

Ending Abuse of Organ Transplantation in China

by David Matas

(Revised remarks prepared for delivery to The Transplantation Society Congress, Vancouver, 17 August 2010)

I am amazed it has taken this long. Finally people are starting to take the abuse of organ transplant surgery in China seriously. There have been isolated pockets of concern before. But an abuse which dates from the 1980's is only now, twenty five years too late, generating widespread notice.

China, from the very moment it began transplant surgery, killed non-consenting donors for their organs. The law even allowed for it.

The Regulations on the Use of Dead Bodies or Organs From Condemned Criminals, dated October 9, 1984, contemplated involuntary organ sourcing from prisoners sentenced to death and then executed. The law set out three events which could allow for harvesting of organs.

One event was consent of the source, the prisoner. A second event was consent of the family. A third event was the refusal or failure of the family to collect the body of the executed prisoner.

The law, then, allowed organ harvesting with consent, but did not prohibit organ harvesting without consent. That meant that, even where there was an express refusal of consent, both by the prisoner before death and the family after death, but the family refused or even just neglected to collect the body, then organs could, according to the law, still be harvested.

In 1984, when this law was enacted, China was still in the early stages of its shift from socialism to capitalism. As the shift progressed, the health system became a major

part of the shift. From 1980, the Government began withdrawing funds from the health sector, expecting the health system to make up the difference through charges to consumers of health services.

The sale of organs for transplants became the primary source of funds. There is global demand for organs because of shortages everywhere. The sale of organs became for hospitals a way to keep their doors open, and a means by which other health services could be provided to the community. This dire need for funds led to a rationalization that selling the organs of prisoners who would be executed anyways was acceptable and to a desire not to question too closely whether the donors wheeled in by the authorities really were prisoners sentenced to death.

Organ price lists were posted on Chinese websites. Hospitals boasted openly on their websites about the money being made from the sale of organs.

China began the organ trade by selling the organs of prisoners sentenced to death. But the global demand for organs and the health system need for money eventually outgrew the available death row supply. The Falun Gong community became the next source.

Falun Gong is a simple set of exercises with a spiritual foundation which started in China in 1992. The belief behind the exercises is a blending and updating of the Chinese Buddhist and Tao traditions.

The Chinese Communist Party/state at first encouraged the exercises because they are healthful. With official encouragement, the practice of the exercises spread rapidly to the point where there were more practitioners than members of the Communist Party.

The Party then, in June 1999, out of jealousy and fear of losing ideological supremacy, banned the exercises. When practitioners persisted and protested, the Party/State in

November 1999 got vicious - vilifying the practice through propaganda, arresting practitioners, torturing them to elicit recantations, and disappearing them if they did not recant.

Practitioners of Falun Gong quickly became the number one victims of repression in China - two thirds of the torture victims, according to the United Nations rapporteur in torture; one half of those in the slave labour camps, according to the United States Department of State Human Rights reports. Many of those Falun Gong practitioners who were arrested and refused to recant also refused to identify themselves, in order to protect their friends, family and workplaces back home who otherwise would have been victimized for not having denounced them. The depersonalization of the Falun Gong, their huge numbers in detention and their vulnerability as an unidentified population made it easy for them to become the next source of organs for sale.

According to research David Kilgour and I did, first in a report released in July 2006 and updated in January 2007, and then in a book titled *Bloody Harvest* released in November 2009, we concluded that Falun Gong were killed in the tens of thousands so that their organs could be sold to foreigners, generating a billion dollar business for China. We launched a global campaign to attempt to end the abuse we identified, speaking in over forty countries and eighty cities about our research.

The Chinese government reacted to our work, but not always in ways which countered our concerns. The Government took down Chinese internet information we referenced. We archived it all so that you can see it on our website¹. However, because of official blocking, internet users can no longer see it in China.

The Government through its embassies, consulates and front organizations, made every effort, wherever we went, to prevent or cancel our speaking engagements, and to bar

¹ <www.organharvestinvestigation.net>

or discourage people from meeting with us. The Party/state churned out hostile propaganda, mostly by attacking Falun Gong or us personally without dealing with the substance of our research.

At this Congress, the reaction of a delegate from China to my presentation, expressed during the question period, was typical of the Communist Party. He stated that the organizers should not have allowed me to speak and attacked my presentation at a personal level without offering a hint of rebuttal.

The Chinese speaker did, to a certain extent, get his way. Congress rules were enforced selectively to impede attendance at the event where I spoke.

At the door of the room to the Congress session where I presented, unlike any other event I and others observed at the Congress, there was an astounding number of eight security people turning away those who were registered at the Congress but who did not have blue colour coded delegate badges. People who had stayed in the corridor outside the room during the session informed me that large numbers were denied entry. At other Congress events, including lunch, registered attendees without blue color coded badges entered unimpeded, even though in theory the colour coding on their badges did not entitle them to entry.

In the years after our initial report came out, the Government of China did make some real changes. China set up an organ donation system, as a pilot project in ten cities in August 2009. Regulatory change required organ transplants to be done only in registered hospitals.

The Government ordered hospitals to give first priority to Chinese patients, putting a substantial damper on the international transplant tourism business. The Government, which had previously taken the position that all organs came from donations, even though there was at the time no donation system, eventually acknowledged that almost

all organs for transplants were coming from prisoners.

The policy and then the law on sourcing of organs changed, banning the sale of organs. Banning the sale of organs, though, was an empty gesture since those who did not consent to the sourcing of their organs were, it should be apparent, not selling them. And the ban on the sale of organs did not prevent hospitals from charging for organ transplants.

The policy and then the law on sourcing of organs changed to require consent of the donor. A 2006 policy provided that medical institutions engaging in organ transplants must obtain the written consent of donors. The policy added that donors have the right to refuse to donate their organs².

All this was repeated in a law a year later. Regulations on Human Organ Transplant, effective May 1, 2007, prohibited harvesting organs from the living without consent and from the dead who did not want to donate their organs when they were alive³.

The shift in priority for organ transplants from foreign to local patients was real. There was more than just an announcement of a policy change. The shift actually happened.

Chinese nationals who needed transplants were understandably miffed at having to wait months and years for transplants when foreigners were being put at the front of the queue. To manage local discontent, priorities had to shift. As well, the advantage of replacing talkative foreign patients with circumspect local patients could not have been lost on those attempting to disguise their abusive practices.

The shift in transplants from whatever hospital wanted to get into the transplant

² Articles 27 and 30 in Health Ministry Notice number 94.

³ Article 25.

business to registered hospitals was also real. Localising transplants in registered hospitals meant increasing the control of the Party and State, something dear to both.

Requiring the consent of sources for organ transplants though was not real. The 2007 law did not repeal the 1984 law and was not completely inconsistent with it. If a prisoner before death actively refused consent to donation, then, according to the 2007 law, harvesting the organs from the prisoner was prohibited. However, if the prisoner said nothing on the topic before death and the family either refused or failed to collect the body after death, then organ harvesting was arguably permissible though there was no consent, even after the enactment of the 2007 law.

Moreover, what the laws meant was very much a theoretical exercise. The Chinese Communist Party/state did not change its policy and law to end the sourcing of organs without consent. Rather the law and policy were changed to silence criticism of sourcing organs without consent.

In China, the law has no meaning independent from Party dictates, since the law can not be enforced against the Party/state. The law exists as a means of communication from headquarters to the field and as an exercise in cosmetics. When the Party/state feels the heat of criticism, it often changes the law without changing practices as a means of countering the criticism.

Statistics and the law tell opposite stories. Volumes of transplants did dip down in January 2007. However, the cause had little to do with a change in transplant policies or laws and a lot to do with a change in the law of the death penalty.

Before January 1, 2007, the death penalty could be imposed by regional courts, the Higher People's Courts. As of January 1, 2007, any death penalty imposed by a regional court has to be approved by the central Supreme People's Court.

This shift in procedures in 2007 reduced substantially the pool of prisoners sentenced to death, in the estimate of Amnesty International by about half. Fewer people sentenced to death means fewer people with these sentences available for organ transplants.

Statistics from the China Liver Transplant Registry, a registry at the Queen Mary Hospital in Hong Kong which collects data directly from hospitals in China, showed that organ transplant volumes initially declined but not as much as this declining supply. The fall off in liver transplants in 2007 was nowhere near the fall off in execution of prisoners sentenced to death.

In 2007 there were two downward pulls on liver transplant volumes. Besides the change in death penalty procedure, there was also the Health Ministry requirement that transplants take place only in registered hospitals. This requirement shut down completely transplants in non-military, non-registered hospitals and shut down temporarily transplants in later registered hospitals until they were registered.

This dual downward pull in principle should have created a decrease in transplants substantially more acute than the decrease in the execution of prisoners sentenced to death. Yet, the opposite occurred. The decrease in transplants was substantially less in percentage terms than the decrease in the execution of prisoners sentenced to death. Though execution of prisoners decreased by half, transplants decreased only by a third.

By 2008 liver transplant volumes bounced back to 2004 levels. Now we are back to historic high volumes for transplants.

According to the China Liver Transplant Registry the number of liver transplants before the 2007 death penalty dip was 2,023 for 2004, 2,794 in 2005 and 2,448 in 2006. In 2007, the figure was 1,469. According to Chinese Deputy Health Minister Huang Jiefu,

in a speech he gave in Madrid in March 2010, the number of liver transplants immediately following 2007 dip was 2,334 for 2008 and 2,181 for 2009.

How was China able to hold down in 2007 its reduction of liver transplant volumes in the face of the imposition of a licensing requirement for non-military hospitals doing transplants and a reduction in what Chinese officials claimed to be their almost exclusive source of organs, prisoners sentenced to death and then executed? How has China been able to return to historically high liver transplant volumes in 2008 and later years in the absence of a commensurate increase in execution of prisoners sentenced to death? The only plausible answer is an increase in sourcing of organs from the only other significant available source, Falun Gong practitioners.

There is to be sure a small up tick in organs sourced from donations. However, the voluntary donor volume is nowhere nearly substantial enough to account for the increase in organ transplant volumes.

The only reasonable conclusion, given current transplant volumes and the substantial death penalty decrease, is that matters have got worse, that sourcing of organs from non-consenting donors has increased. More Falun Gong practitioners are being killed today for their organs than at any time in the past.

I cited Chinese Deputy Health Minister Huang Jiefu rather than the China Liver Transplant Registry for the most recent figures on liver transplants because 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. Huang Jiefu set out the later data from the Registry site in his Madrid March 2010 presentation.

At the Congress, 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 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 and heart in Beijing and lung in Wuxi. The data on the other three sites is also accessible only to those who have registry issued login names and passwords.

When China took over Hong Kong from Britain, the unification was based on the principle of one country, two systems. However, when it comes to public access to aggregate statistical transplant data, there is now one country with one system.

This cover up of transplant statistics has to be considered in conjunction with the cover up of death penalty statistics. The Government of China does not publish official death penalty statistics. At the United Nations Human Rights Council Universal Periodic Review for China in February 2009, six different countries - Canada, Switzerland, United Kingdom, France, Austria, Italy - recommended that China publish these statistics. The Government of China publicly and explicitly rejected this recommendation.

Why is the Government of China refusing to disclose both death penalty and transplant statistics? One answer is that, if these statistics became publicly accessible, the discrepancy between the number of transplants and the number of prisoners sentenced to death and executed would then become screamingly obvious. The Government of China would be hard pressed not to account for the discrepancy once it has itself disclosed it.

The Chinese abuse of transplant technology has, as I have noted, generated isolated pockets of concern before this year. Senator Patrik Vankrunkelsven in December 2006

introduced into the Belgian Senate extraterritorial legislation that would ban transplant tourism. Member of Parliament Borys Wrzesnewskyj introduced similar legislation into the Canadian House of Commons in February 2008. The proposed legislation would, when enacted, penalise any transplant patient who receives an organ without consent of the donor where the patient knew or ought to have known of the absence of consent.

The Transplantation Society opposed in July 2006 the transplantation of organs from prisoners and in November 2006 the presentations of studies from China involving patient data or samples from recipients of organs or tissues from prisoners. The World Medical Association in October 2007 entered into an agreement with the Chinese Medical Association that organs of prisoners and other individuals in custody must not be used for transplantation except for members of their immediate family.

The United Nations Rapporteur on Torture and the UN Rapporteur on Religious Intolerance in 2007 asked the Government of China to explain the discrepancy between the number of Chinese transplants and the number of sources the Government of China is willing to acknowledge. When the Chinese party/state responded with bafflegab, the UN mechanisms in 2008 reiterated their concerns. The UN Committee against Torture added its consternation in its November 2008 report on China.

This year, even this month, has seen a much broader expression of concern. The Swiss section of the International Society for Human Rights, on June 1 2010, posted on the internet a Memorandum against Organ Harvesting and asked for signatures in support. That Memorandum

- Condemned organised organ harvesting in China:
- Called for the cessation of organ harvesting from prisoners and any non-consenting donors; and
- Urged enactment of extra-territorial legislation, penalizing participation in organ-harvesting without consent.

The American Bar Association Section of International Law awarded Gao Zhisheng its International Human Rights Lawyer Award on August 6th in San Francisco. Gao is a disappeared Chinese human rights lawyer who has been instrumental in combating the killing of Falun Gong for their organs.

It was Gao, in June 2006, who formally invited David Kilgour and me to come to China to investigate after we had announced, in May 2006, that we were doing a report to assess allegations that practitioners of Falun Gong were being killed for their organs. In an open letter to the US Congress dated September 27, 2007, he accused a number of Chinese leaders, including former President Jiang Zemin, of crimes against humanity and genocide against the Falun Gong community. In support of his charge, he referred to the evidence we had provided in our report -

"for those whose organs were removed, the stitching on the bodies and the telephone conversation record with involved hospitals, and evidence provided by the transplant doctors involved".

Penny Wakefield for the American Bar Association stated that the organization wanted to recognize the example Gao "sets for other lawyers in China and around the world to fight for others' rights as well as their own."

The Swiss section of Amnesty International on August 13, 2010, (last Friday) called on China to end the use of organs from prisoners sentenced to death and then executed. The human rights organization noted the existence of this Congress at which transplant experts around the world are participating and took advantage of the occasion to call on pharmaceutical companies,

- to take every necessary step to avoid complicity in human rights violations during organ transplants in China;
- to exercise due diligence in order not to support directly or indirectly the harvesting of organs from prisoners as part of the research and marketing of anti-rejection drugs;
- to adopt common guidelines approved by independent experts to avoid complicity in

abuse; and

- to condemn collectively the practice of sourcing organs from executed prisoners.

The global drug company Novartis announced, according to a newspaper report published August 15, 2010, (last Sunday), that it is observing a moratorium on clinical testing of organ anti-rejection drugs in China. Novartis spokesman Satoshi Sugimoto explained that Novartis supported the appeal of Amnesty International and would work to unite all pharmaceutical companies on the issue. Novartis specified that it intends to promote dialogue and education in China to overcome the ethical challenges to the sourcing of organs⁴.

The Canadian Society of Transplantation and Canadian Society of Nephrology released a policy Statement on August 17, 2010 (today) on organ trafficking and transplant tourism. The statement asserts that

- physicians should not prescribe medications or otherwise facilitate obtaining medications which will be used during the transplantation of a purchased organ;
 - physicians may elect not to provide medical records to patients if they believe the information will be used in support of an illegal transplant performed in an unregulated system and that there is a significant risk of harm to the patient or organ vendor;
 - in non-emergency situations, a physician may elect to defer care to another physician for a patient who may have obtained an organ through transplant tourism.
- The Globe and Mail, which had obtained an advance copy of the policy, in an editorial on August 13th, 2010 (last Friday) called the guidelines an important precedent⁵.

The Swiss section of International Society for Human Rights in January 2010 awarded David Kilgour and me their annual human rights prize for combating abuse of organ

⁴ Frédéric Koller "Appel à clarifier les prélèvements d'organes sur des prisonniers en Chine", *Le Temps*, August 14, 2010.

⁵ "Cutting out Transplant Tourism" *Globe and Mail*, August 13, 2010.

trafficking in China. Canadian Member of Parliament Borys Wrzesnewskyj and others have nominated David Kilgour and me for the 2010 Nobel Peace Prize, again for our work in this area.

My mother, if she were alive, would have been pleased to see so many people sharing her opinion of me. For my part, I would much rather, on this issue, be part of a large crowd. I welcome the recent accumulation of concern and support.

All pharmaceutical companies should follow the example of Novartis. Other non-governmental human rights organizations should take initiatives similar to those of Amnesty International and the International Society for Human Rights. National transplantation societies everywhere should emulate the Canadian Society of Transplantation and Canadian Society of Nephrology. Legislators in every country should endorse the type of legislation proposed by Belgian Senator Patrik Vankrunkelsven and Canadian Member of Parliament Borys Wrzesnewskyj. People in this room, in this Congress, should join the effort to end organ transplant abuse in China.

The Government of China itself accepted that the sourcing of organs from prisoners is improper. Deputy Health Minister Huang Jiefu, at the time of the announcement of an organ donor pilot project in August 2009, stated that executed prisoners "are definitely not a proper source for organ transplants"⁶. At the speech he gave in Madrid in March 2010, he decried the "Over-reliance on deceased organs from executed prisoners, a source that does not comply with international ethical and standard of practice."

David Kilgour and I have focussed on the killing of Falun Gong prisoners for their organs. The Government of China denies that this is happening. The dispute we

⁶ "China's Organ Reforms", China Daily, August 26, 2009

have with the Government of China, though, is not over whether prisoners are being killed for their organs, but only over which sorts of prisoners are being killed for their organs.

It is unnecessary to resolve this dispute to end the abuse. Once Chinese prisons and hospitals stop killing prisoners for their organs, then, inevitably, they will stop killing Falun Gong prisoners for their organs.

Chinese government health officials indicate that, through the spread of donations and an eventual enactment of a law allowing for sourcing of organs from the brain dead cardiac alive, the practice of sourcing organs from prisoners will cease. But in this area, ending the abuse tomorrow is not good enough. The abuse should end now.

.....

.

David Matas is an international human rights lawyer based in Winnipeg, Manitoba, Canada.