

**Refugee Review Tribunal  
AUSTRALIA**

**RRT RESEARCH RESPONSE**

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**Questions**

- 1. Please provide information on whether Chinese courts can and do seize the assets of Falun Gong members.**
- 2. Please provide information if possible on the laws “Ch. 94 Article 140” and “Document 555” relating to seizure of assets.**
- 3. Is bigamy a crime in China? What are the penalties?**

**RESPONSE**

- 1. Please provide information on whether Chinese courts can and do seize the assets of Falun Gong members.**

On 30 December 2008, *The Epoch Times* reported that a Falun Gong practitioner was found guilty by a Chinese court and that his house was confiscated and personal property seized. No other reports were located in the sources consulted regarding whether Chinese courts can and do seize the assets of Falun Gong practitioners. Falun Gong sources report that practitioners have had personal property and belongings confiscated by police and local officials. A report dated 15 October 2000 reports on the confiscation of the home of a Falun Gong practitioner by local government officials (An, N. 2008, ‘Falun Gong Artist Sentenced to Five Years in Prison’, *The Epoch Times*, 30 December <http://www.theepochtimes.com/n2/content/view/9428/> – Accessed 11 August 2009 – Attachment 1; ‘Photo Report: Falun Gong Practitioner’s Home Confiscated in China’ 2000, Falun Dafa Clear wisdom website, 15 October <http://www.clearwisdom.net/emh/articles/2000/10/16/6514.html> – Accessed 7 August 2009 – Attachment 2; Xue, F. 2009, ‘“Monitor, Suppress, and Arrest” Falun Gong’, *The*

*Epoch Times*, 9 June <http://www.theepochtimes.com/n2/content/view/17940/> – Accessed 11 August 2009 – Attachment 3; ‘Additional Persecution News From China – April 17, 2009 (21 Reports)’ 2009, Falun Dafa Clear Wisdom website, 25 April <http://www.clearwisdom.net/emh/articles/2009/4/25/106795p.html> – Accessed 11 August 2009 – Attachment 4; ‘Nine Commentaries on the Communist Party’ 2008, *The Epoch Times*, 30 October [http://epoch-archive.com/a1/en/us/nyc/2008/10-Oct/30/A7\\_Opinion.pdf](http://epoch-archive.com/a1/en/us/nyc/2008/10-Oct/30/A7_Opinion.pdf) – Accessed 11 August 2009 – Attachment 5).

On 30 December 2008, *The Epoch Times* reported that after being found guilty by a court a Falun Gong practitioners house was confiscated. The report states that:

Zhou Ning, an artist who provided free art classes for disabled children, was put in prison for five years when authorities discovered that he practiced Falun Gong, a traditional Chinese cultivation method based on the principles of “truthfulness, compassion and forbearance.”

...During Zhou’s trial on July 14, 2008, defense lawyers Li Subin and Wen Haibo told the court that according to the Chinese Constitution, Zhou was innocent.

However, the court still found him guilty. His art studio was destroyed and his students were force to return home. Zhou’s house was confiscated, personal property seized, and his wife is now living with relatives (An, N. 2008, ‘Falun Gong Artist Sentenced to Five Years in Prison’, *The Epoch Times*, 30 December <http://www.theepochtimes.com/n2/content/view/9428/> – Accessed 11 August 2009 – Attachment 1).

A “photo report”, dated 15 October 2000 on the Clear wisdom website is titled “Falun gong practitioner’s home confiscated in China”. The report states that the “home was confiscated by the local government” (‘Photo Report: Falun Gong Practitioner’s Home Confiscated in China’ 2000, Falun Dafa Clear wisdom website, 15 October <http://www.clearwisdom.net/emh/articles/2000/10/16/6514.html> – Accessed 7 August 2009 – Attachment 2).

Several reports by Falun Gong sources report that Falun Gong practitioners have had personal property confiscated by police and local government officials. The following reports provide information on the seizure of Falun Gong practitioners’ property:

- On 9 June 2009, *The Epoch Times* reported on the confiscation of the personal property of Falun Gong practitioners by police officers. The report states that:

In some cases, the police also deceived practitioners into opening their door by telling them they were plumbers or a person wanting to borrow things, repair water pipes, any excuse. Once the door opened, they seized the practitioners without any legal grounds. For those who refused to open their doors, they would break the door open. For those houses with nobody home, the police still broke into the home and searched the premises, confiscating personal property (Xue, F. 2009, ‘Monitor, Suppress, and Arrest’ Falun Gong’, *The Epoch Times*, 9 June <http://www.theepochtimes.com/n2/content/view/17940/> – Accessed 11 August 2009 – Attachment 3).

- On 25 April 2009, Clear Wisdom reported that following the arrest of two Falun Gong practitioners “the neighbourhood committee ransacked their home and confiscated their property” (‘Additional Persecution News From China – April 17, 2009 (21 Reports)’ 2009, Falun Dafa Clear Wisdom website, 25 April

<http://www.clearwisdom.net/emh/articles/2009/4/25/106795p.html> – Accessed 11 August 2009 – Attachment 4).

- A report by *The Epoch Times*, dated 30 October 2008, describes the confiscation of “cash and other valuables” during raids by police officers of the houses of Falun Gong practitioners. The report states that:

Ransacking homes is another form of robbery and intimidation inflicted on Falun Gong practitioners. Those who have held firm in their belief have had to face unwarranted searches with the police ransacking their residence at any moment. Their cash and other valuables have been confiscated without justification (‘Nine Commentaries on the Communist Party’ 2008, *The Epoch Times*, 30 October [http://epoch-archive.com/a1/en/us/nyc/2008/10-Oct/30/A7\\_Opinion.pdf](http://epoch-archive.com/a1/en/us/nyc/2008/10-Oct/30/A7_Opinion.pdf) – Accessed 11 August 2009 – Attachment 5).

Article 220 of the *Criminal Procedure Law of the People’s Republic of China* indicates that the People’s Court can order the confiscation of property but the law does not state in which circumstances the court is allowed to do so. Article 220 states that:

All sentences of confiscation of property shall, whether imposed as a supplementary punishment or an independent punishment, be executed by the people’s court; and the people’s court may execute such judgments jointly with the public security organ if it is necessary to do so (*Criminal Procedure Law of the People’s Republic of China* 17 March 1996, United Nations High Commission for Refugees website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ddbcd4e7&skip=&query=criminal%20procedure%20china> – Accessed 29 May 2008 – Attachment 6).

## **2. Please provide information if possible on the laws “Ch. 94 Article 140” and “Document 555” relating to seizure of assets.**

### **Chapter 94, Article 140**

Articles 94 and 140 of the *Civil Procedure Law of the People’s Republic of China* (1991) do refer to “property preservation” by the courts:

#### **Chapter IX Property Preservation and Preliminary Execution**

Article 92 If it becomes impossible or difficult to execute a judgment because of the acts of one of the parties or for other reasons, the people’s court may, at the request of the other party, order that property preservation be adopted. In the absence of such request, the people’s court may, when necessary, also order to adopt property preservation measures.

When a people’s court has decided to adopt property preservation, it may instruct the applicant to provide a security; if the applicant fails to do so, his or her application shall be rejected.

After receiving a party’s application, if the case is urgent, the people’s court must make an order within 48 hours concerning property preservation; if property preservation is granted by an order, implementation thereof shall begin immediately.

Article 93 Any interested party whose lawful rights and interests, due to urgent circumstances, would suffer unremediable harms without immediately applying for property

preservation, may, before filing the lawsuit, apply to the people's court for the adoption of property preservation measures. The applicant shall provide a security; if the applicant fails to do so, his or her application shall be rejected.

After receiving a party's application, the people's court must make an order within 48 hours concerning property preservation; if property preservation is granted by an order, the implementation thereof shall begin immediately.

If the applicant fails to bring an action within 15 days after the people's court has adopted the preservation measures, the people's court shall cancel the property preservation.

**Article 94 Property preservation shall be limited to the scope of the claim or to the property relevant to the case.**

**Property preservation shall be carried out by sealing up, distraining, freezing or other methods as prescribed by law.**

**After the people's court freezes a property, it shall notify the person against whom the application is made.**

**Property that has already been sealed up or frozen shall not be sealed up or frozen again.**

...Section 5 Judgment and Order Article

138 A judgment shall clearly state:

- (1). the cause of action, the claims, and the facts of and reasons for the dispute;
- (2). the facts and reasons on which the judgment is based and the law is applied;
- (3). the result of the judgment and the litigation costs to be borne; and
- (4). the time limit for filing an appeal and the court with which the appeal may be filed.

A judgment shall be signed by the judicial personnel and the court clerk, and the seal of the people's court shall be affixed to it.

Article 139 If some of the facts in a case being tried by the people's court are already evident, the court may pass judgment on those facts first.

Article 140 Orders shall be applicable to the following:

- (1). rejection of a lawsuit;
- (2). objection to the jurisdiction of a court;
- (3). rejection of a complaint;
- (4). **property preservation and preliminary execution;**
- (5). approval or disapproval of withdrawal of a lawsuit;
- (6). suspension or termination of a lawsuit;
- (7). correction of slips of pen in the judgment;
- (8). suspension or termination of execution;
- (9). cancellation of or refusal to enforce an arbitral award;
- (10) refusal to enforce a document on creditor's rights which has been rendered by the notary office; and
- (11). other matters to be decided by an order.

An appeal may be lodged against the order specified Items (1), (2) and (3) of the preceding paragraph.

A written order shall be signed by the judicial personnel and the court clerk, and the seal of the people's court shall be affixed to it. If an order is issued orally, it shall be entered in the record (*Civil Procedure Law of the People's Republic of China*, Adopted & Promulgated 9 April 1991, UNHCR website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=3ddbca094&skip=0&category=LEGAL&publisher=NATLEGBOD&coi=CHN&querysi=civil&searchin=title&display=10&sort=date> – Accessed 10 August 2009 – Attachment 8).

## Document No. 555

Information from Falun Gong sources indicates that “Document No.555” is a document which was issued by the Ministry of Public Security on 21 July 1998 titled “Notice of the Investigation of Falun Gong”. Falun Gong sources state that this document declared Falun Gong to be a cult and included details for the investigation of Falun Gong practitioners. Reports state that a number of measures were implemented against Falun Gong practitioners as a result of the release of Document No.555 including the confiscation of personal belongings. The following Falun Gong reports provide information on Document no.555:

- A Falun Gong timeline of important events states that following the issuance of Document No.555 the Ministry of Public Security started an investigation of Falun Gong practitioners which involved the confiscation of personal belongings. The timeline provides the following information:

### July 21, 1998

Bureau No. 1 of the Ministry of Public Security issues Document [1998] No. 555, titled, “Notice of the Investigation of Falun Gong,” claiming that Falun Gong is heretical cult. The Ministry begins a series of investigations, seeking evidence in support of the conclusion. Means include tapping phone lines, monitoring volunteers, raiding homes, **confiscating personal belongings**, Various forms of (unlawful) harassment ensue at the hands of Chinese police, including disruption of public morning exercise sessions with water cannons and the closure of certain sites. Homes are ransacked in some areas (‘Falun Gong: Timeline’ 2008, Falun Info website, 17 May <http://www.faluninfo.net/email/213/> – Accessed 11 August 2009 – Attachment 9).

- A report by *The Epoch Times*, dated 15 July 2009 states that:

In July 1998, the Ministry of Public Security issued Document No.555, titled Notice of the Investigation of Falun Gong, claiming that Falun Gong was an heretical cult. The Ministry began a series of investigations, seeking evidence to support this conclusion, and police began disrupting exercise sites, tapping phones and searching the homes of adherents who helped organise activities(Andress, J. 2009, ‘The Persecution of Falun Gong and How it Began’, *The Epoch Times*, 15 July <http://www.theepochtimes.com/n2/content/view/19681/> – Accessed 11 August 2009 – Attachment 10).

- A report dated 27 April 2004 on the Australian Falun Dafa Information Centre website states that ‘Document No. 555’ led to the confiscation of the private property of Falun Gong practitioner’s by local police departments. The report states that:

On July 21, 1998, the First Division of the Public Security Bureau issued a circular – No. 555 – “Notification Regarding Starting an Investigation of Falun Gong.” The notification adopted the procedure that first determines guilt, then makes investigations. The notification claimed that Mr. Li Hongzhi was spreading rumors and evil teachings and that some core practitioners were engaged in illegal activities in the name of Falun Gong. The notification also mentioned that the departments of police, politics and security in each area should begin a thorough

investigation to get inside information on Falun Gong activities and find evidence of crimes committed by core practitioners of Falun Gong.

This notification triggered local police departments in a number of areas around the country, without the evidences, to illegally raid Falun Gong practice sites, forcibly disperse practitioners, search homes, break and enter into civilian residences, **confiscate people's private property** and so on. Because the national media took the attitude of "no reporting" towards this notice or its consequences, the majority of the Chinese public at that time was not aware of what was happening (Gu, A. 2004, 'On the Fifth Anniversary of the "April 25 Appeal" -- Remembering April 25, 1999 (Part 1)', Australian Falun Dafa Information Centre website, 27 April <http://www.falunau.org/archivesArticle.jsp?itemID=1232> – Accessed 11 August 2009 – Attachment 11).

### 3. Is bigamy a crime in China? What are the penalties?

The Chinese *Marriage Law* (2001) prohibits bigamy under Article 3:

Article 3 Marriage upon arbitrary decision by any third party, mercenary marriage and any other acts of interference in the freedom of marriage shall be prohibited. The exaction of money or gifts in connection with marriage shall be prohibited.

**Bigamy shall be prohibited.** Cohabitation of a married person with any third party shall be prohibited. Domestic violence shall be prohibited. Within the family maltreatment and desertion of one family member by another shall be prohibited.

...Article 45 If bigamy, domestic violence to or maltreatment and desertion of family member(s) constitute a crime, the criminal responsibility of the wrongdoer shall be investigated according to law. The victim may institute a voluntary prosecution in a people's court in accordance with the relevant provisions of the criminal procedure law. The public security organ shall investigate the case according to law and the people's procuratorate shall initiate a public prosecution according to law.

Article 46 A no-fault party shall have the right to make a request for damage compensation under any of the following circumstances bringing about divorce:

- (1) bigamy;
- (2) cohabitation of a married person with any third party;
- (3) domestic violence; and
- (4) maltreatment and desertion of one family member by another (*Marriage Law of the People's Republic of China*, Adopted 10 September 1980 & 28 April 2001, People's Republic of China - Ministry of Foreign Affairs website <http://www.fmprc.gov.cn/eng/3625/3630/t18322.htm> - Accessed 10 August 2009 – Attachment 12).

Article 258 of the Chinese *Criminal Law* (1997) stipulates the penalty for bigamy of "fixed-term imprisonment of not more than two years or criminal detention":

Article 258 Whoever has a spouse and commits bigamy or knowingly marries a person who has a spouse shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention (*Criminal Law of the People's Republic of China*, Adopted 1 July 1979 & Revised 14 March 1997 – Attachment 13).

As allowed for by Article 46 of the *Marriage Law* quoted above, bigamists may also be required to pay financial compensation in the form of compensation claimed by former partners. A former wife filing for divorce who accused her husband of bigamy in 2005 “demanded 100,000 Yuan (10,000 euro) compensation for moral harassment” (‘China: Online Marriage Boom’ 2005, ANSA, 9 June – Attachment 14; ‘China parliament outlaws bigamy, sets divorce laws’ 2001, *Reuters News*, 29 April – Attachment 15).

In 2002, the *South China Morning Post* reported on one of the first court cases involving bigamy in Shenzhen, Guangdong:

A Shenzhen court last week jailed an unemployed Hong Kong man for a year for having a second wife, the first such case in a city that is known for its concubine villages since China’s Marriage Law was amended this year to make bigamy an offence.

Mainland media reported the sentence briefly and registered that it was the first case tried under new provisions of the law. The Hong Kong media also gave it run-of-the-mill treatment. But why has there only been one case when it is common knowledge that many Hong Kong and Taiwan men keep mistresses in areas of Shenzhen that have become known as concubine villages?

While living with someone other than a spouse is not considered bigamy, the law sees cohabitation as a violation in itself. Experts say there have not been more cases because wives do not know their husbands are cheating, they know but do not have evidence to bring the man to court, or they have the evidence but still love their husbands.

The Marriage Law is a weapon to be used when marital relations are affected, but nothing can be done if the parties involved choose to give up their rights.

If newspapers play down the issue, or women are not queuing up to get a judge to throw their husbands in jail, it does not mean society has accepted the keeping of a mistress.

Most people in Guangdong are firmly opposed to the habit, condemning both men and women in such relations. But this is a problem of Chinese culture, which traditionally allowed men to have more than one wife. It is also a problem of the rich-poor divide. Lured by Shenzhen’s success story, Chinese flocked to the city seeking riches. Many found jobs and some – poor young women – found men who have the means to keep them.

Lying on the border with Hong Kong, Shenzhen is convenient enough and cheap enough for many Hong Kong men to set up a second home.

A truck driver making HK\$30,000 would need only 4,000 yuan (HK\$3,760) to 5,000 yuan a month to rent an apartment for a mainland mistress, and give her pocket money. But with the economic downturn, the mistresses risk being turned out into the cold.

Companies can help end the concubine trade by providing employees sent to the mainland with packages that would allow wives to give up their own jobs and accompany their husbands. Otherwise, as long as China’s western hinterland remains under-developed, and it will remain so for the foreseeable future, there will be a constant supply of women for the Hong Kong men (‘GUANGZHOU Leu Siew Ying Second wives’ 2002, *South China Morning Post*, 4 December – Attachment 16).

## List of Sources Consulted

### Internet Sources:



## **Government Information & Reports**

Australian Embassy Beijing website <http://www.china.embassy.gov.au/bjng/home.html>

Immigration & Refugee Board of Canada <http://www.irb.gc.ca/>

UK Home Office <http://www.homeoffice.gov.uk>

US Department of State <http://www.state.gov/>

US Department of State website <http://www.state.gov>

## **United Nations (UN)**

UNHCR <http://www.unhcr.ch/>

## **Non-Government Organisations**

Amnesty International website <http://www.amnesty.org/>

Freedom House <http://www.freedomhouse.org/template.cfm?page=1>

Human Rights Watch <http://www.hrw.org/>

International Helsinki Federation for Human Rights <http://www.ihf-hr.org/welcome.php>

Human Rights Internet (HRI) website <http://www.hri.ca>

## **International News & Politics**

BBC News website <http://news.bbc.co.uk/>

## **Region Specific Links**

China Court website <http://en.chinacourt.org/>

## **Search Engines**

Google search engine <http://www.google.com.au/>

## **Falun Gong Sources**

Australian Falun Dafa Information Centre website <http://www.falunau.org/index.jsp>

The Epoch Times <http://www.theepochtimes.com/>

Falun Dafa Clear wisdom website <http://www.clearwisdom.net/html/index.html>

Falun Info website <http://faluninfo.net/>

## **Databases:**

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

## **List of Attachments**

1. An, N. 2008, 'Falun Gong Artist Sentenced to Five Years in Prison', *The Epoch Times*, 30 December <http://www.theepochtimes.com/n2/content/view/9428/> – Accessed 11 August 2009.
2. 'Photo Report: Falun Gong Practitioner's Home Confiscated in China' 2000, Falun Dafa Clear wisdom website, 15 October <http://www.clearwisdom.net/emh/articles/2000/10/16/6514.html> – Accessed 7 August 2009.
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6. *Criminal Procedure Law of the People's Republic of China* 17 March 1996, United Nations High Commission for Refugees website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ddbcd4e7&skip=&q:query=criminal%20procedure%20china> – Accessed 29 May 2008.
7. Attachment deleted.
8. *Civil Procedure Law of the People's Republic Of China*, Adopted & Promulgated 9 April 1991, UNHCR website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=3ddbca094&skip=0&category=legal&publisher=natlegbod&coi=chn&querysi=civil&searchin=title&display=10&sort=date> – Accessed 10 August 2009.
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<http://www.fmprc.gov.cn/eng/3625/3630/t18322.htm> - Accessed 10 August 2009.
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14. 'China: Online Marriage Boom' 2005, ANSA, 9 June. (FACTIVA)
15. 'China parliament outlaws bigamy, sets divorce laws' 2001, *Reuters News*, 29 April. (FACTIVA)
16. 'GUANGZHOU Leu Siew Ying Second wives' 2002, *South China Morning Post*, 4 December. (FACTIVA)