

New Zealand transplant patients and organ transplantation in China: some ethical considerations

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ABSTRACT

In this viewpoint article we consider the situation of organ procurement from China, and address some of the ethical aspects arising for health professionals when New Zealand transplant patients contemplate traveling to China for an organ. We also consider some of the challenges facing health professionals involved in providing care to such patients.

The ability to successfully transplant organs has restored to health many patients who would have faced an early, inevitable death.¹ High success and survival rates have fuelled the demand for organs, leading to shortages in almost every country in the world. Yet alongside such successes lie a number of ethical and legal concerns. One of the most disturbing is the trafficking of persons for the explicit purpose of organ removal. Despite international condemnation,² the trade continues in many countries and has been widely reported in the academic literature.³⁻⁵ It is estimated that up to 10% of all transplants rely on organs that have been illegally acquired.⁶

A further disturbing aspect of the organ trade was first published 26 years ago in a report by Guttman when he addressed the acquisition of organs from executed prisoners in China.⁷ Guttman advocated that transplant professionals “*not become involved in procurement activities for organs and tissues from executed prisoners*”. In a letter to the editor in the *New Zealand Medical Journal* three years later, Miles⁸ gave further evidence of how organs were sourced from executed prisoners in China, adding to a growing body of international literature in this area.^{9,10}

Knowledge that China uses executed prisoners’ organs is not in doubt.¹¹⁻¹³ In 2008, Huang Jiefu (then Vice Minister of Health, Beijing) disclosed in the *Lancet*¹⁴ that “*more than 90% of transplanted organs are obtained from executed prisoners*”, a fact he had earlier stated in 2007.¹⁵ The term ‘executed prisoner’ includes prisoners of conscience who are executed for their organs without due process, as well as death-sentence prisoners whose organs may be removed following judicial execution.

While concerns about the origin of organs used in transplantation in China are not new, the landscape has recently changed. Critical appraisal of available data concludes that transplant organs in China are taken from executed prisoners of conscience with official sanction from the Communist Party in collusion with the health system, transplant professionals and hospitals,¹⁶⁻¹⁸ on an industrial scale. Evidence exists that Falun Gong members, and to a lesser extent, Uyghurs, Tibetans and House Christians are intentionally killed for their organs.¹⁹

Although organ procurement abuses are known to occur elsewhere in the world, in no other country are the state and medical profession acting so complicity in the retrieval and transplantation of organs

from executed prisoners and prisoners of conscience. For instance, Dr Zheng Shusen, a leading liver transplant surgeon at Zhejiang University's First Affiliated Hospital, is also chairman of the Zhejiang Provincial Anti-Cult Association, which is an organisation responsible for directing anti-Falun Gong propaganda. *"It worked closely with the 610 Office, a Gestapo-like organisation that oversees the persecution of Falun Gong members"*.²⁰

Despite assurances from Chinese officials that organs would not be taken from executed prisoners from 1 January 2015,²¹ serious doubts exist as to the legitimacy of such claims.^{22,23} The Chinese Government has not initiated any legislative changes to regulations permitting organ procurement from executed prisoners, and there is no transparency in the current organ allocation system about where organs have been sourced. This has led some commentators to conclude that *"it is not possible to verify the veracity of the announced changes, and it thus remains premature to include China as an ethical partner in the international transplant community"*.²⁴

Recently the prestigious medical journal, *Liver International*, retracted a paper by Yu et al.²⁵ This eventuated after serious allegations were made to the journal concerning questions about the provenance of transplanted organs retrieved from organ donation after cardiac death (DCD) in China.²⁶ Yu et al were given the opportunity by the journal to provide evidence that China had implemented legislative change. Although the authors stated no organs were obtained from executed prisoners, Rogers et al disputed this.²⁷ Evidence from China shows that during the stated period of the paper, executed prisoners remained the primary source of organs for all transplants in China.

Given the strong likelihood that a small number of patients from New Zealand (and Australia) may travel to China each year to receive an organ, the implications of China's transplantation industry have ethical and legal ramifications for transplant patients and health professionals in New Zealand. In the following discussion, we consider how viewing this issue through an ethical lens has relevance for patients

considering traveling to China for a transplant, and the questions that arise for New Zealand health practitioners.

Organ transplantation in New Zealand

The central force driving organ transplantation is a desperate need for organs compounded by a limited supply. Quite simply, demand exceeds supply in almost every country in the world, including New Zealand. For instance, there are currently more than 500 people waiting for an organ or tissue transplant in New Zealand;²⁸ most are waiting for a kidney. Faced with waiting and possibly dying on a transplant register, some patients may consider travelling overseas to procure an organ for a fee.

Although numbers are small, each year New Zealand and Australian dialysis patients travel overseas for a kidney transplant.²⁹ These transplants may be performed ethically and legally. During the period 2000–2015, 27 Australians and 5 New Zealanders underwent a kidney transplant outside of their home country. The ANZDATA Registry report for 2016 notes that it is *"possible that these numbers are an underestimate of the true number, since some patients may not return to Australia/New Zealand and hence be reported to ANZDATA as lost to follow-up"*.²⁹ The number of New Zealand patients traveling internationally for other organs and tissues such as livers, hearts, corneas, etc are unknown, as are the countries the organs originated from.

It is likely many of those who travel internationally for an organ such as a kidney, travel to China because of their availability. Some of those travellers may be New Zealanders and Australians. The recent documentary *Human Harvest*¹⁶ documents a number of international transplant tourists who travelled to China to purchase an organ, some of them knowing in advance the day their surgery would take place. There are also anecdotal reports confirming the existence of such knowledge³⁰ (the cases discussed in the cited article are, in some cases, more than 10 years old). Australian Senator Derryn Hinch was alleged to have been told that if he had \$150,000 he could travel to Shanghai to secure a liver within a week.³¹

Ethical concerns and their relevance for New Zealand

For the procurement of an organ transplant to proceed in New Zealand, consent must be given by the individual in the case of living donation, while in the case of a deceased donation, the consent of a family member will be sought with consultation from a health professional. Informed consent is evidence of intent, understanding and autonomy and affirms the organ was given freely without coercion: it was the individual's choice. Knowing that the organ one receives from a donor (whether living or deceased) has been procured ethically assures one is not complicit in any harms inflicted on the donor.

Although there has been rigorous debate about whether prisoners can truly give informed consent to donate,^{32,33} condemned prisoners in China may include those who stole a car, hold certain beliefs, discharged a firearm or were the perpetrators of corruption or embezzlement.¹⁰ If such crimes in China justify capital punishment, it is doubtful consent would be sought to use their organs, and were consent to be granted, its legitimacy and validity must be questioned.³⁴ The World Medical Association is clear in its policy that in jurisdictions that permit the death penalty, "*executed prisoners must not be considered as organ and/or tissue donors*" because "*it is impossible to put in place adequate safeguards to protect against coercion in all cases*".³⁵ But even if one could defend the use of organs taken from executed prisoners who had faced a fair trial and given their consent for their organs to be used (for instance, as some kind of atonement for their crimes), it is stretching the bounds of credibility to accept the legitimacy of the consent from executed prisoners of conscience who are killed extra-judicially. To be the recipient of an organ sourced from China may render one complicit in that person's killing, and thus to be morally blameworthy.

As noted earlier, anguish and desperation fuel the demand for organs. Yet knowing that one's own death may result from a lack of available organs does not trump the intentional killing of another person, nor the taking of their organs without their consent. No reason can justify the forced

procurement of organs from individuals detained by the state, regardless of their criminal status or their beliefs.³⁶

Ethical concerns for health professionals

A number of ethical tensions arise for New Zealand health professionals if they suspect or know their patient is considering procuring an organ from China, or if their patient returns to New Zealand with a transplanted organ. In regards to pre-travel, do health professionals have a duty to assist a patient with any pre-surgical testing prior to going to China; furthermore, is there a duty to warn such travellers of the use of executed Chinese prisoner's organs so that they can make informed choices?

In answering the first question, one could argue that patients have a legal and moral right to access their medical record and their request for it should not be obstructed. Yet, as Caulfield et al claim, despite the obligation to provide medical records, doctors "*have no obligation to take any actions that would facilitate an illegal transplant, such as providing a patient with a summary of the medical file or a letter for the surgeon that is going to perform the transplant*".² This is because providing medical records for the purposes of ensuring transplant surgery proceeds is likely to directly contribute to the victim's death, thus, there is absolutely no moral duty to provide such support.

The answer to the second question is surely, yes! Patients who consider purchasing an organ from China should be warned that organs are still obtained from executed prisoners who have not given their informed consent. Patients should also know that there are increased rates of morbidity and mortality with internationally sourced transplants.

In regards to providing care post-operatively, do health professionals have a duty to provide medical care to their transplant patients; and is there an obligation for health professionals to disclose such information to New Zealand authorities (when they suspect or know that transplant surgery has occurred in China)? Some health professionals may feel conflicted about their duty to provide medical treatment and care, with their personal views on the patient's decision to pursue an organ from China.

When patients return from China with a transplanted organ, there is an obligation on health professionals to provide appropriate medical care to them, although some may choose to transfer the care of the patient to another health professional. Punishing returning patients seems inappropriate, may create injustice issues³⁷ and is probably not effective at deterring others from heading to China for an organ transplant.

Complicating the landscape is evidence that generally patients who “*return from a commercial transplant overseas commonly do not tell their transplant professional how the organ was obtained*”.³⁸ Moreover, if a patient was required to disclose information about where they were looking to source an organ, or provide details of where their transplantation surgery took place, they may avoid seeking medical care post-surgery. The potential for harm is implied.

Implications for practice

Until independent transparent verification confirms forced organ procurement in China has ended, it is recommended that:

- New Zealand medical practitioners should strongly dissuade their patients from traveling to China for the purpose of receiving an organ transplant. Informing patients of the ethical, medical, psychosocial and legal aspects of buying an organ from China is recommended and is consistent with rights 4(2), 5(1,2), 6(1b,e, 2,3 and 4) of the Code of Health and Disability Services Consumers’ Rights.³⁷ The Declaration of Istanbul Custodian Group has developed material that can assist practitioners in discussions with their patients.³⁴
- New Zealand medical practitioners are justified in exercising their duty to elect to transfer the care of their patient (who intends to travel to China to receive an organ, or a patient who returns from China with a transplanted organ) to another practitioner as long as such a referral does not jeopardise the health of one’s patient.³⁹ Yet such a suggestion is not without challenge, given the fact that a health professional may be either working alone in a small centre, working in a small group, or an alternative clinician is simply unavailable or

unwilling to assume the care of such patients. For instance, where a patient returns with a transplanted liver, the fact that New Zealand has only one liver transplant service may result in a clinician having little choice but to continue to care for a patient whose actions one deeply opposes. Similar ethical challenges arise for health professionals who have a conscientious objection to providing abortion, sterilisation and contraception services to patients. In such situations, the duty to treat one’s patient trumps the interest one has in transferring their care to another colleague as the choices available to patients are severely limited.

- Transplant surgeons from China who intend to continue their training and practice at home should not be permitted to further their transplant training in New Zealand. Prohibiting the continued medical education of Chinese transplant practitioners in New Zealand sends a strong message to China that New Zealand will not be complicit in their organ transplant industry.

Furthermore, it is recommended that professional medical bodies provide formal guidance for health professionals engaged with patients who are organ transplant candidates.

Conclusions

The ability of an individual living in one country to procure an organ from another country has changed organ transplantation surgery. A person in New Zealand with financial means can contact agents in China via the web and confirm transplant surgery before they leave the country. Organs can include, hearts, kidneys, livers and tissue.

Despite allegations surfacing almost 25 years ago in New Zealand, little, if anything, has been done to address the ethical implications such transactions have for medical practitioners caring for patients who require transplant surgery. Neither has much been done to address the obligations medical educators may have when Chinese transplant doctors, who intend to return to China, come to New Zealand to further their transplant training.

In 2016, Rogers et al wrote “...why does the international community, including transplant doctors, medical ethicists and journal editors remain complicit in this silence?”³⁶

There are doubtless many reasons why the international community remains silent on the issue of forced organ procurement in China: apathy, a concern about jeopardising trade relationships, disbelief that such atrocities can occur, or the mistaken belief that the organs of executed prisoners no longer

fulfil the demand for organs. Yet these can become excuses not to act when documented and verified evidence is confirmed. The words of Martin Luther King Jr seem especially poignant in this context: “*He who passively accepts evil is as much involved in it as he who helps to perpetrate it. He who accepts evil without protesting against it is really cooperating with it*”⁴⁰

We have a moral obligation not to remain complicit in this silence.

Competing interests:

Phillipa Malpas is a member of the group, End Transplant Abuse in China (ETAC).

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