

Transparency of organ donations: The case of China

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Introduction

The World Health Organization Guiding Principle 1 of the Guiding Principles on Human Cell, Tissue and Organ Transplantation requires consent from the donor to organ removal for the purpose of transplantation. Guiding Principle 10 requires traceability of organ transplants. Guiding principle 11 requires that donation activities be transparent and open to scrutiny.¹

These obligations belong to jurisdictions which are responsible for the donation activities. According to the World Health Organization, each jurisdiction is to determine the means of implementing the Guiding Principles.

Jurisdictions may claim compliance with these Guiding Principles. Yet, doubts may arise whether those claims are well founded. The international community needs to address the question how claims of compliance can be assessed.

The purpose of this paper is to attempt to answer that question. China, about which doubts of compliance with the Guiding Principles have been raised, is used as a case study.

Distinctions

Traceability, transparency and openness to scrutiny are three different principles. First, traceability differs from either transparency or openness to scrutiny.

¹ http://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf

Traceability helps transparency and scrutiny. However, it is possible to introduce a system of traceability without transparency or openness to scrutiny, if the traceability exists only behind closed doors. As the World Health Organization Guiding Principles indicate, ideally there should be all three - transparency, openness to scrutiny, and traceability. Traceability is not the substitute for either transparency or openness to scrutiny.

Transparency and openness to scrutiny are also different, although there is some overlap. Transparency means we can see right away what we want to see. All we have to do is look. Openness to scrutiny means that to see what we want to see requires scrutiny, and that scrutiny is permissible, even welcome.

Transparency may not give us an immediate answer to every question because what we see requires some analysis and probing. Openness to scrutiny means that, in addition to providing access to all relevant records, the record keepers must be open to answer probing questions about those records.

The two principles of transparency and openness to scrutiny each raise a similar question. What should transparency allow us to see? What should be open to scrutiny?

Without answering those questions comprehensively, this much is clear. Transparency should allow us to see the sourcing of organs to determine whether the consent required by Guiding Principle 1 has been obtained. Openness to scrutiny means that we should be able, with scrutiny, to determine whether the requisite consent has been obtained.

We need to know not just whether the requisite consent has been obtained now, but also whether it had been obtained in the past. Guiding Principle number 1 does not just refer to present and future consent. It also refers to past consent.

The World Health Organization has never suggested that extraction of organs without donor consent was at one time acceptable. Because the principle of consent refers to past consent as well as present and future consent, the principles of transparency and openness to scrutiny apply to past records as well as present and future records, to determine whether there has been past consent.

China

The Government of China acknowledges that it has been sourcing organs for transplants from prisoners in large numbers. I and other independent researchers have concluded that many of these prisoners were prisoners of conscience, killed for organs without their consent. This research has shown that the primary prisoner of conscience source has been practitioners of the spiritually based set of exercises Falun Gong.

Government of China officials recently have said variously that they have ended or will be ending the sourcing of organs from prisoners and that they have either replaced or will be replacing prisoner sources with voluntary donor sources. The question becomes, how do we know that this is so?

The killing by China of prisoners for their organs has generated widespread revulsion within the global transplantation community, leading to ostracization of the Chinese transplant profession. The Chinese transplant profession has every interest in overcoming that ostracization. How do we know whether the assertions of Chinese transplant professionals that they have ceased sourcing or will be ceasing organs from prisoners are real or just a self serving smokescreen, designed to overcome the ostracization without paying the price of real reform?

In China, there is neither transparency nor openness to scrutiny. On the contrary, there is increasing opacity. There is an active effort to hide sourcing of organs from public scrutiny.

I have written and spoken about this cover up at length elsewhere.² Here I will mention just a few points by way of example:

- China runs four transplant registries - for heart, liver, lung and kidney. Hospitals report directly to the registries. The registries for heart, lung and kidney are housed in mainland China and were never public. Aggregate data for the liver registry used to be public. Public access was shut down once I and other researchers started citing the data found on it.
- Doctors used to issue letters to foreign patients who had transplants in China indicating to the after care doctors abroad the type and dose of drugs given, standard tests results, clinical summary and post operative findings. After the report that David Kilgour and I did on organ transplant abuse in China was released in July 2006, the issuance of these letters ceased.
- Chinese health officials at one time claimed that virtually all organs were being sourced from prisoners sentenced to death and then executed. To this day, the Chinese government refuses to release death penalty statistics.

When it comes to transparency and openness to scrutiny about past events, the Chinese authorities could not be more clear. Transparency and openness to scrutiny are out of the question.

² For example, "Cover up of Organ Transplant Sourcing in China", Remarks for a panel on Organ Trafficking in China, Metropole Hotel, 17 December 2012 Geneva, Switzerland, posted at <http://www.dafoh.org/cover-up-of-organ-transplant-sourcing-in-china-presentation-by-david-matas-on-december-17-2012-in-geneva/>

In a March 2015 interview, the current head of the Chinese transplantation system Huang Jiefu is asked:

"Have you actually been involved in obtaining organs from executed prisoners?"

His answer is

"I hope that I can lead people to flip this page over as soon as possible and look at now."³

In the same interview he says:

"So, we shouldn't always dwell in the past, always concerned about the page of death row inmates. Flip over the page and look at the future. ... We should pay attention to the future, not the past."

"Do not always look at the past embarrassing page, do not cling to the past."

The Chinese authorities endorse, for the present and future, the principle of transparency, but they give an odd twist to that concept. Health official Huang Jiefu in a March 2015 interview extolled transparency, claimed there is transparency now and attributed an increase in donations to the existence of this transparency. He seemed to equate transparency with the announcement of the decision that there will no longer be sourcing of organs from prisoners. Yet, that announcement is not the same as transparency.⁴

Transparency does not mean that the Communist Party of China has said something that the rest of the world wants to hear. It means that we can see for ourselves what has happened and is happening. Transparency interpreted that way, which is after all the meaning of transparency in ordinary everyday English, does not exist in China.

³ NetEase "Huang Jiefu: The use of organs of death row prisoners is an embarrassing page in history" March 3, 2015.

⁴ NetEase "Huang Jiefu: The use of organs of death row prisoners is an embarrassing page in history" March 3, 2015.

Transparency does not mean "Tell me". It means "Show me". It is impossible for an independent outside observer looking at publicly accessible records today to be satisfied beyond a reasonable doubt that all sourcing of organs in China is done with consent.

Coding

A. Forms of coding

Coding is not the same as traceability. Coding is a technical mechanism which makes tracing easier.

Michael Strong and Naoshi Shinozaki in a 2010 article wrote:

"There is frequently confusion regarding the terms 'coding system' and 'traceability system'. These are perceived to be the same, but in fact they are quite distinct. A coding system provides the necessary standards and control in order to ensure that each donation, and each product prepared from that donation, is uniquely identified, and that a common terminology is used. A traceability system maintains records on the activities associated with donated material from the time of procurement to the point of implantation."⁵

There is a wide variety of both coding and traceability systems in different countries and sometimes, within the same country, in different hospitals. For China, Strong and Shinozaki report:

"Most of the hospitals in China are using coding systems for cells, tissues and organs. These coding systems are usually different from one hospital to another; however, the coding for patient ID is unique in every city originally for insurance purposes. This

⁵ "Coding and traceability for cells, tissues and organs for transplantation" Cell Tissue Bank. 2010 Nov; 11(4): 305 - 323.

is how a patient and his/ her medical history can be traced within/ among one/ different hospital(s)."

Because coding is different from transparency, in theory, China could introduce uniform coding but still hide organ sourcing. However, the introduction of uniform coding would make urgings of transparency harder to resist. An intent to cover up sourcing of organs becomes a drag on the introduction of coding.

B. Possible internationally accepted uniform coding

There is not now a uniformly accepted coding system for organs. There is not even one proposed. Before coding is proposed, there must be an agreed nomenclature for organs which are being transplanted. We can not code what we can not name. We can not assign a code to an organ unless we know what is the organ which is being coded.

The World Health Organization has proposed an initial nomenclature for organs through its SONG project (Standardization of Organ Nomenclature Globally). The proposal is seen as the first step towards a more comprehensive nomenclature. So we do not have yet for organs even the pre-requisite for coding, an agreed comprehensive set of names for organs to be transplanted.

Because traceability and transparency are different, they can occur at different times. Effective traceability may require technical developments and international consensus. The technicalities of nomenclature and coding, which may take some time to develop, should not cause us to lose sight of the need for transparency now.

Transparency in sourcing for organ transplants should not have to wait until a global consensus develops on nomenclature and coding. Delays in development of that

consensus can not be an excuse for cover up.

A global system of traceability is neither necessary nor sufficient for transparency. We can and have should have transparency now, even though no global consensus has developed on nomenclature and coding. Moreover, even once a global consensus has developed on nomenclature and coding, avoidance of transparency would still be possible.

Avoidance of transparency is not a technical problem; it is an ethical problem. There is no excuse for delaying compliance with ethics.

How, in the absence of uniform coding, do we achieve transparency? Though uniform coding makes transparency easier, the absence of coding does not make transparency impossible. It takes more effort; but it is an effort that must be made if transplant ethics are to be respected.

Practically speaking, hospitals and donation registries can be transparent about their sources for organs by keeping proper records, even without coding, and making those records available to independent outside inspectors charged with determining sources of organs. Inspectors should be able to inspect without advance notice so that records are not falsified in advance of inspection.

Donation registries

A. National donation registries

The Commentary to World Health Organization Guiding Principle 10 encourages donation and transplant programs to participate in national and international registries.

In China, there are two donation programs, one run by the National Health and Family

Planning Commission Ministry of Health, Government of China and District 3450 of Rotary International and another run by the Chinese Red Cross. Each has its own registry.

In March 2014, the National Health and Family Planning Commission, Ministry of Health, Government of China and District 3450 of Rotary International announced the establishment of a national electronic donor registry. The website is www.savelife.org.cn.⁶

The Chinese Red Cross, one month later, in April 2014, set up its own on line organ donation registry.⁷ Their registration website is system is <http://register.rcsccod.org.cn/loadnum>.

The Red Cross and The National Health and Family Planning Commission, Ministry of Health, Government of China in June 2014 announced that in March 2014 they had established a joint committee to coordinate the two organ donation systems. The committee director is Former Vice-Health Minister Huang Jiefu. The offices of the Committee are located in the Ministry of Health.⁸

Why there are two national donor websites in China set up at more or less the same time takes some explanation. China, though it claims to have a donation system, has in fact a purchase and sale system.⁹ Families of patients in hospital near death or brain dead are

⁶ Shan Juan "Organ donor registry aims to save lives" China Daily, 2014 March 19
http://www.chinadaily.com.cn/china/2014-03/19/content_17362089.htm

⁷ Shan Juan "Online organ donations", China Daily, 2014-04-01
http://www.chinadaily.com.cn/china/2014-04/01/content_17398044.htm

⁸ "China sets up organ donation committee" China Daily, 2014 June 17
http://www.chinadaily.com.cn/m/chinahealth/2014-06/17/content_17504714.htm

⁹ See the section "The Nature of the Change" in the talk I gave "Organ Sourcing in China: The Official Version", for a symposium in Bern, Switzerland, on April 16, 2015 posted at
<http://www.theepochtimes.com/n3/1332895-organ-sourcing-in-china-the-official-version/7>

paid large sums to consent to donations of organs which are then sold to wealthy patients in need of organs.

The head of the Chinese transplant system Huang Jiefu summarized the donation system succinctly. He said: "Poor people donate organs and rich people have the right to be transplanted."¹⁰ Elsewhere he said that only 30,000 patients can afford paying for organ transplantation and are on hospital waiting lists for organ transplants, a tenth of the total number of those who need transplants.¹¹

Why are families being paid for organs when the donor has registered? The answer lies in the Regulations on Human Organ Transplant of 2007. Article 8 provides in part:

"If citizens expressed that they were not willing to donate their human organs when they were alive, no organizations or individuals can donate or harvest this citizen's organs; If citizens didn't express they were not willing to donate their human organs when they were alive, after they passed away, this citizen's wife, adult children or parents can have written statements to express the will of donating this citizen's human organs."

This provision has been interpreted to require family consent even where there the donor has expressly consented through a donation registry.

Running an organ donation system in China is a profitable business which has attracted more than one entrant. However, the competition between the systems for donors,

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¹⁰ "China's Organ Transplant will step into the world" 2015 January 18 CN-Healthcare

¹¹ "National guideline issued to better manage organ donation" China Daily, August 24, 2015
http://www.china.org.cn/china/2015-08/24/content_36392733.htm

including a bidding war, is off-putting to donors and has the effect of decreasing donations overall.¹² So the two donation systems entered into a cartel to control the business. The cartel prevents competition from undercutting the individual efforts of the two systems. In September 2014, an official in the Ministry of Health organ transplantation system, Xu Ke, a deputy minister at the National Health and Family Planning Commission, was appointed head of the Chinese Red Cross.¹³

The Red Cross website states that as of October 13, 2015, there were 39,155 donors, 4,677 donations and 13,161 patients who received treatment. As one can gather from the fact that the number of patients who receive treatment is substantially larger than the number of donations, the number of donations is the number of donors who actually donated, donating more than one organ at once. The totals on the website are cumulative since the start of the donation system in 2010. The figures are donation totals from both the Red Cross and the National Health and Family Planning Commission donation systems.

The ratio of patients receiving treatment to the number of donors who donated means that each donor is donating on average 2.8 organs. This means donors must be almost entirely deceased donors.

Gao Xinpu, deputy director of the Medical Affairs Department at the China Organ Donation Administrative Center, stated that from January to May 12, 2015, 872 people who died in

¹² Yaqiu Wang "Will China's Organ-Transplant Reforms Really Work?" September 11, 2013
<http://www.theatlantic.com/china/archive/2013/09/will-chinas-organ-transplant-reforms-really-work/279567/>

¹³ "Party chief of scandal-plagued China Red Cross steps down", Wednesday, South China Morning Post, 03 September, 2014,
<http://www.scmp.com/news/china/article/1584041/party-chief-scandal-plagued-china-red-cross-steps-down>

China had donated 2,311 organs.¹⁴ As of August 19th, 1,590 donors had given 4,414 organs.

Chinese health officials have in many instances stated that prisoners can donate organs. For instance Zhuang Yiqiang, Deputy General Secretary of the China Organ Development Foundation and Deputy Secretary of the Chinese Hospital Association, in March 2015 stated:

"Either death-row prisoners or ordinary people, all have the right to freely decide whether to donate organs or not. Death-row prisoners are also human beings. If he or she is willing to donate organs after death, of course, he or she should not be discriminated by the society."¹⁵

To take another example, China Daily USA in March 7, 2014 reported:

"China is set to further strengthen the regulation of organ donations from executed prisoners and integrate it into the existing public voluntary organ donation and allocation system, according to a political adviser close to the situation.

Huang Jiefu, director of the China Organ Donation Committee and former vice-minister of health, made the remarks on Tuesday on the sidelines of the ongoing two sessions.

'By doing that, organs from death-row inmates used for life-saving operations are secured in a fair, transparent, and corruption-free manner, ... we will regulate the issue by including voluntary organ donations by executed prisoners in the nation's public organ donation system to help ensure an open and fair practice ... China is

¹⁴ Wang Xiaodong "Transplants hit by lack of donors" China Daily 2015 May 20, 2015 http://www.chinadaily.com.cn/china/2015-05/20/content_20769350.htm

¹⁵ "China Organ Transplant Development Foundation: a history of using organs from executed prisoners" 2015 March 04 Beijing Youth Daily

http://big5.ce.cn/gate/big5/wap.ce.cn/szsh/201503/04/t20150304_4719641.html

gradually moving away from a long-term reliance on executed prisoners as a major source for organ donations.' He [Huang] expects that procedures that include the procurement and allocation of organs from inmates who have been executed will be integrated into the national system soon. 'We've reached consensus with the legal and law enforcement departments on that,' he said.

To ensure that donations are voluntary, written consent from the inmate and the family is required, he said.

Another source who didn't want to be named but is close to the situation said written consent from the executed prisoner's lawyer will be added as well.

Also, only designated organ procurement organizations will be allowed to approach law enforcement departments regarding the issue, Huang said.

Most importantly, 'donated organs from executed prisoners will be put into a computerized system to ensure fair allocation', he said. 'Any organ donations, including those by executed prisoners, have to go through the system and the computerized allocation process,' he added.¹⁶

How many donors in the two Chinese organ donation registries are prisoners? How many of those prisoners are sentenced to death? How many are prisoners of conscience? None of these questions can be answered with publicly available information.

Zhou Jian, a division director for the National Health and Family Planning Commission, stated that the information on the National Health and Family Planning Commission registry was open only to the health authorities and authorized organ procurement organizations as needed.¹⁷ The existence of a donation registry, like traceability, is a tool which can

¹⁶ Shan Juan "Govt seeks fairness in organ donor system for inmates" 2014 March 07, China Daily USA

¹⁷ Shan Juan "Organ donor registry aims to save lives", China Daily 2014 March 19 http://www.chinadaily.com.cn/china/2014-03/19/content_17362089.htm

potentially help transparency, but it is not the same as transparency. Unless donation registries are open to an international, independent inspection regime, they are an unused transparency tool.

B. International donation registries

There is something an International Registry on Organ Donation and Transplantation.¹⁸ The registry collects information about national donation systems. It does not collect actual donations.

There is an international network of registries of stem cell donors with twenty five million donors.¹⁹ One can imagine such a network for organs.

Yet an international registry or network of registries is only as good as the national data which is fed into it. If a national registry is not transparent, then an international registry sourcing that national registry will also not be transparent.

China is not part of the database of International Registry on Organ Donation and Transplantation. Given its history and lack of transparency and openness to scrutiny, it should not be.

C. Off registry sourcing

The existence of a donation registry or even several registries does not mean that all organ sourcing passes through registries. Registries do not necessarily have a monopoly on

¹⁸ www.irodat.org

¹⁹ www.bmdw.org

organs. Meeting transparency and openness to scrutiny standards poses special challenges for off registry organ sourcing.

The dehumanization of practitioners of Falun Gong through Communist Party propaganda is so acute and China, through internet blockage and media censorship, so cut off from the rest of the world, that at one time hospitals saw nothing wrong about talking openly about the killing of practitioners of Falun Gong for their organs. When David Kilgour and I were doing the research for the first version of our report, our investigator callers could phone hospitals, pretending to be relatives of patients needing transplants, asking if the hospitals had organs of Falun Gong practitioners for sale, and the hospitals would say, yes we do, come on down.²⁰

After our report came out, the hospitals, belatedly, understood that admitting to anyone who called that they were killing innocents for their organs, was not so smart. The killing did not stop. But an effort of cover up began.

There are now two systems operating in China - a donation system and a non-donation system. The non-donation system sources organs virtually exclusively from prisoners.

In the Wall Street Journal article of March 2015, Huang Jiefu is quoted as saying that "donations - i.e. those not originating from executed prisoners - now account for 80% of the transplant operations in the country." That is to say, sourcing from prisoners accounts for 20% of the transplant operations in the country. At a transplant volume of 10,000 a year, that means that 2,000 organs a year come from prisoners.

At a press conference in March 11, 2015, Huang Jiefu said: "Our policy is to use as few

²⁰ *Bloody Harvest: The Killing of Falun Gong for their Organs*, Seraphim Editions, 2009, Chapter Seven "The calls".

executed prisoner organs as possible".²¹ In an article published in the Chinese Medical Journal, January 20, 2015 Huang Jiefu and others state:

"Before we establish a system of organ donation after citizens' death, if we brutally interrupt the source of organs from executed prisoners, it would inevitably lead to loss of lifesaving hope for many patients with organ failure. ... China's organ donation and transplant system are still a newborn baby who is in need of a gradual process of growing up.... There is still a long way to go."

This notion that "if we brutally interrupt the source of organs from executed prisoners, it would inevitably lead to loss of lifesaving hope for many patients with organ failure" is ethically abhorrent. Healthy people should not be killed for their organs so that sick people can live.

How do we achieve transparency and openness to scrutiny for off-registry organ sourcing? Access to aggregates for the four Chinese transplant registries would be helpful. Matching those aggregates with the organs sourced through donation registries would give us some sense of the scope of off-registry sourcing.

However, the transplant registries do not capture every transplant in China. Some transplants are not reported to the registries.²² Ultimately what is needed is an outside, independent inspection team with access to every hospital and its records, without advance notice. We need an international assessment mechanism.

International Assessment Mechanisms

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<https://docs.google.com/document/d/12a6Z9gRSUnXOweJ7D1Kix1HOjhcP0TKAd7UJ9O17qNw/edit?pli=1>

²² See various reports at <http://www.upholdjustice.org/>

A. World Health Organization

The World Health Organization Executive Board in January 2015 approved a decision requesting the Director-General to convene

"consultations with Member States and international partners, to support the development of global consensus on guiding ethical principles for the donation and management of the mentioned medical products of human origin; good governance mechanisms; and common tools to ensure quality, safety and traceability, as well as equitable access and availability, as applicable, to result in a document to be submitted to the Seventieth World Health Assembly for its consideration."²³

The seventieth World Health Assembly is scheduled for May 2017. An independent expert mechanism tasked with assessing compliance with the World Health Organization Guiding Principles would be a means of achieving transparency globally as well as ensuring respect for the principle of transparency nationally. It should be proposed in the consultations leading to the 2017 World Health Assembly and endorsed by that Assembly.

B. The United Nations Human Rights System

The Office of the United Nations High Commissioner for Human Rights was asked by petition in 2013 to conduct an independent investigation into organ transplant abuse in China. The petition has nearly one and a half million signatures.²⁴ The Office of the High

²³ Executive Board Document number EB136/DIV./3, 136th session, 12 February 2015, Decisions and list of resolutions

http://apps.who.int/gb/ebwha/pdf_files/EB136/B136_DIV3-en.pdf

²⁴ Petition to the United Nations at <https://www.dafoh.org/petition-to-the-united-nations/>

Commissioner has ignored the petition, not even officially acknowledging in writing its receipt, although we know it was received. I personally delivered the reams of paper with signatures in a trolley to the headquarters of the Office of the High Commissioner in Geneva and have pictures of the delivery.

The United Nations Committee against Torture was bolder than the Office of the High Commissioner. China is a signatory to the Convention against Torture and has to report periodically to the expert committee established under the Convention. Its most recent report is being considered in Geneva November 17 and 18.

The Committee against Torture, after considering the previous China report, recommended in 2008 that

"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."²⁵

In the intervening seven years, the Government of China has neither conducted nor commissioned any such independent investigation. The Committee against Torture is ill placed to conduct such an investigation itself.

The United Nations rapporteurs on torture and religious intolerance have taken a similar stance, asking in the years 2007 and 2008 for the Government of China to account for the large discrepancy between the volumes of transplants they claimed to have made and the

²⁵ United Nations document number CAT/C/CHN/CO/4, 12 December 2008
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/CHN/CO/4&Lang=En

volume of sources they were prepared to acknowledge.²⁶ The Government of China answered these queries in 2007 with silence and in 2008 with propagandistic nonsense. These rapporteurs recorded the answers, but were in no position to conduct their own investigations without an authorization from the UN Human Rights Council.

C. United Nations Office on Drugs and Crime

The Office of the United Nations High Commissioner for Human Rights unhelpfully referred us to the United Nations Office of Drugs and Crime when we met informally with their officials about the DAFOH petition. I and others accordingly went to the Office to participate in March 2014 for a pre-arranged meeting, which was cancelled at the last minute, after we arrived.

The Office took the position through e-mail that organ transplant abuse in China did not fall within their ambit. Though their website asserts that organ trafficking falls within the ambit of the Protocol on Human Trafficking to the Convention against Transnational Organized Crime, the view of the Office, which is the Secretariat for Protocol, was that transplant tourism does not come within the definition of organ trafficking.

My colleagues went nonetheless to the United Nations Office of Drugs and Crime on March 21st and attempted on the spot to meet with relevant officials. This effort prompted a

²⁶ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum, Manfred Nowak U.N. Document A/HRC/4/33/Add.1, 20 March 2007, paragraph 40; Report of the Special Rapporteur on freedom of religion or belief Addendum, Asma Jahangir, U.N. Document A/HRC/4/21/Add.1, 8 March 2007, paragraphs 107 to 111. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum, Manfred Nowak, U.N. Document, A/HRC/7/3/Add.1, 19 February 2008, paragraph 36; Report of the Special Rapporteur on freedom of religion or belief, Addendum, Asma Jahangir, U.N. Document A/HRC/7/10/Add.1, 28 February 2008, paragraphs 40 and 41.

response the same day from Mr. Ilias Chatzis, Chief of the Human Trafficking and Migrant Smuggling Section, Organized Crime and Illicit Trafficking Branch, United Nations Office on Drugs & Crime, Vienna. He wrote:

"I would like to thank you for your message and for the interest in our work. I understand that you have been trying to reach me today. However, I had no earlier knowledge of your presence in Vienna nor of the issues you wanted to discuss with me. A meeting would also not be productive as my Section's work does not include what you refer to as organ harvesting nor the other issues covered in your e-mail. My Section covers the UNTOC [United Nations Convention against Transnational Organized Crime] Protocols on Trafficking in Human Beings and on Migrant Smuggling. I am sorry that I cannot be more helpful at this stage."

This rejection is not the final word on the subject. On the contrary, it is worth pressing the United Nations Office of Drugs and Crime and the states parties to the Protocol on Human Trafficking to the Convention against Transnational Organized Crime to interpret the Protocol to include explicitly transplant tourism within the ambit of the Protocol. Nonetheless, we are not there yet.

D. Council of Europe Convention against Trafficking in Human Organs

The Council of Europe Convention against Trafficking Human Organs opened for signature in March 2015. It has not yet entered into force.

It may well be that not every aspect of transplant tourism is encompassed by this Convention. Nonetheless, the instrument, I am confident, encompasses travel for transplantation which involves the purchase of an organ sourced from a prisoner of conscience killed for their organs.

That Convention can be signed by the member States of the Council of Europe, the European Union and the non-member States which enjoy observer status with the Council of Europe. It can also be signed by any other non-member State of the Council of Europe upon invitation by the Committee of Ministers.²⁷

The Convention has reasonable standards but regrettably not much in the way of an enforcement mechanism. There is no expert committee to whom reports can be made. There is no individual petition mechanism. The implementation of the Convention is to be monitored by a committee of representatives of states party to the Convention.²⁸ The Committee of Parties could in theory establish an expert committee for assessing compliance with the Convention and, in my view, should do so.

E. European Union Parliament

The European Parliament passed a resolution in December 2013 on organ harvesting in China. That resolution, amongst other provisions, called for a full and transparent investigation by the European Union into organ transplant practices in China.²⁹

That resolution did not specify which component of the European Union was to do the investigation. But the logical component is the European Parliament itself. An investigation by any other component would require that the component decide that there should be an investigation, a decision the Parliament has already made. The relevant procedure for the Parliament would be the establishment of a special temporary committee

²⁷ Article 28

²⁸ Articles 23(1) and 25(1)

²⁹ December 12, 2013 European Parliament document number P7_TA(2013)0603 resolution number 2013/2981

to conduct the investigation and produce the report.

The European Parliament Rules of Procedure state:

"On a proposal from the Conference of Presidents, Parliament may at any time set up special committees, whose powers, composition and term of office shall be defined at the same time as the decision to set them up is taken; their term of office may not exceed 12 months, except where Parliament extends that term on its expiry."³⁰

The Rules provide for the composition of the Conference of Presidents in this way:

"The Conference of Presidents shall consist of the President of Parliament and the Chairs of the political groups. The Chair of a political group may arrange to be represented by a member of that group."³¹

It should be a simple matter for the Conference of Presidents to set up a special committee to do what the Parliament asked the EU to do, to conduct a full and transparent investigation of organ transplant abuse in China.

A European Parliament investigation into organ transplant practices in China would not be a comprehensive assessment mechanism. It would occur once, in relation to one country.

Nonetheless, the very fact of that investigation would be salutary, not just for China but for respect for the World Health Organization Guiding Principles world wide. An investigation like this done once would be a shot across the bow, a warning that this sort of investigation could be repeated anywhere, anytime should evidence of organ transplant abuse mount high enough.

³⁰ Rule 197

³¹ Rule 26 (1)

Conclusion

There do not now exist adequate international systems and mechanisms to assess compliance with the World Health Organization Guiding Principles on transparency of donations. Those systems and mechanisms can and should be developed.

An international inspection regime exists for prisoners of war run by the International Committee for the Red Cross. The Red Cross, by international humanitarian law treaty, is allowed to determine the location, the number and frequency of visits. On inspection, it is allowed to interview any prisoner privately.³²

Something similar to that needs to be developed for transplants. There needs to be an international inspection agency, perhaps housed either within the World Health Organization or the International Committee of the Red Cross or the Committee of Parties of the Council of Europe Convention against Trafficking in Human Organs. Inspectors should be able to inspect the records of any hospital and donation registry without advance notice and interview any staff privately.

It is easy to get away with what no one sees. It is far harder to violate principles brazenly. In the international health professionals community, where peer pressure can have overwhelming weight, compliance with the principles of transparency and openness to scrutiny practically equates to compliance with all principles.

Transparency and openness to scrutiny are two principles amongst several in the Guiding Principles. Yet, transparency and openness to scrutiny have an elevated status, looming in significance above the other principles. Without transparency and openness to scrutiny, violation of the other Guiding Principles, including the principle of consent, becomes all too

³² Rule 124 ICRC Customary IHL

easy. With transparency and openness to scrutiny, violation of the other Guiding Principles becomes difficult or impossible.

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