

Independent Tribunal Into Forced Organ Harvesting from Prisoners of Conscience in China

Final Judgment & Summary - 2019

Tribunal Members

Sir Geoffrey Nice QC

Prof Martin Elliott

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SUMMARY JUDGMENT

Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China

For over a decade the People's Republic of China has stood publicly accused of acts of cruelty and wickedness that match the cruelty and wickedness of medieval torturers and executioners.

If the accusations are true, then:

Thousands of innocents have been killed to order having the physical integrity of their beings – their bodies – cut open while still alive for their kidneys, livers, hearts, lungs, cornea and skin to be removed and turned into commodities for sale.

Doctors killed those innocent people simply because they pursued truthfulness, compassion, and forbearance and lived lives of healthy exercise and meditation that was seen as dangerous to the interests and objectives of the totalitarian state of the People's Republic of China.

And yet:

The People's Republic of China has done little to challenge the accusations except to say that they were politically motivated lies; and

Governments around the world and international organisations, all required to protect the rights of mankind, have expressed doubt as to the accusations thereby justifying their doing nothing to save those who were in due course to be killed to order.

If the accusations are proved they will, inevitably, be likened to the worst atrocities committed in conflicts of the 20th century; but victim for victim and death for death, the gassing of the Jews by the Nazis, the massacre by the Khmer Rouge or the butchery to death of the Rwanda Tutsis may not be worse

than cutting out the hearts, other organs and the very souls of living, blameless, harmless, peaceable people.

But If the accusations are to be proved in this Judgment then the above images, and the words that describe them, must be minimised; priority must instead be given to the process where judgments can be made free of emotion and where universal principles of justice can be applied to that process in the interests of any who, yet living, may be at risk and to avoid prejudice or prejudgment falling on the People's Republic of China

INTRODUCTION

1. This is the unanimous judgment of 'The Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China' (the Tribunal), a 'People's Tribunal' formed, as others have been, to make a decision about an important issue of public concern not dealt with elsewhere. It was formed by 'The International Coalition To End Transplant Abuse In China' (ETAC), a not-for-profit coalition of lawyers, medical professionals and others dedicated to ending what they assert to have been, and to be, the practice of forced organ harvesting in China.¹
2. ETAC's main interest has been the alleged suffering of practitioners of 'Falun Gong', a group performing meditative exercises and pursuing Truthfulness, Compassion, and Forbearance, but regarded by the People's Republic of China (PRC) since 1999 as an 'anti-humanitarian, anti-society and anti-science cult'²

¹ The International Coalition to End Transplant Abuse in China (ETAC) began in 2014 as a web platform providing a comprehensive information source on the issue of forced organ harvesting of prisoners of conscience in China. The website features independent reports, lectures, testimonies, government action, latest news, press coverage and videos. The site was originally named End Organ Pillaging (EOP):

² Document produced from the Embassy of the People's Republic of China in the Republic of Estonia, 'Falun Gong's anti-humanity, anti-science, anti-society nature denounced': www.chinaembassy.ee/eng/ztlm/jpflg/t112893.htm, accessed 1 October 2018.

3. ETAC invited Professor Martin Elliott, Andrew Khoo, Sir Geoffrey Nice QC (Chairman), Regina Paulose, Shadi Sadr, Nicholas Vetch and Professor Arthur Waldron to form the Tribunal³ and to decide by evidence whether forced organ harvesting from prisoners of conscience in the PRC had happened, whether it was continuing and, if so, what criminal offences, if any, have been committed by the PRC or other bodies or individuals.
4. Once formed, the Tribunal was served by Counsel to the Tribunal, Hamid Sabi and Tabitha Nice.⁴
5. All members of the Tribunal, Counsel to the Tribunal and volunteer lawyers have worked entirely '*pro bono publico*', meaning without payment of any kind. None is a Falun Gong practitioner or has any special interest in the Falun Gong. The Tribunal members have maintained distance and separation from ETAC in order to ensure their independence.
6. Investigations into transplant of human organs in the PRC started as long ago as 2001
7. The principal non-governmental investigations since 2009 have been Bloody Harvest by David Matas and David Kilgour (2009), The Slaughter by Ethan Gutman (2014) and 'An Update' to Bloody Harvest and The Slaughter (2016) by all three authors working together.
8. Government and international investigations and inquiries included:

2001 -Subcommittee on Trade of the US House Committee on Ways

³ Andrew Khoo; Advocate and solicitor Kuala Lumpur; Co-Chair Constitutional Law Committee, Bar Council of Malaysia
 Professor Martin Elliott professor of cardiothoracic surgery at UCL, London and paediatric thoracic transplant surgeon
 Sir Geoffrey Nice QC; barrister England and Wales; prosecutor UN Criminal Tribunal for former Yugoslavia 1998-2006
 Regina Paulose, Attorney (USA), Vice Chair Programs American Bar Association International Refugee Law Committee
 Shadi Sadr; Iranian lawyer, Director of 'Justice for Iran'; judge of People's Tribunals on Indonesia and Myanmar
 Nicholas Vetch; London Businessman; Trustee Fund for Global Human Rights
 Professor Arthur Waldron; Lauder Professor of International Relations, University of Pennsylvania; specialist in China
 Further details available on the CHINATRIBUNAL website

⁴ Hamid Sabi International arbitration lawyer; Counsel to the Iran Tribunal
 Tabitha Nice Solicitor

Markus Findlay barrister; Caseworker at Advocate; Bursary Officer of the Human Rights Lawyers Association

and Means

2007 - Report of the UN Special Rapporteur on Torture

2008 - Report of the UN Committee Against Torture

2009 - Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions

2013 - European Parliament resolution on organ harvesting in China

2016 - Report of the US Subcommittee on Human Rights; 114th Congress Second Session

2016 – European Parliament Written Declaration on stopping organ harvesting from prisoners of conscience in China

2016 – US House Resolution 343 — 114th Congress (2015-2 016)

2018 -U.S. Commission on International Religious Freedom (USCIRF) Report.

2018 - November 2018 Australia House of Representatives Joint Standing Committee on Foreign Affairs, Defence and Trade, Human Rights Sub-Committee

9. Matas, Kilgour and Gutman have become certain of their conclusions about forced harvesting as a past and continuing activity of the PRC believing, as Kilgour suggested in evidence to the Tribunal on Sunday 7th April 2019, that the facts revealed an ‘inconvenient truth’ for other countries.
10. Over the years some reports commented on possible international criminal law offences; none pronounced on criminality with any certainty. *Had* any official national or international body pronounced authoritatively on criminality of the organ transplant practices in the PRC then there would have been no reason for ETAC to commission the Tribunal.
11. The Tribunal has considered *past and present* practices. Past practices of the kind alleged – if proved – are not to be set aside as historic and more conveniently forgotten. These allegations are of the gravest possible kind that should attract the maximum public censure, if proved, whether or not continuing.

JURISDICTION

12. Jurisdictions for other People's Tribunals - The 'Comfort Women Tribunal' into sexual slavery of women by Japan for its WWII military, the Russell Tribunal into the Vietnam War, the Indonesia Tribunal into events of 1965, The Iran Tribunal into events of the 1980s - have been founded in different ways.

13. To take one, Jean Paul Sartre, a member of the Russell Tribunal said:

'[the Tribunal] is not a substitute for any institution already in existence: it is, on the contrary, formed out of a void and for a real need. . .'

14. Sartre detected a universal spirit for international justice starting with the Nuremberg Tribunal that may have been the driving force for *all* informal People's Tribunals created since World War II as the world order of international organisations was developing.

15. The China Tribunal's jurisdiction, as with the Russell Tribunal, is expressly to be found in a gap left by the failure of any official body to pronounce on the criminality or otherwise of the PRC's organ transplant practices.

16. The only formal international *judicial* bodies that *might* have been required to act are the International Criminal Court for crimes by individuals that came into being in 2002 and the International Court of Justice for any alleged breaches by the PRC of the Convention on Genocide. Both courts are almost certainly powerless in respect of these issues and have not, in any event, been asked to act by states that have the power to make such requests.

17. Founding its jurisdiction on the gap left by all other official bodies the Tribunal is satisfied it should *not* make recommendations built on its own Judgment to do things that it is the responsibility of governments, existing

bodies and individuals to do once aware of the Judgment, assuming they accept it.⁵

EVIDENCE

18. The Tribunal's took evidence on the 8th, 9th and 10th of December 2018 and the 6th and 7th of April 2019,
19. Evidence was submitted by ETAC for the first hearing, amplified by further evidence following the first and second evidence hearings. The Tribunal received advice on the relevant issues of law from legal experts practising in different jurisdictions.
20. The Tribunal met to discuss its judgment via the internet.
21. All witnesses bar one were heard in public and videos of their evidence are available on the CHINATRIBUNAL website.
22. Invitations to attend the proceedings, to participate in them, to give evidence or simply to make representations were sent by the Tribunal's Counsel Mr. Hamid Sabi to the Ambassador to London of the PRC and to prominent transplant physicians in the PRC and elsewhere. Similar invitations were also sent to past and current presidents of The Transplantation Society (TTS). Representatives of the Declaration of Istanbul Custodian Group⁶ and of the TTS provided statements but no evidence of any value and their representatives, and all others who had been invited, declined to appear. All relevant correspondence is posted on the Tribunal website.
23. Thus, all material available to and considered by the Tribunal – including the video recordings of witnesses who gave evidence in person - is readily available to readers of this Judgment and the public generally.

⁵ There may, for example, be many businesses and institutions - including airlines, travel companies but also academic and artistic bodies and professional associations (medical most obviously) - likely to have policies related to China which could be the subject of recommendation. They are clearly capable of acting on available information about the PRC without a recommendation from a People's Tribunal

⁶ 'Declaration of Istanbul on Organ Trafficking and Transplant Tourism' – see <https://declarationofistanbul.org>

TRIBUNAL'S METHOD OF WORKING

24.METHOD. Extracts from the Tribunal's method of working, detailed in the full Judgment, include

- a. Witness evidence was dealt with on a 'free evaluation' basis unrestricted by requirements for corroboration or the exclusion of hearsay;
- b. All witnesses, because they had not faced questioning by or on behalf of the PRC, were approached by the Tribunal with caution, searching for any weaknesses in their evidence, the Tribunal also being alive to the risk of group enthusiasm operating on the minds of witnesses who are Falun Gong supporters, whether or not actual practitioners;
- c. The Tribunal did not act on opinions of experts or researchers on the *final issues* the Tribunal has to decide but did rely on their research or expertise, where appropriate, for other issues;
- d. The Tribunal drew no inferences from failure of the PRC or any individuals to respond to invitations to participate in the Tribunal's proceedings;
- e. All written material was approached as for any work of scholarship or research by exploring underlying material supporting the document or video recording for reliability or unreliability.
- f. Tribunal members did not contribute evidence based on their own expertise save for Professor Martin Elliott who did, on occasions, add some medical information on non-contentious subjects. All members of the Tribunal may be seen as jurors acting on evidence of fact and

the expertise of others, including expertise about the law, to make their judgment.⁷

25. Every step of the process has been explained by postings on the CHINATRIBUNAL Website along with all evidence. In this way the public may themselves engage in the same process of decision-making as the Tribunal has done.

26. LAW. Opinions and an Advice on law received from Edward Fitzgerald QC of the UK Bar and Datuk N. Sivananthan of the Malaysian Bar are posted on the website and referred to in the Tribunal's conclusions.

27. On genocide, a crime referred to in public as possibly committed by forced organ harvesting, it is important to note that there is no simple definition in law of the crime that matches the non-lawyer's understanding of it. This may have led to a gap between the non-lawyer citizen's understanding of the term 'genocide' generating unrealistic expectations of when the crime of genocide may be charged in a court. This gap is not necessarily helpful or healthy, but for the time being unavoidable.⁸

⁷ A consequence of this, although no pre-condition for lawyer members of the Tribunal, Counsel to the Tribunal or volunteers assisting Counsel, is that none of those trained as lawyers around the world has in any way been providing legal services. True to the concept of a People's Tribunal they, and all others, have acted without supply of legal services and simply as ordinary citizens.

⁸ There is a recurring issue with the understanding and use of the term genocide by those who have themselves personally suffered, or who are concerned on behalf of those who have suffered, terribly at the hands of others. Believing that no suffering can match for gravity their suffering such people often *want* the cause of the suffering labelled as 'genocide' on the basis that genocide is the worst of all possible crimes. This is a grave misunderstanding as there are many examples of crimes labelled in other ways that might be regarded as being as bad, or worse, than genocide. For example, the destruction of the Twin Towers in 2001 was no genocide. Should someone explode a nuclear device – or let off a 'dirty bomb' – in a multi-ethnic city it would not necessarily be genocide.

Genocide is a crime for which there has to be proof of a particular hostile state of mind in an individual or in a government body towards a group that qualifies under the Genocide Convention's or the ICC Statute's limited set of groups against whom genocide can be committed. The state of mind – hostility to a group simply because of who are in the group – is irrational or even mentally disturbed by today's standards. It is not *necessarily* more evil or wicked than would be a mental state driven by a calmly calculated decision to commit the same acts but for a clearly non-genocidal reason - e.g. to slaughter a defined ethnic group of prisoners who might otherwise rise again as combatants. And as to the difficulties of any victim group being properly within the statutory definition, the limited category of qualifying groups is a matter of drafting of the Convention in 1948 and not now a matter for revision or even complaint.

In short, atrocities of concern not being labelled or proved as genocide but being cast as different crimes, for example Crimes Against Humanity, in no way diminishes the gravity of those crimes.

28. The Tribunal attempted to honour the principle of ‘hearing the other side’ by asking the PRC to make its case known, but with no success.
29. The Tribunal makes conclusions of certainty about the commission of crimes, whether by individuals or by the PRC itself, by applying the test of ‘proof beyond reasonable doubt’ both as to the *mens rea* (mental state) and *actus reus* (acts done) by the PRC. For any lesser degree of strength of conclusions, it will use ‘non-technical language’.
30. RISKS OF PREJUDICE. Although most members of the Tribunal had absolutely no knowledge of the allegations made about organ harvesting in the PRC until approached by ETAC, all were aware in general terms that the PRC had a reputation for abject failure to respect Human Rights, in particular the rights codified in the UN’s 1948 Declaration of Human Rights. On review of the evidence *as a whole* the Tribunal became *certain* that the PRC has, throughout the last 20 years, been in substantial breach of many Articles of the 1948 Universal Declaration.
31. The Tribunal guarded itself against allowing that certainty to prejudice the PRC by considering categories – or topic areas - of evidence separately. Evidence relevant for each category, and nothing else, was considered in turn. That evidence was analysed on the basis that it related to an imaginary country with a good human rights record. What – viewed in isolation – did that evidence prove? The purpose and value of this exercise emerges in the Tribunal’s final conclusions.

EVIDENCE - DESCRIPTION OF WHAT HAPPENS IN TRANSPLANT SURGERY

32. The ability to transplant an organ from one human being to another is a scientific and social triumph.
33. Integral to any form of transplantation is the principle of consent; of the organ donor and his or her family.

34. Transplantation is built on trust, and proper governance structures are required to underpin, that trust. Removal of organs from a previously conscious and healthy person, without their consent, clearly constitutes murder, if the organs are vital to life.
35. Live donation of blood, bone marrow, a kidney, part of a liver and part of a lung is possible without sacrificing the donor, however most transplantation of solid organs can only take place from a cadaver.
36. In all, but one, countries of the world, organs can only be removed from people who are brain dead; that has not been the case in the PRC.
37. Organ donation laws vary somewhat from country to country, variations largely covered by the concepts of 'opt in' or 'opt out'; but in either case necessarily built on sound, well-established ethical foundations and considerable trust.
38. Successful, ethical transplantation requires matching of tissue and blood types, absence of disease and appropriate organ size matching in addition to other technical factors.
39. A scalable transplantation system requires an infrastructure which efficiently matches organs with recipients as they become available. The shortage of available organs means that there exists in most countries a formal organ allocation system
40. Each country has an integrated system for organ retrieval, underpinned by strong ethical principles and robust quality and clinical governance support systems.
41. An effective transport and organ distribution system is necessary to create a well-functioning transplant system and skilled trained teams of transplant surgeons, physicians, nurses and technicians are required. Transplantation is a highly integrated process requiring a broad range of expertise.

EVIDENCE - GENERAL BACKGROUND OF RELEVANCE TO OUR INQUIRY.

42. China is one of the oldest continuous civilisations of the world and it is the world's most populous country with some 1.4 billion individuals.
43. The people of China – its citizens – have lived under authoritarian communist governments since the Second World War. Although that may be significant for understanding the behaviour of some of the country's citizens there can be no suggestion that the people of China are in any way different or have different expectations or entitlements in regard to their human rights; witness the events in Tiananmen Square in 1989.
44. From amongst these citizens emerged the Practice of Falun Gong with 70 million practitioners, driven (as above) by the pursuit of truthfulness, compassion and forbearance. Their beliefs may be thought to be entirely compatible with the human rights of today, just as when a citizen of China contributed to the drafting the Universal Declaration of Human Rights in 1948.⁹
45. The PRC is entitled to the respect due to an enormous and powerful state. The human rights of people ruled by the PRC and by the Communist Party of China (CCP) are entitled to the same respect as for any other citizen of the world.
46. For a general account of relevant early history, the Tribunal has accepted as reliable the background sections of the report prepared for the Tribunal by the China Organ Harvesting Research Centre (COHRC). The Tribunal heard

⁹ The Declaration was drafted by a committee, initially of three persons that included Dr. Peng-chun Chang of China a playwright, philosopher, educator and diplomat who was able to explain Chinese concepts of human rights to the other delegates and creatively resolved many stalemates in the negotiation process by employing aspects of Confucian doctrine to reach compromises between conflicting ideological factions. He insisted, in the name of universalism, on the removal of all allusions to nature and God from the Universal Declaration of Human Rights: Dag Hammarskjöld Library <http://research.un.org/en/undhr/draftingcommittee>

from two of its authors; David Li and Dr Huige Li. A summary of the report is as follows;

- a. Since 2000, the Chinese government prioritised organ transplantation in its national strategy and continuously incorporated organ transplantation into its Five-Year Plans for multiple ministries. The government invested heavily in research, development, personnel training, hospitals, and civilian and military institutions resulting in the establishment of a huge organ transplantation apparatus.
- b. The PRC came to perform more transplants than any other country in the world in just a few years, all this despite the lack of a voluntary organ donation system.
- c. In response to international criticism, Chinese officials announced in 2006 the cessation of organ extraction from death-row prisoners and, subsequently, claimed a transition to a voluntary donor system. Huang Jiefu, the central figure in the PRC's transplantation industry¹⁰ said in a CCTV interview in 2015, that the PRC had built its voluntary organ donation infrastructure in only a few years; that contrasts with other countries where the process has taken decades.
- d. Falun Gong is a Buddhist meditation practice. By the end of the 1990s, the government and critically the former Communist Party leader Jiang Zemin saw Falun Gong's 70 million adherents as a threat to the CCP and to his rule and launched a violent campaign in mid 1999 with the aim of eradicating the practice. The chosen instrument, the 610 Office, was endowed with extraordinarily broad and extra-legal power empowering it to make extra judicial arrests, imprison without trial and torture with impunity.
- e. A collection of documents and notices issued around July 20, 1999, identifies the official launch of a *douzheng* - a vicious propaganda and persecutory campaign against Practitioners of Falun Gong.
- f. In early September 2001, despite and following international pressure and an official announcement ordering the release of illegally detained

¹⁰ Current Chair of the PRC's National Organ Donation and Transplantation Committee; reported to have led the party committee in the Sun Yat-sen University studying anti Falun Gong literature. In May 2001 reported as saying the 'struggle against Falun Gong is a serious political campaign. We must have no mercy towards the few active members'; in September 2005 he ordered two spare livers of the required blood type from Guangzhou and Chongqing to do a live transplant in Xinjiang province. The inference drawn is that two people were killed to order for the 'back up;' livers – that were never used – to be available. In a January 2003 paper he had referred to 123 orthotopic liver transplantations performed at his centre with warm ischemia time between 30 seconds and 8 minutes – indicating death at the hospital site not at an execution site. A 2012 paper he co-authored spoke of 10 liver pancreas transplants from voluntary donors with no heartbeats all between 21 and 41 consistent with livers coming from extrajudicial killings because voluntary donation had yet to start in the PRC; See further https://chinatribunal.com/wp-content/uploads/2019/06/MagnitskySubmission_OfficialsSurgeons_Final.pdf pages 29 *et seq.*

Falun Gong Practitioners Luo Gan, the head of the 610 Office, issued a countermanding secret order to all levels of the judicial system: 'Whoever is found to be practicing Falun Gong should be secretly arrested and sentenced to a life sentence until death'. In the same month, Jiang Zemin issued another directive: 'Beating them to death is nothing. If they are disabled from the beating, it counts as their injuring themselves. If they die, it counts as suicide!'

47. Nothing in the COHR Report has been contradicted by the evidence from witnesses heard in person by the Tribunal and much of it has been directly confirmed.

48. A report prepared by The Human Rights Law Foundation, a body entirely separate from COHCR, will be annexed to the Tribunal's full Judgment. The Tribunal accepts as accurate the report from which the following extract is taken:

- a. On April 27, 1999, a 'Notice' was issued from Jiang Zemin to Politburo Standing Committee Members amongst others. According to this notice, it was Jiang Zemin who personally decided to respond to Falun Gong adherents' peaceful appeal with a violent persecution. Important signals were contained in the letter. The use of aggressive and militaristic language against Falun Gong adherents was a signal for the launching of a violent crackdown.
- b. In September 1999, at the Asia-Pacific Economic Cooperation meeting in New Zealand, Jiang Zemin gave leaders of all countries, including the then US president Bill Clinton, a book full of the CCP's anti-Falun Gong propaganda, including portrayals of Falun Gong adherents as dangerous and/or insane persons needing to be suppressed.
- c. On October 25, 1999, before Jiang Zemin's state visit to France, he accepted an interview in written format by the French newspaper *Le Figaro*. Jiang Zemin attacked Falun Gong and called Falun Gong an 'evil cult,'.
- d. In September 2000, Jiang Zemin was interviewed by CBS TV and made the following statement: 'after careful deliberations, we concluded that Falun Gong is an evil cult'.

49. Witnesses making valuable contributions include Edward McMillan-Scott, a former Member of the European Parliament. He described the result, as he believed it to be, of interviews he had with two Falun Gong Practitioners, Cao

Dong and Niu Jinping being enough to cause Cao Dong to be imprisoned. He described a further meeting attended by the UN rapporteur on torture, Manfred Nowak, with human rights attorney Gao Zhisheng. Subsequently, Gao was injured in what he believed was a staged road accident. This led to Gao sending letters to the European Parliament and to the US Congress. He was then imprisoned and tortured to such an extent that he attempted suicide and has now disappeared into the PRC's penal system.

50. Matthew Robertson, a Chinese speaking expert academic and researcher, spoke of how the PRC's organ transplantation industry embarked on a period of rapid development post-2000, including, *inter alia*, the opening of new transplant wards, hospitals, research laboratories, training of new medical professionals and the development of research into immunosuppressant drugs; all resulting in a rapid expansion of the PRC's organ transplant capability. The Chinese Government, Robertson explains, has provided no adequate explanation for the source of organs justifying this huge expansion.

51. Prof. Wendy Rogers is an ethicist and researcher into forced organ harvesting allegations and is a Board Director of ETAC but is not herself a Falun Gong practitioner. She reports on extensive failures to meet ethical standards of research and academic papers prepared by PRC transplant entities and professionals between 2000 and 2017; such failures being to exclude research based on organs from prisoners or to provide evidence of consents of donors. The Tribunal is asked to consider it odd that such a potentially important body of work should fail in these respects without some good cause. By implication the Tribunal is invited to conclude that there is no 'good cause' that could be made public and that the failings are indicative of a far darker reality. Rogers also points to *inactivity* of international medical bodies in face of the known allegations and, worse, the

exculpatory behaviour and statements of a few international transplant surgeons, notably from Australia, which may have served to encourage the perpetuation of unethical - or worse - organ transplant practices in the PRC.

52. The general approach of the PRC towards the practice of Falun Gong could hardly be clearer. For being seen to be – however unintended - a threat to the authority of the CCP, Falun Gong practitioners were to be subject to any process of physical harm and dehumanisation, and ultimately to extra-judicial killing, that might serve to eliminate Falun Gong thinking.

53. On the basis of all the evidence on this topic presented to the Tribunal, the Tribunal concludes, with certainty, that since 1999 the PRC and the CPP regarded practitioners of Falun Gong as unworthy of any of those universal rights that attach to human beings by reason of their humanity, simply to maintain their power and authority over the Chinese people. Coincident with the developing persecution of practitioners of Falun Gong over time has been an enormous, unexplained provision of transplant hospitals in the absence of a voluntary organ donor system.

EVIDENCE - DIRECT EVIDENCE OF FORCED ORGAN HARVESTING

54. Forced organ harvesting, for the Tribunal's purpose, means killing one person without their consent in order that their organs may be removed and transplanted into another person. The Tribunal has considered a significant volume of direct evidence of forced organ harvesting, more details of which will be included in its full Judgment but by way of sample:

55. Professor Huige Li cited a paper of his joint authorship reciting how in 1978, Zhong Haiyuan, a schoolteacher from the Jiangxi Province, was sentenced to death for her 'counter-revolutionary' thoughts. The execution was performed by police officers, ordered not to kill Zhong immediately. They are

quoted as saying; 'The kidneys must be harvested before she dies', because the army doctors wanted high quality kidneys, 'kidneys from a living person'.

56. Enver Tohti was quoted in *The Slaughter* authored by Ethan Gutman. He gave his account to the Tribunal explaining that in 1995 when he was a general surgeon at a hospital in Urumqi:

He was ordered - based on his availability and with two assistants, an anaesthetist and the 'largest operation equipment' - to go to the Western Mountain Execution Grounds.

At the execution grounds there was the sound of multiple executions from multiple simultaneous gunshots. Tohti then saw that all but one of the 10-20 executed people had been shot in the head. The victim he was ordered to operate on was 'different' from the others. His head had not been shaved, he was in civilian clothes and he had been shot through the right chest rather than the head. Tohti supposed this was to keep the victim's heart beating. The victim was brought, tied down on a trolley, to the vehicle in which Tohti and his team waited and Tohti was ordered to 'cut deep and work fast'.

According to Tohti, the victim was not anaesthetised. Tohti removed the liver and both kidneys. The skin bled when cut, from which fact Tohti deduced that the victim was still alive.

57. In 2002, Zhiyuan Wang received a call from a guard who had tortured a woman for a week and then guarded her while surgeons cut her open without anaesthetic for her organs as she shouted out, amongst other things, 'Falun Gong is good'.

58. A woman with the pseudonym 'Annie' told the *Epoch Times* in March 2006 how her ex-husband had removed the corneas from 2000 people between the years 2001 and 2003, Falun Gong practitioners who had had organs removed after being 'executed' by injection.

59. Huige Li also gave evidence of the 4 methods of live organ harvesting practice in the PRC;

Incomplete execution by shootings.

After lethal injection; where Li described how death can occur under the legal definition within tens of seconds of injection, and Li states that it can be assumed that all organ procurement after lethal injection happened on still-living bodies.

Execution by organ explantation; Li referred to a paper published in 2003 describing the major points of heart removal. Li argued that the lack of criteria for brain death before 2003 meant that the donor could not be brain dead, and thus the beating heart being stopped with cold cardioplegia for extraction was the cause of death.

Organ harvesting under the pretext of brain death; Li provided evidence from Chinese scientific papers where patients were endotracheally intubated *after* definition of brain death. This is not possible. Brain death is associated with the inability to breathe spontaneously. These patients cannot have met the criteria for brain death acceptable elsewhere. They were, perforce, alive at the time of organ donation, even if not conscious of it.

60. The Tribunal notes that the most important aspect of Li's evidence is that relating to removal of organs, by whatever means, without the formal establishment of brain death.

EVIDENCE - INDIRECT EVIDENCE OF FORCED ORGAN HARVESTING

61.. The first recorded instance of organ harvesting from a Chinese political prisoner as a result of execution was in 1978.

62. In 1984, multiple government bodies and ministries jointly promulgated a regulation allowing the bodies and organs of prisoners to be used at will by the State. The Tribunal has considered a weight of evidence which will be included in its full Judgment; the following are for illustration:

63. In January 2001 Liu Yumei, on arrest, was told to give her name and address or all her organs would be harvested.

64. In May 2002 Liu Huiqiong, imprisoned in Beijing Women's Labour Camp, was told by prison officials in the presence of others that Falun Gong practitioners are kept as spare parts.
65. Sometime between 2001 and 2005 a doctor, sympathetic to Falun Gong practitioners, told Yu Xinhui secretly, 'Don't go against the Communist Party..... You won't even know how you will have died. When it happens, where your heart, liver, spleen, and lungs will be taken, you won't even know that either..... You practitioners' organs are the best.'
66. In 2005, Dr Jacob Lavee, former Chair of the Israel Society of Transplantation, had as a patient someone with severe heart failure who was told by his medical insurance company that he could go to the PRC to undergo heart transplantation *on a specific date*. This would not be possible in countries relying on standard transplant practices.
67. The Tribunal found all witnesses who gave evidence in these categories to be believable and they found nothing to cause doubt about any one of them. None had any purpose to serve, that the Tribunal could discern or imagine. Their evidence was often distressing to hear.
68. CONCLUSION FROM DIRECT AND INDIRECT EVIDENCE OF FORCED ORGAN HARVESTING. There is a reasonable amount of direct and indirect evidence of forced organ harvesting. The 'industrial scale' of the practice, as argued for by some, might lead to an expectation of much more evidence being publicly available than is the case. Why should this be?
69. The militarisation of medical services is relevant; the large number of military and police hospitals involved in transplantation - operating a 'do as you are told, or else', policy - is surprising and lends support to the arguments about the organisational structure of the country, including the

military, supporting expansion of transplantation services. Rapid extraction of organs from prisoners has clearly happened often.

70. On the basis of all direct and indirect evidence, the Tribunal concludes with certainty that Forced organ harvesting has happened in multiple places in the PRC and on multiple occasions for a period of at least twenty years and continues to this day.

EVIDENCE - MEDICAL TESTING OF FALUN GONG and UYGHURS

71. Blood testing is a pre-requisite for organ transplantation as donors need to be matched with recipients so that antibodies present in the recipient do not interact with antigens present in the donor organs, leading to rejection. The only way for transplantation to succeed at scale is to have databases matching donors with recipient tissue types.

72. As will be fully evidenced in the Tribunal's full Judgment, Falun Gong practitioners in detention were 'systematically subjected to blood tests and organ examinations. Other prisoners were not tested. Matas and Kilgour in their report contest that there is no rational health reason for such testing or organ examinations, mainly because the health of Falun Gong prisoners was otherwise disregarded by the authorities.

73. Dr Trey, an (expert) witness raises the question '*Why would detained Falun Gong practitioners receive specific physical examinations (including x-rays, ultrasound, blood tests) while at the same time being subjected to brainwashing, labour work, torture or torture death?*' He postulates that the only rational explanation is to build up a systematic medical databank of potential living organ donors.

74. Whilst the questions raised by Trey are appropriate, the Tribunal has seen no evidence specifically to confirm what the tests were, what the resultant findings were, and for what purpose(s) they were used.
75. No purpose of this testing was given by the authorities of the hospitals or prisons to those who gave evidence of having been tested; nor has any explanation been given to other inquiries into forced organ harvesting about the purpose.
76. We must ask why a prison management system might test anyone in the ways described, if at odds with other purposes of internment. Quantities of blood taken do not appear to have been sufficient to permit transfusion to others. The apparent limiting of testing to certain groups does not support an epidemiological approach, say to infection control, since the entire population of the prison would need to be tested for that to have value. Further, the assessment of internal organs by ultrasound could only be to assess how that organ looked structurally. One can postulate that such examinations might have been done to define the state of an organ before or after physical abuse, which we have heard in evidence was frequent in the camps. However, the routine application of such tests as described is more consistent with a baseline assessment of organ status for other purposes, specifically potential organ donation.
77. On the basis of this and all other evidence on the subject, the Tribunal concludes, with certainty, that the medical testing of groups including Falun Gong and Uyghurs was related in some way to the group concerned because other prisoners were not tested. The methods of testing are highly suggestive of methods used to assess organ function. The use of ultrasound examinations further suggests testing was focused on the condition of

internal organs. No explanation has been given by the PRC for this testing; blood or otherwise.

EVIDENCE - INCARCERATION AND TORTURING OF FALUN GONG:

78.As explained above the Tribunal has, where possible and realistic, approached evidence without regard to the PRC's general record of human rights violations. The same approach might suggest that evidence of specific bad conduct – for example torture of religious or ethnic groups - by the state should be disregarded altogether. However, there *may* be a multiplicity of PRC objectives in any forced organ harvesting by the state or by state-approved bodies, including *inter alia*: financial profit, development of transplantation skills, suppression of Falun Gong and its beliefs and dehumanising the Falun Gong - in the minds of those who knew of the harvesting - to alienate them from society.

79.The Tribunal takes the view that understanding the scale and scope of imprisonment without any due process followed by torture of those imprisoned – although it will be assessed as a separate category of evidence and as a single issue at this stage – is of *potential* significance for the Tribunal's Judgment for the following reasons:

It provides a further context in which the treatment of the Falun Gong as a group by the Chinese authorities may be viewed;

It contributes to an overall understanding of the different sets of crimes that have been inflicted on the Falun Gong; and

It reveals the widespread and systematic way in which such actions were undertaken.

80.Every witness that appeared before the Tribunal and who identified as a Falun Gong practitioner had been arrested and imprisoned, and then

tortured whilst incarcerated. Acts of torture occurred throughout the country.

81. According to all the witnesses, the torture took many forms of physical punishment: being forced to adopt a particular physical posture for long periods of time, being hanged from a height using handcuffs, being stretched using cloth belts, being deprived of sleep and food, being prodded with electric batons often on the genitals, being forced to do manual labour, being denied access to the toilet or bathing facilities, being forced to consume medication or drugs, and being publicly humiliated (including by sexual violence). Psychological torture included being made to write 'confessions'.

82. None of the allegations of torture could be independently verified; however, the detail in which the victims described their suffering and the similarities in experience together with the conformity of those experiences from different parts of the PRC are striking.

83. Physical abuse by way of being beaten was also alleged by non-Falun Gong witnesses that appeared before the Tribunal, dealt with specifically so far as Uyghurs are concerned later.

84. All relevant witness statements and their oral evidence will be available in the Judgment and on the Tribunal website. The evidence of Jintao Liu and Lijuan Tang are entirely typical of what was heard by the Tribunal.

85. Speaking of September or October of 2007 Jiantao Liu related how:

They often pulled the force-feeding tubes in and out several times just to torture him. Prisoner Zhang Guobing also urinated into the sticky fluid used to force-feed him. During the day, four prisoners participated. They shoved faeces into his mouth. They forced a toilet brush handle into his anus. They pushed the handle so hard that he couldn't defecate. They also handled his genitals and forced his back against an extremely hot heating unit. They woke him at night by pouring cold water on him, or by piercing his skin with needles. They then dragged him to the ground, stripped him and

poured cold water over him. Yuan Li often used a sharp point on his badge to puncture his nails the prisoners forced him to sit still on a small plastic stool for an extended duration. They also forced him to stand motionless for long periods, until his legs and feet were badly swollen. Additionally, there were times that they denied him toilet use, forcing him to urinate and defecate in his pants.

In 2011 Lijuan Tang was imprisoned for three and a half years. he had been tortured by all kinds of brutal methods of torturing. He was not allowed to eat, not allowed to go to the toilet and had to urinate sometimes in his pants. His pants became dry due to body heat. He was not allowed to take any shower or wash. He was not allowed to sleep. Once he was not allowed to sleep for almost 20 days. When his eyes closed, they used a nib to prick his body and legs. The pricking caused red blood dots which festered, and his flesh stuck to his pants.

86. On the basis of all available evidence the Tribunal concludes with certainty that acts of torture have been inflicted by the PRC authorities on persons detained for their practice of, support for and defence of Falun Gong and for no other reason. Yet practising Falun Gong in other countries could never be considered or constitute any criminal offence. The Tribunal is certain that such acts of torture have taken place at many different sites in the PRC over a long period of time, that acts of forced labour have been particularly harsh and brutal. Acts of torture, generally, reveal an overall consistent attitude and approach of the PRC towards practitioners of Falun Gong which is systematic in nature and designed to punish, ostracise, humiliate, dehumanise, demean and demonise practitioners of Falun Gong into renouncing and abandoning their practice of it.

EVIDENCE - INCARCERATION AND TORTURE OF UYGHURS

87. In addition to what is done to the Falun Gong, The Muslim minorities in Xinjiang - the Uyghurs, the Kazaks and the Uzbeks - are the focus of a CCP crackdown. The CCP has placed restrictions - including by mass incarceration - on the Uyghurs as well as on other religious adherents, such

as Tibetan Buddhists, House Christians, all part of the CCP's policy of *sinicization*. One of the pivotal moments in the region took place in 1996 when the CCP launched 'strike hard' campaign(s) to stop what they believed were illegal religious activities. The CCP introduced 're-education camps' in order to give 'patriotic re-education,' where witnesses have evidenced that multiple forms of torture and murders of political prisoners take place.

88. It is believed that there are 'in the hundreds of thousands, and possibly millions of Uyghurs in prison. Ethan Gutman gave evidence to the Tribunal in December 2018 stating that *'over the last 18 months, literally every Uyghur man, woman, and child – about 15 million people – have been blood and DNA tested, and that blood testing is compatible with tissue matching.'*¹¹ Dr. Enver Tohti corroborated this in his statement to the Tribunal, where he detailed news in June 2016 that the CCP gave Uyghur people free national health examinations. He suspected that the *'CCP is building their national database for organ trade' and that the number of samples collected has 'exceeded 17 million.'*

89. The Tribunal is in receipt of a considerable amount of evidence of incarceration, torture and blood testing being performed on this group of people, and all that evidence will be contained in the Tribunal's full Judgment. As a specific example, however, the following is detailed by Gulbahar Jelilova, a Uyghur, who stated that:

On her arrival at the prison she was given a medical exam'. She was stripped naked and they took a blood and urine sample before placing her in a cell. A little time later the officials placed a black hood over her head, and she was taken to another location and more blood tests were taken as well as ultrasound tests. In two of the prisons in which she was detained, it was

¹¹ <https://chinatribunal.com/wp-content/uploads/2019/04/EthanGutmann.pdf>, page 3

routine to be medically tested and injections were given every 10 days. Jelilova was imprisoned after interrogation in three different prisons in Urumqi. She stated that all three detention centres were overcrowded and dirty. The women took turns sleeping as there was not enough space for everyone to lie down. They were barely given food to eat. They were given showers once a week with one bar of soap which resulted in body sores for the women. They were given pills that caused disorientation and stopped their menstrual cycles. She witnessed many women having mental breakdowns as a result of the conditions in the prison.

90. All Uyghur witnesses who provided statements to the Tribunal, with the exception of Dr. Tohti, were detained and no-one in their families was notified of any legal proceedings. These Uyghur witnesses were not formally charged with crimes, nor provided any due process rights.

91. On the basis of all relevant evidence the Tribunal concludes, with certainty, that acts of torture have been inflicted on Uyghurs. Acts of torture generally reveal an overall consistent attitude and approach of the PRC towards Uyghurs which is systematic in nature and designed to punish, ostracise, humiliate, dehumanise and demean Uyghurs. It is clear that Uyghurs have been routinely forced to undergo regular medical testing.

EVIDENCE - CHRISTIANS, TIBETANS, and FOREIGN NATIONALS

92. In addition, the Tribunal concludes with certainty from all evidence available to it that identifiable groups other than Falun Gong practitioners and Uyghurs – for example Protestant Christians and Tibetan Buddhists - have been incarcerated and tortured in ways consistent with the incarceration and torturing of Falun Gong and Uyghurs.

EVIDENCE - RAPE AND OTHER SEXUAL VIOLENCE

93. The Tribunal heard from a significant number of witnesses at its two hearings detailing evidence of sexual violence including rape against detainees in the

PRC's prison system. The following is representative of evidence from some witnesses:

94. Yin Liping said that on the 19th April 2001 she was incarcerated in the Masanjia Labour Camp. She was locked up with more than forty men of unknown identity and was raped by these men, one of whom video recorded her ordeal.
95. Xuezheng Bao, a woman detainee, witnessed the treatment of a Falun Gong Practitioner who had a physical examination which was used to 'cheat her and aborted her baby'. She says this woman was 'cheated and coerced many times', understood by the Tribunal as understatement for something specific and far worse than reads or sounds.
96. The COHRC, identified earlier, sets out a list of various atrocities perpetrated against Falun Gong Practitioners by the PRC including, *inter alia*, rape, gang rape and sexual torture.
97. The Human Rights Law Foundation report also lists such acts including rape and sexual assault. In the report Gao Zhisheng, a well-known lawyer, says he witnessed; 'immoral acts that shocked my soul... [the] lewd yet routine practice of attacking women's genitals by 610 staff and police. Almost every women's genitals and breasts have been sexually assaulted...almost all...be they male or female were stripped naked before torture.'
98. In his evidence Mcmillan-Scott claimed that Falun Gong prisoners were subjected to 'progressively brutal treatments involving electric prods...always including the genitals.
99. The Tribunal concludes with certainty on all relevant evidence - that the PRC has orchestrated within its penal system the endemic perpetration of sexual violence including rape against male and female prisoners including Falun

Gong practitioners. The use of electric batons on the genitals of both men and women has been prevalent

EVIDENCE - TELEPHONE CALLS TO HOSPITALS

100. Tribunal was presented with evidence of telephone calls from investigators, calling from outside the PRC, to doctors and medical staff at hospitals in many different parts of the PRC. The callers pretended to have a need for a transplant in order to establish whether the person receiving the call would reveal whether the source of any organ was a prisoner, in particular a Falun Gong prisoner. These calls were completed by two different groups. The first set of calls, was made by a team of investigators of the WOPIFG in 2006, and the second set of calls made was provided to the Tribunal as detailed in the book, Bloody Harvest.

101. The majority of the telephone calls, including some of particular significance, confirm other evidence from other sources that has come before the Tribunal. One investigator phoned about 80 hospitals yielding the following result:

10 hospitals admitted using Falun Gong as the organ supply;
5 hospitals said they could obtain Falun Gong as the supply;
14 hospitals admitted they use organs from prisoners;
10 hospitals said the organ source was a secret and could not discuss over the phone

102. There are those who have asserted that there is no value in the calls, who question whether the phone calls even took place and whether the translations are accurate. The Tribunal has considered these assertions but, on all the available evidence, is certain the calls did, in fact, take place and that the translations of these calls are accurate.

103. On the basis of all evidence that will be included in the Tribunal's full Judgment, the Tribunal concludes, with certainty, that telephone calls were

made to hospitals and individual medical staff including senior surgeons and that the translations of those recorded calls are accurate. The Tribunal further concludes, with certainty, that the hospitals telephoned were offering organs for sale, that those organs were from people who were alive at the time of the calls and that those organs were available to the callers on short notice.

Evidence - SCALE OF TRANSPLANT ACTIVITY IN THE PRC; INCLUDING SHORT WAITING TIMES

104. There are constraints on the total number of organ transplants that any country can perform including *inter alia*: the availability of organs, hospitals, doctors and other medical personnel, money and the country's infrastructure.
105. International transplant authorities expect transparency and completeness of data collection in relation to all the above.
106. THE PRC has regarded such data effectively as a state secret. There is no such transparency, and there are grave doubts over all official data.
107. In the absence of validated, externally auditable and complete data from the Chinese state, it is necessary to relate different sources of data to infer what real data are describing about transplant activity in the PRC. 'Triangulating' data from other, multiple and different, sources is both rational and indeed the only way to approach the numerical data.
108. Organ transplantation activity has grown rapidly in the PRC since the turn of the century, supported by official policy. In order to describe that rise in activity, we must summarise the evidence for such growth in a number of areas.

109. THE NUMBER OF HOSPITALS UNDERTAKING TRANSPLANTATION. There have been various indications as to the number of transplant hospitals in the PRC over recent years and detailed evidence of this will be included in the Tribunal's full Judgment. There are upwards of 146 licensed hospitals approved for transplantation in the PRC but in addition a significant number of unapproved hospitals taking the total to well over 700.
110. The Tribunal has received evidence of very significant transplant activity at some of these hospitals and in turn evidence of significant activity being conducted by surgeons which will also further be included in the Tribunal's full Judgment.
111. In March 2013 Huang Jiefu, the architect of the expansion of The PRC's transplant capability told the Guangzhou daily: '*Last year (2012) I did over 500 liver transplants*' (see also footnote 10 above). Jiefu, as will be seen, was far from alone in the prolific nature of his work. In September 2013 Zhu Jiye, Director of the Organ Transplant Institute of Peking University, issued a statement; '*our hospital conducted 4,000 liver and kidney transplants within a particular year*'. This represents 33% of the total peak of 12,000 transplants acknowledged by the state authorities from this hospital alone.
112. The rate and scale of expansion of transplant hospitals and their activity levels are relevant because of an apparent mismatch between the availability of *voluntary* donors and the rapid growth in transplants performed.
113. DONOR NUMBERS AND ORIGIN. In the early days of transplantation in the PRC, organs were thought and said to be obtained solely from executed prisoners. Over time, international pressure appeared to have resulted in a reduction of executions of death row prisoners, but the number of transplants continued to rise. The PRC did not have a deceased organ donation system in the conventional sense until 2010 and this existed only

as a pilot program until 2014. During this period, the number of kidney and liver transplants performed still continued to rise, rising from 66 in 2010 to 7,081 in 2015. It is self-evident that they could not have come from voluntary donors since a voluntary donation system either did not exist or was only in pilot stage.

114. In September 2013 a formal voluntary donation scheme was established under the governance of the China Organ Transplant Response System (COTRS). In 2017 the declared number of registered donors was 375,000 and these resulted in 5146 'eligible' donors (i.e. people who have died and have, or are assumed or taken to have, consented to donation of their organs), a conversion rate 140 times greater than that of the USA where 140 million registered donors resulted in 10,824 eligible donors; a conversion rate of 0.008% against the PRC's 1.4%.

115. In July 2007 the Ministry of Health issued a directive requiring all hospitals to obtain a permit to carry out transplants. 146 of a total of a 1,000 applicant hospitals were granted licenses. A prerequisite to the grant was a minimum bed capacity. To qualify, hospitals needed 15 beds dedicated to liver transplants and 10 intensive care unit beds. For kidney transplants similar provisioning was required.

116. In the Update the authors provide an estimate of the total number of transplants. Assuming a combination of minimum beds required for both liver and kidney transplants based on whether those two activities are undertaken at specific hospitals they calculate a minimum number of beds at the 146 approved hospitals of 5,775. They have then assumed 100% bed utilisation and twelve procedures per bed *per annum*. The Tribunal finds these assumptions to be acceptable. The result would approximate to 69,300 transplant procedures being carried out in the PRC *every year* (5775 x 12).

117. Contextualising the prolific work carried out by just a small number of surgeons and the large number of licensed and unlicensed hospitals performing transplant operations leads to the conclusion that a very large number of such operations are carried out in the PRC each year. Kilgour, Matas and Gutman's assertion in the Update that upwards of 60,000 and as many as 90,000 transplant operations per annum seems reasonable (bracketing the 69,300 previously); this would be between approximately six to nine times the official figure claimed by the PRC. However, the *exact* number is not, and is unlikely to be, verifiable; but it is a large number.
118. A pool of registered organ donors will result in a number of 'eligible' (i.e. dead) donors per annum. In the PRC there is a mismatch between the number of donors who become 'eligible' each year by dying and the number of actual transplants performed each year. There are more transplants than could possibly come from the number of registered or 'eligible' donors. Given that the PRC asserts that it no longer uses executed prisoners for organ transplant purposes the very substantial mismatch is wholly unexplained and demands justification.
119. Haibo Wang (Director of COTRS) suggested in February 2017 that estimates in the order of 60,000 to 100,000 transplants were 'ridiculous', and more than the rest of the world put together. He argued in the interview that it is up to the external investigators to 'prove' the numbers and not for the PRC to prove the veracity of transplant figures. He makes his argument on the basis of there being only 169 hospitals doing transplants in the PRC compared to 300 hospitals performing (his number) transplants in the US. On that basis the US should be performing 120,000 per year - it is not. Haibo Wang's assertion would be correct unless of course the USA was forcibly

extracting organs in which case the number of 120,000 per annum would be perfectly plausible - it is not.

120. SHORT WAITING TIMES FOR TRANSPLANTATION. There are always more people needing a transplant than available donors, even in countries which have long established and well publicised transplant programmes. With voluntary donation schemes, organs come from people who have died and have previously given consent for their organs to be transplanted in the event of death or brain death. The mismatch between supply and demand generates waiting lists.

121. In general terms, waiting times for organs can be months or years. On occasions a process may be expedited, and an organ becomes available in days of the need for it arising. For example, the average waiting time for a liver transplant in the UK for adults is 135 days. For kidneys, the average wait is longer at 2.5 to 3 years. For hearts, the wait is described as months or years and for lungs the wait is even longer.

122. The Tribunal has been presented with evidence which will be included in the Tribunal's full Judgment of waiting times in the PRC which are much shorter than usual in the rest of the world and often as little as two weeks. Dr J Lavee 's account of a patient being offered a transplant within days is set out above. Japanese journalist Yukiharu Takahashi provided the Tribunal with an account of organs being available on two weeks' notice. Another witness visited the Tianjin First Central Hospital in 2001 and was told by the nurse that organs were available in two weeks.

123. Such waiting times are not compatible with conventional transplant practice and cannot rationally be explained by good fortune. Predetermining the availability of an organ for transplant is impossible in any system dependent on voluntary organ donation. Such short-time availability could

only occur if there was an available bank of potential living donors who could be sacrificed to order.

124. VERACITY OF CURRENT OFFICIAL CHINESE TRANSPLANT DATA. From the 1st September 2013, COTRS was mandated by the PRC to record data on allocation of all organs, no matter what the source, by creating relevant organ registries.
125. According to COTRS data - to international acclaim - between 2010 and 2016, annual voluntary deceased donors rose from 34 to 4,080, an increase of 12,000%; kidneys and livers transplanted rose from 63 in 2010 to 10,481 in 2016, an increase of 16,636%.
126. These data sets were analysed by Matthew Robertson *et al* in a paper published in January 2019.
127. Using a forensic statistical approach, two central level datasets (Red Cross and COTRS) were assessed for evidence of human manipulation.
128. The statistical arguments presented in the paper were so important and yet highly technical that the Tribunal felt it necessary to seek independent review of the Robertson *et al* paper, asking both about the appropriateness of the methods used and for comments on the likelihood of human manipulation.
129. Professor Sir David Spiegelhalter FRS agreed that the methodology utilised by Robertson *et al* was appropriate. Spiegelhalter re-ran the data analysis, and his results conformed exactly to those of Robertson *et al*. He also indicated that the chances of such a fit of data to real life events was very remote.
130. It is, therefore, reasonable to assume that some or all of the data provided by both COTRS and the Red Cross has been falsified.

131. If the activity data can be manipulated in such a way, what can be accepted form data provide by the PRC authorities? In consequence of Spiegelholter's independent verification of Robertson *et al's* approach, the Tribunal considers it rational to accept more readily the evidence accumulated by Matas, Kilgour and Gutman in their separate, and now updated, books by other and various means.
132. It is appropriate to ask why the PRC might seek to manipulate data. It is reasonable to assume that the PRC initially wished to advertise its success in the transplantation field; perfectly understandable for a country of such importance on the world stage. It is equally reasonable to assume that, latterly, that very publicity became unwanted as the gap between the number of the PRC's transplantation activities and the number of organs from known sources became more difficult to explain.
133. The Tribunal is satisfied that, in most countries, waiting times for organs of all kinds for transplantation is at best months and often years. Waiting times in the PRC are as little as 2 weeks. The gulf in waiting times between those in other countries and those in the PRC is unexplained. Similarly, unexplained has been the massive growth of physical infrastructure; hospitals and dedicated hospital facilities and personnel and that this the infrastructure development started before the institution of any voluntary donor scheme in the PRC. The Tribunal is convinced that official Chinese transplantation statistics have been falsified. The Tribunal, thus, disregards PRC 'data' and concludes with certainty that, at the time of the most recent estimates, *very* large numbers of transplant operations have been carried out in the PRC. The Tribunal assesses, as credible, numbers of operations being between 60,000 and 90,000 per annum. This, when compared to the official number of eligible donors in 2017 of 5146, leaves an incomprehensible gap.

To achieve the numbers of transplantations performed - before and since the year of most recent estimate - there must have existed another source or other sources of tissue-typed organs; this in turn shows that there must have existed a body of donors unidentified in PRC material.

EVIDENCE - PUBLIC STATEMENTS BY THE PRC ABOUT FALUN GONG

134. The Tribunal will set out in its full Judgment extensive evidence provided to it illustrating the PRC's and some of its senior personnel's attitude to the Falun Gong. The following are two sample extracts:

135. Jiang Zemin described Falun Gong as 'something unprecedented in the country since its founding 50 years ago'. In addition, on June 7th, 1999 Jiang issued an unequivocal order to 'disintegrate' the Falun Gong. In Nov 30th, 1999 Li Lanqing announced Jiang's directive as follows: 'ruin their reputations, break them financially, and destroy them physically'.

136. In early Sept 1999 Luo Gan (Head of 610) said: 'Whoever is found to be practising Falun Gong should be secretly arrested and sentenced to a life sentence until death'.

137. On the basis of all relevant evidence the Tribunal concludes, with certainty, that the PRC and its leaders actively incited the persecution, the imprisonment, murder, torture and the humiliation of Falun Gong practitioners with the sole purpose of eliminating the practice of, and belief in, the value of Falun Gong.

EVIDENCE AND ARGUMENTS FAVOURABLE TO THE PRC

138. There has been little evidence available or provided to the tribunal that is favourable to the PRC. Simple denials over the years by the PRC do not assist.

139. DOCTORS SPEAKING FAVOURABLY OF THE PRC. There have been four Doctors who have spoken favourably of PRC transplantation practices, namely:

Professor Jeremy Chapman

Professor Philip O'Connell

Professor Francis Delmonico

Dr Campbell Fraser

140. One, at least, of these has visited the PRC as a guest of the PRC and found nothing amiss.

141. However, none of these doctors has provided any evidence – in the form of records they have reviewed or patients to whom they have spoken – to justify or properly to explain their support for the PRC's historic or present transplantation practices.

142. All of these doctors were invited by the Tribunal to participate in the Tribunal's proceedings. Their participation would have greatly assisted the Tribunal in its work; they all declined the invitations. Further, although each did contribute in person to a recent report by an Australian Government Committee their contributions have been subject to review by ETAC that reveals that they produced no hard evidence to support what they said and could be criticised for their methodology or their experience in transplant surgery.¹²

143. Additionally, the Tribunal has sought comment from The Transplantation Society (TTS) an international body of transplant surgeons. Its response was that it had no reason to disbelieve the PRC official pronouncements on its

¹² <https://endtransplantabuse.org/australian-parliamentary-report-compassion-not-commerce-an-inquiry-into-human-organ-trafficking-and-organ-transplant-tourism/> [https://chinatribunal.com/submissions/response - compassionnotcommerce_austgovtreport_rogers_matas_hughes/](https://chinatribunal.com/submissions/response-compassionnotcommerce_austgovtreport_rogers_matas_hughes/)

organ transplant practices, pronouncements that, it said, were not its function to investigate or verify. The Tribunal finds this position to be contrary to what is on the TTS website where its policy and ethics objectives include: *'provide global leadership in the practice of human transplantation'* and to *'promote ethical standards for clinical care and scientific investigation.'*

144. Representatives of both the Transplantation Society and the World Health Organisation (WHO) have spoken out on behalf of recent changes in human transplant systems in the PRC, particularly the development of COTRS (see above) and the voluntary donor scheme. They argue that changes are being made and external criticism is not warranted. They have supported a transition for the sourcing of organs from death-row prisoners and suggested that executed prisoners are no longer used. They appear to believe the official Chinese figures (see above for criticism of these figures) to justify this support.

145. The World Health Organization is a specialised agency of the UN concerned with global public health. It operates in a multilateral stakeholder environment and may well be susceptible to political realities. Its statements of this issue have largely depended on the information provided by TTS

146. Yet the evidence with which this Tribunal has been presented, and in particular the mismatch between voluntary donors and transplants done, does not support their optimism that The PRC's unethical practices have ceased. Taking into account the absolute lack of credibility of The PRC's official transplant statistics as revealed by Robertson *et al*, it is very difficult to support the position of these two authorities who both make strong claims for the need for ethical practice in medicine. For example, In May 2010 the WHO adopted WHA63.22 on Human Tissue and Transplantation at the 63rd

World Health Assembly which condemned the purchasing of body parts and called for transparent and ethical systems in organ donation centres.

147. GOVERNMENT COMMITTEES FAILING TO FIND THE ALLEGATIONS PROVED. No official government body has, to date, pronounced on criminality of PRC organ transplant practices.

148. Some governments have acknowledged the serious nature of the allegations against the PRC and have considered the substantial body of available evidence with some serious intent. Others, however, including the British government¹³, have sought to dismiss the allegations without making a Judgment based on consideration of known facts and evidence. Included in the Tribunal's full judgment will be evidence of the extent of some governments' easy surrender to finding the *uncertainty* of proof that then allows them to avoid finding an 'inconvenient truth'. None of the reports of governments has been backed by the quantity or variety of evidence considered by this Tribunal and doubts expressed by them as to whether forced organ harvesting has occurred are without the support of any analysis of evidence or explanation of doubts that can be tested or valued. The US Resolution of 2016, however, goes further than other governments'

¹³ The UK's repeated – if somewhat formulaic – answers express firmly the view that the evidence available is insufficient to prove that forced organ harvesting either has been, or is, taking place; although it acknowledges that the PRC certainly used to harvest organs from capital punishment prisoners. The Tribunal assumed that the Government could not take the positions it has done without having made a careful analysis of the available material because Baroness Goldie and Mark Field MP in answering questions in Parliament for the Government referred to 'analysis' and 'assessment'.

With this in mind Counsel to the Tribunal wrote to Foreign Office Minister Mark Field seeking provision of the analysis or assessment that must exist and inviting him to attend the April hearings of the Tribunal and to be a witness - he was offered to the opportunity to be the very last witness - in order to review all the evidence available to the Tribunal and to comment on it. A representative of the Foreign Office attended for a part of the last day of hearings but did not offer to contribute in any way to the evidence or analysis available to the Tribunal or to speak. No analysis of the kind - that certainly *should* exist - has been provided and the answers by ministers to questions in both Houses of Parliament do nothing to explain the Government's position apart from by their placing some reliance on the World Health Organisation.

The Tribunal is left in the position of having to doubt whether any rigorous analysis of the material available showing whether forced organ harvesting has been practised exists; if it did exist there can have been no good reason *not* to provide it to the Tribunal unless it contained intelligence material. But that seems improbable. Although UK Government statements may be superficially in favour of the PRC they are not evidence; they identify no evidence; they provide nothing by way of analysis.

pronouncements to condemn – almost as *if* proved – state-sanctioned organ harvesting in the PRC.

149. The Tribunal recognises that intelligence from spying on the PRC – something done by the UK, the USA and Australia for certain – might have revealed that the allegations made against the PRC were correct *or* that they were completely false. If the latter, then it is at least possible that the Tribunal would have been alerted to the existence of such information. The Tribunal is left to act on the basis of there being no such intelligence material.

150. Thus, although recognising that assessments by countries like the UK or Australia¹⁴ expressing lack of conviction that forced organ harvesting has occurred *could* be favourable to the PRC in this inquiry, the Tribunal finds nothing in their assessments that actually favours the PRC. It therefore makes no certain conclusion of any kind – one way or another – from the reports of government committees and similar.

THE RESPONSE OF THE PRC GENERALLY

151. There has been little response by the PRC to the allegations made for nearly two decades, as noted early in this Judgment. With evidence now

¹⁴ The report of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs Defence and Trade of the Australian Government delivered in 2018, 'Compassion Not Commerce' was a substantial exercise to which the three named doctors contributed, as set out in the main text. The conclusions of the Committee are subject of detailed commentary by ETAC. The Tribunal find the comments by ETAC about the report – having all necessary caution in mind given ETAC's being the organisation commissioning this Tribunal – serves to eliminate concerns expressed in the report on: statistics, telephone calls, blood testing (being for communicable diseases), number of transplant operations performed, the value of accompanied visits by doctors to the PRC and the voluntary donation scheme said to be effective and in practice. The absence of supporting evidence from the doctors said to speak favourably of the PRC is a recurring shortcoming of the report as are the various misunderstandings of analysis in the 'Update'. The Tribunal have viewed the video contributions of Mr Fletcher of the Australian Department of Foreign Affairs and Trade at the Senate Committee Proceedings of October 2016 and found his doubts about the credibility of the allegations and his assertion that no respectable human rights organisation had given the allegations credence unreliable and an obvious overstatement. They were also impossible to integrate with his assertion that the Department had no capacity to conduct an independent inquiry. The Tribunal found Fletcher's assertion generally on behalf of his Department of there being insufficient evidence to support the allegations neither convincing nor persuasive. The report – after analysis and with the ETAC responses available - provides no evidence on which this Tribunal can properly act.

reviewed it is necessary to return to this topic applying the common sense and experience of the world citizen.

152. Although many citizens have not heard of forced organ harvesting in The PRC there has in fact been a great deal of information made public going back to at least 2001 when the detailed account by Dr Wang Guoqi was given to the US Subcommittee on Trade of the House Committee on Ways and Means¹⁵. Although no representative from The PRC is shown to have been present at the meetings of the Sub-Committee it is inevitable that the Embassy of the PRC in Washington would have reported back to Beijing about the hearing and what Dr Guoci said. The same can be said with equal certainty of all the other formal investigations and inquiries listed above.

153. Similarly, media reports – infrequent though they may have been – around the world expressing concern about the allegations of organ harvesting that were becoming public would have been reported back to Beijing by PRC embassies – that is part of their job. And it is clear that the PRC was actively engaged with countering the Falun Gong internationally throughout that period as a document leaked from the Estonian Embassy of the PRC in 2008 shows.

154. Of course it is true that throughout a substantial part of the period 2001 to the present day the PRC was lying to the world at large and to the medical professions around the world about the fact that (as a minimum) it was harvesting organs from those executed for capital offences. But flows of information were undoubtedly reaching Beijing. The PRC did put in a response to the Australian Government Committee reporting in 2018 ('Compassion Not Commerce') that the Tribunal has considered but finds of no evidential value being simply more assertions without evidence. In any

¹⁵ Paragraph 8 above

case the response did not deal at all with the allegation of forced organ harvesting.

155. Must the Tribunal simply disregard the failure of the PRC to do more? Must the PRC be accorded some form of right to silence matching that of the individual defendant charged with a regular crime in, say, the USA?¹⁶ The Tribunal is disinclined to draw any inferences from what the PRC does *not* do, for example in not responding to the Tribunal's request for engagement; but may the gravity of the allegations and the extended period over which they have been made may require a different common sense reaction. And perhaps considering fictional hypothetical situations may help. Supposing it were said of either the UK or the USA that Muslims were being tortured to death in a prison in Leeds or Philadelphia (cities chosen at random) and assume that the allegations were entirely untrue although being made by a perfectly respectable organisation and had attracted attention in government committees in various countries. Would the simple denial be all that the UK or USA would do on grounds that their word should be enough, and that it would be to honour an impertinence by doing more? Or might they do a great deal more including by seeking redress from whoever made the totally false but believable allegation and by throwing open the gates of the prison and offering sight of all records to an appropriate neutral team of observers? It is impossible to know.

156. The Tribunal cannot go so far as to draw any inferences adverse to the PRC from its failure, over approaching two decades, to rebut an allegation it protests is totally untrue. It sets out in its conclusions what may, nevertheless, flow from this failure.

¹⁶ The right to silence has been effectively abrogated in the UK because inferences can be drawn from silence in the face of questioning or if declining to give evidence at trial.

TRIBUNAL'S OVERALL CONCLUSIONS ON THE FACTS AND LAW

157. PRIMARY CONCLUSION ON FORCED ORGAN HARVESTING. Making overall conclusions is a difficult exercise; difficult but not impossible. They are difficult because much of what happens in the PRC is obscured by disinclination of the PRC to be open with those investigating the issue for nearly two decades and because of the size and complexity of the country. These difficulties cannot, as explained earlier, add to evidence adverse to the PRC. They are irrelevant but do make the exercise arguably more difficult than it would have been had the PRC decided to be open.
158. Difficulties of this kind can easily translate to doubt and uncertainty, especially if uncertainty is an easier or safer resolution because – as David Kilgour said if only of governments expressing uncertainty– finding a truthful resolution adverse to the PRC could be ‘inconvenient’. Difficulties can translate to doubt and uncertainty simply because there are so many points of interest where evidence is missing. Difficulties can translate to doubt and uncertainty because questions naturally arising – for example about how professional people could do the things alleged – can only be answered by the equivalent of guesswork not by evidence.
159. But difficulty is not impossibility nor can it justify those commissioned to make a decision become fearful of doing so if a conclusion is properly possible by consideration of all available evidence despite all real difficulties and incurable uncertainties.
160. Consider the most obvious ‘difficulties’ facing this Tribunal, each spelt out in the form a question:

- a. How can any witnesses giving evidence adverse to the PRC be accepted as truthful and accurate when they have not been tested by questions or challenges put to them by the PRC?
- b. In a country of the size of The PRC how can any inference be drawn or conclusion reached about central control of actions by individuals or individual local institutions (hospitals usually) thousands of kilometres away?
- c. More generally how can the possibility be excluded of things done being merely the work of 'rogue' institutions or individuals?
- d. Where it is necessary to establish a mental state for proof of a crime how can it be proved that the relevant mental state existed in the central government of the PRC or the CPP for an act performed thousands of kilometres away?
- e. Where the mental state of the PRC or CPP themselves need to be proved how can that be done without access to the individuals at the very top of the government or the Communist Party in order to investigate first the individual states of minds or the effective collective mental state?
- f. And very generally how can the Tribunal make judgments about a state known for its use of the 'Big Lie', just as other authoritarian states have been notorious for using and getting away with big lies? The PRC has occasionally made statements about organ transplant, most notably once it was compelled to acknowledge use of organs from executed prisoners for transplant operations. Its other statements have been accusatory of Falun Gong practitioners asserting that everything being said adverse to the PRC on this issue is propaganda and lies and - now - that all organs come from volunteer donors or a properly controlled *post-mortem* donor scheme. Does the Tribunal have to be concerned when such a big state makes such uncompromising statements? It happens that, at the time this Judgment is being written, citizens on both sides of the Atlantic have direct experience of senior politicians lying and 'getting away with it', on one view, despite the lies being recognised for what they are.¹⁷ There is not quite the gulf in behaviour between authoritarian states and those that boast of their open and honest democracies and citizens of all countries can cope with untruths from their leaders however firmly expressed and work out the truth, even though the truth may not bring the leaders down.

¹⁷ The administration of President Trump in the USA and both sides of the debate in the UK about the UK's leaving the European Union are all assumed to have told lies on a generous scale without leaders being toppled.

161. The simple – and obvious answer – to these difficulties and questions is that the Tribunal is not concerned about what it does *not* have that it might have had in a conventional investigation, provided it draws no inferences adverse to the PRC from the PRC’s failure to make things available or from its lying. What the Tribunal must do – just as mathematicians, quantum physicists, engineers etc do when confronted by an impasse to a known line of inquiry – is to look elsewhere, examine what is available and follow the deductive trail along which it is then led, testing its conclusions with the same rigour as it would have tested an investigation that had more materials available to it.

162. It was with this in mind, and with the need to avoid contamination by allowing itself to consider what the PRC has obscured or by knowledge of the PRC’s known breaches of human rights laws generally, that the Tribunal first considered some of the conclusions reached category by category. To the extent possible these conclusions were reached on the basis of isolated silos of evidence, assuming that the country concerned was not the PRC but some imaginary country with a good human rights record and eliminating to the extent possible specific consideration of the Falun Gong.

163. Considering first three categories of evidence that can be stripped of most or all of specific focus on the Falun Gong: The description of what happens in transplant surgery; the telephone calls to Hospitals revealing availability and short waiting time for organs and the Scale of Transplant Activity in The PRC, the summaries are set out in the full Judgment, but now in shortened form as above, are:

- a. An effective transport and organ distribution system is necessary to create a well-functioning transplant system and skilled trained teams of transplant surgeons, physicians, nurses and technicians are

required. Transplantation is a highly integrated process requiring a broad range of expertise

- b. Telephone calls were made to hospitals and individual medical staff including senior surgeons. The hospitals telephoned were offering organs for sale Those organs were from people who were alive at the time of the calls and were available to the callers on short notice.
- c. Very large numbers of transplant operations have been carried out in the PRC. The Tribunal assesses as credible numbers of operations being between 60,000 and 90,000 per annum. This, when compared to the number of eligible donors in 2017 of 5146, leaves an incomprehensible gap. To achieve the numbers of transplantations performed - before and since the year of most recent estimate - there must have existed another source or other sources of tissue-typed organs; this in turn shows that there must have existed a body of donors unidentified in PRC material.

164. Those conclusions, reached above, lead the Tribunal, without giving any consideration to the Falun Gong and assuming the evidence related to a country with nothing to its discredit, to the certain conclusion that there has been a population of donors accessible to hospitals in the PRC whose organs could be extracted according to demand for them.

165. Turning to the conclusions reached, as above, on the basis of direct and indirect evidence about forced organ harvesting, and of evidence about medical testing:

- a. Forced organ harvesting has happened in multiple places in the PRC and on multiple occasions for a period of at least twenty years and continues to this day.
- b. Medical testing of groups including Falun Gong and Uyghurs was related in some way to the group concerned because other prisoners were not tested. The methods of testing are highly suggestive of methods used to assess organ function. The use of ultrasound examinations further suggests testing was focused on the condition of internal organs. No explanation has been given by the PRC for this testing; blood or otherwise.

166. Combining these conclusions with the previous conclusion leads inexorably to the conclusion that there has been a population of donors

accessible to hospitals in the PRC whose organs could be extracted according to demand for them coinciding with the long term practice in the PRC of forced organ harvesting and with many Falun Gong along with Uyghurs being compelled to have medical tests focused on their organs.

167. Now considering the conclusions about Torture of the Falun Gong and the Uyghurs and the evidence of public statements by the PRC about the Falun Gong:

- a. Acts of torture have been inflicted by the PRC authorities on persons detained for their practice of, support for and defence of Falun Gong and for no other reason. Such acts of torture have taken place at many different sites in The PRC over a long period of time. Acts of torture, generally, reveal an overall consistent attitude and approach of the Chinese state towards practitioners of Falun Gong which is systematic in nature and designed to punish, ostracise, humiliate, dehumanise, demean and demonise practitioners of Falun Gong into renouncing and abandoning their practice of it.
- b. Acts of torture have been inflicted on Uyghurs and generally reveal an overall consistent attitude and approach of the PRC towards Uyghurs which is systematic in nature and designed to punish, ostracise, humiliate, dehumanise and demean Uyghurs. It is clear that Uyghurs have been routinely forced to undergo regular medical testing.
- c. The PRC and its leaders actively incited the persecution, the imprisonment, murder, torture and the humiliation of Falun Gong practitioners with the sole purpose of eliminating the practice of, and belief in, the value of Falun Gong.

168. Adding these conclusion to those previously reached makes it clear that the PRC would have no difficulty in committing the Falun Gong to any fate and that they could readily use them as the population of donors accessible to hospitals in the PRC whose organs could be extracted according to demand for them by means of forced organ harvesting.

169. This process of step-by-step reasoning leads inexorably from:

The clear evidence of a supply chain of organs over many years from an unaccountable source; and

The fact that the Falun Gong once incarcerated *could* be a useable source; and

There being no other identified source

to the Tribunal being certain that it was indeed the Falun Gong who were used as a source – probably the principal source - of organs for forced organ harvesting

170. The remaining categories of particular evidence – evidence about Huang Jiefu¹⁸; evidence from PRC and CCP officials - do nothing to displace this conclusion; rather the reverse. And the conclusion fits with the conclusions reached at the start of the Tribunal's evidence review of the General background:

Since 1999 the PRC and the CPP regarded practitioners of Falun Gong as unworthy of any of those universal rights that attach to human beings by reason of their humanity, simply to maintain their power and authority over the Chinese people. Coincident with the developing persecution of practitioners of Falun Gong over time has been an enormous, unexplained provision of transplant hospitals in the absence of a voluntary organ donor system

171. The Tribunal does not have sufficient evidence to reach a conclusion of forced organ harvesting having happened with the Uyghurs. The vulnerability of the Uyghurs to the will of the PRC to establish and maintain complete control over them by incarceration is obvious. The vulnerability of the Uyghurs to being used as a bank of organs is also obvious.

172. In reaching its conclusion the Tribunal has *not*, in the event, had to apply its knowledge of the multiple breaches of Human Rights law generally for which the PRC is culpable, although it would be disingenuous at this stage of

¹⁸ See footnote 7.

the Tribunal's conclusions not to acknowledge that there is nothing inconsistent between the Tribunal's conclusion and the PRC's human rights record.

173. CONTINUITY OF FORCED ORGAN HARVESTING; HAS IT ENDED? Evidence of the most recent availability of organs on demand is to be found in the telephone calls of 2018¹⁹ and the Korean film of 2017²⁰ They are not in themselves sufficient to prove continuity of forced organ harvesting on the same scale although they do nothing to disprove it. More important is that the system has been in effect for years despite international evidence-based concerns and criticism and research asserting that the practice is proved. There is, thus, no particular reason for it to stop and many people's livelihoods in the PRC depend on it. Further, it is clear from the evidence of torture by those who were imprisoned but not harvested, that the authorities had objectives behind the overall treatment of members of Falun Gong other than the purely commercial purpose of harvesting and selling organs. Further still, it would appear probable that access to a supply of organs has been one of the reasons the PRC has been able to become so formidable in the skills required of transplant surgery and thus to rise – subject to the shadow of these allegations – in the estimation of transplant surgeons elsewhere in the world, several of whom continue to support them in public (as at the Australian Committee hearings for the 'Compassion not Commerce' Report – *ante*). There is no evidence of the practice having been stopped and the Tribunal is satisfied that it is continuing.

174. GEOGRAPHICAL SPREAD OF THE PRACTICE. The map of hospitals and prisons (included in the Final Judgment) identifies the hospitals spoken of by

¹⁹ https://chinatribunal.com/wp-content/uploads/2019/06/WOIPFG-Investigation-Report_NewEvidence_2018.pdf

²⁰<https://vimeo.com/280284321>

those tortured and medically tested and those called by investigators on the telephone responding in ways that revealed organs were available on demand.

175. It gives the Tribunal no pleasure to reach this conclusion to which it was driven by evidence and the application of reason and logic together with its appraisal of witnesses who gave evidence. The conclusion shows that very many people have died indescribably hideous deaths for no reason, that more may suffer in similar ways and that all of us live on a planet where extreme wickedness may be found in the power of those, for the time being, running a country with one of the oldest civilisations known to modern man which, ideally, we should be able to respect and from which we should be able to learn.

CONCLUSIONS ON CRIMINALITY

176. **CRIMES COMMITTED** As a preface, it might be thought bizarre in the extreme, if forced organ harvesting by a state or state-approved bodies was established by strong evidence at a court with jurisdiction covering individual criminal or state responsibility, and the court should then say that, for technical reasons, no case could be pursued. On hearing this the citizen would realise that the world order offered her or him no protection through legal processes and that impunity was fully in place in the state concerned. The clear reality is that any court seized of such evidence would know it *had* to find jurisdiction to act in accordance with its statute and rules because to do otherwise would have it condemned to oblivion or replaced. This certainty is one that confronts 'uninvolved' states around the world whenever they are faced with strong evidence of the criminality of other states. They would prefer never to have to refer such evidence to legal authorities, manifesting denial of the 'inconvenient truth' spoken of by David

Kilgour. Once facts as grave as those alleged and accepted here *do* reach a proper court, a proper court *will* find a way to act. The issue will always and only then be which crime or crimes to charge.

177. The Tribunal comes to the following conclusions based on the its factual conclusions spelt out above AND on the basis of the legal Opinions and Advice received.

178. GENOCIDE: The Tribunal has no doubt whatsoever that physical acts have been carried out that are indicative of the crime of genocide. Reviewing the definition of genocide found in the Genocide Convention, and repeated in the Rome Statute of the ICC, the Tribunal is certain that there has been killing of members of a group²¹, there has been caused serious bodily or mental harm to members of a group²², and there has been the deliberate inflicting on the group of conditions of life calculated to bring about the group's physical destruction in whole or in part²³.

179. The Tribunal also finds that in relation to the legal understanding of the term 'group', the Falun Gong and the Uyghurs do constitute, respectively, a group. Further they belong to one or more of the groups that are specifically identified in the Genocide Convention as deserving of protection, namely a national, ethnical, racial or religious group²⁴.

180. In order to find criminality, there must be a conjunction of both physical acts and mental intent. The question to be asked by the Tribunal is whether the crime of genocide has been committed by way of forced organ harvesting of prisoners of conscience. To arrive at the conclusion that the crime of genocide (as legally defined) has indeed been committed, such forced organ

²¹ Genocide Convention 1948, Article II(a).

²² Genocide Convention 1948, Article II(b).

²³ Genocide Convention 1948, Article II(c).

²⁴ Genocide Convention 1948, chapeau of Article II.

harvesting must have been carried out with the specific intent to destroy, in whole or in part, these groups. The Tribunal has not been able to find such requisite specific intent.

181. The Tribunal notes the intention of eliminating the Falun Gong as enunciated by General Secretary Jiang Zemin to the Political Bureau of the Central Committee of the CCP on 7 June 1999, the 20th anniversary of which has recently passed. Separately, the Tribunal notes the development of the market for organ transplant surgery, with its huge money-making potential. How and when these two lines of events met and/or merged is not clear from the information and evidence available to the Tribunal. This in turn led the Tribunal to be unable to conclude with certainty so as to be sure of the specific intent behind the forced organ harvesting of prisoners of conscience.

182. What concerned the Tribunal was the fact that some practitioners of Falun Gong, and some Uyghurs who, while having suffered arrest and detention, were nonetheless released notwithstanding that they had made, at least with respect to the Falun Gong, no promise nor given any undertaking to cease the practice of Falun Gong. In fact, their repeated arrest and detention, in some cases, is evidence that this was so. Why was this allowed to happen? If the physical and biological extermination of the Falun Gong, or the Uyghurs, was the ultimate goal of the CCP, their released should not have occurred. If however, the goal was primarily organ harvesting for profit, then different considerations would apply. As cautioned by Datuk Sivananthan, the intention to forcefully harvest the organs for the sake of profit is not the same as an intention to forcefully harvest the organs to bring about the physical or biological destruction in part or in whole of a protected group.

183. Given that there was no participation of representatives of the PRC or CCP in these hearings to address this issue, and given that no explanation has been offered to otherwise account for the release of persons detained, **the Tribunal is constrained from concluding that the crime of genocide had occurred.**

184. An alternative argument considered by the Tribunal was that it was not necessary for the determination of the crime of genocide that some practitioners of Falun Gong and some Uyghurs were released and/or allowed to leave The PRC, given that the definition of genocide only required that acts of genocide were carried out with the intent to destroy a group 'in part', and not 'in whole'.

185. The Tribunal noted that it was possible to characterise what had occurred as the implementation of a policy to develop the market for organ transplant where the Falun Gong, and the Uyghurs, served unfortunately as a ready and rich resource to meet that demand, such that the infliction of forced organ harvesting on these groups was not primarily motivated by the intention to exterminate members of these groups in whole or in part. Whether or not, despite that, those responsible for forced organ harvesting of members of these groups had the requisite mental state or intent to constitute the crime of genocide is not clear. Whether a knowledge-based approach to criminal intent to commit genocide could be attributed to them is also unclear and, as advised by Datuk Sivananthan, fraught with legal uncertainty.

186. **CRIMES AGAINST HUMANITY:** Adopting the definition of crimes against humanity as set out in the Rome Statute of the ICC²⁵, the Tribunal is certain so as to be sure that attacks have indeed been directed against the Falun Gong and the Uyghurs in The PRC, with actual knowledge of the attack by

²⁵ Rome Statute of the International Criminal Court 1999, Article 7.

state actors of the government of The PRC. Indeed, these attacks are state-sponsored or state-sanctioned, and pursuant to or in furtherance of a state policy to commit such an attack or attacks. We concur with the advice offered by Edward Fitzgerald QC that forced organ harvesting is sufficient to constitute an attack. The Tribunal is further satisfied that such attacks are indeed widespread or systematic.

187. The Tribunal is also satisfied beyond reasonable doubt that one or more of the following acts have been committed on the Falun Gong and the Uyghurs in The PRC: murder²⁶; extermination²⁷; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law²⁸; torture²⁹; rape or any other form of sexual violence of comparable gravity³⁰; persecution on racial, national, ethnic, cultural or religious grounds that are universally recognised as impermissible under international law³¹; and enforced disappearance³².

188. Taken together, such attacks and such acts constitute crimes against humanity, which the Tribunal is certain beyond reasonable doubt or ‘so as to be sure’³³ has occurred.

189. TORTURE: Based on the findings of the Tribunal above in relation to torture in the context of crimes against humanity, **the Tribunal is of the view that it is beyond reasonable doubt that acts of torture have occurred.** In the context of the Convention against Torture, the Tribunal is certain of two things. Firstly, that these were acts ‘by which severe pain or suffering, whether physical or mental, [was] intentionally inflicted on a

²⁶ Rome Statute of the International Criminal Court 1999, Article 7(1)(a).

²⁷ Rome Statute of the International Criminal Court 1999, Article 7(1)(b) and Article 7(2)(b).

²⁸ Rome Statute of the International Criminal Court 1999, Article 7(1)(e).

²⁹ Rome Statute of the International Criminal Court 1999, Article 7(1)(f) and Article 7(2)(e).

³⁰ Rome Statute of the International Criminal Court 1999, Article 7(1)(g).

³¹ Rome Statute of the International Criminal Court 1999, Article 7(1)(h) and Article 7(2)(g).

³² Rome Statute of the International Criminal Court 1999, Article 7(1)(i) and Article 7(2)(j).

³³ In some jurisdictions the ‘modern’ form of ‘beyond reasonable doubt’

person....punishing him [or her] for an act he [or she] ...has committed or is suspected of having committed....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.”³⁴

190. Secondly, the exception in respect of “pain or suffering arising only from, inherent in or incidental to lawful sanction”³⁵ does not arise. It is clear that the type of treatment experienced and described by witnesses who appeared before the Tribunal were in no way justified by this exception.

191. In relation to two other groups, Tibetan Buddhists and House Christians in The PRC, the Tribunal is unable to come to any finding as there was insufficient evidence presented to it to satisfy the elements of the possible crimes under consideration.

192. ACTIONS TO BE TAKEN . As has already been mentioned, the Tribunal is acutely aware, both having had regard to the legal Opinions and Advice and from its own collective knowledge, of the jurisdictional hurdles that lie in the way of prosecuting crimes contrary to international law of genocide, crimes against humanity and torture.

193. In relation to the crime of genocide, and notwithstanding the conclusion arrived at by the Tribunal, it is still open for the UN General Assembly to request from the ICJ an advisory opinion on the very same issue of forced organ harvesting in the PRC and whether it constitutes genocide. There would be no need for the PRC to consent to such a request. Resolutions calling for the same may be moved by one or more Member States for

³⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Article 1.

³⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Article 1.

consideration and, if sufficiently supported, adopted by the General Assembly.

194. Action at an international level could also be founded on the basis of the Responsibility to Protect ('R2P'). This is a political commitment endorsed by all member states of the United Nations, including The PRC, in 2005 to prevent genocide, war crimes, ethnic cleansing and crimes against humanity. Respect for norms and principles of international law mandate national governments, regional and international communities to initiate action to intervene in such situations. However, intervention requires approval by the UN Security Council, of which The PRC is a permanent member that can exercise a veto.³⁶

195. It would also be open for the UN Human Rights Council to consider this matter, again based on a resolution proposed by one or more of its 47 Member States. Subject to a majority vote in favour by the Council, the Council could create a mandate for a Special Rapporteur to investigate these allegations of forced organ harvesting of prisoners of conscience in the PRC, and to report back to the Council whether the crimes of genocide, crimes against humanity, and torture have indeed been committed. Despite the time this would inevitably take this could be one course of action to be given some priority, without limit to the importance of all others.

196. The UN Working Group on Arbitrary Detention might also have a role if necessary cooperation could be established for an interview with a known arbitrarily detained person.

197. But there is a risk in identifying too many possible international interventions that none will receive proper focus, and all may fail.

³⁶ The unlimited power of the 'P5' members of the Security Council to exercise the veto has been the subject of discussion – see, e.g. http://www.globalr2p.org/our_work/un_security_council_code_of_conduct. The work of this Tribunal may stimulate further thought of the need for reform

198. Apart from action at an international level initiated by national governments (or possibly others), domestic action in such matters *is* possible – by asserting universal jurisdiction powers established in some national courts by national legislation or by international law to permit individual plaintiffs to file legal actions against particular individuals or even against a sovereign state for acts or conduct that may constitute genocide, crimes against humanity or torture.³⁷ The Tribunal is aware of an action commenced in and accepted by the national courts in Spain in 2013 by a group of Tibetan exiles seeking to bring, among others, former Chinese leader Jiang Zemin to justice for acts of genocide in Tibet. As a result, the Spanish court issued an international arrest warrant for Jiang. The Tribunal is however not aware of any recent developments in this case. Efforts have been put in train recently by lawyers in Melbourne, Australia to have Aung San Suu Kyi prosecuted for crimes against humanity in respect of the Rohingya Muslim suffering; present progress also unknown.

199. The Tribunal, however, has emphasised that its principal role is to identify whether it is satisfied beyond reasonable doubt that crimes have been committed rather than to identify with certainty whether any individuals may have committed such crimes.³⁸ Having noted possible courses of action that governments *could* take, the Tribunal leaves to citizens, activists and motivated politicians the task of pressing governments to do what it may be

³⁷ In the UK by Lord David Alton and Fiona Bruce MP introduced Bills in Parliament that, if voted into law, would allow the citizen some ability to stimulate government action when genocide is suspected. Their Bill - to '*provide for the High Court of England and Wales to make a preliminary finding on cases of alleged genocide; and for the subsequent referral of such findings to the International Criminal Court or a special tribunal*' – might restrict the ability of the UK government not to respond to events that called for the possibility of genocide being investigated. The Bills are awaiting government time to make further progress See, e.g., <https://www.fionabruce.org.uk/news/fiona-and-lord-alton-liverpool-host-parliamentary-event-question-genocide-determination>.

³⁸ And the test of 'beyond reasonable doubt' is different from lesser levels of belief or opinion such as that 'there is a case to answer' or similar. For governments to intervene, judgment at these lesser levels are what many would think more than sufficient to require them to act by institution of investigations at international level.

thought their duty to do in the face of any revealed wickedness of the kind shown in *any* finding that forced organ harvesting has happened or is continuing to happen in the PRC.

200. The Tribunal merely notes, with disappointment, how both UK and Australian governments have expressed no desire properly to test the allegations by themselves or through the United Nations. It might be expected that allegations such as these - as grave as any on a death for death basis that were proved against the worst political mass murderers of the 20th century – might be thought worthy of the most urgent and potentially beneficial action that the world order would allow. Not to be expected, it seems, of the UK and Australia. As noted, the USA took a different line

201. So far as governments are concerned the Tribunal reverts to what it has said about the PRC's failure to engage with the allegations being made for such a long period of time. By their failures ever sufficiently to investigate the allegations as to find them proved, governments around the world have been able to justify doing little or nothing and certainly not initiating one of the processes that could bring these allegations to formal judicial determination. Over this time the PRC may have deserved better of itself than to let an existing practice continue and grow. Countries testing grave allegations and not letting the PRC escape oversight could have helped the PRC to understand that the practice in which it was engaged had to stop if it was to find a place in the world of something more than an enormously powerful commercial partner and competitor of other states, large and small. Tragically unchecked action allowed many people to die horribly and unnecessarily in the service of objectives that successors to the present PRC leaders may come to recognise were never essential to the wellbeing and growth in stature of their state.

202. Finally – on actions to be taken – assuming Governments do not do as it might be thought they *should*, the usually powerless citizen is, in the internet age, more powerful than s/he may recognise. Criminality of the order revealed may allow individuals from around the world to act jointly in pressurising governments so that those governments and other international bodies are unable *not* to act.

203. But the citizen *as shopper* should not be overlooked. Boycotting of goods started before the American Revolution by Americans in respect of English products and has been an intermittent force ever since against such countries as Israel, America and South Africa. The effect of boycotting is always uncertain and may be limited. More, or most, significant for these events is that for much of its customer base the PRC is a very long way away and an individual citizen's conscience-driven response to knowledge of what her/his 'neighbour' is doing may be in inverse proportion to how near that neighbour is.

RECOMMENDATIONS AND FINAL OBSERVATION

204. As explained above the Tribunal sees no need to make general recommendations because there are plenty of individuals, bodies, and governments that should act given the conclusion that the tribunal has reached.

205. However, this much can be said and it is, again, no pleasure for the Tribunal to be saying it not least because it may be an observation long overdue from responsible governments. In the wonderful, diverse, cultured land of China where, today, the PRC and the CCP may be involved in many more areas of life than is the case in some other countries, any who interact in any substantial way with the PRC including:

- Doctors and medical institutions;

- Industry, and businesses, most specifically airlines, travel companies, financial services businesses, law firms and pharmaceutical and insurance companies together with individual tourists,
- Educational establishments;
- Arts establishments

should now recognise that they are, to the extent revealed above, interacting with a criminal state.

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Geoffrey Nice (Chair)
Regina Paulose
Shadi Sadr
Nicholas Vetch
Arthur Waldron

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