

Submission to the UK House of Commons
Foreign Affairs Select Committee (XIN0076)

Inquiry on Xinjiang Detention Camps

Submitted by:

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1. About the International Coalition to End Transplant Abuse in China

1.1 The International Coalition to End Transplant Abuse in China (ETAC) is a human rights charity that was established with the specific goal of ending forced organ harvesting from prisoners of conscience in China and seeking justice for the victims.

1.2 ETAC is comprised of lawyers, academics, ethicists, medical professionals and human rights advocates. The organisation's activities are co-ordinated through several international advisory committees, including the UK National Committee. ETAC is an independent, non-partisan organisation. We are not aligned with any political party, religious or spiritual group, government or any other national or international institution. Our members are from a range of backgrounds, belief systems, religions and ethnicities.

1.3 ETAC provides global leadership on the issue of forced organ harvesting in China, with a Global Advocacy Network working to coordinate the efforts of supporters to promote and protect human rights by:

- Undertaking, publishing, and disseminating research regarding forced organ harvesting (a form of human trafficking) in China;
- Calling for greater transparency and scrutiny of the transplantation system (including foreign organ tourism) in China;
- Promoting public debate regarding the strengthening of human tissue and organ trafficking laws;
- Raising public awareness regarding the importance of ending arbitrary detention and torture in China, as a prelude to forced organ harvesting;
- 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 demanding accountability for the perpetrators

1.4 Between 2018 and 2020, The Independent Tribunal into Forced Organ Harvesting in China (the China Tribunal) conducted the world's first ever independent legal analysis of all available evidence regarding forced organ harvesting from prisoners of conscience in China, in order to determine what criminal offences may have been committed by individuals affiliated to state or state-approved bodies, organisations or officials in China who may have engaged in forced organ harvesting.

1.5 The Tribunal was initiated by ETAC, *"to decide by evidence whether forced organ harvesting from prisoners of conscience in the PRC had happened, whether it was continuing and, if so, what criminal offences, if any, have been committed by the PRC or other bodies or individuals."*¹ The Tribunal was chaired by Sir Geoffrey Nice QC, a prominent UK human rights lawyer who previously served as the lead prosecutor of Slobodan Milosevic at the UN Criminal Tribunal for former Yugoslavia (ICTY) between 1996 and 2000.

1.6 Although the China Tribunal was initiated by ETAC, its *"members have maintained distance and separation from ETAC in order to ensure their independence"*.² ETAC was responsible for some of the logistics for the Tribunal, such as arranging the London hearings. However, all communication with the Tribunal and submission of evidence was via counsel and ETAC was at no stage privy to the Tribunal's internal deliberations.

Why we are making this submission

1.7 In its Short Form Judgement issued in July 2019³, the China Tribunal concluded that:

"Commission of Crimes Against Humanity against the Falun Gong and Uyghurs has been proved beyond reasonable doubt," adding that: *"In regard to the Uyghurs, the Tribunal had evidence of medical testing on a scale that could allow them, amongst other uses, to become an 'organ bank'. The world is already watching with interest and their geographical location – although very large – may render it possible to lend them support more easily than for the Falun Gong who are dispersed throughout the country."*

¹ https://chinatribunal.com/wp-content/uploads/2019/07/ChinaTribunal-SummaryJudgment_17June2019.pdf. P 3.

² Details of the Tribunal's mandate and methodology can be found here: <https://chinatribunal.com/tribunal-charter/>

³ https://chinatribunal.com/wp-content/uploads/2020/02/China-Tribunal-SHORT-FORM-CONCLUSION_Final.pdf

1.8 We support the Committee's inquiry wholeheartedly and hopes that the it may lead to the UK Government, through its wider support for the protection of human rights, to play its part in working to expose, condemn and eradicate the heinous crime of forced organ harvesting, committed against prisoners of conscience in China, including Uyghurs. Although our comments are made in the context of the specific crime of forced organ harvesting, they are of relevance to the wider issues of Chinese abuse of human rights in Xinjiang and elsewhere.

1.9 Lastly, we would like to highlight the following statement made by the China Tribunal:

*"Government and international bodies must do their duty, not only in regard to the possible charges of Genocide, but also in regard to Crimes Against Humanity, which the Tribunal does not allow to be any less heinous."*⁴

1.10 In the subsequent sections of this submission, ETAC has sought to provide a response to three of the questions posed by the Foreign Affairs Committee in the terms of reference for its Inquiry; representing those that it felt best placed to address.

For further details about ETAC please see: <https://endtransplantabuse.org> and for the China Tribunal: <https://chinatribunal.com/>

⁴ As above

2. How can the UK use organisations and agreements such as the UN Human Rights Council and the Genocide Convention to influence China towards better human rights practices?

2.1 In the last few weeks, China succeeded in being elected back onto the UN Human Rights Council after only a single year of absence - together with Cuba and Russia - which UN Watch has memorably described as, *“like making a gang of arsonist into the fire brigade.”* Earlier this Summer we witnessed the sad spectacle of a UK-Sponsored resolution to the UN Human Rights Council condemning the new Chinese national security law in Hong Kong attracting significantly less signatories (27 against 53) than a rival resolution drafted by Cuba that instead congratulated Beijing on its actions.

2.2 Earlier this year, Beijing successfully secured a seat on the five-person panel that selects the UN’s rapporteurs for the investigation of alleged human rights abuses, just at the time when many states were arguing that a special rapporteur should be appointed to investigate China’s actions in Xinjiang. In order to counter this trend, the UK Government should take a lead in the promotion and protection of human rights by working together with like-minded countries to promote leadership candidates to these organisations who are committed to preserving and promoting both the spirit and letter of vital global protections, such as the Genocide Convention and the Universal Declaration of Human Rights.

2.3 It is essential that countries in the free world continue to stand up for the concept of universal human rights protection if it is to be recognised as having power and meaning, a theme that the UK will soon have the opportunity to promote through the proposed new ‘D10’ alliance of democratic nations, the establishment of which the Government reportedly aims to discuss when it hosts the next meeting of the G7 next year. In a similar vein, Bob Seely MP commented in a recent Westminster Hall debate on 23 September⁵, that:

“We lack the capacity to change China’s policy, but recognition of what is happening is important in its own right. Not to recognise it, and avoid discussing it, puts us in moral jeopardy.”

2.4 With regards to the specific issue of Chinese forced organ harvesting, governments including the UK’s, have clear obligations under the international agreements - such as the Genocide Convention – to which they are a party. In light of the findings of the China Tribunal ETAC believes, therefore, that the UK Government:

⁵ Col 43. <https://hansard.parliament.uk/Commons/2020-10-12/debates/AB40F283-1FA2-4784-AFE7-82F268C3985B/China%E2%80%99sPolicyOnItsUyghurPopulation>

- should fulfil its legal obligations under Article 1 of the Genocide Convention to prevent genocide. The China Tribunal judgment provides sufficient independent legal analysis of available evidence to require states to act in accordance with their legal obligations under the convention; and that it also

2.5 Unfortunately, the option does not exist to bring China before the International Court of Justice for its crimes of torture against Falun Gong and Uyghurs. Although China has signed and ratified the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), it has secured a reservation in connection with the provisions of article 30 of the Convention (allowing for disputes to be brought to the court) that, “*any dispute between parties should be settled by negotiation through the diplomatic channel.*”⁶

2.6 The China Tribunal⁷ itself made a number of recommendations on how multilateral institutions (particularly within the UN) should respond to its final Judgement. A similar approach could be taken as a meaningful response to other human rights abuses, both in China and elsewhere. We hope that the UK Government will seek to play a full role in helping advance these recommendations, both domestically and with its partners in the international arena. We believe they are worth restating here:

- “*In relation to the crime of genocide, and notwithstanding the conclusion arrived at by the Tribunal, it is still open for the UN General Assembly to request from the ICJ an advisory opinion on the very same issue of forced organ harvesting in the PRC and whether it constituted genocide.*” **Para 193**
- “*Action at an international level could also be founded on the basis of the Responsibility to Protect (‘R2P’). This is a political commitment endorsed by all member states of the United Nations, including the PRC, in 2005 to prevent genocide, war crimes, ethnic cleansing and crimes against humanity. Respect for norms and principles of international law mandate national governments, regional and international communities to initiate action to intervene in such situations. However, intervention requires approval by the UN Security Council, of which the PRC is a permanent member and can exercise a veto.*” **Para 194**

⁶ https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en#5

⁷ <https://chinatribunal.com/final-judgement-report/>

- *“It would also be open for the UN Human Rights Council to consider this matter, again based on a resolution proposed by one or more of its 47 Member States. Subject to a majority vote in favour by the Council, the Council could create a mandate for a Special Rapporteur to investigate these allegations of forced organ harvesting of prisoners of conscience in the PRC, and to report back to the Council whether the crimes of genocide, crimes against humanity, and torture have indeed been committed. Despite the time this would inevitably take, this could be one course of action to be given some priority, without limit to the importance of all others.”* **Para 195**
- *“The UN Working Group on Arbitrary Detention might also have a role if necessary cooperation could be established for an interview with a known arbitrarily detained person.”* **Para 196**

3. What mechanisms can the government use to discourage private sector companies from contributing to human rights abuses?

3.1 The effects of forced organ harvesting from prisoners of conscience in China - like the other human rights abuses being perpetrated in Xinjiang - have international reach, impacting citizens and institutions in the UK as well as partner countries. The lucrative nature of the organ transplantation industry, along with the growing number of international partnerships related to organ transplantation, raise grave concerns that UK educational and medical institutions in particular may be implicated in breaches of human rights, including the absolute right to life (Article 6, ICCPR)⁸, the right to be free from slavery (Article 8, ICCPR) and the right to be free from torture, inhumane and degrading treatment (Article 7, ICCPR).

3.2 ETAC submits that as matter of urgency, the UK should ensure that there are adequate policy measures in place to ensure that UK education/research institutions and companies are not in any way sanctioning or supporting forced organ harvesting in China.

3.3 Furthermore, in seeking trade and research opportunities with China, the UK must avoid any partnerships or other activities that are directly or indirectly involved in the field of transplantation medicine including research and training. Such avoidance is essential to ensure that the UK government, private institutions and its citizens do not inadvertently breach international human rights laws and ethical standards

3.4 The UK government should therefore explore what measures it has at its disposal to compel medical and educational institutions to commit themselves to the following safeguards:

- That all collaborations and partnerships with China in relation to organ transplantation should cease and policy should be put in place to prevent possible involvement in China's criminal transplant activity – protecting UK citizens from possible complicity in China's Crimes Against Humanity
- Refrain from funding trips to China related to organ transplantation, research and training

⁸ International Covenant on Civil and Political Rights

- Cease medical student and professional exchanges as well as collaborative research projects with Chinese universities and hospitals that are affiliated with illegal organ transplantation practices⁹
- Be transparent in displaying all information regarding their business relationship with foreign investors and sources of funding on their website
- Take steps towards diversifying their student market and financial reliance so as to not solely, or predominantly, rely on China
- Prevent pharmaceutical companies from participating in drug trials with patients using organs from unethical or illegal sources. The UK should cease exportation to China of organ matching kits, immunosuppressants and other transplant related drugs and medical devices
- Investigate any existing trade relationships in relation to transplant medicine, including MOUs between Chinese and UK medical training facilities; and
- Educate patients about the ethical and medical concerns arising from transplant tourism to countries where ethical practices cannot be verified, of which China is the leading destination of concern.

⁹ David Kilgour, Ethan Gutmann & David Matas, 'Bloody Harvest/The Slaughter – An Update' (revised 2017) https://endtransplantabuse.org/wp-content/uploads/2017/05/Bloody_Harvest-The_Slaughter-2016-Update-V3-and-Addendum-20170430.pdf.

4. How effective is the FCDO's current approach to atrocity prevention, and how can it be restructured to maximise the UK's impact in this area?

4.1 One of the difficulties that ETAC and we are sure other NGOs and advocacy groups have encountered is the lack of transparency regarding the evidence base used by the Government to justify its policy position regarding human rights abuses. The UK Government's response to the allegations of China's forced organ harvesting as investigated by the China Tribunal helps to illustrate this point.

4.2 On 13 March, 2019, between the first and second series of China Tribunal hearings, Lord Ahmad, Minister of State at the FCDO, gave the following reply to a question in the House of Lords by Lord Hunt asking for the Government's response to the allegations being considered:

"As the Foreign and Commonwealth Office Minister for Europe and the Americas, Sir Alan Duncan, said in a Westminster Hall debate in October 2016, "Although I do not doubt the need to maintain close scrutiny of organ transplant practices in China, we believe that the evidence base is not sufficiently strong to substantiate claims about the systematic harvesting of organs from minority groups. Indeed, based on all the evidence available to us, we cannot conclude that this practice of "organ harvesting" is definitely happening in China."

4.3 On 25 March 2019¹⁰, Sir Geoffrey Nice QC, the Tribunal's Chairman, wrote to the Minister on behalf of the China Tribunal to request details of what analysis the FCDO had conducted on the evidence of forced organ harvesting in China in reaching this view, so that this could be made available to the Tribunal to assist in its consideration of the evidence. This would have been of great interest, given the stark contrast with the Tribunal's own Interim Judgement made following its December hearings, which stated that:

*"The Tribunal's members are all certain – unanimously, and **sure beyond reasonable doubt** – that in China forced organ harvesting from prisoners of conscience has been practiced for a substantial period of time involving a substantial number of victims."*¹¹

¹⁰ https://chinatribunal.com/wp-content/uploads/2019/08/InvitationsCorrespondence_Web.pdf

¹¹ Para 12. <https://chinatribunal.com/interim-judgement/>

However, no such analysis has ever been made available by the FCDO, either to ourselves or to the China Tribunal.

4.4 It is of serious concern that the FCDO was not prepared to engage more constructively with the work of the China Tribunal, not least due to the gravity of the allegations of which have been brought to the attention of the FCDO since as early as 2006, but also given that its hearings took place in London and were chaired by an eminent British human rights QC. We can only hope that the FCDO will be more supportive towards the forthcoming Uyghur Tribunal that Sir Geoffrey is also set to chair.

4.5 In their *Additional Statement to the China Tribunal*, human rights researchers and witnesses to the China Tribunal, David Kilgour, David Matas and Ethan Gutmann, describe similarities in the UK Government's disappointing response to their work with that of the Australian Government, commenting that:

"One can see a pattern here. The mass killing in China of innocents for their organs represents for Ministries of Foreign Affairs everywhere an inconvenient truth. It is impossible to accept the reality of this crime without accepting its consequences. After accepting the reality of this ongoing tragedy, one cannot just carry on with the Government of China as if nothing had happened. Once the reality is acknowledged, it must be addressed in some way. It is a lot easier to pretend it does not exist, to turn a blind eye to a horror too awful to contemplate."

4.6 Addressing a similar point, the China Tribunal made the following statement in its *Summary Judgement*:¹²

"The Tribunal merely notes, with disappointment, how governments have expressed no desire properly to test the allegations by themselves or through the United Nations. It might be expected that allegations such as these – as grave as any on a death for death basis that were proved against the worst political mass murderers of the 20th Century – might be thought worthy of the most urgent and potentially beneficial action that the world order would allow."

4.7 The FCDO however, does have a range of tools in its armoury to respond to global atrocities, but their use is of course, contingent on political will within government. One such

¹² Para. 200, P57: https://chinatribunal.com/wp-content/uploads/2019/07/ChinaTribunal_SummaryJudgment_17June2019.pdf

tool is the new UK ‘Magnitsky laws’, brought in under the Global Human Rights Sanctions Regime in July this year. These new measures have already been applied, notably against several individuals believed to have been involved in the murder of Jemal Khashoggi in Istanbul, and also to leading figures in the Belarus regime following the recent disputed presidential election.

4.8 The combination of naming perpetrators, barring them from entry to the country and seizing any assets held here, may not of itself bring an end to human rights abuses, but it can at least serve as an effective deterrent to many potential perpetrators. When it comes to the campaign to end forced organ harvesting from prisoners of conscience in China, we need every reasonable deterrent that the international community can apply. However, getting the Magnitsky-style legislation onto the statute book is only the first stage. As mentioned above, political will is then required for the legislation to be applied. This is what appears to be missing with regards to the British government’s approach thus far both to Chinese forced organ harvesting and the Xinjiang detention camps. Shabana Mahmood MP, made a similar point in the previously mentioned Westminster Hall debate on 23 September 2020, commenting with regards to the situation in Xinjiang, that¹³:

“It is completely unclear why the Government are still dragging their feet. The case for the imposition of sanctions against individuals, about whom we have clear evidence, has been made. What is the roadblock? I would like the Minister to explain what the roadblock is, because we deserve to know. Too many Members across the House have been pressing him on this point, and have got very little out of the Government.

“Since that Adjournment debate in September, the Government have moved with lightning speed on the imposition of Magnitsky-style sanctions against individuals connected to the regime in Belarus and the rigged re-election of President Alexander Lukashenko. It was announced that sanctions were being drawn up on 24 September, and they were imposed on 29 September. It took merely days. I contrast that with what is happening to the Uyghur people, and the actions that the Government are still considering against key individuals in the Chinese Government. We have many years-worth of evidence, and months and months of review from our Government, but still no action.”

4.9 The Uyghurs and other victims of the egregious human rights abuses taking place in Xinjiang surely deserve better than this from the UK Government. Ms Mahmood went on to add:

¹³ Col 33. <https://hansard.parliament.uk/Commons/2020-10-12/debates/AB40F283-1FA2-4784-AFE7-82F268C3985B/China%E2%80%99SPolicyOnItsUyghurPopulation>

“The legal tests have been met, but perhaps there are political tests—and ever-shifting political tests—that have not been met. If that is the case, that is a low moment for our Government.”

4.10 Coming to the final part of the Committee’s question, ETAC has proposed below a number of ways in which the UK Government could strengthen its response to the PRC’s forced organ harvesting, elements of which could also be of practical use in response to other atrocities, including the widespread allegations of cultural genocide perpetrated by the Chinese Communist regime against the Uyghurs and as also recently highlighted, the Tibetans.

4.11 ETAC has urged the Government to undertake to implement the following measures:

- Urgently pass legislation that criminalises organ trafficking and transplant tourism, including provisions for mandatory reporting.
- Ensure that perpetrators of forced organ harvesting amongst Uyghurs, Falun Gong practitioners and other groups within China are subject to sanctions under the UK’s new ‘Magnitsky Act’, the Global Human Rights Sanctions Regime.
- The FCDO’s paper, *UK Support for Human Rights Defenders*,¹⁴ July 2019, highlighted a number of areas in which the Government could help. These included various ways to enhance the visibility of human rights defenders, working with NGOs and other partners to support and publicise their work, and engaging with the multilateral system to ‘strengthen and raise global standards’, working with the UN and other international partners to enforce those standards. The UK should commit to addressing the issue of forced organ harvesting in China and supporting human rights defenders who work on the forced organ harvesting (in China) issue, by implementing the report’s recommendations.
- Following the recent resignation of Rehman Chishti MP, the Government should move quickly to appoint a new Prime Minister’s Special Envoy for Freedom of Religion or Belief, with a more muscular remit to ensure that the aspirations set out in *UK Support for Human Rights Defenders*, are properly followed through, with the necessary resources and policy support made readily available.

¹⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819299/UK-Support-for-Human-Rights-Defenders.pdf

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