

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

WHY THE FOCUS IS ON PRISONERS OF CONSCIENCE

by David Matas

There are a number of reasons why the Independent Tribunal into forced organ harvesting is focusing on the sourcing of organs from prisoners of conscience only and not addressing the sourcing of organs from prisoners sentenced to death and then executed, except insofar as the sourcing of organs from prisoners sentenced to death and then executed is relevant to the sourcing of organs from prisoners of conscience.

The Government of China positions on the two types of sourcing are different. The Government of China admits to having sourced organs from prisoners sentenced to death and then executed, albeit saying today that this sourcing has stopped. The Government of China denies having ever sourced organs from prisoners of conscience.

The response of the Government of China to the two abuses varies not just in content but also in form. The response to the Government of China to the view that their sourcing of organs from prisoners sentenced to death is wrong is, "we agree, we have changed, come help us with the change". The response to the Government of China to the conclusion that they have sourced and are sourcing organs from prisoners of conscience is that the researchers who have come to that conclusion are anti-China (even though, if they were, they would be indifferent to some Chinese killing other Chinese), that their research is unverifiable (even though it is verified), that their research is based on rumour (even though it is not), that they are political (even though their only agenda is respect for human rights), that they are being manipulated by anti-China organizations (even though the research and conclusions comes from the researchers and not the organizations of the victims) and so on. In short, the Chinese response to the conclusion of sourcing from prisoners of conscience is nonsense, bafflegab and evasion.

Differing responses require differing reactions. The answers one would give to the Chinese responses to the evidence of sourcing of organs from prisoners of conscience are only marginally if at all relevant to expressions of concern about sourcing of organs from prisoners sentenced to death and then executed.

The collaboration issues are different. Some foreign transplant professionals accept the Communist Party line that the prisoners sourced for organs were prisoners sentenced to death and then executed and now engage with China on the basis that the foreigners are weaning China off this particular abuse. The issue of engagement becomes entirely different and the fact of engagement becomes much more questionable if Chinese transplant professionals are sourcing organs from prisoners of conscience (who are extra-judicially killed) and covering up that sourcing.

More generally, the professional ethical issues are different. What the ethical stances should be, across the board, when dealing with transplant professionals from China, including publications, training, joint research, and so on, as well as when dealing with patients who are going to or coming back from China are different depending on whether the source of organs was prisoners sentenced to death and then executed or the source of organs was and is prisoners of conscience. Sourcing organs from prisoners sentenced to death means sourcing without consent. Even where is formal consent, meaningful consent, because of the coercive environment of prison, is not possible. Sourcing organs from prisoners of conscience is murder.

The evidentiary issues are different. Because China admits to having sourced organs from prisoners sentenced to death and then executed, the only evidentiary issues are what the numbers were at the time when China admits to having sourced from these prisoners and whether the sourcing of this sort continues. Because China denies ever having sourced organs from prisoners of conscience, the evidentiary issue is whether this ever happened, not just "how many?" and "still?"

There have been many justifications given for the sourcing of organs from prisoners sentenced to death and then executed which are not remotely plausible for the sourcing of organs from prisoners of conscience. For prisoners sentenced to death and then executed, there are potential, albeit feeble, justifications that the prisoners have committed heinous crimes, that the prisoners have consented, that they will die anyways, and that donation is a form of contrition or repentance for their awful behaviour. No such justifications are possible for sourcing of organs from prisoners of conscience.

The legal issues are different. Killing prisoners of conscience in large numbers for their organs is a crime against humanity and arguably genocide. It is much harder to argue that sourcing organs from prisoners sentenced to death and then executed is an international crime.

The distinctiveness of China is different for the two types of sourcing. China is the only Government which has institutionalized the killing of prisoners of conscience for their organs. Other countries, albeit few countries and in much smaller transplant numbers, have historically allowed the sourcing of organs from prisoners sentenced to death and then executed.

Because the victims are different, the etiology is different. The killing of prisoners of conscience for their organs leads to questions about why this is happening, and why those particular prisoners of conscience are victimised. The killing of prisoners sentenced to death has a different answer to the question why it is happening. The second question, why those prisoners, is answered by the answer to the first question.

The efforts to establish what is happening are different. While there is cover up of death penalty execution volumes, there is no cover up of the fact of death penalty executions. Many individual executions are reported in Chinese newspapers. For prisoners of

conscience, Government of China cover-up efforts are much more comprehensive and systematic. Accordingly, determining what is happening involves research efforts not necessary for prisoners sentenced to death and then executed.

Obscuring the difference between sourcing organs from prisoners sentenced to death and then executed and sourcing organs from prisoners of conscience is a form of evasion. Addressing the issue of sourcing organs from prisoners of conscience is much harder than addressing the issue of sourcing organs from prisoners sentenced to death and then executed because the Chinese government response is much more hostile, evidentiary work to establish the abuse is much more onerous, and resulting conclusion is much more grave. There is a temptation to avoid these difficulties by commingling the two issues and taking the easy way out, going with what China admits.

Avoiding the hard issues means avoiding the hard conclusions. A conclusion of sourcing of organs from prisoners of conscience will lead to consequential recommendations in a wide variety of ways, about for instance about the treatment in China of prisoners of conscience generally, which would be overlooked if the focus is generic.

One has to keep in mind the likely Chinese Communist Party response to the fact of the Tribunal and its possible conclusions. That response will be propagandistic and communistic, no matter what tack the Tribunal takes, distorting what the inquiry does.

The Chinese response to an amalgam Tribunal which blurs the distinction between executed death penalty prisoner sourcing and prisoner of conscience sourcing would likely be, "we agree, but that is all in the past and we have moved on". The Chinese response to an inquiry which focuses on sourcing of organs from prisoners of conscience is likely to be much more nonsensical. A ridiculous response to a well-researched and reasoned specific Tribunal report will likely give the Tribunal report itself more weight than a response which might seem half way reasonable to those not knowledgeable, to a more general inquiry

There is an overlap between the two issues in terms of statistics or volume. Determining the volume of organs sourced from prisoners sentenced to death and then executed is relevant to determining the volume of organs sourced from prisoners of conscience. Although the Government of China denies the figures from China's own hospitals about the volume of transplants, we do have those figures.

China also produces figures for donations. Those figures can be questioned. But the numbers of actual donations from prisoners sentenced to death and then executed, together with any volunteer donations, are unlikely to be more than the claimed official figure. If inaccurate, the accurate figures would be less, even substantially less. One way of estimating volumes of prisoner of conscience sources for organs is subtracting official donor sources and executed death penalty sources from the overall total.

There is an overlap, although lesser, in terms of secrecy. As noted, the level of cover up for two phenomena is different. Nonetheless for prisoners sentenced to death and then executed there is cover up of total volumes. This is similar fact evidence for the cover up of volumes of sourcing from prisoners of conscience. When the Party/State hides the number of prisoners sentenced to death which it executes, there is every reason to conclude it would engage in a similar cover up of prisoners of conscience it kills for their organs.

It would be legitimate for the Tribunal to address the phenomenon of sourcing of organs from prisoners sentenced to death and then executed to address these overlaps. Outside of addressing the overlap, getting into the issue of prisoners sentenced to death and then executed is such a different issue that addressing it necessitates a different Tribunal.