Corruption in China’s Death Penalty System — The Deceptive Use of Mobile Death Vans and Falun Gong Prisoners for Organ Harvesting in the Black Market

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I. Introduction

The death van silently rolls into town collecting and executing condemned inmates. Falun Gong practitioners suddenly disappear or die unexplained deaths. Both actions derive from the Chinese government’s corruption and greed. Substantial evidence demonstrates that China is grossly profiting from the black-market organ trade by using condemned prisoners and Falun Gong captives to supply much needed organs to high-paying customers. Seeking to avoid backlash from the international community, especially in this highly publicized time of the 2008 Beijing Olympics, China has deceptively utilized the more inconspicuous death vans and Falun Gong captives to continue its illegal organ extraction and transplantation activities.

II. China’s death penalty

The death penalty has been employed in China since the dawn of recorded history. Scholars date the first recorded public execution in China as early as 2601 B.C. According to Epoch Times, there are 320 offenses that are currently punishable by death in China. Many of those executed in China are not even considered criminals by internationally accepted standards. In fact, sixty-nine percent of the capital crimes covered by the Chinese criminal code are not violent in nature. For example, capital crimes include engaging in tax fraud, producing counterfeit currency, embezzling state property, demanding or accepting bribes, smuggling

2. Id.
contraband across China’s borders, pimping, and killing panda bears.\(^6\) In addition, some capital crimes are vague, which include funding or committing terrorist crimes, belonging to a terrorist organization, and producing, trading, and storing toxic chemicals without authorization.\(^7\)

Defendants sentenced to death are often executed within minutes or hours after the failure of their appeal.\(^8\) Instead of providing any thought to the comfort of prisoners condemned to death, the emphasis is placed on exhibiting the Chinese government’s swift and firm hand of justice.\(^9\) One research foundation estimated that 7,500–8,000 Chinese people were executed in 2006 alone.\(^10\)

### III. Death vans

In March 2003, the Chinese official press reported that the Yunnan Province purchased eighteen mobile execution units or “death vans.”\(^11\) The death vans shuttle from town to town doling out capital punishment.\(^12\) These mobile execution units were buses that were bought and converted for 500,000 Yuan each.\(^13\) The vans are windowless, converted twenty-four seat buses that contain a metal bed where the prisoner is strapped down in preparation for execution.\(^14\) The van is also equipped with a video monitor next to the driver’s seat.\(^15\) Once the procedure begins,

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6. Id.
7. Id. at 10.
8. Id. at 44.
9. Id. at 45
11. Executed, supra note 5, at 2.
13. Executed, supra note 5, at 2. 500,000 Yuan equals $60,000 USD.
15. Id.
the doctor inserts the needle, and the police officer presses a button to release the lethal cocktail into the prisoner’s veins.16

The Supreme People’s Court has urged all the courts throughout China to purchase these death vans to facilitate efficient executions.17 The death vans are more cost-effective, especially for small rural areas, to carry out local executions.18 Otherwise, these small regions would need to build execution facilities or send their inmates to Beijing to be executed.19

A. China’s claim that the death vans are more humane

Executions in China are performed by either lethal injection or firing squad.20 China approved the use of lethal injection in 1997.21 Although the Chinese government is claiming that lethal injection is a more humane form of execution, there have been reports that the executioners have lowered the dosage amounts to cut costs, which results in a lingering, more agonizing and painful death.22 Despite these allegations, the Chinese media and government officials continue to tout that lethal injection is a civilized method for administering the death penalty.23 The Chinese media often justify the use of lethal injection by citing the use of lethal injection in the United States.24 The death van designer also claims that switching from gunshots to lethal injections show that China is now promoting human rights.25 Critics, however, state

16. Id.
17. Id.
18. MacLeod, supra note 12, ¶ 14.
19. Id. ¶¶ 14, 20.
20. Executed, supra note 5, at 44.
21. Id. at 48.
22. Charleton, supra note 3, ¶ 5.
23. Executed, supra note 5, at 48.
24. Id. at 50.
25. MacLeod, supra note 12, ¶ 4.
that the death vans allow China to carry out executions more quickly and easily.  

Realistically, the government is not seeking a more enlightened vision of capital punishment but rather a more efficient way to execute a larger number of people.  

In addition, the vans keep the executions out of the public eye.

**B. Death vans for organ transplantation**

It has been reported that the Chinese government uses mobile execution units to harvest organs from prisoners condemned to death.  

Human rights activists and death penalty opponents fear that China is using lethal injection more frequently to harvest the organs of executed prisoners to supply China’s growing market for organ transplants.  

Amnesty International is also concerned with China using lethal injection for the purposes of facilitating organ transplants from executed prisoners.

The Executive Director of Human Rights in China states that the mobile execution vans help facilitate the black-market trade in organ sales because independent monitoring organizations, like the Red Cross, are denied access to prisons or labor camps.  

With the secrecy already surrounding executions and organ harvesting in China, the death vans only aid in

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the business of black-market organ transplants. Critics positively see a link between the silently rolling death vans and the organ trade.

According to Amnesty International, the chemicals used for lethal injection, which have neurological and neuromuscular effect, can be flushed through the kidneys without causing permanent damage. The chief concern with damaging organs during execution is depriving the organs of oxygen or harming them physically through trauma. Lethal injection allows the executioner to avoid both of these risks. Although the drugs used for lethal injection in China is not publicly known, even the poisonous mix used in the United States would not damage the vital organs desired for transplants. With a shot of the anticoagulant, Heparin, beforehand, even a heart could be transplanted if removed quickly. By leaving the body whole via lethal injection, organs can be extracted more quickly and effectively compared to execution by gunshot.

Prior to the death vans, doctors had to hurriedly perform the organ extraction directly at the execution site before they were detected by the common people. During one particular organ extraction inside an ambulance at the execution site, the doctors could hear people outside of the ambulance. Because the doctors feared that those people might have been the prisoner’s

33. Id. ¶¶ 20-22.
34. Id. ¶ 16; MacLeod, supra note 12, ¶ 7.
36. Id.
37. Id.
39. Id.
40. MacLeod, supra note 12, ¶ 8.
41. See Organs, supra note 4, at 59 (statement of Wang Guoqi, former doctor, Chinese PLA Hospital).
42. Id.
family, they left the job half finished.\textsuperscript{43} The corpse was then hastily thrown in a plastic bag and left on the flatbed of the crematorium truck.\textsuperscript{44} As the ambulance drove away, the people outside pelted the vehicle with stones.\textsuperscript{45} Therefore, the windowless death vans would provide a much safer venue for the doctors and police officers performing the executions and organ extractions.

\textbf{IV. Falun Gong practitioners}

Falun Gong was founded in 1992 by Li Hongzi in northeastern China.\textsuperscript{46} Falun Gong followers practice meditative, slow-motion exercises and adhere to the movement’s guiding principles of truthfulness, benevolence, and forbearance taken from Confucianism, Buddhism, and Taoism.\textsuperscript{47} The Chinese government touts protection of certain religious activities, which include Buddhism, Taoism, Islam, Protestantism, and Catholicism.\textsuperscript{48} However, all other religious groups, sects, and denominations are illegal and subject to suppression by the Chinese government.\textsuperscript{49}

In April 1999, over ten thousand Falun Gong members gathered in Tiananmen Square to peacefully protest the persecution of their practices.\textsuperscript{50} On April 25, 1999, fifteen thousand

\begin{flushright}
\textsuperscript{43.} Id.
\textsuperscript{44.} Id.
\textsuperscript{45.} Id.
\textsuperscript{49.} Id.
\end{flushright}
members of Falun Gong gathered outside of the government’s central headquarters in Beijing and demanded official recognition.\textsuperscript{51}

\textbf{A. \textit{Falun Gong banned}}

Following the April 1999 protests, the Chinese government began a campaign to eradicate the Falun Gong.\textsuperscript{52} Leaders of the movement were detained, the organization was outlawed, and a massive media campaign was launched aimed at discrediting the organization.\textsuperscript{53} On July 22, 1999, the People’s Republic of China’s Ministry of Civil Affairs decreed the Falun Gong an illegal organization.\textsuperscript{54} Following the outlaw of Falun Gong, the international news media and academic groups began producing and disseminating documentation of the group’s rapid dismantling.\textsuperscript{55}

In October 2000, the Chinese government increased efforts to destroy the Falun Gong by pronouncing the group as a “reactionary and hostile” organization.\textsuperscript{56} As a result, detention and re-education efforts were increased.\textsuperscript{57} The Chinese government undertook a three-pronged approach to quash the Falun Gong movement: 1) re-education of members; 2) violent treatment of members; and 3) distribution of anti-Falun Gong propaganda.\textsuperscript{58} Eight hundred thirty thousand Falun Gong followers had been arrested by the conclusion of April 2001.\textsuperscript{59} However, it was

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\textsuperscript{51} Christopher Chaney, \textit{The Despotic State Department in Refugee Law: Creating Legal Fictions to Support Falun Gong Asylum Claims}, 6 (No. 1) ASIAN-PAC. L. & POL’Y J. 130, 142 (Winter 2005).
\textsuperscript{52} Leavy, \textit{supra} note 50, at 756-57.
\textsuperscript{53} \textit{Id.} at 757-59.
\textsuperscript{54} Chaney, \textit{supra} note 51, at 142.
\textsuperscript{55} \textit{Id.} at 131.
\textsuperscript{56} Leavy, \textit{supra} note 50, at 761.
\textsuperscript{57} \textit{Id.}
\textsuperscript{58} Matas & Kilgour, \textit{supra} note 46, at 9.
\textsuperscript{59} \textit{Id.} at 10.
\end{flushright}
reported in April 2006 that each year, more than twice as many Chinese nationals join Falun Gong than the Communist Party, much to the Chinese government’s fear and dismay.60

In 2001, the Chinese president, Jiang Zemin, stated, “Religion must never be allowed when it opposes the direction of the Party of the socialist system, or destroys national reunification or ethnic identity.”61 In late 2001, China declared the use of the Internet to organize or coordinate the activities of “evil cults” a criminal offense.62 In the years following, thousands of Falun Gong followers were detained and charged with violating the anti-cult laws.63 President Jiang Zemin actually created the 6–10 office, a special branch of the Chinese government designed specifically to eliminate the Falun Gong movement.64 The 6–10 office sent thousands of Falun Gong practitioners to prisons and labor camps.65 Falun Gong practitioners have been subjected to torture, capricious detention, and re-education to include confinement, forced labor, and psychological treatments.66 One research group identified over three thousand Falun Gong practitioners who have lost their lives as a result of persecution by the Chinese government.67

62. *Id.*
63. *Id.*
64. Matas & Kilgour, *supra* note 46, at 10.
65. *Id.* at 11.
B. Organ harvesting of Falun Gong prisoners

Researchers linked the large surge in organ transplants performed in China to the persecution and imprisonment of Falun Gong members in 1999. In many prisons and labor camps, Falun Gong practitioners have been singled out from non-practitioners for blood tests and organ examinations. Although those practitioners were given medical screenings, presumably to determine compatibility for organ transplants, many diagnosed with illnesses were not provided with any medical treatments.

One study found that Falun Gong practitioners who die in captivity would officially be categorized as suicide by the Chinese government, and their bodies would be immediately cremated. Furthermore, it has been reported that a large number of these deaths were carried out specifically to gather organs for transplants. Many family members of executed Falun Gong practitioners have reported seeing corpses with surgical incisions and missing body parts. Moreover, the government gave no explanation as to why the corpses were mutilated. Many Falun Gong practitioners whose organs were harvested following their execution were never identified by their families because these practitioners refused to identify themselves to the authorities when they were captured. Therefore, it is easy to conclude that these unidentified practitioners were the easiest and safest targets for clandestine organ harvesting.

69. Bloody, supra note 67, at 38.
70. Allison, supra note 68, slide 70.
71. Matas & Kilgour, supra note 46, at 9.
73. Bloody, supra note 67, at 45.
74. Id.
75. Id. at 35.
These findings parallel international human rights groups that have widely reported that executions in China are often performed in conjunction with specific transplant requirements, i.e., shooting a prisoner in the head when kidneys are needed or shooting a prisoner in the chest when corneas are needed.\footnote{Hemphill, supra note 29, at 439-40.}

\section*{China’s organ harvesting of condemned prisoners}

Organ harvesting is a government business in China.\footnote{Organs, supra note 4, at 41 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).} At least ninety percent of all organ transplants performed in China come from executed prisoners.\footnote{Id. at 16 (statement of N.J. Rep. Christopher H. Smith, Member, Comm. on Int’l. Relations, Member, Subcomm. on Int’l. Ops. and Human Rights).} Only the government has the power to carry out these executions, and therefore, only the government can control the organ trade.\footnote{Id. at 41 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).} Without the death penalty in China, the entire system of organ harvesting would be nonexistent.\footnote{Id. at 42.} Recently in 2006, both the Vice-Minister of Health in China and senior transplantation specialists finally admitted that the vast majority of organs used for transplants were harvested from executed prisoners.\footnote{Repression, supra note 10, at 10.}

Different people in the government play an integral role in the organ transplant process.\footnote{Organs, supra note 4, at 42 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).} The judges and other court officials speed up the process from appeals to death sentence, which ensures that prisoners are available for the optimum time to extract organs for waiting patients.\footnote{Id.} Court officials inform doctors when death sentences are handed down, so they can contact the prisons to make matches for waiting patients.\footnote{Id. at 42-43.} Prison guards and other officials allow hospital staff into the wards to test prisoners to determine appropriate donors for waiting transplant
patients. Many times, prisoners are subjected to a large variety of medical screening tests prior to execution to determine the compatibility of their organs for transplantation. In these instances, medical personnel are strictly forbidden from revealing the purpose of these screenings. The prison guards also set the execution dates and ensure that family members are unaware of the execution until after-the-fact. The guards also allow the doctors to perform the organ extractions immediately after execution directly at the execution site. In fact, medical personnel are routinely informed of the date, time, and location of executions in advance, so they are prepared for the immediate extraction of organs for transplantation.

There have also been credible reports of deliberately botched executions to postpone brainstem death to aid in the retrieving of the organs while the blood is still circulating through the body. It has been reported that organs such as kidneys are removed the night before the scheduled execution. There are other reports that assert organ removal as the actual method of execution. Living organ donors carry a price premium; thus the use of these methods is on the rise. One Chinese doctor reported being ordered to remove the organs from a prisoner who was still breathing. The doctor was in attendance when the firing squad attempted to perform

85. Id. at 43.
86. Brown, supra note 1, at 1071-72.
87. Id. at 1072.
88. Organs, supra note 4, at 43 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).
89. Id.
90. Brown, supra note 1, at 1070.
92. Brown, supra note 1, at 1070-71.
94. Id.
95. Id. at 58 (statement of Wang Guoqi, former doctor, Chinese PLA Hospital).
the execution. The doctor noted that the prisoner was still breathing even after both of his kidneys were removed. Following the doctor’s refusal to continue to participate in the organ transplant program, the doctor was forced by the Chinese government to swear never to expose his work or the fact that the organs he removed were subsequently sold for a profit by the government.

A. Consent not required

Due to reports of the torture and anguish of prisoners and the secrecy surrounding the death penalty’s application in China, it is virtually impossible to independently verify that any executed prisoners truly gave consent for the use of their organs. Chinese prisoners are generally not notified of their impending execution until just hours before it occurs. As a result, donor consent is rarely obtained in spite of it being a lawful requirement. The family members of the condemned prisoners are also rarely informed of the execution. Even when the family members are notified of the execution, they are rarely informed of the prearranged plans for organ extraction. In the rare instances where the family members are notified, they are offered money in advance to authorize the use of the prisoner’s organs. If the family refuses the payment, it is then common for the government to provide the family with a large bill

96. Id.
97. Id.
98. Organs, supra note 4, at 59 (statement of Wang Guoqi, former doctor, Chinese PLA Hospital).
99. Id.
100. See Repression, supra note 10, at 11.
101. Brown, supra note 1, at 1066.
102. Id.
103. Id.
104. Id. at 1066-67.
105. Id. at 1067.
following the execution to recoup losses ranging from food and lodging for the prisoner to the cost of the bullet used to perform the execution.\(^\text{106}\)

One death row prisoner was witnessed lying on the floor in solitary confinement with all of his limbs stretched out and shackled to the ground by his wrists, ankles, and even his neck.\(^\text{107}\) He was fed one meal a day.\(^\text{108}\) Only after he “consented” to donating his organs was he unshackled from the ground.\(^\text{109}\) However, he was still in leg irons and handcuffs.\(^\text{110}\)

It has also been reported that prisoners who are healthy and have useful organs are often pushed to the front of the waiting lists for executions.\(^\text{111}\) In essence, once a prisoner has been deemed fit for an organ transplant, the prisoner becomes nothing more than a warm object sheltering an organ for some other waiting and paying person.\(^\text{112}\)

\textbf{B. Chinese ideology}

The underlying ideological principles of China’s social and political culture justify the use of organs from executed prisoners.\(^\text{113}\) Society as a whole is deemed more important than individual rights.\(^\text{114}\) Because of the organ deficit for transplantation and the demand from high-paying foreigners, China justifies the use of these prisoners’ organs for the overall good of the country.\(^\text{115}\) The Chinese government considers the use of death row prisoners for organ

\begin{footnotesize}
\begin{enumerate}
\item[106] Brown, supra note 1, at 1067.
\item[107] Organs, supra note 4, at 47 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).
\item[108] Id.
\item[109] Id.
\item[110] Id.
\item[112] Organs, supra note 4, at 49 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).
\item[113] Brown, supra note 1, at 1082.
\item[114] Id.
\item[115] Id.
\end{enumerate}
\end{footnotesize}
transplants charity.\textsuperscript{116} The criminals are considered bad people deserving of their death sentence.\textsuperscript{117} In producing the death, the prisoners create waste that can be used to help others continue their lives, hence charity.\textsuperscript{118} Even hospital and prison employees deem the system of retrieving organs without consent just a way to pay back the state for the expense of the prisoners' care while incarcerated.\textsuperscript{119}

\textbf{C. China’s nonexistent organ donation program}

Less than one percent of the organs used for transplants in China are harvested from the recipient’s family members or brain-dead donors.\textsuperscript{120} China lacks an organized formal system for individuals to volunteer their organs for use after their death.\textsuperscript{121} Chinese people are adverse to donating organs based on religious beliefs and out of respect for their elders and ancestors.\textsuperscript{122} Chinese culture insists that regardless of cremation or burial, the body should remain intact after

\textsuperscript{116} Organs, supra note 4, at 44 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} See Id. at 25 (statement of Nancy Scheper-Hughes, Project Dir., Organs Watch).
\textsuperscript{121} Repression, supra note 10, at 10.
\textsuperscript{122} Brown, supra note 1, at 1080; On a personal note, growing up in a Chinese family has provided me with experience and insight into the Chinese way of showing familial and ancestral respect. When my grandfather passed away a few years ago, I experienced the rituals of preserving and worshipping his body after death. My grandfather’s body was transported from the hospital to a Buddhist temple. At the temple, the family gathered around his body, along with two Buddhist monks, and chanted Buddhist verses for approximately two hours. Afterward, my grandfather’s body remained at the temple until the funeral where he was cremated. My family went back to the temple daily to visit him until the day he was cremated. Everyone in the family spent countless hours making hundreds of water lilies out of gold paper money. We had to make enough to cover his entire body like a blanket. This blanket was burned along with his body. The blanket was meant to be a bed of lilies for my grandfather to float upon in the afterlife. The blanket was made out of gold paper money so that my grandfather would never suffer in the afterlife because he would be surrounded by good fortune.
Particularly with Buddhist and Confucian beliefs, the bodies must remain whole after death, making true donations very rare or even nonexistent.\footnote{124}{Organs, supra note 4, at 3 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).}

\textbf{D. \textit{China’s secret organ transplant policy}}

In 1984, the Chinese government issued an official order titled “Provisional Regulations on the Use of Dead Bodies or Organs from Condemned Criminals.”\footnote{125}{Id. at 42 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).} The order served as the sole legal authority regarding the harvesting of organs from executed prisoners.\footnote{126}{Hemphill, supra note 29, at 445.} However, the directive was not law, just a set of orders to carry out the organ transplants to the benefit of the Chinese government.\footnote{127}{Organs, supra note 4, at 42 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).} The order only established basic guidance regarding the procedure but failed to adequately address the human rights of the prisoners.\footnote{128}{Hemphill, supra note 29, at 445.} The 1984 order was never officially passed by the Chinese Communist People’s Congress, but it served to carry out the government’s demands.\footnote{129}{Id.}

The 1984 order regarding the extraction of organs from executed prisoners stipulated the following requirements: 1) consent of the prisoner or the prisoner’s family; 2) procurement of the organ only after the prisoner’s death was confirmed by a supervising official; and 3) the preservation of absolute secrecy regarding the organ harvesting.\footnote{130}{Hemphill, supra note 29, at 447.} The order also required that medical workers refrain from wearing hospital insignia or drive marked vehicles to or from the executions.\footnote{131}{Id.} In addition, the order states that the organ removal times must be coordinated

\begin{itemize}
\item 123. Repression, \textit{supra} note 10, at 10.
\item 125. Id. at 42 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).
\item 126. Hemphill, \textit{supra} note 29, at 445.
\item 127. Organs, \textit{supra} note 4, at 42 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).
\item 128. Hemphill, \textit{supra} note 29, at 445.
\item 129. Organs, \textit{supra} note 4, at 42 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).
\item 130. Hemphill, \textit{supra} note 29, at 447.
\item 131. Id.
\end{itemize}
with crematoriums, so the bodies can be cremated immediately following the procedure.\textsuperscript{132} Even though consent was one of the stipulations in the order, the Chinese government has never produced any evidence confirming a prisoner’s consent to donate his or her organs.\textsuperscript{133} Furthermore, a prisoner shackled to the ground twenty-four hours a day is in no condition to offer an informed consent.\textsuperscript{134}

An unwritten policy also existed ranking the order in which members of society would be recipients of the organ transplants: 1) high-ranking government officials and military members; 2) wealthy overseas Chinese and other foreigners; 3) wealthy Chinese citizens; and finally 4) the common citizen.\textsuperscript{135}

\textbf{E. Sale of organs “illegal” after July 2006}

In 2006, the government enacted the provisions on the “Entry and Exit of Cadavers,” which officially banned the commercial sale of human organs.\textsuperscript{136} However, the 2006 provisions failed to address the harvesting of organs from executed prisoners, leaving the 1984 order intact.\textsuperscript{137} The drafter of the 2006 provisions stated, “The guideline will specifically not mention the use of executed prisoners’ organs, even though it’s the main source of organs in China . . . . The executed prisoners’ organs will not be specifically banned in this guideline or in the coming Human Organ Transplant Rule.”\textsuperscript{138}

This new legislation became effective July 1, 2006, banning the sale of human organs, requiring donors to provide written permission for the transplantation of their organs, limiting

\textsuperscript{132} Organs, supra note 4, at 52 (translation of “The Provisions on the Entry and Exit of Cadavers and Treatment of Cadavers”).
\textsuperscript{133} \textit{Id.} at 43 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).
\textsuperscript{134} \textit{Id.}
\textsuperscript{135} \textit{Id.} at 42.
\textsuperscript{136} Hemphill, supra note 29, at 445.
\textsuperscript{137} \textit{Id.}
\textsuperscript{138} Allison, supra note 68, slide 66.
transplant surgery to certain institutions, compelling an ethics committee to review and approve all transplants in advance, and requiring institutions performing transplant surgery to verify that the organs are from legal sources.139 The provisions attempt to regulate the transportation of cadavers.140 However, the provisions still provide the Chinese government with the ultimate authority on all decisions related to export matters.141 For example, Article 8 of the provisions states, “It is strictly prohibited to trade in cadavers, and to make use of cadavers to engage in commercial activities.” 142 However, Article 7 states that if Chinese customs officials are presented with a valid certificate issued by the Chinese government to approve the transport of cadavers, the body is released.143

In China, enacting legislation does not mean enforcing it.144 In China today, the reality is that the abstract principle of law is often corrupted by the wish for personal gain or the interests of the Communist Party.145 It has been reported that organs are still being sold following this 2006 legislation.146 After the legislation was passed, researchers called two hospitals in Beijing pretending to need a kidney transplant.147 Both hospitals offered kidneys on the spot.148 In another example, undercover investigative reporters for the BBC were informed by hospital staff at No 1 Central Hospital in Tianjin that they could receive a liver for transplant for the price of

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139. Matas & Kilgour, supra note 46, at 36.
140. Hemphill, supra note 29, at 449.
141. Id.
142. Id.
143. Id. at 450.
144. Bloody, supra note 67, at 23.
146. Repression, supra note 10, at 11.
147. Bloody, supra note 67, at 23.
148. Id.
$94,400 USD within three weeks.\textsuperscript{149} Furthermore, the chief surgeon confirmed that the donor might be an executed prisoner because of the surplus of organs from the anticipated increase in executions before China’s National Day.\textsuperscript{150} Organ transplant professionals have said that the new rules do affect field operations.\textsuperscript{151} One website noted that as of August 19, 2007, the Chinese government had approved 164 hospitals to perform organ transplant surgeries.\textsuperscript{152}

\textbf{F. China’s disguise of its organ harvesting from the international community}

When China issued the “Temporary Rules Concerning the Utilization of Corpses or Organs from the Corpses of Executed Prisoners,” it urged everyone involved to be particularly careful about keeping the process a secret to avoid possible political repercussions.\textsuperscript{153}

China admitted that it decided to take efforts to stop illegal organ transplants because of international pressures with the upcoming the 2008 Olympic Games.\textsuperscript{154} Moreover, the Chinese Medical Association’s vice-chairman cited “huge international pressure” leading up to the Olympics as the reason for the crackdown.\textsuperscript{155} The Chinese government addressed the issue of human rights when Beijing was awarded the Olympics in 2001.\textsuperscript{156} These concerns were mirrored by the International Olympic Committee.\textsuperscript{157} However, some argue that by allowing

\begin{itemize}
  \item \textsuperscript{149} Repression, supra note 10, at 11.
  \item \textsuperscript{150} Id.
  \item \textsuperscript{151} Allison, supra note 68, slide 63.
  \item \textsuperscript{152} Id. slide 72.
  \item \textsuperscript{153} Brown, supra note 1, at 1075.
  \item \textsuperscript{155} Id. ¶ 7.
  \item \textsuperscript{156} Repression, supra note 10, at 2.
  \item \textsuperscript{157} Id.
\end{itemize}
China to host the Olympic Games in Beijing, the international community has given China a sense of impunity regarding its well-known human rights violations.\textsuperscript{158}

In 2007, presumably in response to criticism of China’s human rights policies, China’s State Council enacted legislation that made it illegal to profit from the sale of human organs, harvest human organs without proper consent, and collect organs from donors under the age of 18.\textsuperscript{159} However, the lack of transparency within China’s organ transplant system prevents any outside oversight or regulation.\textsuperscript{160}

VI. \textbf{Corruption of China’s Communist Party}

It has been reported that there is widespread corruption among Chinese government officials including graft, bribery, use of official position for personal gain, blackmail, misuse of public money, and extortion.\textsuperscript{161} One source cites graft and bribery as constituting over 50\% of the economic crimes in China.\textsuperscript{162}

Under the current Chinese government, the rights of individuals are always subject to the drafting of new legislation that may suspend those rights.\textsuperscript{163} Moreover, violations of those rights guaranteed by the Chinese constitution are generally not enforceable against the government because of the lack of checks and balances in the system.\textsuperscript{164} The Communist Party always takes precedent over the independent rule of law.\textsuperscript{165} Chinese citizens may only exercise their right to

\begin{itemize}
\item \textsuperscript{158} \textit{Bloody, supra} note 67, at 8.
\item \textsuperscript{159} Anita Chang, \textit{China Limits Organ Transplants for Foreigners}, ASSOCIATED PRESS, July 3, 2007, ¶ 8-9, available at http://organharvestinvestigation.net/media/g&m-070703.htm (last visited July 30, 2008).
\item \textsuperscript{160} \textit{Id.} ¶ 9.
\item \textsuperscript{161} Lin, \textit{supra} note 145, at 5-6.
\item \textsuperscript{162} \textit{Id.}
\item \textsuperscript{163} Brown, \textit{supra} note 1, at 1050.
\item \textsuperscript{164} \textit{Id.}
\end{itemize}
freedom if their behavior does not infringe upon the interests of the society and the state.\textsuperscript{166} Research has indicated that Chinese citizens who engage in promoting freedom of expression are arbitrarily arrested, detained, tortured, and convicted.\textsuperscript{167} Many crimes involving expression of ideas or even an association with an idea or movement that differs from the party line are classified as political crimes.\textsuperscript{168} The ensuing trials are held in secret, excluding observers and even lawyers, under the excuse of maintaining state secrets.\textsuperscript{169}

\textbf{A. Economic gain from organ harvesting}

China sells organs of executed prisoners on a large scale for profit under the guise of state secrets.\textsuperscript{170} China has a system that readily sentences, condemns, and executes human beings so that their organs can be sold by government officials for personal gain.\textsuperscript{171} Arrestees are often denied immediate access to legal representation following their detention.\textsuperscript{172} Chinese police even take extreme steps to limit defense attorneys from assisting their clients.\textsuperscript{173} For example, Chinese police severely limit the length and number of times a defendant is allowed to meet with his attorney, require the attorney to brief police concerning the nature of the conversation prior to the meeting, cancel meetings that are intended to cover topics that are not preapproved, and severely restrict the attorney’s access to the prosecution’s evidence.\textsuperscript{174} Moreover, torture is often used to elicit confessions.\textsuperscript{175} International organizations have documented the widespread abuse

\begin{footnotesize}
\textsuperscript{166} \textit{Id.}
\textsuperscript{167} Daniel C. Turack, \textit{Article: the New Chinese Criminal Justice System}, 7 \textit{CARDozo J. Int’l & Comp. L.} 49, 63-64 (Spring 1999)
\textsuperscript{168} \textit{Executed, supra} note 5, at 21.
\textsuperscript{169} \textit{Id.}
\textsuperscript{170} Brown, \textit{supra} note 1, at 1075.
\textsuperscript{171} \textit{Organs, supra} note 4, at 15 (statement of N.Y. Rep. Benjamin A. Gilman, Member, Comm. on Int’l. Relations).
\textsuperscript{172} \textit{Executed, supra} note 5, at 1.
\textsuperscript{173} \textit{Id.} at 21.
\textsuperscript{174} \textit{Id.}
\textsuperscript{175} \textit{Id.} at 1.
\end{footnotesize}
and torture of prisoners occurring at all types of detention facilities and legal institutions in China.\textsuperscript{176} One individual reported that he was forced to confess to a crime after undergoing torture perpetrated by the police that included electrical shock applied to the toes, fingers and genitals, beating with heavy chains and sticks, and injection of hot pepper, gasoline, and ginger into his nose.\textsuperscript{177} Thus, it is not surprising then that China refuses to accept the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which allows for regular international inspection of detention centers.\textsuperscript{178}

In addition to the arrest and detention of prisoners, trials are often held before defendants are provided adequate time to prepare a defense.\textsuperscript{179} Defendants do not have a guaranteed right to cross-examine witnesses.\textsuperscript{180} In addition, verdicts and subsequent sentences are often determined by private committees prior to a proper trial.\textsuperscript{181} Unfortunately, it is quite common for a court to have reached a verdict before the defendant even enters the courtroom.\textsuperscript{182} Appeals may be rejected based on a mere summary examination of the case by a judge in his chambers.\textsuperscript{183} Official statistics released by the Chinese government note that the conviction rate for all crimes between 1998 through 2002 was 99.1\%, an almost perfect conviction rate, which is troubling considering the reports of torture being used to force confessions and the denial of adequate legal representation.\textsuperscript{184} Even though the Supreme People’s Court is now supposed to review all death

\begin{footnotesize}
\begin{enumerate}
\item[176.] Id. at 13.
\item[177.] Repression, supra note 10, at 6.
\item[178.] Executed, supra note 5, at 13.
\item[179.] Id. at 1.
\item[180.] Id.
\item[181.] Id.
\item[182.] Id. at 28.
\item[183.] Executed, supra note 5, at 1.
\item[184.] Id. at 3.
\end{enumerate}
\end{footnotesize}
penalty cases, one researcher discovered that during a two and a half month period in early 2007, at least thirteen people were executed without their cases being reviewed and approved by the high court.\(^ {185}\)

Once a prisoner is convicted and sentenced to death, the hospital system becomes involved with the harvesting of the organs.\(^ {186}\) With China’s social medical system, the government controls all medical personnel and hospital facilities.\(^ {187}\) Such strict controls prevent medical personnel from questioning the source of the organs used in transplants or their duty to perform the transplants.\(^ {188}\) Furthermore, medical personnel are sworn to secrecy regarding the organ transplantation work they perform.\(^ {189}\) Often, they are presented with donor bodies that have bullet holes in the head or other wounds common in execution victims.\(^ {190}\)

Under the communist system, many rural hospitals suffer from a severe shortage of funding.\(^ {191}\) In the face of these conditions, some hospitals are forced to resort to creative ways to generate revenue, including the sale of organs harvested from prisoners.\(^ {192}\) Hospitals have the unique ability to generate large amounts of revenue from organ transplants.\(^ {193}\) The Organ Transplant Center of the Armed Police General Hospital located in Beijing posted literature stating, “Our Organ Transplant Center is our main department for making money. Its gross income in 2003 was 16,070,000 yuan. From January to June of 2004 income was 13,570,000

\(^{185}\) Repression, supra note 10, at 7.

\(^{186}\) See Id. at 42-43 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).

\(^{187}\) Brown, supra note 1, at 1072.

\(^{188}\) Id.

\(^{189}\) Id.

\(^{190}\) Id.

\(^{191}\) Bloody, supra note 67, at 8.

\(^{192}\) Id. at 9.

\(^{193}\) Id.
yuan. This year (2004) there is a chance to break through 30,000,000 yuan.”  

Due to increased revenue and demand, six new hospitals dedicated solely to organ transplants were constructed between 2001 and 2004. 

The majority of the money generated from the sale of organs of executed prisons goes to the People’s Liberation Army (PLA), the Chinese military. China’s military is a fully functioning business, sanctioned by the government to raise money for military activities and make up for the lack of resources provided by the government. Most of the hospitals partaking in the sale of the harvested organs are run by the PLA. The PLA has a close relationship with the prison system as well as the justice system, ensuring that a great number of the victims are actually condemned because of their political or religious beliefs. Chinese military members not only have access to the prison system in China but also to the prisoners themselves. The PLA’s interactions with these prisons and prisoners are more secretive than those of the civilian government, and they are impervious to Chinese laws. A former doctor of the PLA stated that his job required him to remove the corneas and skin from the corpses of over one hundred executed prisoners, which included a few victims of intentionally botched 

194. Id. at 9-10.
195. See Id. at 44.
199. Id.
201. Id. at 10-11.
executions. The hospital paid the Higher People’s Court a specific dollar amount for each corpse, although no receipts or records of the exchange were documented.

The demand for transplantable organs is the main reason why organ procurement is so pervasive in China. It is common knowledge that high-paying customers will receive a prompt organ transplant in China. Former transplant patients have reported that they were expected to hand out “red envelopes” filled with money to every doctor they saw. The money is shared with both prison and court officials. It has been reported that foreign nationals pay upwards of $200,000 for an organ transplant performed in China, using Chinese donors. Sadly, there is also a reported case where a transplant recipient died because the essential post-operation care and treatment ceased because the patient ran out of money.

Due to the high demand for organs, the large number of death-row prisoners, the improved medical technology, and the huge profits, selling organs from executed prisoners in China will continue. The situation is exacerbated because many of the people who are key participants in the harvesting of the organs are poorly paid prison and hospital administrators. China’s organ procurement from the bodies of executed prisoners is not only a lucrative money-maker, it is also a method to coerce and intimate the general population into submission of

202. Organs, supra note 4, at 57 (statement of Wang Guoqi, former doctor, Chinese PLA Hospital).
203. Id.
204. Brown, supra note 1, at 1078.
205. Id.
206. Organs, supra note 4, at 46 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation); Traditionally in Chinese culture, money gifts are given in small red envelopes, symbolizing good luck and fortune.
207. Id.
208. Hemphill, supra note 29, at 438.
209. Organs, supra note 4, at 46 (statement of Harry Wu, Executive Dir., The Laogai Research Foundation).
210. Brown, supra note 1, at 1079.
211. Organs, supra note 4, at 11 (statement of Michael E. Parmly, Principal Deputy Assistant Secretary of State, Bureau for Democracy, Human Right and Labor, Dept. of State).
government control.\footnote{Id. at 1 (statement of Fla. Rep. Ileana Ros-Lehtinen, Member, Comm. on Int’l. Relations, Chairwoman, Subcomm. on Int’l. Ops. and Human Rights ).} Actually, since the discovery of the lucrative organ transplant market, the number of crimes punishable by death has increased.\footnote{Id. at 29 (statement of Nancy Scheper-Hughes, Project Dir., Organs Watch).}

Chinese web bulletins boards have reported information discussing the sale and corruption of the “organ business.”\footnote{Id. at 11 (statement of Michael E. Parmly, Principal Deputy Assistant Secretary of State, Bureau for Democracy, Human Right and Labor, Dept. of State).} Chinese websites advertising organ transplants openly admit to obtaining their organs from executed prisoners.\footnote{Failing, supra note 31, at 3.} One website specifically targeting foreigners announced on the front page that viscera or soft interior organs including brain, lungs, and heart could be found immediately.\footnote{Bloody, supra note 67, at 17.} This website also thanked the support of the Chinese government, specifically naming the Supreme Demotic Court.\footnote{Id.}

**B. Secrecy in the Chinese government**

China has maintained an air of secrecy concerning the sale of organs harvested from executed prisoners, concealing the transfer of profits.\footnote{Hemphill, supra note 29, at 443-44.} China strove to keep the 1984 order on the use of prisoner cadavers confidential in order to avoid international backlash.\footnote{Id. at 446.} Even official figures regarding death sentences and executions in China are kept secret from the public and foreigners.\footnote{Repression, supra note 10, at 8.} Additionally, international human rights organizations are not permitted to visit prisoners in China.\footnote{Bloody, supra note 67, at 4.} Until recently, the Chinese government emphatically denied the legal procurement of organs from Chinese prisoners condemned to death.\footnote{Hemphill, supra note 29, at 446.}
The only people that would be present at the scene of an organ harvesting are the victim and the perpetrators.\textsuperscript{223} No bystanders would be allowed to witness the event.\textsuperscript{224} Afterward, no body would be found, and no autopsy would be conducted.\textsuperscript{225} The body would be cremated, and the evidence vanished.\textsuperscript{226} The operating room would be left like any other empty operating room.\textsuperscript{227} Cremation of the body prevents any evidence from surfacing regarding the harvesting of organs.\textsuperscript{228} In addition, any wills created by condemned prisoners are subject to official censorship by the government.\textsuperscript{229} The Supreme People’s Court issued a secret regulation concerning a prisoner’s last will and testament that states, “Those parts which are slanderous in nature or which make reactionary statements are not to be handed over to the person’s family . . . sections complaining about grievances or alleged injustices are not to be passed on to the person’s family.”\textsuperscript{230} When one executed prisoner’s brother asked to see the documentation of his brother’s consent to donate his organs, the Chinese officials would not give him the information.\textsuperscript{231} Furthermore, the government warned the brother that if he did not keep silent, he and his family would face retaliation.\textsuperscript{232}

Organ transplant recipients have stated that the entire process is completed with a “don’t ask, don’t tell” policy.\textsuperscript{233} The recipients are typically not told the names of their doctors or the

\begin{itemize}
  \item \textsuperscript{223} Bloody, supra note 67, at 3.
  \item \textsuperscript{224} Id.
  \item \textsuperscript{225} Id.
  \item \textsuperscript{226} Id.
  \item \textsuperscript{227} Id. at 4.
  \item \textsuperscript{228} Brown, supra note 1, at 1068.
  \item \textsuperscript{229} Id. at 1068-69.
  \item \textsuperscript{230} Allison K. Owen, Death Row Inmates or Organ Donors: China’s Source of Body Organs for Medical Transplantation, 5 (No. 2) IND. INT’L & COMP. L. REV. 495, 502 (1995).
  \item \textsuperscript{231} Organs, supra note 4, at 2 (statement of Fla. Rep. Ileana Ros-Lehtinen, Member, Comm. on Int’l. Relations, Chairwoman, Subcomm. on Int’l. Ops. and Human Rights ).
  \item \textsuperscript{232} Id.
  \item \textsuperscript{233} Bloody, supra note 67, at 20.
\end{itemize}
identity of the donors. They are not given any documentation revealing the consent of the donor or family members. Moreover, the procedure is often performed in the middle of the night.

China continues to crack down on individual journalists, newspapers, and websites for reporting any news the government deems sensitive. In the Shandong province, it was reported that the Pingdu city government issued a document in March 2007 requesting that officials “use all measures to downsize the impact of negative reporting to a minimum level.” Chinese national reporters caught reporting on human rights violations from within China are subjected to imprisonment and often charged with communicating state secrets. For the two years prior to August 2006, the Chinese police had detained foreign journalists at least thirty-eight times for covering social issues, including environmental protests, land disputes, and AIDS victims. While foreign journalists are only detained for relatively short periods of time, Chinese journalists face much harsher punishment. One Chinese journalist suffered from beatings and sleep deprivation while in prison for posting political essays on the Internet.

Some large corporations are aiding China in its agenda to maintain its secrecy of governmental practices and suppress the freedom of its citizens. Yahoo, Google, and Microsoft have all facilitated or at least participated in China’s repression of the media, enabling

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234. Id.
235. Id.
236. Id.
238. Repression, supra note 10, at 19.
241. Id. at 14.
242. Id.
243. Id. at 15.
China’s claim of state secrets.\footnote{244} Yahoo signed China’s “Public Pledge on Self-discipline for the Chinese Internet Industry,” which means that Yahoo agreed to officially censor the Internet.\footnote{245} Yahoo has also provided the Chinese government with account holder information, which led to the conviction of at least four Chinese Internet users.\footnote{246} Google has introduced a self-censoring search engine specifically designed for China as an alternative for its existing search engine.\footnote{247} At the Chinese government’s request, Microsoft shut down the blog of a China-based researcher working for the \textit{New York Times}.\footnote{248} Microsoft has also prohibited Chinese MSN Spaces account holders from using specific terms including “human rights,” “Falun Gong,” and “Tibet Independence” in their account names or page titles.\footnote{249}

\section*{VII. International response}

During a 2001 Congressional Hearing before the Subcommittee on International Operations and Human Rights, Michael E. Parmly, Deputy Assistant Secretary of State, Bureau for Democracy, Human Rights and Labor, Department of State stated that his agency considers organ harvesting of executed prisoners without consent of the family members to be an egregious violation of both international human rights law and international medical ethical standards.\footnote{250} The Chairman of the House Subcommittee on International Operations and Human Rights, Florida representative, Ileana Ros-Lehtinen, sponsored a bill designed to keep Chinese doctors from acquiring visas to travel to the United States to engage in any medical training conferences.

\begin{thebibliography}{99}
\footnotetext[244]{\textit{Id.}}
\footnotetext[245]{\textit{Failing}, supra note 31, at 16.}
\footnotetext[246]{\textit{Id.}}
\footnotetext[247]{\textit{Id.}}
\footnotetext[248]{\textit{Id.} at 15.}
\footnotetext[249]{\textit{Id.} at 15-16.}
\footnotetext[250]{\textit{Organs, supra} note 4, at 9 (statement of Michael E. Parmly, Principal Deputy Assistant Secretary of State, Bureau for Democracy, Human Right and Labor, Dept. of State).}
\end{thebibliography}
involving organ and tissue transplantation.\textsuperscript{251} Partially due to China’s human rights record, California Representative, Tom Lantos, worked to advise the International Olympic Committee to reject China’s bid to host the 2008 Summer Olympics.\textsuperscript{252}

In the medical community, a group calling themselves, “Doctors against Organ Harvesting” is pushing for hospitals and higher education institutions to ban visiting Chinese scholars and physicians interested in improving their organ-transplant skills.\textsuperscript{253} Furthermore, this group strives to ensure that medical journals will not accept research on transplants performed in China.\textsuperscript{254} Two key organ transplant hospitals in Queensland, Australia, banned the training of Chinese surgeons in response to the fears that China uses executed prisoners as a source of black-market organs.\textsuperscript{255}

Despite negative international response, China views the international community’s reaction to its organ transplant policies as an interference with their own internal affairs.\textsuperscript{256} China sees this interference as an unwarranted and unjustified intrusion into their national sovereignty.\textsuperscript{257}

\textbf{VIII. Conclusion}

The death vans silently roll out of town after providing a safe place for the execution and organ extraction of condemned prisoners. The family members of deceased Falun Gong practitioners receive no explanation and often no notice whatsoever of the death of their loved ones. Deception permeates the corrupt and greedy Chinese officials who greatly profit from the

\textsuperscript{251} Perales, \textit{supra} note 111, at 701.
\textsuperscript{252} \textit{Id.}
\textsuperscript{253} Allison Hanes, \textit{China Kills to Harvest Organs: MDs, NATIONAL POST} (Canada), May 18, 2007, ¶ 5, \textit{available at} http://organharvestinvestigation.net/media/OttawaCitizen_051807.htm (last visited July 30, 2008).
\textsuperscript{254} \textit{Id.}
\textsuperscript{255} Allison, \textit{supra} note 68, slide 84.
\textsuperscript{256} Brown, \textit{supra} note 1, at 1074.
\textsuperscript{257} \textit{Id.}
black-market organ trade while the rest of the world remains relatively in the dark because of China’s claim of “state secrets.” With the more convenient and inconspicuous death vans and the thousands of Falun Gong practitioners still held captive, China can and will continue to profit from the high demand for organ transplants, regardless of international speculation and potential backlash.

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