

**Achieving social justice through human rights education: A case study on the killing of Falun Gong for their organs**

*(Remarks prepared for delivery to the International Conference on Human Rights Education, Royal Hotel, Durban, South Africa, 14 November 2011)*

by David Matas

Thank you for inviting me. I spoke at this conference last year in Sydney, Australia on the efforts David Kilgour and I had made to inform and advocate around the world on the killing of Falun Gong for their organs and the difficulties we had faced. This time round, I want to pick up the same subject, but from another perspective, the changes that have occurred which address the abuse.

Since we began our work, there has been considerable movement on the field. Before I go through the changes, allow me to give a brief recapitulation.

The Epoch Times published a story in its March 9, 2006 issue with the headline "Over 6,000 Falun Gong practitioners detained in secret concentration camp in China". The report quotes a person with the pseudonym Peter as saying that the camp was located in Sujiatun and that:

"The concentration camp has a crematorium to dispose of bodies. There are also many doctors on site. ... Before cremation, the internal organs are all removed from the body and sold".

A woman using the pseudonym Annie then in Washington DC told the Epoch Times in a story published in its March 17, 2006 edition that her ex-husband harvested corneas of Falun Gong practitioners in a Sujiatun hospital between 2003 and 2005. Other doctors at the same hospital harvested other organs of these victims. The Falun Gong were killed during the harvesting. Their bodies were cremated.

Falun Gong is a set of exercises with a spiritual foundation started in 1992, a modernized

blend of ancient Chinese spiritual traditions of Buddhism, Taoism and the exercise traditions Qi Gong. The Communist Party of China banned Falun Gong in 1999 because of jealousy at its increasing popularity. At the time of banning there were more substantially more Falun Gong practitioners than there were members of the Communist Party. The Party saw a widespread practice with a spiritual foundation as a threat to its ideological supremacy.

Annie's interview led to a controversy about whether or not she was telling the truth. The Government of China, as one might expect, denied what she said. The Coalition to Investigate the Persecution of the Falun Gong, a Washington DC based NGO, asked David Kilgour and me to investigate her claims. We held a press conference in May 2006 announcing that we had decided to conduct the investigation.

We wrote a report released in July 2006 under the title *Bloody Harvest* which concluded that practitioners of Falun Gong in China were indeed being killed for their organs, not just between 2003 and 2005 but from 2001 to the date of our report; not just in Sujiatun but throughout China. The organs were being sold by Chinese hospitals to patients world wide in need of transplants. We produced a second version of the report in January 2007 and a third version in book form in November 2009.

Both David Kilgour and I are human rights activists as well as researchers and writers. Having reached the conclusion we did, we could not just shelve our report and move on. We had to do something. That something was a human rights campaign around the world, addressing every audience we could to urge the end of the abuse we identified.

What has happened in this field since Peter and Annie made their disclosures in March 2006, since we announced our work in May 2006, since we released the first version of our report in July 2006? The answer is quite a lot, both in China and abroad.

## **A. Changes in China**

Changes in China are partly cosmetic and partly real. The changes in China operate on two tracks simultaneously, cover up of the abuse and attempts to counter the abuse.

### **i) Opacity**

One cosmetic change is increased opacity. The little information that used to be available about transplants in China has diminished.

The China Liver Transplant Registry which used to be accessible to the public no longer is. Publicly posted price lists for transplants have gone. Doctors who used freely to admit to telephone callers that they had organs of Falun Gong practitioners for sale no longer make such admissions.

Web sites in China which used to advertise prices of organ transplants and short waiting times for transplants have mostly disappeared. We have archived the sites, but the sites are no longer visible from their sources.

There still remains though at least one visible sight. The Omar Health Care Service website offers to foreigners transplants at The Tianjin Oriental Organ Transplant Center<sup>1</sup>. The website languages are English and Arabic.

This weakening of transparency is change without progress. It shows Chinese sensitivity and reaction to criticism, but does nothing to end the abuses which led to the criticism. Because of the increasing opacity of the system, the extent of the abuses is harder to quantify. However, what little glimpses of the system we get do nothing to alleviate our concerns.

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<sup>1</sup> <http://cntransplant.com/> and <http://cntransplant.com/index1.htm>

## ii) Acknowledgement

A second cosmetic change is a charm offensive. Chinese officials used to claim that all organs for transplants came from donors despite the absence of a donation system and labelled anyone who contradicted them as liars.

Wang Guoqi a doctor from the Tianjin People's Armed Police General Brigade Hospital testified before the U.S. Congress on June 27, 2001 that he helped remove corneas and skin from more than 100 executed prisoners. A few days after the testimony, Foreign Ministry spokeswoman Zhang Qiyue called it "sensational lies" and "vicious slander" against China. "With regard to the trade in human organs, China strictly prohibits that," Zhang said. "The major source of human organs comes from voluntary donations from Chinese citizens."<sup>2</sup>

Instead of labelling their critics as liars, officials now acknowledge the correctness of the position of the critics. In July of 2005 Huang Jiefu, Chinese Deputy Minister of Health, indicated as high as 95% of organs derive from execution<sup>3</sup>. Speaking at a conference of surgeons in the southern city of Guangzhou in mid-November 2006, he said: "Apart from a small portion of traffic victims, most of the organs from cadavers are from executed prisoners"<sup>4</sup>. In October 2008, he said "In China, more than 90% of transplanted organs

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<sup>2</sup> John Pomfret "Rare Chinese Newspaper Exposé Details Prisoner Organ Harvests" The Washington Post, July 31, 2001

<sup>3</sup> The Congressional Executive Commission on China Annual Report 2006, p. 59, note 224, p.201: "Organ Transplants: A Zone of Accelerated Regulation" Caijing Magazine (Online), 28 November 05.

<sup>4</sup> [http://news3.xinhuanet.com/english/2006-11/16/content\\_5335427.htm](http://news3.xinhuanet.com/english/2006-11/16/content_5335427.htm)

are obtained from executed prisoners"<sup>5</sup>. In March 2010, he stated that: "... over 90% of grafts from deceased donors are from executed prisoners"<sup>6</sup>.

What is more, the Government of China now accepts that this sourcing of organs from prisoners is improper. Deputy Health Minister Huang Jiefu, at the time of the announcement of an organ donor pilot project in August 2009, stated that executed prisoners "are definitely not a proper source for organ transplants".<sup>7</sup>

Instead of accusing those who criticize China for sourcing organs from prisoners as liars and anti-China, officials now say just give us time - to set up an effective donation system and a law sourcing organs from the brain dead cardiac alive so that we can source organs from reputable sources. This charm offensive though has had no noticeable impact on diminishing actual transplant abuse in China.

### **iii) Ban on sales**

A third cosmetic change is enactment of legislative standards and principles. Chinese communists are past masters of this sort of flim flam. Their laws are full of high sounding principles which mean nothing. This legislative technique has devolved onto the transplant sector. Unless and until the rule of law exists in China, unless and until government officials can be brought to account before independent judges for violating the laws of the land, the enactment of high sounding laws in the transplant field as elsewhere will mean

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<sup>5</sup> <<http://press.thelancet.com/chinaorgan.pdf>>

<sup>6</sup> "Tomorrow's Organ Transplantation Program in China", Presentation delivered at the Madrid Conference on Organ Donation and Transplantation, Madrid 2010, by Prof. Huang Jiefu, Vice Minister of Health, P.R.C.

<sup>7</sup> "China's Organ Reforms", China Daily, August 26, 2009

little.

The Government of China introduced a number of changes first through a Ministry of Health notice issued on March 16, 2006 titled "Clinical Application of Human Organ Transplant Technology Management Interim Provisions" which came into effect on July 1st, 2006 and second through a State Council regulation issued March 31, 2007 titled "Regulations on Human Organ Transplant" which came into effect May 1, 2007. The interim provisions and the regulation are, in many respects, identical.

Amongst the changes introduced by both the interim provisions and the regulation was a ban on the trade or sale of organs. The regulation states

"No organizations or individuals are not allowed to trade human organs in any form and are not allowed to be engaged in any activities related to trading human organs."<sup>8</sup>

In itself, this regulatory provision, even if enforced, does not counter the problem David Kilgour and I addressed because neither practitioners of Falun Gong nor their relatives were selling the organs which were harvested. The organs were stolen, not sold.

The exorbitant charges levied in China for transplants are paid to doctors and hospitals. In form, they are not that different from charges of hospitals for transplants in other countries. The money that goes to prison guards involved in handing over prisoners for their organs is closer in form to the trading of organs. Yet, even here, technically, the guards are not being paid for the organs of prisoners, since the guards hand over the prisoners alive to the organ harvesters.

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<sup>8</sup> Regulation article 3. See also Interim provisions article 27.

In substance though this regulatory provision is violated when Falun Gong are killed for their organs. Those who participate in the killing of Falun Gong for their organs are both murderers and thieves. Thieves sell stolen organs. The law prohibits the trading of organs "in any form". Killing Falun Gong for their organs and then charging patients high prices for transplants of these organs is a form of trading in Falun Gong organs.

The regulation also has a fee limitation. It states:

"Medical institutions engaged in organ transplant shall collect only these fees and expenses:

1. The expense of surgery for harvesting and transplanting organs;
2. The expense of storing and transporting organs;
3. The cost of medicine, the examination fee, the cost of medical materials and fees for use of equipment.

The fee collection structure must take this form; the amounts will be set out separately."<sup>9</sup>

Fees beyond the stipulated charges are forbidden. There is no amount hospitals can allocate to pay prison guards to hand over prisoners for transplant.

Because there is no rule of law in China, it is impossible to challenge the hospital charges for transplants and the prison cooperation in transplants for money as a form of trade of organs or a violation of the fee regulation scheme. Individuals can not go to court to challenge actions of the state. Even if they could, the courts in China are not independent from government. So the result of such a challenge would be pre-ordained.

#### **iv) Registration**

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<sup>9</sup> Regulation article 21. See also interim provisions article 33.

The interim provisions and regulation require civilian hospitals engaged in transplants to be registered with the Ministry of Health<sup>10</sup>. Unregistered civilian hospitals could not be engaged in transplants. Civilian medical practitioners cannot carry out organ transplants unless registered to carry out transplants with their professional medical association<sup>11</sup>.

This change appears to have had real bite, changed the practice on the ground. Though real, the change has limited significance. For one, it applies to civilian hospitals only. Military hospitals and military medical practitioners, which sell transplants as a business, are immune from the change, since the changes were edicted by the Ministry of Health and that Ministry has no control over the military.

Hospital registration provides a mechanism for control to prevent abuse. However, it does not mean that the mechanism is actually working. The murkiness of the workings of the Chinese health system prevent any assessment of the value of registration.

Institutions to be registered must have:

- i) the capacity to carry out organ transplants;
- ii) suitable technology, equipment, facilities;
- iii) a functioning ethics committee;
- iv) a quality inspection and control policy<sup>12</sup>.

Provincial health administrative departments are required to have experts evaluate transplant treatment<sup>13</sup>. Evaluation must be objective, impartial, scientific. There must be

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<sup>10</sup> Regulation Article 11. Interim Provisions chapter two article 15.

<sup>11</sup> Article XVI.

<sup>12</sup> Regulation article 11.

<sup>13</sup> Regulation article 14.



a complete, archived record of the evaluation process and content.

Provincial health administrative departments are to provide specialized courses to increase organ transplant institution registration. These departments must provide to the Ministry of Health and announce to the public the list of registered institutions and practicing physicians.

Organ transplants can be carried out in non-registered hospitals in emergency situations, for instance, where the organs can not be delivered in a timely fashion to a registered institution or where the patient is in a critical condition. If in a registered medical institution conditions change such that the criteria for registration are no longer met, the institutions shall stop doing transplants.

Before the registration requirement, there were an estimated 1,000 hospitals engaged in transplants. About 600 civilian hospitals applied for registration. The Ministry of Health announced in August 2007 that 164 applications were granted<sup>14</sup>. By August 2009, the Ministry of Health had revoked the licenses of 16 for failing to comply with the registration criteria<sup>15</sup>.

Despite the registration system, transplant abuse in China appears to be increasing because the death penalty is decreasing and transplant volumes, after a dip in 2007, have returned to traditional levels. Since there is no significant alternative increasing sourcing, this combination must mean that the sourcing from prisoners other than prisoners sentenced to

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<sup>14</sup> Jim Warren "China moving rapidly to change transplant system to comply with international ethics, standards practice" Transplant News, September 2007

<sup>15</sup> Peter Foster, "China admits organs removed from prisoners for transplants" Daily Telegraph, August 26, 2009

death, that is to say prisoners of conscience and principally Falun Gong practitioners must be increasing.

#### **v) Donation system**

A fourth cosmetic change is the establishment of a donation system for organs. In principle, the establishment of a donation system should be more than cosmetic. However, that would be so only if the system actually generated donations, which is not the case in China.

The Government of China announced in August 2009 an organ donation system as a pilot project in ten locations. The Chinese Ministry of Health, under the supervision of the Chinese Red Cross, in March 2010 set up an organ donation system in 11 provinces and municipalities.

The newspaper Beijing Today reported in March 2011, one year later, "In Nanjing, the capital of Jiangsu Province, [one of the eleven sites], the not one person has elected to be a donor." Liu Wenhua, a member of the Red Cross of Nanjin and one of 12 donation counsellors sent by the city government to five hospitals said "only three people in Nanjing have donated organs in the past 20 years". The story goes on to note: "Success was equally absent in other regions. As of last Thursday, only 37 people nationwide had registered to donate their organs."<sup>16</sup> These were donations not of actual organs but just promises of donations of organs on death.

The Chinese health system is now holding out the promise of licensing of hospitals on

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<sup>16</sup> Han Manman "Organ donor pilot a failure after one year"

March 18, 2011

<http://www.beijngtoday.com.cn/feature/organ-donor-pilot-a-failure-after-one-year>

condition they only use donated organs from the country's voluntary organ donation system<sup>17</sup>. China has in the works a two track system, a small one which meets international standards alongside a very large one which does not. The very planning of such a two track system is an admission that the system as a whole will not meet international standards for a very long time, if ever.

#### **vi) Priority to locals**

Chinese patients are now given priority access to organ transplants, taking precedence over foreigners. The Ministry of Health of the Government of China announced that change on June 26, 2007<sup>18</sup>. The priority includes permanent residents of China from Hong Kong, Macau and Taiwan.

Transplants to foreigners under this policy are still possible. The priority to locals is not a ban on transplants to foreigners. Rather for foreigners, the procedure is different. Foreign transplants must be approved by the Ministry of Health.

A priority given to Chinese patients is real, though not total. Transplant tourism into China has decreased, but not ended. This change in the demand does nothing to change the supply. Sourcing is as disreputable as ever.

Moreover, this change too has a cosmetic effect, since finding out from Chinese patients in China about what goes on during the transplant process is almost impossible. Foreign transplant tourists or their families or their local doctors involved in after care have been in

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<sup>17</sup> Shan Juan, "China to cut dependence on executed prisoners for transplants" China Daily, 2011 May 04.

<sup>18</sup> "Foreign Applications for Organ Transplant Restricted" <[china.org.cn](http://china.org.cn)>

many cases forthcoming, providing valuable information about the workings of the Chinese transplant system.

### **vii) Sourcing from the brain dead**

The Government of China has committed to enacting a law to legalize organ harvesting from the brain dead. The official Chinese government report on the original proposal for the law change about organ transplants which took effect on July 1, 2006 quoted unnamed sources as saying that the regulation would "introduce, for the first time in China a set of medical standards on brain death"<sup>19</sup>.

This promise has been repeated many times since. The promise is now over five years old. Yet, still there is nothing.

## **B. Outside China**

### **i) Israel**

Israel passed a law banning the sale and brokerage of organs<sup>20</sup>. The law as well ended funding through the health insurance system of transplants in China for Israeli nationals. The Israeli Organ Transplant Law 2008 states

"This chapter does not forbid performance of organ transplantation outside Israel, including reimbursement of such transplant, as long as both of the following are maintained:

1. Organ procurement and transplantation have been performed according to local laws;

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<sup>19</sup> "Organ Transplant Regulation Drafted" China Daily March 13, 2006 <china.org.cn>

<sup>20</sup> Shahar Ilan, *With top rabbis' blessing, Knesset approves organ donation*, Haaretz 24/03/2008

2. All the provisions of this law against the trade in organs have been respected."<sup>21</sup>  
It further states under the heading "Penalties", which are potentially three years in prison and a fine:

"The above penalties will apply whether organ procurement or transplantation has been performed in Israel or anywhere outside Israel"<sup>22</sup>.

## **ii) Taiwan**

Taiwan on October 30, 2006 issued a bulletin stating that doctors and other medical personnel, in order to respect the Physicians Act, which requires conformity to medical ethics, must not

- a) introduce patients to organ transplant brokers;
- b) direct patients to a place where
  - i) local law does not prohibit the sale of organs,
  - ii) information on organ sourcing is not transparent, or
  - iii) international public opinion clearly and openly criticizes violations of human rights or medical ethics in organ transplantation;
- c) contact foreign organ transplant institutions to transplant organs for their patients; or
- d) go abroad with their patients for organ transplants and receive compensation<sup>23</sup>.

David Kilgour and I visited Taiwan October 11 to 14, 2006. We met on October 12th with Mr. Sheng-mou Hou, Minister of the Department of Health, in a public meeting at which the

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<sup>21</sup> Clause 5

<sup>22</sup> Clause 36(B).

press were invited<sup>24</sup>.

### **iii) Australia**

Neil Laurie, Clerk of the Queensland Parliament, by letter dated November 1, 2006, sent a petition to Stephen Robertson, the Minister of Health for the Queensland Government in Australia, asking for an investigation of the forced organ harvesting from Falun Gong. The Minister of the Queensland, on December 1, 2006 in response, wrote that the Prince Charles Hospital has "a policy of not training any Chinese surgeon in any transplant surgical technique" and that the Princess Alexandra Hospital "does not undertake any sponsored organ transplant research or training with China."

The Prince Charles and Princess Alexandra Hospitals are the two major transplant hospitals in Queensland. I have been told informally that, though no other Australian State Health Minister has issued a similar statement, other transplant hospitals in Australia now follow a similar policy.

### **iv) Belgium**

Two Belgian senators Patrik Vankrunkelsven and Jeannine Leduc introduced into the Belgian Parliament on November 30, 2006 a law which addresses organ transplant tourism<sup>25</sup>. The law inserts a provision into an existing law on organ transplants<sup>26</sup>.

The insertion prohibits the undergoing of transplants outside the European Union in three

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<sup>24</sup> German Press Agency "Taiwan asked to bar citizens from organ transplants in China" October 12, 2006.

<sup>25</sup> SÉNAT DE BELGIQUE SESSION DE 2006-2007, December 13, 2006

<sup>26</sup> la loi du 13 juin 1986 sur le prélèvement et la transplantation d'organes

circumstances. The first is that there is evidence indicating that the source of the organ is a living person who has not consented. The second is that there is evidence indicating that the source of the organ is a prisoner sentenced to death. The third is that the amount paid for the transplant is so large that it creates a presumption that the organ was sold for profit.

A person who undergoes a transplant in violation of this prohibition is subject to a fine of between 500 and 5,000 Euros. The penalty can be avoided if the person who underwent the transplant can prove that the organ was not harvested from a living person who has not consented or a prisoner sentenced to death and that the organ was not sold for profit. The law gives the government the authority to establish a list of medical institutions outside the European Union to which a person can go for a transplant without the necessity of proving these matters.

The authors of proposed legislation appended a commentary which explains that the law provides that whoever undergoes an organ transplant outside of the European Union must personally assure him or herself that the organ was donated willingly and did not come from a prisoner sentenced to death, who is presumed not to be able to decide without constraint. Also, anyone who pays a large sum must assume that this payment is not a simple reimbursement for costs incurred. If the organ recipient can not prove the opposite, the recipient subject is subject to punishment.

The government can establish a list of medical institutions for which these negative presumptions do not apply. If the patient receives a transplant in one of the listed institutions, he or she does not have to discharge a burden of proof and is therefore not liable to punishment.

It follows that, if the patient must undergo an organ transplant outside of the European Union, it would be preferable that the patient goes to a medical institution on the list.

Otherwise, the patient must be especially vigilant and verify the source of the organ received.

Also appended to the proposed legislation was a background note which referred extensively to the report that David Kilgour and I wrote on the killing of Falun Gong for their organs. The background note stated that the proposed law was aimed at preventing Belgians from being tempted by the sale of organs in violation of ethical standards. The authors of the proposed legislation wrote that if the countries from which patients now go systematically to China instituted a ban, the encouragement for the sale of organs would end.

## **v) Canada**

### **a) Legislation**

A Canadian Member of Parliament Borys Wrzesnewskyj introduced into the Parliament of Canada proposed extraterritorial legislation banning transplant tourism. The proposed legislation was introduced twice, into two successive Parliaments, the first time as Bill C-500 on February 5, 2008, the second time as Bill C-381 on May 7, 2000.

The Bill creates a number of distinct offences. All the offences have extraterritorial effect. They are punishable whether the acts are committed inside or outside Canada.

One set of offences deals with absence of consent. Every one commits an offence who receives the transplant of an organ removed without the donor's consent and knew or ought to have known, at the time of the transplant or earlier, that the organ was removed without the donor's consent. A person commits an offence if the person participates in the removal of an organ or other body part without the donor's consent. A person offends if the person knowingly acts on behalf of a person who removes an organ or other body part without the donor's consent or of a person who purchases the organ.



A second set of offences deals with the sale of organs. An offence is committed by a person who obtains an organ with the intention of having that organ transplanted and knew or ought to have known, at the time of the acquisition or earlier, that the organ part was acquired as a consequence of a financial transaction. There is an offence committed when a person participates in the acquisition of an organ, and knew or ought to have known, at the time of acquisition or earlier, that the organ was acquired as a consequence of a financial transaction.

The proposed law sets up a certification procedure. Anyone who has a transplant must within 30 days after the transplant obtain a certificate establishing that the organ was donated and that no money was paid for it and provide that certificate to a designated Canadian authority. A Canadian citizen or a permanent resident who has a transplant outside Canada must provide the certificate to the designated Canadian authority at the latest upon return to Canada.

The proposed law sets up reporting requirements. Doctors and nurses must report to the designated Canadian authority the identity of any person examined who has had an organ transplant.

Borys Wrzesnewskyj, the author of the Bill, nominated me and David Kilgour for the Nobel Peace prize for 2010. Members of Parliament are eligible nominators for the prize.

## **b) Ethical standards**

The October 2010 policy statement on organ trafficking and transplant tourism of the Canadian Society of Transplantation and Canadian Society of Nephrology<sup>27</sup> has a number of

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<sup>27</sup> Transplantation - Volume 90, Number 8, October 27, 2010

standards which bear directly on the Chinese situation, though China is not specifically named. The policy makes every effort to discourage doctors from having anything to do with Chinese transplant abuses.

Under the heading "Recommendations for Pre-transplant Counselling, the policy statement sets out these principles:

"5. Health care providers should inform patients that individual provinces or territories usually will not extend insurance coverage for medical or surgical expenses incurred by patients in jurisdictions outside Canada related to the transplantation of an organ obtained through transplant tourism ...

6. ... Patients should be educated about the harms that may come to those who provide organs through transplant tourism. ... organs have allegedly been taken by force, and individuals may even been killed to obtain their organs ... The entire transplant tourism industry relies on secrecy, making it is impossible to determine whether donor information provided by organ brokers, who are motivated by financial gain, is accurate."

Under the heading Guidance regarding the "Pre-transplant Evaluation of Transplant Candidates", the policy statement has these principles:

"1. ... Physicians should not prescribe medications or otherwise facilitate obtainment of medications that will be used during the transplantation of a purchased organ...

2. ....individual physicians may elect not to provide medical records to patients if they believe the information will be used in support of an illegal transplant performed in an unregulated system and that there is a significant risk of harm to the patient or organ vendor."

Under the heading "Post Transplant Obligations" is this principle:

"2. In non-emergent situations, individual physicians may elect to defer care to another physician....In such situations, the physician should ensure that the patient has reasonable access to the proposed alternative care provider and that the deferral is not discriminatory to any individual patient."

#### **vi) France**

French Parliamentarian Valérie Boyer on 19 October 2010 along with several other members of the National Assembly proposed a law which sets out certificate and reporting requirements similar to the Canadian proposed law. The proposed law requires every French citizen and habitual resident who undergoes an organ transplant abroad to acquire at the latest 30 days after the transplant a certificate stating that organ was donated without payment. The organ recipient must provide the certificate to the French Biomedical Agency before returning to France.

The proposed legislation requires every doctor to report to the Biomedical Agency the identity of every person the doctor examined who underwent a transplant. The proposed law in turn requires the Biomedical Agency to report to the Public Department any person who there are reasonable grounds to believe was involved in a financial transaction to obtain an organ.

The background note accompanying the proposed law note states that several investigations have made public the existence of a network of trafficking of organs harvested from members of the Falun Gong community, who have been persecuted for years. The only investigation to which reference is made in the footnote accompanying that statement is the one David Kilgour and I did. Valerie Boyer made public her proposed law in October 2010 at a press conference in Paris at the National Assembly at which both David Kilgour and I were invited to participate and did participate.

**vii) The World Medical Association**

The World Medical Association at its General Assembly, in Pilanesberg, South Africa, in October 2006 adopted a resolution stressing the importance of free and informed choice in organ donation, stating that prisoners and other individuals in custody were not in a position to give consent freely, and demanding that the Chinese Medical Association condemn any practice in violation of these ethical principles and basic human rights and ensure that Chinese doctors were not involved in the removal or transplantation of organs from executed prisoners. The resolution demanded that China immediately cease the practice of using prisoners as organ donors.

The World Medical Association issued a press release on October 5, 2007 announcing that it had reached an agreement with the Chinese Medical Association against transplantation of prisoners' organs, except for members of their immediate family. The agreement was reported at that day's meeting of the World Medical Association annual General Assembly in Copenhagen. The Chinese Medical Association undertook to promote the strengthening of management of human organ transplantation and prevent possible violations of the regulations against the sale of organs made by the Chinese Government.

I gave a talk on the subject "China and the World Medical Association" to the International Association of Law and Mental Health Congress, Padua, Italy, 27 June 2007. In that talk, drawing on the example of the World Psychiatric Association and Soviet psychiatric abuse, I stated that, for membership of the Chinese Medical Association in the World Medical Association to continue, the Chinese Medical Association must

- 1) acknowledge that systematic abuse of transplant surgery has taken place including instances of involuntary organ harvesting of Falun Gong practitioners for transplants,
- 2) promise to discontinue the abuses,
- 3) provide redress for the victims, and
- 4) democratize the transplant surgery profession.

The Chinese government has shrugged off the agreement between the World Medical Association and the Chinese Medical Association at the Copenhagen General Assembly. Liu Zhi, from the CMA international department, told the Sydney Morning Herald in October 2007 said that the agreement had no legal effect<sup>28</sup>.

Liu Zhi expressed the hope that the agreement would influence the government. Yet, he also said that the current transplant system in China is "clean". It is hard to know what influence Mr. Liu could expect the agreement to have on the government when he was not prepared to acknowledge that the system had any problems.

#### **viii) The Transplantation Society**

The Transplantation Society on November 6, 2006 recommended a set of principles for its member when interacting individuals or transplant programs in China. Among these were that:

a) Only those doctors who agree to conduct clinical practice according to The Transplantation Society policy should be permitted to become members. That policy opposes the recovery of organs from prisoners.

b) Presentations of studies involving patient data or samples from recipients of organs from prisoners should not be accepted at The Transplantation Society meetings.

c) Members of The Transplantation Society should not carry out pre-clinical or clinical research projects in collaboration with groups from China if any material is derived from

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<sup>28</sup> Mary-Anne Toy, "Olympic jitters behind China's organ pledge" Sydney Morning Herald, October 10, 2007

prisoners or recipients of organs from prisoners.

The Ethics committee, led by Annika Tibell of Sweden, composed the principles. David Kilgour and I met with Annika Tibell in Sweden in September 2006.

### **ix) Journal standards**

Some professional transplantation journals have developed an editorial policy about contributions which rely on data from abusive transplant practices. The Editors and Associate Editors of the journal *Liver Transplantation* wrote that they "have decided that original publications dealing with clinical liver transplantation outcomes submitted to this journal should explicitly exclude the use of executed prisoners or paid donors as a source of donor organs."<sup>29</sup>

The American Journal of Transplantation issued as instructions to authors a new policy effective May 2011 which states:

"AJT will not accept manuscripts whose data derives from transplants involving organs obtained from executed prisoners. Manuscripts writing about this practice (e.g. an editorial or a report recounting the secondary consequences of this practice) may be considered at the discretion of the Editorial Board, but require a written appeal to the Board prior to submission of the manuscript.

### **x) Pharmaceutical companies**

Amnesty International in August 2010 issued an appeal which stated:

"Companies should exercise due diligence to ensure that they are not directly or indirectly implicated in the taking or use of organs from executed prisoners."

It called on pharmaceutical companies

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<sup>29</sup> Issue 13:182, 2007.

"to collectively:

- declare their commitment to respecting human rights;
- condemn the practice of sourcing organs from executed prisoners; and
- undertake to carry out human rights due diligence, including throughout their value chains, so as to become aware of, prevent and address adverse human rights impacts, and to ensure that they do not directly or indirectly assist, encourage or support the sourcing of organs from executed prisoners."<sup>30</sup>

Drug company Novartis stated in August 2010 that it was observing a moratorium for its clinical immunosuppressive drug trials in China. Its spokesman, Satoshi Sugimoto, declared that Novartis supported the public statement of Amnesty International and would work on bringing together the stakeholders for the next steps.<sup>31</sup>

## Conclusion

The advocacy effort in which David Kilgour and I have been engaged has been an effort in human rights education. Our advocacy has involved communication of human rights standards, mechanisms, research methodology and results. During the period in which we were engaged in an education campaign about the killing of Falun Gong for their organs and an advocacy campaign to stop it, there have been many changes to the factors which contributed to the abuse.

In some cases, the changes set out here would have occurred whether we had done our

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<http://www.amnesty.ch/de/themen/wirtschaft-menschenrechte/dok/2010/amnesty-international-calls-for-the-end-to-the-use-of-organs-from-executed-prisoners>

<sup>31</sup> "Appel à clarifier les prélèvements d'organes sur des prisonniers en Chine" Frédéric Koller/Le Temps <<http://www.infosud.org/spip.php?article8664>>

study or not, whether we had engaged in our education/advocacy campaign or not. In other cases, our study and activism were likely a contributory cause.

On balance, though the problem we have identified is far from resolved, the very fact of movement in so many countries in so many different ways after our we released our report and engaged in education and advocacy to stop the abuse supports the value of human rights education. Human rights education is all on its own a powerful tool in advancing respect for human rights.

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