

Prevention and cure

Combating organ transplant Abuse in China: New Developments

(Remarks prepared for a forum in Taipei, Taiwan, 28 February 2013)

David Matas

Table of contents

I. Introduction

II. Changes Abroad

A. Prevention

i) Proposed and enacted legislation and government orders

a) Australia

b) Belgium

c) Canada

d) France

e) Israel

f) Malaysia

g) Taiwan

ii) Anti-rejection drug testing in China

a) Amnesty International

b) Novartis

c) Roche

d) Isotechnika

e) Pfizer

iii) Ethics of professional associations

a) The Transplantation Society

b) World Medical Association

c) Istanbul declaration

d) Canadian Society of Transplantation and Canadian Society of Nephrology

iv) Ethics Implementation

- a) Training of Chinese transplant professionals
- b) Publication of research of Chinese transplant professionals

v) World Health Organization

B. Remedies Abroad

i) United Nations

- a) Specialized mechanisms
- b) Committee against torture
- c) Universal periodic review

ii) National

- a) Limiting state immunity
- b) Immigration control
- c) U.S. reporting
- d) Litigation

III. Changes in China

A. Amelioration in China

i) Legal changes

- a) Hospital registration
- b) Requirement of consent
- c) Prohibition of sale
- d) Criminal law amendment

ii) Policy changes

- a) Priority to nationals

- b) Shift from prisoners to donors
- iii) Political change
- iv) Change assessment

B. Deterioration in China

- i) Cover up
 - a) Website information
 - b) Hong Kong liver transplant registry
 - c) Denials
 - d) Referral letters
- ii) Numbers
- iii) Universal periodic review

IV. Conclusion

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I. Introduction

The bulk of organs for transplants in China come from prisoners of conscience, predominantly practitioners of the spiritually based set of exercises Falun Gong. That was the conclusion of research in reports published in June 2006, January 2007, and in the book *Bloody Harvest*, November 2009 all of which I co-authored with David Kilgour and in the book *State Organs* August 2012 I co-edited with Torsten Trey.

One reason, amongst many, that David Kilgour and I came to the conclusion we did is that the precautions which should be in place to prevent the abuse were not in place. After the first version of our report, we launched on a global advocacy campaign to attempt to end the abuse we had identified. The book *State Organs* is a reflection and continuation of that campaign by joining together professionals from around the world, each making their own contribution to the ongoing effort.

Since the release of the first version of our report, more than six and a half years have passed. In the intervening period, much has changed, and not always for the better. This paper focuses on the changes both in China and abroad, the changes in China for better and worse and the changes abroad to attempt to prevent the abuse and to remedy the wrongs inflicted.

II. Changes abroad

A. Prevention

i) Proposed and enacted legislation and government orders

a) Australia

Member of the New South Wales Parliament David Shoebridge is proposing to introduce into that Parliament legislation¹ to prohibit any person from

- a) entering into a commercial transplant arrangement,
- b) removing tissue from the body of another person, whether living or deceased, without consent,
- c) consenting to the use of tissue removed from the body of another person, whether living or deceased, for the purpose of its transplantation to the patient if the tissue was removed without consent, and the patient knows or is reckless as to that lack of consent.

The proposed legislation requires medical practitioners and nurses who provide services to a patient and have reasonable grounds to suspect that tissue has been transplanted to the patient to report to the appropriate authority

- (a) the name of the patient,
- (b) when and where the medical practitioner or nurse provided services to the patient, and
- (c) the grounds for suspecting that tissue has been transplanted into the patient.

Any patient who consents to the transplantation to the patient of any tissue must report to the appropriate authority the date, location and nature of the treatment in connection with which the tissue was transplanted to the patient.

The proposed legislation has extraterritorial effect. The law applies where either the person committing the prohibited act or the person from whom the tissue is removed is ordinarily resident in New South Wales, even where the act itself occurs outside New South Wales.

¹ Human Tissue Amendment (Trafficking in Human Organs) Bill 2013

b) Belgium

Two Belgian senators Patrik Vankrunkelsven and Jeannine Leduc introduced into the Belgian Parliament on November 30, 2006 a law which addresses organ transplant tourism². The law inserts a provision into an existing law on organ transplants³.

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

² Sénat de Belgique Session de 2006 2007, December 13, 2006

³ la loi du 13 juin 1986 sur le prélèvement et la transplantation d'organes

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.

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.

c) Canada

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, 2009.

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.

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

d) 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.

e) Israel

Israel passed a law in 2008 banning the sale, purchase and brokerage of organs both in Israel and abroad⁴. The prohibition against sale forbids receipt of a reward for an organ removed from the body of any person including one's own⁵. The prohibition against purchase forbids giving a reward for an organ transplanted into the body of any person including one's own⁶.

The prohibition against brokerage forbids being a broker either directly or indirectly where a prohibited reward has been promised⁷. The penalties for violating these prohibitions apply whether the organ removal or transplant is intended to take place inside or outside

⁴ Organ Transplant Act, 2008

⁵ Article section 3(a)

⁶ Article 3(b).

⁷ Article 4.

Israel⁸.

The law prohibits reimbursement of transplantation abroad conducted in violation of the standards of the legislation⁹. This provision ended funding through the health insurance system of transplants in China for Israeli nationals. Jay Lavee in his contribution to the book *State Organs* explains the enactment of this law as a reaction to transplant abuse in China.

f) Malaysia

The Malaysian Anti-Trafficking in Persons Act 2007 defines exploitation to include the removal of human organs¹⁰. The law prohibits the trafficking of any person for the purpose of exploitation¹¹. The law also imposes a penalty on any person who profits from the exploitation of a trafficked person¹².

The prohibitions in the Act apply whether the conduct constituting the offence took place inside or outside if the trafficking starts in Malaysia or Malaysia is the receiving country¹³. As well, any offence committed by a citizen or permanent resident of Malaysia outside of Malaysia may be dealt with as if it had been committed within Malaysia¹⁴.

⁸ Article 36(b)

⁹ Section 5.

¹⁰ Article 2

¹¹ Article 12.

¹² Article 15.

¹³ Article 3

¹⁴ Article 4.

Datuk Seri Liow Tiong Lai, the Health Minister of the Government of Malaysia, announced on October 16, 2011 that, as of January 1, 2012, any Malaysian who travels abroad for an organ transplant provided on a commercial basis would not get a free supply of immunosuppressant drugs from government hospitals. The Minister said that the new ruling would apply only to new cases. Old cases would continue getting their supply of immunosuppressant drugs from government hospitals. He added that those who need surgery overseas must consult the Health Ministry to get government approval.

g) Taiwan

The Health Department of the Government of Taiwan on August 4, 2006 promulgated an administrative order which provides that a physician would be in violation of medical ethics and subject to disciplinary action if the physician

1. introduces or refers patients to a broker,
2. introduces or refers patients to a country where laws or regulations do not prohibit organ trade or organ brokerage or the information on the source of organs is not transparent,
3. contacts organ transplant agencies abroad and brokers patients,
4. takes patients abroad for organ transplants and receives remuneration.

The Taiwan Legislature on November 22, 2012 resolved that the Department of Health must require major medical institutions and physicians to record the country of transplant and hospital information (including surgeons) of any patient who received an organ transplant in a foreign country. The recording must be done when the patients apply for postoperative health insurance payment after returning home.

ii) Anti-rejection drug testing in China

a) Amnesty International

The Swiss section of 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

"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."¹⁵

b) Novartis

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 and would work on bringing together the stakeholders for the next steps.

The NGO Doctors Against Forced Organ Harvesting has appealed to drug companies "to set high standards in corporate responsibility ... refraining from using transplants that might be legally, but not ethically acceptable."

c) Roche

Triodos Bank disinvested from Roche stating:

"Roche does not take full responsibility for its clinical trials in China. In our final assessment we balanced the gathered information and concluded that Roche's approach to clinical trials in China is not acceptable. The company's size and

¹⁵ "Anti rejection Drug Trials and Sales in China" American Transplant Congress, Philadelphia, April 30, 2011 at https://dafoh.org/Matas_speech.php

influence warrant a much clearer position on the origin of transplanted organs. Since the company no longer meets our human rights minimum standard, it has been excluded from the Triodos sustainable investment universe and will be removed from all Triodos investments within the short term."

Dr. Eric J. Goldberg, chief medical research director of an international clinical pharmaceutical research corporation was given an invitation to conduct clinical research trials in China. He refused the request and persuaded his employer to locate another country to conduct the research. He has attempted to sway other pharmaceutical companies to do the same¹⁶.

d) Isotechnika

Information on the internet in the spring of 2012 showed that the Edmonton based company Isotechnika intended to commence clinical trials in the end of August 2012 in China of the anti rejection drug Voclosporin under a contract with the Chinese company 3SBio. The drug would be used in kidney transplant patients.

David Kilgour and I wrote last July to the Government of Canada Minister of Health, the United States Commissioner of Food and Drugs, and the European Medicines Agency Executive Director requesting that their agencies indicate that, in deciding whether to approve the anti rejection drug Voclosporin for use within your jurisdiction, they would not accept data generated from clinical trials in China.

We also wrote Isotechnika itself asking them to commence a moratorium on trials in China for Voclosporin until such time as transparency allows independent outsiders to be satisfied beyond a reasonable doubt that the sourcing of organs for those trials meets

¹⁶ Robin Kemker, "Organ Transplant Expert Refuses China's Invitation", Epoch Times Dec 29, 2010

international ethical standards. These letters generated responses and discussions, but no concrete commitments. Isotechnika has not, as far as we know, to date commenced the conduct of these trials in China but also has not publicly renounced the intention of conducting them.

e) Pfizer

Pfizer in 2012 set out global standards for clinical studies which provide that the studies must be conducted in accordance with relevant international standards. A qualified Institutional review board or independent ethics committee must review and approve each study before the study is conducted. The review panel must be independent from Pfizer and be knowledgeable about the community where the study will be conducted.

Study participants may only be enrolled after providing their voluntary informed consent. Informed consent must be documented in writing.

Pfizer-sponsored clinical research must be designed, conducted, and monitored to ensure the protection of the rights and safety of study participants. Pfizer-sponsored studies must be monitored by to assess the protection of study participants' rights and welfare and to ensure that the study is being conducted in accordance with relevant standards.

iii) Ethics of professional associations

a) The Transplantation Society

The Transplantation Society, an international non-governmental organization, opposed the transplantation of organs from prisoners sentenced to death in July 2006. Their statement said:

"Because of the restrictions in liberty in a prison environment it is impossible to ascertain whether prisoners are truly free to make independent decisions, and thus an autonomous informed consent for donation cannot be obtained. Therefore, The

Transplantation Society is opposed to any use of organs from executed prisoners."

The Society recognized that in China, prisoners sentenced to death are a major source of organs. Indeed, their statement called executed prisoners "the major source". The Society, in November 2006, then issued a letter to all its members about interaction with China on transplants which failed to draw the logical conclusion from this reality.

The Society says about the presentation of transplant studies from China at Transplantation Society meetings:

"presentations of studies involving patient data or samples from recipients of organs or tissues from executed prisoners should not be accepted".

The November letter treats collaboration on studies the same way. It states:

"Collaboration with experimental studies should only be considered if no material derived from executed prisoners or recipients of organs or tissues from executed prisoners is used in the studies."

This November letter is even more categorical on the source of organs in China. The letter is "almost all" organs are "likely" to have been obtained from executed prisoners.

The Society will permit doctors from China to become members of the Society only if they "sign the Statement of The Transplantation Society for Membership agreeing to conduct clinical practice according to The Transplantation Society policy".

When it comes to clinical or pre clinical trainees from transplant programs that use organs or tissues from executed prisoners, the policy states that "Care should be taken to ensure, as far as possible, that it is their intention that their clinical career will comply with the standards of practice outlined in The Transplantation Society Policy & Ethics Statement".

On transplant tourism, the Transplantation Society Policy and Ethics statement provides:

"Transplant tourism is a recently described phenomenon that may entail exploitive practices of organ transplantation for recipients who travel outside their country of residence to purchase an organ from a vendor. A practice of transplant tourism that has no transparency or professional oversight violates ethical principles of care. The Transplantation Society is opposed to practices of transplant tourism that exploit donors and recipients."

b) World Medical Association

In a news release dated 5 October 2007 the World Medical Association announced at the annual General Assembly in Copenhagen an agreement with the Chinese Medical Association. The Chinese Medical Association agreed that organs of prisoners and other individuals in custody must not be used for transplantation, except for members of their immediate family.

In a letter to the World Medical Association, the Vice President and Secretary General of the Chinese Medical Association, Dr Wu Mingjiang, said:

"We would like to inform you that after discussions in the Chinese Medical Association, a consensus has been reached, that is, the Chinese Medical Association agrees to the World Medical Association Statement on Human Organ Donation and Transplantation, in which it states that organs of prisoners and other individuals in custody must not be used for transplantation, except for members of their immediate family.

The Chinese Medical Association will, through its influence, further promote the strengthening of management of human organ transplantation and prevent possible violations of the regulations made by the Chinese Government. We also hope to work more closely with the WMA and exchange information and views on

the management of human organ transplantation."

Dr Edward Hill, chair of the World Medical Association, said the announcement by the Chinese Medical Association was a very positive step forward and added:

"We shall now continue our dialogue with the Chinese Medical Association and include other national medical associations in a project to find best practice models for ethically acceptable organ procurement programmes. This would help not only China and its high demand for organs, but also other regions in the world that have the same problems of coping with a severe shortage of organs."

Liu Zhi, of the Chinese Medical Association's international department, said that the agreement with the World Medical Association has no legal effect. He expressed the hope that the agreement would influence Chinese 500,000 doctors and government decisions.

The Chinese Medical Association agreement does not bind military doctors who are not members of the Chinese Medical Association and military hospitals. Yet, organ recipients recount that military doctors and hospitals are heavily involved in organ transplant surgery. The mere fact that the recipient is an immediate family member of the prisoner does not automatically mean that the prisoner has freely consented to the donation.

The World Medical Association adopted a statement on organ and tissue donation at its General Assembly in Bangkok, Thailand, October 2012 which provides that detainees should be eligible to donate after death only where

- a) there is evidence that this represents their long-standing and considered wish and safeguards are in place to confirm this;
- b) their deaths are from natural causes; and
- c) the organs are donated to a close relative either. The statement further provided that in

jurisdictions where the death penalty is practised, executed prisoners must not be considered as organ and/or tissue donors because it is impossible to put in place adequate safeguards to protect against coercion in all cases.

The statement provided that transplant surgeons should seek to ensure that the organs and tissues they transplant have been obtained in accordance with the provisions of this policy; they should refrain from transplanting organs and tissues that they know, or suspect, have not been procured in a legal and ethical manner. "This policy" included these provisions: "Organs or tissue suspected to have been obtained through unlawful means must not be accepted for transplantation." and "Organs and tissues must not be sold for profit".

c) The Istanbul Declaration

A group of transplant professionals met in Istanbul Turkey in May 2008 and produced a declaration by consensus under the title "The Declaration of Istanbul on Organ Trafficking and Transplant Tourism"¹⁷. The Declaration provided that "The legacy of transplantation is threatened by organ trafficking and transplant tourism."

Participants in the Istanbul Summit concluded that transplant commercialism, transplant tourism, and organ trafficking should be prohibited. Transplant tourism was defined to include travel for transplantation involving organ trafficking or transplant commercialism.

d) Canadian Society of Transplantation and Canadian Society of Nephrology

The Transplantation Society policy is primarily directed to non-Chinese transplant professionals interacting with Chinese transplant professionals. The World Medical Association has the Chinese Medical Association as a member. The World Medical

¹⁷ 1228 Clinical Journal of the American Society of Nephrology Clin J Am Soc Nephrol 3: 1227 - 1231, 2008

Association is primarily directed to transplant professionals who are members of its national affiliates, including the Chinese Medical Association.

The Canadian Society of Transplantation and Canadian Society of Nephrology in October 2010 issued a policy statement on Organ Trafficking and Transplant Tourism which is primarily directed to Canadian professionals treating patients who may go or may have gone for transplantation abroad. That policy provides:

1. Patients who are candidates for transplantation should receive information about the dangers and ethical concerns regarding transplant tourism and organ trafficking. Patients should be told that individuals who purchase transplants overseas are at an increased risk for complications, including death, organ failure, and serious infections.
2. Patients should be told that those who obtain a transplant overseas may receive suboptimal care even when they return to Canada. One reason is poor documentation and communication about the transplant procedure. Canadian healthcare providers often receive little or no documentation of commercial transplantations making the posttransplant care of recipients of commercial transplantations more difficult. A second reason is that patients are transferred before they are clinically stable.
3. Healthcare 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.
4. As members of the medical community, physicians have a duty to prevent harm to other individuals. Patients should be educated about the harms that may come to those who provide organs through transplant tourism. Patients should be told that

"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 impossible to determine whether donor information provided by organ brokers, who are motivated by financial gain, is accurate."

5. The obligation to do what is in the best interests of patients does not include the performance of investigations in preparation for transplantation of a purchased organ. Physicians should not prescribe medications that will be used during the transplantation of a purchased organ.

6. 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.

7. In nonemergency situations, individual physicians may elect to defer to another physician care of patients who may have obtained an organ through transplant tourism. The physician would discuss their preference to defer posttransplant care to another physician before transplantation to avoid any expectation of posttransplant care by the patient. Where a physician elects to transfer care to another physician, the patient must be provided with reasonable notice of the physician's decision to terminate the relationship and to transfer care to another physician.

iv) Ethics implementation

a) Training of Chinese transplant professionals

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 Health, 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'.

The Prince Charles Hospital is one of the 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.

Doctors Danovitch, Shapiro, and Lavee, in a 2011 article, wrote

"Training of Chinese transplant professionals by the international community must be conditioned on commitments that trainees will not engage, directly or indirectly, in the use of organs from executed prisoners."¹⁸

b) Publication of research of Chinese Transplant Professionals

The Editors and Associate Editors of the journal *Liver Transplantation*, wrote in 2007 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."¹⁹

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

¹⁸ G.M. Danovitch, M.E. Shapiro, and J. Lavee "The Use of Executed Prisoners as Sources of Organ Transplants in China Must Stop" Volume 11 pages 426 428.

¹⁹ Issue 13:182, 2007

written appeal to the Board prior to submission of the manuscript."

The Danovitch, M.E. Shapiro, and J. Lavee, in the article just cited, state:

"International and national professional medical societies and journals should not accept abstracts, publications or presentations from Chinese transplant centers unless the authors clearly indicate that the data presented is in concordance with the most recent Chinese government regulations regarding transplant tourism and that executed prisoners were not the source of organs."

v) World Health Organization

The World Health Organization, in an Assembly in May 2010 endorsed Guiding Principles on Human Cell, Tissue and Organ Transplantation. Two of these principles are traceability²⁰ and transparency²¹.

Traceability requires coding to identify tissues and cells used in transplantation. Transparency requires public access to data on processes, in particular allocation, transplant activities and outcomes for both recipients and living donors, as well as data on organization, budgets and funding. The objectives are to maximize the availability of data for scholarly study and governmental oversight and to identify risks and facilitate their correction.

B. Remedies Abroad

ii) United Nations

a) Specialized mechanisms

United Nations Rapporteur on Torture Manfred Nowak and UN Rapporteur on Religious

²⁰ Guiding principle 10

²¹ Guiding principle 11

Intolerance Asma Jahangir addressed organ transplant abuse in China in their 2007 and 2008 reports. They wrote in 2007:

"Allegation transmitted: Organ harvesting has been inflicted on a large number of unwilling Falun Gong practitioners at a wide variety of locations, for the purpose making available organs for transplant operations.... It is reported that there are many more organ transplants than identifiable sources of organs, even taking into account figures for identifiable sourcesIt is alleged that the discrepancy between available organs and numbers from identifiable sources is explained by organs harvested from Falun Gong practitioners, and that the rise in transplants from 2000 coincides and correlates with the beginning of the persecution of these persons.... "

The Government of China responded but without addressing the concerns raised. As a result, the Rapporteurs reiterated their concerns in 2008 saying in part:

"A critical issue was not addressed in the Government's previous responses, in particular: It is reported that there are many more organ transplants than identifiable sources of organs, even taking into account figures for identifiable sources ... It is alleged that the discrepancy between the number of transplants carried out and the number of available sources is made up from the harvesting of organs from Falun Gong practitioners. ... The request for an explanation for the discrepancy in the number of transplants between the years 2000 to 2005 and the numbers from identifiable sources of organs is reiterated."

b) Committee against Torture

The UN Committee against Torture in its November 2008 concluding observations of the state report of China wrote:

"... the Committee takes cognizance of the allegations presented to the Special Rapporteur on Torture who has noted that an increase in organ transplant operations coincides with 'the beginning of the persecution of [Falun Gong

practitioners]' and who asked for 'a full explanation of the source of organ transplants' The Committee is further concerned with information received that Falun Gong practitioners have been extensively subjected to torture and ill treatment in prisons and that some of them have been used for organ transplants. The State party should immediately conduct or commission an independent investigation of the claims that some Falun Gong practitioners have been subjected to torture and used for organ transplants and take measures, as appropriate, to ensure that those responsible for such abuses are prosecuted and punished ."

c) Universal Periodic Review

The United Nations Universal Periodic Review Working Group in February 2009, Canada recommended that China implement the recommendations of the Committee against Torture. The Government of China explicitly, in writing, rejected this recommendation.

Canada, Switzerland, United Kingdom, France, Austria, Italy recommended that China publish death penalty statistics. The Government of China said no to this recommendation too.

Germany recommended that China guarantee all citizens of China the exercise of religious freedom, freedom of belief and freedom of worshipping in private. The Government of China said that it would not accept this recommendation.

Canada, the United Kingdom, Hungary, the Czech Republic, France, Sweden and New Zealand recommended that China abolish all forms of arbitrary detention including re-education through labour camps. The Government of China said no to this recommendation.

Finland recommended that China take effective measures to ensure that lawyers can

defend their clients without fear of harassment. One example we gave in the chapter on strategy is the case of Gao Zhisheng. To this recommendation of Finland also, the Government of China said no.

So with the Government of China, we have more than just a denial of the facts. There is a rejection of the standards.

ii) National

a) Limiting state immunity

The doctrine of sovereign immunity has been an obstacle to bringing the perpetrators of forced organ harvesting to justice. Legislation introduced in November 2009 in Canada by a non-government member of Parliament proposed lifting the immunity for all international offences, subject to local exhaustion of remedies. The proposal was made by a former Minister of Justice, Irwin Cotler, now a member of the Liberal opposition in the Canadian Parliament²².

The proposed law states: "a foreign state is not immune from the jurisdiction of a court in any proceedings that relate to genocide, a crime against humanity, a war crime or torture." It further states that this provision "shall apply only after all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law."

The proposed legislation goes on to say that the principle of exhaustion of remedies locally "does not apply when the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of genocide, a crime against humanity, a war crime or torture." The phrase in the proposed legislation, that a prosecution "be in conformity with the generally recognized principles of international law"

²² Bill C-483

I interpret to refer to the principle of complementarity, meaning that proceedings should be conducted in the state of the act where there is a willingness and ability to do so.

b) Immigration control

US visa application forms from 2012 ask visa applicants this question: "Have you ever been directly involved in the coercive transplantation of human organs or bodily tissue?"²³ The likelihood of a person answering yes to such a question is small. The question all the same has a significant value, practical as well as symbolic. Those directly involved in the coercive transplantation of human organs or bodily tissue may well, in the face of such a question, be discouraged from applying for a visa.

Moreover, if the question is asked and a person directly involved in the coercive transplantation of human organs or bodily tissue lies on application, that lie can have legal consequences. An applicant for a visa can be barred from entry on the basis that the applicant has foreclosed relevant inquiries. It is not necessary to establish that the inquiries, if made, would have led to a finding of inadmissibility on a ground other than the misrepresentation.

Moreover, a misrepresentation once made can have consequences for the rest of the life of that person. Once the lie is uttered, then any status acquired on the basis of that lie, even citizenship, can be later unravelled because of that lie. For revocation of citizenship or permanent residence as well as for entry, authorities need not prove that the person was directly involved in the coercive transplantation of human organs or bodily tissue. It is sufficient for the authorities to establish that the lie foreclosed enquiries whether the person was directly involved in the coercive transplantation of human organs or bodily tissue.

²³ Immigration form DS-160

c) U.S. Reporting

The Country Reports on Human Rights Practices for 2011 United States Department of State - Bureau of Democracy, Human Rights and Labor released on May 24, 2012 provides:

"In response to allegations that the organs of executed prisoners were harvested for transplant purposes, Vice Minister of Health Huang Jiefu in 2009 stated that inmates are not a proper source for human organs and prisoners must give written consent for their organs to be removed. Overseas and domestic media and advocacy groups continued to report instances of organ harvesting, particularly from Falun Gong practitioners and Uighurs."

These reports have existed since 2006; the United States Country Reports reflected them for the first time in 2012. This reflection, while not an endorsement of these reports, is an indication of the seriousness with which they are now taken.

d) Litigation

There have been lawsuits around the world against the leaders of persecution against the Falun Gong, including Jiang Zemin, Luo Gan, and Bo Xilai. While these lawsuits have not to date resulted in monetary judgements or criminal convictions, they have nonetheless had an impact.

Bo Xilai in February 2004 went from Liao Ning Province where he led the persecution of Falun Gong in general and the killing of Falun Gong for their organs to Beijing where he became Minister of Commerce. While Minister of Commerce, Bo travelled around the world to promote international trade with China and investment into China. His travelling gave victims the opportunity to serve him with lawsuits for his role in the persecution of Falun Gong in Liao Ning Province. Lawsuits commenced against him in thirteen different countries, including one in Canada in which I am acting as counsel.

The American Consulate in Shanghai wrote in December 2007 to the State Department in Washington:

"Gu [Nanjing's Professor Gu] noted that Bo had been angling for promotion to Vice Premier. However, Premier Wen had argued against the promotion, citing the numerous lawsuits brought against Bo in Australia, Spain, Canada, England, the United States, and elsewhere by Falungong members. Wen successfully argued Bo's significant negative international exposure made him an inappropriate candidate to represent China at an even higher international level."

Bo went from Minister of Commerce in Beijing to Communist Party head of Chongqing in November 2007.

III. Changes in China

A. Amelioration in China

i) Legal changes

a) Hospital registration

The State Council of the People's Republic of China March 31, 2007 enacted a regulation on human organ transplant effective as of May 1, 2007 which requires medical institutions engaged in transplants to register with provincial health administrative departments²⁴. To be able to register, medical institutions must have:

1. medical doctors who have mastered organ transplant technology;
2. facilities and equipment ready to support organ transplants;
3. organ transplant clinical application and ethics committees; and
4. a comprehensive human organ transplant administrative policy for quality inspection and control.

b) Requirement of consent

According to the 2007 regulation, donations must be consensual, and in writing. A

²⁴ Article 11

consent, once given, can be withdrawn at any time²⁵. If a person, while alive, expressly refuses to donate, the organs of that person can not be harvested after death. If a person is silent about donation while alive, only immediate relatives of the person can donate the organ after death.

Harvesting live organs without consent is a crime²⁶. So is harvesting organs from bodies of persons who do not want to donate their organs when they were alive.

c) Prohibition of sale

The 2007 regulation prohibits trading in organs²⁷. Compensating donors is also forbidden²⁸.

The funds medical institutions can collect for transplants are limited to

1. The expense of surgery for harvesting and transplanting organs;
2. The expenses of storing and transporting organs;
3. The costs of medicine and medical materials and the examination and equipment fees for harvesting and transplanting human organs²⁹.

d) Criminal law amendment

The Standing Committee of the China Congress promulgated in February 2011 an amendment to the Criminal Law which addressed organ transplant abuse. The change came into force on May 1, 2011.

²⁵ Article 8f

²⁶ Article 25

²⁷ Article 3

²⁸ Article 7

²⁹ Article 21

The new law criminalizes the organization of the sale of organs. It also forbids the harvesting of organs before death against the person's will or after death against the will near relatives where there is no consent from the person before death. The amendment further prohibits forcing any person to donate an organ³⁰.

ii) Policy changes

a) Priority to nationals

Before the 2007 law came into force, when the Chinese focus was on the foreign market, waiting times for foreign customers were much shorter than waiting times for Chinese nationals. Chinese nationals waiting for transplants were understandably miffed by this preferential treatment to foreigners.

According to Chinese official sources, there are 1.5 million people who in China who suffer from organ failures and need transplants every year³¹. The Ministry of Health of the Government of China announced that from June 26, 2007 Chinese patients would be given priority access to organ transplants over foreigners³².

b) Shift from prisoners to donors

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. This system is limited to donation after cardiac death. It does not contemplate either living donations or donations after brain death only. The program has since expanded to 19 provinces and

³⁰ Adding Article 234A to the Criminal Law

³¹ "Success Leads to More Liver Transplants" China Daily, August 15, 2007.

³² Jim Warren "China moving rapidly to change transplant system" Transplant News, September 2007

municipalities. The Red Cross branches in these provinces and municipalities have set up offices to advocate for organ donation.

Chinese Deputy Health Minister Huang Jiefu told a conference in Hangzhou, China in March 2012 that China would abolish the practice of taking transplant human organs from prisoners within three to five years³³. He stated "The pledge to abolish organ donations from condemned prisoners represents the resolve of the government".

Haibo Wang, director of the China Organ Transplant Response System Research Center of the Ministry of Health, in an interview published in the Bulletin of the World Health Organization³⁴, noted that there is a fledgling organ system run by the Red Cross Society of China. He indicated that China would begin shifting transplantation sourcing from prisoners to voluntary donors in early 2013. He stated: "The implementation of the new national system will start early next year at the latest. This will also mark the start of phasing out the old practice."

Just this past Monday, February 24, 2013, Zhao Baige, executive vice-president of the Red Cross Society of China, announced that the Red Cross is urging all provinces and regions not covered by the donation program to add the program by the end of the year. The organ donation program aims to match donations between deceased organ donors and people waiting for donations across the country³⁵.

iii) Political changes

³³ "China to abolish transplanting organs from condemned prisoners within 3-5 years", English.news.cn, 2012-03-22 23:29:18, Hangzhou, March 22 (Xinhua)

³⁴ 2012;90:802 - 803 | doi:10.2471/BLT.12.031112

³⁵ "China to expand organ donor system nationwide" China Daily, February 26, 2013

Bo Xilai was appointed Mayor of Dalian City in Liao Ning Province from 1993 to 2001. He was appointed Deputy Secretary of the Chinese Communist Party for Liao Ning Province in 2000. From February 2001 to February 2004 he was Governor of Liao Ning Province.

While he was in Liao Ning, Bo developed a reputation as a brutal leader of the persecution of Falun Gong. Wang Lijun was the head of the Jinzhou City Public Security Bureau On-site Psychological Research Center (OSPRC), Liao Ning province from 2003 to 2008. Wang worked under Bo Xilai in Liao Ning province in 2003 and 2004.

Wang conducted research on a lingering injection execution method which would allow organ removal for transplants before the person died from the injection. He conducted further research to prevent patients who received organs of injected prisoners from suffering adverse effects from the injection drugs.

Wang received the Guanghua Science and Technology Foundation Innovation Special Contribution Award in September 2006, for his research and testing of this lethal injection method. In his acceptance speech, he talked about "thousands" of on-site organ transplant cases from injected prisoners in which he and his staff participated. He said "to see someone being killed and to see this person's organs being translated to several other person's bodies is profoundly stirring", a remark that would have worthy of Josef Mengele.

In 2008, shortly after Bo was moved from Beijing to Chongqing, Bo brought Wang from Liao Ning province. Wang held various positions in public security in Chongqing and in 2011 became deputy mayor of the city under Bo.

On February 2nd 2012, Wang Lijun was demoted. Four days later he visited the American consulate in Chengdu for a full day. When he left, the Chinese security police arrested him.

Chinese Premier Wen Jiabao, at a closed Communist Party meeting in Zhongnanhai on March 14, is reported to have addressed organ harvesting and Bo Xilai's involvement. A source attributes to Wen these remarks:

"Without anaesthetic, the live harvesting of human organs and selling them for money - is this something that a human could do? Things like this have happened for many years. We are about to retire, but it is still not resolved. Now that the Wang Lijun incident is known by the entire world, use this to punish Bo Xilai. Resolving the Falun Gong issue should be a natural choice."³⁶

The Party announced the next day that Bo lost his position as Communist Party General Secretary of Chongqing. On April 10th, he was suspended from the Politburo.

106 United States members of Congress in October 2012 wrote a letter to Secretary of State Hilary Clinton as a result of the attempted defection of Wang Lijun and the time he spent at the US consulate. The letter asked

"that the State Department release any information it may have that relates to transplant abuses in China, including any documentation that Wang Lijun may have provided to our Consulate in Chengdu."

iv) Change assessment

In a country that follows the rule of law, a change of law indicates a change in practice. Not so in China. China is subject to the rule of the Communist Party not the rule of law. Where the law and the Party conflict, the Party prevails. It is impossible to enforce the law against the Party.

In China, neither the courts nor the prosecution nor even the defense are independent

³⁶ Cheng Jing "Wen Jiabao Pushes for Redressing Falun Gong, Source Says" Epoch Times April 9, 2012.

from the Party. Human rights NGOs are not allowed to function. Independent media are censored and controlled.

It is unrealistic to expect to find in China an island of respect for any law, including the law of organ transplants, in a raging sea of Communist Party tyranny. Rather, the law itself is a facet of that tyranny, a form of propaganda the Party uses to put a benign public face on its underlying cruelty.

The practical effect of the changes in organ transplant law, such as they are, affect in any case civilian hospitals only under the jurisdiction of the Ministry of Health and not military hospitals. In China, the military is a conglomerate business. It has been authorized to engage in non-military activities in order to develop revenue streams other than taxes. One of the businesses the military has developed is selling organs. These organs are sold to the public at large including transplant tourists.

The primary culprits in the killing of Falun Gong for their organs have been military hospitals and doctors, largely because they have more ready access to the forced organ donor bank held in prisons, detention centres and labour camps than their civilian counterparts do. Effective organ transplant law reform in China would require closing down the organ transplant business of the military.

The legal developments in organ transplant law are nonetheless worth noting, not as an indication of change in practice, but rather as a sign of Party concern about its image. The global concern about organ transplant abuse in China has led the Party to react in cosmetic ways, by changing its law.

In a country subject to the rule of law, policy would take priority over politics and law over policy. In a tyranny, this hierarchy is reversed. Politics trumps policy and policy trumps

law. The changes in Chinese policy are more likely to affect practice than changes in law.

That appears to be the case at least with the shift of priorities from foreigners to locals. That shift has not stopped transplant tourism into China. It has nonetheless impacted that tourism substantially. Since the policy shift, China has seen a significant downturn in transplant tourism.

As for the policy of moving from prisoners to donors as sources of organs, it is too early to say. At the level of principle, it is, of course, ridiculous to suggest that the killing of prisoners for their organs should be phased out over time. It should stop immediately. The announcement of the change in any case smacks of cosmetics. We are going to have to wait to see how real the intention of change is.

B. Deterioration in China

i) Cover up

The problem China manifests is not just silence and denial. Over time, there has been a progressive degradation of information available. Information once available now no longer is. There has been an active attempt at cover up, to remove any possible clues which might allow for outside deduction about the sourcing of organs.

The onus lies on China to account for its organ sourcing, not on outsiders to show that this sourcing is improper. As the years go by, this accountability seems increasingly more unlikely as bits and pieces of information within China which were previously available, are systematically made to disappear.

China, rather than moving towards traceability and transparency, has been moving away from it. One can see this in a myriad of ways.

a) Website information

One example is a progressive dismantling of Chinese website information which gives an insight into transplant practices. One example is website information about short waiting times for transplants, information to which we referred in our reports.

Short waiting times means that sources are being killed for their organs. Moreover, because of the need for blood type compatibility between the source and the recipient as well as the prevalence of hepatitis B in China which makes many potential sources unusable and the absence of national organ distribution system which hampers the use of multiple organs from the same source, the number of people ready to be killed for their organs at any one time has to be a multiple of the number of organs transplanted.

The China International Transplantation Assistant Centre website said, "It may take only one week to find out the suitable (kidney) donor, the maximum time being one month..." . It went further, "If something wrong with the donor's organ happens, the patient will have the option to be offered another organ donor and have the operation again in one week." The site of the Oriental Organ Transplant Centre in early April, 2006, claimed that "the average waiting time (for a suitable liver) is 2 weeks." The website of the Changzheng Hospital in Shanghai said: "...the average waiting time for a liver supply is one week among all the patients".

If you go to those sites now, those statements are not to be found. You can see them on our own website <www.organharvestinvestigation.net>, because we have archived them, but not on the websites from which they originally came.

This has been a consistent pattern. With regularity, when we have cited an official Chinese source, the source disappears.

b) Hong Kong Liver Transplant Registry

Another example of progressive degradation of availability of information is the China Liver Transplant Registry. For Bloody Harvest, David Kilgour and I were able to garner useful information about transplant volumes from the China Liver Transplant Registry in Hong Kong. After our work was published, the China Liver Transplant Registry shut down public access to statistical aggregate data on its site. Access is available only to those who have a Registry issued login name and password.

At The Transplantation Congress in Vancouver in August 2010, Haibo Wang, who was then assistant director of the China Liver Transplant Registry, presented at the same session I did. I asked him why public access to the data on the Registry website was shut down and if it could be restored. His answer was that public access was shut down because people were, so he said, 'misinterpreting' the data. If anyone was now to get access, the Registry had to know first the purpose for which the data was being used and some confidence that the data would not be, in his view, 'misinterpreted'.

The Chinese health system runs four transplant registries, one each for liver, kidney, heart and lung. The other three are located in mainland China – kidney and heart in Beijing and lung in Wuxi. The data on the other three sites is also accessible only to those who have registry issued login names and passwords.

c) Denials

Another example of active efforts of the Government of China to degrade and deny information was documentary response to our report produced by Phoenix TV, a Hong Kong media outlet. This documentary was an exercise in misrepresentation and obfuscation.

Investigators made telephone calls to hospitals throughout China, claiming to be relatives

of patients needing transplants and asking if the hospitals had organs of Falun Gong for sale. One of the calls was made to Nanning City Minzu Hospital in Guangxi Autonomous Region (22 May 2006) had this exchange:

"Q: Didn't you use Falun Gong practitioners' organs before?

A: Now it has changed from before....

Q: Then they [the hospital in Guangzhou to which the caller was referred] use organs from Falun Gong practitioners?

A: Right, right, right....

Q: It is said that the organs from Falun Gong practitioners are relatively healthy and better. Do they use this kind as well?

A: Right, right, right. Usually the healthy ones are chosen.

Q: What I mean is that the organs from Falun Gong practitioner are better. Do they use this kind as well?

A: Right, right, right....

Q: ...what you used before, were they from detention centres or prisons?

A: From prisons.

Q: Oh, prisons. And it was from healthy Falun Gong practitioners, the healthy Falun Gong right?

A: Right, right, right. We would choose the good ones, because we will assure the quality of our operations.

Q: That means you choose the organs yourself?

A: Right, right, right.....

Q: ...Usually how old is the age of the organ supplier?

A: Usually in their 30s.

Q: In their 30s. Then you will go to the prison to select yourself?

A: Right, right, right. We must select it."

In the Phoenix TV documentary, Lu Guoping acknowledges having received the call from

our caller. He confirms that he referred our caller to a hospital in Guangzhou. He acknowledges that the caller asked whether that hospital used organs from Falun Gong practitioners.

What changes in the documentary is the answer he said he gave. In the TV interview, he says:

"I told her I was not involved in the surgical operations and had no idea where the organs come from. I told her I could not answer her questions. She then asked me whether these organs come from prisons. I replied no to her in clear cut terms"

On the video, Dr. Lu is presented with a partial transcript of the call made to him found in our report. He reacts by saying:

"The record of the phone call does not conform to the truth. Many parts of it have been distorted or mutilated. The report says that when I was asked where the organs removed from Falun Gong people came from, prisons or detention, houses I said they came from the prisons. But this was not my answer....The report also says that when the person who called me asked whether we have to go to the prison to select body organs I answered yes and added we have to go there to make the choice. This question was actually not raised at all then."

There is no indication in the Phoenix TV documentary that we have a recording where Dr. Lu says in his own voice the words attributed to him in our report. Nor does either the doctor or the interviewer make any attempt to explain how we could possibly have got the voice of the doctor on a recording saying what he denies saying, interspersed seamlessly with what he admits saying, if he did not say what he denies saying. The suggestion left by the documentary is that we have altered a transcript. Because there is no acknowledgement of a recording, there is no suggesting we have altered the recording.

The Chinese government, in a response sent to the Rapporteurs by letter dated March 19, 2007 and published in the report of Professor Nowak to the UN Human Rights Council dated February 19, 2008, stated that

"the allegations in the communication that we have received that, between the years 2000 and 2005, 60,000 transplantations were performed are drawn from erroneous data cited in a report compiled by two Canadians investigating allegations of organ harvesting of Falun Gong practitioners in China. The report claims:

'Professor Bingyi Shi, vice chair of the China Medical Organ Transplant Association, says there were about 90,000 [organ transplants] in total up until 2005, leaving about 60,000 in the six year period 2000 to 2005 since the persecution of Falun Gong began.'

It has been ascertained that, in January 2007, during an interview with the BBC, Professor Shi Bingyi expressly clarified that on no occasion had he made such a statement or given figures of this kind, and these allegations and the related figures are pure fabrication. "

Moreover, the Government of China, lest there be any doubt, asserted that

"China's annual health statistics are compiled on the basis of categories of health disorder and not in accordance with the various types of treatment provided."

The actual source of the information from Shi Bingyi is footnoted in our report. It is a Chinese source, the Health News Network. The article from the Network was posted on the website for transplantation professionals in China. The text, dated 2006 03 02, stated, in part, in translation:

"Professor Shi said that in the past 10 years, organ transplantation in China had grown rapidly; the types of transplant operations that can be performed were very wide, ranging from kidney, liver, heart, pancreas, lung, bone marrow, cornea; so

far, there had been over 90,000 transplants completed country wide; last year alone, there was close to 10,000 kidney transplants and nearly 4,000 liver transplants completed."

This article, in June 2008, remained on its original Chinese internet site, though it has been taken down since. The original source of the information remained available within China through the internet at the time the Government of China denied the information.

Shi Bingyi was also interviewed for the Phoenix documentary. That video shows Shi Bingyi on screen saying that the figures we quote from him he simply never gave. He says on the video:

"I did not make such a statement because I have no knowledge of these figures I have not made detailed investigation on this subject how many were carried out and in which year. Therefore I have no figures to show. So I could not have said that."

When Lu Guoping denies saying what taping shows that he said, when Shi Bingyi denies saying what official media shows that he said, it is apparent that there is no attempt to get at the truth. Rather the truth is denied for propaganda reasons. This is the very antithesis of transparency and accountability.

d) Referral letters

Doctors in China used to give to each foreign transplant patient a referral letter to the foreign aftercare treatment doctor indicating the results of hospital tests, the anti-rejection drug treatment and the level of functioning of the new organ. This letter would of course also indicate the name of the Chinese doctor and the hospital in which the transplantation took place.

After the first version of our report was published, these referral letters stopped. The last such referral letter I have seen is dated July 23, 2006. After that, foreign transplant patients left China with nothing. This, needless, to say complicated after care in the country of the return.

Malaysian doctor Ghazali Ahmad in the book *State Organs*, in the chapter he contributed titled "The Spoils of Forced Organ Harvesting in the Far East", wrote:

"Even though the number of renal transplant patients returning from China had dwindled significantly since 2006 (see table 1) the management of such patients became unfortunately more complicated and challenging. The main reason for this circumstance is due to the fact that ALL new returning transplant recipients from China since 2006 no longer bring along with them any form of documentation to guide the clinicians in Malaysia to provide optimal follow up care. Such a practice is a part of deliberate attempts by the syndicate members to remain anonymous, unaccountable and leave absolutely no trace of their illegal activities. However, the absence of any information on the perioperative as well as postoperative findings, clinical summary, necessary information on the type and dose of the induction agents given, the best serum allograft function achieved and the lack of many other standard test results had caused a serious gap in the ability of the local clinicians to deliver a quality and effective care deserved by such patients who had not only risked their lives and parted with their hard earned life savings to obtain a new, safer and better quality of life but now faced real and potentially serious transplant related complications."

Why this particular cover up, by individual doctors? And why then, starting from August 2006? Dr. Ahmed explains the cover up as a deliberate attempt to leave no trace of illegal activities. But what illegal activities?

The decision of the Government of China to give priority to locals over foreigners was not announced till June 26, 2007. So from August 2006 to June 2007 there would have been no motivation to hide a trace of transplanting organs into foreign patients.

The only explanation I can see is the publication in July 2006 of the report David Kilgour and I wrote on the killing of Falun Gong for their organs. What the individual doctors were trying to hide by the discontinuation of referral orders was tracing back to them the killing of Falun Gong for their organs.

While this discontinuation may indeed have that effect, of hiding the identity of individual complicit doctors, it also has, in terms of the general phenomenon, the contrary effect. The discontinuation of Chinese doctor referral letters consequent on the publication of our report is an additional piece of evidence which helps to show that the abuse, the killing of Falun Gong for their organs, is indeed happening.

ii) Numbers

After the release of the second version of our report and before the publication of our book, executions decreased and transplant volumes, after an initial dip, returned to traditional levels. So we concluded that sourcing from Falun Gong practitioners had increased.

A development since the book was published is further changes to the death penalty. Vice President Zhang Jun of the Supreme People's Court in January 2011 stated that China's Supreme People's Court would overturn death sentences in cases where evidence was collected by illegal means. The judge said that the move was intended to limit the application of capital punishment and pressure local courts to check evidence more thoroughly.

The China National People's Congress Standing Committee amended the Criminal Law in February 2011 (effective May 1, 2011) to decrease the number of death penalty offences from 68 to 55. In a second change, the death penalty could no longer be imposed on those 75 years or older at the time of trial, except for a person who has committed a murder with "exceptional cruelty".

The Supreme People's Court (SPC) wrote, in its annual report released in May 2011, that the death penalty should only be applied to "a very small number" of criminals who have committed "extremely serious crimes." Chinese courts were told to pronounce a two year suspension of execution for condemned criminals if an immediate execution is not deemed necessary; capital punishment reprieves should be granted as long as they are allowed by law.

This downward slide in the death penalty continues a previous trend. The most significant prior development was the requirement, which took effect on January 1, 2007 that all death sentences had to be approved by the Supreme People's Court. That change alone led to a reduction of an estimated 30% to 40% in the imposition of the death penalty.

In the abstract, from a human rights perspective, the reduction in the death penalty is good news. The news ceases though to be good if the decrease in the death penalty leads to an increase in the killing of Falun Gong for their organs. While the decrease in the death penalty has occurred at the same time as the increase living donor transplants, the increase in living donor transplants has come nowhere near the estimated decrease in the death penalty.

iii) Universal periodic review

I referred earlier to the United Nations Human Rights Council Universal Review for China in 2010. In summary, at the time of the review, the Government of China said explicitly

and publicly no to freedom of belief, yes to forced labour, yes to arbitrary detention, no to an independent investigation into the allegations that Falun Gong practitioners are being killed for their organs, no to explaining the discrepancy between sources of organs and volume of organ transplants, no to bringing perpetrators of organ transplant abuse to justice, no to allowing human rights lawyers to defend their clients without harassment.

While as an indication of behaviour what these responses tell us is not new, it is disheartening to see the Government of China rejecting so blatantly universal human rights standards which it has elsewhere accepted. This should perhaps not surprise us but the Universal Periodic Review has shown us clearly and unequivocally that Chinese Communist Party adherence to human rights standards is an exercise in hypocrisy.

Conclusion

It seems that things must go badly wrong before we can get them right. There have been many positive changes since the first version of our report came out, though not enough. There is a direct connection between the improvements, however tentative, in organ transplant standards and remedies and the dawning awareness that the Communist Party of China has been killing Falun Gong for their organs.

Transplant technology, though designed for human betterment is, like all technology, morally neutral. The innovators of transplant technology, I am convinced, never imagined that what they developed would be used to murder prisoners of conscience and sell their organs for huge sums. As the Communist Party of China though has shown in spades, transplant technology can be used to advance evil as much as good.

The global human rights, ethicist, legal, health, and transplant communities have come to realize, to all our horrors, that we can not let the intended good of transplant technology speak for itself. If we want to prevent organ transplant abuse, we have to lay in our

defenses against it.

While change has many parents, the driving force behind the changes I have set out in this overly long text has been the global Falun Gong community. David Kilgour and I have approached the killing of Falun Gong as outsiders. We have produced independent, detached research, analysis, writing, advocacy and activism, all on a part time, voluntary basis. The impact of our report is attributable largely to the resonance it has had within the global Falun Gong community.

The global Falun Gong community approaches the matter differently from us - through lived experience. We can appreciate and understand. They know.

The Falun Gong are a survivor community. Many have been tortured to within an inch of their lives. Many others have lost immediate family members to Communist Party savagery. One after another surviving Falun Gong practitioner has narrowly escaped being killed for his or her organs. The Falun Gong community has seen their colleagues in the movement disappear into the Chinese organ pillaging maw.

Falun Gong are profoundly ethical. One of their founding principles is truthfulness. The Falun Gong community will persist in telling the truth about organ transplant abuse in China until that abuse ends and the perpetrators are brought to justice.

This planet will, I believe, at some point develop a proper set of global standards and mechanisms to prevent and remedy organ transplant abuse. Out of the Chinese Communist Party killing of Falun Gong for their organs will arise a global legacy, an ethical global organ transplantation system. That legacy will survive long after the Communist Party of China is a bitter, distant memory. And we will have the global Falun Gong community to thank for that legacy, because they will not rest until that legacy is built.

.....
David Matas is an international human rights lawyer based in Winnipeg, Manitoba, Canada.