Organ transplant abuse in China: A plan of action for the UK

(*Remarks prepared for presentation at the House of Lords, November 5, 2024*)

by David Matas

China is engaged in the mass killing of prisoners of conscience for their organs. The primary victims, since 2001, have been practitioners of the spiritually based set of exercises Falun Gong. Also victims in significant numbers have been Uyhgurs since 2017. In smaller numbers have been Tibetans and House Christians.

The evidence of this abuse is overwhelming, establishing this abuse beyond any reasonable doubt. One significant component of that evidence is the judgment of the China Tribunal of 2020. Tribunal proceedings were held here in London, and were chaired by Sir Geoffrey Nice.[1]

I want to present here a plan of action for the UK to combat organ transplant abuse in China. The plan of action has two components. One is prohibiting UK complicity in organ transplant abuse in China. The other is contributing to the effort to end transplant abuse in China.

Prohibiting UK complicity is entirely within the control of the UK. Ending transplant abuse in China is something only China can do. The UK can, nonetheless, contribute to the effort to end in China that abuse.

A. Preventing complicity

Prosecution

The UK Parliament enacted prosecution legislation in 2022. The 2004 Human Tissues

[1] https://chinatribunal.com/

Act prohibits commercial dealings in human material for transplantation.[2] The Health and Care Act 2022 amended the Human Tissues Act to add a provision to extend the scope of the original prohibition to offences committed outside the UK by those habitually resident in England and Wales, or by UK nationals not habitually resident in Northern Ireland.[3]

There is no reason why the law has to be so limited. In principle, Parliament could enact a law which applies to foreigners who committed their crimes abroad, as long as subsequently they show up in the United Kingdom. The UK has that sort of legislation now for war crimes, crimes against humanity and genocide.

Forced organ harvesting directed against prisoners of conscience is arguably a crime against humanity, and a genocide as a mass killing of part of the group to which the victims belong. Nonetheless, rather than leave the matter to interpretation and debate, the criminal law of forced organ harvesting could and should be extended to any person within the jurisdiction of the UK, no matter where the offence was committed.

Mandatory legal reporting

The criminal prohibition is accordingly in place. Yet, to make it work, there has to be reporting of transplant tourism from health professionals to Government officials. That reporting can be affected by legislation.

Transplant tourists require continuing medical care on return because they continue to need anti-rejection drugs. However, that continuing care would be subject to health

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2 Section 32

3 Section 32A

professional patient confidentiality unless there is a standard providing an exception to that confidentiality.

That confidentiality means that, even if the extra-territorial offence legislated in 2022 exists, it becomes unenforceable without an exception to confidentiality. So, one element of the plan of action to combat UK complicity in organ transplant abuse in China is the need to establish an exception to that blanket health professional patient confidentiality.

Mandatory ethical reporting

Mandatory reporting of transplant tourism from health professionals to government authorities responsible for the enforcement of the extra-territorial forced organ harvesting law can be effected by professional ethical standards as well as by law. In the UK, there is no legislation requiring reporting of gunshot and knife wounds. The General Medical Council has developed an elaborate multi-page guidance on the reporting by doctors to the police of gunshot and knife wounds.[4]

Unless and until there is legislation on mandatory reporting by health professionals to the relevant government authorities of transplant tourism, something similar to the General Medical Council guidance on reporting of gunshot and knife wounds could and should be developed on reporting of transplant tourism. There should be equivalent professional ethical standards developed for nurses and pharmacists.

Health insurance coverage

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4 https://www.gmc-uk.org/-/media/documents/gmc-guidance-for-doctors---confidentiality---reporting-gunshot-and-knife-wounds_pdf-70063779.pdf

In principle, health insurance coverage should not be allowed to cover transplant tourism. Yet, right now in the UK there is nothing prohibiting that coverage.

Health coverage in the UK for treatment abroad can be, in limited circumstances, public and, in broader circumstances, private. The UK needs legislation to prevent that coverage from encompassing the sort of organ transplant abuse prohibited by the Health Care Act. The prohibition should encompass private as well as public insurance coverage.

Immigration ban

The UK should prohibit entry to the UK of anyone complicit in organ transplant abuse abroad. That prohibition, if it existed, would prevent entry not just for tourism, but also for lectures, exchanges, conferences, and training. Again, right now, that prohibition, specific to organ transplant abuse, does not exist.

There is a generic prohibition on entry where a person has committed a criminal offence abroad which has caused serious harm.[5] There is no doubt that killing someone for their organs is serious harm.

Yet this is an offence which no one person commits alone. The act rather is broken down into a number of component parts with different actors. Each person in the chain is complicit in the offence. To avoid any question whether complicity fits within the immigration ban, the matter should be addressed explicitly.

Supply chains

[5] Immigration Rules Part 9 Rule 9.4.1.(c)

Forced organ harvesting involves more than just perpetrators. It involves the machinery of death.

For forced organ harvesting to occur, there has to be a transplant hospital or a transplant wing of a hospital. There needs to be anti-rejection drugs. For the transportation of organs, there needs to be refrigeration and liquid immersion. ECMO (extra-corporeal membrane oxygenation) machines keep organs alive after they have ceased to function naturally.

Lord Hunt proposed in 2023 in the House of Lords an amendment to a Government procurement bill which would have granted Government officials discretionary power to a exclude a supplier from Government contracts if the supplier or a connected person was or is involved in forced organ harvesting or dealing in any device or equipment or services relating to forced organ harvesting. The proposed amendment was adopted in the House of Lords but rejected in the House of Commons. In advocating against the amendment in the Commons, the Government spokesperson raised a number of theoretical objections, all of which have answers.[6] The initiative of Lord Hunt is worth pursuing.

End collaboration

Even without legislation, all elements of UK society should avoid complicity with organ transplant abuse in China with prisoner of conscience victims. Avoiding complicity means avoiding collaboration which facilitates the abuse.

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6 https://hansard.parliament.uk/commons/2023-09-13/debates/72FC2B5F-2B7D-46D6-899E-19CF4FCF2BDA/ProcurementBill(Lords)

UK hospitals, doctors and nurses should not be training doctors or nurses to engage in transplantation in China. UK health professionals should not be going to China for transplantation conferences, training or presentations. Chinese transplant professionals should not be invited to attend conferences, give lectures or participate in training in the UK. UK medical journals should not be publishing Chinese transplant research unless the sourcing of organs referenced in the research is verifiably clear and proper. Global Rights Compliance has published a Policy Guidance and a Legal Advisory Report both titled "Do no harm" which provide guidance and advice on mitigating risks of complicity in organ transplant abuse in China through the exercise of due diligence.[7]

Sanctions

The United Kingdom, under the umbrella of its sanctions legislation,[8] has both corruption and human rights sanctions. There are over 4,600 individuals and entities sanctioned.[9] Yet there are, from what I can see, no sanctions listed for those complicit in forced organ harvesting.

This absence in the listing is not the result of an absence of candidates. There is a good number of them and plenty of evidence against them. The UK sanctions regime needs to direct its attention to at least some of the forced organ harvesting culprits.

An exception to sovereign immunity

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7 https://endtransplantabuse.org/international-law-firm-global-rights-compliance-publish-legal-advisory-report-and-policy-guidance-do-no-harm/

8 The Sanctions and Anti-Money Laundering Act

9 https://search-uk-sanctions-list.service.gov.uk/

The United Kingdom has a State Immunity Act from 1978 which gives both civil and criminal immunity to foreign state organs. Whether individuals acting for the state have immunity is not addressed. That gap has nonetheless been filled by the common law, which has found that individuals acting for a foreign state organ have the same civil and criminal immunity that the state organ for which they act does. When a state acts, it acts, after all, through individuals.

Even though the current UK criminal law is limited to those habitually resident in England and Wales and UK nationals, visiting foreigners, as noted, can be prosecuted for crimes against humanity and genocide, and forced organ harvesting arguably falls within those categories.

Forced organ harvesting is, in China, a crime of the state. The slaughter of innocents is organized through state institutions - the police, who detain the victims, the prisons and the state health system, including the state military hospitals. The targeted victims are demonized, dehumanized and depersonalized by state institutions.

The perpetrators, if prosecuted in the UK for their crimes or sued civilly by the representatives of victims, should not be able to claim state immunity. The State Immunity Act should be amended to make that clear.

Persona non grata

The United Kingdom does not need legal exceptions from state immunity in order to address civil or criminal liability of Chinese state agents present in the United Kingdom. The Government of the UK can declare any Chinese state agent in the UK who is complicit in forced organ harvesting *persona non grata*. That declaration means that

the state agent with immunity must leave the UK or not enter, if not already in the UK.

The Vienna Convention on Diplomatic Relations of 1961 provides:

> "The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.
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> If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the mission."[10]

Although threre is no need to explain a declaration that a person is *persona non grata*, the UK government should give such an explanation where that declaration is made because the individual is complicit in forced organ harvesting. Such declarations should also be made for those still in China who are complicit in the abuse and who otherwise might become members of the Chinese diplomatic mission in the UK. The Government of the UK should indicate in advance of any such declaration that it intends to declare Chinese members of diplomatic missions, as well as those in China who might otherwise become members of diplomatic missions, *persona non grata* those complicit in organ transplant abuse in China with prisoner of conscience victims.

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[10] Human Tissue Authority, Code of Practice and Standards, Public Display, paragraph 65

lhttps://content.hta.gov.uk/sites/default/files/2023-06/Code%20D%20-%20Public%20Display.pdf

Bodies exhibit

Those responsible for plastinated bodies exhibits, where the bodies are sourced from China, are unable to establish the sourcing of those bodies. There is evidence establishing that the sourcing of these plastinated bodies from China is prisoners of conscience.

Current UK law requires consent before death for public display of bodies after death only if the death occurs in England, Wales or Northern Ireland. For imported bodies, there is no legal consent requirement.[11]

The UK Human Tissue Authority Code of Practice and Standards provides:

> "Anyone removing, storing or using bodies or body parts imported for the purpose of public display ... should ensure that they have been sourced legally in the country of origin and the person whose body or body parts are intended for public display has given consent for this purpose."[12]

That provision, while welcome, is not the same as a legal requirement. Lord Hunt in 2019 and 2021 introduced into the House of Lords a private member's bill that would impose the same consent requirements for imported cadavers used in exhibitions as exist for UK-sourced cadavers. The UK Parliament should enact that proposed

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11 https://hansard.parliament.uk/Lords/2019-02-27/debates/941C59AA-1D9E-4077-AE25-16F48F844AD8/HumanBodiesCommercialExhibition

12 Human Tissue Authority, Code of Practice and Standards, Public Display, paragraph 65 https://content.hta.gov.uk/sites/default/files/2023-06/Code%20D%20-%20Public%20Display.pdf

legislation.

Council of Europe Convention

The Council of Europe has a Convention against Trafficking in Human Organs which has entered into force. The Convention requires states parties to establish as a criminal offence organ trafficking and transplant tourism.[13] The offence would have to apply to citizens and permanent residents who engage in those abuses abroad.

The United Kingdom signed the Convention the very first day it was open for signature March 25, 2015. Nine years later the UK has yet to ratify the Convention. The 2022 legislation appears to put the UK in compliance with the Convention obligation to legislate the necessary prohibition. Signature indicates an intention to ratify. It is not clear why there has been this hesitation over ratification.

Ratification would be more than a formality. Ratification would allow the UK to join the other states parties to the Convention in working together in combatting organ trafficking and transplant tourism. Now that the requisite legislation is in place, the UK should ratify the Convention.

B. Ending Abuse

Human rights dialogues

A bilateral human rights dialogue between the UK and China can be frustrating. A report by a Canadian academic and consultant, Charles Burton, noted these concerns about the Canada Chinese human rights dialogue:

• The Chinese Ministry of Foreign Affairs takes up much of the dialogues reading scripts.

[13] Articles 4,5, 7 and 8

These scripts are repeated at the dialogues of the various countries over the years.

• There is little connection established between the dialogues and progress on the ground; it is difficult to determine benchmarks or other objective indicators of success.

• The Chinese Ministry is showing less commitment to the dialogues by downgrading the level of head of delegation and reducing staff in their Human Rights Division.

• The rise of nationalism in China concomitant with China's economic rise to power has made the Chinese Government unwilling to be chastised over human rights any more.

• The Chinese side tends to drag its feet in making dialogue arrangements sending out a signal that the western nations are the demandeurs in this instance.

• The Chinese response to the lists of cases of concern is not as complete as Canada expects it should be and degree of responsiveness varies significantly year by year.

• There is a pervasive cynicism about the process and dialogue fatigue has set in.[14]

Nonetheless, a bilateral human rights dialogue with China, where the mass killing of prisoners of conscience for their organs is consistently and continuously raised, has its value. It sends a message that the UK knows about the abuse and will not forget about it just because of Chinese Government denials, obfuscations and run arounds. What matters more than placating the criminals and their fellow travellers is the memory of the victims.

UN Human Rights Council

The United Nations Human Rights Council provides a number of opportunities and mechanisms to raise concerns about organ transplant abuse in China. The UK should

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[14] "Assessment of the Canada-China Bilateral Human Rights Dialogue", April 19, 2006

http://spartan.ac.brocku.ca/~cburton/Assessment%20of%20the%20Canada-China%20Bilateral%20Human%20Rights%20Dialogue%2019APR06.pdf

take advantage of those opportunities.

Twelve UN human rights experts wrote to the Government of China on June 10, 2021 expressing

> "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."[15]

This communication was followed by a press release four days later expressing alarm at the organ harvesting allegations in China.[16] The Government of China responded to the UN human rights experts on September 10th,[17] 2021 with the usual nonsense.[18]

This statement by a consolidated group of UN human rights experts nonetheless presents an opportunity for the UK and other like minded states in concert to pursue the expert initiative. One is a public joint letter written by the UK and other like minded states addressed to the High Commissioner for Human Rights echoing the concerns of the human rights experts.

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15 https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26382

16 https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27167&LangID=E

17 https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=36489

18 https://endtransplantabuse.org/wp-content/uploads/2022/04/Joint-Letter-from-65-Organisations-to-United-Nations-Special-Rapporteurs__ForcedOrganHarvesingInChina_April_2022_signed.pdf

A second is joining in a proposed Council resolution on the subject. A third is joining in a proposal to the Council for a special session on forced organ harvesting in China. The United Kingdom is not currently a member of the Council and can not either move resolutions or vote on them. It can nonetheless co-sponsor resolutions and speak on them.

Because China and their friends have now stacked the Human Rights Council with voting member states supportive of China, resolutions expressing concern about Chinese human rights violations are unlikely to succeed. However, one opportunity that always remains available is statements.

In the immediately previous session of the UN Human Rights Council in September, the United Kingdom made a statement on the item of the agenda titled "The human rights situations that require the Council's attention".[19] That statement included these words about China:

> "In Xinjiang, we echo the statement made earlier by the US, while in Hong Kong, we call on the authorities to end politically motivated prosecutions, immediately release Jimmy Lai and cease attempts to apply Hong Kong law extra-territorially, including to individuals in the UK. China must uphold its human rights obligations."

It would be a simple matter, at the next and ensuing sessions of the Council to add to its statement these words or something to similar effect:

> "we echo the concerns expressed by the UN human rights experts made in June

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19 https://www.gov.uk/government/speeches/un-human-rights-council-57-uk-statement-for-item-4-general-debate#:~:text=Upholding%20the%20international%20rule%20of,rule%20of%20law%20must%20prevail.

2021 about forced organ harvesting in China with prisoner of conscience victims and call on the Government of China to provide a more meaningful response than it did in September 2021".

UN Security Council

The United Kingdom is a permanent member of the UN Security Council. China is not a state party to the treaty establishing the International Criminal Court. Nonetheless, the Court has jurisdiction over situations in which one or more crimes within the Court mandate appears to have been committed which are referred to the Court Prosecutor by the Security Council.[20]

The United Kingdom could ask the Security Council to refer to the Court Prosecutor the situation of forced organ harvesting in China with prisoner of conscience victims. Such a request, even if there are enough votes in the Council to have the request endorsed by the Council, is almost certainly to be vetoed by China. Nonetheless, the request is worth making if for no other reason than to draw attention to the abuse and remind China that, they may be able to veto, they can not hide what they are doing.

UN General Assembly

The United Nations General Assembly Third Committee in recent years has been the forum of a number of joint statements criticising human rights violations in China. The United Kingdom has signed on to these joint statements and, in 2023, delivered one on behalf of the group.[21] The Government of China has responded to these joint

[20] Court statute Article 13 (b)

[21] For the 2021 joint statement see https://www.dfat.gov.au/international-relations/themes/human-rights/unga-third-committee-statements/76th-session/joint-statement-human-rights-situation-xinjiang-21-octobe

statements with its usual blather.[22]

These statements too represent an opportunity to show China that, despite their implausible reactions, concerns remain. Next time round, the UK should make every effort to ensure that the joint statement refers to concerns about forced organ harvesting in China with prisoner of conscience victims.

Conclusion

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For the 2022 joint statement see
https://www.international.gc.ca/news-nouvelles/2022/2022-10-31-statement-un-onu-declaration.aspx?lang=eng

For the 2023 joint statement see
https://www.gov.uk/government/speeches/joint-statement-on-human-rights-violations-in-xinjiang-at-the-un-third-committee

For the 2024 joint statement see

https://unny.mission.gov.au/unny/241022_UNGA79_Joint_statement_on_the_human_rights_situation_in_Xinjiang_and_Tibet.html

[22] For 2021, see

http://un.china-mission.gov.cn/eng/chinaandun/socialhr/202110/t20211022_9607296.htm

For 2022, see
http://un.china-mission.gov.cn/eng/chinaandun/socialhr/3rdcommittee/202211/t20221101_10794920.htm

For 2023, see
http://un.china-mission.gov.cn/eng/chinaandun/socialhr/3rdcommittee/202310/t20231018_11162597.htm

As long as the Chinese Communist Party (CCP) remains in power in China, one can expect the Government of China never to admit that forced organ harvesting with prisoner of conscience victims is happening or has happened. That does not mean, however, that the abuse is destined to stop only after a regime change.

The primary concern of the CCP is not forced organ harvesting with prisoner of conscience victims. The primary concern of the CCP is rather the CCP, the mainenance in power in China of the CCP. Forced organ harvesting with prisoner of conscience victims is happening now in China because the political benefit for the CCP for that abuse is greater than the political cost. If the equation is reversed, if the political cost of the abuse is greater than the political benefit, the CCP will end the abuse. It is up to the UK and other like minded states to change that CCP equation, to increase the political cost the CCP bears from the abuse.

The United Kingdom has made progress in addressing organ transplant abuse in China through its 2022 legislation and its Human Tissue Authority Code of Practice and Standards on Public Display. There is nonetheless a lot more that could be done. The UK, from its previous initiatives, looks to be pointed in the right direction. The Government and Parliament need to keep on moving.

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