

## ANDREA TOKAJI<sup>1</sup> of Fighting for Justice Foundation Organ Harvesting Parliamentary Briefing 9am Friday 8 June 2018

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In addition to, and in line with the submission made on the 7 August 2017 to the Federal Government's Inquiry into Organ Transplant Tourism<sup>2</sup>, we would like to submit evidence today to show that:

1. Up to 55 Australians<sup>3</sup> may have engaged in transplant tourism into our region and predominantly to China<sup>4</sup> recently (2006-2015);
2. The transplant tourism occurring in our region victimises vulnerable religious minorities deemed as 'political dissidents' by the Chinese government who are illegally detained and tortured;
3. These acts amount to government-sanctioned genocide and torture of minorities;
4. Australia has a due diligence obligation to ensure that further organ harvesting and transplant tourism is prevented through a National opt-out organ donation policy approach;
5. Victims of this abhorrent human right violation are to be supported and rehabilitated, and its perpetrators are to receive due punishment as a form of deterrence;
6. Human rights lawyers advocating for victims need to be supported by our Government as much as practicable on the grounds of humanitarian intervention: Gao Zisheng was tortured for his legal advocacy;
7. Australia's *Commonwealth Criminal Code*<sup>5</sup> does not go far enough to ensure that transplant tourism is criminalised in order to curb Australia's demand for the trafficking or harvesting of organs internationally;
8. This international crime and human right violation requires due consideration under our *Commonwealth Criminal Code* as well as in Australia's imminent *Modern Slavery Bill* as a form of slavery in medical supply chains;
9. Australia needs to ensure that our international health insurance does not cover organ transplants on the black market. The European Union has reviewed the scope for creating a fair system of organ donation and for the use of a more efficient and transparent organ database accessible to EU and eventually to global citizens in their recent study published in 2015<sup>6</sup>, which may be a collaborative way forward for Australia.

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<sup>2</sup> Federal Government Inquiry into Organ Transplant Tourism and Organ Harvesting at: [http://www.aph.gov.au/sitecore/content/Home/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/HumanOrganTrafficking/Submissions](http://www.aph.gov.au/sitecore/content/Home/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Submissions)

<sup>3</sup> Senator Rice as quoted in the Official Committee Hansard of the Senate Foreign Affairs, Defence and Trade Legislation Committee, Estimates, Thursday 20 October 2016, Canberra, Page 80, at: [http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/aa4f0e69-697b-4d56-ad2a-ef0c34f8251d/toc\\_pdf/Foreign%20Affairs,%20Defence%20and%20Trade%20Legislation%20Committee\\_2016\\_10\\_20\\_4504\\_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/aa4f0e69-697b-4d56-ad2a-ef0c34f8251d/0002%22](http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/aa4f0e69-697b-4d56-ad2a-ef0c34f8251d/toc_pdf/Foreign%20Affairs,%20Defence%20and%20Trade%20Legislation%20Committee_2016_10_20_4504_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/aa4f0e69-697b-4d56-ad2a-ef0c34f8251d/0002%22)

<sup>4</sup> Senator Rice goes on to mention that 53 Australians received organ transplants in China from 2001 to 2014, which was recently confirmed by Scott Ludlam via a question on notice to the minister for health. The Senator expressed regret that there is no formal register, and that this figure is likely to be an undercount at page 82 at: [at: http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/aa4f0e69-697b-4d56-ad2a-ef0c34f8251d/toc\\_pdf/Foreign%20Affairs,%20Defence%20and%20Trade%20Legislation%20Committee\\_2016\\_10\\_20\\_4504\\_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/aa4f0e69-697b-4d56-ad2a-ef0c34f8251d/0002%22](http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/aa4f0e69-697b-4d56-ad2a-ef0c34f8251d/toc_pdf/Foreign%20Affairs,%20Defence%20and%20Trade%20Legislation%20Committee_2016_10_20_4504_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/aa4f0e69-697b-4d56-ad2a-ef0c34f8251d/0002%22)

<sup>5</sup> The *Criminal Code Act 1995* (Cth), at: <https://www.legislation.gov.au/Series/C2004A04868>

<sup>6</sup> DIRECTORATE GENERAL FOR INTERNAL POLICIES, POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY, Proceedings of the Workshop on Organ Harvesting in China, Brussels, 21 April 2015 STUDY; at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/542201/IPOL\\_STU\(2016\)542201\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/542201/IPOL_STU(2016)542201_EN.pdf)

10. Transplant Tourism needs to be seen through the lens of slavery, human trafficking and exploitation.
11. Australia has an obligation to raise these abhorrent human rights violations<sup>7</sup> in our region with our trade partner China, calling their government to account for the trade of organs for monetary and political gain.
12. This matter requires extra-territorial application in the context of Australian offenders and Australian victims.
13. It is in the best interest of Australia to accede to the 2014 *Council of Europe Convention against Trafficking in Human Organs* insofar as: criminalising the illegal removal of human organs from living or deceased persons without consent or authorisation; where it is for a financial gain or comparable advantage; providing protective measures to ensure transparency and equitable access to transplantation services.<sup>8</sup>
14. Trafficking in organs, trafficking for the purpose of organ harvesting, organ harvesting and transplant tourism are different crimes requiring specific legal recognition in distinct definitions, with provisions for the criminalisation of these practices, with provisions targeting its prevention, and victim protection and assistance.

The Joint Standing Committee on Foreign Affairs, Defence and Trade is currently undertaking an inquiry into the Modern Slavery Act UK - and needs to consider trafficking, harvesting and transplant tourism in the supply chain of medical services in our region.

Organ trafficking and transplant tourism violates the principles of equity, justice and respect for human dignity and should be prohibited. Transplant commercialism targets impoverished and otherwise vulnerable donors and leads inevitably to inequity and injustice: it should be prohibited, prevented and prosecuted as a “*violation of human rights and human dignity*”.<sup>9</sup>

### **The reality of Organ Harvesting - and Australia’s role:**

There is evidence to suggest that 176 Australians have had an organ transplant overseas in the last 13 years, with half being illegal transactions.

A *News Corp* investigation recently found that almost a hundred desperate Australians have turned to the black market to buy a human organ as demand for transplants outstrips supply - risking their own health, with many of them ending up sick in hospital back in Australia. The unregulated trade is seeing prisoners shot on demand to supply human organs, with poor people forced by debt collectors to sell their kidneys for as little as \$1,000.<sup>10</sup>

In the course of a three-year investigation News Corp has learnt that in February an Australian man bought a kidney off a 26-year-old Pakistani woman as part of a transplant costing \$116,000.<sup>11</sup>

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<sup>7</sup> Organ harvesting is known to be a trade that victimises the vulnerable and the exploiters are usually the rich and well off - who can afford to pay the poor to keep silent.

<sup>8</sup> as per the Council of Europe Convention against Trafficking in Human Organs CETS No.216 at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/216>

<sup>9</sup> WHO GUIDING PRINCIPLES ON HUMAN CELL, TISSUE AND ORGAN TRANSPLANTATION, As endorsed by the sixty-third World Health Assembly in May 2010, in Resolution WHA63.22 found at: [http://www.who.int/transplantation/Guiding\\_PrinciplesTransplantation\\_WHA63.22en.pdf](http://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf)

<sup>10</sup> As reported by Sue Dunlevy, News Corp Australia, 7 August 2016, at: <http://www.news.com.au/national/australians-turn-to-black-market-for-human-organs/news-story/06905df7ffc5337cb53927c9de1cce3a>

<sup>11</sup> As reported by Sue Dunlevy, News Corp Australia, 7 August 2016, at: <http://www.news.com.au/national/australians-turn-to-black-market-for-human-organs/news-story/06905df7ffc5337cb53927c9de1cce3a>

Victim testimonies and documented evidence cites organs on demand are being transferred from the criminal detention facilities in China, where it's victims are force fed, tortured and kept in isolation while their urine and blood samples are taken - to the large commercial hospitals in China advertising organ transplant time frames of five hours upon arrival.<sup>12</sup>

China boldly advertises a five hour- turnaround time for transplant tourists receiving a new organ from the time of a patient's arrival in multiple commercial-sized hospitals strewn across their major cities, citing accommodation package-deals within the hospital facility.

The methodology used in Chinese hospitals by doctors in organ harvesting has been well documented in investigative reporting<sup>13</sup>, in documentaries<sup>14</sup> as well as academic papers<sup>15</sup>.

Today's purpose is to reinforce the stories of countless victims and their families in relation to this abhorrent crime that is taking place in our region - with Australians as consumers.

### **Organ Harvesting of China's prisoners of conscience:**

Researchers say China is home to the most rampant illegal organ trade in the world and is the number one destination for 'transplant tourism'.<sup>16</sup>

The *United Nations Office of Drugs and Crime's Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings* in their 2013 Analysis and Findings Report has identified China as one of the countries frequently identified as locations of greater organ trafficking activity. In this same report, China was also identified as a destination for harvested organs.

Recently published research by author Ethan Gutmann, former Canadian politician David Kilgour and lawyer David Matas claims China is performing 60,000 to 100,000 organ transplants a year.<sup>17</sup>

Canadian human rights lawyer David Matas says he has uncovered evidence of organ harvesting from death row inmates and political prisoners in China. He says evidence suggests that most of the organ transplants which happen each year in China are the result of organ harvesting.<sup>18</sup> Hospital websites in China advertise short waiting times for organ transplants; stating that they have more than ten "beating hearts" available.

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<sup>12</sup> Known from testimonies of various victim survivors, some of whom have family in Australia, as well as from reports such as the David Matas and David Kilgour, BLOODY HARVEST, Revised Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China, 31 January 2007, available at: <http://organharvestinvestigation.net>

<sup>13</sup> As reported by Sue Dunlevy, News Corp Australia, 7 August 2016, at: <http://www.news.com.au/national/australians-turn-to-black-market-for-human-organs/news-story/06905df7ffc5337cb53927c9de1cce3a>

<sup>14</sup> at: <https://www.youtube.com/watch?v=CBtjRjXEzIQ&t=2400s>

<sup>15</sup> David Matas, Esq. and Hon. David Kilgour, Esq. An Independent Investigation Into Allegations of Organ Harvesting of Falun Gong Practitioners in China, Revised Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China, at: <http://organharvestinvestigation.net>

<sup>16</sup> Megan Palin, The 'living dead': prisoners executed for their organs then sold to foreigners for transplants, 3 June, 2017, at: <http://www.news.com.au/world/asia/the-living-dead-prisoners-executed-for-their-organs-then-sold-to-foreigners-for-transplants/news-story/4048895e300f415a0a078e229d697bf7>

<sup>17</sup> Rick Feneley, Joel Keep, Australian organ transplant doctors defend China ties, 19 August 2016 at: <http://www.sbs.com.au/news/article/2016/08/19/australian-organ-transplant-doctors-defend-china-ties>

<sup>18</sup> As reported by Simon Lauder on 1 September 2010, ABC News, at: <http://www.abc.net.au/news/2010-09-01/australian-organ-tourists-drive-sinister-trade/966408>

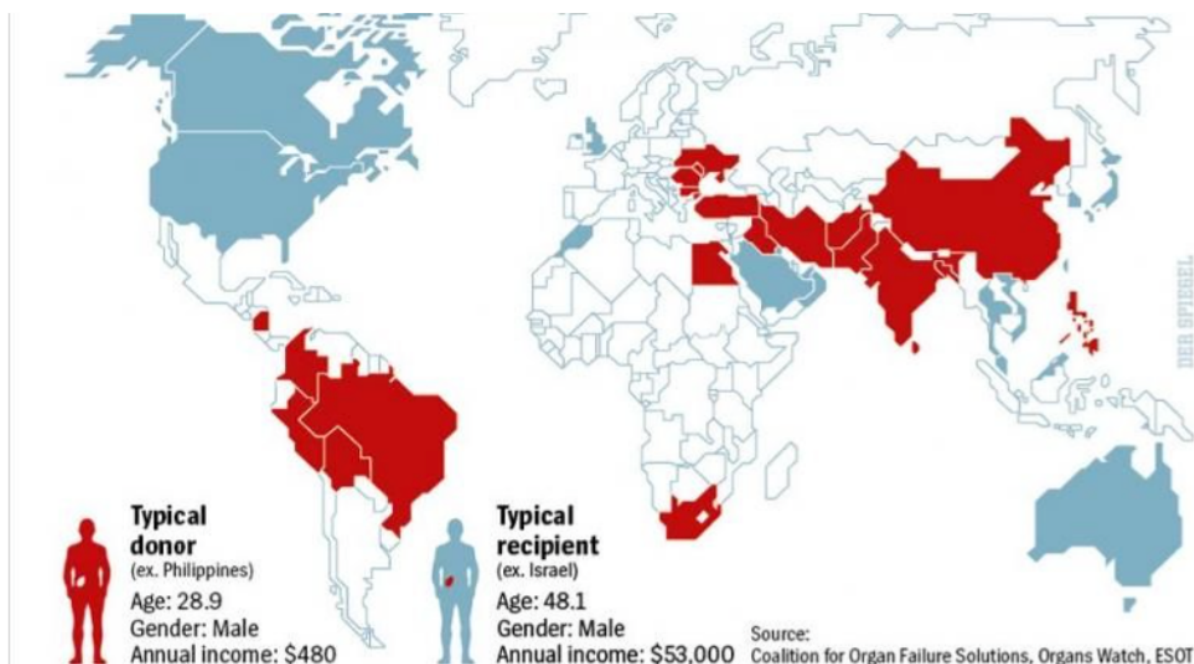
Nine national level and eleven provincial level military hospitals are credited for the majority of all recent organ transplants. The major role of military hospitals in organ harvesting is another key factor, according to Mr. Matas.

Organ transplants in China are overseen by China's vice-minister of health, Dr Huang Jiefu, who was trained at the Sydney University and was made an honorary professor by the Sydney University<sup>19</sup> (since removed).

### Organ Harvesting and Transplant Tourism is on the rise:

The development of organ transplant medicine over the last 25 years has been so rapid that transplants are now literally performed around the globe. In 2012 over 114 000 transplants have been done in 109 countries, of which some 70 % (77 800) are kidney transplants (from both living and deceased donors).<sup>20</sup>

The World Health Organisation is warning of an alarming rise in the illegal trade in human organs, saying around 10 per cent of transplant procedures involve organs that have been bought on the black market.



Source: Der Spiegel

### International Jurisprudence:

The commercialisation of the human body and its parts is prohibited by all relevant international and EU law documents, as well as in national legislations of member states.

The international community has responded to the rise in this abhorrent human right violation and international crime by calling on the Government of the People's Republic of China and the Com-

<sup>19</sup> Kirsty Needham, Sydney University forced to reveal emails in Chinese organ-donation link scandal, The Sydney Morning Herald, 7 February 2016, at: <http://www.smh.com.au/nsw/sydney-university-forced-to-reveal-emails-in-chinese-organ-donation-link-scandal-20160206-gmna3b.html>

<sup>20</sup> GODT, Newsletter Transplant 2014 vol 19, September 2014;

munist Party of China to immediately end the practice of organ harvesting from all prisoners of conscience.

This includes declarations and resolutions from from Canada<sup>21</sup>, America<sup>22</sup> and the European Union<sup>23</sup>. Today is an opportunity for Australia to do the same.

YEAR	COUNTRY	LEGISLATION	DESCRIPTION
June 2016	America	US House of Representatives Resolution 343	Expressing concern regarding persistent and credible reports of systematic, state-sanctioned organ harvesting from non-consenting prisoners of conscience in the People's Republic of China, including from large numbers of Falun Gong practitioners and members of other religious and ethnic minority groups.
July 2016	European Union	Written declaration, under Rule 136 of Parliament's Rules of Procedure, on stopping organ harvesting from prisoners of conscience in China	<ol style="list-style-type: none"> <li>1. The Convention against Trafficking in Human Organs was adopted by the Council of Europe on 9 July 2014 in order to criminalise illegal organ transplantations; it was subsequently opened for signature, and every country is encouraged to sign.</li> <li>2. There have been persistent credible reports on systematic, state-sanctioned organ harvesting from non-consenting prisoners of conscience in the People's Republic of China, primarily from practitioners of Falun Gong peaceful meditation and exercises but also from Uighurs, Tibetans and Christians.</li> <li>3. The international community has strongly condemned organ harvesting in China and actions should be taken to end it.</li> <li>4. Owing to the severity of underlying abuse there is a clear need to organise without delay an independent investigation into ongoing organ harvesting in the People's Republic of China.</li> <li>5. The Commission and the Council are called upon to implement Parliament's resolution of 12 December 2013 on organ harvesting in China<sup>2</sup> and provide a report on this issue.</li> <li>6. This declaration, together with the names of the signatories, is forwarded to the Council and the Commission.</li> </ol>

<sup>21</sup> Passed by Canadian Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development in November 2014.

<sup>22</sup> US House of Representatives unanimously passes Resolution 343 in June 2016, at: <https://www.congress.gov/bills/114/congress/house-resolution/343/text>

<sup>23</sup> European Parliament Written Declaration under Rule 136 of Parliament's Rules of Procedure, on stopping organ harvesting from prisoners of conscience in China, in July 2016, at: <http://endorganpillaging.org/2010-spanish-criminal-code-amended-to-combat-transplant-tourism-and-organ-trafficking/>

YEAR	COUNTRY	LEGISLATION	DESCRIPTION
2008	Israel	Israel's Organ Transplant Laws	<p>The Criminal Code includes the illegal trafficking of human organs as a felony.</p> <ul style="list-style-type: none"> <li>- The Criminal Code establishes penalties of up to twelve years in prison for people who encourage, promote, facilitate or advertise the procurement of illegal human organs trafficking.</li> <li>- Those people requesting organs who are aware of the illegal origin of these may also face jail sentences.</li> <li>- The illegal organ trafficking is a growing activity, especially in developing countries.</li> <li>- The current Penal Code criminalised as a Bodily Harm offence the organ harvesting through a payment or reward to the donor.</li> </ul>
2015	Taiwan	Taiwan Human Organ Transplantation Act	<p>Physicians are in violation of medical ethics and subject to disciplinary action if they:</p> <ul style="list-style-type: none"> <li>- introduce or refer patients to a broker;</li> <li>- introduce or refer patients to a country where laws or regulations do not prohibit organ trade or organ brokerage or the information on the source of organs is not transparent;</li> <li>- contacts organ transplant agencies abroad and brokers patients;</li> <li>- takes patients abroad for organ transplants and receives remuneration.</li> </ul>
2015	Italy	XVII LEGISLATURA – DISEGNI DI LEGGE E RELAZIONI - DOCUMENTI	<p>Any person who trades, sells or manages illegally trafficked organs from living persons would serve a prison term of 3 to 12 years and pay a hefty fine from 50,000 to 300,000 euros.</p>
2010	Spain	Spanish Criminal Code	<p>The Criminal Code includes the illegal trafficking of human organs as a felony.</p> <ul style="list-style-type: none"> <li>- The Criminal Code establishes penalties of up to twelve years in prison for people who encourage, promote, facilitate or advertise the procurement of illegal human organs trafficking;</li> <li>- People requesting organs who are aware of the illegal origin of the organs may also face jail sentences;</li> <li>- The Penal Code criminalises as a Bodily Harm offence the organ harvesting through a payment or reward to the donor.</li> </ul>

While there is no one comprehensive international best practice legislative model Australia can look to that covers all relevant offences pertaining to organ harvesting, transplant tourism, organ trades and the human trafficking of organs, we can look to the Israeli, American, Canadian and EU jurisdictions for guidance.

Medical professionals such as Dr Jacob Lavee<sup>24</sup> - who is a cardiologist, has had personal encounters with forced organ harvesting in China, and was part of Israeli's organ transplant law reform processes. Dr Lavee remains a prominent source of authority on medical practice compliance with international human rights standards.<sup>25</sup>

<sup>24</sup> Interview with Dr Jacob Lavee in 2014, at: <https://dafoh.org/interview-with-prf-dr-jacob-lavee/>

<sup>25</sup> RYAN CONNELLY HOLMES AND DAN SAGALYN, One doctor's war against global organ trafficking, PBS NEWS HOUR, 29 May 2017, at: <http://www.pbs.org/newshour/updates/one-doctors-war-global-organ-trafficking/>

The *Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, the *The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, the Optional Protocol on the sale of children, child prostitution and child pornography (2000)* to the *UN Convention on the Rights of the Child (1989)* and commentary on the matter from the *World Health Organisation* are international principles and instruments we can look to for further guidance.

### **The Declaration of Istanbul on Organ Trafficking and Transplant Tourism:**

Clause 5 of the *Principles* within the *Declaration of Istanbul on Organ Trafficking and Transplant Tourism*<sup>26</sup> encourages jurisdictional self-sufficiency in organ donation by providing a sufficient number of organs for residents in need from within the country or through regional cooperation<sup>27</sup>.

Australia focuses on organ donations through its annual Donate Life Week Campaign between 30 July and 6 August - Make Your Decision Count<sup>28</sup>. With only 33% of Australians registered as organ donors, more needs to be done to ensure that demand for organs does not take Aussies off-shore.

This is where Australia should consider legislative reform to organ donation so that it becomes an opt-out system rather than an opt-in system for deceased donations.

Australia needs to ensure that our international health insurance does not cover organ transplants on the black market.

The *Declaration Principles* go on to say that: organ trafficking and transplant tourism violate the principles of equity, justice and respect for human dignity and should be prohibited. Because transplant commercialism targets impoverished and otherwise vulnerable donors, it leads inexorably to inequity and injustice and should be prohibited.

In Resolution 44.25, the World Health Assembly called on countries to *prevent* the purchase and sale of human organs for transplantation.

In its *Proposals*, the *Declaration* affirms the States due diligence obligation to respond to the need to increase deceased donations, and to ensure the protection and safety of living donors while combating transplant tourism, organ trafficking and transplant commercialism.<sup>29</sup>

Trafficking in organ trade is an organised crime, involving a host of offenders. The *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons* includes "organ removal" and its subsequent sale as an end purpose of trafficking.<sup>30</sup>

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<sup>26</sup> The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, at: <http://www.declarationofistanbul.org>

<sup>27</sup> Clause 5 of the Principles within the Declaration of Istanbul on Organ Trafficking and Transplant Tourism, at: <http://www.declarationofistanbul.org>

<sup>28</sup> Campaign page and how to register to become national donor here: [https://register.donatelife.gov.au/?gclid=CjwK-CAjwk4vMBRAgEiwA4ftLs7Eqvc\\_YIL7qr4ahVMLuNVWDsyi\\_UNA4T0ylwbHC1801czHuSktH9RoCpRkQAvD\\_BwE](https://register.donatelife.gov.au/?gclid=CjwK-CAjwk4vMBRAgEiwA4ftLs7Eqvc_YIL7qr4ahVMLuNVWDsyi_UNA4T0ylwbHC1801czHuSktH9RoCpRkQAvD_BwE)

<sup>29</sup> Proposals of the Declaration of Istanbul on Organ Trafficking and Transplant Tourism, at: <http://www.declarationofistanbul.org>

<sup>30</sup> Trafficking in persons for organ removal is also defined and prohibited in other international/regional instruments, such as *The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*; *The Council of Europe (CoE) Convention on action against trafficking in human beings*; *The Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims*.

The *Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin* declares, in Article 21, that the human body and its parts shall not, as such, give rise to a financial gain or comparable advantage.

In July 2010, the United Nations General Assembly adopted the *Global Plan of Action to Combat Trafficking in Persons (A/RES/64/293)*.<sup>31</sup>

Between 2007 and 2013, 100 cases of such trafficking were detected by the national criminal justice systems and reported to UNODC by 20 countries in all regions of the world.

## The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons

Article 3 of the United Nations Trafficking Protocol<sup>32</sup> defines trafficking in persons and clearly includes trafficking for the purpose of the removal of organs as part of that definition.

## Optional Protocol on the sale of children, child prostitution and child pornography (2000) to the UN Convention on the Rights of the Child (1989)

This protocol states that the sale of children for the purpose of transferring their organs for profit should be a criminal offence.<sup>33</sup>

## World Health Organisation (WHO)

The *Guiding Principles on Human Organ Transplantation* (1991) of the World Health Organisation states that the commercialisation of human organs is 'a violation of human rights and human dignity'.<sup>34</sup>

## Australia's National Plan and current Legislation:

While there are few incidents of organ trafficking reported in Australia, the clandestine nature of human trafficking means that victims of organ trafficking may be difficult to identify.

The Commonwealth's organ trafficking laws criminalise the movement of donors into, from, or within Australia for the purpose of the unlawful removal of their organs. For an organ trafficking offence to apply, an element of '*movement*' must be present.

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<sup>31</sup> Based on its request for an expanded knowledge base on trafficking in persons, the UNODC was given the mandate and duty to collect data and report biennially on trafficking in persons patterns and flows at the national, regional and international levels.

<sup>32</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000 at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

<sup>33</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002, at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

<sup>34</sup> WHO GUIDING PRINCIPLES ON HUMAN CELL, TISSUE AND ORGAN TRANSPLANTATION, As endorsed by the sixty-third World Health Assembly in May 2010, in Resolution WHA63.22 found at: [http://www.who.int/transplantation/Guiding\\_PrinciplesTransplantation\\_WHA63.22en.pdf](http://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf)



Under the *Criminal Code Act 1995 (Cth)*<sup>35</sup>, if an Australian citizen travels overseas in order to purchase an organ - engaging in what is referred to as '*transplant tourism*', this does not currently constitute an Australian organ trafficking offence unless the donor had been moved to, from, or within Australia.

The *Commonwealth Criminal Code Act 1995* amendment of 7 March 2013 fails to recognise:

- Australians who travel overseas to receive an organ that they either know or were reckless in not knowing, was trafficked;
- Does not identify recipients of trafficked organs as guilty of an offence – unless they arranged for the victim to be brought to, or to be taken from Australia;
- Does not encompass a situation where the victim (the organ source) neither enters nor leaves Australia and was never in Australia.

This inadequate law means that transplant tourism of Australians continues - with dire consequences. Australia needs to consider its ongoing relationship with China, and should draw due attention to China's appalling human rights record - particularly against minority groups.

This lack of prosecutory and criminal offences also puts into question the lack of transparency of the medical sector as it relates to our region. The current rate of organ trafficking around the world has created a substantial health risk contributing to a serious abuse of human rights, particularly of the right to life.

Australia needs to move towards a more comprehensive, holistic reform to transplant tourism, guided by the *Declaration of Istanbul on Organ Trafficking and Transplant Tourism*<sup>36</sup>, which is also guided by the *World Health Organisation's Principles on Human Cell, Tissue and Organ Transplantation*<sup>37</sup>, and in consideration of international extradition laws under Article 16 of the *United Nations Office of Drugs and Crime's Convention Against Transnational Organised Crime and the Protocols Thereto*<sup>38</sup>.

### **Conclusion:**

Trafficking in organs, trafficking for the purpose of organ harvesting, organ harvesting and transplant tourism are different crimes requiring specific legal recognition in distinct definitions, with provisions for the criminalisation of these practices, with provisions targeting its prevention, and victim protection and assistance.

Australia's domestic laws need to give powers for such preventative and diversionary approaches to tourism transplant and organ harvesting in our region, ensuring the full extent of investigative, law enforcement and exercise of criminal jurisdiction, for the necessary prosecution of organised crime, and for the protection of vulnerable victims.

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<sup>35</sup> The *Criminal Code Act 1995 (Cth)*, at: <https://www.legislation.gov.au/Series/C2004A04868>

<sup>36</sup> The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, at: <http://www.declarationofistanbul.org>

<sup>37</sup> WHO GUIDING PRINCIPLES ON HUMAN CELL, TISSUE AND ORGAN TRANSPLANTATION, As endorsed by the sixty-third World Health Assembly in May 2010, in Resolution WHA63.22 found at: [http://www.who.int/transplantation/Guiding\\_PrinciplesTransplantation\\_WHA63.22en.pdf](http://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf)

<sup>38</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME Vienna, UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME AND THE PROTOCOLS THERETO, New York, 2004, at: [https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THERETO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf)

Australia also needs to consider its academic ties with China and it's then China's vice-minister of health, Dr Huang Jiefu, who was trained at the Sydney University and made an honorary professor by the Sydney University - who oversaw the organ-transplant system in China.<sup>39</sup>

It is inconsistent with our international human rights obligations - and Australia's standards - that organs can be easily bought by Australians on the black market in China - for a premium price - which victimises the most vulnerable, and encourages the ongoing torture, illegal detention and persecution of minority groups under a Communist regime.

Australia has a responsibility as a developed nation and economy in the Asia region to not only stand up for minority groups who are persecuted, tortured while their lives threatened, but also to stand with the human rights activists and lawyers in China who stand for the value and dignity of the life and freedoms of those minorities.

All allegations of organ harvesting should be taken seriously. Criminal authorities in China are called upon to investigate these allegations for possible prosecution. China is called upon to institute appropriate laws in compliance with the *UN Protocols and principles*, guided by the recommendations set out in the *OSCE Action Plan to Combat Trafficking in Human Beings and Ministerial Council Decision No. 5/08*. Stringent penalties against all those involved should also apply.

China is urged to accede to the Optional Protocol to the Convention Against Torture.

The *UN Committee Against Torture and the UN Special Rapporteur on Torture* is called upon to once again investigate if the government of China has engaged in, or is engaging in violations of any of the terms of Article 3 of the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons*, which bans, among other practices, the removal of organs.

### **RECOMMENDATIONS: [As per FFJF's 7 August Federal Parliament Submission on Organ Transplant Tourism]**

Organ harvesting of unwilling donors where it is either systematic or widespread is a crime against humanity.

In consistency with the *Declaration of Istanbul on Organ Trafficking and Transplant Tourism*<sup>40</sup>, which is also guided by the World Health Organisation's Principles on Human Cell, Tissue and Organ Transplantation<sup>41</sup>, Australian therefore needs to ensure that:

1. Governments, in collaboration with health care institutions, professionals, and non- government organisations should take appropriate actions to increase deceased organ donation. Measures should be taken to remove obstacles and disincentives to deceased organ donations.<sup>42</sup>
2. Australians travelling overseas to receive an organ that they either know or were reckless in not knowing, was trafficked to amount to a criminal offence, with recipients of trafficked organs are to be identified as guilty of trafficking offence;

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<sup>39</sup> Kirsty Needham, Sydney University forced to reveal emails in Chinese organ-donation link scandal, The Sydney Morning Herald, 7 February 2016, at: <http://www.smh.com.au/nsw/sydney-university-forced-to-reveal-emails-in-chinese-organ-donation-link-scandal-20160206-gmna3b.html>

<sup>40</sup> The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, at: <http://www.declarationofistanbul.org>

<sup>41</sup> WHO GUIDING PRINCIPLES ON HUMAN CELL, TISSUE AND ORGAN TRANSPLANTATION, As endorsed by the sixty-third World Health Assembly in May 2010, in Resolution WHA63.22 found at: [http://www.who.int/transplantation/Guiding\\_PrinciplesTransplantation\\_WHA63.22en.pdf](http://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf)

<sup>42</sup> As consistent with the *Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, at: <http://www.declarationofistanbul.org>

3. Ensure that *organ 'transplant tourism'* constitutes as an Australian organ trafficking offence in all jurisdictions in Australia - with a Regional law enforcement and judicial cooperation across Asia.
4. Organ trafficking to be recognised to have taken place regardless of the the victim (the organ source) movements, ie: whether the victim (the organ source) neither enters nor leaves Australia and was never in Australia - does not alter their trafficked status;
5. Australians to be compelled to conduct due diligence checks in order to ensure their donor is voluntarily supplying their organs;
6. Australians are to favour voluntary deceased organ donors above live donors;
7. The Australian Parliament is to consider the creation of a formal register outlining where and from whom Australians have received their organs;
8. In countries without established deceased organ donation or transplantation, national legislation should be enacted that would initiate deceased organ donation and create transplantation infrastructure, so as to fulfil each country's deceased donor potential.<sup>43</sup>
9. In all countries in which deceased organ donation has been initiated, the therapeutic potential of deceased organ donation and transplantation should be maximised.<sup>44</sup>
10. Countries with well established deceased donor transplant programs are encouraged to share information, expertise and technology with countries seeking to improve their organ donation efforts.
11. The Australian Government should not issue visas to doctors from China seeking to travel to Australia for the purpose of training in organ or bodily issue transplantation, and should note the links of Chines medical practitioners to organ transplant tourism.
12. The Australian Government should urge China to open all detention facilities, including forced labour camps in China to international community inspection through the International Committee for the Red Cross or other human rights or humanitarian organisations on the grounds of humanitarian compassion and cooperation.

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<sup>43</sup> As consistent with the *Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, at: <http://www.declarationofistanbul.org>

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## **ABOUT FIGHTING FOR JUSTICE FOUNDATION**

*Fighting for Justice Foundation seeks to disrupt the demand for trafficking through preventing the prevalence of gender based violence and harmful social norms through social and legislative reform in the Australasia region through our Advocacy, Education and Outreach projects.*

*Andrea Tokaji is an international human rights lawyer advocate, legal trainer, educator, speaker and writer, and is currently doing her PhD on the international crime of human trafficking and how to curb it's demand from a human rights perspective.*

*Fighting for Justice Foundation is based in Canberra, and runs international outreach, education and advocacy programs for vulnerable women and children in rural remote communities susceptible to human trafficking.*

**With thanks,**



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