Input on country visit to Australia of the Special Rapporteur on contemporary forms of slavery

Australian Committee
International Coalition to End Transplant Abuse in China (ETAC)
endtransplantabuse.org

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Introduction

1. The Australian Committee of the International Coalition to End Transplant Abuse in China (**ETAC Australia**) welcomes the opportunity to submit this input to the Special Rapporteur on contemporary forms of slavery (**Special Rapporteur**) regarding organ trafficking in Australia as it relates to forced organ harvesting in China.

2. In Australia, organ trafficking is the unseen and forgotten form of modern slavery.

3. Organ trafficking crimes and human rights violations are gregarious and, for many, hard to believe. In China, these crimes include religious or spiritual persecution, torture, rape, slavery, forced organ harvesting, and extrajudicial killings whereby prisoners of conscience are imprisoned and enslaved in internment camps and killed on demand for their organs.

4. Australians who travel overseas and procure or source an unlawful or unethical organ in China for an organ transplant may be complicit in these crimes and human rights violations.

5. This input aims to provide the Special Rapporteur with important information about organ trafficking as it relates to Australia, focusing on the failure of the Australian Government to implement the recommendations of the "Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism" report published in 2018 (**Compassion, Not Commerce Report**).

ETAC Australia

6. ETAC Australia was established in 2016 in response to serious human rights violations in the People's Republic of China (**China**) associated with systematic, forced and state-sanctioned organ harvesting and trafficking from prisoners, including prisoners of conscience (**forced organ harvesting**).

7. We share a common commitment to promoting and protecting human rights and ending the heinous crime of forced organ harvesting in China, and all associated crimes as they relate to the conduct of Australians in procuring or sourcing unlawful organ transplants overseas.

8. Details about the Australian Committee members can be viewed **here.**

Failure of the Australian Government to implement recommendations

9. In 2018 ETAC Australia made submissions to the Human Rights Sub-Committee of the House of Representatives Joint Standing Committee on Foreign Affairs, Defence and Trade (**Committee**) in

response to the *Inquiry into Human Organ Trafficking and Organ Transplant Tourism*[1], and subsequently gave evidence at the public hearings.[2]

10. Following this inquiry, the Australian Government published the Compassion, Not Commerce Report and made twelve recommendations.[3] The recommendations range from amending Australia's organ trafficking laws, signing and ratifying the Council of Europe Convention against Trafficking in Human Organs (**Convention against Trafficking in Human Organs**), establishing a comprehensive data collection repository regarding organ transplants by Australians, raising awareness of the issue, and notably Recommendation 1, the establishment of a Commission of inquiry to thoroughly investigate organ trafficking in countries where it is alleged to occur on a large scale.

11. The key recommendations in the Compassion, Not Commerce Report have not been implemented by the Australian Government, including the failure to establish a Commission of inquiry. This is despite ETAC and other organisations calling on the Government to implement these recommendations.

12. ETAC Australia raised with the Committee in 2018 the deeply concerning issue of minority groups being detained in labour internment camps, including those who practice the Buddhist qigong and meditation practice of Falun Gong, Uyghurs, Tibetans, and House Church Christians, and where the Chinese Community Party (**CCP**) use prisoners of conscience as a supply for unlawful organ transplants.

13. As stated above, heinous crimes are committed in these internment camps including religious or spiritual persecution, torture, rape, slavery, forced organ harvesting, and extrajudicial killings.

14. The treatment of those detained in internment camps, including forced organ harvesting offences, are serious breaches of fundamental human rights including the right to life (Article 6, ICCPR); right to a fair trial (Article 14, ICCPR); freedom from cruel, inhuman or degrading treatment of punishment, in particular, no one shall be subjected without their free consent to medical or scientific experimentation (Article 7, ICCPR); right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (article 10, ICCPR); and the right to the enjoyment of the highest attainable standard of physical and mental health (Article 12, ICESCR).

15. Australia has ratified the ICCPR and the ICESCR.

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[1] Submission No. 7, International Coalition to End Organ Pillaging in China – AAIC, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Submissions.

[2] https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Public_Hearings.

[3] https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Tabled_Reports.

16. In March 2020, after twelve months of detailed scrutiny of all available evidence, the China Tribunal[4], chaired by Sir Geoffrey Nice QC, unanimously and beyond reasonable doubt, concluded that:

> *"Forced organ harvesting has been committed for years throughout China on a significant scale and … Falun Gong practitioners have been one – and probably the main – source of organ supply."*
>
> *"In regard to the Uyghurs the Tribunal had evidence of medical testing on a scale that could allow them, amongst other uses, to become an 'organ bank'."*
>
> *"Commission of Crimes Against Humanity against the Falun Gong and Uyghurs has been proved beyond reasonable doubt…"*

17. In ETAC's 2018 submission[5], we recommended that the Australian Government work with the international community to hold China accountable for its past and present human rights violations of prisoners of conscience by seeking clear and compelling evidence that forced organ harvesting has ceased.

18. ETAC Australia reiterates this call to action, and further submits that the Australian Government must have laws that deter and prevent organ trafficking, in particular forced organ harvesting in China.

The need to strengthen laws to prevent organ trafficking in Australia

19. The *Criminal Code Act 1995* (**Criminal Code**) does not provide for the offence of "trafficking in human organs". Recommendation 7 of the Compassion, Not Commerce Report recommended that the Australian Government amend the Criminal Code to include, *inter alia*, an offence of "trafficking in human organs" including "the solicitation of a commercial organ transplant.[6]

20. It is incumbent on the Australian Government to have effective laws and regulations which prevent and deter organ trafficking. There are a number of international jurisdictions which have laws to prohibit their citizens or permanent residents from engaging in unlawful organ transplants overseas including the United States of America, Canada, United Kingdom, Taiwan, and Israel.[7] The various laws in overseas jurisdictions can be found here.

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[4] https://chinatribunal.com/, accessed 9 January 2024.

[5] Submission No. 7, International Coalition to End Organ Pillaging in China – AAIC, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Submissions.

[6] Recommendation 7, Compassion not Commerce Report, states that:

[7] Paragraphs 1.1 – 1.10 of the *Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism* report, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking.

21. At the date of drafting this input, the Australian Government is yet to amend the Criminal Code as recommended in the Compassion, Not Commerce Report. Further, despite the Attorney-General's recent review in 2023 of organ trafficking laws, the report titled, "Targeted Review of Modern Slavery Offences in Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth)", failed to recommend amending the Criminal Code to include an offence of "tracking in human organs".

22. Australia's current organ trafficking laws are inadequate. The laws do not capture conduct where Australians may receive an organ transplant that has been unlawfully procured or sourced without the person's consent and often involving a commercial transaction.

23. ETAC supports the inclusion in Australian law of the offence of "trafficking in human organs" as provided for in Article 4 of the Convention against Trafficking in Human Organs.

24. Inserting this offence will ensure that the illicit removal of human organs that occurs overseas involving Australians is captured by Australia's laws. Such law reform will bring Australia's laws in line with jurisdictions overseas.

25. Australia should also sign and ratify the Convention against Trafficking in Human Organs as recommended in the Compassion not Commerce Report.[8]

Raising awareness of organ trafficking

26. The Compassion, Not Commerce Report made three recommendations relating to raising awareness and education.

27. Recommendation 8 recommended the establishment of a multilingual public health education program. Recommendation 9 recommended that the Australian Government include information on trafficking in human organs and transplant tourism on relevant government websites, including on the SmartTraveller.gov.au, on country-specific pages where human organ trafficking is known or suspected to occur. Recommendation 2 recommended that the Australian Government monitor the transplantation practices of other countries with regard to consistency with human rights obligations, including with regard to the use of the organs of executed prisoners.[9]

28. Whilst organ trafficking information has been added to the organ transplant tourism information pages of Smart Traveller[10], which is a welcomed initiative, countries that are high in organ trafficking activity are not listed, and no information is provided under medical tourism for China.[11]

[8] Recommendation 6, Compassion not Commerce Report.

[9] Recommendation 2, Compassion not Commerce Report.

[10] https://www.smartraveller.gov.au/before-you-go/health/organ-transplant-tourism.

[11] https://www.smartraveller.gov.au/destinations/asia/china.

Monitoring overseas transplants

29. Australia does not maintain a national register of all organ transplants that occur overseas involving Australians. Despite this, Australians who do have transplants overseas, and then later return to Australia, will usually access Australia's healthcare system for the required post-operative and clinical care needed. Essentially, this means that the Australian healthcare system incurs the financial and emotional burden of post-operative aftercare following overseas transplants. [12]

30. The Compassion, Not Commerce Report made three recommendations, namely Recommendations 3, 4 and 5, relating to data collection and monitoring overseas transplants.

31. Having a national registry of overseas organ transplants will not only effectively monitor overseas transplants, it will also assist the Australian healthcare and legal system to better deal with the far reaching clinical, ethical, and legal issues which arise as a result of Australians having a transplant overseas.

Human rights due diligence

32. In 2022, ETAC commissioned Global Rights Compliance (**GRC**) to provide a legal advisory regarding the international business and human rights responsibilities as they relate to organ trafficking, including the state-sanctioned regime of forced organ harvesting in China.[13]

33. GRC produced two reports, the Legal Advisory Report and the supplementary Policy Guidance, both titled, *Do No Harm – Mitigating Human Rights Risks when Interacting with International Medical Institutions & Professionals in Transplantation Medicine*.[14]

34. The Legal Advisory Report emphasises the need for medical institutions and transplant-associated businesses to undertake due diligence, having regard for the UN Guiding Principles on Business and Human Rights. The report specifically states that

> medical institutions and transplant-associated businesses must carry out assessments of existing high-risk "business" relationships (i.e., business relationships that involve geographies, products or sectors that have been identified as presenting high risks of adverse impacts such as organ trafficking or forced organ harvesting)[15], to inform an

[12] See paragraph 3.21, Compassion, Not Commerce Report, which highlights why in Australia there is a paucity of data of overseas transplants, including the lack of reporting by both the donee and the health professional responsible for their care in Australia.
[13] Global Rights Compliance. 2022. Legal Advisory Report, *Do No Harm – Mitigating Human Rights Risks when Interacting with International Medical Institutions & Professionals in Transplantation Medicine*. https://globalrightscompliance.com/project/do-no-harm-policy-guidance-and-legal-advisory-report/.
[14] https://globalrightscompliance.com/project/do-no-harm-policy-guidance-and-legal-advisory-report/
[15] OECD, OECD Due Diligence Guidance for Responsible Business Conduct (OECD 2018) 66 <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

assessment as to what extent transplantation institutions may be causing, contributing to or are linked to the practice of unethical organ transplantation.[16]

35. Undertaking the requisite human rights due diligence will enable businesses to better identify these risks. Australia's modern slavery legislation should emphasise the importance of adopting human rights due diligence and make it requirement under Australian law.

Conclusion

36. Strengthening legislation which prohibits organ trafficking, especially unlawful overseas organ transplants, and strengthening legislation which requires human rights due diligence, are important legal reform initiatives that act to prevent and eradicate forced organ harvesting in China, and all associated crimes and human rights violations.

37. ETAC calls on the Special Rapporteur to encourage the Australian Government, in the strongest terms, to amend its organ trafficking laws to provide for the two distinct offences of "trafficking in persons for the removal of organs" and "trafficking in human organs". Further, the need for a national registry of overseas transplants is pressing and urgent. Solutions can only be found when the extent of the problem is known.

38. As was stated in the Attorney-General's targeted review report:

> The Targeted Review recognises that strong criminal justice responses are an integral part of combatting modern slavery in Australia and seeks to ensure Australia's legislative framework continues to support effective disruption, investigation and prosecution actions.[17]

39. ETAC further calls upon the Special Rapporteur to raise Recommendation 1 with the Australian Government with the view to establishing a Commission of Inquiry through the United Nations to investigate organ trafficking.

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[16] Global Rights Compliance, n13, p39.

[17] Targeted Review of Modern Slavery Offences in Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth), p. 19, https://consultations.ag.gov.au/crime/modern-slavery-offences/user_uploads/targeted-review-of-modern-slavery-offences-in-divisions-270-and-271-of-the-criminal-code-act-1995.pdf, accessed 15 January 2023.