

China and the Universal Periodic Review 2018

by David Matas

Introduction

The human rights record of every member country of the United Nations comes up periodically for review at the UN Human Rights Council. For each country's Universal Periodic Review session, three hours is allocated. The sessions are billed as interactive dialogues.

Each state subject to review gets to speak four times - at the beginning, the end and twice in middle. The first time is an introduction. The other three times are to respond to intervening questions and remarks made by state speakers. The time not allocated to the state under review is divided among the country delegations which had expressed an interest in speaking.

Before each review, countries can pose advance questions. NGOs with UN status can make submissions. Immediately prior to and during the review, governments and NGOs can host, in nearby rooms, parallel sessions related to the country under review.

China came up on November 6th, 2018 for review for the third time since the Universal Periodic Review had started in 2008. Because of the large number of countries who wanted to make a statement, the time allocated to each country to speak was 45 seconds.

Advance questions are posted on the internet and, for China, can be found at this link:

<https://www.ohchr.org/EN/HRBodies/UPR/Pages/CNindex.aspx>

Interventions about China of those state parties during the review who wanted their speeches posted on the internet can be found at this link:

<https://extranet.ohchr.org/sites/upr/Sessions/31session/China/Pages/default.aspx>

A selective summary of the statements by China at the Universal Periodic Review session can be found at this link:

<https://extranet.ohchr.org/sites/upr/Sessions/31session/China/Pages/default.aspx>

"China - Draft report circulated on 23 November 2018 during the ad-referendum period"

Falun Gong

My focus was organ transplant abuse with Falun Gong victims. I paid particular attention to anything in the Universal Periodic Review materials for China related to that topic. There were no advance questions about the persecution of Falun Gong, and only one mention of it during the country statements - by Canada. Canada, asked China to "end prosecution and persecution on the basis of religion or belief, including for Muslims, Christians, Tibetan Buddhists and Falun Gong".

There were a couple of repressive governments which applauded Chinese persecution of belief. North Korea made four recommendations to China, one of which was to "continue to fight against cult organizations to safeguard welfare of people". Syria encouraged the Chinese to "counter extremist religious movements".

Chinese officials said, presumably in response to the Canadian comment, that "Falun Gong is not a religion but an evil sect banned by Chinese law". In fact, the practice of Falun Gong is not banned by Chinese law. The practice of Falun Gong is banned by Communist Party policy only.

Practitioners of Falun Gong have none of the characteristics of cult followers. They lead normal working lives among family members. Li Hongzhi, the spiritual teacher and founder, is a private person whom many practitioners have never met or seen.

What makes the practice of Falun Gong evil in the eyes of the Chinese Communists is that it is popular, more popular than the Party before the practice is banned; that it is based on Chinese traditions, unlike Communism, which is Western; that it is spiritual, again unlike Communism, which is atheist; and that it is impossible to control, since the practitioners have no hierarchy or organizational structure which the Communists can pre-empt. Yet, none of these characteristics, objectively, can be called evil.

Organ transplant abuse

About organ transplant abuse, Germany asked these advance questions

"How does China react to allegations of organ-harvesting in prisons and detention facilities? Can China provide data on annual numbers of organ transplantations and legal sources of organ donations in order to dispel these allegations?"

Only one government raised the matter during the interactive dialogue, Austria. Austria said:

"Regarding the removal of organs, we would like to know how the Chinese authorities ensure that this is only performed with the free, informed and specific consent of the donor without exception. Austria would be grateful to receive information on the implementation of a zero tolerance policy on harvesting organs in prisons and detention facilities."

Given the fact that Austria, like all other countries, had only 45 seconds, this component was a substantial part of their statement.

China again responded with bafflegab. The Chinese delegation stated that the transplantation of organs is regulated by strict provisions enacted in 2015 which require that all organs come from voluntary donors after death or living donors; China has an organ allocation system; and the traceability of organs in China was affirmed by the World Health Organization.

There are a number of flaws in this Chinese response. First of all here too, the Chinese officials make reference to "provisions" which suggest that there is a law. Yet, there was no law enacted in China in about transplantation of organs in 2015, only a Chinese Communist Party/ Government of China policy statement.

Moreover, there is a law to the contrary, allowing for sourcing of organs from prisoners without consent. The 1984 Chinese Government Temporary Rules Concerning the Utilization of Corpses or Organs from the Corpses of Executed Criminals provides:

"III. The dead bodies or organs of the following categories of the condemned criminals can be made use of.

1. The uncollected dead bodies or the ones that the family members refuse to collect: ..."

See Second appendix to a Human Rights Watch report posted at

https://www.hrw.org/reports/1994/china1/china_948.htm

China consistently throughout its statements equated obedience to the law with the rule of the law, though they are quite different concepts. The rule of law imports independence of the judiciary, which does not exist in China. It requires that the Chinese Communist Party be subject to the law, which also does not exist in China.

That false equation is bad enough. When the Government, as well, equates statements of

Communist Party policy with legislation what we have the Chinese officials saying is that the rule of law means obedience to the Party. This amounts to turning the concept of law in its head. The rule of law becomes its opposite.

The Austrian question was generous, suggesting that transplant abuse in China occurred behind the backs of authorities, that they did not know about it and that they needed mechanisms to find out about it. The Chinese rejection of this generosity is itself an indictment, suggesting that they know full well what is going on. Rather than acknowledging that organ transplant abuse might be happening and pretending they did not know that it was happening, if it was happening, they chose cover up and denial.

The organ allocation system, the China Organ Transplant Registry System, is shrouded in secrecy. A link to the website shows nothing. See <https://www.cot.org.cn/>

The Chinese claim of World Health Organization (WHO) endorsement of the Chinese transplantation system ignores the reality of WHO. WHO does not do periodic public evaluation and critiques of country transplantation systems.

An analysis

During the Universal Periodic Review session for China, there were many expressions of appreciation for economic growth and poverty alleviation in China. Some delegations noted also the accompanying degradation of the environment. Canada, again, took a unique position, stating that they were "concerned about the broader deterioration of human rights in China since the last UPR". The United Kingdom echoed Canada in part, stating that there had been improvement in economic rights, but that "political and civil rights have deteriorated".

Given that each state had only 45 seconds, there was no time for analysis of all this. But why is this so, assuming that it is so? Why has there been an improvement in economic rights and a worsening in the environment and a deterioration of civil and political rights, at one and the same time?

In general, there can be too little government or too much. The extreme of too little government is a collapsed state like Somalia, where there are no government services and no government control. The extreme of too much government is a totalitarian state like North Korea, where every aspect of daily life comes under government control. Both extremes are disastrous for the populations living there.

China used to be like North Korea, a totalitarian state with the Communist Party's intruding everywhere. It was as disastrous for the economy in China as in other Communist countries. So, the Party relented, but in the economic sphere only, going from one extreme to the other. In the economic sphere in China today, rather than there being too much government control, there is too little, which explains the environmental degradation and a lot else besides. Political control and restrictions of civil rights remain.

This combination, economic freedom and political domination, allowed both for growth and Party control. The dissatisfaction with the Party for poor economic results receded. Every other source of dissatisfaction or distancing from the Party was managed or repressed.

This dual strategy of economic freedom and political/ civil repression has had negative fallouts, in particular, the killing of Falun Gong for their organs. Socialism, albeit an economic disaster, at least was an ideology - from each according to his means, to each according to his needs. By abandoning socialism, the Party stood for nothing, other than its own control.

The shift generated an ideological vacuum which, among competing beliefs, Falun Gong

filled most successfully. Before the advent of Falun Gong in China, exercise and spiritual beliefs operated in different spheres. The Falun Gong blending of the Chinese spiritual and exercise traditions resonated with the Chinese populations to the point where the practice became, within seven years from its beginning, more popular than the Communist Party, which had remained, despite its withdrawal from the economic sphere, the vehicle for political success in China.

In China, nothing fails like success. Falun Gong, by becoming so spectacularly successful, signed its own death warrant. The practitioners were not an organization; its beliefs had no political component. But simply by winning over the hearts and minds of the population, the practice made the Party feel threatened. The Party did not just want control. It wanted the population to believe in the Party even though the Party, with its withdrawal from socialism, gave the population nothing in which it could believe.

The mass arbitrary detention of Falun Gong and the torture to extract recantations were a direct result of the continuation of political and civil control and were bad enough. The economic freedom led to an even worse result, the killing of Falun Gong for their organs.

The shift from socialism to capitalism meant that the state withdrew money for the provision of services and expected the private sector to take its place, to provide those services instead. One sector where this happened was the health sector. Transplantation in China, with the shift from socialism to capitalism, became a private business.

Hospitals lost a lot of state funding. How were they going to get the money to keep their doors open? The answer became transplantation. With transplantation, there was an inexhaustible demand - not just in China, but around the world.

There was also, because of the mass detention of Falun Gong practitioners, an inexhaustible

supply. It became a simple matter to match the two. The only constraints were beds, staff, medical supplies and infrastructure. But, over time, they could be easily overcome and were.

There was one other factor that made this shift to the killing of Falun Gong for their organs realistic. If prisoners had not been killed for their organs before organ harvesting from Falun Gong began, killing Falun Gong for their organs would have been quite a leap. However, prisoners, including prisoners of conscience, were systematically throughout China being killed for their organs years before the organ harvesting of Falun Gong started.

While the Falun Gong movement was growing peacefully, the primary source of organs for transplants were common criminals sentenced to death and then executed. So reliant was the Chinese health system on organs from prisoners that the Chinese did not even bother to set up a donation system for organs. The donation system for organs in China began as a pilot project in 2010. Among the prisoner population from whom organs were sourced, before the repression of Falun Gong began, were other prisoners of conscience - Uighurs.

It is hard to imagine that, if China had been sourcing organs from donors from the get go, it would have switched to sourcing organs from Falun Gong simply because there was a lot of them available in arbitrary detention. It is a lot easier to see how this could have happened when the system had already institutionalised sourcing organs from prisons, including organs from other prisoners of conscience, before the repression of Falun Gong began.

So, the practice of Falun Gong was the unlucky victim not only of its own popularity but also the conjunction of economic liberation and continuing political repression. When it began, Falun Gong was in the right place at the right time. By the time practice grew to the point

that the Party feared for its ideological supremacy, China became the wrong place and the wrong time.

The question this combination of events arises is not whether the abuse is happening, but the extent of Party complicity. Yet, this is a question which has little significance. Whether the abuse was something the Party directed and planned, or whether it was something to which the Party just turned a blind eye, the Party is equally culpable. Wilful blindness is as much a basis for criminal responsibility as direction and control.

The Austrian oral questions were more astute than the German written ones. The German questions invited China to respond in its typical fashion - with denial, made-up unverifiable data and insults directed at anyone who presented evidence to the contrary.

The Austrian oral questions raised the issue of the extent to which transplant abuse in China was happening as the result of inadequate controls over the transplant sector. Questions of this sort are legitimate.

However, posing those questions to Chinese officials means asking the wrong persons. The questions have to be asked of those whose concern is first for the truth rather than for the reputation and power of the Communist Party.

Given the breadth, scope, duration and continuation of transplant abuse in China, it is impossible to conclude that the killing of Falun Gong for their organs is something that the Party just had not noticed. Any statement from the Party that transplant abuse in China is a fall out from inadequate control mechanisms would have been implausible.

The Party operates at two levels. At one level, it attempts to address outside concerns. At another level, it attempts to address challenges to its own authority within China.

Telling the truth, or staying closer to the truth, is a better strategy when addressing outsiders. However, it is not always such a good strategy for the Party when attempting to assert and maintain its own authority in China.

At the internal level, a pretty lie is often better than an ugly truth. Any admission by Chinese officials of the killing of prisoners of conscience for their organs would threaten Party rule.

A caveat that the abuse happened without Party knowledge, even though false, would also make the Party look bad. For internal propaganda purposes, straight denial that the abuse is happening is the better strategy, no matter what the evidence. This is particularly so given the pervasive coverup and propaganda in China.

If a few outsiders are willing to stand up to China because of the evidence, so be it. Ultimately, the government of China has a lot less to fear from a few independent researchers or foreign governments than it does from its own population.

Death penalty statistics

In addition to the meagre global reaction to persecution of Falun Gong and evidence of transplant abuse in China, country statements raised a number of related concerns. One of those was death penalty statistics.

Death penalty statistics were and still are relevant figures for identifying sources of organs for transplants. Transparency about organ transplants requires transparency about death penalty statistics.

A number of countries during the interactive dialogue, asked China to produce those statistics. Australia stated that it

"recommends China work towards the abolition of the death penalty, and publish execution data as a priority, to promote transparency".

The Australian Foreign Ministry has a poor public record of combating organ transplant abuse in China. See Parliamentary submission number 168 pages 9 to 16

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Submissions?

One wonders what the Ministry would do if they got the transparency they requested.

France asked China to publish statistics on the number of executions. Italy asked China to "provide official figures regarding death sentences and executions". Slovenia recommended that China "increase transparency regarding death penalty by publishing statistics of the total number of executions."

China, as usual, responded with nonsense. One might have thought they would say, we will consider this or we will not do this, for whatever reason. But instead they said they were doing this when they were not.

Their response was that they provide relevant figures on the death penalty to the People's Congress every year. While indeed there is a report on the death penalty to the People's Congress every year, those reports do not include statistics on death sentences and executions, an omission noted, no less, by Xinhua, the official Chinese news agency. See

http://www.xinhuanet.com/english/2017-03/12/c_136121670.htm

Rome statute ratification

Several countries suggested China ratify the Rome statute of the International Criminal Court. This suggestion is relevant to organ transplant abuse in China since the killing of Falun Gong for their organs is a crime against humanity and arguably genocide. See

<http://scholarcommons.usf.edu/gsp/vol12/iss1/6>

Estonia recommended that China "sign and ratify the Rome Statute of the International Criminal Court and the Agreement on the Privileges and Immunities of the Court". Latvia recommended that China "explore options to accede to the Rome Statute of the International Criminal Court". Liechtenstein recommended that China "ratify the Rome Statute as well as the Kampala amendments to the Rome Statute China ratify the Rome statute [criminalizing aggression]".

The Chinese response was cryptic. They answered that they hope that the International Criminal Court will garner greater support with its practice.

There are, of course, various criticisms of the Court floating around, often from accused or their allies. To which of them the Chinese government intended to refer is anyone's guess.

Any court which brings mass murderers to justice is going to meet with criticism from the murderers themselves and their supporters. If China is waiting until those accused of mass murder and their friends stop criticising the Court before they ratify the Rome statute, we will be in for quite a wait.

Chinese economic weight

One theme which came up in the Universal Periodic Review was Chinese official largesse and economic prowess. That largesse is also relevant to the killing of Falun Gong for their organs, because money buys silence.

Sierra Leone noted with appreciation "the huge financial and technical assistance provided to Sierra Leone and several African nations during the outbreak of the Ebola epidemic". South Sudan expressed appreciation for the zero tariff regime China has for imports from developing countries.

China announced that it would contribute \$800,000 a year to the Office of the High Commissioner for Human Rights. In the abstract, that sort of contribution is welcome. However, China gives away funds the way dope dealers give away crack cocaine. They wait till your addicted and then they start charging, a lot. In the case of China, the price is doing and saying what the Party wants.

UN visits

Several countries recommended that China allow access to UN thematic mechanisms. This access too is relevant to the killing of Falun Gong for their organs because of the many requests that China cooperate with an independent investigation into transplant abuse in China.

This independent investigation need not be done by *ad hoc* investigators. It could be done by already established UN mechanisms. The failure of China to allow access to these mechanisms highlights one facet of organ transplant abuse in China - coverup.

Croatia recommended that "China cooperate with and allow unimpeded access to

international monitors, such as the relevant Special Procedures to investigate alleged related rights violations". Germany recommended that China "allow independent observers, including Special Procedures, unhindered access to all regions".

Hungary recommended that China "allow independent observers, including the UN High Commissioner for Human Rights and all UN Special Procedures that have requested a country visit, unfettered access to all parts of China's territory". Ireland recommended that "China grant access to the OHCHR [the Office of the United Nations High Commissioner for Human Rights] to all regions of the country".

Latvia recommended that China "respond positively to pending visit requests by the special procedures mandate-holders of the Human Rights Council and consider the extension of a standing invitation to all special procedures mandate-holders". Luxembourg recommended that China cooperate with the UN special procedures. Poland asked China "to positively respond to the invitation addressed by the Special Rapporteur on freedom of religion or belief".

About these recommendations, China was evasive. China noted that it had received visits from the UN Working Group on Arbitrary Detention. What it did not mention was that the last visit of this Working Group to China was 2004, 14 years earlier. The Working Group noted in its report on that visit that re-education through labour camps were used to suppress freedom of expression and that followers of Falun Gong were over-represented in these camps. See paragraph 48

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/102/74/PDF/G0510274.pdf?OpenElement> .

Human trafficking

A couple of countries raised the issue of human trafficking. Organ trafficking is a form of human trafficking.

Vietnam asked China to help the victims of human trafficking. Ivory Coast recommended that China adopt legislation to combat trafficking in human beings. China did not respond to these recommendations.

Parallel fora

There were a couple of parallel sessions scheduled a day before the official China Universal Periodic Review session which I attended. One was titled "Human rights in China, development and progress since reform and opening up from NGOs perspective" The other was titled "Human Rights in China".

Below are photos of banners outside the rooms about the meetings. I found out about the meetings from an electronic bulletin board in the Palais.

The events were not posted on the internet. The UN NGO liaison office, which I had visited earlier that day to ask about meetings, was not aware of these meetings. The room may have been booked through the permanent mission of China to the UN.

The NGOs on the roster were all either government organized or at least government tolerated. Lui Kaiyang, the chair of both meetings, stated during the first meeting that Chinese NGOs have a harmonious relationship with the Chinese government.

After the first meeting, I asked the chair if there was a Chinese NGO which addressed transplant abuse in China. He said yes. I asked him for the name. He said he could not

remember the name. I gave him my card and asked him to send me the name later by e-mail. I have not heard from him since.

The events, it seems, were publicised primarily to the diplomatic missions in Geneva. The persons in attendance who spoke during the meetings, from the fulsome appreciation they gave when spoke, all appeared to be from diplomatic missions. For the first meeting, there were country name cards available to put in front of attendees. I picked up the Canadian one and put it front of me. Someone after the meeting approached me to talk me and asked if I was from the Canadian diplomatic mission. When I said no, the conversation ended.

There was a camera videoing the presentations. I asked the cameraman if he was from the media. The answer I got, from a reporter nearby, was yes, that he was from the official Chinese media.

Conclusion

Much of the Universal Periodic Review for China dealt with other matters. The killing of prisoners of conscience for their organs was very much a backwater. It was possible to hear faint echoes of the abuse in the proceedings, if you knew about the abuse beforehand. But it would have almost impossible to piece together that abuse from the proceedings themselves.

All the states which had ratified or even signed the Council of Europe Convention on Organ Trafficking, as well as all states of the European Union, the United States, Canada and Ireland, in light of their Parliamentary/ Congressional resolutions on the subject, were sent a statement on the subject issued by the International Coalition to End Transplant Abuse in China. The statement asked states to assert that there is credible, persistent and troubling

evidence of organ transplant abuse in China and recommend that China co-operate with an independent international investigation to address this evidence. See

<https://endtransplantabuse.org/universal-periodic-review-etac-statement-china-must-account-for-the-vast-number-of-transplants-its-hospitals-report/>

Impunity is licence. When past violations are ignored, new violation become likely. There were many concerns expressed during the Universal Periodic Review about the plight of Uighurs. None of those interventions drew the link between the victimization of the Uighurs and the victimization of Falun Gong.

As noted earlier, the victimization of Uighurs is not new. Organ harvesting of Uighurs preceded organ harvesting of Falun Gong. But, until recently, the pervasiveness and intensity of persecution of Falun Gong far exceeded that of Uighurs.

The Chinese Communists could not help but notice the relatively free ride they got internationally from the persecution of Falun Gong, from the mass slaughter for their organs. The Communists launched into the present phase of repression of Uighurs with that free ride in their minds.

The Uighur leadership have been quite aware of the common plight the victims of Chinese Communism face and have shown solidarity with the Falun Gong community. States protesting victimization of the Uighur community show do no less.

The best one can say about the 2018 Universal Periodic Review is that showed some glimmers of light, pointing the way to future efforts. However, those future efforts should not wait till China's next turn in the Universal Periodic Review cycle, four or five years from now.

At the session of the UN Human Rights Council immediately prior to the China Universal Periodic Review, the 39th, a number of countries - Canada, the United Kingdom, Austria on behalf of the European Union, France and Germany - all made statements on September 18th under agenda item 4, Human rights situations that require the Council's attention, which included reference to human rights violations in China. That pattern can and should continue.

The Human Rights Council has three regular sessions a year - typically in March for four weeks, June for three weeks and September for three weeks. See

<https://www.ohchr.org/en/hrbodies/hrc/pages/sessions.aspx>

Although none of the country statements on China at the Human Rights Council session in September made mention either of Falun Gong or organ transplant abuse, that can and should change. The failure of China to address adequately or even properly the concerns raised about Falun Gong and organ transplant abuse at the Universal Periodic Review should be a matter of concern at future Human Rights Council sessions.

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