

Fighting for Justice **Foundation Submission**

to the Joint Standing Committee on
Foreign Affairs, Defence and Trade:
**Human Organ Trafficking and
Organ Transplant Tourism**

4 August 2017



Speaking up for those who cannot speak for themselves.

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EXECUTIVE SUMMARY

I submit to the Federal Parliament and this Committee that the amendments to the 2012 *Criminal Code Act (Cth) 1995* did not reach far enough in seeking to shut down organ trafficking or harvesting, as organ trafficking was only dealt with to the extent of the Australian jurisdiction, and transplant tourism remains a reality for Australia.

There is evidence to suggest that Australians continue to engage in Transplant Tourism to China, and evidence suggests that up to 55 Australians have travelled overseas between 2006 and 2015 for a kidney transplant alone¹, where their organ 'donors' were more likely than not political dissidents and religious minorities held illegally in detention, without access to legal representation, due process, the presumption of innocence, or often without a criminal charge.

This abhorrent violation of people's rights goes to the most fundamental and inalienable right of a person: their right to life², and Australia needs to ensure that we are not contributors to these violations.

Senator Rice in the 2016³ Senate Estimates hearings states: organ harvesting in China, has been documented by investigative reporters since 1994. There is evidence of Falun Gong practitioners and, to a lesser extent, Christians and Tibetans being systematically targeted in large internment and alleged harvesting camps. We know that China currently has two and a half million political prisoners detained. The latest 680-page investigation report on organ harvesting indicates that the 169 approved transplant hospitals could have conducted 60,000 to 100,000 organ transplants per year since 2001.

Senator Rice goes on to mention that 53 Australians received organ transplants in China from 2001 to 2014, which was recently confirmed by Scott Ludlam via a question on notice to the minister for health. The Senator expressed regret that there is no formal register, and that this figure is likely to be an undercount.⁴

¹ According to the Australia & New Zealand Dialysis & Transplant Registry, at least 55 Australians travelled overseas to receive a kidney transplant between 2006-2015.

² Article 3 of the United Nations *Universal Declaration of Human Rights*, at: http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. In 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child (CRC).

³ Senator Rice as quoted in the Official Committee Hansard of the Senate Foreign Affairs, Defence and Trade Legislation Committee, Estimates, Thursday 20 October 2016, Canberra, Page 80, at: http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/aa4f0e69-697b-4d56-ad2a-ef0c34f8251d/toc_pdf/Foreign%20Affairs,%20Defence%20and%20Trade%20Legislation%20Committee_2016_10_20_4504_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/aa4f0e69-697b-4d56-ad2a-ef0c34f8251d/0002%22

⁴ Senator Rice as quoted in the Official Committee Hansard of the Senate Foreign Affairs, Defence and Trade Legislation Committee, Estimates, Thursday 20 October 2016, Canberra, Page 82, at: http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/aa4f0e69-697b-4d56-ad2a-ef0c34f8251d/toc_pdf/Foreign%20Affairs,%20Defence%20and%20Trade%20Legislation%20Committee_2016_10_20_4504_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/aa4f0e69-697b-4d56-ad2a-ef0c34f8251d/0002%22

Under the *Criminal Code Act 1995 (Cth)*⁵, if an Australian citizen travels overseas in order to purchase an organ - engaging in what is referred to as 'transplant tourism', this does not constitute an Australian organ trafficking offence unless the donor had been moved to, from, or within Australia.

The amendments to the *Criminal Code Act (Cth) 1995* passed in March 2013 implemented a range of offences within the trafficking category, including forced labor, forced marriage, organ trafficking and harbouring a victim, and was indeed a positive development.

However, this submission notes that the amendments are limited to addressing organ transplant abuses only when the source of the organ is an Australian or when the abuse occurs in Australia, carrying no extra-territorial application.

Human trafficking as an international crime takes on the nature of extra-territorial offences, and requires cross-jurisdictional cooperation and enforcement to ensure this crime is kept to a minimum.

Organ harvesting is known to be a trade that victimises the vulnerable and the exploiters are usually the rich and well off - who can afford to pay the poor to keep silent.

In China, organ harvesting is taking a more sinister approach, with public officials involved in the kidnapping, torture, the organ removal and the murder of political dissidents and religious minorities such as Falun Gong practitioners and House Christians who are systematically targeted for the trade.

These organs on demand are transferred from the criminal detention facilities in China, where it's victims were force fed, tortured and kept in isolation while their urine and blood samples were taken - to the large commercial hospitals in China advertising organ transplant time frames of five hours upon arrival.⁶

A foreigner seeking an organ transplant in China would be very well taken care of and provide for - at premium prices, overseen by China's vice-minister of health, Dr Huang Jiefu, who was trained at the Sydney University and made an honorary professor by the Sydney University - who has overseen the organ-transplant system in China.⁷

Australia needs to move towards a more comprehensive, holistic legislative reform to transplant tourism, guided by the *Declaration of Istanbul on Organ Trafficking and Transplant Tourism*⁸, which is also guided by the *World Health Organisation's Principles on Human Cell, Tissue and Organ Transplantation*⁹, and in consideration of international extradition laws under Article 16 of

⁵ The *Criminal Code Act 1995 (Cth)*, at: <https://www.legislation.gov.au/Series/C2004A04868>

⁶ Known from testimonies of various victim survivors, some of whom have family in Australia, as well as from reports such as the David Matas and David Kilgour, BLOODY HARVEST, Revised Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China, 31 January 2007, available at: <http://organharvestinvestigation.net>

⁷ Kirsty Needham, Sydney University forced to reveal emails in Chinese organ-donation link scandal, The Sydney Morning Herald, 7 February 2016, at: <http://www.smh.com.au/nsw/sydney-university-forced-to-reveal-emails-in-chinese-organ-donation-link-scandal-20160206-gmna3b.html>

⁸ The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, at: <http://www.declarationofistanbul.org>

⁹ WHO GUIDING PRINCIPLES ON HUMAN CELL, TISSUE AND ORGAN TRANSPLANTATION, As endorsed by the sixty-third World Health Assembly in May 2010, in Resolution WHA63.22 found at: http://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf

the *United Nations Office of Drugs and Crime's Convention Against Transnational Organised Crime and the Protocols Thereto*¹⁰.

Australia's domestic laws need to give powers for such preventative and diversionary approaches to tourism transplant and organ harvesting in our region, ensuring the full extent of investigative, law enforcement and exercise of criminal jurisdiction, for the necessary prosecution of organised crime, and for the protection of vulnerable victims.

Similarly to our recent law reform in relation to the restrictions on paedophiles in travelling overseas to harm children in other jurisdictions¹¹, Australia needs to ensure that we are not part of the problem of transplant tourism and not creating a demand for the trade in human organs of vulnerable targeted minorities.

The current rate of organ trafficking around the world has created a substantial health risk contributing to a serious abuse of human rights, particularly of the right to life. The European Union has reviewed the scope for creating a fair system of organ donation and for the use of a more efficient and transparent organ database accessible to EU and eventually to global citizens in their recent study published in 2015¹².

It is inconsistent with our international human rights obligations that organs can be easily bought by Australians on the black market in China - for a premium price - which victimises the most vulnerable, and encourages the ongoing torture, illegal detention and persecution of minority groups under a Communist regime.

RECOMMENDATIONS:

Organ harvesting of unwilling donors where it is either systematic or widespread is a crime against humanity.

In consistency with the *Declaration of Istanbul on Organ Trafficking and Transplant Tourism*¹³, which is also guided by the World Health Organisation's Principles on Human Cell, Tissue and Organ Transplantation¹⁴, Australian therefore needs to ensure that:

1. Governments, in collaboration with health care institutions, professionals, and non-governmental organisations should take appropriate actions to increase deceased organ donation. Measures should be taken to remove obstacles and disincentives to deceased organ donation.¹⁵

¹⁰ UNITED NATIONS OFFICE ON DRUGS AND CRIME Vienna, UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME AND THE PROTOCOLS THERETO, New York, 2004, at: https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf

¹¹ Dan Conifer and Henry Belot, Paedophiles could have passports cancelled in 'world first' bid to prevent sexual abuse of children overseas, 30 May 2017, ABC News, at: <http://www.abc.net.au/news/2017-05-30/paedophiles-could-have-passports-cancelled-bid-to-prevent-abuse/8572738>

¹² DIRECTORATE GENERAL FOR INTERNAL POLICIES, POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY, Proceedings of the Workshop on Organ Harvesting in China, Brussels, 21 April 2015 STUDY; at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/542201/IPOL_STU\(2016\)542201_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/542201/IPOL_STU(2016)542201_EN.pdf)

¹³ The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, at: <http://www.declarationofistanbul.org>

¹⁴ WHO GUIDING PRINCIPLES ON HUMAN CELL, TISSUE AND ORGAN TRANSPLANTATION, As endorsed by the sixty-third World Health Assembly in May 2010, in Resolution WHA63.22 found at: http://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf

¹⁵ As consistent with the *Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, at: <http://www.declarationofistanbul.org>

2. It becomes a crime for Australians to travel overseas to receive an organ that they either know or were reckless in not knowing, was trafficked;
3. Australians are to enter an organ transplant agreement conducting due diligence in ensuring the live donor is voluntarily supplying their organs;
4. Australians are to favour voluntary deceased organ donors above live donors;
5. recipients of trafficked organs are to be identified as guilty of trafficking offence;
6. organ trafficking may take place regardless of the the victim (the organ source) movements, ie: whether the victim (the organ source) neither enters nor leaves Australia and was never in Australia - does not alter their trafficked status;
7. create a formal register stating where and from whom Australians have received their organs.
8. In countries without established deceased organ donation or transplantation, national legislation should be enacted that would initiate deceased organ donation and create transplantation infrastructure, so as to fulfil each country's deceased donor potential.¹⁶
9. In all countries in which deceased organ donation has been initiated, the therapeutic potential of deceased organ donation and transplantation should be maximised.¹⁷
10. Countries with well established deceased donor transplant programs are encouraged to share information, expertise and technology with countries seeking to improve their organ donation efforts.
11. Ensure organ 'transplant tourism' constitutes as an Australian organ trafficking offence in all jurisdictions in Australia - with a Regional cooperation in Asia for the law enforcement and judicial mechanisms.
12. All allegations of organ harvesting should be taken seriously. Criminal authorities in China should investigate the allegation for possible prosecution. Appropriate laws are to be in sync with the UN Protocols and principles, guided by the recommendations set out in the OSCE Action Plan to Combat Trafficking in Human Beings and Ministerial Council Decision No. 5/08.
13. The UN Committee Against Torture and the UN Special Rapporteur on Torture should once again investigate if the government of China has engaged in, or is engaging in now, in violations of any of the terms of Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, which bans, among other practices, the removal of organs.
14. The Australian Government should not issue visas to doctors from China seeking to travel to Australia for the purpose of training in organ or bodily issue transplantation.
15. The Chinese Government needs to be urged to implement and enforce their anti harvesting legislation. Stringent law enforcement against all those involved should also apply.
16. The Australian Government should urge China to open all detention facilities, including forced labour camps in China to international community inspection through the International Committee for the Red Cross or other human rights or humanitarian organisations.

¹⁶ As consistent with *the Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, at: <http://www.declarationofistanbul.org>

¹⁷ As consistent with *the Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, at: <http://www.declarationofistanbul.org>

17. China should accede to the Optional Protocol to the Convention Against Torture.

On the 8 February 2016, in the Federal Parliament Ms Parke, moved—That Parliament House:

(1) notes continuing concerns in relation to the practice of harvesting organs from prisoners in the People's Republic of China, in addition to allegations of an illegal organ harvesting trade in other parts of Asia and in Europe; and

(2) calls on the Government to:

(a) acknowledge the illegal trade of organs as a significant health policy and human rights issue in the international community and publicly condemn organ transplant abuses;

(b) engage in international dialogue, in a human rights context, relating to the harvesting of organs, ensuring cooperation to protect the poorest and most vulnerable groups from organ transplant tourism and the illegal sale of tissues and organs through the development of tools to ensure traceability of organs;

(c) consider federal measures and encourage Australian states and territories to consider measures to ensure that trafficking of human organs is addressed;

(d) urge the Chinese Government to immediately cease the practice of harvesting organs from prisoners;

(e) support and encourage universal adoption and implementation of the *World Health Organisation Guiding Principles on Human Organ Transplantation* regarding protection of donors, transparency and the implementation of quality systems including vigilance and traceability; and

(f) urge the Chinese Government to increase efforts to set up an organised and efficient national register of organ donation and distribution, and to cooperate with requests from the United Nations Special Rapporteurs and other international bodies and governments for investigations into the system.

This motion in the House should be upheld and implemented, as attention to the plight of human rights abuses in our region, Australia's role as either perpetrators and contributors or preventers, and as upholding the right to ethical health services to all.

ABOUT FIGHTING FOR JUSTICE FOUNDATION

Fighting for Justice Foundation seeks to curb the demand for human trafficking through addressing gender based violence and harmful social norms through social and legislative reform in the Australasia region through our Advocacy, Education and Outreach projects.

Andrea Tokaji is an international human rights lawyer advocate, legal trainer, educator, speaker and writer, and is currently doing her PhD on the international crime of human trafficking and how to curb it's demand from a human rights perspective.

Fighting for Justice Foundation is based in Canberra, and runs international outreach, education and advocacy programs for vulnerable women and children in rural remote communities susceptible to human trafficking.

On 16 July 2014, I attended the first Parliamentarians Against Forced Organ Harvesting (PAFOH) round table, at which we enjoyed a presentation from Professor Maria A Fiatarone Singh - who presented on 'Organ Harvesting: The Role of Governments', with evidence of Australia's support of the organ transplant tourism trade in China through our training and support of their lead surgeon and health minister: Dr Huang Jei Fu - who was trained by Sydney University and given a Honorary Professorship.

On the 11 August 2015, I gave a presentation into NSW Parliament alongside Greens Member David Shoebridge on the realities of Australians procuring harvested organs as transplant tourists into China. I gave evidence to the Parliament on the victims of the harvested organs being particularly targeted by the Chinese Governments as dissidents and religious minority groups, who, under Communism, are seen as an ongoing threat to the Government. I also highlighted human rights defenders, such as Gao Zisheng - who was tortured for his advocacy work on behalf of minorities targeted for organ harvesting.

I now make this submission in support of legislative reform to ensure Australia does not have a hand in transplant tourism, that Australia is a part of bringing down criminal enterprise and does not willingly or unwillingly - by virtue of our demand for organs - support China's kidnapping, torture and organ trade for political and economic gains.

The reality of Organ Harvesting - and Australia's role:

There is evidence to suggest that Australians continue to engage in transplant tourism into our region - with China as a preferred destination. Transplantation Society past president Dr Jeremy Chapman says so-called organ tourists continue to escape punishment, despite the trade being illegal. Dr Chapman says the number of commercial transplants globally has dropped from about 10,000 to 2,000 in the past few years, creating an enormous demand for organs.¹⁸

A *News Corp* investigation has found that almost a hundred desperate Australians have turned to the black market to buy a human organ as demand for transplants outstrips supply - risking their own health, with many of them ending up sick in hospital back in Australia. The unregulated trade is seeing prisoners shot on demand to supply human organs and poor people forced by debt collectors to sell their kidneys for as little as \$1000.¹⁹

There is evidence to suggest that 176 Australians have had an organ transplant overseas in the last 13 years, with half being illegal transactions.

With patients who choose to access organ transplant legally having to wait up to seven years, this becomes too lengthy time frame, with many dying in the process of waiting.

In the course of a three-year investigation News Corp has learnt that in February an Australian man bought a kidney off a 26-year-old Pakistani woman as part of a transplant costing \$116,000.²⁰

¹⁸ As reported by Simon Lauder on 1 September 2010, ABC News, at: <http://www.abc.net.au/news/2010-09-01/australian-organ-tourists-drive-sinister-trade/966408>

¹⁹ As reported by Sue Dunlevy, News Corp Australia, 7 August 2016, at: <http://www.news.com.au/national/australians-turn-to-black-market-for-human-organs/news-story/06905df7ffc5337cb53927c9de1cce3a>

²⁰ As reported by Sue Dunlevy, News Corp Australia, 7 August 2016, at: <http://www.news.com.au/national/australians-turn-to-black-market-for-human-organs/news-story/06905df7ffc5337cb53927c9de1cce3a>

Researchers say China is home to the most rampant illegal organ trade in the world and is the number one destination for 'transplant tourism'.²¹ Recently published research by author Ethan Gutmann, former Canadian politician David Kilgour and lawyer David Matas claims China is performing 60,000 to 100,000 organ transplants a year. They say this dwarfs the Communist regime's estimates of about 10,000 and that it cannot be explained by China's fledgling program for voluntary organ donors.²²

Canadian human rights lawyer David Matas says he has uncovered evidence of organ harvesting from death row inmates and political prisoners in China. He says evidence suggests that most of the 10,000 organ transplants which happen each year in China are the result of organ harvesting.²³

The World Health Organisation is warning of an alarming rise in the illegal trade in human organs, saying around 10 per cent of transplant procedures involve organs that have been bought on the black market.

The latest estimates show that organ traffickers are exploiting poor people in China, India and Pakistan to cash in on the rising international demand for replacement kidneys.

Experts say the trade is not only illegal but dangerous and they say Australians desperate for a kidney transplant are heading overseas and not coming back.

Jeremy Chapman recalled in an interview with the ABC: "... there are stories of brokers offering iPads for a kidney. So living donors in China are now also targeted. Living donation has been the target in the Philippines, in Sri Lanka, in Columbia, in Peru, in a number of countries around the world. So those countries have a responsibility to clamp down on this illegal activities, it is indeed jeopardising and terrorising the poor."²⁴

Researchers say China is home to the most rampant illegal organ trade in the world and is the number one destination for 'transplant tourism'. Researchers say the donor organs are often sourced illegally from prisoners executed for their religious, political or cultural beliefs, who have not consented to any of it. Many of China's prisoners have testified to having been subjected to medical testing consistent with organ transplant screening but without explanation while behind bars. "They called these people the living dead. You just haven't died yet, but you're gone," one organ transplant recipient said.²⁵

According to the Australia & New Zealand Dialysis & Transplant Registry, at least 55 Australians travelled overseas to receive a kidney transplant between 2006-2015. The data isn't broken down by countries and doesn't include figures of Australians who have travelled overseas for transplants of organs other than kidneys, such as livers.

²¹ Megan Palin, The 'living dead': prisoners executed for their organs then sold to foreigners for transplants, 3 June, 2017, at: <http://www.news.com.au/world/asia/the-living-dead-prisoners-executed-for-their-organs-then-sold-to-foreigners-for-transplants/news-story/4048895e300f415a0a078e229d697bf7>

²² Rick Feneley, Joel Keep, Australian organ transplant doctors defend China ties, 19 August 2016 at: <http://www.sbs.com.au/news/article/2016/08/19/australian-organ-transplant-doctors-defend-china-ties>

²³ As reported by Simon Lauder on 1 September 2010, ABC News, at: <http://www.abc.net.au/news/2010-09-01/australian-organ-tourists-drive-sinister-trade/966408>

²⁴ Jeremy Chapman and Eleanor Hall, The World Today, ABC News, 29 May 2012, at: <http://www.abc.net.au/worldtoday/content/2012/s3513372.htm>

²⁵ Megan Palin, The 'living dead': prisoners executed for their organs then sold to foreigners for transplants, 3 June, 2017, at: <http://www.news.com.au/world/asia/the-living-dead-prisoners-executed-for-their-organs-then-sold-to-foreigners-for-transplants/news-story/4048895e300f415a0a078e229d697bf7>

Doctors Against Forced Organ Harvesting Australia spokeswoman Sophia Bryskine said the organisation was “particularly focused on China because, unlike anywhere else in the world, it is the only place where systematic forced organ harvesting continues to occur on a mass, state-sanctioned level”.²⁶

The Dui Hua Foundation, which monitors executions in China, estimates that approximately 2,400 people were put to death in 2013, and China was named the world’s biggest executioner in Amnesty International’s Death Sentences and Executions 2015 report. According to Amnesty International, “tens of thousands of Falun Gong practitioners have been arbitrarily detained” since the government launched a crackdown on the practice in 1999.²⁷

Professor of transplantation surgery at the Royal Prince Alfred Hospital Richard Allen says it is important for donor registries to rely more on deceased donors. Professor Allen says the more living donors are relied on for organs, the greater the opportunities for illegal trade.²⁸

Dr Chapman says the only way to stamp out illegal organ trading is for each country to cater for its own needs. Australia focuses on organ donations through its annual Donate Life Week Campaign between 30 July and 6 August - Make Your Decision Count²⁹. With only 33% of Australians registered as organ donors, more needs to be done to ensure that demand for organs does not take Aussies off-shore.

Australia also needs to consider its academic ties with China and it’s then China’s vice-minister of health, Dr Huang Jiefu, who was trained at the Sydney University and made an honorary professor by the Sydney University - who oversaw the organ-transplant system in China.³⁰

In 2013, Dr Huang Jiefu, admitted organs continued to be sourced from executed prisoners, and Dr O’Connell noted “a deep sense of mistrust of your [China’s] transplant programs which have been responsible for overt commercial trafficking of prisoner organs for transplantation to wealthy foreigners from the West and [the] Middle East.”³¹

In 2013, director of the China Organ Donation Committee, Dr Huang Jiefu, told medical journal The Lancet that more than 90 per cent of transplant organs were still sourced from executed prisoners.

Professor Fiatarone Singh, who led a campaign for Sydney University to revoke an honorary professorship awarded to Huang Jiefu, said “The ethical concern is that there is convincing evidence from this Chinese hospital’s reports that large volumes of transplants were performed in this hospital at a time when virtually no voluntary organ donation system existed, and when the

²⁶ DAFOH performs systematic research into the reports of the state-sanctioned practice in China from prisoners of conscience, at: <https://dafoh.org>

²⁷ Amnesty International Report on Illegal Detention in China, at: <https://www.amnesty.org.au>

²⁸ As reported by Simon Lauder on 1 September 2010, ABC News, at: <http://www.abc.net.au/news/2010-09-01/australian-organ-tourists-drive-sinister-trade/966408>

²⁹ Campaign page and how to register to become national donor here: https://register.donatelife.gov.au/?gclid=CjwKCAjwk4vMBRagEiwA4ftLs7Eqvc_YIL7qr4ahVMLuNVWDsyi_UNA4T0yIwbHC1801czHuSktH9RoCpRkQAvD_BwE

³⁰ Kirsty Needham, Sydney University forced to reveal emails in Chinese organ-donation link scandal, The Sydney Morning Herald, 7 February 2016, at: <http://www.smh.com.au/nsw/sydney-university-forced-to-reveal-emails-in-chinese-organ-donation-link-scandal-20160206-gmna3b.html>

³¹ Rick Feneley, Joel Keep, Australian organ transplant doctors defend China ties, 19 August 2016 at: <http://www.sbs.com.au/news/article/2016/08/19/australian-organ-transplant-doctors-defend-china-ties>

Vice-Minister of Health at the time, Huang Jiefu, has admitted that virtually all organs were sourced from executed prisoners.”³²

Organ Harvesting of China’s prisoners of conscience:

Doctors Against Forced Organ Harvesting have reported that:

“The harvesting of organs from executed prisoners in China started in 1984 when a law was implemented in China that allowed the practice. The public first became aware of this practice following the testimony of Dr. Wang Guoqi to the U.S. Congress in 2001. Worldwide, organ harvesting from executed prisoners is banned as unethical.”³³

In 2006, former Canadian Diplomat David Kilgour and human rights lawyer David Matas presented their investigations and concluded that from 2000 to 2005, at least 41,500 organs were harvested from Falun Gong practitioners – a peaceful spiritual group that has been brutally persecuted in China for the past 16 years.

The *Kilgour & Matas Report* alleged that organs were harvested from living prisoners of conscience, mostly from detained Falun Gong practitioners. The data suggested that organ procurement was “on demand”, that organs were harvested without acceptable consent and that the unwilling donors were killed in the process.³⁴

The *Kilgour & Matas Report* nevertheless provides a critical amount of circumstantial evidence that systematic organ harvesting is indeed occurring in China, including the collection of more than 30 distinct pieces of evidence supporting the allegations of the initial witnesses. They sadly concluded that the allegations of systematic organ harvesting specifically targeting Falun Gong followers are true.³⁵

Nine national level and eleven provincial level military hospitals are credited for the majority of all recent organ transplants. The major role of military hospitals in organ harvesting is another key factor, according to Mr. Matas.

Based on his nine years of work on the subject, Mr. Kilgour said that the efforts to stop the crime are approaching a critical point.

There are a number of things in the *Kilgour & Matas Report* by David Matas and David Kilgour dated 31 January 2007 that are worth noting:

- The Coalition to Investigate the Persecution of the Falun Gong in China (CIPFG)³⁶, by letter dated May 24, 2006 asked for the assistance of David Matas and David Kilgour in investigating allegations that state institutions and employees of the government of People's Republic of

³² Rick Feneley, Joel Keep, Australian organ transplant doctors defend China ties, 19 August 2016 at: <http://www.sbs.com.au/news/article/2016/08/19/australian-organ-transplant-doctors-defend-china-ties>

³³ The *Doctors Against Forced Organ Harvesting* promote ethics in medicine and provide reports on ethics in medicine periodically, at: <https://dafoh.org/unethical-organ-harvesting/forced-organ-harvesting-in-china/>

³⁴ David Matas, Esq. and Hon. David Kilgour, Esq. An Independent Investigation Into Allegations of Organ Harvesting of Falun Gong Practitioners in China, Revised Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China, at: <http://organharvestinvestigation.net>

³⁵ Doctors Against Forced Organ Harvesting - <http://www.dafoh.org/unethical-organ-harvesting/forced-organ-harvesting-in-china/>

³⁶ The Coalition to Investigate the Persecution of the Falun Gong in China (CIPFG), a non- governmental organisation registered in Washington, D.C. have a branch in Ottawa, Canada.

China's harvesting organs from live Falun Gong practitioners, and killing the practitioners in the process.³⁷

- The practitioners are killed in the course of the organ harvesting operations or immediately thereafter. These operations are a form of murder, or genocide.
- The practitioners killed in this way are then cremated. There is no corpse left to examine to identify as the source of an organ transplant.
- The government of China admitted to using the organs of executed prisoners in 2005.
- Chinese nationals, for cultural reasons, are reluctant to donate their organs after death. There was no organised system of organ donation formed in China at the time of this study.
- David Ownby, Director of the Centre of East Asian studies at the University of Montreal has noted that - Chinese leaders refer to Falun Gong as a "cult"- and that - China has essentially reacted out of fear of Falun Gong's ability to mobilise its followers..."
- The source of 41,500 transplants for the six year period 2000 to 2005 is unexplained.
- A number of family members of Falun Gong practitioners who died in detention reported seeing the corpses of their loved ones with surgical incisions and body parts missing. The authorities gave no coherent explanation for these mutilated corpses. The wait times for organ transplants for organ recipients in China appear to be much lower than anywhere else.
- Hospital web sites in China advertise short waiting times for organ transplants, and that they had more than ten "beating hearts" available.
- The wait times for organ transplants for organ recipients in China appear to be much lower than anywhere else.
- In China, organ transplanting is a very profitable business, with one hospital quoting a price of 200,000 yuan or \$66,600 for a liver transplant.³⁸
- It was estimated in a United Nations General Assembly Report in 25 February 2011 that there were more than 5,000 executions in 2008.³⁹

On the 16 April 2015 at the "Transplantation and Human Rights" forum in Switzerland, organised by the International Society for Human Rights⁴⁰, legal and medical professionals shared their findings regarding organ harvesting of prisoners of conscience in China, pledging to help end the crime by continuing to increase international pressure on the Chinese regime and by using legal means outside of China to deter Chinese officials from participating in the atrocities.

The purpose of the forum was to raise public awareness and offer a global platform for experts to discuss, identify, and execute solutions to put an end to this crime against humanity.

³⁷ The 'REPORT INTO ALLEGATIONS OF ORGAN HARVESTING OF FALUN GONG PRACTITIONERS IN CHINA' written by David Matas and David Kilgour dated 6 July 2006.
<http://OrganHarvestInvestigation.net> and <http://investigation.go.saveinter.net>

³⁸ China International Transplantation Network Assistance Centre Website - <http://en.zoukiishoku.com/> - Shenyang City.

³⁹ Human Rights Council Sixteenth session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez.

⁴⁰ Falun Dafa Minghuri - www.falundafaminghuri.org

Calling China's forced organ harvesting crimes a "disaster of humanity," Mr. Franz Immer, Cardiovascular Surgeon and CEO of *Swisstransplant*, the Swiss National Foundation for Organ Donation and Transplantation, said that the foundation has been working with the European Parliament and the World Health Organisation (WHO) over the past six years to stop it.

Mr. Immer explained that during his visit to Beijing, he came to understand that "the donor would die, or be killed, at a specified time, at the convenience of the visitors, and subsequently refused to participate,"

According to a recent [BBC Report](#), the Chinese authorities put more prisoners to death every year than the rest of the world combined - an estimated 2,400 people in 2013 - according to the San Francisco-based prisoners' rights organisation, Dui Hua.⁴¹

In the same [BBC Report](#), readers were reminded that China had promised to stop harvesting organs from executed prisoners by November 2014, and then by 1 January 2015, promising for many years that it will end the controversial practice.

China is torturing it's political dissidents and minority groups:

Legally, the definition of torture under international human rights law refers to ⁴² severe pain or suffering at the hands of a public official for a specific purpose.⁴³ The Chinese Government are systematically targeting minority groups, torturing and removing the organs of political dissidents and minorities - causing severe pain and suffering at the hands of their public officials. These acts can clearly be seen to fit within the legal definition of torture.

Though China ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1988, it has failed to bring domestic legislation in line with the obligations of the treaty.

The Committee Against Torture (CAT), the expert UN body charged with overseeing the treaty's implementation, has repeatedly raised concerns about a number of issues in China including: the lack of a definition of torture in domestic laws that accords with that of UNCAT; exclusion at trial of evidence obtained through torture and other ill-treatment; arbitrary detention where there is a high probability of torture and other ill-treatment; torture and other ill-treatment of human rights defenders; and the lack of independence of judges and lawyers.

The UN Special Rapporteur on torture, who visited the country in 2005, addressed similar concerns in recommendations to the Chinese government.

⁴¹ BBC Report dated 4 December 2014, <http://www.bbc.com/news/world-asia-china-30324440>

⁴² Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is the internationally agreed legal definition of torture:

"Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

⁴³ This definition contains three cumulative elements:

- the intentional infliction of severe mental or physical suffering
- by a public official, who is directly or indirectly involved
- for a specific purpose.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment undertook a visit to China from 20 November to 2 December 2005, at the invitation of the Government. The Special Rapporteur on Torture reported that there is evidence to suggest that torture remains widespread in China.

The Special Rapporteur on Torture went on to state that the criminal justice system and its strong focus on admission of culpability, confessions and re-education is particularly disturbing in relation to political crimes and the administrative detention system of “Re-education through Labour”, recognising that “politically deviant and dissident behaviour by the respective target groups such as Falun Gong practitioners and human rights defenders are either subjected to criminal sanctions, or years of administrative detention for having disturbed the social order or similar petty offences”.⁴⁴

Political dissidents, journalists, writers, lawyers, human rights defenders, Falun Gong practitioners, ‘House Church’ attendees and members of the Tibetan and Uighur ethnic, linguistic and religious minorities were often prosecuted as a result of having exercised their human rights to freedom of speech, assembly, association or religion.

The 2006 Special Rapporteurs Report of Torture in China indicated that 66% of the victims of alleged torture and ill-treatment were Falun Gong practitioners.

The combination of deprivation of liberty as a sanction for the peaceful exercise of freedom of expression, assembly and religion, with measures of re-education through coercion, humiliation and punishment aimed at admission of guilt and altering the personality of detainees up to the point of breaking their will, constitutes a form of inhuman or degrading treatment or punishment, which is incompatible with the core values of any democratic society based upon a culture of human rights.

The Declaration of Istanbul on Organ Trafficking and Transplant Tourism:

Most countries in the world are signatories to the *Declaration of Istanbul on Organ Trafficking and Transplant Tourism*⁴⁵, which is also guided by the World Health Organisation’s Principles on Human Cell, Tissue and Organ Transplantation⁴⁶

As the *Declaration*⁴⁷ states: access to healthcare is a human rights, but often not a reality. The rich and privileged in our world have the means to exploit the vulnerable, the poor and the weak. In

⁴⁴ Human Rights Council, Thirteenth session, Agenda item 3, Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development A/HRC/13/39, Distr.: General 9 February 2010 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-39.pdf>

⁴⁵ The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, at: <http://www.declarationofistanbul.org>

⁴⁶ WHO GUIDING PRINCIPLES ON HUMAN CELL, TISSUE AND ORGAN TRANSPLANTATION, As endorsed by the sixty-third World Health Assembly in May 2010, in Resolution WHA63.22 found at: http://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf

⁴⁷ The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, at: <http://www.declarationofistanbul.org>

the Declaration⁴⁸, organ trafficking⁴⁹, transplant commercialism⁵⁰ and travel for transplantation⁵¹ are all defined.

Clause 5 of the *Principles* within the *Declaration* encourages jurisdictional self-sufficiency in organ donation by providing a sufficient number of organs for residents in need from within the country or through regional cooperation⁵².

Australia focuses on organ donations through its annual Donate Life Week Campaign between 30 July and 6 August - Make Your Decision Count⁵³. With only 33% of Australians registered as organ donors, more needs to be done to ensure that demand for organs does not take Aussies off-shore.

The Australian Organ Donor Register is a national register for people to record their decision about becoming an organ and tissue donor for transplantation after death. Registering is voluntary and people have complete choice over which organs and tissues they wish to donate.

As Australia is a developed nation in a developing region, it has heightened responsibility to ensure that privileged well-off Australians do not access organs harvested from vulnerable victims as transplant tourists into our region.

The *Declaration Principles* go on to say that: organ trafficking and transplant tourism violate the principles of equity, justice and respect for human dignity and should be prohibited. Because transplant commercialism targets impoverished and otherwise vulnerable donors, it leads inexorably to inequity and injustice and should be prohibited. In Resolution 44.25, the World Health Assembly called on countries to prevent the purchase and sale of human organs for transplantation.

In its *Proposals*, the *Declaration* affirms the States due diligence obligation to respond to the need to increase deceased donations, and to ensure the protection and safety of living donors and appropriate recognition for their heroic act while combating transplant tourism, organ trafficking and transplant commercialism.⁵⁴

⁴⁸ The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, at: <http://www.declarationofistanbul.org>

⁴⁹ The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, organ trafficking defined as: Organ trafficking is the recruitment, transport, transfer, harbouring or receipt of living or deceased persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation at: <http://www.declarationofistanbul.org>

⁵⁰ The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, transplant commercialism defined as: Transplant commercialism is a policy or practice in which an organ is treated as a commodity, including by being bought or sold or used for material gain, at: <http://www.declarationofistanbul.org>

⁵¹ The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, travel for transplantation defined as: Travel for transplantation is the movement of organs, donors, recipients or transplant professionals across jurisdictional borders for transplantation purposes. Travel for transplantation becomes transplant tourism if it involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centres) devoted to providing transplants to patients from outside a country undermine the country's ability to provide transplant services for its own population, at: <http://www.declarationofistanbul.org>

⁵² Clause 5 of the Principles within the Declaration of Istanbul on Organ Trafficking and Transplant Tourism, at: <http://www.declarationofistanbul.org>

⁵³ Campaign page and how to register to become national donor here: https://register.donatelife.gov.au/?gclid=CjwKCAjwk4vMBRAgEiwA4ftLs7Eqvc_YIL7qr4ahVMLuNVWDsyi_UNA4T0ylwbHC1801czHuSkH9RoCpRkQAvD_BwE

⁵⁴ Proposals of the Declaration of Istanbul on Organ Trafficking and Transplant Tourism, at: <http://www.declarationofistanbul.org>

Trafficking in organ trade is an organised crime, involving a host of offenders.

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons

- includes "organ removal" and its subsequent sale as an end purpose of trafficking.

Article 3 of the United Nations Trafficking Protocol⁵⁵ that defines trafficking in persons, clearly includes trafficking for the purpose of the removal of organs, and states:

*'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude **or the removal of organs;**' [emphasis added]*

The United Nations Office of Drugs and Crime's Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings in their 2013 Analysis and Findings Report has identified China as one of the countries frequently identified as locations of greater organ trafficking activity. In this same report, China was also identified as a destination for harvested organs.

Optional Protocol on the sale of children, child prostitution and child pornography (2000) to the UN Convention on the Rights of the Child (1989)

This protocol states that the sale of children for the purpose of transferring their organs for profit should be a criminal offence.⁵⁶

World Health Organisation (WHO)

The Guiding Principles on Human Organ Transplantation (1991) of WHO state that the commercialisation of human organs is 'a violation of human rights and human dignity'.⁵⁷

Australia's National Plan and Legislation:

In the 2015 *National Action Plan to Combat Human Trafficking and Slavery*⁵⁸, the Australian Government has committed to implementing a strong program of initiatives to prevent and address human trafficking and slavery, both at home and abroad, founded on the following principles:

⁵⁵ The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000 at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

⁵⁶ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002, at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

⁵⁷ WHO GUIDING PRINCIPLES ON HUMAN CELL, TISSUE AND ORGAN TRANSPLANTATION, As endorsed by the sixty-third World Health Assembly in May 2010, in Resolution WHA63.22 found at: http://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf

⁵⁸ Australia's *National Action Plan to Combat Human Trafficking and Slavery, 2015-19*, at: <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf>

1. to prevent and deter human trafficking and slavery;
2. to detect, investigate and prosecute offenders; and
3. to provide support to trafficked people, including by protecting their human rights.

The *National Action Plan* recognises that 'while there is a low reported incidence of organ trafficking in Australia, the clandestine nature of human trafficking means that victims of organ trafficking may be difficult to identify'.⁵⁹

Division 271 of the Criminal Code fulfils Australia's obligations under the *Trafficking Protocol*⁶⁰, and contains specific offences for human trafficking, covering trafficking in all its forms - including organ trafficking offences.

The provision for organ trafficking offences in Division 271 criminalise organising or facilitating the transportation of the victim into, out of, or within Australia, reckless as to whether the victim's organ will be removed contrary to the law of the relevant State or Territory, or without consent.

The slavery-like offences in Division 270 have extended geographic jurisdiction, and can apply where the conduct occurred in Australia, or where the conduct occurred outside Australia but the offender was an Australian company, citizen or resident.

None of the offences in Division 270 require the victim to be subject to an element of movement.

In Australia, State and Territory laws criminalise the removal of organs:

- for the trade or sale of the organs, or
- Where there is no consent for the removal of the organs.

The Commonwealth's organ trafficking laws criminalise the movement of donors into, from, or within Australia for the purpose of the unlawful removal of their organs. For an organ trafficking offence to apply, an element of 'movement' must be present.

The Commonwealth's organ trafficking laws criminalise the movement of people into, from or within Australia for the unlawful removal of their organs. For an organ trafficking offence to apply, both elements of 'movement' and 'removal of organ' must be present, for example:

- If a donor is moved into Australia in order to sell their organ, this will constitute an Australian organ trafficking offence. This applies regardless of whether the donor provided full and free consent to the donation.
- If an Australian citizen travelled overseas in order to purchase an organ ('transplant tourism'), this would not constitute an Australian organ trafficking offence as the donor would not have been moved to, from or within Australia.

While there are few incidents of organ trafficking reported in Australia, the clandestine nature of human trafficking means that victims of organ trafficking may be difficult to identify.

The *Criminal Code Act 1995* (Cth) contains the Commonwealth's human trafficking laws and

⁵⁹ Australia's *National Action Plan to Combat Human Trafficking and Slavery, 2015-19*, at: <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf>

⁶⁰ The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000 at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

comprehensively criminalises the trafficking of a person for the removal of an organ.

- The offences criminalise the trafficking of persons both into and from Australia.
- The offences also criminalise the trafficking of persons domestically within Australia in certain circumstances.

The movement of a person to remove their organ does not necessarily constitute an offence of organ trafficking. The Criminal Code outlines that removal of an organ will constitute an offence of organ trafficking where:

- removal is contrary to the law of the Australian State or Territory where it is meant to be carried out. As all States and Territories have criminalised the trade and sale of organs this criminalises the trafficking of a person for the sale of their organ, and/or
- there is a lack of consent and no medical need. Consent must be full and free and the victim must not have been coerced, threatened or deceived to induce their consent.

Importantly, the Criminal Code does not prevent a medical professional removing an organ of a person without their consent if doing so would save the person's life or avoid significant harm to that person.

An organ does not ultimately need to be removed for there to be an offence of organ trafficking, nor does a person need to intend to commit an offence; a person only needs to be reckless to the possibility. A person will be reckless if they are aware that a substantial risk exists and it is unjustifiable for them to take that risk.

The maximum penalty for an organ trafficking offence is 12 years. If one of the following aggravating factors applies, the maximum penalty is 20 years:

- the offender intends to remove an organ, rather than just being reckless to the removal of the organ
- the offender subjects the victim to cruel, inhuman or degrading treatment, or
- the offender engages in conduct that gives rise to a danger of death or serious harm to the victim or another person and is reckless to that danger.

If the victim is under 18 years of age, the maximum penalty is 25 years.

If an Australian citizen travelled overseas in order to purchase an organ - engaging in what is referred to as 'transplant tourism', this would not constitute an Australian organ trafficking offence unless the donor had been moved to, from, or within Australia.

This inadequate law means that transplant tourism of Australians continues - without due process. Australia needs to consider its ongoing relationship with China, considering China's appalling human rights record - particularly against minority groups.

Australia has a responsibility as a developed nation and economy in the Asia region to not only stand up for minority groups who are persecuted, tortured and their lives are threatened, but also to stand with the human rights activists and lawyers in China who stand for the value and dignity of the life and freedoms of those minorities.

With respect,



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Speaking up for those who cannot speak for themselves

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