

Crime and punishment: The killing of prisoners of conscience in China for their organs

by David Matas

(Remarks prepared for delivery to Stop Medical Genocide April 2nd, 2023, Tokyo, Japan)

Introduction

Evidence of the mass killing of prisoners of conscience in China for their organs has been available since 2006. One reason, though far from the only, for the conclusion that these killings were occurring was that there were no laws in place either in China or outside China to prohibit or punish the acts.

In the intervening fifteen years, there has been a number of changes in the legal landscape. In this presentation, I want to give an overview of this landscape, both in China and outside of China, both internationally and nationally.

China

In China, after the evidence was published in 2006 that the Government was killing prisoners of conscience en masse, primarily practitioners of Falun Gong, for their organs, the state enacted a new law directed to organ transplant abuse without repealing the old laws which specifically allowed the abuse. The State Council enacted a regulation on organ transplantation in March 2007; it became effective in May 2007. That law prohibits live harvesting of organs without consent. It also prohibits sourcing of organs from deceased who expressed when alive a wish not to donate their organs after death.

As for sourcing of organs of deceased who said nothing before death either for or against donation, the law authorized the spouse, adult children or parents to consent. But what about sourcing of organs from deceased whose bodies were unclaimed or about whom the near relatives were also silent? On these matters the 2007 law said nothing.

There are two much older laws which address those questions. The 1979 Rules of the Ministry of Health provide that dissection carried out by educational and research institutions, including medical schools, when conducting teaching or research, can be conducted on corpses which no one claims. There is no requirement of consent from anyone.

A Regulation of 1984, adopted by a wide range of Chinese government entities, on the Use of Dead Bodies or Organs from Condemned Criminals has a similar provision. It enacts that the uncollected dead bodies or the ones that the family members refuse to collect of condemned criminals "can be made use of".

The 2007 law did not amend or repeal the 1979 or 1984 laws. But the legal problems in this area in China are not just a gap in the law or a failure to repeal older laws.

The Chinese reality is that its Communist Party controls the legal system. The Party does not use the law to prosecute itself or impede or hinder its behaviour in any way. In Communist China, the law is used only against those not on good terms with the Party. The rule of law does not exist in China. Instead of the rule of law, there is the rule of the Party.

The mass killing of prisoners of conscience for their organs in China is state run, institutionalized. It occurs through the operation of the prison system and government hospitals, including hospitals run by the military as profit making businesses.

Typically, family members do not claim bodies of arbitrarily detained prisoners of conscience, whether Falun Gong or any other such prisoner. Families may not know where their detained relative is. They may not even know of the fact of detention. Even if they do know, families are often reluctant to have anything to do with the authorities for fear of

being accused of not turning in the victim for having adopted a practice or behaviour or belief that the Chinese Communist Party views as threatening to its supremacy.

The mass killing of prisoners of conscience for their organs serves a dual purpose for the Party. The killings eliminate what the Party sees as its political enemies. The organ sourcing plays a large part in funding the health system. The selling of organs in China is a multi-billion dollar business. It helps to finance the health system as a whole, allowing medical institutions to keep their doors open after the Party shifted China from socialism to capitalism and withdrew state significant amounts of funding from the health sector. It is implausible to suggest that the Party would have shut down or would shut down this organ trade, no matter what the law said.

International

At the time that David Kilgour and I did our initial report on the killing of Falun Gong for their organs, there was no international instrument prohibiting cross border organ trafficking. The obvious candidate would have been The Protocol to Prevent, Suppress and Punish Trafficking in Persons of The United Nations Convention against Transnational Organized Crime prohibits trafficking in humans for the purpose of organ removal.

China is a party to both the Convention and the Protocol. The United Nations Office on Drugs and Crime, the UN bureaucracy charged with the work of the Convention and its Protocols, has however taken the position that, however similar the terminology seems, trafficking in humans for the purpose of organ removal is different from organ trafficking and that the Convention and Protocol do not cover organ trafficking.

Into the breach came the Council of Europe which negotiated and adopted in 2015 a Convention against Trafficking in Human Organs. The Convention requires states parties

to enact legislation penalizing organ removal without consent or with financial incentive. The legislation must penalize this behaviour wherever in the world it is committed by a citizen or permanent resident of a state party.

There are currently fifteen ratifying states and 11 states which have signed but not ratified the Convention. The fifteen **ratifying states** are Albania, Belgium, **Costa Rica**, Croatia, Czech Republic, France, Latvia, Malta, Montenegro, Norway, Portugal, Republic of Moldova, Slovenia, Spain and Switzerland. These fifteen states in principle should have the necessary legislation to put them in compliance with the Convention.

Joining the Convention is not limited to member states of the Council of Europe and indeed one non-member state, **Costa Rica, has signed but not ratified**. Observer states can sign on their own initiative. Non-observer states require an invitation from the Committee of Ministers of the Council, which can, of course, be requested. In addition to Costa Rica, Canada, the US, Mexico and the Holy See are observer states.

Another positive development came from the Board of Directors of The International Society for Heart and Lung Transplantation on 26 April 2022; they approved an updated Statement on Transplant Ethics which addressed specifically transplant abuse in China. The statement asserts that, in light of the evidence of transplant abuse in China, submission of data related to clinical transplantation or the use of tissue from human donors in China would not be accepted for presentation at a Society sponsored meeting, to the Society Registry or for publication in a Society sponsored journal.

National

Above and beyond the fifteen Council of Europe states mentioned, we can see a few other

jurisdictions which passed the necessary legislation. Israel was first off the mark.

Israel in 2008 enacted a law which prohibits receipt of a reward for an organ removed from the body of any person. The law also prohibits organ brokerage. The prohibitions apply whether the organ removal or transplant takes place inside or outside Israel. The law further prohibits reimbursement through the health insurance system of transplantation abroad conducted in violation of the standards of the legislation.

Taiwan in June 2015 enacted a law prohibiting the use of organs from executed prisoners, as well as the sale, purchase and brokering of organs. The law specifically bans transplant tourism. Patients who get organ transplants overseas must provide legal proof of the source of the organs in order to be eligible for state funded medical aftercare. An Italian law of December 2016 penalizes, globally, the trading, selling and buying of organs.

Canada enacted unanimously in Parliament a bill on organ trafficking which received royal assent on December 15th, 2022. The law makes complicity in organ trafficking outside of Canada a crime prosecutable in Canada. The United Kingdom Health and Care Act, which received royal assent on April 28th, 2022, makes organ trafficking, if committed by a UK citizen or habitual resident, an extra-territorial offence, punishable in the UK if committed abroad.

There are a number of jurisdictions with legislative initiatives which have yet to result in legislation in force. In the United States, the House of Representatives adopted with overwhelming support, just this past Monday, March 27th, the Stop Forced Organ Harvesting Act of 2023. The Bill imposes financial sanctions on any person who facilitates forced organ harvesting or trafficking in persons for purposes of the removal of organs. The Bill also makes inadmissible to the US any foreigner who engages in such activity.

Not all initiatives outside of China move in the right direction. The city of Busan Korea and the Korean Organ Donation Association on November 9th, 2022 co-hosted what was titled The First Korea, China Japan Asian Organ Donation International Symposium to canvass ways in which the three countries could collaborate and seek ways to build a cooperative system. Yet, Japan and Korea should not be cooperating and collaborating on organ donation systems with China, a country which kills innocents for their organs on an industrial scale through government health and detention institutions. The First Korea, China Japan Asian Organ Donation International Symposium should be the last.

Conclusion

A number of other national jurisdictions have actively considered changes in the law without, so far, enacting them. The United Nations has 193 member states. The number of states which have enacted the necessary legislation is pitifully small when compared to the size of the global community.

Though there have been several changes overall since 2006 and the initial reports of the mass killing of Falun Gong in China for their organs, the problem remains. The changes have not been sufficient inside China to stop the mass killing of prisoners of conscience in China for their organs or outside China to stop foreign complicity in those killings. A lot more needs to be done.

Thank you.

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