

## **The Death Penalty in China and Falun Gong**

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### **Introduction**

In the abstract, from a human rights perspective, reduction in the death penalty is good news. The news ceases though ceases to be good if a decrease in the death penalty means an increase in arbitrary execution of prisoners of conscience.

Regrettably, that is the scenario which China presents to us. In China, organs for transplants are supplied almost entirely from prisoners. These prisoner sources of organs are of two types - prisoners sentenced to death for capital crimes and prisoners of conscience, predominantly Falun Gong, at most sentenced to three years for disrupting social order and mostly sentenced to nothing and just arbitrarily detained.

In recent years, death penalty volumes in China have decreased, but transplant volumes, except for a blip in 2007, have remained constant. The only plausible explanation for the source of organs to fill the gap left by the decrease from death penalty prisoners is an increase from prisoners of conscience.

The Government of China denies sourcing organs from prisoners of conscience, but does not provide statistical information on sources of organs. It refuses to provide death penalty statistics on the basis that they are state secrets.

The connection between death penalty statistics and organ transplant abuse was made explicit by the UN rapporteur on torture, the UN rapporteur on religious intolerance and the UN Committee on Torture. All have asked China to explain the discrepancy between its volume of transplants and its volume of sources. Though China does not publish death

penalty statistics, non-governmental estimates provide death penalty numbers which come nowhere near to explaining the volume of transplants which China says is sourced from death penalty prisoners.

China rejects the evidence that Falun Gong prisoners are killed for their organs, but acknowledges that almost all of its organs for transplants come from prisoners. China promises eventually to stop sourcing organs from prisoners.

The dispute with China is not whether organs for transplants are coming from prisoners, but only over which prisoners. Yet, even sourcing organs from prisoners sentenced to death violates ethical standards of the transplant profession, the official policies of The Transplantation Society and the World Medical Association. The Government of China claims that prisoners sentenced to death consent to the use of their organs for transplants. Transplant professionals assert the obvious, that autonomous informed consent is impossible in a prison environment, which is inherently coercive. Sourcing of organs from prisoners, no matter what sort of prisoners, is done, practically, without consent.

Wherever one stands on the dispute over which Chinese prisoners are the sources of organs, international standards dictate that China has the responsibility to account for its sources of organs. It does not fall to outsiders to show that organ transplant sourcing is abusive. The World Health Organization Guiding Principles on Human Organ Transplantation assert the principles of transparency, accountability and traceability.

China does not respect these Guiding Principles. On the contrary, as evidence of the killing of Falun Gong for their organs has mounted, China has engaged in increasing cover up, removing access to data which government websites had previously made available and denying statements its own officials previously made.

The Committee against Torture established under the Convention against Torture in December 2008 had called for to China to cooperate with an independent investigation into the sourcing of organs for transplants and for prosecution of those involved in organ transplant abuse. The Government of China has rejected that recommendation.

## **Analysis**

In July of 2005 Huang Jiefu, Chinese Deputy Minister of Health, indicated as high as 95% of organs derive from execution<sup>1</sup>. Speaking at a conference of surgeons in the southern city of Guangzhou in mid November 2006, he said: "Apart from a small portion of traffic victims, most of the organs from cadavers are from executed prisoners"<sup>2</sup>. In October 2008, he said "In China, more than 90% of transplanted organs are obtained from executed prisoners"<sup>3</sup>. In March 2010, he stated that: "... over 90% of grafts from deceased donors are from executed prisoners"<sup>4</sup>.

As one can see, at some points, Huang Jiefu refers to deceased donor sources and at other points to all sources. The questions then become, how many live donors are there and how many persons are sentenced to death and then executed? Answering the second question, how many persons are sentenced to death and then executed is not that easy, since the Chinese State and the Communist Party which runs the State consider this information to be a state secret. We are left with external estimates. I and David Kilgour

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<sup>1</sup> The Congressional Executive Commission on China Annual Report 2006, p. 59, note 224, p.201: "Organ Transplants: A Zone of Accelerated Regulation" *Caijing Magazine* (Online), 28 November 05.

<sup>2</sup> [http://news3.xinhuanet.com/english/2006-11/16/content\\_5335427.htm](http://news3.xinhuanet.com/english/2006-11/16/content_5335427.htm)

<sup>3</sup> <<http://press.thelancet.com/chinaorgan.pdf>>

<sup>4</sup> "Tomorrow's Organ Transplantation Program in China", Presentation delivered at the Madrid Conference on Organ Donation and Transplantation, Madrid 2010, by Prof. Huang Jiefu, Vice Minister of Health, P.R.C.

concluded, in our reports in 2006 and 2007<sup>5</sup> and book *Bloody Harvest*<sup>6</sup>, that the bulk of prisoners who are the source of organs for transplants are Falun Gong practitioners who do not consent, who are killed by the organ harvesting operation and who are not sentenced to death.

David Kilgour and I drew a figure of 41,500 organs from Falun Gong killed for their organs at the date of our 2006 report by looking at volumes of transplants and volumes of executions before and after the persecution of Falun Gong began. After the persecution of Falun Gong began transplant volumes shot up, but executions remained steady. So we attributed the difference in transplant sources to Falun Gong.

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.

Since the release of our reports and book there have been developments, though not necessarily ones which give us more information. For one, Amnesty International has stopped publishing death penalty statistics.

Amnesty International used to provide a death penalty log, setting out individual cases. The last log, published in 2002 set out executions for 2000.

Amnesty International continued with yearly estimates after 2002 of persons sentenced to death and then executed, but its last statistics, for 2008 of 1,718 executions, was published in our book. There are no statistics since. The organization gave no explanation for

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<sup>5</sup> At <[www.organharvestinvestigation.net](http://www.organharvestinvestigation.net)>

<sup>6</sup> Seraphim Editions, 2009

stopping either the log or the statistics.

The loss of information is regrettable. The log and the statistics were based on media reports. While not every execution was publicly reported and therefore the log and statistics gave a number lower than total executions, the figures were useful for indicating trends and characteristics. One could see from the log and statistics which Amnesty International compiled the breakdowns, for instance, by crime, region and gender. Amnesty International should re-establish its log and statistical reporting.

For our book, David Kilgour and I were able to garner useful information about transplant volumes from the China Liver Transplant Registry in Hong Kong<sup>7</sup>. In a second development, the China Liver Transplant Registry has now 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.

There is some information still publicly accessible, including the names and location of transplant hospitals reporting to the registry. That listing tells us that military as well as civilian hospitals are reporting. The registry lists 35 national hospitals including 9 military and 45 provincial hospitals including 11 military<sup>8</sup>.

At The Transplantation Congress in Vancouver in August 2010, Haibo Wang, 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

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<sup>7</sup> Liver Transplant Registry, [www.cltr.org](http://www.cltr.org), Queen Mary Hospital, The University of Hong Kong, Hong Kong

<sup>8</sup> <https://www.cltr.org/en/transplantcenters.jsp>

misinterpreting the data. If anyone is to get access now, the Registry has to know first the purpose for which the data is being used and some confidence that the data will not be 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<sup>9</sup> and heart<sup>10</sup> in Beijing and lung<sup>11</sup> in Wuxi. The data on the other three sites is also accessible only to those who have registry issued login names and passwords.

The World Health Organization Guiding Principles on Human Organ Transplantation principle 11 requires transparency of sources, open to scrutiny, while ensuring that personal anonymity of donors and recipients are protected. Hiding aggregate data from the public which were previously available directly contradicts this principle. Aggregate data from all four transplant registries should be publicly accessible without the need for a login name and password.

Though these developments since *Bloody Harvest* in 2009 do not justify re-examination of our numerical conclusions, they do deserve comment. Murder of innocents is harder in broad daylight. The darkness cast by data coverup makes organ transplant abuse easier to perpetrate. One factor which drove our conclusion that Falun Gong were being killed for their organs is that the mechanisms which should be in place to prevent such an abuse were not in place. That conclusion is even more true now than when we published our book, because data publicly available then through the China Liver Transplant Registry which

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<sup>9</sup> Kidney Transplant Registry, [www.csrkt.org](http://www.csrkt.org)

<sup>10</sup> PLA No. 309 Hospital, Beijing, Heart Transplant Registry, [www.cotr.cn](http://www.cotr.cn), effective from April 2010, Fuwai Cardiovascular Hospital, Chinese Academy of Medical Sciences, Beijing

<sup>11</sup> Lung Transplant Registry, [www.cotr.cn](http://www.cotr.cn), effective from April 2010, Wuxi People's Hospital, Wuxi

indicated the extent of the abuse are no longer available.

A third development since *Bloody Harvest* was published is the establishment of an organ donation system. 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.

Under the pilot project, relatives of 90% of the deceased donors received subsistence benefits. These benefits led to concern that they were disguised forms of payment for donated organs<sup>12</sup>.

Beijing News reports that the Chinese Red Cross is charging hefty sums for organs, about \$16,000 each<sup>13</sup>. Hospitals which do not pay do not get organs. The report indicates that the money goes to the families of the donors.

It is difficult to know exactly what is going on with this donation system. Occasionally officials in the system give media interviews to local Chinese Communist Party outlets in which they provide figures. However, there is no way of checking these figures against a verifiable source and they are inconsistent one with the other.

The newspaper Beijing Today reported in March 2011, one year after the donation system started, "In Nanjing, the capital of Jiangsu Province, [one of the eleven sites], not one person has elected to be a donor." Liu Wenhua, a member of the Red Cross of Nanjin and

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<sup>12</sup> Li Li, "China acts to address legal barriers and conduct awareness campaigns to boost organ donation" Beijing Review, [http://www.bjreview.com.cn/health/txt/2012\\_04/16/content\\_448771.htm](http://www.bjreview.com.cn/health/txt/2012_04/16/content_448771.htm)

<sup>13</sup> "Red Cross in fees-for-organs claim" Agence France-Presse, July 10, 2013

one of 12 donation counsellors sent by the city government to five hospitals said "only three people in Nanjing have donated organs in the past 20 years". The story goes on to note: "Success was equally absent in other regions. As of last Thursday, only 37 people nationwide had registered to donate their organs."<sup>14</sup> There is no indication how many, if any, of these 37 had died during the year, resulting in actual donations.

According to Deng Haihua, spokesman for the National Health and Family Planning Commission, speaking at a press conference given in China to Communist Party media outlets, by July 8, 2013, 2,495 organs had been donated since 2010<sup>15</sup>. Yet, only two months earlier, the figure for donations since 2010, according to official sources, was 626<sup>16</sup>. It seems unlikely that the system would have produced a little more than six hundred donations in three years and then a little less than two thousand donations in two months.

A meeting hosted by Minister Bin Li of the National Health and Family Planning Commission at Hangzhou, Zhejiang October 29, 2013 was told that there had been, as of that date, 1,161 deceased organ donors resulting in more than 3,175 organ transplants. Deceased and living donor transplants constituted, so the meeting was told, 49.4% of organ transplantation in China for 2013<sup>17</sup>.

As with most figures released by Communist Party officials, they are unverifiable and raise more questions than they answer. Are the figures of 1,161 and 3,175 the totals since the

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<sup>14</sup> Han Manman "Organ donor pilot a failure after one year" March 18, 2011 <[http://www.beijingtoday.com.cn/feature/organ donor pilot a failure after one year](http://www.beijingtoday.com.cn/feature/organ%20donor%20pilot%20a%20failure%20after%20one%20year)>

<sup>15</sup> "China introduces fair organ distribution system", Xinhua Agencies, July 10, 2013

<sup>16</sup> "China to improve nationwide organ distribution system" Xinhua, May 12, 2013

<sup>17</sup> The Hangzhou Resolution and Report of Meeting with Minister Bin Li of the National Health and Family Planning Commission of the People's Republic of China, October 29, 2013.



start of the deceased donor system in 2010 or the totals for 2013? If the former, then what are the figures for 2013?

Organs from deceased donors are the realization of commitments while a person is alive. Is the figure of 1,161 the number of people who registered as donors or the number of people who died after registering as donors? If the latter, what is the figure for those who have registered as donors?

If 1,161 is the figure of those who died after registering as donors, the number of those in total who registered as donors, including those who are still alive, must be many times larger than 1,161. Yet, how is it possible to have only 37 people registering as donors in the first year of the operation of the donation system and thousands in the following years? What changed?

Most people will not die immediately after they commit to donate. Indeed, most people who commit to donate, at least outside of China, die many years later after the commitment to donate. If 1,161 is the figure for people who have registered as donors, how is it possible for 1,161 donors in China to lead to 3,175 transplants in such short order? Why are Chinese donors dying so quickly after they register?

As for living donors, in the Hangzhou report there were no numbers quoted, just an overall percentage of which living donors form part. This is typical of Government of China disclosure of living donors, percentages, but not numbers. What are the living donor numbers?

At the Hangzhou meeting, a number of Chinese transplant professionals, including representative of 40 transplant centres, signed a resolution committing them to stop the use of organs from prisoners. The notion of holding anyone to account for use of organs from

prisoners in the past is absent.

The resolution also poses many questions. Which were the 40 transplant centres that signed? If others sign on later, how do we find out about it? Is there a compliance assessment mechanism? How do we know whether the resolution is being respected? If it is not, what is the remedy?

A fourth development is a statistical snapshot we glimpsed in March 2010 when Chinese Deputy Health Minister Huang Jiefu gave a speech to a transplant conference in Madrid. At that conference, he selectively released the information hidden in the four transplant registries. The historical information is consistent with what was known before. The new information brings the data up to date to the time of his speech, admittedly only a few months after our book was published.

The speech though is not completely reliable because it is internally inconsistent. Huang Jiefu produces, in a slide show presentation, one slide showing the number of kidney and liver transplants in China over the past decade. He produces a second slide showing living donor vs. deceased kidney transplantation from 2003 to 2009. The second slide produces totals for living and deceased donations (non-heart beating donations - NHBD). So there are two slides which have kidney transplant totals for the period 2003 to 2009. These two slides have conflicting information.

The first slide shows kidney transplants for 2009 to be 6,458. The second shows the figure 6,485. There is presumably a transposition error here. However, because we cannot check the original figures, we do not know which is correct.

For 2008, the figure for both slides is 6,274. This is useful information because it shows we are not considering two different types of data.

For 2007, the figure for the first slide is 7,700 and for the second slide is 3,974. This is a significant difference, without explanation.

For 2006, the difference is also large, 8,000 for first slide, 3,021 for the second slide. Similarly for 2005, we have 8,500 for the first slide and 3,441 for the second. For 2004, we have an astonishing figure of 10,000 for the first slide and 3,461 for the second. For 2003, we have 5,500 for the first slide and 3,171 for the second.

Because for 2007 and earlier years for the first slide we have rounded numbers and for the second slide precise numbers, it appears that, for the earlier years for the second slide we are not looking at totals but rather a subset. The first slide, it seems, presents estimates. The second set presents, it would seem, the subtotal of reported kidney transplants which provide the necessary differentiated information to allow the construction of the second table.

The second Huang Jiefu table differentiates between living and deceased donor kidney transplants. Kidney transplant information which does not distinguish between living and deceased sources would be useless for the construction of this table. So, presumably, it was just pushed aside.

Huang Jiefu, mind you, says none of this. He just blithely presents contradictory information without explanation and hides the data sets from the public on which he based his tables.

If the analysis here is correct, then the larger totals of the first table are the better ones. The larger though the totals, the more that is needed to explain the sources. Where in the world did 10,000 kidneys, and 2,265 livers come from in 2004? It was not from living

donors.

Another table Huang Jiefu presents is living vs. deceased donor liver transplantation. That table shows significant living donor sources starting from 2007. Living donors are 23.5% of liver transplants in 2007, 19.1% in 2008 and 13.6% in 2009. However, for 2004, living donors are a mere .4% of total donations.

Huang Jiefu does not give comparable figures for kidney transplants. I suspect that the reason is that the figures would look nowhere near as good. The volume of kidney transplants has been in recent years three times or more the volume of liver transplants. The most likely hypothesis is that kidney transplant living donors are the same absolute number in any year as the liver transplant living donors. That would mean that the percentage of kidney transplant living donors would be, in percentage terms, one third or less of the percentage of liver transplant living donors.

Living donations, according to the Huang Jiefu text, are given to "related or kinship recipients". The current law allows for living donor sourcing from relatives. The State Council of the People's Republic of China Regulations on Human Organ Transplant effective as of May 1, 2007 states

"The recipient of a living organ must be the donor's spouse, lineal descent or collateral relative by blood within three generations, or they must prove they have developed a family like relation with the donor."<sup>18</sup>

Living related donors could in theory be prisoners. There is no express intent to exclude living related donor prisoners.

The Government of China is trying to discourage sourcing from living donors, because of the

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<sup>18</sup> Article 10

risks to the donors. In an article in the China Daily, Chen Shi, an organ transplant expert with the institute of transplantation at Shanghai based Tongji Hospital, is quoted as saying "Living organ donations, which can cause health risks for the donor, should always be the last resort when no suitable organ from a deceased donor is available."<sup>19</sup>

There has been fraud in the use of living relative donor exception which the authorities have been trying to control. Identities of donors have been disguised to pretend that they are relatives when they are not. This has led to a clampdown on living donor sourcing<sup>20</sup>.

In Dongguan, doctor Zhou Kaizhang and seven others were prosecuted in August 2012 for this type of fraud. According to the Chinese Medical Doctor's Association, Dr. Zhou had performed 1,000 kidney transplants. The prosecution related to 51 kidneys transplanted between March and December 2010.

Unethical organ transplants in China are not going to be confined to live donors. There is no particular reason why abusers would restrict themselves to live donors. Abuse of deceased donor sources is similar pattern behaviour.

There is plenty of evidence of abuse in the deceased donor organ transplant system. Yet, all the news stories we see of clampdowns relate to live donors. Why is that so? Why is there no comparable clampdown on deceased donor organ transplant abuse? The answer must be that the authorities are prepared to tolerate that form of abuse. That toleration is one form of complicity in the abuse.

How many live donations are the product of the corrupt black market system which in

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<sup>19</sup> [http://www.chinadaily.com.cn/china/2011\\_11/07/content\\_14046100.htm](http://www.chinadaily.com.cn/china/2011_11/07/content_14046100.htm)

<sup>20</sup> [http://www.theepochtimes.com/n2/china\\_news/chinas\\_organ\\_trafficking\\_crackdown\\_increases\\_forced\\_organ\\_harvesting\\_288008.html](http://www.theepochtimes.com/n2/china_news/chinas_organ_trafficking_crackdown_increases_forced_organ_harvesting_288008.html)

theory China is trying to discourage? How large will the living donor numbers be once the black market is shut down? In light of the fakery going on, which Chinese officials admit, how do we even know that the donors survive what are supposedly live donations?

In an interview dated September 18, 2012, then Deputy Health Minister Huang Jiefu stated that 65% of organs come from prisoners and 35% from living donors<sup>21</sup>. He added that live donations should be a last resort and not advocated. Living donations can cause damage to healthy donors and violates the "no harm" principle of medical ethics. Chinese medical insurance does not provide long term coverage to donors for complications from living donor transplants.

He noted that a living donor black market has emerged, inducing the poor to sell organs to wealthy people willing to pay high prices. This practice, he added, violates the principles of health care reform. The Ministry of Health issued a policy directive that live organ donor transplants must be approved by a provincial health department.

Huang Jiefu talked, in his 2010 Madrid speech, about how organ transplantation was initially an unregulated business. He does not say this, but the overall impression he leaves is that any hospital which wanted got into the business of transplants and sold transplants to whomever they wanted, getting organs from whatever source on which they could lay their hands. It is apparent that this sort of system would not produce reliable statistics, that any information about volumes would just be estimates.

A law which took effect on May 1, 2007 required that transplants take place only in registered hospitals<sup>22</sup>. The law set up a registration system for hospitals. The statistics we

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<sup>21</sup> <http://6d.dxy.cn/article/29049>

<sup>22</sup> Regulations on Human Organ Transplant

see for 2008 and 2009 come, presumably, from the registered hospitals which is why we get precise figures in both slides for those years. From 2009, estimates from a hospital free for all became unnecessary.

A fifth development is 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<sup>23</sup>.

The China National People's Congress Standing Committee amended the Criminal Law in February 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"<sup>24</sup>. The new law came into effect May 1.

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

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<sup>23</sup> People's Daily, 10/01/2011

<sup>24</sup> China at <[www.handsoffcain.info](http://www.handsoffcain.info)>.

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. 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.

A sixth development since the publication of *Bloody Harvest* has been the work of Ethan Gutmann and Jaya Gibson. Their work, first announced in June 2010<sup>25</sup>, tells us that the killing of innocents for their organs has spread from Falun Gong to Tibetans, Eastern Lightning house Christians and Uighurs. They glean this information from interviewing members of these victim groups who got out of Chinese detention centres and then out of China. Those interviewed tell them of blood testing and organ examination of the sort that Falun Gong practitioners endured.

This phenomenon means we cannot ascribe the difference between transplant volumes and death penalty volumes to Falun Gong practitioners alone. Some of the sources will be these other victim groups.

A seventh development is the bizarre publication in the Journal of the American Medical Association in July 2011 of some Communist Party propaganda about organ transplants in China, a commentary title "Regulation of Organ Transplantation in China: Difficult Exploration and Slow Advance" by Shi Bing Yi Shi and Chen Li Ping, members of the Chinese military, the People's Liberation Army<sup>26</sup>. This publication violates medical ethics.

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<sup>25</sup> Ethan Gutmann, "China's Policies Toward Spiritual Movements" Congressional Executive Commission on China, Roundtable discussion, Friday, June 18, 2010; Julia Duin, "China accused of vast trade in organs", Washington Times April 27, 2010

<sup>26</sup> Issue of July 27, 2011, Vol 306, No. 4.



The Transplantation Society Ethics Committee Policy Statement on the Chinese Transplantation Program states: "presentations of studies involving patient data or samples from recipients of organs or tissues from executed prisoners should not be accepted." The Editors and Associate Editors of the journal *Liver Transplantation*, wrote that they "have decided that original publications dealing with clinical liver transplantation outcomes submitted to this journal should explicitly exclude the use of executed prisoners or paid donors as a source of donor organs."<sup>27</sup> Publication of the Commentary violated the spirit of these standards.

What is more, Shi Bingyi, one of the co-authors, has a history of stating what the Communist Party wants him to say about organ harvesting, even though it contradicts his own previous statements. Dr. Shi said in an article posted on Health Paper Net in March 2006 that there were about 90,000<sup>28</sup> transplants in total up until 2005. The text 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."

David Kilgour and I referred to this total and this article in our reports and book, *Bloody Harvest*. Manfred Nowak, the United Nations Rapporteur on Torture, asked the

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<sup>27</sup> Issue 13:182, 2007

<sup>28</sup> [http://www.transplantation.org.cn/html/2006\\_03/394.html](http://www.transplantation.org.cn/html/2006_03/394.html) (Health Paper Net 2006 03 02) Archived page: <http://archive.edoors.com/render.php?uri=http%3A%2F%2Fwww.transplantation.org.cn%2Fhtml%2F200603%2F394.html+%&x=32&y=11>

Government of China to explain the discrepancy between volume of organ transplants and volume of identified sources, relying, in part, in our report and its reference to the Shi Bingyi article. 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

"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."

Shi Bingyi was interviewed in a video documentary produced by Phoenix TV, a Hong Kong media outlet. That video shows Shi Bingyi on screen saying what the Government of China, in its response to Nowak, indicates he said, that the figures we quote from him he simply never gave. He is wearing a military uniform, perhaps to indicate that we should not take too seriously what he is saying, that he is only following orders. 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."

Yet, the actual source, the Health News Network article, in June 2008, remained on its original Chinese website, though it has been taken down since. The original source of the information remained available within China through the internet at the time Shi Bingyi denied the information.

So we have to approach the Commentary published by the Journal of the American Medical Association both with repugnance and a grain of salt. It does have nonetheless some data consistent with other data.

The Commentary observes that with the (after cardiac death) donation system set up as a

pilot project in eleven cities "more than 200 individuals" volunteered to donate their organs, and that "only 63 were able to do so by the end of May 2011". To say, as the authors do, that only 63 "were able" to die in a certain period is, to say the least, an odd way of putting things. One has, I think, to be a dyed in the wool member of Communist Party of China to characterize staying alive as an inability. Yet, the Commentary does confirm the point that this donation system is statistically insignificant as a source of organs.

Where does this leave us? Our figure of 41,500 was generated by comparing transplant volumes before and after the persecution of Falun Gong began. The most reliable death penalty statistics came from Amnesty International. Though they were almost certainly an underestimate because based on media reports alone, we considered them reliable indicators of multi-year trends, if not yearly totals. Multi-year averages of executions, according to Amnesty International figures, remained constant before and after the persecution of Falun Gong. The difference between transplant volumes before and after the persecution of Falun Gong could then reasonably be attributed to Falun Gong sourcing.

Another methodological approach, used by researcher H. Li, is to take the highest estimate of death penalty execution volumes and work from there<sup>29</sup>. The high estimate to which he refers is 10,000 yearly published in 2004. This 2004 10,000 yearly estimate came from Chen Zhonglin, a National People's Congress delegate who, with others, was urging a review of all death sentences by the Supreme People's Court<sup>30</sup>, a reform which eventually happened in 2007.

Chen made clear that his estimate was not an official figure and was based on tabulations<sup>31</sup>.

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<sup>29</sup> Forced Organ Harvesting in China

<sup>30</sup> "China executes 10,000 people a year - NPC delegate" AFP March 15, 2004.

<sup>31</sup> Amnesty International "Executed 'according to law'? - The death penalty in China"

In other words, he was guessing in a context where a high figure helped to support the reform he advocated. In any case, even if we take Chen's estimate at face value, it reduces to 7,000 by the time the reforms he advocated were implemented, since they generated at least a 30% reduction in volume of executions.

Since we do not know with precision the number of executions, another tack is trying to figure out the volume of executions which would support the volume of transplants, a figure which we have. The volume of executions has to be a multiple of the number of transplants for a variety of reasons.

One reason is the absence of a national organ distribution system. Individual hospitals make arrangements with individual prisons for organs. There is substantial organ wastage in China.

Zhou Jun, a deputy head of the National Health and Family Planning Commission's Department of Medical Administration and Medical Service Supervision, announced in August 2013 a national organ distribution system to take effect in September<sup>32</sup>. It had been operating on a trial basis since 2011. This distribution system applies only to donated organs, not organs sourced from prisoners.

A second reason is that transplanting several organs at once from the same donor contradicts the recipient information. Everywhere else patients wait for donors. In China, sources wait for patients. Once the patients are ready, the sources are killed.

Given the short waiting times for transplants and the absence of national organ distribution system, sourcing several organs from the same donor would require recipient coordination. Yet, our interviews with recipients show no such coordination.

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<sup>32</sup> "Organ distribution system to be enforced", Global Times, Zhang Yiwei, August 18

A third reason relates to the Chinese government claim that donors consent. While there is no proof of this consent, let us take the Chinese government claim at face value, that persons sentenced to death actually do consent. Then consider the failure of the national donor system in operation for now over a year.

As noted, a newspaper report shows 37 consents in a year throughout 11 cities. The Journal of the American Medical Association Commentary shows around 200 consents till May 2011. This low rate of consent is attributed to cultural aversion to donations. Yet prisoners sentenced to death in China come from the same culture as other Chinese and would have the same cultural aversion to donation. There is no reason to believe that their consent, if freely given, would occur at any different rate than consents outside of prison.

So we are left with a choice. Either consents of persons in prison sentenced to death, like consents of persons outside of prison, are statistically insignificant. Or the notion of prisoner consent is just a sham, one more piece of Communist propaganda.

The prison environment and impending execution may induce consents which would otherwise not be forthcoming. However, consents at a higher rate than the non-prison population because of these factors are indicators of the coercive impact of prison on voluntariness and not indicators of true consent.

As well, though the prison coercive environment may induce rates of nominal consent higher than that of the general population, it is implausible to suggest that the rate of nominal consent would be near or close to 100%, given the almost total reluctance of the non-prison population to consent. Even within a prison atmosphere, there will be, in light of Chinese cultural aversion to donation, a significant proportion of prisoners who will not even nominally consent.

A fourth reason the volume of executions has to be a multiple of the number of transplants is the Criminal Procedure Code of China requirement that a convict sentenced to death to be executed seven days after sentence<sup>33</sup>. The Code allows the sentence to be executed by either injection or shooting.

The interviews David Kilgour and I have had with patients tell us that, if the source of the organ was a prisoner sentenced to death and then executed, the seven day rule was not being respected. For, if it were, then patients would have had at most seven days notice of the availability of a transplant and would have been told that the organ would have been available at a precise date.

However, patients were not being told that. They were told, and hospitals were advertising this on their websites, that organs would be available at any time, at the convenience of the patients.

It would be reasonable to assume that the seven day rule for execution was often, even if not universally, applied. That would mean that many prisoners sentenced to death and then executed were not sources of organs for transplants.

Even in a country like China, where there is no rule of law, no independent judiciary, no free media, no democracy, where human rights defenders are repressed, there is some scope for the presumption of legality. Corruption undermines the presumption, but does not replace it altogether.

For prisoners sentenced to death, the corrupt would be tempted to ignore the seven day rule where there was money to be made from transplants. However, it is reasonable to

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<sup>33</sup> In Article 211.

assume that at least some Chinese officials are not corrupt.

The fifth reason the volume of executions has to be a multiple of the number of transplants is the form of execution. Until 2006, the majority of death penalty prisoners were executed by shooting. In a 2006 article for USA Today<sup>34</sup>, Liu Renwen, death penalty researcher at the Chinese Academy of Social Sciences, is quoted as saying that the "majority (of executions) are still by gunshot... But the use of injections has grown in recent years, and may have reached 40%."

Until January 2008, execution by shooting was common. That month Jiang Xingchang, the vice president of the Supreme People's Court, announced to the China Daily an expansion of lethal injections to replace shootings<sup>35</sup>.

Once a person is shot and killed, there is almost immediate organ deterioration. Organ transplants can be sourced from those shot and killed, if the sourcing is done immediately. Injection offers the luxury of time. The bulk of the anecdotal evidence we have, except for the period when China began transplants, is that organ sources are injected and not shot. Many of those executed by shooting, because of the practical reality of immediate organ deterioration and the inability to organize on the spot harvesting, are not organ sources.

A sixth reason is the need for blood type and ideally tissue type compatibility between the donor and the recipient. Not every donor is available as a source for every patient. There are four blood types in the ABO system - A, B, AB and O. The ABO blood type distribution in China is A 27%, B 26%, AB 12% and O 35%<sup>36</sup>.

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<sup>34</sup> Calum MacLeod "China makes ultimate punishment mobile" 6/14/2006

<sup>35</sup> Xie Chuanjiao, "Lethal injection to be used more", 2008 01 03,  
<[http://www.chinadaily.com.cn/cndy/2008\\_01/03/content\\_6366317.htm](http://www.chinadaily.com.cn/cndy/2008_01/03/content_6366317.htm)>

<sup>36</sup> <http://answers.yahoo.com/question/index?qid=20081004023622AAepoS>

Blood type O is a universal donor and AB blood type is a universal recipient, meaning that blood type O can donate to donors with any blood type and blood type AB can receive organs from donors of any blood type. That is to say 12% of patients can receive from any donor and 35% of donors can donate to any recipient.

For local recipients, the patient blood type distribution would match the prisoner blood type distribution. For transplant tourists, the blood type distribution would depend on the source of tourism.

Nonetheless, for each recipient one would need approximately three prisoners for a statistical likelihood of a match. Moreover, since sourcing is local, each detention centre with ties to a local hospital has to have its own group of prisoners waiting for execution, its own organ donor bank. The notion that at any one time at all major prisons in China there are hundreds of prisoners sentenced to death and awaiting execution runs contrary to observed experience.

Then UN Rapporteur on Torture Manfred Nowak, on his visit to China in November 2005, found in prisons persons sentenced to death at first instance awaiting appeal, but none sentenced to death awaiting execution<sup>37</sup>. When he asked to see such prisoners, he was told that there were none, because all prisoners sentenced to death whose appeals had been exhausted were executed immediately.

A seventh reason the volume of executions has to be a multiple of the number of transplants is blood disease which renders transplantation unsuitable. The most common

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<sup>37</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to China, UN Document number E/CN.4/2006/6/Add.6, 10 March 2006



such blood disease is hepatitis B, which is endemic in China. One study estimated 50 to 60 % of the Chinese population carries hepatitis B markers<sup>38</sup>. Another study focused on four Chinese cities found the infection rate to be 62.6%<sup>39</sup>.

If we put all these factors into the mix, we are looking at a factor of ten to one. That is to say, 10,000 organ transplants a year, if the sourcing is solely prisoners sentenced to death and then executed, would require something in the order of 100,000 executions a year.

One has, of course, to take into account the increased sourcing from living organ donors. On the other side of the ledger are the death penalty developments which have cut down substantially on executions.

The bottom line is that the volume of prisoners sentenced to death and then executed necessary to sustain the current rate of transplantation is so out of whack with every death penalty estimate in China, by far, as well as Chinese death penalty execution procedures that organ sourcing, preponderantly, must be coming from other sources than prisoners sentenced to death and then executed. And what would those other sources be?

Tibetans, Uighurs and Eastern Lightning house Christians, sources Ethan Gutmann and Jaya Gibson have identified, are unlikely to come anywhere near the necessary volume. Uighurs and Tibetans are detained in specific geographical locations in China, not throughout China. Eastern Lightning house Christians suffer nowhere near the rate of detention nor extremes of vilification of Falun Gong. Falun Gong practitioner prisoners remain the most plausible source for the bulk of transplants in China.

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<sup>38</sup> "Prevalence of Serological Hepatitis B Markers in a Working Population in Hefei, China" Asia Pac J Public Health October 1987 vol. 1 no. 4 28 33

<sup>39</sup> "Hepatitis B Virus Prevalence in Industrialized Cities in China" Asia Pac J Public Health October 1991 vol. 5 no. 4 350 358

Numbers in this context are just guesswork. My guess, for what it is worth, is that the source of the 10,000 transplants a year in China is 1,000 from prisoners sentenced to death and then executed, 500 from living donor relatives, 500 from Tibetans, Uighurs and Eastern Lightning House Christians, and 8,000 from Falun Gong practitioners.

Be that as it may, the onus does not lie on me to prove these numbers. The onus lies rather on the Government of China to provide the numbers. The current situation creates a presumption of wrongdoing beyond the sourcing of organs from prisoners sentenced to death and then executed.

When the Government of China admits that organs are sourced predominantly from prisoners, what is it trying to hide by not providing numbers? One compelling answer is that it is trying to hide the killing of Falun Gong and other prisoners of conscience for their organs.

Criminals against humanity typically make every effort to cover up their crimes. The secrecy we see about numbers looks to be just that, a cover up of a crime against humanity.

## **Conclusion**

The combination of a decrease of the death penalty with an increase of sourcing of prisoners of conscience for their organs raises questions about advocacy of the abolition of the death penalty. Advocacy of abolition of the death penalty in China must be accompanied by advocacy of an end to sourcing of organs from prisoners and full disclosure of the sourcing of organs for transplants, not only for the future but also in the past. To do less would be irresponsible.

Since the demand for organs is potentially inexhaustible and the money to be made is huge,

one can question how real the ambition is of those in the Chinese health system to end the death penalty and stop sourcing organs from prisoners. Yet, even if it is real, even if it happens, the fact remains that killing of prisoners of conscience for their organs is a crime against humanity. Stopping that killing tomorrow or even today is not a defence to the crime. The international community must hold accountable those responsible for crimes against humanity. We must press for an accounting from the Government of China of its past sources of organs for transplants, even if the death penalty in China and sourcing of organs from prisoners were to disappear today.

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