

INTERIM JUDGMENT

The Independent Tribunal Into Forced Organ Harvesting from Prisoners of Conscience In China

1. The three days of hearings witnesses from around the world are now concluded. As forecast in my opening remarks, the Tribunal has, in the course of hearing witnesses, started its investigatory function and there will be a further hearing or hearings by one means or other. These hearings will allow the Tribunal to complete its reception of evidence from additional witnesses, and of documentary evidence, identified by the Tribunal itself as possibly valuable, including documents sought from witnesses during their testimony.
2. Once that material has been considered the Tribunal will deliver, in public, its judgment. It is hoped this will happen in the Spring of next year.

The necessary passage of time until then will allow the People's Republic of China (PROC) to reconsider:

- a) Invitations it has received - but to which it has made no reply - and to consider participating in the proceedings, as it still could.
 - b) Named doctors who have expressed favourable views about China's transplant practices and who have so far declined invitations to assist the Tribunal may reconsider their position; and it is hoped that they will.
3. The 'call for evidence' on the CHINATRIBUNAL website remains open so that members of the public may continue to contribute statements, or to identify further witnesses or documentary evidence, that the Tribunal may wish to consider.

4. ETAC and the Tribunal remain aware of the need to have access to individuals who, or material that, suggests nothing criminal has been involved in China's organ transplant practices. The Tribunal would, accordingly, be grateful for notification of the names of any such individuals who could assist with 'exculpatory evidence', or of written material to a similar effect that it may not yet have had drawn to its attention.
5. It will be recalled that none of the many reports into China's transplant practices have explored specifically whether those practices have involved commission of international criminal offences, although often asserting that they may have committed. People's tribunals typically deal with allegations of extremely serious crimes by states or state supported bodies that - as in this case - formal national and international bodies have failed to deal with. This tribunal *will* investigate if international criminal offences have been committed by state or state-supported bodies or organisations or individuals in China which, or who, may have engaged in forced organ harvesting.
6. It should be further recalled that any finding without qualification in the Tribunal's final judgment that commission of crimes has been proved completely will be based on the Tribunal members being satisfied of such a finding being *beyond reasonable doubt*. Other findings, one way or another if any, made at lesser levels of certainty will be explained in the judgment.
7. It is not for the Tribunal to be concerned with the use to be made of its judgment, which is primarily for ETAC. Nevertheless, it cannot be missed by anyone remotely familiar with the allegations made over the years about forced organ harvesting from prisoners of conscience that repeated findings adverse to the PROC may have had little, if any, effect on such practices.

8. Similarly, it is not for the Tribunal to focus too much of its attention on how practices in the PROC contravene international norms and ‘shock the conscience of humanity’ - to quote the preamble of the statute of the International Criminal Court. It **is** for the Tribunal simply to do its work according to its mandate which is to investigate what crimes have been committed by organ transplant practices in the PROC, established by evidence presented to, or called for by, the Tribunal and by nothing else.
9. Nevertheless, the Tribunal cannot overlook that in the modern world where countries and their citizens are all interconnected, through trade and in other ways, public pronouncements critical of the conduct of one country may possibly have some effect on that country directly, or indirectly by informing other countries and their citizens that connect with and thereby support it.
10. Normally a tribunal like ours would not issue a partial or interim judgment but would wait until it had made all relevant factual and legal decisions and then issue its single final judgment. Different considerations may apply where issuing a partial or interim judgment may serve the immediate public good.
11. Unusually, and for a specific reason that will follow, the Tribunal announces its conclusion now on one factual issue only of the many that will have ultimately to be considered in answering the question asked of the Tribunal.
12. The Tribunal’s members are all certain - unanimously, and *sure beyond reasonable doubt* - that in China forced organ harvesting from prisoners of conscience has been practised for a substantial period of time involving a very substantial number of victims. We will deal in our final judgment in detail with our findings as to whether any international crimes have been committed by this practice, if so by whom and with detail as to time periods and numbers of victims. This final judgment will be derived from our further analysis of present material and other material yet to be provided and to legal advice yet to be received.

13. But - to repeat - it is beyond doubt on the evidence presently received that forced harvesting of organs has happened on a substantial scale by state supported or approved organisations and individuals.

14. Without reference to *criminality*, it can be confidently asserted - not insignificant perhaps on 'Human Rights Day' that this year celebrates precisely 70 years to today since the Universal Declaration of Human Rights was adopted - that China's practice of forced organ harvesting as evidenced before us is in breach of, as a minimum, the Declaration's:

Article 3 (right to life);

Article 6 (recognition as a person before the law);

Article 7 (equality before the law);

Article 9 (not to be subject to arbitrary arrest);

Article 10 (full equality to a fair and public hearing in determination of rights);

Article 11 (presumption of innocence).

Article 5 (torture) is also shown to have been breached by witnesses who were called principally to help with evidence of events in prisons of medical testing consistent with preparation of individuals for organ harvesting, all of which witnesses bar one were tortured.

15. Our judgment on the single issue shows that we have been driven by the evidence we have received to 'certainty of mind' that these things have done on a very large scale over a substantial period of time. We reach this decision without the assistance of those who might have advanced evidence to a contrary effect. It must be clearly understood that any such evidence coming later - from doctors, academics, government officials, whoever - **will** be considered just as it would have been were it

to have been heard in the last three days. It should also be fully understood that it is not the case that every witness before us has given evidence that is supportive of the particular conclusion we have so far reached - some witnesses have given factual evidence that, without being doubted as to its credibility, takes this central issue no further.

16. Giving this partial interim judgment now is appropriate given the potential, as above, for public pronouncements critical of the conduct of one country to have some effect on that country directly or indirectly by informing countries and individuals that connect with, and thereby support, that country.
17. We have to have in mind how the repeated accounts in reports of forced harvesting of organs in the PROC - even those reports that have touched on possible criminality - have not, so far as is known, had any or much effect on transplant practices in the PROC. It is possible that the clear and certain finding - *beyond reasonable doubt* - that we make about forced organ harvesting, although not by itself and at this stage a finding of international criminal liability, *will* have a direct effect on the PROC or on those with whom it interacts. They should, once aware by our judgment or otherwise of the practice in China of forced organ harvesting, reflect on any support they effectively give by engaging with the PROC.
18. We should all, perhaps, reflect on how the oxygen of publicity given to the allegations made and supported to the extent they are by our interim judgment, may allow the real oxygen of life to continue *life itself* in some who might otherwise be killed. Such a conceivable outcome - slight as a probability, arguably remote but certainly possible - makes it not only appropriate for us to record our present certainty about the PROC'S forced organ harvesting practices but a duty publicly to do so. Doing so *now* may possibly save innocents from harm.

19. Reflecting on our several duties to fellow citizens of the world we can properly remind ourselves of past atrocities where states sought destruction of some part of their communities and recall the parts played in horrifying events that unfolded by others who remained silent.

20. Dangerous concepts of sovereignty that might now allow ‘other’ countries to do within their borders to their own citizens what they like pay no regard to humanity being a single family protected by essential and codified rights. These concepts have to be confronted and by confronting them with clear and certain decisions, such as ours concerning forced organ harvesting, real benefits may follow.

21. Our final judgment will, as already explained, be announced in due course.

London 10th December 2018



Sir Geoffrey Nice QC
Chairman, China Tribunal

Members of the Panel: Prof. Martin Elliott, Mr. Andrew Khoo, Ms. Regina Paulose, Ms. Shadi Sadr, Mr. Nicholas Vech and Prof. Arthur Waldron