

## **Assessing evidence of genocide: A case study**

by David Matas

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Perpetrators deny that genocide has happened and attempt to cover up its existence. One can see from Holocaust denial and Nazi fugitives that genocide denial and cover up occur even when the perpetrators have lost power. The scope for denial and cover up expands exponentially when the perpetrators remain in power.

Genocide denial and cover up by existing state agents gets caught up in international politics. The friends of the deniers are reluctant, for geopolitical reasons, to press the issue. As well, establishing that a genocide has happened becomes more difficult when perpetrators in power do everything in their power to repress knowledge of the genocide.

How do we deal with lack of transparency and denial by state agents in a context where there is compelling evidence of genocide? This paper attempts to address this question through the prism of evidence of genocide of Falun Gong in China.

Falun Gong is a blending and updating of Chinese spiritual and exercise traditions which was banned in China in 1999. There has been convincing evidence of mass killing of Falun Gong, either through torture to elicit recantations or through forced organ extraction for transplants. Whatever one thinks of the evidence of genocide of Falun Gong, the increasing opacity of the Chinese Communist regime on organ transplant sourcing is incontestable.

The World Health Organization Guiding Principles on Human Cell, Tissue and Organ Transplantation require, in principle 10, traceability, and, in principle 11, transparency for transplant sources. China violates both of these principles.

### **A. Research**

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 concluded that prisoners of conscience in China have been killed in the tens of thousands for their organs for transplants. Most of these victims were practitioners of the spiritually based set of exercises Falun Gong.

Falun Gong is a blending and updating of ancient Chinese spiritual and exercise traditions. It began in 1992 with the teachings of Li Hong Zhi and quickly spread throughout China with the encouragement of the Government officials who considered the exercises as beneficial to health and to the finances of the health system. By 1999 Falun Gong practitioners were, according to a Government survey more numerous than the membership of the Communist Party. At this point, out of fear of losing its ideological supremacy and jealousy at its popularity, the Party banned Falun Gong.

Those who did the exercises after 1999 were arrested and asked to denounce the practice. Those who did not were tortured. Those who refused to recant after torture disappeared.

Many of the disappeared, David Kilgour and I concluded, were then killed for their organs. While it would take me too far afield to go through all the evidence which led us to that conclusion, I will mention a few bits.

- Investigators made calls to hospitals throughout China, claiming to be relatives of patients needing transplants, asking if the hospitals had organs of Falun Gong for sale on the basis that, since Falun Gong through their exercises are healthy, the organs would be healthy. We obtained on tape, transcribed and translated admissions throughout China.
- Falun Gong practitioners who were detained and after torture recanted and who then got out of detention and out of China told us that they were systematically blood tested and organ examined while in detention. Other detainees were not. The blood testing and

organ examination could not have been for the health of the Falun Gong since they had been tortured; but it would have been necessary for organ transplants.

- Waiting times for transplants of organs in China are days and weeks. Everywhere else in the world waiting times are months and years. A short waiting time for a deceased donor transplant means that someone is being killed for that transplant.
- There is no other explanation for the transplant numbers than sourcing from Falun Gong. China is the second largest transplant country in the world by volume after the US. Yet, until 2010 China did not have a deceased donation system and even today that system produces donations which are statistically insignificant. The living donor sources are limited in law to relatives of donors and officially discouraged because live donors suffer health complications from giving up an organ.

## **B. The onus**

Nonetheless, whatever one might think of our work, it does not fall to us to establish that the sourcing of organs for transplants in China is improper. It rather falls to the Government of China to establish that the sourcing of organs for transplants in China is proper. The World Health Organization Guiding Principles of traceability and transparency in organ transplant sourcing bind member states of the Organization. Those principles bind China.

### **i) Executed criminals**

The Ministry of Health of China accepts that organs for transplants are coming almost entirely from prisoners. The Ministry claims that these prisoners are criminals sentenced to death and not prisoners of conscience.

Well, ok. How many people in China are sentenced to death? The Government of China will not say. It is not just that the Government is silent on the matter. Officials actively,

explicitly reject requests to make that information public.

Under the Universal Periodic Review of the United Nations Human Rights Council created in 2006 every state gets reviewed once during a four year cycle. China's first turn came up February 2009 in Geneva.

Only states can intervene in the Universal Periodic Review Working Group debate. But it can be any state; it does not have to be a state which is a member of the Human Rights Council. The debate is an interactive dialogue, meaning China has a right to respond.

The Universal Periodic Review Working Group came out with a report tabulating the recommendations of states which spoke during debate. The Government of China reaction followed immediately upon release of the report. The Chinese government accepted some recommendations, mostly from other gross violator states which commended the Government of China for its efforts and encouraged it to keep on doing what it was doing. The Government of China said it would consider other recommendations. There was also a long list of recommendations the Government of China rejected out of hand.

Canada, Switzerland, United Kingdom, France, Austria and Italy recommended that China publish death penalty statistics. The Government of China said no to this recommendation. The Government of China was not prepared even to consider this recommendation. The recommendation was rejected immediately.

## **ii) Explaining the discrepancy**

The United Nations has attempted in other ways to find out the source of organs for transplants. The UN Rapporteurs on Torture and Religious Intolerance as well as the UN Committee against Torture asked China to explain the discrepancy between volumes of transplants and volumes of sources.

Here are the details. The then United Nations Rapporteur on Torture Manfred Nowak and then UN Rapporteur on Religious Intolerance Asma Jahangir wrote in their 2007 reports:

"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 sources, namely: estimates of executed prisoners annually, of which a high percentage of organs are donated, according to the statement in 2005 of the Vice Minister of Health Mr Huang Jiefu; willing donor family members, who for cultural reasons, are often reluctant to donate their organs after death; and brain dead donors. Moreover, the reportedly short waiting times that have been advertised for perfectly matched organs would suggest the existence of a computerized matching system for transplants and a large bank of live prospective donors. It 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 to this Report but without addressing the concerns raised. As a result, the Rapporteurs reiterated their concerns in 2008 with these words:

"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, namely: annual estimates of executed prisoners by whom a high percentage of organs are donated, according to the statement in 2005 of the Vice Minister of HLTH, Mr. Huang Jiefu; willing donor family members, who for cultural reasons, are often reluctant to

donate their organs after death; and brain dead donors. Moreover, the short waiting times that have been advertised for perfectly matched organs would suggest the existence of a computerized matching system for transplants and a large bank of live prospective donors. It 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 Special Rapporteurs note reports that on 15 November 2006, Vice Minister Huang reiterated at a conference of surgeons in Guangzhou that most organs harvested come from executed prisoners. And notwithstanding the reported stringent criteria in place for donors, including for those sentenced to death, the Government informed in its response of 28 November, that voluntary donations, and donations between relatives are the two other legitimate sources of transplant organs. According to the allegations, based on data from the China Medical Organ Transplant Association, between the years 2000 and 2005 there were 60,000 transplantations performed, or approximately 10,000 per year for six years. This period coincides with the alleged rise in the persecution of Falun Gong practitioners. In 2005, it is reported that only 0.5% of total transplants were accounted for by donations by relatives; non relative brain dead donors were around nine in 2006; and estimates given that the Government does not make public statistics on executions for 2005 indicate 1770 executions were carried out, and 3900 persons sentenced to death. 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. However, it is also reported that the true number of executions is estimated to be around 8,000 to 10,000 per year, rather than the figure of 1770 executions referred above. As the Special Rapporteur on torture recommended in his report on his visit to China, he reiterates that the Government (E/CN.4/2006/6/para. 82, recommendation q) should use the opportunity of the restoration of the power of review of all death sentences by the

Supreme People's Court to publish national statistics on the death penalty. A full explanation of the source of organ transplants would disprove the allegation of organ harvesting of Falun Gong practitioners, particularly if they could be traced to willing donors or executed prisoners. 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."

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."

So the official Chinese position, in response to a request to explain the discrepancy between

volumes of transplants and volumes of sources, is that China did not during the relevant period produce statistics on volumes of transplants. That statement is certainly false.

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.

Let us assume that what the Chinese government said in response to the requests from the UN were true, that it did not publish any statistics at all on volumes of transplants. How does that silence meet the requirements of transparency and traceability? Surely it does not.

The United Nations Committee against Torture picked up the baton from the special rapporteurs. In its November 2008 concluding observations, it wrote:

"While noting the State party's information about the 2006 Temporary Regulation on Human Organ Transplants and the 2007 Human Organ Transplant Ordinance, 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" which could clarify the discrepancy and disprove the allegation of organ harvesting (A/HRC/7/3/Add.1). 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 (arts. 12 and 16)."

This issue then was further amplified by the United Nations Universal Periodic Review Working Group in February 2009. At the Universal Periodic Review Working Group, Canada recommended that China implement the recommendations of the Committee against Torture. The Government of China explicitly, in writing, rejected this recommendation.

## **C. Degradation**

### **i) Hong Kong Liver Transplant Registry**

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. China, rather than moving towards traceability and transparency, has been moving away from it.

One can see this in a myriad of ways. One example 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.

## **ii) A documentary**

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.

I had referred earlier to the telephone calls which investigators made 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 this 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.

Shi Bingyi was also interviewed for this 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.

### **iii) Websites**

There has been 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 report.

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 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](http://www.organharvestinvestigation.net)>, because we have archived them, but not on the websites from which they originally came.

This has been a consistent pattern which, given the volume of our evidence. With regularity, when we cite an official Chinese source, the source disappears.

**D. An independent investigation**

David Kilgour and I in 2006 sought to visit China for our investigation. We asked in writing for a meeting with the Chinese embassy to Canada discuss terms of entry. Our request for a meeting was accepted. But the person who met with David Kilgour was interested only in denying the allegations and not in arranging for our visit.

The United Nations Committee against Torture, in its November 2008 concluding observations, it wrote

"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."

The investigation David Kilgour and I conducted was independent and the Committee against Torture did not mean to suggest anything different. What they were proposing was an investigation independent from the Government of China with which the Government of China would nonetheless cooperate by giving access to Chinese territory, documents, places of detention and witnesses in China without fear of intimidation or reprisals.

The Government of China rejection at the United Nations Universal Periodic Review Working Group in February 2009 of the Canadian proposal that China implement the recommendations of the Committee against Torture included the rejection of this particular recommendation. To the suggestion of an independent investigation, China said no.

The NGOs Doctors against Forced Organ Harvesting (DAFOH) and the Radical Party have circulated a petition calling upon the United Nations Human Rights High Commissioner

"to initiate the formation of an independent, professional investigation team to

oversee the investigation on forced organ harvesting practices in China, with a special attention to prisoners of conscience."

Given the nature of the United Nations, this sort of investigation would be more likely to happen if the Government of China indicated its willingness to cooperate.

## **E. Conclusion**

Very often, when a crime is committed, the cover up which follows is worse than the crime itself. In this case, the cover up pales beside the crime of killing of innocents for their organs. Yet, the cover up makes the crime worse, because it implicates many more people than the organ transplant abuse.

Those involved directly in organ transplant abuse are a limited number - the prison guards, the medical personnel, the Party officials who encourage and profit from the abuse. The number involved in the cover up is far more extensive.

The whole Party and State apparatus in China is complicit in the cover up. People who have had nothing to do with the killing of innocents for their organs and may be actively opposed are tainted with this cover up, guilty of wilful blindness.

The World Health Organization principles of traceability and transparency are there for a reason, to prevent abuse. If Chinese officials want to avoid complicity in this abuse, they must be forthcoming, open and honest about sources of organs for transplants. That means at the very least,

- a) providing past and present death penalty statistics
- b) making publicly accessible past and present aggregate transplant data from all four transplant registries, and
- c) indicating willingness to cooperate with an independent international investigation into sources of organs for transplants in China.

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