2

Organ trafficking and organ transplant tourism in the global context

2.1 In the course of this inquiry, the Sub-Committee received a range of evidence relating to known and suspected organ trafficking markets, the limitations of available data with regard to organ trafficking and transplant tourism, and the medical, ethical, social and economic risks associated with transplant tourism. This chapter examines the prevalence of organ trafficking and organ transplant tourism internationally, discussing allegations relating to organ trafficking in China, and provides an assessment of risks associated with seeking commercial organ transplants overseas.

Global prevalence

Limited availability of data

2.2 Data on the prevalence of organ trafficking is limited; and analysis of organ trafficking and transplant tourism as transnational issues has been largely reliant on qualitative research. Data collected by specific jurisdictions has limited value for transnational analysis and response due to a lack of standardisation in data reporting across jurisdictions.[1] This issue is summarised by the United Nations Special Rapporteur on Trafficking in Persons, especially Women and Children:

> Available information on trafficking in persons for the removal of organs is incomplete … those involved in trafficking in persons for the removal of organs (including victims) have very little incentive to come forward … [healthcare] providers who end up treating persons who have obtained organs abroad may be inhibited from sharing information with the authorities owing to concerns over patient privacy, their own obligations of confidentiality, uncertainty as to whether any laws have been breached or, indeed, their own complicity in the arrangement. Furthermore, definitional problems and confusion contribute to poor reporting and analysis…[2]

2.3 Seeking to redress these limitations, the General Assembly of the United Nations resolved in September 2017 that the United Nations Office on Drugs and Crime would work with relevant stakeholders to enhance the collection and analysis of data relating to trafficking in persons for the purpose of organ removal. This work is to be coordinated by the United Nations Inter-Agency Coordination Group against Trafficking in Persons and is to draw data from Member States, the World Health Organization, and other UN bodies. [3]

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1 United Nations General Assembly (UNGA), 'Report of the Special Rapporteur on trafficking in persons, especially women and children, 68th session', UN Doc. A/68/256, 2 August 2013, para. 22.

2 UNGA, 'Report of the Special Rapporteur on trafficking in persons…', UN Doc. A/68/256, 2 August 2013, para. 22.

3 UNGA resolution no. 71/322, 'Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs,' UN Doc. A/RES/71/322, 25 September 2017.

Estimates of the global trade in organ trafficking and organ transplant tourism

2.4 Despite the limitations of available data, broad estimates have been made concerning the scale of the illicit trade in human organ transplantation.

2.5 Trafficking in human organs, and trafficking in persons for organ removal, are human rights crimes, as codified in a number of international instruments. The commercial trade in human organs is near-universally prohibited. Despite these prohibitions and restrictions, the illicit commercial trade in human organs has been estimated by the research advisory organisation Global Financial Integrity to be worth between US $840 million and $1.7 billion globally each year.[4] Up to 10 per cent of kidney transplants worldwide may now involve commercially traded organs.[5]

2.6 Table 2.1 provides an estimate of rates of global commercial transplantation and prices paid by recipients as reported in the Global Financial Integrity Study published in 2017.

Table 2.1 – Overview of the commercial organ market

Organ	Global illicit transplants (per annum)	Price range ($US)
Kidney	7,995	$50,000-$120,000
Liver	2,615	$99,000-$145,000
Heart	654	$130,000-$290,000
Lung	469	$150,000-$290,000
Pancreas	233	$110,000-$140,000
Total	11,966	$840 million-$1.7 billion

Source C May, 'Transnational crime in the developing world', Global Financial Integrity, 2017.

2.7 Other studies have reported similar prices for commercial transplants. For example, in 2006 a World Health Organisation Study found that price of a renal transplant ranged from between $70,000 and $160,000.[6]

2.8 This illicit trade is enabled by complex transnational criminal networks involving predatory brokers, human traffickers, unscrupulous clinicians,

4 C May, 'Transnational crime in the developing world', *Global Financial Integrity*, March 2017, p. 29.

5 P Garwood, 'Dilemma over live-donor transplantation', *Bulletin of the World Health Organization*, vol. 85, no. 1, January 2007, p. 5.

6 Y Shmazono, The state of the international organ trade: a provision picture based on integration of available information. *Bulletin of the World Health Oganization*, Vol. 85, No12, 2007, pp. 901-980.

and corrupt officials.[7] Social media and other forms of online advertising have provided a new means for brokers to target desperate prospective transplant recipients directly, inducing them to travel overseas to receive transplantation, a practice known as 'transplant tourism'.[8] Table 2.2 outlines the participants in this trade. Participants may take one or more roles in the network.

Table 2.2 – Roles of participants in the commercial organ trade

Role	Description
Donors (victims)	Individuals from whom the organ is removed. Donors may receive a payment, be coerced. Voluntary donors are typically motivated by socioeconomic disadvantage, yet frequently experience an overall reduction in their socioeconomic status due to the impact of physical and mental health outcomes associated with commercial donation on their employability and social standing.
Recipients (patients)	Individuals who purchase the organ and undergo transplantation. Recipients are typically middle- and high-income individuals from developed states or high-income individuals from developing states. In some instances, recipients may purchase 'packages' from brokers – including travel, accommodation, transplantation, and post-operative care.
Brokers	The individual who coordinates the operational network, typically framework of an organised crime group. The individual recruits clinicians and other facilitators as well as brokering transactions. The individual is responsible for the recruitment of recipients, through advertising or word-of-mouth. In larger networks, recipient recruitment and coordination roles may be undertaken by separate individuals. The broker may deceive both the donor and recipient about the nature, legality and terms of the arrangement.
Recruiters	The individual responsible for identifying and soliciting potential donors. These individuals may have been donors at one point themselves; like other forms of human trafficking, organised crime networks may seek to co-opt victims into the criminal endeavour. Recruiters may double as minders.
Minders	The individual responsible for facilitating the transportation of the donors and recipients. The individuals serve as drivers, 'enforcers' to ensure compliance from the donor, and service providers to recipients. Minders may double as recruiters.
Medical professionals	The surgeons, nephrologists, anaesthesiologists, nurses, technicians, etc. involved in determining whether the donor and recipient are compatible, as well as performing the actual transplantation. Some of these individuals may not be aware of the illicit nature of the transplant.
Public officials	Law enforcement, customs and immigration agents, administrators and healthcare officials who facilitate the operations of the criminal network.
Service providers	Other actors, who may or may not be aware of involvement in illicit activity, such as medical tourism agencies, transport providers, hospitals, laboratories, hotels and translators.

Sources C May, 'Transnational crime in the developing world', Global Financial Integrity, 2017; and Directorate-General for External Policies, 'Trafficking in human organs', European Parliament, EP/EXPO/B/DROI/FWC/2013-08/Lot8/03, July 2015.

7 The Echo Project, *Submission 13*, p. 6.

8 Dr M Soledad Antonio, private capacity, *Committee Hansard*, 8 June 2018, p. 55.

Organ market donors

2.9 The victims of organ trafficking and transplant tourism are overwhelmingly the poor and the vulnerable.[9] Some donors may get a meagre payout in exchange for their organ; a small proportion of the hundreds of thousands of dollars the criminal networks may receive.[10] There are many claims of victims being coerced or even killed for their organs.[11] Where 'donors' receive a payment for their organ, this may be significantly less than promised.[12] Estimated rates based on known cases of kidney trafficking are detailed in Table 2.3. Although other costs are involved, the significant disparity is reflective of the exploitative mark-ups applied by the organised crime networks responsible.

Table 2.3 – Commercial renal transplant markets

Transplant jurisdiction	***Donor***		***Recipient***		***Mark-up***
	Origin	*Received ($US)*	*Origin*	*Paid ($US)*	
China	*China*	*$5,000*	*Israel*	*$100,000*	*1,900%*
Costa Rica	*Costa Rica*	*$18,500*	*Israel*	*$175,000*	*846%*
Kosovo	*Moldova*	*$12,000*	*Canada*	*$120,000*	*900%*
Peru	*Peru*	*$7,000*	*Mexico*	*$125,000*	*1,686%*
Singapore	*Indonesia*	*$18,700*	*Singapore*	*$237,000*	*1,166%*
South Africa	*Israel*	*$20,000*	*Israel*	*$120,000*	*500%*
South Africa	*Brazil*	*$6,000*	*Israel*	*$120,000*	*1,900%*
United States	*Israel*	*$10,000*	*Israel, U.S.*	*$120,000*	*1,100%*

Source C May, 'Transnational crime in the developing world', Global Financial Integrity, 2017.

Known and suspected organ markets

2.10 Medical anthropologist Dr Yosuke Shimazono conducted a widely-cited study on behalf of the WHO in 2007, which offered a conservative estimate that 5 per cent of all transplant recipients in 2005 underwent commercial organ transplants overseas.[13] The study found that transplant

9 *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism* (Declaration of Istanbul), 'Proposals', p. 5.

10 N K Clare, 'Organ trafficking and transplantation pose new challenges', *Bulletin of the World Health Organization*, vol. 82, no. 9, 2004, p. 715.

11 With regard to alleged killings for organ removal, see the *Alleged organ trafficking in China* section of this chapter.

12 D Martin, Action to stop thriving global organ trade must start at home, *The Conversation*, 1 June 2012, available: theconversation.com/action-to-stop-thriving-global-organ-trade-must-start-at-home-7333 accessed 20 July 2018.

13 Y Shimazono, 'The state of the international organ trade: a provisional picture based on integration of available information', *Bulletin of the World Health Organization*, vol. 85, no. 12, 2007, p. 959.

tourism was the most common means of obtaining a transplant for people in some countries.[14] According to the study, known 'organ-exporting' countries included India, Pakistan, Philippines and China, and there were suspicions regarding Bolivia, Brazil, Colombia, Iraq, Iran, Israel, Moldova, Peru and Turkey.[15]

2.11 Professor Jeremy Chapman AC, noted renal physician and Past-President of the Transplantation Society, told the Sub-Committee:

> …countries where commercial transplantation is occurring [include] Egypt, Turkey, Pakistan, possibly Lebanon, India, Sri Lanka, possibly Singapore, Cambodia, Vietnam, Laos, China, Mexico and Venezuela … they are mostly typified by having high inequality scores, by having low economic human development indicators and by having a large source of impoverished individuals on whom to prey for donors.[16]

2.12 The Stop the Traffik submission to the inquiry noted research conducted by medical anthropologist Professor Nancy Scheper-Hughes in 2005 that indicates that Australia may be amongst other organ-importing nations.[17] At the WHO's Second 2007 Global Consultation on Human Transplantation, Saudi Arabia Taiwan, Malaysia and South Korea were identified as major organ-importing countries. Australia, Japan, Oman, Morocco, India, Canada and the United States were also identified as minor organ-importing countries. [18] However, the methodology of the collection of this data makes corroboration difficult. [19]

2.13 In a submission to the inquiry the Holy See's Secretary for Relations with States, Archbishop Paul Gallagher, noted that the problems of organ trafficking and transplant tourism must be viewed 'within the larger context of the very grave problems of forced migration, trafficking of human beings and social-economic exclusion. Consequently, it is a problem that cannot be addressed within the confines of any one nation.'[20]

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14 Y Shimazono, 'The state of the international organ trade', p. 959.

15 Y Shimazono, 'The state of the international organ trade' p. 957.

16 Prof Chapman AC, private capacity, *Committee Hansard*, Canberra, 9 May 2017, p. 2.

17 N Sheper-Highes, 'Prime Numbers: organs without borders,' *Foreign Policy*, vol. 146, 2005, pp. 26-27, as cited in Stop the Traffik, *Submission 5*, p. 4.

18 Y Shimazono, 'Mapping transplant tourism', Paper presented at the World Health Organization's Second Global Consultation on Human Transplantation, Geneva, 28-30 March 2007, as cited in D A Budiani-Saberi and F L Delmonico, 'Organ trafficking and transplant tourism: a commentary on the global realities', *American Journal of Transplantation*, vol. 8 no. 5, 2008, pp. 925, 927.

19 Y Shimazono, 'Mapping transplant tourism', as cited in 'Organ trafficking and transplant tourism', pp. 925, 927.

20 Holy See, *Submission No. 62,* p. 1.

2.14 The evidence presented to the Sub-Committee suggests that organ transplant markets have evolved significantly over time due to a combination of factors. These include developments in transplantation surgery techniques and immunosuppressant drugs combined with uneven economic development of countries, migration patterns, demographic trends, and the evolution of criminal networks.

2.15 It would be a mistake however to see organ trafficking as necessarily a sophisticated and exclusively criminal enterprise. A study in the British Journal of Criminology by Seán Columb of organ trafficking in Egypt which explored Sudanese migrants makes the following observations:

> Essentially the organ trade is [often] conceptualized as a perversely criminal phenomenon, a social aberration far removed from the ethical domain of transplant medicine. This unambiguous representation is, however, a false dichotomy. There is no clear illegal/legal divide. Organ markets exist to service the surplus demand for organs generated by the commercial expansion of the transplant industry. The transfer of transplant technologies is contingent on the supply of organs. When this supply cannot be satisfied by legal channels, organs are sourced from commercial donors, or in some instances from individuals who have been coerced into having one or more of their organs removed. The informal networks that support the organ trade are not isolated units possessing a purely criminal *modus operandi*. These networks cross various divides: legal, quasi-legal and the blatantly illegal. The individuals who assume different roles in informal networks are rarely specialists in a particular criminal enterprise; rather they respond to relative opportunities in a given context. For instance, the majority of organ brokers interviewed as part of this study were involved in organ trading on a temporary basis. Their participation in organ markets was viewed as a part-time occupation, a way to supplement their income.[21]

2.16 The majority of countries in which organ trafficking is growing problem appear to lack a properly established deceased organ donor system. Dr Campbell Fraser noted that those who purchase organs are "generally, fairly wealthy people coming from countries that do not have a deceased-donation system."[22] He further noted that one of the best methods to combat organ trafficking and transplant tourism is to develop these

21 S Columb "Excavating the organ trade: an empirical study of organ trading networks in Cairo Egypt", *The British Journal of Criminology*, Vol 57, 2017, p.1305 – 1306.

22 Dr Fraser Private Briefing, *Committee Hansard* 13th June 2017 p. 6

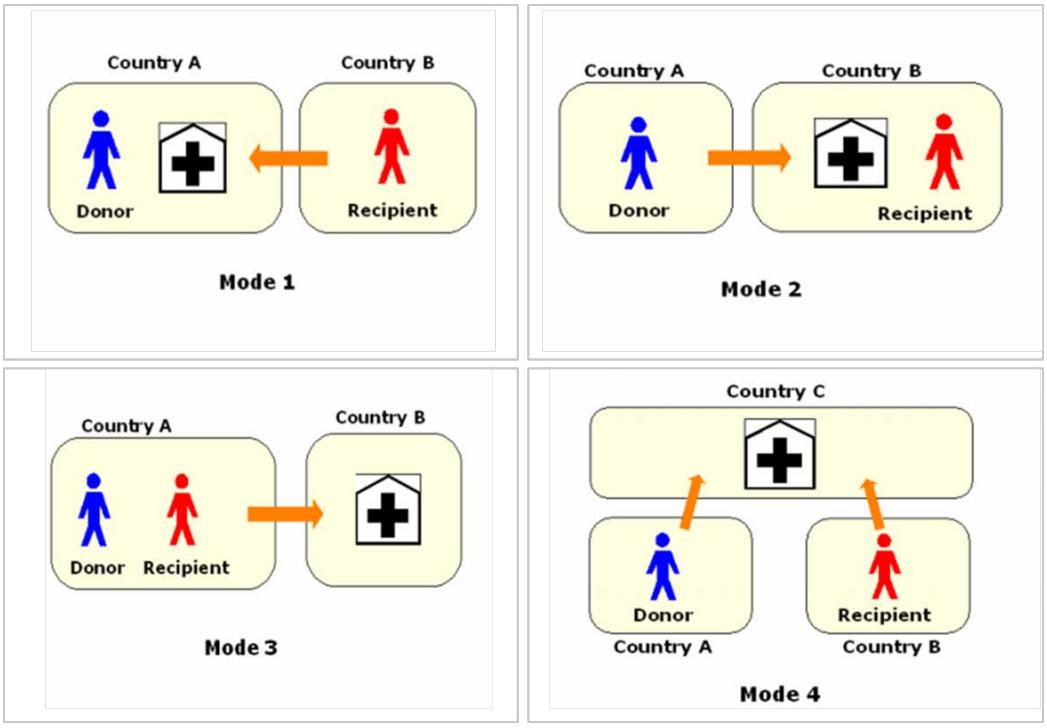
systems in other countries, so that patients have options other than seeking out organs via traffickers.[23]

2.17 Professor Phillip O'Connell had a similar opinion, noting that introducing transparent, ethical transplantation practices in developing countries was the ideal goal: "I think any way we can assist them to do that and introduce a legal and viable alternative, would be positive in reducing trafficking, because if you do not do that, all that will happen is that the destination where it occurs will change."[24]

Pathways for transplantation tourism

2.18 Figure 2.1 depicts the recognised pathways through which travel for transplantation may occur. Travel for transplantation constitutes transplant tourism where it involves activities associated with organ trafficking (i.e. transplant commercialism).[25]

Figure 2.1 – Modes of travel for transplantation



Source *Y Shimazono, 'Mapping transplant tourism', Presentation at the World Health Organization's Second Global Consultation on Human Transplantation, 28-30 March 2007, Geneva.*

23 Dr Fraser Private Briefing *Committee Hansard* 13th June 2017 p. 6

24 Prof O'Connell, Immediate Past-President, the Transplantation Society, Private Briefing *Committee Hansard* 13th June 2017 p. 6

25 World Health Organization (WHO), *Global glossary of terms and definitions on donation and transplantation*, 2009, p. 14.

2.19 The archetypical mode of transplant tourism is depicted in Mode 1, whereby a prospective recipient travels to the donor person's country of residence and undergoes the transplant through medical infrastructure in that country. According to Professor Chapman, Egypt is the "predominant" destination for travel at this time, with other current destinations including Pakistan and Sri Lanka.[26] Other prominent destination countries may include Turkey,[27] India,[28] and China.[29]

2.20 Mode 2 depicts the travel of a donor person to the country of residence of the prospective recipient. This mode of transplant tourism is known or suspected to have occurred in the United States,[30] India,[31] and Australia.[32]

2.21 Mode 3 depicts the travel of both the donor person and the prospective recipient, from their mutual country of residence, to undergo the transplant using the medical infrastructure of another country. Such an arrangement may be made due to poor domestic facilities, high costs, or prohibitive legislation and enforcement in their country of residence.[33]

2.22 Mode 4 depicts the travel of a donor person and prospective recipient, from two separate countries, to a third country, to facilitate the transplantation. This mode of transplant tourism is known or suspected to have occurred in the Philippines,[34] Kosovo,[35] South Africa,[36] Ukraine,[37] and Bulgaria.[38]

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26 Prof Chapman AC, private capacity, *Committee Hansard*, Canberra, 9 May 2017, p. 2.

27 Prof Chapman AC, private capacity, *Committee Hansard*, Canberra, 9 May 2017, p. 2.

28 Prof Chapman AC, private capacity, *Committee Hansard*, Canberra, 9 May 2017, p. 2.

29 The ongoing debate as to whether China continues to host transplant tourism is the subject of the next section of this report.

30 Y Shimazono, 'The state of the international organ trade', p. 957.

31 Y Shimazono, 'The state of the international organ trade', p. 957.

32 The Australian Federal Police has received one referral relating to the alleged trafficking of a person from the Philippines to Australia to facilitate an organ transplant. The details of this case are set out in chapter 3 of this report.

33 F Amazhazion, 'Epistemic communities, human rights, and the global diffusion of legislation against the organ trade', *Social Sciences*, vol. 5, no. 4, 2016, p. 4.

34 Dr Soledad Antonio, private capacity, *Committee Hansard*, Canberra, 8 June 2018, p. 56; Dr F Sarmiento III, Program Manager, Philippine Organ Donation and Transplantation Program, Philippine Network for Organ Sharing, Department of Health (Philippines), *Committee Hansard*, 8 June 2018, p. 57.

35 E Salcedo-Albarán, N Duarte and D Santos, 'Introduction to the International Trafficking of Organs,' *Global Observatory of Transnational Criminal Networks: Research Paper no. 12*, pp. 11-12.

36 United Nations Office on Drugs and Crime (UNODC), 'State v. Netcare Kwa-Zulu Limited', *UNODC Case Law Database*, no. ZAF002.

37 Organization for Security and Co-operation in Europe (OSCE), 'Trafficking in human beings for the purposes of organ removal in the OSCE region', *Occasional Paper Series,* no. 6, July 2013, p. 65.

38 OSCE, 'Trafficking in human beings', pp. 64-65.

Alleged organ trafficking in China

2.23 On 22 November 2016, the Sub-Committee received a private briefing from the Falun Dafa Association of Australia, which included the participation of David Matas and David Kilgour, authors of investigative report *Bloody Harvest*, regarding allegations of trafficking of organs sourced from executed prisoners of conscience in China.

2.24 Falun Dafa, also known as Falun Gong, is a spiritual, meditative and exercise based practice that originated in China in 1992; drawing upon older Qigong, Taoism and Buddhist practices. It is not an organised religion as such, rather it is described by the Falun Dafa Associaton in Australia as a

> … spiritual discipline in the Chinese tradition of "cultivation", or "self-cultivation", based on the principles of truthfulness, compassion, and forbearance (*Zhen, Shan*, and *Ren* in Chinese). It includes meditation and gentle exercises to improve health, energy and wellbeing.[39]

It was initially embraced and promoted by the Chinese Government as a "positive example for its contributions to both physical and moral welfare of the Chinese population."[40] In 1999, after a protest by 10,000 Falun Gong practitioners outside of the Communist Party headquarters in Beijing, the government outlawed Falun Dafa and the practice was classified as *xie jiao* or 'heterodox teachings'. [41] From this point Falun Dafa practitioners have faced a number of crackdowns, including imprisonment, torture and forced 're-education' of its adherents. [42] The Chinese Government and Chinese State media, describe Falun Dafa as an 'anti-humanitarian, anti-society and anti-science cult.'[43]

2.25 Allegations about organ trafficking in China are closely associated with broad concerns about China's use of the death penalty. China is widely estimated to execute more people every year than the rest of the world

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39 Falun Dafa Association of Australia, *Submission 24,* p. 15.

40 Falun Dafa Association of Australia, *Submission 24* , p. 15, and V Xiuzhong Xu and B Xiao 'Falun Gong: Two Decades after a deadly ban in China, adherents still face pressure in Australia' in *ABC News,* www.abc.net.au/news/2018-04-21/what-is-the-falun-gong-movement-and-does-china-harvest-organs/9679690 , accessed 13 September 2018.

41 Falun Dafa Association of Australia, *Submission 24* , p. 15, and V Xiuzhong Xu and B Xiao 'Falun Gong: Two Decades after a deadly ban in China', accessed 13 September 2018.

42 Falun Dafa Association of Australia, *Submission 24* , p. 15, and V Xiuzhong Xu and B Xiao 'Falun Gong: Two Decades after a deadly ban in China', accessed 13 September 2018.

43 Embassy of the People's Republic of China in the Republic of Estonia, 'Falun Gong's anti-humanity, anti-science, anti-society nature denounced', *Embassy website*, www.chinaembassy.ee/eng/ztlm/jpflg/t112893.htm, accessed 1 October 2018. There are similar stories published on the United States, Australian and other Embassy websites.

combined, though the exact number is described as a state secret.[44] In 2016 China executed some 2,000 individuals according to estimates by the Dui Hau Foundation on Human rights, a human rights non-government organisation based in the United States. This figure has fallen from approximately 7,000 estimated executions in 2006, and 12,000 in 2002.[45] However, Amnesty International reports that publicly available information released by the Chinese Government covers 'only a tiny fraction of the thousands of death sentences handed out every year in China.'[46]

2.26 China's organ transplant system was, at least at one point, dependent on the use of the organs of executed prisoners, a practice that is regarded as unethical by the international medical community.[47] The Sub-Committee received evidence from a number of organisations and individuals who indicated that state-sanctioned trafficking of organs from executed prisoners of conscience was, and possibly still is occurring in China. These allegations state that some people, suspected of particular religious or spiritual beliefs, or of particular ethnicities, are subject to extrajudicial imprisonment and execution in China, and that these people were, or are, the source of some, or most, of the organs transplanted in China.

2.27 Other witnesses and submitters, such as Professor Chapman, Dr Campbell Fraser, and Dr Dominique Martin disputed these allegations as overstated and unsupported by the evidence available.[48] The Sub-Committee also received evidence suggesting that China has undertaken a degree of reform towards the elimination of the use of the organs of executed prisoners.[49] These matters are of ongoing debate amongst the international human rights community.

2.28 A number of submissions, including by the Falun Dafa Association of Australia, Doctors Against Forced Organ Harvesting, and the Fighting For Justice Foundation, to this inquiry assert that transplant rates in China far exceed official statistics, that executed prisoners are a significant source of

44 The Dui Hai Foundation, 'Criminal Justice', *Dui Hua Website,* www.duihua.org/wp/?page_id=136, accessed 1 October 2018

45 The Dui Hai Foundation, 'Criminal Justice', *Dui Hua Website,* www.duihua.org/wp/?page_id=136, accessed 1 October 2018

46 Amnesty International, *China's Deadly Secrets,* 2017, p.11

47 World Medical Association (WMA), *WMA Council Resolution on Organ Donation in China*, adopted by the 173rd WMA Council Session, Divonne-les-Bains, France, May 2006 and reaffirmed by the 203rd WMA Council Session, Buenos Aires, Argentina, April 2016.

48 Dr Fraser, private capacity, *Committee Hansard, Canberra* June 8 2018, p. 32 Prof Chapman AC, private capacity, *Committee Hansard*, Canberra, 13 June 2017, pp. 2-3 and Dr Martin Co-Chair, Declaration of Istanbul Custodian Group, *Committee Hansard, Canberra* June 8 2018, p. 41

49 J Huang et al., 'A new era for organ transplantation in China', *Chinese Medical Journal*, vol. 129, no. 16, 2016, pp. 1891-1893.

organs used for transplants in China, and that some of these organs are sourced from extrajudicial executions who are prisoners of conscience.[50] These prisoners of conscience are alleged to include political prisoners, members of ethnic minorities such as Tibetans and Uyghur Muslims, members of unregistered Christian 'House Churches'; and Falun Gong practitioners.[51]

2.29 A number of these submissions reference Matas and Kilgour's estimate that 60,000 to 100,000 organ transplants occur per annum in China significantly more than the official figure of approximately 10,000 to 20,000 per annum.[52] The submissions refer to hospital records, public comments by hospital administrators and officials, and transplant infrastructure utilisation rates as evidence of large numbers of undocumented transplants. These submissions allege executions of prisoners of conscience are taking place to facilitate these undocumented transplants.[53]

2.30 Professor Chapman disagreed that transplant infrastructure utilisation is a viable indicator, arguing that "you cannot invoke the same number of transplants as you would in an American hospital," based on transplant infrastructure alone.[54] Professor Chapman also cited research and reporting from *The Washington Post,* which found that data compiled by healthcare information firm Quintiles IMS indicates that Chinese market demand for immunosuppressant drugs roughly reflects official transplant statistics.[55]

2.31 Dr Dominique Martin, Co-Chair of the Declaration of Istanbul Custodian Group, also doubted the validity of the use of transplant infrastructure as a basis for estimation, asserting:

> The methodology by which these large estimates have been derived simply does not add up. It is really a gross overestimate of

50 See: Fighting for Justice Foundation, *Submission 2*; International Coalition to End Transplant Abuse in China, *Submission 7*; Australian Lawyers for Human Rights, *Submission 9*; Human Rights Law Foundation, *Submission 17*; Doctors Against Forced Organ Harvesting, *Submission 22*; Falun Dafa Association of Australia, *Submission 24*; and a range of submissions made by individuals.

51 Doctors Against Forced Organ Harvesting (DAFOH), *Submission 22*, p. 6.

52 D Kilgour, E Gutmann, and D Matas, *Bloody Harvest/The Slaughter: An Update*, 2017 revised edition, pp. 268, 364. *Exhibit 2*

53 Australian Epoch Times Ltd, *Submission 21*, Doctors Against Forced Organ Harvesting, *Submission 22*, and Falun Dafa Association of Australia, *Submission 24*

54 Prof Chapman AC, private capacity, *Committee Hansard*, Canberra, 13 June 2017, p. 2.

55 S Denyer, 'China used to harvest organs from prisoners. Under pressure, that practice is finally ending', *Washington Post*, 15 September 2017, as cited in Prof J Chapman AC and Prof P O'Connell, *Submission 28*, pp. 1-2.

> any kind of transplant activity that has been taking place in China…[56]

2.32 The International Coalition To End Transplant Abuse In China contends however that the estimates:

> ...are based on an average 30 day stay per patient in the hospital transplant wards. That is, the estimates are conservative and have taken into account the longer hospital stays of Chinese patients compared to those of US or Australian patients.[57]

Organs 'on demand'

2.33 In its submission, the Falun Dafa Association of Australia claims that the detainment of practitioners in large numbers forms 'organ banks' – "an easily accessible pool of retail organs that facilitates brief waiting times for matching and a stable supply to meet an increasing transplantation demand."[58] The submission considers that this means "practitioners are available for 'live' organ extraction, which reportedly can improve an organ recipient's survival rate."[59]

2.34 The International Coalition to End Transplant Abuse in China (ETAC) contends that it is possible to arrange an organ transplant in China for several weeks into the future, including for a transplant of a vital organ such as the heart.[60] ETAC states that this:

> …requires advance identification of organs in order to match the recipient. Under Chinese law, prisoners on death row must be executed within one week of sentencing … advance bookings suggest that organs come from prisoners who are killed on demand. [61]

2.35 The Human Rights Law Foundation's submission makes the claim that an unusual number of 'emergency' transplants – where a patient presents at a hospital in acute organ failure, a deceased donor is located, and the transplant occurs, all within 24 hours –provides evidence of a pool of 'on demand' deceased donors.[62]

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56 Dr Martin, Declaration of Istanbul Custodian Group, *Committee Hansard*, Canberra, 13 June 2017, p. 5.

57 International Coalition to End Transplant Abuse in China, *Submission 7 - Supplementary Submission*, p. 1.

58 Falun Dafa Association of Australia, *Submission 24*, p. 6.

59 Falun Dafa Association of Australia, *Submission 24*, p. 7.

60 International Coalition to End Transplant Abuse in China, *Submission 7*, p. 5.

61 International Coalition to End Transplant Abuse in China, *Submission 7*, p. 5.

62 Human Rights Law Foundation, *Submission 17*, pp. 7-8.

2.36 The Submission of Doctors Against Forced Organ Harvesting highlighted transcripts of purported telephone conversations between *Bloody Harvest* researchers posing as prospective patients and staff at Chinese hospitals.[63] In these alleged transcripts, the hospital staff appear to indicate that organs sourced from imprisoned Falun Dafa practitioners are available for transplantation. However it is not possible to evaluate or confirm the authenticity of this material.

2.37 The Sub-Committee also received a significant number of anecdotal accounts in submissions made by Falun Dafa practitioners. These accounts made allegations of extrajudicial detainment, torture, and unusual medical examinations, which, it is alleged, were undertaken to facilitate organ matching.[64]

2.38 A submission received from Mr Jintao Liu, a Falun Dafa practitioner, provided an account of his experience whilst detained by Chinese authorities in relation to his beliefs. Mr Liu recalled being forced to receive repeated blood tests and X-ray examinations whilst imprisoned in a labour camp. Mr Liu contrasted this apparent care for his welfare with the sustained physical and sexual abuse he alleged he was subjected to whilst in detention.[65]

2.39 Ms Chen Heqin, a Falun Gong practitioner, provided an account of her detainment by Chinese police:

> … [they] took me to a hospital and forced me to take a medical examination … I did not cooperate with the doctor. A policeman rushed at me and pushed me down onto a bed. Immediately, all six police officers pressed me tightly against the bed and the doctor checked my heart with a stethoscope. I was also forced to allow the doctors to check my kidneys, liver and lungs, take blood from my finger and finally measure my blood pressure. I believe this was connected with being prepared for the forced organ harvesting.[66]

2.40 Submission 49 (name withheld) provided the recollections of another individual allegedly subjected to similar practices as a Falun Dafa practitioner in detainment:

> I was forced to undergo a thorough medical check including blood tests, X-ray, CT scan, ultrasound, and electroconvulsive therapy …

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63 Doctors Against Forced Organ Harvesting, *Submission 22,* appendix 2, reproduced from D Matas and D Kilgour, *Bloody Harvest,* 2007, appendix 14.

64 Some Submissions include: 34, 49, 48, 41, 128, 33, 32, 44

65 Mr Jintao Liu, *Submission 34*, p. 1.

66 Ms Chen Heqin, *Submission 40*, p. 1.

> the police who required me to do the medical check also said that only Falun Gong practitioners were ordered to undergo these thorough examinations … these tests were used to assess us as organ donors, which is relevant to the brutal organ harvesting from Falun Gong practitioners that is still happening in China today.[67]

2.41 Dr Fraser asserted his view that the apparent blood testing of imprisoned Falun Dafa practitioners may have been to support the detection of communicable diseases, rather than for tissue typing to support organ matching for transplantation purposes.[68] Dr Fraser stated:

> I asked [Falun Dafa practitioners], 'How much blood did you have removed?' they said they had two 10-millilitre vials of blood taken. I have consulted with my clinical colleagues, and we do not believe that two vials of blood is anything like what is required for testing for tissue typing, blood grouping and all the other tests that are required.[69]

2.42 The International Coalition to End Transplant Abuse in China (ETAC) contended instead that initial testing for tissue typing may be undertaken with less than 10 millilitres of blood.[70] Clinical ethicist Professor Wendy Rogers, Chair of the ETAC International Advisory Committee, indicated:

> …that [initial] information can go into a database. Further crossmatching, which does require an increased amount of blood, is not required until a potential recipient arrives and a donor is selected from the database.[71]

Prisoner executions as an organ source

2.43 The suspected ongoing use of the organs of executed prisoners in China is an issue of concern to some members of the international transplant community. According to a resolution of the World Medical Association, the use of the organs of executed prisoners in transplants is unethical, as prisoners set for execution are not in a position to provide free and informed consent without fear of the consequence for failing to do so.[72]

2.44 In 2007, Dr Huang Jiefu, director of the China Organ Donation and Transplant Committee and then Vice-Minister of Health of the People's

67 Name Witheld, *Submission 49*, p. 1.

68 Dr Fraser, private capacity, *Committee Hansard*, Canberra, 13 June 2017, p. 3.

69 Dr Fraser, private capacity, *Committee Hansard*, Canberra, 13 June 2017, p. 3.

70 ETAC, *Submission 7 - Supplementary Submission*, p. 2

71 Prof Rogers, Chair, International Advisory Committee, End Transplant Abuse in China, *Committee Hansard*, Canberra, 8 June 2018, p. 10.

72 WMA, *WMA Council Resolution on Organ Donation in China*

Republic of China, confirmed that the organs of executed prisoners were being used in organ transplants, but maintained that this was occurring on a voluntary basis, saying:

> …most of the cadaveric organs come from executed prisoners. It should be clarified that, at present, the only prisoners who are subject to capital punishment in the PRC are convicted criminals. In addition, the relevant governmental authorities require that prisoners or their family provide informed consent for donation of organs after execution.[73]

2.45 With regard to organs sourced from executed prisoners in China, nephrologist Dr Gabriel Danovitch notes that there is a risk in transplanting these as:

> …the mode of execution (typically a bullet to the head) makes the organ susceptible to ischemic damage to the biliary tree that is a potent source of complications several weeks after transplant, by which time the recipients of these organs have typically been repatriated.[74]

2.46 In December 2014, Dr Huang reportedly announced China would cease the use of organs sourced from executed prisoners from 1 January 2015.[75] Dr Huang claimed this measure followed the establishment of a national digital organ matching and allocation system, the China Organ Transplant Response System (COTRS), in September 2013, as well as other initiatives to encourage voluntary deceased donation.[76]

2.47 Dr Campbell Fraser, Professor Philip O'Connell and Dr Dominique Martin all advised the Sub-Committee that to the best of their knowledge it would appear China is transitioning away from the use of the organs of executed prisoners. Dr Fraser observed:

> [China is] clearly moving towards an ethical, deceased donation model. There are still some isolated cases of executed prisoners' organs being used, but there is no evidence whatsoever that any of those organs are coming from prisoners of conscience.[77]

2.48 Professor O'Connell observed that China was moving away from the use of executed prisoners' organs in favour of deceased donation, "albeit with

73 J Huang, 'Ethical and legislative perspectives on liver transplantation in the People's Republic of China' *Liver Transplantation*, vol. 13, 2007, p. 194.

74 G M Danovitch, 'The high cost of organ transplant commercialism', *Kidney International*, vol. 85, 2014, p. 249.

75 ABC News, 'China to stop using executed prisoners' organs in transplant operations', 5 December 2014.

76 J Huang et al., 'A new era for organ transplantation in China', pp. 1891-1893.

77 Dr Fraser, private capacity, *Committee Hansard*, Canberra, 9 May 2017, p. 2.

issues that we would say would be inappropriate in Australia and, I think, from a global ethical perspective are not appropriate."[78] Dr Martin elaborated on these ethical concerns:

> …[China is] now offering financial incentives to families to agree to donation after death, which of course is preferable to executing people to take their organs but is not something that much of the international community would endorse.[79]

2.49 Other commentators have however expressed doubt regarding Dr Huang's claim that China has ceased the use of the organs of executed prisoners. Of particular concern is Dr Huang's assertion that:

> Death-row prisoners are also citizens and have the right to donate organs … once the organs from willing death-row prisoners are enrolled into our unified allocation system [COTRS], they are then treated as voluntary donation from citizens; the so-called donation from death-row prisoners doesn't exist any longer.[80]

2.50 A 2016 study in the *American Journal of Transplantation* observes that, in the absence of a repeal of the 1984 provision that provides for the use of organs of executed prisoners, there is no legislative basis to enact Dr Huang's proclamation, therefore:

> …it is not possible to verify the veracity of the announced changes, and it thus remains premature to include China as an ethical partner in the international transplant community.[81]

China as a transplant tourism destination

2.51 In November 2006, the *New Scientist* magazine reported that at a summit on transplants in Guangzhou, the Chinese Government announced that payments for organs and transplant tourism would no longer be permitted. The declaration further specified that Chinese nationals would receive priority for transplants, and that foreign nationals would only be treated under special circumstances. The declaration became law on 1 January 2007.[82]

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78 Prof O'Connell, the Transplantation Society, *Committee Hansard*, Canberra, 9 May 2017, p. 3.

79 Dr Martin, Declaration of Istanbul Custodian Group, *Committee Hansard*, Canberra, 13 June 2017, p. 5.

80 Beijing Times, 'Huang Jiefu: 38 hospitals in the Mainland have suspended use of death row organs', 4 March 2014; as cited in Allison et al., 'China's semantic trick with prisoner organs', *The BMJ – Opinion*, 8 October 2015.

81 Trey et al., 'Transplant medicine in China: need for transparency and international scrutiny remains', *American Journal of Transplantation*, vol. 16, no. 11, August 2016.

82 New Scientist, 'China agrees to ban transplant tourism', *New Scientist*, 29 November 2006, www.newscientist.com/article/mg19225803-400-china-agrees-to-ban-transplant-tourism/ accessed 1 October 2018.

2.52 At the Pontifical Academy Summit (PAS) which was held by Holy See's Pontifical Academy of Sciences in 2016, Professor Huang, professor and chairman of the China National Organ Donation and Transplantation Committee, presented data on China's new policy on prohibiting the use of organs from executed prisoners. According to a Xinhau news report, Professor Huang stated that:

> The total number of deceased donor liver and kidney transplant between 2010 and 2016 were 27,600 and China's Ministry of Health has submitted the detailed statistics to the Geneva-based World Health Organization (WHO) for public release.
>
> From the beginning of 2015, China imposed a total ban on the use of executed prisoners' organs for transplantation, Huang said, describing the process as "an arduous journey."
>
> "Rome is not built in one day, the same as for the forbidden city", he added.
>
> According to Huang, hundreds of foreigners used to come to China every year for transplant tourism before the Chinese government banned the practice in 2009. From 2007 to 2016, the Chinese authorities formed joint task forces and cracked down on 32 illegal intermediaries, investigated 18 medical institutions, prosecuted, convicted and imprisoned 174 people including 50 medical personnel, and eradicated 14 black market dens, Huang said, referring to the "Zero Tolerance" action to behaviours violating organ transplantation regulations and laws.[83]

2.53 The Sub-Committee received varied evidence on whether China continues to host substantial numbers of transplant tourists. A submission by the International Coalition to End Transplant Abuse in China asserts that transplant tourism in China continues and that:

> … Australians receiving organs in China are at risk of participating in organ trafficking, and the extra-judicial and intentional killing of the non-consenting person from whom the organ is sourced. Unwitting complicity or wilful blindness to the unethical nature of organ harvesting is inextricably bound with such transplant tourism.[84]

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83 Xinhua, 'China vows to crack down on organ trafficking', *China Daily*, 8 February2017, www.chinadaily.com.cn/china/2017-02/08/content_28141842.htm accessed 1 October 2018.

84 International Coalition to End Transplant Abuse in China, *Submission 7*, p. 6.

2.54 Mrs Sophia Bryskine, Australian Spokesperson for Doctors Against Forced Organ Harvesting, contended that China remains a significant transplant tourism destination. Mrs Susie Hughes of the International Coalition to End Transplant Abuse in China provided as an exhibit a November 2017 South Korean documentary film *The dark side of transplant tourism in China: killing to live*.[85] The film claims that approximately 1,000 Koreans travel to China each year to receive a commercial organ transplant at Tianjin First Central Hospital alone.[86]

Mrs Bryskine summarised the films findings:

> … [the film] examines in detail, with undercover footage, the process that a transplant tourist undergoes at a major transplant centre in China, the Tianjin First Central Hospital … hidden camera footage shows the hospital doctor and nurse explaining the speed at which the organs will be made available—two weeks, or a few days if the patient donates an extra US$15,000. A kidney costs US$130,000 to a Korean patient.[87]

2.55 Citing data collated by participants of the Pontifical Academy of Sciences Summit on Organ Trafficking, however Professor Chapman observed however that the number of transplants being performed in China for foreigners has "collapsed" in recent years.[88]

2.56 Dr Martin and Professor O'Connell both stated that China had significantly reduced its intake of transplant tourists, though not necessarily completely eliminated the practice. Professor O'Connell described it as having been restricted to a "trickle."[89] Dr Martin described having received only "occasional reports."[90]

2.57 Dr Fraser observed that, in the early 2000s, China was a preeminent destination for transplant tourism, noting that "the norm was, if there was a Malaysian patient who required a transplant, they would be officially and formally referred by their doctor to China."[91] Dr Fraser indicated that "foreigners can no longer enter China for transplantation."[92] Dr Fraser stated that several patients he had interviewed had been prevented from

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85 Mrs Bryskine, DAFOH, *Committee Hansard*, Canberra, 8 June 2018, p. 8.

86 Mrs Hughes, ETAC, 'The dark side of transplant tourism in China: killing to live', first broadcast 17 November 2017, *Exhibit 10*.

87 Mrs Bryskine, DAFOH, *Committee Hansard*, Canberra, 8 June 2018, p. 8.

88 Prof Chapman AC, private capacity, *Committee Hansard*, Canberra, 9 May 2017, p. 2.

89 Prof O'Connell, The Transplantation Society, *Committee Hansard*, Canberra, 9 May 2017, p. 2.

90 Dr Martin, Declaration of Istanbul Custodian Group, *Committee Hansard*, Canberra, 13 June 2017, p. 5.

91 Dr Fraser, private capacity, *Committee Hansard*, Canberra, 13 June 2017, p 3.

92 Dr Fraser, private capacity, *Committee Hansard*, Canberra, 9 May 2017, p. 2.

entering China.[93] Dr Fraser indicated that it is predominantly Egypt which is now meeting the demand previously filled by China.[94] This is apparently despite the fact that since 2010 it has been a criminal offence in Egypt to buy or sell an organ.[95]

2.58 The Australia and New Zealand Dialysis and Transplantation Registry (ANZDATA) recorded a decline in recent years in the number of Australian patients who received renal transplants with organs sourced from deceased donors in China, as detailed in Table 2.4.[96]

93 Dr Fraser, private capacity, *Committee Hansard*, Canberra, 9 May 2017, p. 2.

94 Dr Fraser, private capacity, *Committee Hansard*, Canberra, 13 June 2017, p 3.

95 In 2010, the Transplantation of Human Organs and Tissues Act was established in Egypt making it a criminal offence to buy or sell an organ. See: S Columb 'Excavating the organ trade'

96 Department of Health, Australia & New Zealand Dialysis and Transplant Registry (ANZDATA), *Supplementary Submission 176.1.*

Table 2.4 – Renal transplants received by Australian patients in China, ANZDATA, 2001-2016[97]

Year of transplant	Deceased donor	Living donor	Donor status unknown	Total
2001	4	1	0	5
2002	2	0	0	2
2003	1	0	0	1
2004	7	2	0	9
2005	5	0	0	5
2006	1	1	0	2
2007	1	3	0	4
2008	0	1	0	1
2009	0	1	2	3
2010	1	3	0	4
2011	0	1	0	1
2012	0	0	0	0
2013	0	0	0	0
2014	0	1	0	1
2015	0	0	1	1
2016	0	0	0	0
Total	**22**	**14**	**3**	**39**

Source *ANZDATA, EXHIBIT 17, 19 July 2018.*

2.59 ANZDATA also found that between 2011 and 2016 only three renal transplants were recorded as having been received by Australian patients in China, with two of those from living donors and one donor of unknown origin (meaning the donor may have been living or deceased.)[98]

International Parliamentary resolutions

2.60 In December 2013, the European Preliminary Union passed a resolution that, among other things,

> express[ed] its deep concern over the persistent and credible reports of systematic, state-sanctioned organ harvesting from non-consenting prisoners of conscience in the Peoples Republic of China, including from large numbers of Falun Gong practitioners imprisoned for their religious beliefs, as well as from members of other religious and ethnic minority groups;[99]

97 Note: this table may not reconcile with Table 3.2 as it captures only patients who were undergoing dialysis immediately prior to receipt of a transplant overseas.

98 Department of Health, Australia & New Zealand Dialysis and Transplant Registry (ANZDATA), *Supplementary Submission 176.1.*

99 The European Parliament resolution of 12 December 2013 on organ harvesting in China (2013/2981 (RSP)) also Submission 168 from Mr David Matas

2.61 In June 2016, the House of Representatives of the United States Congress passed by unanimous consent House Resolution 343. The resolution condemned the practice of "state-sanctioned forced organ harvesting in China" and called on China to "end the practice of organ harvesting from prisoners of conscience."[100] The resolution also called upon the United States Department of State to report annually to Congress on implementation of a visa ban to be imposed on persons identified as directly involved with the coercive transplantation of human organs or bodily tissue.[101]

Australian Government response

2.62 Mr Graham Fletcher, First Assistant Secretary, North Asia Division, of the Department of Foreign Affairs and Trade informed the Sub-Committee of the Australian Government's position on the allegations that organs are forcibly taken from prisoners of conscience killed in China:

> …we are aware of the statistics which allege that there are a very large number of transplants occurring in China, but we do not have any basis for accepting that those statistics are accurate ... we have conducted our own investigations both in China and elsewhere to seek to establish whether the claims made about organ harvesting from prisoners of conscience have any basis, and our conclusion is we have not found evidence that supports them … we have no evidence that prisoners of conscience are being killed in China.[102]

2.63 Mr Fletcher indicated that the Department of Foreign Affairs and Trade has met with advocacy groups in relation to the allegations.[103] Mr Fletcher added that the Australian Government has expressed opposition to the use of the organs of executed prisoners with the Chinese Government through the Australia-China human rights dialogue process.[104] The Department has also specially raised allegations relating to the trafficking of organs of prisoners of conscience.[105]

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100 United States Congress, 'H.Res.343 - Expressing concern regarding persistent and credible reports of systematic, state-sanctioned organ harvesting from non-consenting prisoners of conscience in the People's Republic of China, including from large numbers of Falun Gong practitioners and members of other religious and ethnic minority groups', *114th Congress of the United States.*

101 United States Congress, 'H.Res.343 -, *114th Congress of the United States.*

102 Mr Fletcher, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, Canberra, 28 March 2017, pp. 2-3.

103 Mr Fletcher, DFAT, *Committee Hansard*, Canberra, 28 March 2017, p. 3.

104 Mr Fletcher, DFAT, *Committee Hansard*, Canberra, 28 March 2017, p. 3.

105 Mr Fletcher, DFAT, *Committee Hansard*, Canberra, 8 June 2018, p. 52

2.64 Mr Fletcher did not provide further detail on the nature of DFAT's own investigations.[106] Mr John Deller, Secretary of the Falun Dafa Association of Australia, drew an analogy to the United Nations Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea. Mr Deller observed of the Hon Michael Kirby AC CMG, who led the Commission of Inquiry:

> He couldn't get into North Korea; he couldn't get any of that information that we were talking about. He interviewed people who had been abused and tortured, and they gave testimony, and from that he formed a very clear picture and conclusion, which is widely accepted around the world.[107]

2.65 Mr David Matas was critical of the Department of Foreign Affairs, Defence and Trades position and questioned whether Australia has conducted any credible investigations.[108]

> The Department has conducted no independent investigation or assessment of the evidence of the killing of prisoners of conscience in China for their organs. It is inconsistent for the Department not to investigate the evidence and yet produce a conclusion on the evidence.[109]

2.66 In correspondence to the Sub-Committee, Mr Fletcher advised that the Chinese Government has consistently rejected reports of forced organ harvesting in China, including at our bilateral dialogues. At various times Chines officials have admitted that organs were previously transplanted from executed prisoners, but have highlighted more recent growing regulation in China's organ translation system, including requirements that all organ donations must be voluntary.[110]

2.67 Australia-China human rights dialogues are the primary formal, bilateral opportunity for Australia to raise human rights concerns with China.[111] While fifteen rounds of formal dialogue have taken place since the inception of the process in 1997, no dialogue has taken place since February 2014. The Sub-Committee understands that the Australian

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106 Mr Fletcher, DFAT, *Committee Hansard*, Canberra, 8 June 2018, pp. 51- 52

107 Mr Deller, Secretary, Falun Dafa Association of Australia, *Committee Hansard*, Canberra, 8 June 2018, p. 12.

108 Mr Matas, *Submission 168,* pp. 11-12.

109 Mr Matas, *Submission 168,* p. 12.

110 *Supplementary Submission 1.1,* Email correspondence with DFAT, 19 January 2018.

111 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Australia's human rights dialogues with China and Vietnam*, June 2012, Commonwealth of Australia.

Government is seeking to resume the dialogue, but no timeline has yet been agreed to.[112]

Chinese Government Response

2.68 On 2 October 2018, shortly before the completion of this report, the Sub-Committee received from the Embassy of the People's Republic of China a submission from the Chinese Organ Transplant Development Foundation.[113] This submission provided a substantive statement of the Chinese Government's official position in relation to human organ transplantation and organ donation. The submission states that the Chinese Government has "a consistent and clear attitude towards human organ transplantation" and follows "internationally-acknowledged ethical principles of organ transplantation". [114]The Foundation's submission contends that since the introduction in 2007 of the Regulation on Human Organ Transplantation (RHOT), China has developed a reformed human organ donation and transplantation system that "reflects China's identity, culture and governance of society, including donation system, procurement and allocation system, clinical transplant service, post-transplantation registry system and transplant service regulation system."[115]

2.69 The Chinese Organ Transplant Development Foundation's submission identifies the adoption of the RHOT as the beginning of the "legalisation and standardisation" of organ donation and transplantation practice in China to ensure that the rights of both donors and recipients are protected. The submission also highlights the adoption in 2011 of "the Eighth Amendment to the Criminal Law of the People's Republic of China" which distinguishes organ donation with informed consent from organ trafficking and states that "whoever organises others to sell human organs shall be convicted and punished." [116]

2.70 Further, the submission notes the work China has done in conjunction with international organisations around the world:

> such as WHO, The Transplantation Society (TTS) and the International Society for Donation and Procurement and international experts (including famous Australian organ transplant expert, former TTS president Philip O'Connnell) have

112 *Supplementary Submission 1.1,* Email correspondence with DFAT, 19 January 2018.

113 Chinese Organ Transplant Development Foundation, *Submission 170* (Translation), p.1

114 Chinese Organ Transplant Development Foundation, *Submission 170* (Translation), p.1

115 Chinese Organ Transplant Development Foundation, *Submission 170* (Translation), p.1

116 Chinese Organ Transplant Development Foundation, *Submission 170* (Translation), p.1-2

> come to China to participate in and witness the establishment of [China's] human organ donation system.[117]

2.71 The Foundation's submission strongly emphasises voluntary, informed consent as a key principle underlying China's reformed organ donation and transplantation system, noting that Chinese citizens have the right to donate, or indeed to not donate, their organs:

> Any organization or individual shall not make others donate their organs by coercion, deception or temptation. Organ donors should have full capacity for civil conduct and written consent is required for organ donation. Donors who already gave consent have the right to withdraw. If a citizen has refused to donate their organs, any organisation or individual shall not donate or procure their organs. If a citizen has not refused to donate, their organ can be donated after their death with the joint written consent of their spouse, children over the age of 18 and parents.[118]

2.72 The submission does not, however, address the allegations of organ harvesting from prisoners of conscience.

Sub-Committee view

2.73 The Sub-Committee recognises the serious nature of the allegations made with regard to organ trafficking in China. The Sub-Committee also notes with grave concern the associated allegations relating to the detainment, torture, 're-education', and the application of the death penalty to prisoners of conscience in China.[119]

2.74 Additionally, the Sub-Committee has particular concerns around the use of the death penalty generally. On 5 May 2016, the Human Rights Sub-Committee tabled a report into Australia's advocacy for the abolition of the death penalty entitled, *A world without the death penalty*.[120]

2.75 The Sub-Committee notes that use of the death penalty in China can be applied to cases of over forty different crimes and thousands of executions are carried out every year.[121] As executed prisoners have been a source of organs in the past, the extensive use of the death penalty in China fuels

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117 Chinese Organ Transplant Development Foundation, *Submission 170 (Translation),* p. 4.

118 Chinese Organ Transplant Development Foundation, *Submission 170 (Translation),* p. 1-2.

119 See: Cornell Center on the Death Penalty Worldwide, *Death Penalty Datbase: China* www.deathpenaltyworldwide.org/country-search-post.cfm?country=China&region=&method= accessed 13 September 2018

120 Joint Standing Committee on Foreign Affairs, Defence and Trade, *A world without the death penalty*, May 2016, Commonwealth of Australia.

121 Amnesty International, *China's Deadly Secrets,* 2017, p.11

continuing concerns that capital punishment continues to provide a source of trafficked organs.

2.76 The capacity of the Australian Government and other Australian institutions to investigate the allegations is a matter of debate.

2.77 The Sub-Committee has read with concern the recent report released by the United States Congressional-Executive Commission On China, which outlines a number of alleged human rights violations. Whilst not specifically investigating claims into organ harvesting, the report highlights:

> a dramatic increase in Communist Party Control over government, society, religion, and business; and the increasing use of technology and surveillance as a tool of repression. The Report also highlights the elevated role of the United Front Work Department, a Party institution used to influence and neutralize possible challenges to its ideological and policy agenda, and the impact this has had on religious freedom and ethnic minority communities.[122]

The Sub-Committee has taken particular note of this report, as it demonstrates the intolerant environment some religious or spiritual practitioners find themselves in. The Sub-Committee will continue to express these concerns and seek further discussion with the Chinese government in order to address these issues.

2.78 The Sub-Committee maintains its longstanding support for the human rights dialogue process, which is an important tool for Australian bilateral human rights advocacy.[123] The Sub-Committee firmly supports the resumption of the Australia-China human rights dialogue.

2.79 The Sub-Committee is not in a position to conclusively establish the veracity of the allegations either in relation to past activity or current practice, but, on the balance of evidence, is inclined to conclude that organ trafficking has occurred in China and may continue to occur, albeit on a lesser scale. If the full extent of the allegations made were to be verified, it would represent a systemic campaign of human rights abuse against vulnerable ethnic and spiritual minority groups. These groups have substantial diasporas in the Australian community. The Sub-Committee considers that the Australian Government has a responsibility to apply the

122 Congressional-Executive Commission on China, 'Press Release – Chairs Release 2018 Annual Report' in *2018 Annual Report,* 10 October 2018

123 See: Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT), *Australia's human rights dialogues with China and Vietnam*, June 2012, Commonwealth of Australia; and JSCFADT, *Australia's human rights dialogue process*, September 2005, Commonwealth of Australia.

full extent of its available capability to investigate these allegations as far as possible.

2.80 The progress of ethical reforms to the organ matching and transplantation system in China is a matter of dispute. While reform may be occurring, the Sub-Committee believes the available evidence is insufficient to conclude that China has in fact ceased the use of organs sourced from executed prisoners. It is not clear whether China remains a major destination for transplant tourism. The Sub-Committee is however concerned that any person travelling to China to receive an organ transplant today may be participating in unethical practice.

2.81 There is sufficient evidence that China used the organs of executed prisoners in the past without their free consent. There are contending views about whether this practice is still occurring- although other evidence points to an ongoing, possibly worsening, regime of repression and human rights violations in China. Given this, the onus is on the Chinese authorities to demonstrate to the world that they are not overseeing or permitting the practice of harvesting organs from executed prisoners without their knowledge and free consent. In the absence of such a demonstration by the Chinese authorities, the world is entitled to question assertions of claims to the contrary.

2.82 However the focus of evidence that was presented to the Sub-Committee in relation to China should not detract from the reality that organ trafficking and transplant tourism is a global problem and that other countries in South Asia and the Middle East appear to be perhaps more significant locations. Information and data in relation to the extent of the trade in these regions is quite limited, a state of affairs that underling the urgent need for greater international cooperation and collaboration.

2.83 As the Holy See's submission to the Sub-Committee observed, it is "a problem that cannot be addressed within the confines of any one nation' and that 'robust cooperation between States will be necessary if the global criminal networks behind much of this evil trade are to be effectively checked.'[124]

2.84 Given the international nature of this problem and the limitation of available data, the most effective course of action would seem to be for the United Nations to establish a Commission of inquiry to assess the current state of the trade across the globe and the need for action by national governments and the international community.

2.85 Given the gravity of the allegations which the Sub-Committee heard, Australia could pursue the establishment of a United Nations Commission

124 The Holy See, *Submission 62,* pp. 1-2.

of Inquiry into organ trafficking and transplant tourism through a draft resolution of the United Nations General Assembly or the United Nations Human Rights Council. The World Health Organisation could possible also provide anther avenue through which Australia could pursue an international inquiry.

Recommendation 1

The Sub-Committee recommends that the Australian Government pursue through the United Nations the establishment of a Commission of inquiry to thoroughly investigate organ trafficking in countries where it is alleged to occur on a large scale.

Recommendation 2

Given the contention and ongoing debate around transplant practices in China, the Sub-Committee recommends that the Australian Government:

- **monitor the transplantation practices of other countries with regard to consistency with human rights obligations, including with regard to the use of the organs of executed prisoners;**
- **seek the resumption of human rights dialogues with China;**
- **continue to express concern to China regarding allegations of organ trafficking in that country; and**
- **offer to assist with the further progression of ethical reforms to the Chinese organ matching and transplantation system.**

Impacts of transplant tourism

2.86 Evidence provided to this inquiry highlighted a range of risks to both transplant tourist patients and organ donors. These risks include negative health impacts for both patients and donors, and negative health and socio-economic outcomes for donors.

Risks to patients

2.87 The Sub-Committee received evidence indicating that Australians who travel overseas for a transplant experience elevated risk of viral or bacterial infection, graft failure and death. Available evidence primarily relates to risks associated with kidney transplants.[125]

2.88 Patients who received a primary renal transplant from a deceased donor in Australia in 2015 or 2016 experienced an average one-year graft survival rate of 94 per cent and one-year patient survival rate of 97 per cent.[126] Patients who received a primary renal transplant from a living donor in Australia during that period experienced an average one-year graft survival rate of 100 per cent and one-year patient survival rate of 98 per cent.[127]

2.89 A study of patients across four renal units in New South Wales found that patients who travelled overseas for renal transplants between 1990 and 2004 experienced a one-year graft survival rate of 66 per cent and a one-year patient survival rate of 85 per cent. [128] For comparison, one-year primary deceased donation graft survival rates averaged between 93 per cent and 96 percent between 1990 and 2004.[129] The survey of overseas transplants also found overseas transplant recipients were at increased

125 A E Anker and T H. Feeley, 'Estimating the risks of acquiring a kidney abroad; a meta-analysis of complications following participation in transplantation tourism' in *Clinical Transplantation,* Vol 26, 2012 pp. E232-E241 and S Kennedy et al., 'Outcome of overseas commercial kidney transplantation: an Australian perspective', *Medical Journal of Australia*, vol. 182, no. 5, 2005, pp. 224-227.

126 ANZDATA, *Annual Report 2017*, Table 7.18 – Primary Deceased Donor Grafts - Australia 2009-2016, Chapter 7, p. 26.

127 ANZDATA, *Annual Report 2017*, Table 7.23 Primary Living Donor Grafts - Australia 2009-2016, Chapter 7, p. 26.

128 S Kennedy et al., 'Outcome of overseas commercial kidney transplantation: an Australian perspective', *Medical Journal of Australia*, vol. 182, no. 5, 2005, pp. 224–227.

129 Patients in Australia and New Zealand experienced a 93 percent one-year deceased donation graft survival rate in 1990-1994 (n=1906); 95 per cent in 1995-1999 (n=1779); and 96 per cent in 2000-2004 (n=1850).
ANZDATA, *Annual Report 2016*, Table 8.20 Primary Deceased Donor Grafts - Australia and New Zealand 1990-2015, Chapter 8, p. 23.

risk of contracting human immunodeficiency virus (HIV), hepatitis B virus, cytomegalovirus and fungal infections.[130]

2.90 These findings are consistent with the 2012 findings of a meta-analysis of 39 international studies. According to the analysis, patients who travelled overseas for organ transplants experienced heightened risk of graft failure and death than had they received the transplant in their countries of origin. Patients were also at increased risk of contracting HIV, hepatitis B, cytomegalovirus, diabetes and wound infections.[131]

2.91 Professor Patrick Coates, Honorary Secretary and President-elect of the Transplantation Society of Australia and New Zealand, told the Sub-Committee that there have been "significant [graft] rejection episodes that have occurred in transplants that have occurred overseas and the person has come back to Australia."[132] Professor Coates indicated that his research had identified 32 instances of infection that were detected in persons who received an organ transplant overseas, including bacterial, viral and fungal infections.[133] Professor Coates stated that fungal infection rates in particular exceeded rates associated with transplants in Australia.[134] Professor Coates added that treatment of avoidable infections is particularly expensive for the Australian healthcare system.[135]

2.92 These findings are echoed by Dr Campbell Fraser, who observed:

> A renal transplant performed in Australia has a success rate in the 95 per cent or 96 per cent range. A commercial transplant done in Pakistan or Egypt is probably 55 per cent or 60 per cent. Even with that, patients are going to come back with very poor quality surgery, and very probably with infections. These infections can be fatal.[136]

2.93 A submission made by the Declaration of Istanbul Custodian Group, states:

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130 S Kennedy et al., 'Outcome of overseas commercial kidney transplantation: an Australian perspective', *Medical Journal of Australia*, vol. 182, no. 5, 2005, pp. 224–227.

131 A Anker and T Feeley, 'Estimating the risks of acquiring a kidney abroad: a meta-analysis of complications following participation in transplant tourism', *Clinical Transplantation*, vol. 26, no. 3, 2012, pp. 232-241.

132 Prof Coates, Honorary Secretary and President-elect, Transplantation Society of Australia and New Zealand, *Committee Hansard*, 8 June 2018, p. 5.

133 Prof Coates, Honorary Secretary and President-elect, Transplantation Society of Australia and New Zealand, *Committee Hansard*, 8 June 2018, p. 2.

134 Prof Coates, Honorary Secretary and President-elect, Transplantation Society of Australia and New Zealand, *Committee Hansard*, 8 June 2018, p. 2.

135 Prof Coates, Honorary Secretary and President-elect, Transplantation Society of Australia and New Zealand, *Committee Hansard*, 8 June 2018, p. 2.

136 Dr Fraser, private capacity, *Committee Hansard*, Canberra, 13 June 2017, p. 7.

> Rates of mortality and serious complications, including infection with HIV, tuberculosis and hepatitis, are much higher in transplant tourists than in patients who obtain a transplant legally in a country like Australia.[137]

2.94 The impact on public healthcare was also referred to by Doctors Against Forced Organ Harvesting, who noted that the elevated risk of post-transplant infection experienced by transplant tourists is likely to be causing increased burden on the Australian healthcare system.[138] Similarly, a 2016 News Corp investigation observed that:

> Australian taxpayers are footing the medical bills when the transplant recipients return home sick, some ending up in intensive care. Their anti-rejection medication comes from the public purse as well, costing $10,000 to $12,000 a year.[139]

Risks to donors[140]

2.95 Commercial donors of organs and victims of forced organ trafficking suffer significant and enduring physical, psychological, financial and social harm. The Asian Pacific Society of Nephrology posited that:

> …patients, health professionals and others involved exploit vulnerabilities in systems designed to evaluate and protect prospective transplant candidates and organ donors; they also take advantage of broader social vulnerabilities in the form of poverty, unemployment, and poor health literacy.[141]

2.96 A study of commercial donors in Egypt found that inadequate pre-operative screening and post-operative care lead to 78 per cent of donors reporting deterioration in their overall health and 94 percent expressing regret about selling their organ.[142] 85 per cent were unwilling

137 Declaration of Istanbul Custodian Group, *Submission 14*, p. 1.

138 Doctors Against Forced Organ Harvesting, *Submission 22*, p. 8.

139 S Dunlevy, 'Organs for sale: Australians turn to black market for human organs', *Sunday Telegraph*, 7 August 2016.

140 Studies completed on this topic are generally at least ten years old, the Sub-Committee hopes to see further academic research be undertaken in this area to further strengthen our understanding of the risks surrounding organ trafficking.

141 Asian Pacific Society of Nephrology, *Submission 6*, p 1.

142 D Budiani, 'Consequences of living kidney donors in Egypt,' paper presented at a meeting of the Middle East Society on Organ Transplants, Kuwait, November 2006, as cited in D Budiani-Saberi and F Delmonico, 'Organ trafficking and transplant tourism: a commentary on the global realities', *American Journal of Transplantation*, vol. 8, no. 5, 2008, pp. 925-929.

to be known publicly as a vendor in the commercial organ trade, citing social rejection.[143]

2.97 A study of commercial donors in Pakistan found 93 per cent of donors sold an organ to repay a debt and 85 per cent reported no long-term economic advantage due to direct healthcare costs and reduced earnings potential as a result of poor health outcomes.[144]

2.98 A further study in Iran found that 79 per cent of commercial donors were prevented from attending post-operative follow-up sessions due to poverty, 71 per cent experienced severe post-operative depression, 60 per cent experienced anxiety and 65 per cent experienced negative employment outcomes, primarily due to reduced physical capacity to perform labour. [145]

2.99 These findings are consistent with other studies in India[146] and the Philippines;[147] with deteriorating health outcomes and social rejection leading to long-term socio-economic disadvantage through reduced employment opportunities.

Sub-Committee view

2.100 Transplant tourism poses clear health risks to donors, including risk of infection, diminished physical capacity, and complex psychological harm, including mental illness and emotional trauma. Donor participation in transplant tourism may lead to social or economic harm or exploitation, including financial hardship associated with poor health outcomes resulting from organ removal.

2.101 Transplant tourism also poses serious health risks to organ recipients, including elevated risk of bacterial, viral and fungal infection, graft failure, and death. Providing medical care to patients who develop such

143 D Budiani, 'Consequences of living kidney donors in Egypt,', as cited in D Budiani-Saberi and F Delmonico, 'Organ trafficking and transplant tourism: a commentary on the global realities', *American Journal of Transplantation*, vol. 8, no. 5, 2008, pp. 925-929.

144 A Daqvi, 'A socio-economic survey of kidney vendors in Pakistan,' *Transplant International*, vol. 20, no. 11, 2007, pp. 909–992.

145 J Zargooshi, 'Iranian kidney donors: motivations and relations with recipients', *Journal of Urology*, vol. 165, no. 2, 2001, pp. 386–392.

146 M Goyal, R Mehta, L Schneiderman and A Sehgal, 'Economic and health consequences of selling a kidney in India', *Journal of the American Medical Association*, vol. 288, no. 13, 2002, pp. 1589-1593.

147 Y Shimazono, 'What is left behind?', *Presentation at a World Health Organization Informal Consultation on Transplantations,* May 2006, Geneva, as cited in D Budiani-Saberi and F Delmonico, 'Organ trafficking and transplant tourism: a commentary on the global realities', *American Journal of Transplantation*, vol. 8, no. 5, 2008, pp. 925-929.

complications represents an increased and avoidable burden on the Australian healthcare system.

2.102 The Sub-Committee considers it is both unethical and medically hazardous for patients to travel overseas to receive a commercial organ transplant.