

Calling Out Evil; citizens acting when governments do not.

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I spent the greater part of my life as an academic paediatric cardiothoracic surgeon, working to save or improve lives with a team equally devoted to caring for others, irrespective of belief or background. For over 25 years of that career, I was involved in heart, lung, and tracheal transplantation. Donating one's organs for transplantation is an act of supreme generosity; one human thinking of the needs of another, potentially unknown person. There are never enough organs to meet demand, and prioritisation is necessary. Nations supporting transplantation have constructed systems which maintain databases of donors' relevant details to be matched with a similar dataset of potential recipients. This ensures the best tissue match and the transplant of a non-diseased organ. Transplant data should thus be transparent and auditable.

In 2016, as Gresham Professor of Physic, I was approached by Sir Geoffrey Nice QC [GN], then Professor of Law at Gresham. He had been asked by an NGO, End Transplant Abuse in China (ETAC), for a legal opinion on evidence they had accumulated concerning forced organ harvesting (FOH) in China; people being killed so that their organs could be transplanted. GN felt the problem too serious for a simple legal opinion. Evidence of FOH had been available to the international community for well over a decade, but neither individual governments nor international organisations had taken any action. What should we, the people, do if such bodies fail to act against so clearly unethical and illegal practices?

GN advised the establishment of a People's Tribunal based on principles laid down by Bertrand Russell and Jean-Paul Sartre at the 1966 International War Crimes Tribunal. Regina Paulose describes* People's Tribunals as '*independent, peaceful, grassroots movements, created by members of civil society to address impunity that is associated with ongoing or past atrocities*'. They are established when the authorities have taken no action. They permit citizens, acting as jurors, to make a judgment based on evidence presented to them.

After reading a truly shocking summary of evidence, and with some trepidation (China is a powerful state), I accepted the invitation to join The China Tribunal and joined five others under the chairmanship of GN[†]. We had no previous knowledge of the alleged crimes, and no relevant political allegiances. There was a great deal of written evidence to review, largely accumulated over the previous decade by two Canadians David Matas (human rights lawyer) and the late David Kilgour (former Secretary of State) and Ethan Gutmann, an American journalist now resident in London. The tribunal read all this material and more that ETAC provided. There were also two public hearings held in London at which oral evidence from relevant witnesses was presented in person, with questioning from the tribunal Members.

* The principles and the history of People's Tribunals have been described in: Paulose, RM (Ed); (2021) *People's Tribunals, Human Rights and The Law*. Routledge, New York

[†] www.chinatribunal.com The details of all the members are available here.

All the evidence, written, oral and video is available on the Tribunal website[‡] for your make your own conclusions.

We heard that the Chinese government, in the form of the communist party (CCP), had, in 1999, become concerned about the rapid growth of the peaceful Falun Gong spiritual movement, which then had over 80 million practitioners, including within the CCP itself. The President, Jiang Zemin, saw them as a threat to CCP values and implemented a crackdown on the Falun Gong. Thousands of its practitioners were detained without trial in the established Laogai system of camps. Conditions were brutal, encompassing torture, sexual violence, and extrajudicial killing.

The CCP simultaneously ordered an expansion in organ transplantation, to catch up and overtake the west. In the early 2000's, there was exponential growth in transplant facilities, related research, and staff. In 1984, China had passed legislation permitting organ removal for transplantation from executed prisoners. Whilst this has never been repealed, international pressure resulted in a gradual decrease in the number of executions, officially for many years the sole source of donor organs. A formal voluntary organ donor system was not established until 2011, and then only registering a relatively small number. Yet in the era from 2000-2014 between 60 and 100,000 transplants were performed per year (estimated from scientific publications, hospital websites and individual surgeon's reports; China held its transplant data as a state secret, in contrast to the rest of the world).

Outside China, people in need of a transplant can wait months or years for an organ, and a significant number die on the waiting list. Within China during this era, transplants were available for a large fee (between \$50,000 and \$150,000) to transplant tourists and Chinese citizens practically on demand with waiting times as short as days, and with organs being available 'in reserve' if a problem arose. This would not be possible without a pool of readily available donors; the Falun Gong and other detainees provided that pool. In support of this contention, evidence was presented of camp inmates being subjected to blood tests and ultrasound examinations consistent with assessing organ function and potentially tissue typing. There was no evidence for any other purpose.

Whilst some organs, e.g., a single kidney, a lobe of liver or part of a lung) can be taken from a live donor, others such as heart and whole lung result in the death of the patient. Ethically, such organ extraction can only take place after brain-stem death (brain death) for which there are well established criteria, including apnoea (absence of spontaneous breathing). After brain death criteria have been met, the donor is ventilated mechanically and supported in the best physiological state prior to transplantation. More recently, donation after circulatory death either sudden (uncontrolled) or elective withdrawal of support (controlled) has become accepted. The tribunal was told of (and by) surgeons who had removed vital organs from living patients, causing their death and evidence of supposedly brain-dead donors who were intubated on the operating table for ventilation. They cannot have been brain dead.

[‡] www.chinatribunal.com.

From such evidence and much more, we concluded, beyond reasonable doubt, that the People's Republic of China had sponsored forced organ harvesting, and that Falun Gong practitioners had been the principal source of such organs. Further, we concluded that the PRC had committed crimes against humanity, namely deprivation of liberty, murder, torture, rape and other sexual violence and persecution based on racial, national, ethnic, cultural, or religious grounds. Genocide was not proven.

Consequence

Local and international responses were slow. Early news coverage was limited and some, we came to learn, suppressed. There was a general feeling at the time (post-Brexit) that trade trumped human rights, a view which I am not convinced has passed, despite the horrors uncovered.

Gradually however, the Tribunal's Judgment has begun to make an impact, demonstrating confidence in the evidence reviewed. Here are some examples: -

Legislation

- in June 2021, 12 UN special rapporteurs and human rights experts issued formal correspondence on the issue to the Chinese government.
- legislation dealing with transplant tourism and/or organ harvesting has been passed or is in progress in France, the UK, Canada, USA, and Korea.
- additional resolutions have been passed on the subject in the EU parliament and in the US senate.

Medical associations

- Canadian, British, American, and Australian medical associations have all issued statements condemning FOH and quoting the China Tribunal.
- More than 1000 individual US and Canadian signed as statement condemning FOH
- The International Society for Heart and Lung Transplantation has published a paper stating that, given the body of evidence, submissions to the ISHLT from China relating to transplantation or organ and tissue donation will not be accepted until independent proof that the practice of FOH have ceased.

Global Rights Compliance

- This human rights legal group has published detailed guidance[§] on how organisations (medical, academic, or commercial) should deal with China in the light of the China Tribunal findings. Already corporations are taking note of how they might frame new contracts with China.

Effectiveness

Has the China Tribunal been effective? It has clearly had an important impact, but one cannot feel comfortable until FOH in China is proven to have ended. Such proof will not be available until China ceases to obfuscate and embraces transparency. International organisations are either not permitted or are unwilling to audit China's data. Further, China's policy (the United

[§] <https://globalrightscompliance.com/project/do-no-harm-policy-guidance-and-legal-advisory-report/>

Front)** of exerting external influence via academic and professional organisations may well limit either access or will.

Some Personal Reflections.

This was a chastening and humbling experience, both as an ordinary citizen and as a surgeon. I was astonished by the proven brutality of a state against its peaceful citizens and horrified by the necessary complicity of medical staff in carrying out the procedures, either organ extraction or insertion, without questioning the source of organs. The ethical spine of transplantation had been fractured. As a researcher and a member of the public, I was appalled that transplant data were held as a state secret, and that what data were available were highly questionable. Such secrecy and lack of transparency are indefensible.

It was humbling to observe of the bravery of those who gave evidence at significant personal risk to themselves or their families. Humbling to read the extraordinary research work undertaken by those who investigated the reports of FOH from China. And humbling to be amongst an international panel of such expertise, wisdom, and commitment (all giving their time *pro bono*).

Surgical treatment decisions are based on the best data obtainable, but such data are rarely complete. We must use our judgment, based on the evidence before us. This was also the situation for the China Tribunal. It is worth restating that we entered the Tribunal process with no predetermination or bias. We were open to **all** evidence presented to us. Despite multiple invitations to China via its embassy and to individual Chinese surgeons and its supporters in the 'west', none chose to submit evidence. It would have been good to be able to assess contrary data or evidence; none was forthcoming, either during the Tribunal or in the two years since, despite international coverage.

After much debate, we decided not to campaign after the Judgment was published, however tempting that was. A Judge, after making a decision, does not campaign on behalf of the plaintiff or defendant, rather letting her or his judgment stand. We felt that it would be of greater effect for others to use our published Judgment in whatever way they wished, hopefully both to stop the practice of FOH and to bring to justice those who might later be subject to charge. Time will tell if that approach has worked.

Totalitarian regimes and leaders from Russia to Myanmar, from Iran to China have flourished, and exhibited extreme cruelty to those with opposing views. How can ordinary citizens respond? In this context, I have concluded that People's Tribunals are valuable. They can and do both shine a light on issues ignored by governments and precipitate change that most people would think authorities should already have undertaken. Ordinary citizens can review complex evidence and can make judgments which, with appropriate exposure and publicity can both influence public opinion and lead to an appropriate global response from legislators.

** See Clive Hamilton & Mareike Ohlberg (2020); *Hidden Hand: exposing how the Chinese communist party is reshaping the world*; One World Publications, London

Ordinary citizens, encountering evil, can fight back.

This article is based on a Reader's Lecture delivered on 7th March 2022