

Health Professionals Network

Letterwriting Action

March 1995

China

The Use of Organs from Executed Prisoners

Keywords

Theme: execution/medical ethics/organ transplantation

Summary

Amnesty International has serious concerns at the widespread use of the death penalty in China and at the lack of safeguards for prisoners. Moreover, despite mounting protests from human rights organizations and the international transplant community, the retrieval of organs for transplantation from executed prisoners remains commonplace in China, reportedly accounting for the vast majority of organs transplanted in the country. Official regulations require the consent of the prisoner or the prisoner's family prior to removal of tissue from the body, but numerous sources report that consent is rarely, if ever, obtained, and the degrading conditions in which condemned prisoners are held would preclude truly free and informed consent even if it were sought. Prisoners selected to serve as a source of organs after their execution are subjected to degrading treatment in the form of medical investigations that are not for their benefit and that are performed without the purpose of these tests being revealed to them. Health professionals participate in the performance of these investigations, breaching their ethical obligation to act for the wellbeing of their patient. Health professionals are also involved in the retrieval of organs from the bodies of executed prisoners and in the implantation of these organs into recipients, although the system by which such transplantations are arranged reportedly includes payment of large fees to hospitals and the preferential treatment of politically favoured patients, breaching the World Health Organization's *Guiding Principles on Human Organ Transplantation*. Finally, this system of organ procurement occurs against the background of a judicial process which falls far below international standards, raising the concern that in some cases the imposition and timing of the death penalty will be influenced by the need for organs for transplantation. Even if the imposition and timing of executions was not manipulated according to transplantation needs, the existence of the organ trade is likely to act as an impediment to restriction of the scope of executions and to the eventual abolition of capital punishment in China.

Amnesty International is calling on the Chinese authorities to bring to an immediate end the practice of using organs for transplantation taken from the bodies of executed prisoners. It is also calling on Chinese medical professional bodies to require all Chinese health professionals to refuse to take part in executions or in the retrieval or use of organs from executed prisoners.

Recommended Actions

Medical groups are asked to write to their national transplant association, calling on the association to denounce publicly the practice of using the organs of executed prisoners in China, and asking the association to write to the Chinese Medical Association and the Asian Transplant Society calling for it to make clear to Chinese medical professionals that medical involvement in executions, including the ante-mortem and post-mortem removal of organs, is unacceptable.

Health professionals are asked to write to as many of the addresses given as possible, in English or their own language, making the following points:

- despite official denials, there is abundant evidence that organ harvesting from the bodies of executed prisoners is a common practice in China, and that this is rarely, if ever, preceded by the consent of the prisoner or the prisoner's family
- condemned prisoners who have been selected to provide organs are usually subjected to medical investigations the purpose of which is not revealed to them; this breaches fundamental medical ethics
- the system of organ distribution which makes use of tissues from executed prisoners breaches the World Health Organization's guidelines for organ transplantation because of the lack of donor consent, the large fees paid to hospitals, and the non-medical criteria that influence the allocation of organs
- the deplorable lack of safeguards in Chinese legal process, which falls far short of international standards, provides little guarantee that the decision to impose or to implement death sentences will not be influenced by the need for transplant organs

and calling for:

- the Chinese authorities to put an immediate end to the practice of harvesting organs from the bodies of executed prisoners, replacing this source of organs, if necessary, with a truly voluntary system of live-related and cadaveric organ donation in accordance with World Health Organization guidelines
- health professionals to refuse to participate in the retrieval of organs from executed prisoners or the use of such organs, whatever the stage of the process at which they are involved
- the Chinese Medical Association to adopt a policy against the retrieval of organs from executed prisoners or the use of such organs in conformity with a growing consensus within the international medical community

Medical groups are asked to use the information in this report to prepare a short article or letter for their national medical press. If your group includes transplant surgeons, they may be able to write an article for the specialist press - a few addresses of transplantation journals are given below.

ADDRESSES

1) Government authorities

Li Peng Zongli
Guowuyuan
9 Xihuanghezhenggenbeijie
Beijingshi 100052
People's Republic of China

Telexes: 210070 FMPRC CN or 22478 MFERT CN

Faxes: + 86 1 512 5810

(via Ministry of Foreign Affairs)

Salutation: Your Excellency

(Premier of the People's Republic of China)

CHEN Minzhang Buzhang

Wzishengbu

44 Houshai Beigan, Gulou Xidajie

Beijingshi

People's Republic of China

Telexes: 210070 FMPRC CN (22193 according to F'and'A 1993)

(Please transfer to Public Health Minister Chen Minzhang)

Telegram: Minister of Public Security Chen Minzhang, Beijing, China

Salutation: Your Excellency

(Minister of Public Health of the People's Republic of China)

XIHO Yang Buzhang

Sifabu

Xiaguangli

Beijingshi 1100016

People's Republic of China

2) Medical/Transplantation associations

Dr Chawalit Ongcharit

President

Asian Society of Transplantation

Department of Surgery

Chulalongkorn University Hospital

Rama VI Rd

Bangkok 10330

Thailand

WU Jieping Mingyu Huizhang

Zhonghua Yixuehui

42 Dongsi Xidajie

Beijingshi 100710

People's Republic of China

(Honorary President,

Chinese Medical Association)

CHEN Minzhang Huizhang

Zhonghua Yixuehui

42 Dongsi Xidajie

Beijingshi 100710

People's Republic of China

(President,

Chinese Medical Association)

Lin Juying (f) Lishizhang
Zhonghua Huli Xuehui
42 Dongsi Xidajie
Beijingshi
People's Republic of China
(Chairperson,
Chinese Nurses' Association)

3) Hospitals believed to be carrying out transplants

The Director
West China University of Medical Sciences
37 Guoxue Xiang
Wainan 610041
Chengdushi
Sichuansheng
People's Republic of China

The Director
**Institute of Organ Transplantation
Tongji Medical University**
Wuhanshi
Hubeisheng
People's Republic of China

The Director
No.3 Hospital of Beijing Medical College
Beijingshi
People's Republic of China

The Director
Nanfeng Hospital
Guangzhoushi
Guangdongsheng
People's Republic of China

The Director
Chongshan University of Medical Sciences
Guangzhoushi
Guangdongsheng
People's Republic of China

The Director
Zhengzhou People's No.3 Hospital
Zhengzhoushi
Henansheng
People's Republic of China

4) Transplantation journals

Transplantation

William & Wilkins Ltd
428 East Preston St
Baltimore, MD 21202-3993
USA

- or -

William & Wilkins Ltd
Broadway House
2-6 Fulham Broadway
London SW6 1TF
UK

Nephrology Dialysis Transplantation

Oxford Journals
Science, Medical and Journals Division
Oxford University Press
Walton St
Oxford
Oxon OX2 6DP
USA

Transplantation Reviews

W.B. Saunders Co.
Periodicals Dept
6277 C. Harbor Drive
4th floor
Orlando, Fl. 32887
USA

Transplantation Proceedings

PO Box 3000
Denville, NJ 07834
USA

China:

The Use of Organs from Executed Prisoners

It has been known for some time that organs taken from executed prisoners are used for transplants in China. Amnesty International reported this practice in 1993 and called at that time for the Chinese government to ban the use of organs from executed prisoners without their free and informed consent (*China: Victims in their thousands: the death penalty in 1992*, AI Index: ASA 17/09/93). However, the use of organs from this source continues in China, reportedly on a widespread scale. In the absence of a system of voluntary cadaveric organ donation, the main source of organs in China is reported to be executed prisoners. Although a small number of live-related transplants take place, the percentage of transplant kidneys estimated to be derived from executed prisoners has been put as high as 90%. Organs reported to have been harvested from this source include corneas, kidneys and hearts. A number of recent reports indicate that it is also possible for foreigners to travel to China and to buy transplants using organs from executed prisoners.

Organs from executed prisoners: the procedure

The details of the organ retrieval process are closely guarded by the Chinese government. Information has emerged largely through confidential statements given to Amnesty International and other organizations by security and health personnel who have been involved in the procedure. In the experience of one medical source who gave testimony for the report *China: Victims in their thousands: the death penalty in 1992*, the following procedure occurred when executions were imminent. The Head of the Intermediate People's Court gave notice of impending executions to the Deputy Head of the court's executive office, who in turn notified the relevant government Health Department. The Health Department official with responsibility for such cases then contacted the appropriate hospitals, giving the number and date of the executions and medical details of the condemned. In the experience of this source, use of organs was routine following executions.

Condemned prisoners who are selected to provide organs following their execution are subjected to medical investigations, including invasive procedures such as removal of blood samples for tests, generally without being told the reason that such tests are being done. If the death sentence is confirmed on appeal, the prisoner is informed only a few hours before the execution and may spend his last night handcuffed and shackled on a chair, watched by fellow detainees, to prevent attempted suicide or acts of insubordination. On the following day the execution may be preceded by a "mass sentencing rally", during which the prisoner's name, crime and punishment are announced to a crowd while the prisoner is forced to stand with head bowed and hands tied behind his back. Finally, the prisoner is taken to the execution ground and put to death. Although the method of execution in China is specified as a single shot to the back of the head, there are reports that this may be altered to a shot to the heart if the prisoner's corneas are to be harvested.

Once the execution has been carried out, the body is removed to the designated hospital in an ambulance. On some occasions the transplant organs are removed from the body immediately in a vehicle parked at the execution field itself. Generally the body is then cremated and only the ashes returned to the family, which is therefore unable to verify that organ retrieval has been carried out. If the family requests the return of the intact corpse, it is usually met with a bill for the expenses of the

¹Guttmann RD. On the use of organs from executed prisoners. *Transplantation Reviews*, 1992, **6**:189-93.

prisoner's upkeep during detention, which is often too large for the family to pay.

Consent

Times (London), 5 December 1994

Despite mounting evidence to the contrary, the Chinese authorities steadfastly continue to assert that the use of organs from executed prisoners is a rare event in China, and that it is always preceded by the voluntary consent of the prisoner or the prisoner's family.

In April 1993, Jin Yongjian, China's ambassador to the United Nations (UN) in Geneva, stated before the UN Committee against Torture that organs have been used for transplant operations only rarely and "with the consent of the individual". In its August 1994 report on China², Human Rights Watch/Asia published the *Temporary rules concerning the utilization of corpses or organs from the corpses of executed criminals*, a set of official regulations circulated in October 1984 to the High People's Courts, People's Procuracies, and the Departments of Public Security, Health and Civil Affairs of each province, autonomous region and

directly-administered city in China. Section 3 of the *Temporary rules* states:

3. *The corpse or organs of executed criminals may be provided for use in any of the following circumstances:*
 1. *No one claims the body or the family refuses to claim the body;*
 2. *The executed criminal has volunteered to have his corpse provided to a medical treatment or health unit for use;*
 3. *The family consents to the use of the corpse.*

However, multiple sources concur that transplant organs do not normally come from unclaimed bodies or following consultation with the prisoner's family, and that consent for organ retrieval is rarely sought from the condemned prisoner.

Medical investigations that are necessary prior to organ donation are performed without revealing to the prisoner the purpose of these investigations. From the time the death sentence is handed down and, in cases where the prisoner is appealing against the death sentence, during the time that his or her appeal is processed, the condemned prisoner is held in degrading conditions, often restrained with handcuffs or feet-shackles, or both. The prisoner is generally told about the failure of his or her appeal against the death sentence only hours before the execution.

If consent for organ donation were sought, it is difficult to see how it could be truly free and informed under these circumstances. And if the prisoner wished to withhold consent, it is difficult to see how he or she could make this wish known in the hours prior to execution. Condemned prisoners have the right to write a will, but the authorities have the official power to censor it. Even if a will is written, there is no guarantee that it will make its way from the prisoner, via guards and prison officials, to the prisoner's family, particularly if it expresses a determined wish to be spared organ retrieval.

The performance on a prisoner of invasive medical investigations that are not for that person's

² *Human Rights Watch/Asia. Organ procurement and judicial execution in China, Newsletter Vol.6, No.9, August 1994.*

benefit, without explaining the purpose of the investigation and without gaining the prisoner's express consent, amounts to medical exploitation of that person and clearly is a form of degrading treatment which Amnesty International condemns.

Medical involvement in the process of organ retrieval

The involvement of health professionals in the organ retrieval process begins prior to the execution, with medical investigations aimed at ascertaining the prisoner's suitability as an organ donor. However, Principle 3 of the UN *Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman and Degrading Treatment*, states:

It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

Health professionals who take part in pre-execution investigations for organ transplantation are in breach of this principle, and they are also in breach of their ethical duty, set out both in the UN Principles of Medical Ethics and in the World Medical Association's Declaration of Tokyo, not to participate in forms of cruel, inhuman or degrading treatment.

After the execution, health professionals are involved in retrieval of organs from the body. This may occur at the site of the execution itself. Sources report the presence of unmarked vehicles at the execution ground within which organs are removed from the body by medical personnel. The *Temporary Rules concerning the utilization of corpses or organs from the corpses of executed criminals* state:

The use of the corpses or organs of executed criminals must be kept strictly secret, and attention must be paid to avoiding negative repercussions. [The removal of organs] should normally be carried out within the utilizing [transplant] unit. Where it is genuinely necessary, then with the permission of the people's court that is carrying out the death sentence, a surgical vehicle from the health department may be permitted to drive onto the execution grounds to remove the organs, but it is not permitted to use a vehicle bearing health department insignia or to wear white clothing. Guards must remain posted around the execution grounds while the operation for organ removal is taking place.

The systematic involvement of medical personnel in a process that is intended to be kept secret from the public, and the clandestine nature of the procedure itself, suggests that this involvement is not keeping with professional ethics and that the authorities are aware of that.

Hospitals receive payment from Chinese patients or their work units for performing transplantations with organs from executed prisoners. It is an open secret in neighbouring Asian countries with long transplant waiting lists that a transplant can be arranged promptly in China in exchange for payment. In both cases, the fee paid probably greatly exceeds the treatment costs of the operation itself, violating World Health Organization (WHO) *Guiding principles on human organ transplantation* (1991) that stipulate that payment for transplants should be limited to a justifiable fee for the services rendered. The lucrative nature of the organ transplant business means that hospitals have to "compete" for organs. Sources that have spoken to Amnesty International report that hospital personnel send gifts to police officials who are involved in executions, hoping to ensure the future supply of organs.

Some concerns have also been expressed that priorities in organ allocation are based on non-medical criteria such as political position or ability to pay high fees.

The death penalty in China

The system of organ procurement from executed prisoners in China occurs against the background of a judicial system which fails to meet international standards at almost every stage from arrest to execution. Amnesty International has repeatedly highlighted the numerous flaws in the legal process that leads to capital punishment in China (*China: The Death Penalty* AI Index: AISA 17/01/89; *China: Victims in their Thousands: The Death Penalty in 1992* AI Index AISA 17/09/93). The lack of legal safeguards in China raises the concern that the use of the corpses of executed prisoners as a source of organs may play a role in encouraging the imposition of the death penalty.

It is impossible to give an accurate figure for the number of people executed in China each year. Such statistics are considered a "state secret" and are not made public. In 1993 Amnesty International monitored 2,564 death sentences by Chinese courts, and recorded the execution of 1419 prisoners. These numbers are higher than the figures recorded by Amnesty International for 1992, which were 1890 death sentences and 1079 executions. However, many capital cases are not publicized and do not come to the attention of Amnesty International, and the true figures for both death sentences and executions are far higher than those given here.

Imposition of the death penalty is based on China's Criminal Law and Criminal Procedure Law, both of which were adopted in 1979 to provide fundamental legislation which had previously been non-existent. Amendments to the Criminal Law, expanding the number of offences punishable by death, were made in 1982 and, as part of a nationwide "campaign against crime", in 1983. Further amendments have been made since 1983. Today, approximately 65 offences are punishable by death in China, including many non-violent and economic crimes such as "speculation" and "bribery". In 1992 Luo Deming was sentenced to death for allegedly selling ordinary alcoholic spirits under the prestigious *Maotai* name. To Amnesty International's knowledge this was the first time in China that the death penalty had been applied for infringement of trademark rights.

Once under suspicion of a capital offence, defendants find themselves trapped in a legal process that is weighted heavily against them. The poor and less-educated are particularly ill-equipped to resist the procedure that is set in motion, since they are often unaware of their rights and of the legislation under which they may be sentenced to death, and their access to legal advice is often inadequate or even nonexistent.

The Criminal Procedure Law allows the police to hold suspects for at least four and a half months before a decision is taken on whether or not to prosecute them. During this period, the police are able to interrogate the suspect but the suspect has no right of access to a lawyer or to meet with a judge. There have been numerous reports of the use of torture and physical intimidation to extract confessions during such interrogations. In *China: The Death Penalty*, Amnesty International documented cases in which official admissions were made that the death sentence had been handed down on the basis of confessions extorted through police mistreatment.

Once a decision is made to try a case, often after a period of several months' police detention, the detainee can seek the assistance of a lawyer. Normally, under the Criminal Procedure Law, the trial can take place just seven days after the defendant receives the bill of prosecution, leaving inadequate time for the preparation of an effective defence. In addition, under legislation adopted in 1983, some capital cases may be tried without the defendant having been given any advance warning of the trial. In such cases defendants are tried either without a lawyer or with a court-appointed

lawyer who has had no time at all to prepare a defence. Defence lawyers are seriously handicapped by established judicial practices. They have access only to a part of the file concerning the defendant, they cannot confront witnesses and are effectively barred from challenging the validity of the charges. Some lawyers have been subjected to demotion, detention and even physical violence as a consequence of attempting to mount an adequate defence in criminal cases, so that many lawyers decline to take on criminal cases or, if they do take such cases, rarely try to prove the innocence of their clients.

In all events, the accused's defence is likely to have little effect on the verdict in the trial, since there is no presumption of innocence in Chinese legal practice. Decisions on guilt and innocence are generally made outside the court, by committees subject to political influence. In some instances a "preparatory court" (*yupai ting*) meets to decide on the case on the basis of the police findings and the requisitions of the prosecution. "Major and difficult" cases, which include those liable to the death penalty, are submitted for determination to the court's "adjudication committee" (*shenpan weiyuanhui*), which makes decisions on the basis of files and without the presence of defendant or lawyer. As a result, formal trial procedures have little bearing on the outcome of cases. In the overwhelming majority of cases known to Amnesty International, court verdicts are almost verbatim reproductions of the prosecutors' indictments.

Having been convicted and sentenced to death by this process, the defendant may lodge a single appeal to a higher court. The appeal process includes no hearing: the High Court merely reviews the files of the case together with any submission made by the defendant or lawyer. Once the sentence has been confirmed by the High Court, the defendant has, in principle, the right of petition for commutation of the sentence to the President of the Republic or the Standing Committee of the National People's Congress. There is no known record of such a commutation since at least the early 1980s. In fact, this right of petition for commutation is virtually non-existent in practice, since the condemned prisoner is usually told of the failure of his appeal to the High Court only hours before his execution, and a petition for commutation does not suspend the execution of the sentence.

The lack of legal safeguards is a crucially important consideration in the process that leads to the removal of organs from the corpse of an executed prisoner. Given the close liaison between courts, health departments and hospitals over the distribution of transplant organs, the fact that organ transplantation represents a source of income for hospitals, and the fact that "gifts" are reportedly given to officials involved in the execution process, the possibility arises that in some circumstances convicted individuals will be condemned to die, and the execution scheduled, in order to fill a need for transplant organs. The Chinese legal system, riddled with flaws, provides no protection against such a development.

Conclusion

The use of organs from executed prisoners is reported to be the source of the overwhelming majority of transplant organs used in China. Despite official denials, multiple sources with direct experience of the practice concur that such organ procurement rarely, if ever, occurs with the prior consent of the prisoner, and, given the degrading conditions in which condemned prisoners are held in China, it is difficult to see how free and informed consent could actually be given by a condemned prisoner.

The process of organ procurement involves pre-execution medical investigations, the purpose of which is rarely if ever revealed to the prisoner. Medical personnel who take part in this practice are therefore breaching their ethical obligation to act for the benefit of patients, to only undertake medical procedures with informed consent and not to participate in degrading treatment, and are also violating a number of the WHO's guiding principles on organ transplantation. In view of the

deplorable lack of legal safeguards in China's judicial system there is a real risk that the decision to impose the death penalty, already a common punishment in China, and the timing of its execution, will be dictated at least partially by the need to fill a need in the supply of transplant organs. Finally, the existence of a lucrative trade in organs based on prisoners with few if any legal rights poses a major obstacle to reform capital punishment practice and eventually to abolish the punishment.

In view of the gross inadequacy of current judicial safeguards in China, Amnesty International is calling on the Chinese government to stop the practice of organ procurement from executed prisoners immediately and, if it wishes to ensure a supply of transplant organs for those with genuine medical need, to institute a system of cadaveric and living-related donation that is truly voluntary and in accordance with the WHO's guiding principles. Amnesty International is also calling on Chinese medical associations to inform all Chinese health professionals that participation in executions, including ante-mortem and post-mortem removal of organs from condemned prisoners for transplantation, is unethical. Amnesty International urges the Chinese authorities to review the practice of the death penalty with a view to its curtailment and eventual abolition.