

11 April, 2022

**Re: China's Response to Joint Correspondence by UN Special Rapporteurs and human rights experts AL CHN 5/2021 regarding forced organ harvesting targeting ethnic, religious or linguistic minorities such as Falun Gong Practitioners, Uyghurs, Tibetans, Muslims and Christians in detention**

**Letter for the attention of:**

Ms. Siobhán Mullally, Special Rapporteur on trafficking in persons, especially women and children

Dr. Miriam Estrada-Castillo (Vice-chairperson), Working Group on arbitrary detention

Ms Tlaleng Mofokeng, UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Mr Tai-Ung Baik, Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Mr Fernand De Varennes, UN Special Rapporteur on minority issues

Mr Ahmed Shaheed, UN Special Rapporteur on freedom of religion or belief

Mr Nils Melzer, UN Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment

Ms Dubravka Šimonovic, UN Special Rapporteur on violence against women, its causes and consequences

Ms Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ms. Elina Steinerte (Chair-Rapporteur), Working Group on arbitrary detention

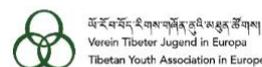
Ms. Leigh Toomey, Working Group on arbitrary detention

Mr. Mumba Malila, Working Group on arbitrary detention

Mr. Priya Gopalan, Working Group on arbitrary detention

We the undersigned write with regard to the Government of China's response (ref No.GJ/41/2021) dated 10 September 2021 (the "Response") to the joint correspondence issued by United Nations Special Rapporteurs and human rights working groups the ("UN Human Rights Experts") on 10 June 2021 (the "Joint Correspondence").

INTERNATIONAL COALITION TO  
**END TRANSPLANT  
ABUSE IN CHINA**



The Response is flawed and entirely inadequate considering the urgency and gravity of the allegations. We respectfully request that the UN Human Rights Experts should express the same to the Government of China.

Expert international investigators who have worked on state-sanctioned forced organ harvesting since 2006 have reviewed the Response. We provide their analysis below as a resource to support your important work on this issue.

In addition, we have listed six actions which we respectfully urge you to consider.

### THE JOINT CORRESPONDENCE

In the Joint Correspondence the UN Human Rights Experts expressed their “utmost concern at the alleged regular and forced medical examination targeting ethnic, religious or linguistic minorities such as Falun Gong practitioners, Uyghurs, Tibetans, Muslims and Christians in detention, without their consent; and the alleged enforced disappearance of some detainees, which appears to be related to the allegedly illegal acquisition organ trafficking”.

The UN Human Rights Experts also stated that “in [their] view, the information ...[...]... is sufficiently reliable to indicate a matter warranting immediate attention”.

The UN Human Rights Experts requested the following from the Government of China (the “Twelve Requests”):

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal grounds for the performance of medical examinations on prisoners or detainees particularly on the basis of their ethnic, religious or linguistic characteristics such as Falun Gong practitioners, Uyghurs, Tibetans, Muslims and Christians.
3. Please provide additional information on the factual and legal basis for the arrest and detention of Mr. Omir Bekali.
4. Please provide information on the procedure followed to request and ensure the free and informed consent of prisoners or detainees in connection to medical examinations. Also, please explain the purpose of such medical examination targeted at prisoners or detainees belonging to minority groups and the reason for which the prisoners or detainees are not informed of the results.
5. Please, provide information on the assurances taken for avoiding a conflict of interest of physicians by prohibiting that physicians who determine the death or a potential donor would be involved in removing an organ from that donor or in the care of the intended recipient.



6. Please provide information on the legislative amendments to prohibit all forms of trafficking in persons, and provide effective and appropriate victim protection services, including in prisons and detention centres, and their implementation.
7. Please provide information on measures adopted to guarantee the need for donation and transplantation activities to be transparent and open to scrutiny, while protecting the personal anonymity and privacy of donors and recipients.
8. Please indicate how your Excellency's Government is ensuring that organ trafficking is given appropriate attention within anti-trafficking programmes and policies and that efforts to address it are provided with adequate resources.
9. Please provide information of how data is collected to prevent abuse of transplantation systems, such as registries of donors, waiting list of recipients numbers transplantations, donor consent and monitoring compliance.
10. Please provide information on the investigations of the reported incidents in relation to organ harvesting and how does your Excellency's Government ensure that victims and survivors of organ trafficking are provided with appropriate and urgent healthcare., as well as physical, psychosocial, and legal services.
11. Kindly indicate whether your Excellency's Government delivers specialise training on trafficking in persons to relevant actors (such as law enforcement, judicial authorities, medical personnel, hospital administrators) including on acceptable forms of evidence in the medical surgery field, to strengthen national capacities to detect, investigate and prosecute such form of trafficking.
12. Please indicate the steps taken by Excellency's Government to ensure that prisoners or detainees are not discriminated or targeted based on their culture, religions or beliefs, or language.

## **ANALYSIS OF THE RESPONSE**

The Response is inadequate and misleading. It leaves many outstanding questions related to state - sponsored organ trafficking from prisoners of conscience in China. The Government of China provided no credible evidence in support of its assertions or explanations. The information provided did not address the Twelve Requests. Effectively the United Nations, and indeed the World, are being asked to "take China's word for it" that there is no forced organ harvesting ongoing in China despite the overwhelming evidence to the contrary.

The Response has 5 components. Our observations in respect of each component are set out below.

### **A. INDIVIDUAL CASES**

The UN Human Rights Experts asked the Government of China to provide any additional information and/or comments they may have had on the evidence of two individuals Ms. Gulbakhar Jalili and Mr. Omir Bekali. The Government of China responded with personal attacks against these two individuals.

These two individuals testified at the China Tribunal. They were two of twenty-eight public witnesses to the Tribunal. The China Tribunal sent invitations to the Ambassador to London of the People's Republic of China on five occasions (20 November 2018, 26 November 2018, 13 December 2018, 15 March 2019 and 2 April 2019) to attend the proceedings, to participate in them and/or to make representations. No reply was received to any of these invitations.

The concerns the Government of China expressed to the UN Human Rights Experts about these witnesses could have been expressed to the China Tribunal. Indeed, the Government of China could have participated in the Tribunal and, if they so wished, cross examined the witnesses. There were, at the China Tribunal, other witnesses who conveyed much the same evidence as the evidence summarized by the UN Human Rights Experts in their communication to the Government of China.

The United Kingdom House of Lords in an 1893 case Lord Herschell wrote:

*"Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue; but it seems to me that a cross examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross examination, and afterwards to suggest that he is not a witness of truth, I mean upon a point which it is not otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling."*

All this can be said of the Government of China in their response to the UN Human Rights Experts about the two individual witnesses, given that the Government of China was given five different opportunities to comment on the testimony of these witnesses. The Government of China and certainly the UN Human Rights Experts should accept the evidence of these witnesses at face value.

If the Government of China understood that the expression of concern of the UN Human Rights Experts was an invitation to question the credibility of the witnesses, they misunderstood that expression. The UN Human Rights Experts were not asking the Government of China whether they belatedly wanted to impeach the credibility of these witnesses. The experts were asking for information or comments on the evidence conveyed by the witnesses, and not on the credibility of the witnesses. To attack the credibility of the witnesses belatedly is an evasion of the requests for information that was requested.

None of the Twelve Requests asked specifically about Ms. Gulbakhar Jalilova by name. There was one request for information about Mr. Omir Bekali, the factual and legal basis for his arrest and detention.

As regards his arrest and detention, the UN Human Rights Experts wrote:

*"On 26 March 2017, Mr. Bekali, a 44 year old Uyghur Kazakhstani national, was allegedly arrested from his family house at Pichan without an arrest warrant and brought to Karmay Prison where he was allegedly told that he was accused of terrorism offences."*

The Government of China responded:

*"From 26 March to 24 November 2017, Omir Bekali was investigated by the public security organs on suspicion of organizing, leading or participating in terrorist organizations. That investigation established that Omir Bekali had repeatedly encouraged, abetted and financed the participation of others in terrorist organizations, and that in June 2006, he had allocated US \$22,000 to the financing of 'jihad' personnel abroad. The facts of his crime were clear and the evidence was irrefutable, and the coercive measures taken against him by China were fully compliant with legal procedure. Omir Bekali is in good physical health and excellent condition. The coercive measures taken against him were lifted in November 2017, on condition that he leave the country within a specified time. He left the country in December 2017."*

As is evident, the Response states that arrest of Mr. Bekali without warrant and detention without charge for seven months "were fully compliant with legal procedure". This should be of grave concern. The response also raises questions over (i) the facts of the crime and (ii) the evidence in support of the detention.

The statement of the Government of China that Mr. Bekali "*had allocated US \$22,000 to the financing of 'jihad' personnel abroad*" seems to suggest that Mr. Bekali had a separate jihad fund and that he allocated funds he had in some other account to his jihad fund. "Jihad" is an ambiguous term. It can mean only the spiritual struggle against sin. Jihad is not equivalent to terrorism. To equate jihad to terrorism, as the Chinese communication appears to do, is ignorant, but also representative of the Government of China's response to its Uyghur population, equating Islam with terrorism and accusing Uyghurs, as a group, of terrorism on the flimsiest of pretexts.

On the face of it, no crime has been committed, and indeed it is of concern that the Government of China appears to assert that the alleged conduct could justify arbitrary detention. This should be a matter of concern for the UN Human Rights Experts.

Rather than attacking the credibility of the witnesses, the Government of China could have provided information, if they had it, that the evidence of the witnesses was not representative of the general situation in Xinjiang.

The inference to be drawn is that there is no such information available. That the Government of China felt compelled to resort to belated personal attacks, free from the scrutiny of an independent tribunal, serves as a good indication that it has nothing to say in answer not just to the evidence of these two witnesses but in answer to all the many witnesses who gave similar evidence before the China Tribunal.

Generally, the Government of China has given evasive answers to the expressions of concern and requests for information of the UN experts. The personal attacks on the witnesses are striking because, in addition to being evasive, they are also aggressive and rude. They are an example of a general shift in the Government of China to what has been labelled wolf warrior diplomacy, which refers to increasing assertiveness in China's responses to perceived and actual criticisms. This assertiveness can, as it does here, take the form of extreme verbal formulations against its critics.

Peter Martin has observed that for Chinese wolf warrior diplomacy "*the primary audience is domestic politicians*"; that is much of the rhetoric is for the benefit of China's own citizens.. The Government of China response, though formally addressed to the Office of the United Nations High Commissioner for Human Rights, is, in substance, directed to local Chinese Communist Party officials. The UN experts should treat this response accordingly.

Over exuberant protestations of innocence without evidence can themselves be inculpatory. That appears to be the case here. This response to the evidence of the two witnesses suggests an attempt to deflect well deserved blame rather than innocence. The China Tribunal recommended that any person or organization that interacts in any substantial way with the People's Republic of China should recognize that, when it comes to organ harvesting, "*they are interacting with a criminal state*".

Given the nature of the allegations and the documented willingness of the Chinese government to engage in the extraterritorial coercion of Chinese citizens, the UN should consider whether witness protection is necessary in the case of these two individuals. Protection of witnesses could take the form of not merely physical protecting, but also preventing reputational damage. We would hope that the UN Human Rights Experts would acknowledge the courage it took for these witnesses to come out with the evidence that they did, and the importance of dismissing gratuitous slurs on their reputations.

## **B. ISSUES RELATING TO MEDICAL EXAMINATIONS**

The UN Human Rights Experts asked for the following:

*"information on the legal grounds for the performance of medical examinations on prisoners or detainees particularly on the basis of their ethnic, religious or linguistic characteristics such as Falun Gong practitioners, Uyghurs, Tibetans, Muslims and Christians."*

and

*"information on the procedure followed to request and ensure the free and informed consent of prisoners or detainees in connection to medical examinations. Also, please explain the purpose of such medical examinations targeted at prisoners or detainees belonging to minority groups and the reason for which the prisoners or detainees are not informed of the results."*

The Government of China provided information on the legal grounds for the performance of medical examinations on prisoners or detainees but provided no information on the purpose of such examinations on the basis of ethnic, religious or linguistic characteristics. The Government stated that there are no involuntary or forced medical examinations but indicated no procedure to obtain consent.

The Government further stated that "*all persons held in custody are treated equally and without discrimination, no matter what status they have, what ethnic group they belong to or what religion they believe in*" despite overwhelming evidence to the contrary. The Government consequently ignored the request to explain the purpose of medical examinations targeted at prisoners or detainees belonging to minority groups. The Government further claimed that "*there are no cases where the persons examined in detention facilities are not informed of the results of their medical examinations*" despite substantial evidence to the contrary.

This concern too, then, is substantially unanswered. Silence can sometimes speak volumes. That is the case here. The absence of reference to any evidence to the contrary in response to the large volume of evidence of discriminatory medical testing can be taken as a tacit admission that this discriminatory medical testing is happening. We urge the UN Human Rights Experts to adopt this view.

### **C. ORGAN TRANSPLANTATION ISSUES**

The UN Human Rights Experts expressed concern at the lack of independent oversight as to whether prisoners or detainees provide valid consent to organ donation, and reports that families of deceased detainees and prisoners are prevented from claiming their bodies. The Government of China did not respond to the concern at the lack of independent oversight. The inference to be drawn is that there is none.

As to the difficulty that families of deceased detainees and prisoners have in claiming their bodies, the Government of China responds with laws, but not facts. Moreover, its presentation of the laws is incomplete. It ignores mention of a 1984 law, that has not been repealed, which allows sourcing of organs from prisoners without their consent or the consent of their families as long as the bodies are unclaimed. This law incentivizes a system which sources organs from prisoners.

The way the Government of China structured its response to the UN experts is odd. The Government categorizes forced organ transplantation issues as one of five issues raised by the UN Human Rights Experts. However, forced organ transplantation is the only issue. To pretend that forced organ transplantation is one of many issues is another way of evading the concerns and requests for information expressed by the UN Human Rights Experts.

### **D. ISSUES RELATED TO HUMAN TRAFFICKING**

There is unfortunate international terminological confusion regarding trafficking. The United Nations Office on Drugs and Crime, which is the UN bureaucracy responsible for the Protocol on Trafficking in Persons of the Convention on Transnational Organized Crime, has taken the position that organ trafficking and human trafficking of persons for the removal of organs are separate issues. In their view, human trafficking of persons for the removal of organs comes within the Protocol on Trafficking in Persons in the Convention on Transnational Organized Crime and the remit of their Office, but trafficking of organs does not.

This view is far from idiosyncratic. It is so widespread that it has led to a separate international covenant on trafficking in organs, the Council of Europe Convention against Trafficking in Human Organs, even though the Council of Europe has a Convention on Action against Trafficking in Human Beings.

The UN Special Rapporteur on trafficking in persons, one of the twelve UN experts who addressed their communication to the Government of China, differs from the UN Office on Drugs and Crime in that they do include trafficking in organs within the concept of trafficking in persons. As the communication of the UN experts to China notes, the 2013 report of this Rapporteur to the General Assembly, raised concerns about the harvesting by States of organs of persons who have been or are being executed.

The UN Human Rights Experts collectively expressed concern to the Government of China about the evidence in China on trafficking in organs. Four of its twelve recommendations asked for information about trafficking in persons and, within that category, organ trafficking.

The Government of China, in their response, took advantage of the ambiguity in international terminology by addressing trafficking in persons without addressing organ trafficking. Under the heading "D. Issues related to human trafficking", the Government of China response did not mention organ trafficking at all.

Nonetheless, the context of the requests from the UN Human Rights Experts was clear. It was apparent that the UN Human Rights Experts were asking about organ trafficking and not other forms of trafficking. This is another example of an evasion, and not just a misunderstanding.

#### **E. DETAINEES ARE NOT DISCRIMINATED AGAINST ON THE BASIS OF THEIR CULTURE, RELIGIOUS BELIEFS OR LANGUAGE**

The heading of this category speaks for itself. It is a denial. The denial is elaborated not by reference to the facts but rather by reference to the laws in China prohibiting discrimination.

The Response states that China is "a State governed by the rule of law". Yet, that is not the case. The Government of China equates the rule of law with the rule of the Chinese Communist Party. When the Party itself dictates discrimination, there is no legal recourse against the Party.

The Response, in the same sentence as it refers to the rule of the law, states "*China is engaged in a struggle against terrorism and extremism*". Yet, it is impossible to distinguish between discrimination and the struggle against terrorism and extremism except by reference to the facts.

In China, the evidence is overwhelming that, in the name of combatting terrorism and extremism, the Government of China discriminates against, indeed, persecutes individuals on the basis of their culture, religious beliefs or language. References to terrorism and extremism are verbalisms. Discrimination is real.

The very jumbling together of terrorism and extremism highlights the problem. Terrorism globally is a real danger, addressed in international standards and mechanisms.

Extremism is not. There are no international standards against extremism. Extremism, to the Government of China, is anything they want it to mean, including absence of sufficient expressed loyalty to the Chinese Communist Party.

#### **OTHER OBSERVATIONS**

The UN Special Rapporteurs requested information "*on the legal grounds for the performance of medical examinations on prisoners or detainees particularly on the basis of their ethnic, religious or linguistic characteristics such as Falun Gong practitioners, Uyghurs, Tibetans, Muslims and Christians.*"

The Government of China's response cited State Council orders and public security guidelines to claim that these medical tests were for the health of the detainee being examined, and that they have the right to be apprised of the nature of the examination and its outcome.

Yet, in the cases cited by the Special Rapporteurs, the witnesses make clear that the purpose of the examination was not for their own health. The examinations were coercive, were focused specifically on organ function, were shrouded in secrecy, were unexplained, and took place in the context of incarceration based on religious and/or ethnic identity. The witnesses were not given the results of their tests.

For example, Ms. Gulbakhar Jalilova reports being made to wear a black hood and taken to an unknown location for the examination. She reports being subjected to blood tests, ultrasounds, and regular chest X-rays. She reports that when she asked about the purpose of the examinations, she was told to be quiet and not ask questions. Mr. Omir Bekali made similar allegations: blood tests, ultrasounds of the abdominal and thoracic organs, all while handcuffed with a black hood over his head. He does not report being apprised of the purpose of the examination.

These medical examinations are consistent with the kind of examinations needed to assess organ function, but they are not consistent with standard examinations for the general health of the prisoner, which would in any case not be conducted on a regular basis as these were. The Government of China's response provides no new data that would suggest the purpose of these examinations was anything other than an assessment of organ function, required prior to organ removal.

The UN Special Rapporteurs requested information on measures *“adopted to guarantee the need for donation and transplantation activities to be transparent and open to scrutiny, while protecting the personal anonymity and privacy of donors and recipients.”*

The Government of China's response contains nothing on these measures. Recent research indicates that voluntary transplant activities in China are not in fact transparent. When scrutinised, it instead appears that the Chinese state has falsified its official transplant statistics.

The Special Rapporteurs request information on *“how data is collected to prevent abuse of transplantation systems, such as registries of donors, waiting lists of recipients numbers of transplantations, donor consent and monitoring compliance.”*

The Government of China's response again cites general policies but does not contain specific information explaining how these protocols are upheld and does not provide the Special Rapporteurs access to verify their claims. As noted, recent research shows that official registry data appears to have been falsified to promote state narratives of reform.

## **CONCLUSIONS AND REQUESTS**

The Response of the Government of China largely ignores the Twelve Requests and concerns of the UN Human Rights Experts.

We respectfully request that the UN Human Rights Experts take the following steps in response to the Government of China's Response:

1. Issue a new joint correspondence that highlights the inadequacies of the Response and re-request the information requested in the Joint Correspondence;
2. Issue a recommendation for the Government of China to cooperate with an independent United Nations Commission of Inquiry into organ transplantation from prisoners of conscience in

China. If there is no cooperation, an investigation should be conducted nonetheless. A request for authorization of such an investigation should be sent to the relevant office of United Nations;

3. Place the issue on the agenda of [insert next relevant United Nations meeting ];
4. Convene a meeting in which Member States meet with the China Tribunal Chair, Sir Geoffrey Nice QC and other investigators, to discuss the work and Judgement of the China Tribunal and the reports they examined; and
5. Request that the Working Group on Arbitrary Detention transmits the case through its regular procedure in order to render an opinion on whether the deprivation of liberty in respect of the two witnesses referred to in the Joint Correspondence was arbitrary or not.

Given that the UN Human Rights Experts have stated that “*the information... [...] is sufficiently reliable to indicate a matter warranting immediate attention*”, and that the Government of China has issued an unsatisfactory response, we urge the UN Human Rights Experts to deal with this issue as a matter of priority. To do otherwise risks undermining the credibility of the concerns previously expressed by the UN Human Rights Experts, and of the United Nations generally.

The Chinese Response was issued almost 5 months ago. We respectfully request that the proposals set out above are put into action without delay.

We hope that it will also be possible for representatives to meet with you to discuss the above information and answer any questions you may have.

Yours sincerely

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Dr. Nhatthien Nguyen, *President, Vietnam Democracy Center*

Mehmed Obul, *President, Australian Uyghur Association*

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Vo Mong Tuyen, *Moderator, Country – Honor – Duty Group*

Thierry Valle, *President, Coordination des Associations et des Particuliers pour la Liberté de Conscience CAP Freedom of Conscience, NGO with ECOSOC consultative status at the United Nations*

Andy Vermaut, *President, Alliance Internationale pour la Defense des Droits et des libertes (AIDL)*

Andy Vermaut, *Spokesperson, Postversa*

Dr. Huu Vo M.D., *President Executive Committee, United Council of Vietnamese Homeland and Overseas*

Martin Weightman, *Director, All Faiths Network*

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Association Clarté et Bien être

Association Fleur de Jade Caraïbes

Association Lotus Sacré

Australian Uyghur Tangritagh Women's Association

Falun Dafa Associations of Canada

Falun Dafa Association of France

Free Vietnam Global Network

Initiative Citoyenne

Les Trois Lotus

Lumière de Chine

Sagesse de Chine

Tibetan Community Italy

Vietnamese American Science and Technology Society

Vietnamese Nationalist Party