



**THE INTERNATIONAL COALITION TO END ORGAN PILLAGING IN CHINA**  
**[endorganpillaging.org](http://endorganpillaging.org)**

## **Submission**

**Inquiry into Human Organ Trafficking and Organ Transplant Tourism**

**Joint Standing Committee on Foreign Affairs, Defence and Trade**

**Australian Advocacy and Initiatives Committee**  
**The International Coalition to End Organ Pillaging in China**  
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## The Australian Advocacy and Initiatives Committee

The Australian Advocacy and Initiatives Committee (**AAIC**) was formed in 2016 in response to serious human rights violations in China associated with the systematic, forced and state-sanctioned organ harvesting and trafficking from prisoners, including non-consenting prisoners of conscience (**forced organ harvesting**).

The AAIC comprises of lawyers, academics, ethicists, medical professionals and human rights advocates, and is the Australian chapter of the International Coalition to End Organ Pillaging in China (**EOP**). The EOP provides leadership on the issue of forced organ harvesting, and promotes and protects human rights by:

- Undertaking, publishing and disseminating research regarding forced organ harvesting in China;
- Calling for greater transparency and scrutiny of the transplantation system in China;
- Promoting public debate regarding human tissue and organ trafficking laws and policy;
- Raising public awareness regarding the importance of ending the detainment, torture and forced organ harvesting of prisoners of conscience in China;
- Advocating for actions to reduce and avoid international complicity in China's violations of transplant ethics and human rights law; and
- Seeking justice for the victims of forced organ harvesting and their families, and demanding accountability for the perpetrators.

The AAIC members include:

- Madeleine Bridgett, Chair
- Susie Hughes, Deputy Chair
- Dr Robyn Clay-Williams, PhD
- Mitchell Coidan
- Prof Maria Fiatarone Singh, MD, FRACP
- Nathan Kennedy
- Prof Paul Macneill, LLB, PhD
- Michelle Nguyen
- Prof Wendy Rogers, FRACGP, PhD
- Keith Spencer
- Dr Sarah Winch, PhD

More details about members can be viewed [here](#).

## Executive Summary

1. The AAIC welcomes this timely Inquiry into Human Organ Trafficking and Organ Transplant Tourism (**the Inquiry**), and commends the Joint Standing Committee on Foreign Affairs, Defence and Trade, for providing this opportunity to strengthen Australia's efforts to deter international human organ trafficking.
2. The terms of reference of this inquiry considers two issues:
  - a. Whether it is practicable or desirable for the offence of Organ Trafficking under Division 271 of the *Criminal Code Act 1995* (Cth) (**the Criminal Code**), to have extraterritorial application; and
  - b. Whether Australia should accede to the 2014 Council of Europe Convention against Trafficking in Human Organs (**the Convention**).
3. Human organ trafficking and organ transplant tourism around the world is increasing, particularly by citizens of economically wealthy countries. This reflects the inadequacy of the current supply of organs donated through ethical and lawful means<sup>1</sup>, especially in countries that do not have effective donor programmes, such as China.
4. In China, there is particular concern that members of minority communities with specific religious and spiritual affiliations, are detained without trial in forced labour camps and re-education detention centres where they are tortured and subjected to the involuntary and forced removal of organs, resulting in their death.
5. The AAIC is extremely concerned about organ tourism to China by Australian citizens, who may thereby participate in forced organ harvesting from minority communities.
6. For these reasons, the AAIC supports amendments to the Criminal Code to enable the application of extraterritorial jurisdiction, and strongly encourages Australia to accede to the Convention, particularly given the nature of international organ trafficking and organ transplant tourism.

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<sup>1</sup> Hughes, N. *Prime Numbers: Organs without Borders* [2005] (146) Foreign Policy 26.  
<http://foreignpolicy.com/2009/10/21/organs-without-borders/>.

## China's Transplant Industry and The Need for Extraterritorial Laws in Australia

7. In 2005, after longstanding denials, it was officially acknowledged that executed prisoners were harvested for their organs in China.<sup>2</sup>
8. Before China introduced a pilot voluntary organ donation programme in 2010, over 90% of organs transplanted were procured from prisoners, many imprisoned because of their religious and spiritual beliefs, having not received a fair trial, if a trial at all.<sup>3</sup>
9. China has claimed that the organs from executed prisoners were from prisoners who had been tried, found guilty, and executed according to Chinese law. Whilst we do not condone organ procurement from any prisoners, whether they have been tried or not, we remain seriously concerned about organs sourced from prisoners of conscience. It is not possible that China has been sourcing all their organs from prisoners who have been tried and are on death row. We say that for the following reasons:
  - a. Organs are produced on demand, which is not compatible with China's 1984 regulation on organ procurement from executed prisoners. It is possible to book transplants in China several weeks in the future, including liver or heart transplants. This requires advance identification of organs in order to match the recipient. Under Chinese law, prisoners on death row must be executed within one week of sentencing. Therefore, it is not possible to book organs from specific prisoners weeks in advance. Instead, advance bookings suggest that organs come from prisoners who are killed on demand, to a timetable set by the transplant team in response to the demand by the recipient.
  - b. Despite continuing high rates of state executions, these numbers, which are a state secret<sup>4</sup>, fall far short of the estimated number required to provide the transplants occurring in China each year,<sup>5</sup> even if each execution resulted in several organs for transplant.
  - c. Prisoners on death row would make poor donors due to their health concerns, in particular, infections with blood-borne viruses such as hepatitis and HIV from past drug use and/or poor lifestyles. Only a small percentage of death row prisoners

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<sup>2</sup> Huang J. "Ethical and legislative perspectives on liver transplantation in the People's Republic of China". *Liver Transplantation* 2007, 13: 193–196; People's Daily, "As the [Supreme People's Court] gets back the authority to review death penalty cases: our country's death penalty figures will certainly come down gradually", 1 November 2006, <http://npc.people.com.cn/BIG5/14957/53049/4982508.html>.

<sup>3</sup> Norbert, W.P., Caplan, A., Shapiro, M.E., Els, C., Allison, K.C. and Huige, Li. 2017. "Human rights violations in organ procurement practice in China" in *BMC Medical Ethics* 18:11.

<sup>4</sup> Amnesty's Report "China's Deadly Secrets". 2017. <https://www.amnesty.org/en/documents/asa17/5849/2017/en/>; Amnesty International Global Figures 2015, <https://www.amnesty.org/en/latest/news/2016/04/death-penalty-2015-facts-and-figures/>.

<sup>5</sup> Kilgour, D., Gutmann, D. and Matas, D. 2016. *Bloody Harvest/The Slaughter: An Update*. <http://endorganpillaging.org/an-update/>.

executed could possibly be a source of viable organs, thus inflating the required number of executions even further.

10. It is for these reasons that prisoners of conscience, especially Falun Gong practitioners, are killed for their organs, as they provide a 'healthy' alternative to death row prisoners. Incarceration in labour camps allows organs to be sourced on demand from healthy prisoners. As part of their spiritual practice, Falun Gong practitioners live healthy lifestyles through daily exercise, healthy food regimes, daily meditation and abstaining from alcohol and drugs. In March 2006, a whistleblower claimed that as many as 4,000 Falun Gong practitioners had been killed for their organs at the hospital in northeast China where she worked. In response, David Kilgour, former Canadian Secretary of State for Asia-Pacific, and David Matas, an international human rights lawyer, launched an independent investigation and came to 'the regrettable conclusion that the allegations are true.'<sup>6</sup>
11. It is estimated there were thousands of people executed in China in 2015.<sup>7</sup> The 'true extent of the use of the death penalty in China is unknown as data is treated as a state secret'.<sup>8</sup> A recent report by Amnesty International states that 'as of 2017, it appears that China is still sourcing organs from prisoners on death row'.<sup>9</sup> Despite Chinese declarations to the world in 2014 that the country would cease using organs harvested from prisoners<sup>10</sup>, they have not made available any robust data as to how they currently supply organs for the extraordinarily large numbers of transplants performed each year.<sup>11</sup> Nor has China provided any evidence that it adheres to international standards such as the Declaration of Istanbul<sup>12</sup>, and the WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation.<sup>13</sup>
12. Transplant tourism to China is especially concerning given the credible evidence that non-consenting prisoners of conscience and other executed prisoners are the major source of organs in China, as they have been for decades.<sup>14</sup> Thus, Australians receiving organs in China are at risk of participating in organ trafficking, and the extra-judicial and intentional killing of the non-consenting person from whom the organ is sourced. Unwitting complicity or willful blindness to the unethical nature of organ harvesting is inextricably bound with such transplant tourism.

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<sup>6</sup> Kilgour, D. and Matas, D. 2009. *Bloody Harvest: Organ Harvesting of Falun Gong Practitioners in China*.

<sup>7</sup> Amnesty's Report "China's Deadly Secrets". 2017. <https://www.amnesty.org/en/documents/asa17/5849/2017/en/>; Amnesty International Global Figures 2015, <https://www.amnesty.org/en/latest/news/2016/04/death-penalty-2015-facts-and-figures/>.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Delmonico, F, Chapman, J, Fung J, Danovitch, G, Levin A, Capron A, Busuttil R, O'Connell P. Open Letter of the People's Republic of China: China's fights against corruption in organ transplantation. *Transplantation*. 2014; 97(8):795-6

<sup>11</sup> Kilgour, D., Gutmann, D. and Matas, D. 2016. *Bloody Harvest/The Slaughter: An Update*, <http://endorganpillaging.org/an-update/>.

<sup>12</sup> Declaration of Istanbul, <http://www.declarationofistanbul.org/>.

<sup>13</sup> WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation, <http://www.who.int/transplantation/en/>.

<sup>14</sup> Kilgour, D., Gutmann, D. and Matas, D. 2016. *Bloody Harvest/The Slaughter: An Update*. <http://endorganpillaging.org/an-update/>.

13. New evidence and figures from primary Chinese sources reveal the nature and scale of these crimes, as a means of supplying China's vast, lucrative organ transplantation industry. On 22 June 2016, three highly respected independent investigators published the 680-page report *Bloody Harvest/ The Slaughter: An Update (The Update)*, illustrating a state-driven industry that transplants far more organs, by an order of magnitude, than can be accounted for by official sources, which China claims are all voluntary donors. The report is a meticulous examination of the transplant programs of hundreds of hospitals in China. It draws almost entirely on official Chinese-language sources including medical journals, hospital websites, media reports, and a vast number of deleted websites found in archives. It analyses hospital revenue, transplantation volumes, bed utilisation rates, surgical personnel, training programs, and state funding. The report concludes that 60,000 to 100,000 transplants per year are currently taking place in China - as opposed to the official Chinese claim of 10,000 per year.<sup>15</sup>

14. Prisoners of conscience targeted include Uyghurs, Tibetans and House Christians, but by far the largest group to be targeted for organ harvesting is practitioners of the Buddha-school practice of Falun Gong. The large-scale development of China's transplantation system coincided with the Communist Party of China's determination to wipe out the practice of Falun Gong.<sup>16</sup> This involved a campaign of government propaganda, large-scale extrajudicial imprisonment, torture and coercive reeducation, leading to the incarceration of hundreds of thousands of Falun Gong practitioners in labour camps, where many remain today. A key finding in the February 2017 Freedom House report, *"The Battle for China's Spirit"* states that:

At least 100 million people—nearly one-third of estimated believers in China—belong to religious groups facing “high” or “very high” levels of persecution (Protestant Christians, Tibetan Buddhists, Uighur Muslims, and Falun Gong).<sup>17</sup>

15. China's organ harvesting has become a focus of media investigations around the world.<sup>18</sup> In response, there is growing international political awareness of, and concern about, forced organ harvesting in China. In June 2016, U.S. Congress passed House Resolution 343 condemning the practice,<sup>19</sup> followed by a House of Representatives Committee on Foreign

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<sup>15</sup> Ibid.

<sup>16</sup> The former Communist Party leader Jiang Zemin saw the popularity of Falun Gong, and the associated revival of traditional values as a threat to his rule, and launched a violent campaign to “bankrupt them financially, ruin their reputations, destroy them physically.” The Diplomat: <http://thediplomat.com/2016/06/organ-harvesting-in-china/>.

<sup>17</sup> The Battle for China's Spirit Report, Freedom House, <https://freedomhouse.org/report/china-religious-freedom>.

<sup>18</sup> The International Coalition to End Organ Pillaging in China website: <http://press.endorganpillaging.org/>.

<sup>19</sup> United States House of Representatives, H.Res.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...”, June 13, 2016. Available at: <https://www.congress.gov/bill/114th-congress/house-resolution/343>.

Affairs joint hearing at which authors of *The Update* gave evidence. The European Parliament has held several hearings and passed various resolutions,<sup>20</sup> notably and most recently *Written Declaration 0048/2016*.<sup>21</sup> The UK parliament has also held hearings and the Conservative Party's Human Rights Commission recent report documents the practice.<sup>22</sup>

16. China has developed an extensive organ transplant system, and until there is clear and compelling evidence that there have been significant changes to China's organ procurement regulations and practices, there remains grave concerns for Australians who travel to China for organ transplants. It is unlikely Australians would know the true source of their organ when they embark on their journey. The transplants that they receive may have only been possible because of the systematic, forced and state-sanctioned killings of thousands of prisoners, in particular prisoners of conscience. There are also concerns about the medical treatment Australians receive in China during the transplant process, and whether the transplants will be successful upon their return to Australia.
17. In Australia, there are no data collected on the numbers of citizens who travel overseas each year for the purposes of organ transplants. Despite the lack of data, there is general agreement that at least some Australians engage in organ tourism.<sup>23</sup> Of these, an unknown proportion travel to China. In response to a question by Senator Scott Ludlum to the Minister of Health in September 2016 about the numbers of Australians who have received Chinese organ transplants, Senator Nash for the Minister for Health answered:

Limited kidney transplantation data is available for the period 2001 to 2014. This data, from the Australian and New Zealand Dialysis and Transplantation Registry, identifies 53 Australian transplantations in China. While the data describe the fact and place of transplantation, information about the circumstances is not provided.<sup>24</sup>

18. Thus, laws in Australia must protect and prevent Australians from participating in such heinous crimes. It is for this reason that Australian laws must have extraterritorial application.

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<sup>20</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0603+0+DOC+XML+V0//EN>

<sup>21</sup> European Parliament Written Declaration 0048/2016 - <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONGML%2BWDECL%2BP8-DCL-2016-0048%2B0%2BDOC%2BPDF%2BV0%2F%2FEN>.

<sup>22</sup> The Conservative Party Human Rights Commission, "Forced Organ Harvesting in China," September 23, 2016. Available at: [http://www.conservativehumanrights.com/reports/CPHRC\\_ORGAN\\_HARVESTING\\_REPORT.pdf](http://www.conservativehumanrights.com/reports/CPHRC_ORGAN_HARVESTING_REPORT.pdf).

<sup>23</sup> "Australian organ tourists drive sinister trade" <http://www.abc.net.au/news/2010-09-01/australian-organ-tourists-drive-sinister-trade/966408>; "Organs for sale: Australians turn to black market to save their lives" <http://www.dailytelegraph.com.au/news/special-features/in-depth/organs-for-sale-australians-turn-to-black-market-to-save-their-lives/news-story/6f967138d4af1403a2e9289f5f47e2b0>; "Tough new laws to crack down on illegal organ trade to be considered by parliamentary inquiry" <http://www.news.com.au/national/tough-new-laws-to-crack-down-on-illegal-organ-trade-to-be-considered-by-parliamentary-inquiry/news-story/6734f8d6b5501578e8e21007cb1c7051>.

<sup>24</sup> Parliament of Australia, Parliamentary Business, Chamber documents, Work of the Senate Notice Paper - Questions on Notice, Question 100, notice given September 2, 2016 [http://www.aph.gov.au/Parliamentary\\_Business/Chamber\\_documents/Senate\\_chamber\\_documents/qon](http://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/qon).



**Division 271 of the *Criminal Code Act (Cth) 1995***

19. Division 271 of the Criminal Code contains offences for trafficking in persons, and it provides for specific provisions for organ trafficking.
20. The maximum penalty for organ trafficking is 12 years imprisonment, and as high as 25 years if the offence has aggravating features.
21. Pursuant to s 271.7A of the Criminal Code organ trafficking is:
  - (a) the removal, or entering into an agreement for the removal, would be contrary to the law of the State or Territory where it is, or is to be, carried out; or
  - (b) neither the victim, nor the victim's guardian, consents to the removal, and it would not meet a medical or therapeutic need of the victim.
22. It is an offence of organ trafficking pursuant to s 271.7B of the Criminal Code if:
  - (a) the offender engages in conduct consisting of the organisation or facilitation of the entry or proposed entry, or the receipt, of another person (the victim) into Australia; and
  - (b) the offender is reckless as to whether the conduct will result in the removal of an organ of the victim contrary to this Subdivision, by the offender or another person, after or in the course of that entry or receipt.
23. Section 271.7C provides for aggravated offences of organ trafficking, and s 271.D and 271.E provides for offences of domestic organ trafficking and aggravated offences.
24. In summary, the provisions against organ trafficking make it an offence to traffic victims into and out of Australia, or within Australia, for the purpose of organ removal.
25. These provisions do not, however, extend to organ trafficking and/or organ transplant tourism offences which occur overseas, and amendments are therefore necessary to make it an offence if this occurs outside Australia.
26. Currently, there are no sanctions for the commercial trading of organs, or the removal of human organs, without consent, committed by Australians abroad. Further, the provisions do not make it an offence for the trafficking of organs, but rather for the trafficking in persons for the purpose of organ removal. It is important that this distinction is made in any amendments to the laws on organ trafficking, and it is for this reason that accession to the Convention is necessary. Currently, the Convention is the only international treaty which specifically deals with trafficking in human organs.

27. It is our submission that the Criminal Code is the appropriate law to amend to ensure organ trafficking and organ transplants overseas are deemed an offence. However, it is not simply a matter of extending the current provisions to cover conduct overseas. Further provisions are necessary to ensure the nature of organ trafficking and organ transplant tourism overseas is adequately covered by the legislation.
28. We refer the Committee to domestic and international Bills and Acts which provide a good starting point for drafting legislation on international organ trafficking and transplant tourism in Australia. Notably, the *Human Tissue Amendment (Trafficking in Organs) Bill* 2016 (NSW) aims to make further provision with respect to commercial or non-consensual trading of human organs and other human tissue.<sup>25</sup> Whilst the AAIC has been supportive of this Bill, in our submission a federal legislative response to organ trafficking is preferred, and the Criminal Code is the appropriate place for the enactment of extraterritorial laws.
29. We also refer the Committee to the Canadian Bill C-350 which aims to amend Canada's *Criminal Code* 'to provide for the imposition of penal sanctions for persons who, in Canada or outside Canada, are knowingly involved in the medical transplant of human organs or other body parts obtained or acquired as a consequence of a direct or indirect financial transaction or without the donor's consent. It also amends the *Immigration and Refugee Protection Act* to impose sanctions on individuals in respect of whom there is reason to believe were engaged in the trafficking and transplanting of human organs and other body parts by providing that they are inadmissible for the purposes of entering or remaining in Canada.'<sup>26</sup>
30. Other significant international laws include the *Human Organ Transplant Act* 2015 (Taiwan)<sup>27</sup>; the *Organ Transplant Act* 2008 (Israel)<sup>28</sup>; the *Criminal Code* 2013 (Spain)<sup>29</sup>; and the *Criminal Code* (Italy).<sup>30</sup> These laws provide for organ trafficking offences which occur overseas, and are good examples of how effective legislation can reduce illegal and unethical organ transplants.<sup>31</sup> Importantly, they also highlight how laws with extraterritorial application can encourage more effective donor programmes locally.<sup>32</sup>

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25 <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=2953>

26 <https://openparliament.ca/bills/42-1/C-350/>; <http://www.parl.ca/DocumentViewer/en/41-2/bill/C-561/first-reading>

27 <http://endorganpillaging.org/2015-taiwan-human-organ-transplantation-act-amended-and-promulgated/>

28 <http://endorganpillaging.org/2008-israel-organ-transplantation-law/>

29 <http://endorganpillaging.org/2010-spanish-criminal-code-amended-to-combat-transplant-tourism-and-organ-trafficking/>; <http://www.legislationline.org/topics/country/2/topic/14>, see GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain (2013).

30 <http://www.legislationline.org/topics/country/22/topic/14> - see Article 604; <http://endorganpillaging.org/2015-italian-senate-unanimously-passed-a-bill-that-punishes-any-person-who-illegally-sell-organs-from-living-people-with-severe-sanctions-and-stiff-prison-terms/>.

31 <http://www.haaretz.com/israel-news/.premium-1.530848>

32 Boas, H., Mor, E., Michowitz, R., Rozen-Zvi, B., Rahamimov, R. 2015. 'The Impact of the Israeli Transplantation Law on the Socio-Demographic Profile of Living Kidney Donors' in *American Journal of Transplantation*, 15: 1076-1080.

<http://onlinelibrary.wiley.com/doi/10.1111/ajt.13090/full>.

31. Amending the Criminal Code so it has extraterritorial application reflects the nature of international organ trafficking and transplant tourism, and is consistent with a number of international treaties which Australia has ratified including the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons*; the *International Covenant on Economic, Social and Cultural Rights*; the *International Covenant on Civil and Political Rights*; and the *International Convention Against Torture*.
32. Given that China procures organs through the extra-judicial killing of prisoners, and prisoners of conscience, the actions of Australians seeking transplants in China need to be enshrined in law, so that Australians are sourcing organs ethically and legally. The legal framework will also raise awareness and empower Australians to make better choices regarding their healthcare.
33. All international human rights, health care, and transplant organisations, including the UN, WHO and The Transplant Society, have declared it unethical and/or illegal to use prisoners of *any* kind as sources of organs for transplant, given the inability to provide meaningful voluntary consent in the context of imprisonment for any reason. The fact that it is innocent prisoners of conscience who have served as the major source of unethically procured organs in China makes this crime particularly egregious. It is therefore incumbent upon Australia to do all that it can to prevent Australians from participating in any organ tourism or organ trafficking, including in China.

## **The Council of Europe Convention Against Trafficking in Human Organs**

34. The AAIC notes that the purposes of the Convention as enshrined in Article 1 are:

- a. to prevent and combat the trafficking in human organs by providing for the criminalisation of certain acts;
- b. to protect the rights of victims of the offences established in accordance with this Convention protect the rights and freedoms of victims;
- c. to facilitate co-operation at national and international levels on action against the trafficking in human organs.

35. The AAIC notes the following Articles of the Convention as highly relevant to the question as to whether Australia accedes.

36. The Convention requires States parties to criminalise the following acts when committed intentionally:

- a. the removal of human organs from living or deceased donors:
  - i. where the removal is performed without the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorised under its domestic law;
  - ii. where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage;
  - iii. where in exchange for the removal of organs from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage.<sup>33</sup>
- b. Use of illicitly removed organs;<sup>34</sup>
- c. Implantation of organs outside of the domestic transplantation system or in breach of essential principles of national transplantation law;<sup>35</sup>

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<sup>33</sup> Article 4(1) of the Convention.

<sup>34</sup> Article 5 of the Convention.

<sup>35</sup> Article 6 of the Convention.

- d. Illicit solicitation, recruitment, offering and requesting of undue advantages;<sup>36</sup>
- e. Preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs;<sup>37</sup> and
- f. Aiding or abetting the commission, of, and attempt to commit, any of the above criminal offences.<sup>38</sup>

37. Article 10(1) of the Convention relevantly provides the jurisdictional 'reach' parameters required by a State for the criminalisation of trafficking in human organs when it is committed in its territory or by one of its Nationals. Article 10 therefore requires that States parties must adopt laws that capture offences of commercial trading and use of human organs and other tissue, taken without consent, when committed by their nationals abroad.

38. Article 10, therefore, holds great importance for the necessary amendments in the Criminal Code to enable extraterritorial application.

39. Article 11 of the Convention extends liability to corporate entities, to ensure that legal persons are held liable provided certain conditions are met.<sup>39</sup>

40. Given the facilitative role of private companies, their employees and/or agents in the commercial trafficking of human organs or tissue, or persons for the purposes of engaging in organ tourism in another State or Territory, the AAIC recommends that the provisions within Article 11 be incorporated into amendments to the Criminal Code.

41. States parties are also required to take into account any aggravating circumstances in determining the sanctions that ought to be imposed in relation to offences established under the Convention pursuant to Article 13. The aggravating circumstances include:

- a. where the offence caused the death of, or serious damage to the physical or mental health, of the victim;<sup>40</sup>
- b. the offence was committed by a person abusing his or her position;<sup>41</sup>
- c. the offence was committed in the framework of a criminal organisation;<sup>42</sup>

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<sup>36</sup> Article 7 of the Convention.

<sup>37</sup> Article 8 of the Convention.

<sup>38</sup> Article 9 of the Convention.

<sup>39</sup> Article 11 of the Convention.

<sup>40</sup> Article 13(a) of the Convention.

<sup>41</sup> Article 13(b) of the Convention.

<sup>42</sup> Article 13(c) of the Convention.

- d. the perpetrator has previously been convicted of offences established in accordance with the Council of Europe Convention;<sup>43</sup>
- e. the offence was committed against a child or any other particularly vulnerable person.<sup>44</sup>

42. The aggravating circumstances in Article 13 of the Convention are relevant to the crimes associated with organ trafficking and organ transplant tourism in China, and as such should be adopted.

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<sup>43</sup> 13(d) of the Convention.

<sup>44</sup> Article 13(e) of the Convention.

## AAIC Recommendations

43. The AAIC understands that the terms of reference of the Inquiry are limited to two considerations. However, in order to prevent organ trafficking and transplant tourism, we strongly recommend a multi-faceted approach, which includes awareness raising, education, health campaigns, and international intervention. Such an approach will support the effectiveness of any legislative changes and help to deter international crimes of organ trafficking and transplant tourism.
44. In addition to the necessary law reform to the Criminal Code, and accession to the Convention, the AAIC makes the following recommendations:
- a. Inclusion of a question on Australian visa applications, similar to that used on US visa applications where applicants are asked: *Have you ever been directly involved in the coercive transplantation of human organs or bodily tissue?*.<sup>45</sup> Failure to answer truthfully has legal consequences including being banned from entry on the grounds of foreclosing relevant enquiries.
  - b. Inclusion of a question on immigration re-entry documents at customs check points which directly asks returning Australian citizens if they have received an organ transplant overseas, and if so in what country.
  - c. Creation of legislation to impose civil as well as criminal liability for those complicit in organ trafficking and organ transplant tourism.
  - d. Creation of a register of all organ transplants received by Australian citizens overseas, with mandatory reporting by doctors caring for such patients to ensure the integrity of the register and the healthcare of transplant patients. A register will facilitate the prosecution of Australian citizens who commit crimes under the proposed amendments to the Criminal Code.
  - e. Development of a national health campaign to educate and inform all Australians of the dangers of sourcing organs internationally. The campaign can educate Australians of the medical, legal and moral risks, and empower them to make better health decisions.
  - f. That the Australian Government request and demand transparent data from China regarding forced organ harvesting from all prisoners, including prisoners of conscience.

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<sup>45</sup> Immigration form DS-160.

- g. 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.
  - h. That the Australian Government publicly declare and condemn the practice of forced organ harvesting in China.
  - i. That the Australian Government demand an immediate end to the persecution of the Falun Gong spiritual practice by the Government of the People's Republic of China and the Communist Party of China, and the immediate release of all Falun Gong practitioners and other prisoners of conscience.
45. If you would like to discuss any aspect of this submission, please contact Madeleine Bridgett, AAIC Chair, and Susie Hughes, AAIC Deputy Chair, by email: [aaic@endorganpillaging.org](mailto:aaic@endorganpillaging.org).