interest* and the abiding *public interest* in having a government that observes moral imperatives and international law.

**(a) The response of Department of Immigration Multicultural and Indigenous Affairs, Department of Foreign Affairs and Trade, Attorney-General's Department and their respective Ministers to Mr. Chen Yonglin's approaches or requests to the Australian Government for asylum and/or a protection visa;**

12. An inquiry into the response to Chinese consulate asylum seeker Chen Yong Lin's request for protection raises issues of foreign policy, international law and immigration procedure. Chen Yong-Lin's experience with DIMIA/DFAT should be seen in perspective.

### ***Foreign Policy and China***

13. The prime emphasis that successive Australian governments place on trade with China raises issues of moral concern. An eminent Professor of Law, Yuan Hong Bing<sup>3</sup>, argues that democratisation of China is not a necessary concomitant of the expanded world trading position of China. Professor Yuan argues that the Central Committee of the Chinese Communist Party (CCCP) is now essentially fascist.

14. We should recall that public acclaim in the late 1930's for Germany's economic revival under National Socialism included a failure to take early action against fascism. There are parallels between the style of Nazi fascist leadership and the emergence of dictatorial Central Committee control of the Chinese Communist Party. Widespread coercion and suppression within the Communist Party, forced labour camps, torture and detention of opponents

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<sup>3</sup> Professor Yuan Hong Bing is a former prisoner, and well known democracy activist. He was recently granted an Australian protection visa on 22 July 2005 after a 12-month delay.

and hostile extra-territorial surveillance within émigré populations is reminiscent of Nazism.

15. In recent years, whilst the Chinese Communist Party processes of internal consultation were progressively strangled from the top, China developed an ostensibly more open foreign policy. Not only in WTO negotiations but in a variety of bilateral negotiations with its neighbours China has embarked on a policy of settling, territorial border disputes. In maritime Asia where China now sits as “+ 1” to ASEAN, China has pursued an active diplomacy across to the Pacific Rim.
16. At UN level China has sought to neutralise criticism. Falun Gong complaints to the United Nations Human Rights Commission (UNHRC) have been to a Committee of which China was a member. After the 1999 post-ballot violence in East Timor, China joined peacekeeping measures abroad for the first time by sending police contingents to join the UN peace-keeping mission, established under Article 7 of the UN Charter. These contingents were disciplined and efficient reflecting well on a professional police force.
17. The Central Committee’s internal security measures contradict the apparently more worldly approach of the Chinese leadership. The magnitude of China’s rural to urban population shift is unprecedented in world history. The Central Committee, now ruling a country with a rapidly widening rich – poor gap, has reacted ruthlessly to social stability problems facing the nation. The silence of China’s trading partner, Australia, which has a declared interest in economic and political stability within China, is noted by pro democracy groups. Australian support for a resumption of defence technology sales to China by the European Union was unfavourably commented upon in the Falun Gong message to more than 100 million practitioners. If the oppressed elements in China mature into a free and democratic China, Australian foreign policy, run as ever by a coterie who survive political vicissitudes, will once more have backed the wrong horse.
18. The recent suggestion by the Australian Foreign Minister that President Mugabe of Zimbabwe might be reported to the International Criminal Court sits uneasily with Australian silence over the ongoing ruthless repression of Chinese peasants forcibly evicted without compensation and in some instances killed by security forces; the presence of more than 60,000 alleged Falun Gong practitioners in labour camps and the frequent disappearance and murder of citizens. In June 2005 clashes arose near Dingshou City, Hebei Province. Four farmers were killed after protesting the requisition of their land without compensation to meet urban industrial planning requirements.

19. Recognising these challenges, the CCCP moved in recent years to strengthen internal security. A broad rearrangement of the State Security apparatus was undertaken throughout 1999 – 2002. The prefectural control of dissent was further centralised by a rearrangement of the State security functions. As an outcome of near global agitation by the Falun Gong movement, the activities of the notorious Gestapo-like 610 Office have spread abroad.<sup>4</sup> The 610 Office is but one of many branches of the State Security apparatus dedicated to controlling discreet elements of the population and cohorts abroad. The Falun Gong movement has been more successful than other groups in drawing attention to persecutory actions.
20. China's efforts at intelligence gathering abroad have been enhanced in recent years. This activity is coextensive to internal security initiatives and diplomacy.
21. During 1999-2003 a purge took place within top circles of the Ministry of State Security (MSS). Many officials were arrested and/or disappeared. The functions of the State Security apparatus descend from the ruthless Central Committee Head of Politics/Justice Luo Gan through Zhou Yong Kan Minister, Ministry of Public Security (MPS), and, Xu Shi Yao, Minister responsible for the Ministry of State Security (MSS). Elements of the MPS and MSS are in active liaison with the Australian Secret Intelligence Service (ASIS), the Australian Security Intelligence Organisation (ASIO) and the Australian Federal Police (AFP).<sup>5</sup>
22. The suppression of the formerly officially promoted Falun Gong practice is directed by the No. 26 Bureau, within the MPS, currently led by Zhang Yue. The 610 Office, which recently changed its official name "610" to "No. 26 Bureau", reflects the creation of a public security team established by proclamation on 10 June 1999 (hence "610") to suppress the Falun Dafa or Falun Gong movement. The writ given to the 610 Office included the establishment at provincial and city level of 610 Offices. The story for the CCCP now that it has lined itself up against more than 100 million Falun Gong followers and countless sympathisers is yet to be played out. Former Chinese T.V. anchorwoman Li Ying provides an important insight into the historic events that saw the Falun Gong leader flee to Washington from where he leads followers who outnumber the entire Chinese Communist Party membership.

"In May 1994 I went to Canada following an invitation by the Canadian Broadcasting Commission. I travelled on an official passport and stayed for two weeks.

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<sup>4</sup> One of the documents brought to Australia by defector Hau Feng Jun outlines Beijing's Three Year Plan to act decisively against the Falun Gong at home and abroad.

<sup>5</sup> Hamish McDonald and Craig Skehan, "In from the Cold", *Sydney Morning Herald*, November 24, 2003.

I continued working as a back host, anchor woman and reporter with the Guangdong Broadcasting Agency. In December 1994 my friend told me about Falun Gong and asked me if I wanted to accompany her to a lesson in Guangzhou City by the Falun Gong Master Li Hongzi but it was booked out. On 5 March 1995 my friend invited me to watch Falun Gong exercising in the park in Guangzhou City. I picked up a book and then tried some exercises. I cannot name my friend as this may endanger her safety.

At home I read the book *Zhuan Fa Lun* and I was impressed. I told my co-workers at the Radio Station. The same week I went back to the park for early morning exercises. I picked up a video tape of the exercises and I was given some lessons.

At that time some Government agencies supported Falun Da Fa so I was able to indirectly mention the Falun Gong on Radio. In 1996 or 1997 someone told me that the Guangdong Qi Gong Association for Meditation and Martial Arts had been invited by the Guangdong Qi Gong Association to give a lesson and the invitation was a follow-up. The conference in 1997 was newsworthy and it was covered by T.V and Radio. I participated as a practitioner.

In 1997 I met a fellow practitioner Chen Cheng-Yong at a group study. In 1998 I met Dai Zhi Zhen a woman Falun Da Fa practitioner at some exercises. On one occasion I took a video camera with me to film a large group exercise. My friends who worked in T.V stations helped to copy and distribute the tapes.

For the next two years I went to the park each morning for the exercises with practitioners who numbered about 20. I came to know Chen Cheng-Yong as "A Yong" – this was his nickname.

Later I became aware of poor relations between the Master Li Hongzi and the Qi Gong owing to a decision by the Master to withdraw the official association with Qi Gong. Some media reporting on the split said that the Qi Gong was trying to exploit financially the Falun Gong connection. Things started to go bad after that. We commenced using the expression Falun Da Fa but many people use the terms "Falun Gong" and "Falun Da Fa" interchangeably.

From 25 April 1999 until 20 July 1999 my co-workers and friends in high places in the media warned me to be cautious about the Falun Gong. I was told by high officials in these media outlets that intelligence agents were infiltrating the Falun Gong.

On 20 July 1999 a practitioner telephoned me and told me that Government suppression of Falun Gong had started. I was told that e-mail and other facilities had been blocked in North-East China. I trusted this practitioner as he was a former adviser in a national agency. I then spread the news by telephoning fellow practitioners.

Early on 21 July 1999 at about 6.30am I went by bus to the Provincial Government Offices in Guangzhou City. When I reached the Offices I saw more than a thousand other practitioners who seemed to be arriving individually and in groups. The Police arrived around 8.00am. They were armed which was unusual. They were not ordinary Police as they wore body armour and helmets.

The Police took us all away on buses. I was taken to the Eastern Suburbs and released without being questioned at all. A Police Officer told us not to go back to the City. I took a bus back to the same place. The police were still there. I watched for a while and then went back to work.

At about 1.00pm the same day I left work. I went back to the City Government Offices and joined other practitioners in the park opposite. I just sat there silently with the other practitioners. I saw two persons who I understood to be representatives of our practitioners enter the Offices.

At about 2.00pm the Police again put us on the buses to the Eastern Suburbs and let us go. Again my name was not taken but the police took videos. I took a bus back to work arriving about 4.00pm. The Party Committee Leader at the Radio Station called a meeting in the main studio. The Station head, Zeng Guang Xing spoke. All present were sitting. I heard Mr Zeng say, "I have five letters here from the Communist Party Central Committee. One of them is from President Jiang Ze Min."

President Jiang Ze Min was quoted as saying that former Head of Liberation Army Medicine, Li Qi Hua who had been in all the struggles of the Communist party since 1928 had written an article about the Falun Gong being very good. The president was quoted as saying that he could not accept that such a famous military doctor could become a Falun Gong practitioner. The President was further quoted as saying that he couldn't accept the 25 April 1999 incident when 10,000 practitioners came to Beijing. The President was quoted as saying that all Party members should be re-educated and that he forbade any Party member from practising Falun Da Fa. Mr Zheng concluded by saying that all media was to deliver this message.

After the meeting my supervisor told me to stop practising Falun Gong. I said, "That's impossible."

About a week later Ling Ling called me to a meeting with the Head of the Station, Zhang Yun Jiang. Mr Zhang said words to the effect, "The Central Government has already ordered Party Members to stop practising Falun Gong so you must also, you must stop because you may lose your job and privileges." I said, "I can always have another job but I can only have one life."

They did not make me sign a form renouncing Falun Gong. Later a Party Official known to me told me that they told the Station Party Committee representatives that I had already left Falun Gong and this is why they left me alone.

Some time after this, maybe a week or so, I told Chen Cheng-Yong about my experiences. He told me that he had been at the Provincial Offices and City Offices with practitioners on 21 July but I had not seen him. After this Chen Cheng-Yong and I stayed in regular contact. We practised at home and sometimes Chen Cheng-Yong came and joined myself and other practitioners at some other practitioner's homes. Sometimes we met in coffee shops or restaurants.

About this time in late July 1999 I heard on China Central T.V which usually carried Party announcements, an announcement that the Central Committee of the Chinese Communist Party had established a task-force to deal with anything related to Falun Gong. The announcer mentioned six or seven Party Officials who composed the task-force. I recall two names that were mentioned, namely, Li Lan Qing and Luo Gan. I became worried because I knew Luo Gan was the Central Committee Member directing political issues related to Justice.

Over the next few months the propaganda started at the Broadcasting Centre to criminalise the Falun Gong. I told Chen Cheng-Yong about this propaganda and his words were to the effect, "I know that it's all made up. We should go to Beijing and appeal." This sentiment was also mine and I heard other practitioners say the same. We also heard a rumour that Master Li Hongzi would be tried in absentia. In this period some

practitioners told me that they had been arrested by policemen who said they were from the "610 Office." It was not until I was arrested in February 2001 that I learnt that "610" was a reference to a Central Communist Party Committee decision affecting the Falun Gong made on 10 June 1999.

I said to Chen Cheng-Yong, "I can't go to Beijing now as I have a lot going at work to handle."

In late September 1999 Chen Cheng-Yong asked me if I could travel to Beijing with him to tell the Central Government that the Master Li Hongzi was not a criminal. Again I couldn't go. I am informed and verily believe that Chen Cheng-Yong went to Beijing on the National Day Week starting October First.

I next spoke to Chen Cheng-Yong a few days later. He telephoned me and said he was back in Guangzhou. He said there were many practitioners in Beijing waiting to be witnesses in the case against Master Li Hongzi but there were no such case. Chen Cheng-Yong said, "The Government is too gutless to try Master Li in his absence because Beijing will be swamped with practitioners."

Over the next two weeks I talked with other practitioners including Chen Cheng-Yong about going to Beijing to tell my own practising story about the Falun Da Fa exercises making me healthier. I wanted to say to the Government that Falun Gong was peaceful for the mind and healthier for the body.

On 5 January 2000 I asked the Radio Station for fifteen days leave. I did not give a reason. My leave was approved. I believe my superior thought I was going to decorate my new apartment at room 501, no. 20 Bai Rong Yuang Zi Chang Road, Guangzhou. The apartment had been allocated to me by the Station. I rang Chen Cheng-Yong and other practitioners and said I was going to Beijing. Chen Cheng-Yong said he could get some leave and come with me. So I booked the tickets for Chen Cheng-Yong and myself. I also used Chen Cheng-Yong's identity card to pay the compulsory insurance for his flight. Chen Cheng-Yong and I agreed we would write a statement about our experiences with Falun Gong. On 6 January 2000 I left a letter on my desk to the Head of the Radio Station saying I was going to Beijing and may be arrested.

Chen Cheng-Yong and I took the 0820 flight to Beijing on 7 January 2000. At 10:00 I telephoned my co-worker at the Radio Station and asked her to deliver the letter from desk. Chen Cheng-Yong told me that he had not told his workplace but he had left a note for his sister, Chen Cheng Yan, telling her that he was going somewhere and to keep the Falun Gong book in a safe place.

Chen Cheng-Yong and I took a bus to Tiananmen Square. At the square a plain clothes policeman said "Where are you going, where did you come from?" I just smiled and did not answer. We took another bus to the Central Party Appeals Office which is co-located with the Government Appeal Office.

We were walking around trying to find the right building. We walked past a group of people who looked surprised. We realised we were in the wrong place and turned around but the same people surrounded us and asked for our Identity Papers. One of the group said, "They're from Guangzhou!" Another said, "What are you doing here?" We both said, "We came to appeal." Someone in the group said, "Are you with Falun Gong?" We said, "Yes".

We were arrested and placed in a van. The van drove us to the Guangdong Government Office in Beijing. There were many Police standing around.

We were placed before two Officials in the room – a man and a woman. We both said, “We came here to appeal. You are too busy to deal with us we have letters to deliver you can just present them to the right persons and we’ll leave.” The Officials asked for the telephone numbers of our workplaces and left. At the same time a policeman said, “Appeals are for Westerners – you are wasting your time.”

The male Official returned and said to me, “I have just contacted your Office. Your boss just told me that he was totally surprised as he had only just received a letter from you.” The male said to the female Official, “She’s really with a Radio Station.” The male Official also said to Chen Cheng-Yong that he had checked. Chen Cheng-Yong said, “I have to go back to work tomorrow.” The male Official said, “No, No, no way for you to go by yourself.”

It was then explained to us that we had to go home in custody. The Official said, “You both have committed the crime of disturbing the social order. I have reserved two seats for you to fly back on the last flight around 6 o’clock pm. It happens two police officers are going back to Guangzhou for a holiday – you will be escorted by them.”

At Guangzhou Airport the Head of the Radio Station along with about 8 Station Officials met us. There was also two uniformed Yue Xiu District Police Officers – the leader of whom was a woman, Liang Guo Zhen. The police took me away.

Because Chen Cheng-Yong came from a different District he had to stay and wait with the original escort for his Hai Zhu District Police to arrive. He waved goodbye to me. In China each citizen is answerable to his Neighbourhood Committee and is supervised by his District Police.

On Saturday 8 January 2000 I telephoned Chen Cheng-Yong’s home. His father answered. I asked him if Chen Cheng-Yong was home and he said, “No.” I told him about the Beijing trip and our arrest. He said, “No wonder the uniformed police from Hai Zhu District came and searched. They took away all of the Falun Gong books but they did not tell me about Chen Cheng-Yong’s arrest.”

On Monday 10 January 2000 I reported to work. I was suspended from work and told by Li Zheng Xiang to stay in the Radio Station Library. I was told I could not leave nor could I resign. I remained in the library on one-tenth of my salary doing newspaper clippings and other menial tasks until I fled Guangzhou on 30 December 2001.

On 23 January Chen Cheng-Yong telephoned me. He said, “I’ve been held for 15 days. I have only just been released. We should meet.” I suggested we meet at a restaurant in the Li Wan District. We met about 30 minutes later. Chen Cheng-Yong had not been home. I told him about the search on his home. Two other practitioners known to me were present. I cannot name them as they may be at risk if I do.

Chen Cheng-Yong told us that he was interrogated for many hours on 7 January 2000 and denied sleep over long periods. Chen Cheng-Yong was smelly, long haired and unshaven. We discussed the future. I recall clearly Chen Cheng-Yong saying, “The police warned me not to practice Falun Da Fa but I said back to them that Falun Da Fa is good. They became angry and made me kneel down.”

After this we all commenced practising secretly at home. We distributed flyers and used the internet.

I was asked by the Radio Station to reimburse the air fare booked by the police.... I was forced to pay for the return fare of one of the police officers plus my return. His name on the ticket is Liu Wei.... The Radio Station demanded that I repay the costs because I had gone to Beijing to appeal for the Falun gong and had been returned.... Later, Chen Cheng-Yong told me that the police had forced him to pay the airfare for himself and one of the escorting police.

Very early on the morning of 13 May 2000 Chen Cheng-Yong telephoned me. He said "Today is Falun Da Fa Day I am going to Guangzhou Main Park to perform some exercises do you want to go?" I said, "It is very dangerous I have some brochures to print from the Falun Da Fa website. I cannot go." Later that afternoon Chen Cheng-Yong telephoned me and said, "I went alone to the Park and practised, there were old men there and the police didn't find me." He sounded very happy.

Several days later Chen Cheng-Yong, myself and other practitioners distributed the brochures. At night we also pasted posters on street poles and put brochures into mailboxes.

In July 2000 Chen Cheng-Yong told me that he had been arrested again and held for more than a week. He told me that he had been made to pay more than two thousand Ren min Bi (RMB) for his imprisonment costs. I was surprised and he explained to me that he had been held in an empty school by two workers from workplace. He told me he believed this was his workplace. He told me he believed this was the direction of the 610 Office.

We continued our activity all through until August 2000. This included exchanging experiences over the internet with other practitioners all over China. We used the National ISP with a proxy server that was changed at random. I verily believe that there is no other approved ISP in China except for a special arrangement out of Hong Kong.

In October or November 2000 Chen Cheng-Yong telephoned me. He said, "I've heard something about the counter-measures against us being upgraded you better escape." Several days after Chen Cheng-Yong's call the Yue Xiu District police came to my home and asked me if I knew where Chen Cheng-Yong and his sister were. I told them I didn't know.

A few days later I met Chen Cheng-Yong's father who said to me, "the 610 Officers came to my house and questioned me about Chen-Cheng-Yong's whereabouts. They asked me for his phone number and told me to tell him to stop practising or he will be sent to a re-education agency. I had to give Chen Cheng-Yong's pager number to them. Later Chen Cheng-Yong rang me and asked me, "how could you do this." When Chen Cheng-Yong's father was telling me this he cried and said his heart was broken.

In late February 2001 I was arrested and held at Ren Min Street Police Station. The next day I was moved to a compulsory shelter for homeless travellers I knew as Cheng Cheng. In China people can be held in such shelters until their circumstances are investigated. There a woman police officer, Liang Guo Zhen, told me they knew where Chen Cheng-Yong was because of a post mark on a letter from Chan Cheng-Yong to his father. This was news to me.

One night I was practising exercises in my room. A man who I knew as Mr Liang the Deputy Chief of the Ren Min Street Police Station, Yue Xiu District told me to stop exercising. I said, "Who orders this?" He said, "The 610 Office." I asked "Why "610" Office?" Liang, said, "Because it was established on June 10<sup>th</sup>." One week later while I

was still in prison a man called. Long, who said he was from the 610 Office, told me that Chen Cheng-Yong was wanted all over China by the 610 Office.

Before I was released in early March 2001 another guard, Jiang Jia hui, who also said he was from the 610 Office told me words to the effect, "We know Chen Cheng-Yong was wanted all over China by the 610 Office.

Before I was released in early March 2001 another guard, Jiang Jia Hui, who also said he was from the 610 Office told me words to the effect, "we know Chen Cheng-Yong is now back in Guangzhou we're going to get him." I said, "How do you know." He said "Someone saw Chen and his sister putting up posters and told us."

In July 2001 my friend, a practitioner known to me, told me that Chen Cheng-Yong had been found dead in an empty house. Sometime afterwards I heard that Chen Cheng-Yong's father had also died.

On 30 December 2001 I escaped from China."<sup>6</sup>

23. As an important material witness, Ms Li gave her Affidavit abroad while she waits to provide her evidence in anticipated legal proceedings on behalf of Chen Cheng-Yong's Australian widow and child who currently live on Australian social security. It is to be hoped that DFAT / DIMIA facilitate MS Li's entry to Australia to give evidence in NSW Supreme Court Compensation to Relatives proceedings against the Chinese Government.

24. Many career military, and public security officials, oppose the activities of the 610 Office. Career police officer Hau Feng Jun, who arrived in Australia on 16 February 2005, describes his transfer into the 610 Office:

"I enjoyed my general police duties from 1997 until early September 2001. I had no disciplinary problems and I was a good officer. By that time I had three stars on my shoulders and one stripe – one star for each four years. I do not know what the equivalent rank is in English. When I was on general police duties I felt righteous arresting thieves and violent criminals, including drug dealers, but in or about June / July 2001, the Tian Jin Police Bureau set up a special unit known as the National Security Protection Bureau ("NSPB"). I am informed and verily believe the NSPB was an initiative of Luo Gan who is a Central Communist Party member responsible for security.

In June / July 2001, all police stations – and there are eight in Tian Jin City – received advice that 50 to 80 police officers were required from Tian Jin Police District to join the new National Security Protection Bureau office in Tian Jin. I was informed and verily believe that the heads of each of the eight District Police Stations were called in and asked to inform their station staff that applications were invited to join the new Bureau. There was an open website for this and I remember that only one person volunteered from my branch at He Ping District. This was Li Kang Zhi from the Jie Fang Qiao Police Station.

I did not volunteer because I had had direct contact with Falun Gong practitioners in April 1999 during the incident in front of Tian Jin Educational College. I was informed at that time

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<sup>6</sup> Affidavit affirmed 19 February, 2003.

by my superiors that there was a Falun Gong protest over an article that had been published in a college magazine by a Professor He Zuo Xiu who had denounced the Falun Gong.

For three days, Falun Gong practitioners stood in front of the Tian Jin College asking the College to explain the truth about Falun Gong and to apologise. I was on duty and I recall that on the first day there were about 2000 practitioners. On the third day there were about 5000 practitioners. I was one of the Tian Jin Police Bureau Officers in the anti-riot squad who was sent to control the crowd. I observed that the Falun Gong were mostly elderly, peaceful and not carrying sticks or bricks. They were peaceful and even the ground was clean after they left. I learnt at that time that they had a problem with the central party in Beijing but so far as I was concerned they were peaceful, ordinary people.

Because I had personally observed the treatment of the Falun Gong, I regarded them as totally different from ordinary law-breakers and I did not want to go into the 610 Office as the National Security Bureau was popularly known to suppress them. I was aware that 610 referred to the 10<sup>th</sup> June 1999 proclamation by the Chinese Communist Party suppressing the Falun Gong.

Unfortunately, due to the lack of volunteers, our police superiors put all of the police's numbers in a computer and chose us randomly on the basis of the following criteria:

- a) Officers had to be under 40 years of age;
- b) They had to possess a diploma-level education or above;
- c) They must be members of the Chinese Communist Party.

My number went in because I met the criteria and I was chosen.

I was sent to the 610 Office in early September 2001. Until 17 April 2002, I worked on the Human Resources and Analysis Branch studying the membership and structure of the Falun Gong in Tian Jin city. Soon I came to realise what the 610 Office was about. Normally, in our police rules and procedures and the criminal code, police cannot detain suspects for more than 24 hours without them being charged. Our instructions were to charge persons within 12 hours. It was different with 610 Office detainees. There were no restrictions on holding detainees who were Falun Gong.”

We did not have special cells at the 610 Office which was located in another part of Tian Jin City at 41 An Shan Road, He Ping District. We wore uniforms for formal occasions but our work was done in plain clothes. Interrogations were done locally in whatever police district cell persons were detained within. Another difference between Falun Gong detainees and others were that normally under proper procedures, detainees did not have to be handcuffed and shackled, yet Falun Gong went straight away into handcuffs and shackles, without being charged. There were no restrictions on beating Falun Gong practitioners.<sup>7</sup>

25. Defector Hau was an Analyst within No 26 (610 Office) of the Ministry of Public Security based in Tian Jin City. He has brought credible evidence of

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<sup>7</sup> Affidavit affirmed 20 May 2005.

the workings of the 610 Office, its personnel and informants abroad including documentary evidence of informant placement. The material includes either direct identification or inferential identification of paid agents including *agents provocateur* who in one case lured a person now serving a lengthy term of imprisonment in China.

26. Another defector "Z", who cannot be named at this time, describes his experience of having the 610 Office within his Headquarters as follows:

"On [REDACTED] 1997 I was promoted to Police Chief (grade: Deputy Section Chief) at the Local Police Station, [REDACTED] Branch of the Public Security Bureau, [REDACTED] City. On or about 25 April 1999 I heard in the course of my police duties that there had been a massive peaceful demonstration in Beijing of around 10,000 Falun Gong practitioners and in consequence the Central Committee of the Communist Party had banned any further activities by the Falun Gong. I became aware through instructions from my superiors that we were to identify and detain whenever possible Falun Gong practitioners. In the course of that work I secured some Falun Gong material which I read. I did not think it was bad at all but I was not interested in becoming a participant. I recall that on one occasion I was responsible for drawing up some lists of suspected or identified Falun Gong practitioners. I transmitted the list to my superiors.

I became morally concerned about the investigation of Falun Gong. On 14 March 2002, my colleague and friend [REDACTED] told me that on [REDACTED] whilst he ([REDACTED]) was on duty, a [REDACTED] in the [REDACTED] Hospital [REDACTED] district, [REDACTED], had been arrested by officers in my district and taken to my police station for interrogation. He was held in an interrogation room on the second floor. Whilst [REDACTED] was in charge of the police station Officer [REDACTED] and his team were directly involved in interrogation of persons on the second floor. [REDACTED]'s duties were to oversight the interrogations going on in the various interrogation rooms on the second floor.

Because the elevator did not work at night in the police station it was necessary for [REDACTED] to climb the stairs to the fifth floor. [REDACTED] worked on the fifth floor and at about 9pm on that night, [REDACTED], when he was returning from duty alone he was climbing the stairs. [REDACTED] told me that when he reached the second floor he could hear what he recognised to be the sounds of interrogation teams at work. The door of one of the interrogation rooms on the second floor was open and [REDACTED] recognised [REDACTED] and his team. In the room [REDACTED] saw a naked person with his head in the rungs of a chair from behind almost on his knees with his hands handcuffed behind his back. [REDACTED] noticed that most of the person's naked body was red and swollen which he said that he recognised as obvious signs of a physical beating. There were five to six persons in the room including [REDACTED]. [REDACTED] told me he saw two of the policemen holding electric batons. [REDACTED] said that he went upstairs to his own office and thought about what he had seen.

He was very upset and began to realise what the State was doing to the Falun Gong. He did not know at that time who the naked person was. He went back down to the second floor to look again. As he reached the second floor he heard [REDACTED], whose voice he recognised, call out from one of the interconnecting offices on the second floor words to the effect, "You better stop interrogating in your room because the one in this other room has died". [REDACTED] further told me that he went back to the room where he had seen the naked man and saw what he recognised to be a corpse. At that time there

were still two or three police officers in the room with the corpse. There was a quietness between the officers and they seemed to be in an apprehensive mood.

Also on [REDACTED], when I resumed duty I met a female police officer on the [REDACTED] floor. She told me that the [REDACTED]'s wife was called [REDACTED] and [REDACTED] was in hospital. By this comment I formed the belief that [REDACTED] was in hospital due to her treatment also by the police interrogators. I can identify the female officer but I do not wish to for her own protection. There are other matters I can depose to as well but I am fearful for the safety of police officers my evidence might implicate in terms of disloyalty.

I verily believe that I am not alone in the Public Security Bureau in being opposed to the torture and killing of police suspects whether they are Falun Gong or any other persons in custody. I am informed and verily believe that [REDACTED]'s body was sent to [REDACTED] District Peoples Morgue where a special detail of police officers were sent to stop anyone from seeing or photographing the body. Likewise, I was informed and verily believe that a police detail was sent to prevent the deceased's wife, [REDACTED], from being similarly photographed or interviewed.

During the course of my training I was fully informed as to the dangers associated with over-applying the electric truncheon. I was specifically warned in my training that over-application of the electric truncheon may cause a heart attack for a susceptible person."<sup>8</sup>

27. There has been independent verification of the above-mentioned murder of a medical officer who was a Falun Gong practitioner. After "Z" arrived in Australia he lodged his protection visa application at a DIMIA front desk. Included in the application was documentary proof of "Z"'s rank in the Public Security Bureau including a Class Graduation and active service photographs. One photograph included an explanation that one of his identified graduates was now serving abroad undercover. Z gave detailed evidence of the 610 Office activities and his rejection as a Roman Catholic of the persecution and murder of citizens.
28. "Z"'s protection application was rejected. At a later date, "Z"'s residence was broken into, his set of photographs, his laptop and other materials were taken. "Z" had to be taken into protection and moved interstate. An application to the RRT for a review of the DIMIA decision was dealt with in a prompt and insightful manner by the Deputy Principal Tribunal Member who is a former DFAT officer. The Refugee Review Tribunal was unable to find any record of the photographs in the DIMIA file. Fortunately, by the time of the break-in, the originals were in the custody of my office.
29. China's overseas intelligence information reporting lines run not only through bureaux that embrace overt military intelligence gathering but through the national Defence Department and the MPS. Informant recruitment is a traditional activity of state control. MPS informants operate in a decentralised structure. Informants from, for example Tian Jin province / city are both

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<sup>8</sup> Affidavit affirmed 8 January 2004.

recruited and report direct to home town controllers in the Tian Jin provincial and city bureaux. This intelligence is passed to the No. 26 Bureau in the MPS Headquarters, Beijing. This intelligence function mixes what in the West is a separation between domestic and overseas intelligence, eg. FBI / CIA, MI5 / MI6, ASIO / ASIS.

30. It is important to bear the latter distinction in mind when considering Chen Yong Lin's claim of "one thousand spies". Both the MSS and the MPS control and direct informants abroad. Excluding management, finance and supply, there are, relevantly, 17 Bureaux within the MSS<sup>9</sup> and an expanding number of bureaux with the MPS. Hostile Chinese overseas intelligence activity may be graded into three levels – high level espionage / counter espionage; general intelligence collection and analysis, and, special "strike force" operations.
31. Defector Hau's testimony throws much light on the second category – *general intelligence and analysis*. This category is global. The documentation provide by Hau is of near paranoid surveillance and counter-measure activity directed at;
- fourteen (14) identified "evil cults" that include most Christian denominations or bible societies active in China.
  - the Falun Gong.
32. The resources devoted to the surveillance of Chinese at home and abroad are considerable. For spying activity of the following genre the 610 Office Paymaster pays Agent ██████ in \$US20,000 sums. Here is an intelligence summary of one of ██████'s tasks: [Report to be handed to Chair].
33. A top secret recommendation for payment is insightful with respect to the recruitment of persons abroad to give information [Report to be handed to Chair]. Document analysis correlates the work of agents. Electronic monitoring measures are illustrated by another document. Another report demonstrates linkages between surveillance and passenger movement controls.
34. The general intelligence and analysis activity documented by Hao Feng Jun meshes with espionage directed at non-Chinese targets. The MSS maintains close contact with the MPS in identifying opportunities. Chinese diplomatic missions play a role in this global activity.
35. Some diplomatic missions have declared and non-declared intelligence operatives. Declared personnel traditionally move at teacup level in diplomatic, military, trade and cultural circles. Sometimes, the sphere of

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<sup>9</sup> See attached list.

contact is limited by travel restrictions but it is part of the occasionally collegiate game of declared overseas intelligence liaison. While some undeclared personnel neither report to nor inhabit, overseas diplomatic missions, there are MSS intelligence operatives holding diplomatic and consular protection. Part of the traditional exercise has been to identify these operatives as trade, cultural or consular staff.

36. For example, the identity of undeclared diplomatically-based intelligence representatives is often known or suspected by other diplomatic staff. Diplomatic defectors whose roles within diplomatic missions have been unremarkable may still have important value in terms of knowing or suspecting undeclared intelligence personnel and the true rank role and identity at times of official visitors within delegations. Accordingly, it may be unprofessional to view a consular officer as necessarily being a person of low value in intelligence terms. For example, Chen Yong-Lin knew of the visit to Australia of a 610 Official who toured the Chinese missions.
37. Surrogacy, in intelligence gathering is a relevant consideration with respect to asylum policy. Intelligence recruits and / or defectors may be passed on. With the intelligence function goes necessary access to border entry procedures. Thus the US Central Intelligence Agency has an annual quota of in-house visas.
38. Australia is no exception to this process. In early years, the grant of visas to defectors and informants required special measures. Nowadays, the Australian Foreign Minister has effective capacity to grant a territorial asylum visa without the necessity for orthodox immigration visa processing for temporary and permanent entry processing.
39. On 10 April 1987, after his escape from prison, Australian spy Wang Jian Ping was granted a territorial asylum visa signed by Australian Foreign Minister Bill Hayden on a temporary travel document. A recent statement by the Australian Foreign Minister that there have only been two grants of "political asylum" in Australian history is disingenuous. There have been many grants of visas to intelligence operatives and defectors, including accommodatory "asylum grants" for allies. The process is well established. In a related context in 1969-70 this writer recommended and the relevant Minister approved visa issue to the family of a Chinese informant.
40. This Australian visa function lacks the Senate and Congressional Committee oversight used in the United States. The Australian model is muddled and opaque and the public are misled by disingenuous language. By law, asylum requires a visa. The only meaningful reference is to properly applied visa categories. There should be an audit of all DIMIA visa activity with

independent, if necessary, in camera, committee oversight of all intelligence related visa grants.

41. In the justice area, there has been separate capacity for the re-establishment of renamed individuals whose well-founded fear is based on being, for example, a paid informant. This function should also be open to independent scrutiny to ensure that persons indirectly involved in crimes against humanity including extra-judicial execution in ambushes are not given safe haven.
42. This lack of accountability and review is the *achilles heel* of the process in Australia. Hostile counter-intelligence activity may co-locate with defection and other requests for protection. Thus, persons seeking protection may be "bait". Escape routing may be manipulated by a foreign intelligence service to identify escape routes. In this context, Indonesian intelligence services scored a major coup over Australian services in the late 1970s.
43. In the approach to the 1956 Melbourne Olympic Games, UK services proposed that Soviet and Satellite participation at the Olympics may provide a significant opportunity to recruit, from among the ranks of officials and athletes of whom many were defence personnel. Following discussions in London, Melbourne and Canberra the Australian Security Service Head, Brigadier Charles Spry, with the help of the late Colonel Ellis, from Britain, established a defector recruitment net for the Olympic Games. Unknown to those approached, Soviet services had penetrated United Kingdom and Australian Services.
44. There should be a proper analysis of this tragedy and a reappraisal of the great danger a compromised system presents to those defectors who, for good motive, seek to decrease human suffering and advance the human condition. The Australian and United Kingdom Governments owe an apology and compensation to the families of any who perished in this exercise, particularly in Hungary. Again, in this context, the term "defector" is pejorative. Defectors are not always "traitors" taking calculated risks. Some are courageous patriots who take immense risks and place loved ones in peril.
45. So far as secrecy laws allow me to properly submit, Australia's asylum procedures that evolved from the Cold War were founded in tragedy and opportunism, and, judging from recent events have never progressed in tradecraft. Such cloistered activity, open to political idiosyncrasy and inhumanity, requires independent review and quality assessment.
46. In 1971 Foreign Minister Andrew Peacock granted political asylum to an East German woman. Under the Constitutional Law of West Germany, East German citizens had access to West German citizenship. As the applicant

had a country of recourse she did not qualify under Article 1 of the UN Convention on Refugees for protection in Australia. Nevertheless as an anti-Soviet riposte she was granted “political asylum”. There was an is no such visa category.

47. In the early 1980's the United Nations General Assembly (UNGA) resolved by successive resolutions to call upon the youth of South Africa not to serve in the South African military forces. Member states were called upon to assist those (white) South African conscientious objectors and military deserters who, being opposed to apartheid deserted or refused to serve in the South African Defence Forces. The Australian Government supported that resolution publicly but consistently refused to grant asylum or to promptly process refugee entry for young men fleeing South Africa. It was necessary to establish an unofficial assistance network in Australia for those deserters.
48. Delay in processing was a deterrent measure for those asylum seekers who might otherwise have wished to speak of the issues particularly secret military operations / atrocities in Angola and Namibia from which they were fleeing. The Australian Department of Foreign Affairs consistently opposed the grant of refugee status to such persons when their cases came before the Determination of Refugee Status Committee, which the writer chaired for a short period. This was in breach of the UNGA Resolution and constitutes gross hypocrisy. Deserters found that they were not readily processed for protection and remained estranged from loved ones who they were unable to sponsor.
49. The Fraser Government had a strong policy consistent with the UNGA Resolutions. However, the Hawke Government and subsequently the Howard Government opposed economic and sporting boycotts of the apartheid regime. This opposition was reflected in departmental policies by the Department of Foreign Affairs and the Immigration Department and thus, although giving lip service to the UNGA Resolution, Australia neither encouraged nor honoured the commitment given to the UN General Assembly. Australia took kudos for the vote but failed to honour the promise held out to those young men who, some with their young partners, fled South Africa. Asylum policy in this context is disingenuous and fraudulent. Many of the young deserters and draft dodgers suffered isolation, ostracisation and depression.
50. Writing of that period, S.A. military defector Andrew Backwell, now a senior Australian television executive says:

“While I am obviously very grateful to have been granted permanent residence status in Australia, I was very disappointed, taking into account Australia's outspoken opposition to Apartheid and endorsement of the relevant United Nations resolutions, not to be granted political asylum or refugee status.

The UNGA resolutions specifically appealed to the youth of South Africa to refrain from enlisting in the military and called on member states, Australia being one, to provide asylum for these conscientious objectors.

By the Australian government not adhering to these United Nations resolutions it publicly and politically supported, a great opportunity was lost by not making the strong political statement, about the abhorrence of Apartheid, the granting of asylum would have provided.

In my instance, the granting of permanent residence essentially swept this political stance under the carpet. Not honouring the political assistance promised by the UNGA resolutions obviously also deterred further South African asylum seekers from fleeing the atrocities of Apartheid.

If it was not for the assistance provided by ██████████'s office, by applying legal pressure on the government, I have doubts my submission would have been given the same priority. I will always be thankful to ██████████ for the extremely generous support and assistance he provided me and countless other refugees attempting to escape persecution. Without this support I am sure a number would have been returned to their countries of origin with no alternative but to face the often grave consequences.

██████████ also assisted in providing and printing the appropriate United Nations resolutions for clandestine distribution in South African. I believed it was vital for the desperate and isolated South African objectors to be aware of the United Nations support of their plight, support that was promised by the Australian Government but unfortunately not provided in its entirety."<sup>10</sup>

51. A similar fate befell five West Papuan dissidents who in 1982 reached Thursday Island. Their applications for asylum advanced by the writer's office were not processed in accordance with international law. Foreign Minister Bill Hayden described the West Papuans as suffering from "some minor cultural disruption" – cold comfort for one of the dissidents whose bayonet wound I saw and photographed at Thursday Island Base Hospital. Immigration Minister Hurford described the five as "canoe-paddling job opportunists". The story brought out by the five mirrored the similarly unanswered sufferings of the East Timorese yet Australian authorities evinced no interest in obtaining their stories. Australia's then infra red spectrometer satellite access would have enabled verification of alleged mass grave sites. Australian Defence acquired information enabled verification of escape routes. For fear of reprisals against families, the five could not themselves publicly identify grave sites.

52. Like Chen Yong-Lin's experience, applications for asylum are not always perceived as applications for protection engaging Australia's obligations under the 1951 Convention Relating to the Statute of Refugees and the 1967 Protocol thereto. In the early 1980s, the Indonesian intelligence service was allegedly behind the sending to Australia of a person recruited by another

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<sup>10</sup> E-mail to the writer dated

service, itself penetrated by the Indonesian Intelligence Service. When "M" arrived in Australia his secret instructions included the identification of East Timorese sympathisers within the Australian Labour Party. Later, "M", who had gone to ground at Ipswich, Queensland, disposed of his equipment, expended his funds elsewhere and applied for asylum. As with all asylum cases involving any political sensitivity, the matter was referred to the Foreign Minister. Not surprisingly, Mr Hayden's immediate reaction was to suggest that the man be returned forthwith. The Refugee Determination Committee that the writer was then chairing recommended otherwise. Asylum obligations may occasionally embrace the un-likeable if they have a well founded fear of persecution.

53. In 1982, unlike "M" whose case came before the then Determination of Refugee Status Committee, "L", a member of a visiting Chinese delegation, applied for asylum. This was during a sensitive stage of a Hawke Government trade initiative with China. The order went out that no Australian Intelligence Service have any contact with the defector whose request for asylum was not treated as an application for refugee status. In a secret exchange the defector was handed over at Brisbane Airport to Chinese Embassy officials and flown back to China. The Australian Department of Foreign Affairs sought assurances from the Chinese Embassy that they could check on the welfare of the defector after his return to China. Indeed, the senior officer in the Department of Foreign Affairs who was involved in carrying out the Prime Minister's order was himself posted to China allegedly to check on "L"'s welfare. This action was in contrast to the United States Government granting asylum at about the same time to a member of a Chinese National Table Tennis Team.
54. The moral responsibility for persons who seek to defect applies equally to the duty to protect informants, if necessary, with visas. On 14 January 1970, Australian Ambassador to Vietnam, Ralph Harry sent a cablegram to Canberra suggesting that an asylum contingency plan be drawn up to ensure that Australia would be able to extract certain personnel including those with whom Australian services had been operating in Vietnam. So sensitively was Mr Harry's recommendation received that it was deemed inappropriate by the then Secretary of the Department of External Affairs for there to be a cabled response. Concern was expressed that the cable might be read by the US and interpreted as "defeatist". Instead, an officer travelled by plane to speak to Ambassador Harry. No contingency plan was drawn up until the fall of Saigon was imminent. Australia left behind significant elements identified with its Mission. The record did not show that Ralph Harry's advice on prospects of success in Vietnam was sounded.
55. After May 1975, Australia rejected a proposal by French services that a joint rescue mission be launched for certain groups likely to perish. This included

the largely Roman Catholic Hmong leadership on the Laos / Northern Vietnam border. Official Australian participation in the mission was declined. An approach by the French Government for the "loan" of Hercules aircraft for extraction through Laos was declined. By all subsequent accounts a significant proportion of the Hmong leadership who had assisted US/Australian special Forces perished. In that same period, the Whitlam Government issued instructions to H.M. vessels to avoid rescue at sea whenever possible. Airlift of refugees from Guam and other first arrival points was rejected. Consistently and with near paranoid suspicion of Australian Intelligence, the Whitlam Government effectively ended Eastern European Refugee programs of which the Paris based con-joint US / Australia Soviet Jewish uplift operation managed from the writer's office was part. It is inhumane to close asylum pipelines established for such movement.

56. Following intelligence and foreign policy failures in the 1970s, inquiries in the United States, United Kingdom and Australia all pointed to the undesirability of cliques within intelligence and foreign policy advising.
57. The preponderance in policy advising roles of serving and former Foreign Affairs officials with established linkages relevant to refugee / asylum issues is marked. The influence in recent years of those officials has been pronounced. The personnel of the Australian Department of Foreign Affairs are a recognised elite. Much of their individual work displays great capacity and, at times, individual courage. The influence of such minds in Government at the present time is profound.
58. Combined with close working relationships at Prime Minister / Foreign Minister level, there may be a natural disposition to homogeneity in outlook. Manifestations of this may be the working relationships within line Departments responsible for advice on defector / asylum / refugee issues.
59. At relevant times, this fraternity has worked most of the levers including: Secretary, DFAT; Head East Timor Policy Advising, (aspirant at the same time for Ambassador in Jakarta); Ambassador – Jakarta; Secretary, DIMIA; Secretary, Dept of Defence, Special Envoy in the South Pacific, Special Adviser to the Prime Minister, Head – ASIO; Head – Office of National Assessments, Ambassador to the UN. The preponderance of such closely connected advisers may to some extent explain why DIMIA has fallen into line in the *geo-strategic* as distinct from humanitarian treatment of refugee / asylum-seekers.
60. Direct linkages to aid programs in the Foreign Affairs pyramid further reduces the prospect of non-empathetic advice getting through to the top. In some other countries, intelligence and foreign aid programs are statutorily independent. This may aid the rigorous development of policy. When

significant elements of the bureaucratic, academic and intelligence community are closely linked there is a likelihood of homogenous advice. The lack of robustness in the response over Chinese political activity in Australia is remarkably similar to the soft line on Indonesian atrocities including the clerical dissembling by DFAT in early 1999 when confronted by acquired intelligence on the risk of post-ballot violence in East Timor.

61. It seems appropriate to ascertain the role of Australia's First Law Officer in light of the persistent breaches of international law by DFAT / DIMIA. The Australian Federal Attorney General, sits in Cabinet. Australia has not developed the tradition of independent advising as has been convention in the United Kingdom. The breakdown of the rule of law in DFAT / DIMIA activities particularly the discrepancy between domestic law and international law represents a failure at First Law Officer level.
62. While the diffident manner in which Chen Yong Lin's defection was received by the Australian Minister for Foreign Affairs may reflect bilateral relations with the PRC, Chen Yong Lin's fear of being denied protection may relate to certain knowledge he had about Australian propensity to appease China by handing over defectors.
63. Defector Chen Yong Lin was aware that one attempted Chinese defection in recent years by a cipher clerk in a Chinese Consulate in Australia had gone wrong. Mr Chen was aware that the cipher clerk had been recaptured by Consular officials and held prisoner in the Consulate eventually escaping. Also aware of this incident, Australian spy Wang Jian Ping adds to this story claiming that the young Consular Officer and his wife from the Melbourne Consulate were handed over to Chinese Embassy officials at Melbourne Airport on the basis of an assurance of access in China by DFAT. This arrangement, wholly contrary to international law, is sadly reminiscent of the hand-over years earlier during the Hawke era.
64. The Wang case, widely known in Chinese intelligence and diplomatic circles, also acts as a deterrent to defection.
65. In 1982 Wang Jian Ping was arrested and charged by Chinese Authorities with supplying secret information to an Australian Diplomat. Wang says:

"I first met [REDACTED] socially when I was working with the Central Committee of the Revolutionary Committee of the China Kuoming Tang (KMP). My friend Xiao was working in the People's Liberation Army Missile base as a captain in the Intelligence Corps. [REDACTED], who spoke fluent mandarin and had, at that time, been based at the Australian Embassy in Beijing for more than five years was supplied by myself and, as I found out at my trial, also by Xiao, with many documents. The categories of documents supplied were listed on our charge sheets when we were put to trial by the public prosecutor. I was amazed that they knew what I had given [REDACTED]."

I was sentenced to ten years imprisonment. Xiao was sentenced to ten years also. I was sent from Beijing prison to Xinjiang prison. In 1985 I was visited by my mother. She had had contact with an official from the then Public Security Bureau who had questioned her about my lifestyle and background concerning whether I had had any contacts with the Soviet Union, particularly the KGB, including someone code-named "██████████". I was very surprised to hear this from my mother. She was asked specifically whether I had ever mentioned the code name "██████████". She told them I never had. She wrote down the Chinese characters that are phonetic for the code name.

I was very shocked to hear this because in 1980, a friend of mine in the Public Security Bureau had warned me "It is very dangerous for you to have contact with the Soviet Services, particularly the KGB. You should stop it straight away". I told my friend I had no such contacts in the various foreign embassies I dealt with such as staff members of the Military Attaché at the French Embassy and staff members of the Defence Attaché from the Syrian Embassy and persons I had already met in the Australian Embassy. The next time I had seen ██████████ I told him I had been warned not to have a dealing with any Soviet spies and since most of my dealings were with Foreign Embassies that there is some suspicion that I was dealing with a Soviet spy there.

██████████'s reaction was immediate. He said angrily "Look – we are friends. You cannot say I am KGB." He appeared insulted and I never raised it with him again.

By 1986 I had had plenty of chances to escape whilst on errands and work details outside the prison. Prison authorities trusted me and on 24 November 1986 I escaped and travelled to Hong Kong through Beijing. I was helped by local people organised by a triad group. I travelled to Beijing first. During those years communications were relatively primitive and I was able to see my daughter and mother in Beijing secretly and I got down to Hong Kong where I made contact with Britain's MI6 and was helped to safety in the colony. The Australian Foreign Minister Bill Hayden provided me with a territorial asylum visa and I entered Australia in April 1987.

In my debriefings with ASIO I was questioned closely about the documents I had given ██████████. The questioning went on intermittently over about two years. It became obvious to me that none of the documents I had handed to ██████████ had reached Australia. ASIO seemed serious and not involved in any disinformation exercise in the belief that perhaps I was a plant. In that period, the Australian Government refused me permission to speak to Xiao who, strangely, had also escaped from a different camp to Australia in 1991 or 1992.

For some years I gained the impression that ASIO could not go any further in investigating why the documents had allegedly not got to Australia. I was very upset that I had served so many years in prison and undertaken so many dangers and deprivations to find that the information I had given to try to get changes in China had not even arrived in Australia. That was the first time I had learnt that there was an Inspector-General of Security because my controller in ASIO told me about it but I didn't know how to go about a complaint. I was more amazed to find out that ██████████ had been posted back to ██████████ as Consul-General. I learnt through my own contacts that during this period ██████████ met and befriended Jiang Zemin, then Mayor of ██████████, who became the Chinese president in 1991.

I became an Australian citizen in 1989. I settled into business and remained in touch with ASIO. In March 1994 I made a business visit to China. I was nervous but as I travelled on an Australian passport I felt fairly safe and having served most of my sentence before my escape I felt that things had changed a little in China. I did my business and returned. In November 1994 ASIO asked me if I would work for them. I had had little to do with

them for several years after the incomplete investigation into the [REDACTED] matter. At that time the ASIO were interested in the structure and operations of the Ministry of State Security. I gave them a briefing of more than ten pages and I went back to China in the same month on further business. I travelled with [REDACTED], [REDACTED], and [REDACTED]. MSS approached me in my hotel room and took me to another floor. I thought they were going to arrest me but they reassured me that they were not. The officers told me in effect that they had received a lot of information about me in Australia and my dealings with ASIO. They told me that there was a man in Canberra who was saying a lot of bad things about me. They gave me a Chinese name I recognised and suggested that he was a double agent. I refused to comment.

On 1 December 1994 MSS visited me in my hotel in Guangzhou, China. They were from No 3 Bureau of MSS. They asked me to cooperate with them. They showed me a report they had received about ASIO and me. I was asked about the China democracy campaign in Australia but I refused to give any information. I told them that the person they claimed to be an informant was a friend of mine. I did not believe them that my friend was their informant. Then the MSS Senior Officer asked me to deliver a message to ASIO. Upon my return to Australia I delivered the message to ASIO.

On 24 March 1995 I went on my eighth trip to China. On 8 April 1995 I was kidnapped by persons in plain clothes at Beijing Domestic Airport. They covered my eyes and took me to Beijing No 2. Prison. I was registered as a Chinese Prison Escapee and I was charged as an escaped spy and sentenced to a further ten years imprisonment plus three years deprivation of political rights.

In 1996 several members of the MSS visited Australia and had a meeting with ASIO. They made another trip in 1997. I learnt this from my further interviews with MSS in prison. I was finally released on 7 November 2003 after serving eight years and seven months of my second ten year sentence. My release was regular as I had received remissions.

I am very angry with respect to what the Australian Government did to me and I intend to sue the Australian Government for compensation. After my release I was even more angry to read a letter from Australian Foreign Minister Alexander Downer to The Honourable Bob McMullan MP dated 21 April 1988. Among other matters Mr Downer claimed that the Australian Embassy had attempted to provide me with consular assistance and that because I had used my Chinese passport to re-enter China the Chinese authorities regarded me as a Chinese citizen and had not permitted Australian consular access to me.

I am sure that the Australian Ministry of Foreign Affairs knew that I did not have a Chinese passport. I cannot see how I could have applied for a Chinese passport. I had an Australian passport. Indeed I still hold my Australian passport and it bears all of the entry and exit stamps for the trips I made to Beijing including the one when I was arrested. It would have been a simple task for the Australian Embassy to ask to sight my passport. I believe that under international convention the Chinese authorities would have had to have surrendered my passport. Instead it was returned to me from by prison authorities on my release.

I cannot believe the Australian Ministry of Foreign affairs made any serious attempts to get consular access to me. I remain very dissatisfied and angry over my treatment. I had told ASIO in 1987 as soon as I arrived in Australia about the alleged Soviet mole "[REDACTED]". I do not know who "[REDACTED]" is or was. It took me a long time to realise that ASIO's two year investigation related to all my documents not reaching Australia from [REDACTED]. I also realised that identification of the Soviet mole may have allowed

MSS to pressure the mole. After two years ASIO dropped me cold as if I was disbelieved. It was not until November 1994 that ASIO contacted me again. One of my subsequent controllers told me that ASIO had made a mistake dropping me

When I got back to Australia in 1987 I went to live with [REDACTED] and his wife. They treated me very well at their home for three months. I do not know what influence [REDACTED] had when I was in prison the second time but when I read the letter of 21 April 1998 from Alexander Downer to Bob McMullan I find it hard to believe that anyone in Foreign Affairs took any steps to get me out of jail. It almost seemed as if I was being punished for assisting ASIO in their inquiry into that Department.

In summary I have received no recognition for any of the work I did out of conscience in handing over many documents to [REDACTED] because they never got to Australia. When Hayden gave me a territorial asylum visa he also wrote to the Department of Immigration and informed them that I had done valuable work for Australia. An ASIO officer who told me this said Mr Hayden was referring to the intelligence briefings and information I had brought about the Ministry of State Security to ASIO. I was told by the ASIO officer that I had had a significant influence in altering ASIO policy on issues relating to China.

I believe that my long-standing views about the Chinese Central Committee and the manner in which the Chinese Government is working against it's own people has not been received well by the Australian Department of Foreign Affairs which did not share the caution ASIO has about Chinese activities in Australia. Although I am not going into the detail, I assisted ASIO for 4 and 5 years in Australia in their attempts to identify Chinese informers and operatives in Australia. I feel a deep unease about the Australian Department of Foreign Affairs and would not recommend that any defector provide information to that Department. I think that the return of two defectors from the Chinese Consulate at Melbourne a few years ago was wrong.

**(b) The application of the Migration Act 1958, its regulations and guidelines concerning the maintenance of confidentiality for any consular officials or staff (including Mr. Chen Yonglin, and any other former consular officials or staff) who were applicants for territorial asylum and/or protection visas by Department of Immigration Multicultural and Indigenous Affairs, Department of Foreign Affairs and Trade and their respective Ministers;**

66. On 6 June 2005, Chinese Ambassador Mme Fu Ying was asked by ABC's *Lateline* host Tony Jones about a conversation with Foreign Minister Alexander Downer in which Chen Yong-Lin's request for protection was apparently discussed. Mme Fu said "I was asked by the Australian Government if he (Chen) would face persecution if he returned to China..."

67. Mme Fu's statement is consistent with the DFAT *modus vivendi* for prior hand-overs. A culture permissive of such breathtaking non-compliance with international law requires public scrutiny. In my view, only a Royal Commission with proper Terms of Reference can deal with such blatant breaches of international law including the Refugee Convention. China is a

State known to practice torture and administer the death penalty. It takes an extremely artful defector to avoid leaving key-stroke evidence of computer downloads. All relevant agencies including DFAT are alive to the potentially incriminating nature of IT supported defection. The hand-over of persons who may in judicious time be subjected to torture and / or the death penalty for treason is contrary to Australia's adherence to the *Convention on the Protection of All Persons From Being Subjected to Torture or Other Cruel Inhuman or Degrading Treatment or Punishment*, and the *UN Protocol Against the Death Penalty* both of which are incorporated into Australian domestic law.

68. All protection requests, must be dealt with in conformity with the *Migration Act 1958*<sup>11</sup>, the regulations thereto, and, to the extent to which there is no express inconsistency with Australian domestic laws, international law.<sup>12</sup> A person who articulates a well founded fear of persecution, if returned to a country of origin, engages Australia's Convention duty to assess the need for protection. Likewise, a person expressing imperfectly or intuitively such a fear must be assessed against any information known only to the receiving State. In the latter context, Australian signals capacity and related skills are renowned.

69. The Government's appeasement of China was further illustrated when DFAT connections to the Chinese Embassy at Canberra gave advance notice of Foreign Minister Downer's intention to issue a certificate to remove the Falun Gong banner bearing the words "Truthfulness, Forbearance, Compassion" displayed in advance of Chinese Foreign Minister Tang Jiaxuan's March 16 2002 visit to Canberra. Chen-Yong Lin says:

In early 2002 I became aware that the Chinese Foreign Minister Tang Jiaxuan would visit Australia in March 2002. As part of the preparations for my Minister's visit I was informed and perused documentation that indicated the topics of interest that were likely to be discussed between my government and the Government of Australia. I say that those topics included the Falun Gong demonstrations being held outside the Chinese Embassy in Canberra and the Chinese Consulates in Australia.

The day preceding Tang Jiaxuan's arrival in Canberra I was informed by sources within the Delegation and the Embassy that Australian Foreign Minister Alexander Downer had signed a certificate to restrict the Falun Gong activities in front of the Chinese Embassy in Canberra.<sup>13</sup>

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<sup>11</sup> Section 36 creates a class of protection visas, the criterion for a protection visa and protection obligations. Section 91R gives an Australian definition of "persecution for the purposes of Article 1A(2) of the Refugee Convention.

<sup>12</sup> Article 14 of the Universal Declaration of Human Rights says, *inter alia*, everyone has the right to seek asylum. Article 13 of the ICCPR says, "An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

<sup>13</sup> Affidavit affirmed 12 July, 2005

70. The Australian ban on the public display of Falun Gong banners displayed in proximity to Chinese Missions throughout almost the entire democratic world is, the Falun Gong claim, unique. The ban is a breach of Article 19 (freedom of expression) of the International Covenant on Political Rights (ICCPR), and, a gesture of contempt to the view of the Federal Court which in a similar case<sup>14</sup> indicated that, the peaceful display of a reproachful symbol could hardly offend the dignity of a diplomatic mission.

71. Falun Gong practitioner and ex labour camp prisoner Chen Hong was rejected for a protection visa by DIMIA. Her lawyer subsequently presented a well documented case to the Refugee Review Tribunal. The documents produced were in format and apparent official execution similar to the many official documents verified in recent years as emanating within the Chinese Police and public security apparatus. The Reasons for Decision given by the Tribunal Member contain pejorative comments and a mixture of opinion and poorly reasoned inference followed by an inexplicable conclusion;<sup>15</sup>

“...It is clear to the Tribunal that her “engagement” with Falun Gong began when she was preparing her application for a protection visa.

The Tribunal is conscious of s91R of the Act, which states:

(3) For the purposes of the application of this Act and the regulations to a particular person:

(a) In determining whether the person has a well-founded fear of being persecuted for one or more of the reasons mentioned in Article 1A(2) of the ...Convention...

disregard any conduct engaged in by the person in Australia unless:

(b) the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person’s claim to be a refugee within the meaning of the ...Convention...

“...The Tribunal is confident that very soon after arriving in Australia the Applicant manufactured a link with the Falun Gong community solely for the purpose of creating and strengthening a claim to be a refugee under the Convention. Given how quickly the Applicant lodged her protection visa, and given that that application already included a number of documents that is has discounted as fakes, the Tribunal is confident that the Applicant’s pretended embrace of Falun Gong culture was being prepared, with help from others, even before she came to Australia, and was thus very much pre-meditated. The Tribunal is not at all equivocal in this finding and it is therefore is bound by the Act to ignore the Applicant’s Falun Gong affiliations in Australia.”

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<sup>14</sup> Involving a ban on the peaceful display of Christian crosses outside the Indonesian Embassy.

<sup>15</sup> RRT Sydney 21 June 2004

72. Some six months ago the Falun Gong opened a website to encourage Chinese Communist Party Members to register their resignation from the party. The Falun Gong claim that to date approximately 5% of the Chinese Communist Party membership has resigned. Many of those resigning are resident abroad. Defector Hau brought with him an example of the internet monitoring carried out by the Chinese Security Services in respect of the resignation website. It appears that the unsuccessful protection visa applicant Ms Chen Hong had resigned from the Communist Party and had registered such on the website. A document made available by Defector Hau reveals past and present Public Security Bureau interest in Ms Chen Hong. Her case is presently on appeal to a Federal Magistrate and it is to be hoped that fresh evidence will be permitted on appeal. The document that includes the reference to Ms Chen Hong is reproduced in full:

Confidential

No 12 [2005] Gong Chu Zhèng

**Report on Investigations on People in Our City  
Who Recently Published Their Statement of Withdrawing  
From CCP on Dajiyuan (Epoch Times) Website**

The 610 Office of the Municipal Party Committee:

Recently the overseas Falun Gong website published a series of anti-communist articles "Nine Commentaries on Chinese Communist Party". The Dajiyuan Website also sets up a special column called "Declaration on Withdrawing from Communist Party (Communist Youth League)". It instigates Falun Gong members and other people to withdraw from Chinese Communist Party and Chinese Communist Youth League. According to your office report, there are four Falun Gong Members in our city who made such declaration. And another 5 were found to make such declaration through our effort of monitoring the Internet. We made a time investigation on them. Hereby we report our investigation as follows:

1. Sun Xiuting: After looking into the Falun Gong Database, we did not find any Falun Gong practitioner called Sun Xiu Ting. And we also looked into the information database of the residence living in our city. We found altogether 25 people called Sun Xiuting. After our home visits, we found the Sun Xiuting of Jixian County (female, born on 21 March 1966, non Communist Party member, lives in the residential building of Auto Repair Factory under the No. 58 Communication Bureau in Jixian County, Tianjin City, works in Chaoxian Check-up Station under Jixian County Communication Bureau) who was previously a Falun Gong practitioner. But we did not find Sun Xiuting had suspicious engagement in any of the Falun Gong Evil Cult activities.

2. Chen Hong: female, was born on 15 October 1964. The place on the household register was Guangming Street, Lutai Township, Ninghe County of Tianjing City. In April 2000 she was sentenced to one year of forced labor because of engaging in Falun Gong activities. In May 2000 she was expelled from the Communist Party by the Ninghe County Disciplinary Inspection Committee of Chinese Communist Party. This Chen went to Australian Commission in Shanghai to apply for a visa in August 2003. In the same year she went to Australia to visit her son who was studying in Australia then. She is now in Australia.

3. Hao Li: No such name was found after looking into the Falun Gong Database and information database of the residence living in our city.

4. Wu Shuqing: After looking into the Falun Gong Database, there was only one person named Wu Shiqing. Some basic information about her: female, born in 1940, non Communist Party member, living in 25-201 Daoxiyuan Beili, Heiniu Cheng, Hexi District. We not found this Wu engaged in any Falun Gong Evil Cult activities.
5. Yang Feng: There is no such a name in the Falun Gong database after investigation.
6. Liu Yu: After looking into the Falun Gong Database, only one name called Liu Yu was found. Her basic info: female, born on 2 May 1952, non Communist Party member. She presently lives at 5-1-203 Xingang Dajie, Tanggu District, Tianjin City. She is a retiree of Xingang Ship Repair and Building Factory. We did not find this Liu Yu had the suspicion of engaging in Falun Gong Evil Cult activities.
7. Gu Wang: male, born on 31 October 1956, previously lived at 12-3-603, 4<sup>th</sup> Road of Zhongshanmeng, Hedong District, Tianjing City. He is a Falun Gong practitioner, previously worked in Tianjing Electronic Transmission Research Institute. He cancelled his household registry on 6th September 2001 and immigrated to Toronto, Canada in 2002. He is now living in Canada.
8. Jia Zhenghong: male, born on 16 October 1954, previous registered living place: 42-27-301 Youanmen Dajie, Beijing, graduated from Precision Instrument Department of Tianjing University in 1982, and worked in the same university after graduation. He joined the Party in 1981 when he was still in university, went to US in December 1989. At that time he did not ask to retain his Party membership in the Organization Department of Tianjing University and did not have any contact with the university since.
9. Fu Rao: No such a name was found after looking into the Falun Gong Database and information database of the residence living in our city.

From the above, we conclude that the three persons that made declaration on the website are: Chen Hong (overseas, expelled from CCP in 2000), Jia Zhenghong (quitting the Party long time ago) and Gu Wang (non Communist Party member). The remaining 6 could not be confirmed yet.

24 January 2005

Subject: Public Safety Falun Gong Withdrawing from CCP Investigation  
Report (total 2 copies) Anti-Cult Department of Public Security Bureau in Tianjin  
City Printed on 24 January 2005

## **Handovers**

73. The 1982 hand-over of a Chinese defector was against acquired information strongly suggestive that the defector was not a plant. When the writer became aware of the hand-over all evidence pointed towards a breach of

protection obligations. There is a need for review external to DFAT / DIMIA of all such situations.

74. At the time of the 1982 handover, the procedural handbook relating to the criteria for determining Refugee Status under the 1951 Convention and the 1967 protocol thereto issued by the Office of the United Nations High Commissioner for Refugees included the following:

“... a person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee “*sur place*”

A person becomes a refugee “*sur place*” due to circumstances arising in his country of origin during his absence. Diplomats and other officials serving abroad, prisoners of war, students, migrant workers and others have applied for refugee status during their residence abroad and have been recognised as refugees.

A person may become a refugee “*sur place*” as a result of his own actions, such as associating with refugees already recognised, or expressing his political views in his country of residence. Whether such actions are sufficient to justify a well-founded fear of persecution must be determined by a careful examination of the circumstances. Regard should be had in particular to whether such actions may have come to the notice of the authorities of the person’s country of origin and how they are likely to be viewed by those authorities.”<sup>16</sup>

“An applicant claiming fear of persecution because of political opinion need not show that the authorities of his country of origin knew of his opinions before he left the country. He may have concealed his political opinion and never have suffered any discrimination or persecution. However, the mere fact of refusing to avail himself of the protection of his Government, or a refusal to return, may disclose the applicant’s true state of mind and give rise to fear of persecution. In such circumstances the test of well-founded fear would be based on an assessment of the consequences that an applicant having certain political dispositions would have to face if he returned. This applies particularly to the so-called refugee “*sur place*”.”<sup>17</sup>

75. During the 1954 Petrov asylum controversy, Australia’s former Foreign Minister, Mr H.V. Evatt embarrassed his colleagues by asserting in the Parliament that the Soviet Government had assured him that there were no spies at the Russian Embassy. The concept of asking for an “assurance” that a defector will not be harmed if returned to China demonstrates (to be generous) similar naivety.

76. Against the documented mal-treatment of public officials in China, a hand-over of an asylum seeker without a claim for protection being properly assessed may be a breach of the Migration Act 1958 and international law. A

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<sup>16</sup> Office of the United Nations High Commissioner for Refugees. 1979. Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Geneva: United Nations. Para 94 – 96.

<sup>17</sup> *Supra*. Para 83

proper assessment, according to UNHCR Guidelines, involves an assessment of the following elements:

- personality of the applicant;
- political opinion;
- motive behind the defection;
- nature of the defection;
- nature of the likely persecution;
- motives of the persecuting state;
- nature of the legal system available to a potential returnee;
- the extent of any compromise of the applicant in the eyes of the potential persecuting state.

77. In Chen Yong Lin's case, his return to China was discussed before these requirements were met and in apparent disregard of Australia's obligations to properly consider the claim for protection pursuant to Article 1A(2) of the Refugee Convention. The papering over of such a legal obligation by securing an assurance from the Chinese Government that Chen would not be harmed if returned knows no equivalent States practice amongst those democratic nations who take their obligations under the Refugee Convention seriously.

78. In law, the receiving state (Australia) does not absolve its conscience by obtaining an assurance from potential persecutory state that the refugee will not be harmed. As the UNHCR guideline says,

"...persecution "for reasons of political opinion" implies that an applicant holds an opinion that either had been expressed or has come to the attention of the authorities. There may however, also be situations in which the applicant has not given any expression to his opinions. Due to the strength of his convictions, however, it may be reasonable to assume that his opinions will sooner or later find expression and that the applicant will, as a result, come into conflict with the authorities. Where this can reasonably be assumed, the applicant can be considered to have fear of persecution for reasons of political opinion."<sup>18</sup>

79. Australia's obligation is to determine whether the defector holds political opinions that will place that defector at risk in the future if returned. In other words, as a person of conscience, will the asylum seeker be liable to express her/his political opinions to her/his detriment and persecution upon return? This is why it is incumbent upon a receiving state to determine whether the asylum applicant is a person of principle, holding a deep seated political opinion that is likely, when the dust settles and if she/he is not immediately harmed on return, to nevertheless result in her/his persecution.

80. It is axiomatic that the duty to protect includes the duty to enquire. There is no evidence that the necessary inquiries had been made about Chen prior to

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<sup>18</sup> *Supra*. Para 82

the Australian Government's approach to the Chinese authorities. Only an in-camera enquiry may supplement the necessary inquiry into the Foreign Minister's conduct by determining whether there was acquired intelligence that might run counter to the open assurance sought and obtained from the Chinese Government.

81. In simple terms, was there information available to indicate unfriendly concern over Chen and the intention to subject him to investigation and interrogation? Specifically, was there any intelligence awareness in the Australian Government that Chen may have breached any of the Chinese criminal code laws relating to the supply of information, particularly computer downloaded information? It is wise to recall that the receiving state, if it alone is possessed of information is obliged to give consideration to those issues even if unknown to the applicant.

82. There are a number of criminal provisions in the law of the People's Republic of China, relevant to the conduct of Mr Chen and any other defectors who supply oral or electronic information. In particular, the law of 28 February 1995, Article 106, *Chapter 1: Crimes Endangering National Security*:

"Article 106. Whoever colludes with institutions, organisations, or individuals outside the country and commits crimes stipulated in Articles 103, 104, and 105 of this chapter are to be heavily punished according to the stipulations in the articles."

"Article 109. If a state organ personnel, during the time of performing his public functions, leave his post without authorization and defects from the country; or if the defection takes place when he is already outside the country, thereby endangering the PRC's national security, he is to be sentenced to not more than five years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights when the circumstances are serious, he is to be sentenced to not less than five years and not more than 10 years of fixed-term imprisonment. When a state personnel handling state secrets commits the crime in the preceding paragraph, he is to heavily punished according to the stipulations in the previous paragraph."

83. Article 108 and 113 may be combined to indicate that Chen might face the death penalty if returned. I am instructed these provisions are well known and are pointed out in training sessions to members of the Chinese diplomatic service.

84. Against this background, seeking an assurance that Chen would not be persecuted is empty. The PRC Government might legitimately argue that prosecution according to the law is not persecution. Indeed, there may be a qualitative difference between persecutory acts of the State and prosecution within the law. Technically, the Chinese Government with some sophistry may argue that Mr Chen does not face persecution. Even assuming that a handover might be contemplated, the real question for Mr Downer to ask was whether Mr Chen would be given indemnity against prosecution? For only

with such an indemnity and confidence in the rule of law in China could Mr Downer absolve himself of his obligations in international law to ensure that he is not handing a person over who may face torture and / or the death penalty. Forms of detention and forced labour that accompany regular sentences of imprisonment come within the definitions of torture so far as Chinese standards of detention and confinement are concerned.

85. As to the rule of law in China Professor Yuan says that,

“In my opinion, it is not possible for widow Dai Zhi Zhen and her infant to obtain compensation in China for personal injury and / or economic loss because:

- a. China’s Constitution declares that China’s leadership acts under the will of the Chinese Communist Party.
- b. The organs of investigation, prosecution and judicial assessment are totally controlled by the Chinese Communist Party.
- c. The persecution of Falun Gong has been initiated by Jiang Zemin in the name of the Chinese Communist Party.
- d. Therefore the victims of the Falun Gong political persecution cannot possibly secure justice under Rules of Law controlled by the Chinese Communist Party.”<sup>19</sup>

86. It may be difficult to see how a diplomatic defector would fare any better.

87. The DIMIA decision to deny “Z” a protection visa contained the following statement;

“There is nothing to indicate there is mistreatment of applicants who have returned to China after failing to get refugee status in Australia. Information considered in the Department of Foreign Affairs and Trade COUNTRY PROFILE for China; and Documents CX1173, CX781, CX774 clearly indicate this.

The Department of Foreign Affairs and Trade COUNTRY PROFILE for China advises that there is no law in China which we know of that refugee application will cause charges to be laid. Further, applications for protection visas are kept in confidence by the Department. Even if the Chinese authorities were to find out about the PV Application, there is no evidence that they penalise those who apply for refugee status overseas, simply because they have made such an application.”

88. This exercise in self absolution is parroted by DIMIA in almost all unfavourable Chinese protection visa decisions. This demonstrates all that is wrong and disingenuous in the operations of that Department. In Z’s case the DIMIA decision maker made no reference to Article 109 or to *Chapter 1: Crimes Endangering National Security* of the criminal law of the People’s Republic of China.

89. The DIMIA decision in Z’s case demonstrates once again the superficial and misinformed basis of decision-making. The failure to see Z as an applicant with a special profile typifies the cut-and-paste manner in which Reasons for

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<sup>19</sup> Affidavit of Yuan Hongbing affirmed 29 March 2005.

Decisions are given by DIMIA and often by the RRT. The selective quotations include the following:

“A decision maker is not required to make the applicant’s case for him or her.”

“The Officer of the UNHCR has advised that the applicant’s statements must be coherent and plausible and must not run counter to generally known facts (Handbook on Procedures and Criteria for Determining Refugee status, Office of the United Nations High Commissioner for Refugees (UNHCR), Geneva, 1988, para204).”

90. Only a sea-change can realign Australia with liberal democratic values that embrace substantive compliance with the law. It is the ultimate in bad faith to give lip service to values and ignore them in practice.

91. There are no words adequate to describe the breakdown of law and conscience in DIMIA / DFAT. The archive basement of my law office is a well of tears. There are so many people treated inhumanely over years by oppressive bureaucracy. It is a well of inhumanity and a national shame probably replicated around the nation. Proverbially, Chen Yong Lin’s case touched a chord and the good sense of the Parliament in establishing your Committee has allowed me to make submissions that I might not otherwise have been able to safely venture.

92. There is far more informed testimony available from many honest women and men in DIMIA, DFAT, ASIS, ASIO and related agencies. An assurance of non-reprisals from the same top officialdom that has largely authored the current problems would be a sick parody. Senior Officials should be stood aside pending a Royal Commission with a panel of at least three. The warrant given to the Royal Commissioners must include the power to grant an indemnity from prosecution for witnesses.

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**BERNARD COLLAERY**

26 July 2005