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A Legal Assessment under International Criminal Law and
International Human Rights Law

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Sasa Milic

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Univ.-Prof. Dr. Michael Lysander Fremuth

Abstract

This thesis examines whether alleged human rights abuses in China, particularly the widespread and systematic repression of Falun Gong practitioners and Uyghur Muslims, including non-consensual organ harvesting, could meet the threshold of crimes against humanity under Article 7 of the Rome Statute. Using doctrinal legal analysis rooted in ICL and IHRL, it assesses the contextual element (an attack against a civilian population to a State or organisational policy) the material acts (murder, torture, persecution, enforced disappearance, and other inhumane acts), and the mental element, drawing on jurisprudence from the ICTY, ICTR and the ICC, as well as national universal-jurisdiction practice. Although China is not a State Party to the Rome Statute, the thesis argues that the prohibition of crimes against humanity, as a *ius cogens* norm, binds all states regardless of treaty ratification. The study addresses evidentiary challenges in authorisation settings and purposes methods to infer State policy intent through patterns, institutional capacity, and corroborated testimony. It concludes that characterising the alleged abuses as crimes against humanity is legally tenable and normatively necessary to uphold international accountability.

Kurzfassung

Diese Masterarbeit prüft, ob die mutmaßlichen Menschenrechtsverletzungen in China, insbesondere die weitverbreitete und systematische Repression von Falun Gong praktizierenden und Uigurischen Muslimen, einschließlich nicht einvernehmlicher Organentnahmen, den Tatbestand von Verbrechen gegen die Menschlichkeit nach Artikel 7 des Römischen Statuts erfüllen. Auf Basis einer rechtsdogmatischen Analyse im ICL und IHRL werden das kontextuelle Element (Angriff gegen eine Zivilbevölkerung, aufgrund staatlicher oder organisatorischer Politik), die materiellen Handlungen (Mord, Folter, Verfolgung, Verschwindenlassen sowie sonstige unmenschliche Handlungen) und das subjektive Tatbestandsmerkmal untersucht, unter Bezugnahme auf die Rechtsprechung der ICTY, ICTR und IStGH. Obwohl China dem Statut nicht beigetreten ist, wird argumentiert, dass das Verbot von Verbrechen gegen die Menschlichkeit als *ius cogens* Norm alle Staaten bindet und alternative Verantwortlichkeitswege stützt. Die Arbeit behandelt Beweisschwierigkeiten in Autoritäten Kontexten und schlägt Methoden vor, staatlicher Politik und Vorsatz anhand von Mustern, institutionellen Kapazitäten und Bestätigen Zeugenaussagen herzuleiten. Sie kommt zu dem Schluss, dass die rechtliche Einordnung der mutmaßlichen Übergriffe als Verbrechen gegen die Menschlichkeit tragfähig und normativ geboten ist.

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Abbreviations

ARISWA	International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading treatment
CERD	International Convention on the Elimination of all Forms of Racial Discrimination
CFR	Charter of Fundamental Rights of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HRW	Human Rights Watch
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICL	International Criminal Law
ILC	International Law Commission
ICJ	International Court of Justice
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for former Yugoslavia
IHL	International Humanitarian Law
IHRL	International Human Rights Law
NGO	Non-Governmental Organization
Peoples Republic of China	China

Rome Statute	Statute
Special Communist Party Organ	610 Office
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAT	UN Committee Against Torture
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNSC	United Nations Security Council
VCLT	Vienna Convention on the Law of Treaties
WHO	World Health Organisation
WMA	World Medical Association

Chapter I

1.1 Introduction

Execution related forced organ harvesting in the People's Republic of China (further referred to as “China”) has emerged as a pressing human rights concern and a complex legal issue. Numerous investigations and tribunal findings since the mid-2000s have alleged that prisoners of conscience, primarily Falun Gong practitioners, and Uyghur Muslims, among others, have been killed for their organs on a systematic scale.¹

In June 2019, the China Tribunal, formally named the *Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China* (further referred to as “Tribunal”), delivered a unanimous judgement finding, beyond reasonable doubt, that China has, for many years and on a significant scale, engaged in forced organ harvesting, with Falun Gong practitioners constituting one, and probably main source of organs, and that the practice continued at the time of the judgement.²

The Tribunal was initiated in 2018 by the International Coalition to End Transplant Abuse in China, a human rights organisation co-founded by David Matas, and chaired by Sir Geoffrey Nice KC and comprised six further experts, including medical, legal, historical, and ethical specialists, all served entirely *pro bono publico*.³ Although styled as “independent” and constituted with rigorous evidential standards, the Tribunal possessed no formal legal jurisdiction, and the Chinese government declined to participate or to respond to its proceedings.⁴

Over five days of public hearings in December 2018 and April 2019, the Tribunal heard evidence and received written submissions from more than fifty witnesses, including former detainees, medical professionals, researchers, and human rights campaigners, supported by documentary records, statistical analyses, covert recordings, and expert testimonies.⁵ Delivered

¹ China Tribunal, ‘Judgment’ (1 March 2020) https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf accessed 1 September 2025.

² *ibid*, paras 479-481.

³ *ibid*, paras 1-13, 17-18.

⁴ R Hurley, *The Chinese state has not responded to repeated invitations to give evidence to an independent tribunal in London that is considering allegations of forced organ harvesting* (BMJ, 16 April 2019) 365 11805 <https://www.bmj.com/content/365/bmj.11805> accessed 1 September 2025.

⁵ China Tribunal, ‘Judgment’ (1 March 2020) paras 9-16 https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf accessed 1 September 2025.

on 17 June 2019 and subsequently published in full on 1 March 2020, the judgement determined that the actions in question constituted crimes against humanity.⁶

International human rights experts have likewise expressed “extreme alarm” at these allegations, recognizing the gravity of the claims and urging China to permit independent scrutiny.⁷ Despite China’s official denials of such allegations, the evidence, such as short organ transplant waiting times incompatible with voluntary donations, and records of detainees being subject to unexplained blood tests and medical exams, has led observers to characterise the practice as a state-sanctioned policy or organ extraction from vulnerable groups.⁸

From a legal standpoint, the core challenge is that “forced organ harvesting” is not explicitly enumerated as a crime in the major instruments of international criminal law (further referred to as “ICL”). For example, the Rome Statute (further referred to as “Statute”), defines crimes against humanity in Article 7. However, the Statute does not list organ removal or trafficking as a stand-alone offence. This lack of express recognition raises the question of how such conduct can be prosecuted or condemned under existing law. The question is whether the killing of individuals for the purpose of harvesting organs can be subsumed under established categories of international crimes. In particular, one must assess if these acts fall under other recognised crimes against humanity, such as murder, torture, persecution, or other inhumane acts, provided the *contextual element*, like a widespread or systematic attack directed at a civilian population with state policy involvement, is satisfied.

Indeed, the Tribunal, an informal people’s tribunal without a statutory or treaty-based jurisdiction, but constituted to international fact-finding standards, proceeded to label forced organ harvesting as “a crime against humanity” in substance, even though no treaty explicitly names it, by finding that the documented conduct met the definitional criteria of murder, torture and other inhumane acts committed as a part of systematic persecution.⁹

⁶ *ibid.*

⁷ Sadie Brown, ‘UN Experts “Extremely Alarmed” by Alleged Organ Harvesting in China’ (OCCRP, 18 June 2021) <https://www.occrp.org/en/news/un-experts-extremely-alarmed-by-alleged-organ-harvesting-in-china> accessed 31 August 2025.

⁸ *ibid.*

⁹ *China Tribunal*, ‘Judgment’ (1 March 2020) paras 479–484 https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf accessed 1 September 2025; R Hurley, ‘China’s forced organ harvesting constitutes crimes against humanity, informal London tribunal finds’ (2019) 365 *BMJ* l4287 <https://www.bmj.com/content/365/bmj.l4287>, accessed 14 August 2025.

The Tribunal was not a court of law established under national or international statute. Instead, it functioned as an independent people's tribunal, a form of civil society mechanism recognised in international practice for investigating alleged gross human rights violations, where formal courts are unavailable or unwilling.¹⁰ While such tribunals lack binding legal authority, they derive legitimacy from procedural fairness, independence of their members, and application of recognised legal standards, including the Statute definitions of crimes against humanity.¹¹

The cumulative record of investigative reports, expert testimony, and the Tribunal's comprehensive fact-finding underscores the seriousness of the allegations and the legal complexity they present. While the Tribunal lacked formal adjudicative authority, its application of established ICL definitions to the evidence demonstrates that forced organ harvesting, though not expressly enumerated as an offence in the Statute, can be subsumed within recognised categories of crimes against humanity where the contextual requirements are met.¹² In doing so, the Tribunal's work exemplifies the role that independent people's tribunals can play in bridging evidentiary gaps and shaping normative discourse where formal judicial avenues are absent or obstructed.¹³ This situates the phenomenon not only as a pressing human rights crisis, but as a matter of international criminal concern, meriting further legal scrutiny, independent monitoring and, where possible, prosecution under existing frameworks.¹⁴

1.2 Background context

1.2.1 Falun Gong practitioners

Falun Gong is a spiritual movement that grew popular in China during the 1990s. In 1999, the Chinese Communist Party banned Falun Gong and marked them as a "heretical cult", launching a nationwide campaign to eradicate it.¹⁵ Over the past two decades, hundreds of thousands

¹⁰ China Tribunal, 'Judgment' (1 March 2020), paras 1,2, 6, https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf accessed 1 September 2025.

¹¹ Regina Menachery Paulose (ed), *'People's Tribunals, Human Rights and the Law: Searching for Justice'* (Routledge 2020), pp 271-274.

¹² Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, art 7.

¹³ Regina Menachery Paulose (ed), *'People's Tribunals, Human Rights and the Law: Searching for Justice'* (Routledge 2020)', pp 271-274.

¹⁴ R Hurley, 'China's forced organ harvesting constitutes crimes against humanity, informal London tribunal finds' (2019) 365 *BMJ* 14287 <https://www.bmj.com/content/365/bmj.l4287> accessed 25 August 2025.

¹⁵ R Bejesky, 'Falun Gong and Re-Education through Labor' (2004) *Columbia Journal of Asian Law (CJAL)* 147 <https://journals.library.columbia.edu/index.php/cjal/article/view/3223> accessed 25 August 2025.

of Falun Gong adherents have been arrested and detained extrajudicially, often in “re-education through Labor” camps, prisons, and extra-legal transformation of “black jail” centres. During these detentions, many have been subject to forced ideological re-education, torture, and other cruel treatment aimed at forcing renunciation of their beliefs.¹⁶

The Tribunal found Falun Gong practitioners to be “*one and probably the main source of organ supply*” for China’s transplant industry.¹⁷ This is facilitated by the large number of Falun Gong detainees, i.e., the movement that once had 70-80 million followers in China, and over 100 million worldwide.¹⁸ The persecution of Falun Gong is thus directly relevant to this thesis as it provides a significant part of the factual matrix for the alleged organ harvesting campaign. Falun Gong practitioners can be considered *prisoners of conscience*, targeted solely for their spiritual beliefs, and their victimization raises questions under both IHRL, regarding freedom of belief, freedom from torture, right to life, and the ICL, regarding potentially constituting crimes against humanity.¹⁹

1.2.2 Uyghur Muslims

The Uyghurs are predominantly Muslim, ethnic minority concentrated in Xinjiang Uyghur Autonomous Region of China. In recent years, especially since 2017, the Chinese government has instituted a comprehensive security crackdown in Xinjiang, under the excuse of anti-terrorism measures, which resulted in mass arbitrary detentions of Uyghurs and other ethnic minorities in re-education camps²⁰. Credible reports by UN bodies,²¹ and human rights or-

¹⁶ United Kingdom Home Office, *Country Policy and Information Note: China – Falun Gong* (28 November 2023) para 3.1.5

<https://assets.publishing.service.gov.uk/media/6568b3812ee693001360c8a8/CHN%2BCPIN%2BFalun%2BGong.pdf> accessed 14 August 2025, see also R Bejesky, ‘*Falun Gong and Re-Education through Labor*’ (2004) 17 Columbia Journal of Asian Law 147 <https://academiccommons.columbia.edu/doi/10.7916/jcap-0810/download> accessed 14 August 2025.

¹⁷ *China Tribunal*, ‘Judgment’ (1 March 2020) para 461 https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf accessed 1 September 2025.

¹⁸ Human Rights Watch, *Dangerous Meditation: China’s Campaign Against Falun Gong* (2002) <https://www.refworld.org/reference/countryrep/hrw/2002/en/40640> accessed 14 August 2025.

¹⁹ *China Tribunal*, ‘Judgment’ (1 March 2020), para 3, https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf accessed 1 September 2025.

²⁰ OHCHR, *Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region* (31 August 2022) paras 35–39, 148–152, 166–172 <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf> accessed 15 August 2025.

²¹ *ibid*, paras 35–39, 148–152, 166–172 (religious repression, sterilization, international crimes); ILO Committee of Experts on the Application of Conventions and Recommendations, *Observation—China (C29 Forced Labour)* (adopted 2022, published 2023), paras 15–22 https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4323397,103404:NO accessed 15 August 2025; OHCHR (UN Special Procedures), ‘*UN experts call for decisive measures...*’ (26 June 2020) (surveillance, arbitrary detention) <https://www.ohchr.org/en/press-releases/2020/06/un-experts-call-decisive-measures-protect-fundamental-freedoms-china> accessed 15 August 2025.

ganisations,²² describe a systematic state-orchestrated program of cultural and religious repression against Uyghurs, including severe restrictions on religious practice,²³ pervasive surveillance,²⁴ forced labour,²⁵ and coercive population control measures such as sterilisation,²⁶ leading some observers to characterize the campaign as *potential genocide* or *crimes against humanity*.²⁷

While the documented abuses against Uyghurs primarily concern arbitrary detention and ill-treatment, emerging evidence suggests that detainees may also be subject to forced organ harvesting.²⁸ Witness testimonies and investigative findings indicate that many Uyghur prisoners, like Falun Gong practitioners, have been forced to undergo blood tests, DNA sampling, ultrasounds, and other medical examinations without consent.²⁹

Notably, evidence cited by the European Parliament indicates that millions of Uyghurs, and other minority residents of Xinjiang, were given mandatory medical examinations, under the “*Physicals for All*” programme, described as “essential to check matches of organs for transplant”, with the result stored in a centralized database of living organ sources.³⁰

²² Human Rights Watch, ‘*Break Their Lineage, Break Their Roots*’ (19 April 2021) pp 1–5, 27–33 <https://www.hrw.org/report/2021/04/19/break-their-lineage-break-their-roots/chinas-crimes-against-humanity-targeting> accessed 15 August 2025; Human Rights Watch, ‘*China: Crimes Against Humanity in Xinjiang*’ (News release, 19 April 2021) <https://www.hrw.org/news/2021/04/19/china-crimes-against-humanity-xinjiang> accessed 15 August 2025; Amnesty International, *Where Are They?* (7 September 2018) <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA1791132018ENGLISH.pdf> accessed 15 August 2025.

²³ OHCHR, *Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China* (31 August 2022) paras 35–39 <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assessment.pdf> accessed 15 August 2025.

²⁴ CERD, Concluding observations on the combined fourteenth to seventeenth periodic reports of China (30 August 2018) UN Doc CERD/C/CHN/CO/14-17 paras 40–44 <https://docs.un.org/en/CERD/C/CHN/CO/14-17> accessed 15 August 2025.

²⁵ *ibid*; OHCHR, *Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China* (31 August 2022) paras 35–39 <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assessment.pdf> accessed 15 August 2025.

²⁶ Human Rights Watch, *Break Their Lineage, Break Their Roots: China’s Crimes against Humanity Targeting Uyghurs and Other Turkic Muslims* (19 April 2021) pp 27–33 <https://www.hrw.org/report/2021/04/19/break-their-lineage-break-their-roots/chinas-crimes-against-humanity-targeting> accessed 15 August 2025.

²⁷ OHCHR, ‘*Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China*’ (31 August 2022) paras 35–39 <https://www.ohchr.org/en/documents/country-reports/ohchr-assessment-human-rights-concerns-xinjiang-uyghur-autonomous-region> accessed 15 August 2025; Human Rights Watch, *Break Their Lineage, Break Their Roots: China’s Crimes against Humanity Targeting Uyghurs and Other Turkic Muslims* (19 April 2021) pp 27–33 <https://www.hrw.org/report/2021/04/19/break-their-lineage-break-their-roots/chinas-crimes-against-humanity-targeting> accessed 15 August 2025.

²⁸ Human Rights Watch, ‘*China: Minority Region Collects DNA from Millions*’ (13 December 2017) <https://www.hrw.org/news/2017/12/13/china-minority-region-collects-dna-millions> accessed 15 August 2025

²⁹ *ibid*.

³⁰ Sophie Richardson, ‘*China: Minority Region Collects DNA from Millions*’ (Human Rights Watch, 13 December 2017), [China: Minority Region Collects DNA from Millions | Human Rights Watch](https://www.hrw.org/news/2017/12/13/china-minority-region-collects-dna-millions), accessed 15 August 2025; European Parliament, ‘European Parliament resolution of 5 May 2022 on reports of continued organ har-

For the purposes of this thesis, it will be further examined in Chapter II's factual background, but it is introduced here to underscore two main victim groups that inform the legal analysis in subsequent chapters.

1.3 Main legal research question and sub-questions

1.3.1 Main legal research question

In the light of the foregoing, the central research question of this thesis is: *How forced organ harvesting should be legally qualified under international law?*

In particular, the question is whether this practice violates China's binding obligations under IHRL, and if so, whether it additionally constitutes *a core international crime*, specifically, a crime against humanity under Article 7 of the Statute of the ICC. This dual focus reflects two pillars of analysis. One of them is the State's responsibility for human rights violations, and the other is individual criminal responsibility for atrocity crimes.

To answer the main research question, a series of sub-questions are posed under two frameworks, IHRL and ICL, each addressing different aspects of the legal qualification. By systematically addressing these sub-questions, the thesis will build a comprehensive answer to how forced organ harvesting is characterized in international law.

1.3.2 Sub-questions:

Following the above-mentioned, the sub questions are as follows:

I. Under IHRL

- What fundamental human rights are violated by the practice of forced organ harvesting, and which of these rights are protected under treaties or norms binding on China?

This involves identifying specific rights such as right to life,³¹ the prohibition of torture,³² and cruel or inhuman treatment, and freedom of thought, conscience and religion,³³ that are im-

vesting in China' (2022/2657(RSP)) P9_TA(2022)0200 https://www.europarl.europa.eu/doceo/document/TA-9-2022-0200_EN.pdf accessed 15 August 2025.

³¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 6.

pacted. It also requires determining whether China is legally obligated to uphold those rights through international instruments like the Convention Against Torture (further referred to as “CAT”), which China has ratified in 1998,³⁴ the International Covenant on Civil and Political Rights (further referred to as “ICCPR”), with a status signed, but not ratified.³⁵ In the latter case, an important sub-issue is the extent to which China’s signature of the ICCPR binds it not to defeat the object and purpose of the Covenant under Article 18 of the Vienna Convention on the Law and Treaties (further referred to as “VCLT”).³⁶ Additionally, many of the relevant rights are non-derogable and considered *customary* or even *peremptory norms*, meaning China is obliged to respect them regardless of the treaty status,³⁷ as it will be elaborated in a separate chapter.

- Who are the victims of these alleged violations and what is their protection under IHRL?

Here, we consider the status of *prisoners of conscience* or detained persons like Falun Gong practitioners and Uyghur Muslims. How does IHRL protect such individuals? Are they entitled to specific protections under treaties or customary law? These sub-questions examine the impact of the targeting of particular groups on the legal characterization, for example, does the targeting of Falun Gong for their beliefs, or Uyghurs for their ethnicity implicate additional human rights (like freedom of religion, or minority rights), and potentially aggravate the violations?

- What obligations does China have under international law to prevent, prohibit, and punish forced organ harvesting, and how these obligations can be invoked or enforced?

³² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, arts 2–3.

³³ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) art 18..

³⁴ UN Treaty Body Database, ‘Status of CAT (China Ratification)’ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CAT accessed 31 August 2025.

³⁵ UN Treaty Body Database, ‘Status of ICCPR (China)’ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR accessed 31 August 2025.

³⁶ Vienna Convention on the Law of Treaties (VCLT) (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 18.

³⁷ *Prosecutor v Anto Furundžija* (Trial Judgment, 10 December 1998) ICTY IT-95-17/1-T, paras 153–157.

This entails surveying China's duties under relevant human rights treaties and customary law. For instance, under CAT, China is obligated to prevent and punish torture and inhumane treatment,³⁸ which are the obligations potentially violated by the organ harvesting.

Considering ICCPR, China would be obliged even as a signatory, to uphold the rights to life under Article 6, and freedom from torture and cruel or inhuman treatment under Article 7,³⁹ which forced organ removal violates. The question also extends to how these international obligations can be brought to display: What mechanisms exist to hold China accountable, given its refusal or independent investigations? And how does China's domestic laws and constitution interface with its international obligations in this context? Ultimately, this sub section will clarify the IHRL legal framework applicable to forced organ harvesting, identifying the rights violated and the responsibility of the state under international law.

II. Under ICL

- Which acts recognized under Article 7 of the Statute does the practice of forced organ harvesting correspond to?

Given that organ harvesting per se is not named in the Statute, the analysis will try to determine if conduct can be legally characterized as one or more of the listed crimes against humanity under Article 7 of the Statute.⁴⁰ Key candidates include murder (if victims were killed for their organs),⁴¹ torture (if the extraction process involves severe pain and is done by officials for specific purposes),⁴² persecution (if targeting identifiable groups for political, racial, or religious reasons),⁴³ imprisonment or other severe deprivation of liberty,⁴⁴ and "other inhumane acts",⁴⁵ a residual category for acts causing great suffering or serious injury.

³⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, arts 2–4.

³⁹ International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 6–7.

⁴⁰ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 art 7(1)(a)–(k).

⁴¹ *ibid*, art 7(1)(a), see also ICC, *Elements of Crimes* (2011), p 4 (murder).

⁴² *ibid*, art 7(1)(f), see also ICC, *Elements of Crimes* (2011), p 5 (torture).

⁴³ *ibid*, art 7(1)(h), see also ICC, *Elements of Crimes* (2011), pp 7-8 (persecution).

⁴⁴ *ibid*, art 7(1)(e), see also ICC, *Elements of Crimes* (2011), p 5 (imprisonment or other severe deprivation of liberty).

⁴⁵ *ibid*, art 7(1)(k), see also ICC, *Elements of Crimes* (2011), p 8-9 (other inhumane acts).

This sub question will involve matching the factual elements of organ harvesting, e.g. the killing of detainees, medical abuse of their bodies, targeting of certain groups) with the legal elements of these crimes as defined in the Statute and interpreted in case law. For example, does killing a prisoner via organ extraction qualify as murder under ICL? *Prima facie* yes, as it is unlawful killing a civilian. Could the physical act of harvesting an organ from a living nonconsenting victim be seen as an act of torture or at least an inhumane act causing serious bodily harm? And does the deliberate selection of Falun Gong or Uyghur Muslim prisoners for this treatment constitute persecution on religious or ethnic grounds? Each potentially relevant crime will be examined in turn, applying the known legal definitions to the scenario of organ harvesting.

- What are the requisite contextual elements and thresholds that elevate these acts to crimes against humanity, and does the evidence indicate those thresholds are met?

Crimes against humanity require not only certain underlying acts (like murder or torture), but also require the fulfilment of contextual element, i.e., that they are committed as part of a “*widespread or systematic attack directed against any civilian population*”, with knowledge of the attack.⁴⁶ Thus, this sub question considers whether the organ harvesting in China fits the contextual chapeau of crimes against humanity. It will be assessed through answering the question whether there is evidence of a widespread or systematic practice of organ harvesting, as opposed to isolated incidents. The allegations and findings suggest a systematic program orchestrated by state or state-sanctioned entities, involving hospitals, prisons and officials, which would satisfy the “state policy” element of a crimes against humanity attack. The civilian population targeted would be the prisoners, and the motive (harvesting organs) does not remove the attack from being directed against them. Existing documentation, such as statistical analyses of transplant numbers far exceeding official donor counts, or organized medical testing of detainees, and that will be used to argue the organizational policy and scale of the abuse.

- What evidence and legal precedents support the classification of forced organ harvesting as a crime against humanity?

⁴⁶ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, arts 7(1), 7(2)(a).

This sub question involves marshalling available evidence for each element, for instance: proving the occurrence of the underlying acts through witness testimonies and statistical data and demonstrating the widespread or systematic nature through patterns and official involvement. Although no prior international tribunal case is directly in point for organ harvesting,⁴⁷ the absence of direct precedent means we extrapolate from analogous crimes and general principles.⁴⁸ This sub section thus points the arguments that, legally, forced organ harvesting fits within the existing architecture of crimes against humanity, even if it presents novel factual permutations.

1.4 Scientific gap

Despite increasing international concern about organ harvesting in China, this remains still fragmented regarding its classification under ICL. While human rights bodies and non-governmental organisations have repeatedly raised alarm over the systematic targeting of Falun Gong practitioners and Uyghur Muslims for organ removal,⁴⁹ there is insufficient doctrinal analysis on whether and how such acts fall under the scope of crimes against humanity, particularly under Article 7 of the Statute.⁵⁰

Existing literature often focuses on the human rights dimensions or the medical ethics of transplant abuse but fails to address enough the individual and state accountability mechanisms rooted in ICL. This legal ambiguity creates a significant accountability gap, especially when credible evidence indicates state involvement. Therefore, this thesis aims to fill a critical void by conducting a structured legal analysis of forced organ harvesting in China, through the lens of ICL and IHRL, primarily focusing on crimes against humanity.

To that addition, Kai Ambos observes that organ trade and trafficking in human beings challenge the established structures of ICL and argues that such acts can potentially fall within the

⁴⁷ China Tribunal, 'Judgment' (1 March 2020), paras 271-274, 461-467, https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf accessed 1 September 2025.

⁴⁸ *Prosecutor v Anto Furundžija* (Trial Judgment, 10 December 1998) ICTY IT-95-17/1-T paras 144–157.

⁴⁹ China Tribunal, 'Judgment' (1 March 2020), para 50, https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf accessed 1 September 2025, Human Rights Watch, 'China: Minority Region Collects DNA from Millions' (News Release 13 December 2017) <https://www.hrw.org/news/2017/12/13/china-minority-region-collects-dna-millions> accessed 15 August 2025, European Parliament, 'European Parliament resolution of 5 May 2022 on reports of continued organ harvesting in China' (2022/2657(RSP)) P9_TA(2022)0200 https://www.europarl.europa.eu/doceo/document/TA-9-2022-0200_EN.pdf accessed 15 August 2025.

⁵⁰ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002), 2187 UNTS 90, art 7(1), 7(2)(a), Leslie P Francis and John G Francis, 'Stateless Crimes, Legitimacy, and International Criminal Law: The Case of Organ Trafficking' (2010) 4 *Criminal Law and Philosophy* 283–295 <https://doi.org/10.1007/s11572-010-9100-y> accessed 15 August 2025.

scope of crimes against humanity, particularly when linked to systematic attacks or state policy.⁵¹ Similarly, a group of UN Special Rapporteurs expressed alarm at “credible information” that ethnic and religious minorities in detention were being targeted for forced organ removal.⁵² Following that, Leila Nadya Sadat argues that ICL must evolve to encompass modern atrocities such as organ harvesting, which may not be explicitly mentioned in treaties but reflect the same characteristics as recognised crimes against humanity.⁵³ The lack of express categorisation of organ harvesting in the Statute reflects, according to Sadat, a broader reluctance in international law to adapt swiftly to emerging forms of atrocity.⁵⁴ This thesis, therefore, seeks to address that normative gap through a structured legal analysis of forced organ harvesting in China, integrating both ICL and IHRL perspectives, with a primary focus on crimes against humanity.

Similarly, there is a growing scholarly view that such acts violate non-derogable rights protected under IHRL. Organ harvesting from non-consenting prisoners engages the most fundamental human rights: the right to life,⁵⁵ and the absolute prohibition of torture.⁵⁶ The right to life is recognised as a supreme, non-derogatory right in both treaty law and authoritative interpretation by the UN Human Rights Committee,⁵⁷ while the prohibition of torture admits of no exceptions under any circumstances⁵⁸.

This was recognised also as a *ius cogens* norm, permitting no derogation under any circumstances as affirmed by international courts, including the ICTY in *Furundžija case*.⁵⁹ Human rights bodies have also spoken directly on the matter, especially UN Committee against Tor-

⁵¹ Kai Ambos, *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (3rd edn, C.H. Beck/Hart/Nomos 2022), pp 270-273.

⁵² OHCHR, ‘China: UN human rights experts alarmed by “organ harvesting” allegations’ (Press Release, 14 June 2021), <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations> accessed 15 August 2025.

⁵³ Leila Nadya Sadat, ‘Crimes Against Humanity in the Modern Age’ (2013) 107 *American Journal of International Law* 334 <https://www.jstor.org/stable/10.5305/amerjintlaw.107.2.0334> accessed 31 August 2025.

⁵⁴ *ibid.*

⁵⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 4(2), 6.

⁵⁶ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

⁵⁷ UN Human Rights Committee, *General Comment No 36: Article 6 (Right to Life)*, UN Doc CCPR/C/GC/36 (3 September 2019) para 2, <https://www.refworld.org/legal/general/hrc/2019/en/123145>, accessed 27 August 2025.

⁵⁸ UN Committee against Torture, *General Comment No 2: Implementation of Article 2 by States Parties*, UN Doc CAT/C/GC/2 (24 January 2008), para 5, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/catgc2-general-comment-no-2-2007-implementation> accessed 4 September 2025; Nils W Paul and others, ‘Human rights violations in organ procurement practice in China’ (2017) 18 *BMC Medical Ethics* 11 <https://bmcmmedethics.biomedcentral.com/articles/10.1186/s12910-017-0169-x> accessed 15 August 2025.

⁵⁹ *Prosecutor v Anto Furundžija* (Trial Judgment, 10 December 1998) ICTY IT-95-17/1-T paras 144–157.

ture, in its 2008 report, expressed grave concern over the alleged use of Falun Gong practitioners in China for organ transplants.⁶⁰

While the moral and legal condemnation under IHRL is clear, scholarly work has only begun to explore how the systematic and state-sanctioned nature of such abuses might also satisfy the legal elements of crimes against humanity. In short, the practice has been publicly reported and condemned as human rights atrocity but remains under analysed in academic law as to its precise classification under ICL. This thesis seeks to fill that gap by connecting facts with legal analysis, thereby aligning the disconnection between human rights abuses and ICL framework.

1.5 Methodology

This thesis adopts a doctrinal legal research methodology, focusing on primary and secondary sources of international law to assess the legal characterization of forced organ harvesting as a potential crime against humanity. The research is rooted in a well-established approach to law, analyzing the normative frameworks of ICL and IHRL through the interpretation of treaties, customary law, case law, and jurisprudence of international bodies.

Primary sources include international treaties such as Statute,⁶¹ CAT,⁶² and ICCPR,⁶³ as well as VCLT.⁶⁴ The work draws on jurisprudence from relevant tribunals including the ICTY,⁶⁵

⁶⁰ UN Committee Against Torture, 'Concluding Observations on China' (21 November 2008) UN Doc CAT/C/CHN/CO/5 para 25.

⁶¹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90.

⁶² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

⁶³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

⁶⁴ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

⁶⁵ *Prosecutor v Tihomir Blaškić* (Appeals Judgment, 29 July 2004) IT-95-14-A; *Prosecutor v Anto Furundžija* (Trial Judgment, 10 December 1998) IT-95-17/1-T; *Prosecutor v Anto Furundžija* (Appeals Judgment, 21 July 2000) IT-95-17/1-A; *Prosecutor v Ante Gotovina, Ivan Čermak and Mladen Markač* (Trial Judgment, 15 April 2011) IT-06-90-T; *Prosecutor v Dario Kordić and Mario Čerkez* (Trial Judgment, 26 February 2001) IT-95-14/2-T; *Prosecutor v Dario Kordić and Mario Čerkez* (Appeals Judgment, 17 December 2004) IT-95-14/2-A; *Prosecutor v Milorad Krnojelac* (Trial Judgment, 15 March 2002) IT-97-25-T; *Prosecutor v Milorad Krnojelac* (Appeals Judgment, 17 September 2003) IT-97-25-A; *Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (Trial Judgment, 22 February 2001) IT-96-23-T & IT-96-23/1-T; *Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (Appeals Judgment, 12 June 2002) IT-96-23 & IT-96-23/1-A; *Prosecutor v Zoran Kupreškić and others* (Trial Judgment, 14 January 2000) IT-95-16-T; *Prosecutor v Milan Lukić and Sredoje Lukić* (Trial Judgment, 20 July 2009) IT-98-32/1-T; *Prosecutor v Milan Lukić and Sredoje Lukić* (Appeals Judgment, 4 December 2012) IT-98-32/1-A; *Prosecutor v Zdravko Mucić (Čelebići)* (Trial Judgment, 16 November 1998) IT-96-21-T; *Prosecutor v Duško Tadić* (Decision on Jurisdiction, 2 October 1995) IT-94-1;

ICTR,⁶⁶ ICC,⁶⁷ ECtHR,⁶⁸ domestic case laws,⁶⁹ as well as interpretive documents like the Elements of Crimes,⁷⁰ and General Comments from UN treaty bodies.⁷¹

Secondary sources encompass scholarly literature, commentaries, and doctrinal analysis by recognized international law experts such as Kai Ambos,⁷² and Leila Nadya Sadat.⁷³ Further, the thesis evaluated relevant reports and communications from UN Special Rapporteurs,⁷⁴ the UN Committee Against Torture,⁷⁵ the European Parliament,⁷⁶ NGOs, only to the extent that they provide factual background that informs the legal reasoning.

Prosecutor v Dragan Vasiljević (Trial Judgment, 29 November 2002) IT-98-32-T; *Prosecutor v Dragan Vasiljević* (Appeals Judgment, 25 February 2004) IT-98-32-A.

⁶⁶ *Prosecutor v Jean-Paul Akayesu* (Trial Judgment, 2 September 1998) ICTR ICTR-96-4-T.

⁶⁷ *Prosecutor v Jean-Pierre Bemba Gombo* (Appeals Judgment, 8 June 2018) ICC-01/05-01/08-3636; *Prosecutor v Jean-Pierre Bemba Gombo* (Decision pursuant to Article 61(7)(a) and (b), Pre-Trial Chamber II, 15 June 2009) ICC-01/05-01/08-424; *Prosecutor v Germain Katanga* (Trial Judgment, Trial Chamber II, 7 March 2014) ICC-01/04-01/07-3436; *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui* (Decision on the Confirmation of Charges, Pre-Trial Chamber I, 30 September 2008) ICC-01/04-01/07-717; *Prosecutor v Laurent Gbagbo* (Decision on the Confirmation of Charges, Pre-Trial Chamber I, 12 June 2014) ICC-02/11-01/11; *Prosecutor v William Samoei Ruto and Joshua Arap Sang* (Decision on the Confirmation of Charges, Pre-Trial Chamber II, 23 January 2012) ICC-01/09-01/11-373; *Situation in the Republic of Burundi* (Decision pursuant to Article 15 authorising an investigation, Pre-Trial Chamber III, Public Redacted Version, 25 October 2017) ICC-01/17-9-Red; *Situation in the Republic of Kenya* (Decision pursuant to Article 15 authorising an investigation, Pre-Trial Chamber II, Corrigendum, 31 March 2010) ICC-01/09-19-Corr; *Decision on the Prosecutor's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute (Bangladesh/Myanmar)* (Pre-Trial Chamber I, 6 September 2018) ICC-RoC46(3)-01/18-37; *Prosecutor v Omar Hassan Ahmad Al Bashir* (Decision on Cooperation, Pre-Trial Chamber I, 13 December 2011) ICC-02/05-01/09.

⁶⁸ *Çakıcı v Turkey* App no 23657/94 (ECtHR, 8 July 1999); *Cyprus v Turkey* App no 25781/94 (ECtHR, Grand Chamber, 10 May 2001); *El-Masri v The Former Yugoslav Republic of Macedonia* App no 39630/09 (ECtHR, 13 December 2012); *Imakayeva v Russia* App no 7615/02 (ECtHR, 9 November 2006); *Khadzhialiyev and Others v Russia* App no 3013/04 (ECtHR, 17 November 2008); *Pretty v United Kingdom* App no 2346/02 (ECtHR, 29 April 2002); *Sabanchiyeva and Others v Russia* App no 38450/05 (ECtHR, 6 June 2013); *Soering v United Kingdom* App no 14038/88 (ECtHR, 7 July 1989).

⁶⁹ Higher Regional Court (Koblenz), Judgment 1 StE 9/19 (*Anwar R.*) (13 January 2022) (IIIM, unofficial English translation, 9 July 2025). *United States v Karl Brandt and others* (The Medical Case/Doctors' Trial) Judgment, in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No 10*, vol II (US Government Printing Office 1949).

⁷⁰ International Criminal Court, *Elements of Crimes* (2011).

⁷¹ Human Rights Committee, *General Comment No 36: Article 6 (Right to Life)*, CCPR/C/GC/36 (30 October 2018), <https://www.refworld.org/legal/general/hrc/2019/en/123145>, accessed 27 August 2025; Committee against Torture, *General Comment No 2: Implementation of Article 2 by States Parties*, CAT/C/GC/2 (24 January 2008), <https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcgc2-general-comment-no-2-2007-implementation> accessed 4 September 2025.

⁷² Otto Triffterer and Kai Ambos (eds), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (4th edn, Hart/Bloomsbury 2021).

⁷³ Leila Nadya Sadat, 'Crimes Against Humanity in the Modern Age' (2013) 107 *AJIL* 334, 343.

⁷⁴ UN Special Procedures (OHCHR), 'China: UN human rights experts alarmed by "organ harvesting" allegations' (Press Release, 14 June 2021) <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations>, accessed 31 August 2025.

⁷⁵ Committee against Torture, *Concluding Observations on the fifth periodic report of China*, CAT/C/CHN/CO/5 (3 February 2016).

⁷⁶ European Parliament, 'European Parliament resolution of 5 May 2022 on reports of continued organ harvesting in China' (2022/2657(RSP)) P9_TA(2022)0200 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022IP0200> accessed 31 August 2025.

The research also engages in comparative analysis by referencing similar legal developments in international criminal jurisprudence, such as cases involving systematic detention,⁷⁷ medical experimentation,⁷⁸ or persecution of minorities.⁷⁹ The thesis aims to synthesize doctrinal, normative, and evidentiary material to construct a coherent legal argument concerning state and individual accountability.

Where applicable, soft law and customary international law principles are also examined, particularly in relation to the prohibition of torture and the duty to prevent crimes against humanity under general international law.⁸⁰

The qualitative method allows for a structured, normatively grounded legal inquiry into a complex and evolving issue. The analysis is desk-based and will not include empirical interviews or field research but relies on triangulating legal norms with substantiated factual findings in the public domain.

VCLT is used as a foundational tool for interpreting the relevant treaty provisions because it codifies the general principles of treaty interpretation recognized under customary law.⁸¹ It is applicable even in cases where states have not ratified the treaty in question, as it has been affirmed repeatedly by the ICJ and other tribunals as binding in its interpretative guidance.⁸² In the context of this thesis, China has signed, but not ratified the ICCPR, which raises questions about the binding nature of its provisions.⁸³

⁷⁷ *Prosecutor v Dario Kordić and Mario Čerkez* (Appeal Judgment, 17 December 2004) ICTY IT-95-14/2-A.

⁷⁸ *United States v Karl Brandt et al. (The Medical Case)*, Judgment, in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No 10*, vol II (US Government Printing Office 1949) <https://www.legal-tools.org/doc/595f3c/> accessed 31 August 2025.

⁷⁹ *Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (Appeal Judgment, 12 June 2002) ICTY IT-96-23 & IT-96-23/1-A; *Prosecutor v Delalić and others (Čelebići)* (Trial Judgment, 16 November 1998) ICTY IT-96-21-T; *Prosecutor v Jean-Paul Akayesu* (Trial Judgment, 2 September 1998) ICTR ICTR-96-4-T.

⁸⁰ *Prosecutor v Anto Furundžija* (Trial Judgment, 10 December 1998) ICTY IT-95-17/1-T; *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (Judgment) [2012] ICJ Rep 422; International Law Commission, *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens) with Commentaries* (2022), conclusions 23–24; International Law Commission, *Draft Articles on Prevention and Punishment of Crimes against Humanity* (2019), arts 2–4.

⁸¹ SR Ratner, ‘International Law Rules on Treaty Interpretation’ (University of Michigan Law Repository 2013), [International Law Rules on Treaty Interpretation](https://www.legal-tools.org/doc/595f3c/), accessed on 25 August 2025.

⁸² International Law Commission, *Report of the International Law Commission on the work of its sixty-fifth session*, UN Doc A/68/10 draft conclusion 1, [Report of the International Law Commission, Sixty-fifth session \(6 May–7 June and 8 July–9 August 2013\)](https://www.legal-tools.org/doc/595f3c/), accessed on 25 August 2025.

⁸³ Nicolas Hernández, ‘The PRC, the ICCPR, and the Interim Obligation under Article 18 of the VCLT’ (SSRN, 2010) (papers.ssrn.com), accessed 25 August 2025.

However, Article 18 of the VCLT obliges states that signed but not ratified a treaty to refrain from acts which would defeat the object and the purpose of the treaty.⁸⁴ Having that in mind, VCLT provides the appropriate framework for evaluating whether China's actions contradict obligations arising from the ICCPR and other legal instruments.⁸⁵ Furthermore, VCLT enables the interpretation of substantive obligations under treaties such as the Statute and the CAT in a manner consistent with their object and purpose.⁸⁶

Chapter II – Factual and Contextual Background

2.1 China's Organ Transplantation System

The transplantation of human organs in China has long been a subject of international concern due to systemic deviations from global ethical norms. The World Health Organisation (further referred to as "WHO") issued its *Guiding Principles on Human Cell, Tissue and Organ Transplantation* in 2010,⁸⁷ outlining a normative framework to ensure that organ procurement is ethical, voluntary, transparent, and free from coercion or commercial exploitation. China's historical transplantation practices have been repeatedly criticised for failing to meet these standards, particularly regarding informed consent, transparency, and the use of organs from executed prisoners.⁸⁸

One of the central principles of the WHO frameworks is that organ donation must be premised on voluntary and informed consent, free from any coercion or inducement⁸⁹. In stark contrast, prior to 2015, many transplanted organs in China were sourced from executed prisoners, a population inherently incapable of providing free and voluntary consent⁹⁰.

⁸⁴ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 18.

⁸⁵ Hernández [n 101].

⁸⁶ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 31(1).

⁸⁷ WHO, *Guiding Principles on Human Cell, Tissue and Organ Transplantation* (World Health Organization 2010).

⁸⁸ China Tribunal, 'Judgment' (1 March 2020), https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf accessed 1 September 2025

⁸⁹ World Health Organization, *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation* (endorsed WHA63.22, 2010) Guiding Principle 3.

⁹⁰ Kirsten C Allison and others, 'Historical development and current status of organ procurement from death-row prisoners in China' (2015) 16 *BMC Medical Ethics* 85, 2–3 <https://bmcomedethics.biomedcentral.com/articles/10.1186/s12910-015-0074-0>, accessed 25 August 2025.

This incapacity arises from the coercive environment condemned prisoners' line in, which fundamentally undermines their autonomy and capacity to consent.⁹¹ International ethical standards, including those of medical associations, underscore that prisoners are in a position of vulnerability and power imbalance, making any supposed agreement suspect of coercion.⁹² Medical and professional associations reiterate that using organs from prisoners violates medical ethics and principles of autonomy and the prohibition of cruel, inhuman, or degrading treatment.⁹³

Investigations have revealed that, prior to the 2015 policy shift, executions in China were frequently carried out in a manner designed to facilitate organ retrieval. Allegedly, instead of being executed by standard firing squad or lethal injection protocols, prisoners were often shot in such a way as to preserve organ viability.⁹⁴ Additionally, medical personnel reportedly participated in these executions, and organs were removed almost immediately after death, sometimes while death was not yet fully confirmed. Mobile "execution vans" equipped for lethal injection were also allegedly used in order to facilitate rapid organ retrieval.⁹⁵

These practices flouted the internationally accepted "dead donor rule", which mandates that organ procurement only occur once death is fully confirmed.⁹⁶ Academic investigations, testimonies from former Chinese doctors, and independent reports indicate that these executions were orchestrated to fulfil transplant demand, effectively amounting to execution for the purpose of organ harvesting, in direct violation of human rights and medical ethics.⁹⁷

⁹¹ Matthew P Robertson and Jacob Lavee, 'Execution by organ procurement: Breaching the dead donor rule in China' (2022) 22 *American Journal of Transplantation* 1804, 1809, [https://www.amjtransplant.org/article/S1600-6135\(22\)08269-7/fulltext](https://www.amjtransplant.org/article/S1600-6135(22)08269-7/fulltext), accessed on 25 August 2025.

⁹² World Medical Association, *WMA Statement on Organ and Tissue Donation* (2017) para 17, 18, 19, [WMA Statement on Organ and Tissue Donation – WMA – The World Medical Association](https://www.wma.net/activities/ethics/statements/organ-and-tissue-donation), accessed on 25 August 2025.

⁹³ The Transplantation Society, *TTS Membership Statement* (nd) <https://tts.org/10-tts/about/715-tts-membership-statement>, accessed on 25 August 2025.

⁹⁴ David Kilgour and David Matas, *Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China* (6 July 2006), p 4, <https://cja.org/wp-content/uploads/downloads/Kilgour-Matas-organ-harvesting-rpt-July6-eng.pdf>, accessed on 25 August 2025.

⁹⁵ Ethan Gutmann, *The Slaughter: Mass Killings, Organ Harvesting, and China's Secret Solution to Its Dissident Problem* (Prometheus 2014) chs 2–3; UN Special Rapporteur on Torture, *Report on Allegations of Organ Harvesting in China* A/HRC/4/33/Add.1, (2007) paras 40–42 <https://undocs.org/A/HRC/4/33/Add.1>, accessed on 25 August 2015.

⁹⁶ World Health Organization, *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation* (2010) Principle 3.

⁹⁷ UN Special Rapporteur on Torture, *Report on Allegations of Organ Harvesting in China* Un Doc A/HRC/4/33/Add.1, (2007) paras 40–42 <https://undocs.org/A/HRC/4/33/Add.1>, accessed on 25 August 2025.

The UN Committee Against Torture, in its 2008 Concluding Observations on China, explicitly noted that the lack of effective safeguards to ensure the voluntariness of such donations and called for the cessation of this practice.⁹⁸ Additionally, the WHO's prohibition against organ commercialisation was routinely breached.⁹⁹ Reports have documented the commercialisation of organ transplants in China, with organs allegedly made available to foreign patients at short notice, raising serious questions about the existence of a hidden database of pre-screened, non-consenting donors.¹⁰⁰ Such practices not only contravene WHO standards but may also fall within the scope of international legal instruments prohibiting organ trafficking and forced medical procedures.¹⁰¹

Transparency forms another core component of the WHO principles.¹⁰² Despite official claims of reform, China's transplant system has long been criticised for its opacity.¹⁰³ Until recent years, no reliable registry of voluntary donors was publicly available, and discrepancies between reported transplant figures and known donor data persist.¹⁰⁴ A comprehensive scoping review by Rogers et al., analysing 445 peer reviewed studies involving over 85,000 transplants in China between 2000 and 2017, found that 98.5% of the studies failed to report whether the organs were sourced from executed prisoners, and 99% did not clarify whether donors had given consent.¹⁰⁵ Additionally, the majority of studies did not indicate whether ethics committee approval had been obtained. These findings underscore the persistent lack of transparency and suggest systemic non-compliance with international ethical standards in China's transplant system.¹⁰⁶

Furthermore, scholars have demonstrated that post-2015 transplant volume data remain implausible and statistically inconsistent with voluntary donation patterns, suggesting that uneth-

⁹⁸ UN Committee Against Torture, 'Concluding Observations on China' (21 November 2008) UN Doc CAT/C/CHN/CO/5 para 25.

⁹⁹ WHO, *Guiding Principles on Human Cell, Tissue and Organ Transplantation* (2010), Guiding Principle 5.

¹⁰⁰ Ibid; UN Committee Against Torture, 'Concluding Observations on China' (12 December 2008) UN Doc CAT/C/CHN/CO/4, para 25, <https://undocs.org/CAT/C/CHN/CO/4>, accessed on 25 August 2025.

¹⁰¹ Council of Europe, *Convention against Trafficking in Human Organs* (CETS No. 216, opened for signature 25 March 2015); UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

¹⁰² WHO, *Guiding Principles on Human Cell, Tissue and Organ Transplantation* (2010), Guiding Principle 11.

¹⁰³ OHCHR, 'China: UN human rights experts alarmed by "organ harvesting" allegations' (14 June 2021) <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations>, accessed on 25 August 2025.

¹⁰⁴ Wendy Rogers and others, 'Compliance with ethical standards in the reporting of donor sources and ethics review in peer-reviewed publications involving organ transplantation in China: a scoping review' (2019) 9 *BMJ Open* e024473 <https://bmjopen.bmj.com/content/9/2/e024473.full.pdf>, accessed on 25 August 2025.

¹⁰⁵ *ibid*, pp 1,5,6.

¹⁰⁶ *ibid*, pp 7,8.

ical sourcing practices may still be occurring.¹⁰⁷ In December 2014, Dr. Huang Jiefu, then head of China's organ transplantation committee, publicly announced that China would cease the use of prisoners' organs starting from 1st of January 2015.¹⁰⁸ He stated that all organs for transplantation would henceforth be sourced solely from voluntary civilian donations, though not accompanied by binding legislation or a robust enforcement mechanism. To date, international experts and human rights bodies have expressed continued concern over the verifiability of these reforms, noting the lack of independent inspection and ongoing denial of access to international observers.¹⁰⁹

For decades, China lacked a public organ donation program, since there were present cultural aversions to body dismemberment, meaning voluntary donation rates were extremely low.¹¹⁰ Despite China's 2014 announcement that it would end the procurement of organs from executed prisoners as of January 2015, Alison et al. observe that no legal or regulatory reform accompanied by a public declaration, leaving open the legal possibility for the continued use of prisoners' organs. Moreover, the authors highlight that prisoners may still be classified as voluntary donors, undermining the ethical distinction between coerced and free consent. This ambiguity raises doubts on the transparency and legitimacy of China's transplant reform, especially in the field of international medical and human rights standards that prohibit organ procurement without consent.¹¹¹ In contrast, transplant surgeries in China expanded rapidly. An estimated 120,000 organs were transplanted from 1977 to 2009, while only 130 voluntary donations were recorded in that period.¹¹² This shortfall was filled by harvesting organs from prisoners. Until 2005, Chinese officials denied using prisoners' organs, even as evidence mounted that the majority of transplants came from executed prisoners. Organ procurement was often arranged informally between hospitals and court or prison authorities, without gen-

¹⁰⁷ Matthew P. Robertson, Raymond L Hinde and Jacob Lavee and, 'Analysis of Official Deceased Donor Organ Transplant Data Casts Doubt on Credibility of China's Organ Transplant Reform' (2019) *BMC Medical Ethics* 20:79, [Analysis of official deceased organ donation data casts doubt on the credibility of China's organ transplant reform | BMC Medical Ethics | Full Text](https://doi.org/10.1186/s12910-015-0074-0), accessed on 25 August 2025.

¹⁰⁸ News.com.au, 'China to Phase Out Use of Prisoner Organs' (3 December 2014) <https://www.news.com.au/world/breaking-news/china-to-phase-out-use-of-prisoner-organs/news-story/57d544d89eb703971c0b6dd895c0db33> accessed 1 September 2025.

¹⁰⁹ OHCHR, 'China: UN human rights experts alarmed by "organ harvesting" allegations' (14 June 2021) <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations>, accessed on 25 August 2025; Human Rights Watch, 'China: Questions Persist on Organ Harvesting' (News Release, 16 August 2017) <https://www.hrw.org/news/2017/08/16/china-questions-persist-organ-harvesting>, accessed on 25 August 2025.

¹¹⁰ Kirsten C Allison and others, 'Historical development and current status of organ procurement from death-row prisoners in China' (2015) 16 *BMC Medical Ethics* 85 <https://bmcmethics.biomedcentral.com/articles/10.1186/s12910-015-0074-0>, accessed on 25 August 2025.

¹¹¹ *ibid*, p 2.

¹¹² *ibid*, p 1.

uine consent from the prisoners.¹¹³ Regulations enacted in 1984 and 2007 required death-row inmates or their families to consent before organs could be taken, but these rules were ignored in practice.¹¹⁴ As stated, it was only in 2005 that a senior health official, Vice-Minister Huang Jiefu, publicly admitted that over 95 percent of the transplanted organs in China were sourced from executed prisoners, leading to condemnation of the practice as “profit-driven, unethical and violating human rights”.¹¹⁵

Investigative forensic analysis indicates that during the early 2000s, selected executions in China were orchestrated to preserve viable organs.¹¹⁶ A 2022 peer-reviewed study in the *American Journal of Transplantation* found that organs were frequently removed from individuals before brain death could be properly declared, subsequently, the removal likely causing the donor’s death.¹¹⁷

During this period, the number of transplant hospitals reportedly soared from approximately 150 to over 600, as Chinese media warned of “chaos” in organ procurement.¹¹⁸ Hospitals are reported to have provided to wealthy domestic and foreign patients who could obtain organs on demand, often paying large sums to intermediaries, while the identity and consent of donors remained undisclosed.¹¹⁹ An independent investigation by Kligour and Matas documented hospital-level transplant scheduling systems, phone call transcripts, and eyewitness evidence strongly suggesting that detained Falun Gong practitioners were being used as a living organ bank to support the boom in transplant tourism.¹²⁰

In the late 2000s, China undertook incremental reforms to ban organ transplantation. A 2007 State Council Ordinance introduced a system of licensing for transplant centres and banned

¹¹³ *ibid*, pp 1-2.

¹¹⁴ *ibid*, p 2.

¹¹⁵ *ibid*, p 3.

¹¹⁶ Ethan Gutmann, *The Slaughter: Mass Killings, Organ Harvesting, and China’s Secret Solution to Its Dissident Problem* (Prometheus 2014) 42–49.

¹¹⁷ Matthew P Robertson and Jacob Lavee, ‘Execution by organ procurement: Breaching the dead donor rule in China’ (2022) 22 *American Journal of Transplantation* 1804, 1807–09 <https://www.amjtransplant.org/action/showPdf?pii=S1600-6135%2822%2908269-7>, accessed on 25 August 2025.

¹¹⁸ Kirsten C Allison and others, ‘Historical development and current status of organ procurement from death-row prisoners in China’ (2015) 16 *BMC Medical Ethics* 85, p 3, <https://bmcmethics.biomedcentral.com/articles/10.1186/s12910-015-0074-0>, accessed on 25 August 2025

¹¹⁹ Human Rights Watch, ‘China: End Organ Harvesting From Prisoners’ (News Release, 21 November 2014) <https://www.hrw.org/news/2014/11/21/china-end-organ-harvesting-prisoners> accessed on 25 August 2025.

¹²⁰ David Kilgour and David Matas, *Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China* (6 July 2006) pp 25–34, <https://cja.org/wp-content/uploads/downloads/Kilgour-Matas-organ-harvesting-rpt-July6-eng.pdf> accessed 1 September 2025.

organ trade, an implicit acknowledgement of past abuses.¹²¹ In March 2010, China launched pilot programs for citizen-based deceased organ donation, supported by the WHO and the Red Cross Society of China. The pilots aimed to replace prisoner-sourced organs and eventually evolved into the China Organ Transplant Response System.¹²²

Despite these formal developments, significant transparency concerns remain. Requests to international monitoring bodies to inspect organ transplant centres or review donation records, have been denied.¹²³ Moreover, while the number of registered voluntary donors in China has risen in recent years, the supply of organs appears to far outpace what those donors alone could provide, given the exceptionally short waiting times advertised by Chinese hospitals. For example, whereas patients typically wait years for organs in Western countries, Chinese transplant hospitals have openly advertised compatible organs within mere weeks or even days.¹²⁴

Such discrepancies between demand and ethical supply fuel concerns that organs are still being sourced from concealed channels, possibly including prisoners. In short, while China's legal framework on paper now forbids organ trading and claims to exclude coerced donations, the opacity of the system and past reliance on prisoners creates a concerning background. Whether such conduct might additionally amount to an international crime, such as torture or murder as a crime against humanity, depends on further legal analysis of context and intent, which will be addressed in subsequent chapters. At this stage, the historical and ongoing features of China's transplantation system appear to establish the factual predicate for that legal inquiry.

2.2 Treatment of Falun Gong Practitioners and Organ Harvesting allegations

Falun Gong was a spiritual, apolitical movement combining traditional qigong practice with moral philosophy, that grew extremely popular in China during the 1990s, with an estimated

¹²¹ Regulations on Human Organ Transplantation (State Council of the PRC, 2007), English version available at: https://en.nhc.gov.cn/2014-06/05/c_75633.htm

¹²² Kirsten C Allison and others, 'Historical development and current status of organ procurement from death-row prisoners in China' (2015) 16 *BMC Medical Ethics* 85, page 3, <https://bmcmmedethics.biomedcentral.com/articles/10.1186/s12910-015-0074-0>, accessed on 25 August 2025.

¹²³ OHCHR, 'China: UN human rights experts alarmed by "organ harvesting" allegations' (14 June 2021) <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations>, accessed on 26 August 2025.

¹²⁴ David Kilgour and David Matas, Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China (6 July 2006) pp 23–25 <https://cja.org/wp-content/uploads/downloads/Kilgour-Matas-organ-harvesting-rpt-July6-eng.pdf>, accessed on 26 August 2025.

millions of adherents.¹²⁵ Initially tolerated by state authorities for its perceived health benefits, the Chinese Communist Party grew alarmed at its organisational autonomy and ideological appeal. In 1999, the government formally banned Falun Gong and launched a systematic campaign of repression, labelling Falun Gong as an “evil cult” (*Xie jiao*).¹²⁶ What followed was a nation worldwide campaign of persecution against Falun Gong believers. Thousands of practitioners were detained, often without any judicial process.¹²⁷ Many were dispatched to prisons or “re-education through labour” camps, where they were subject to torture, forced renunciation of their beliefs, and other ill-treatment.¹²⁸ Falun Gong practitioners were also singled out for ideological re-education and faced intense pressure to sign statements renouncing their faith.

A Special Communist Party Organ (further referred to as “610 Office”) was established to oversee the anti-Falun Gong campaign, coordinating law enforcement, propaganda, and indoctrination efforts.¹²⁹ Within this repressive environment, Falun Gong detainees developed coping tactics of refusing to disclose their identities to the authorities,¹³⁰ which led to the situation that detained practitioners often would not give their real names or home addresses, fearing repercussions for their families and communities.¹³¹ While this non-cooperation aimed to protect their loved ones, it had a dangerous side effect that large numbers of prisoners became effectively anonymous within the detention system.¹³²

Chinese authorities often did not know the identity or home province of many captives, and no family members were notified of their whereabouts. As observed by researchers, this created a “remarkably undefended” population in custody, i.e., detainees who could disappear without anyone outside the camps knowing to ask questions.¹³³ Tragically, such conditions made Falun Gong prisoners of conscience vulnerable to abuses, since officials acting in secrecy could avoid accountability. Against this backdrop, allegations began to emerge in the mid-2000s that Falun Gong prisoners are being killed for their organs.

¹²⁵ David Ownby, *Falun Gong and the Future of China* (Oxford University Press 2008), chs 1,2.

¹²⁶ *ibid*, pp 170-173.

¹²⁷ Amnesty International, *Crackdown on Falun Gong and Other So-Called “Heretical Organizations”* (Report, AI Index ASA 17/11/00, March 2000).

¹²⁸ *ibid*

¹²⁹ European Parliament, *Critical Role of the 610 Office in the Persecution of Falun Gong* (URU Alm-del 145, Annex) <https://www.ft.dk/samling/20201/almdel/uru/bilag/145/2343619.pdf> accessed 26 August 2025.

¹³⁰ David Matas and David Kilgour, *Bloody Harvest: The Killing of Falun Gong for Their Organs*, 2nd edn (CreateSpace Independent Publishing Platform 2009) 89–90, p 14 [Microsoft Word - report20060706-eng.doc](#), accessed 26 August 2025.

¹³¹ *ibid*, Appendix 9, p 95.

¹³² *ibid*, p 95.

¹³³ *ibid*.

One particularly alarming feature of this repression was the routine medical testing of Falun Gong detainees, not for healthcare purposes, but for organ compatibility assessment.¹³⁴ Furthermore, according to the Tribunal, detained Falun Gong practitioners were systematically subjected to blood tests, organ function exams like ultrasounds and X-rays, whereas other practitioners were not, indicating targeted screening for transplantation suitability.¹³⁵ In many documented cases, individuals who matched potential recipients were subsequently disappeared from custody, with their bodies either unrecovered or released only as cremains, thereby preventing autopsy.¹³⁶

Several investigations, including the Tribunal, concluded that Falun Gong practitioners were likely the primary source of forced organ harvesting in China, carried out in collusion between military hospitals, civilian transplant centres, and the public security apparatus.¹³⁷ These acts were allegedly conducted without informed consent, with the explicit aim of using prisoners as a living organ bank to meet demand in China's lucrative transplant market, including for transplant tourists.¹³⁸

Throughout the 2000s, the Chinese government categorically denied that it was harvesting organs from Falun Gong practitioners. Despite the mentioned, international concern grew and Prof. Manfred Nowak, the UN Special Rapporteur, took note of the issue as early as 2006. In a communication to the Chinese government, Prof. Nowak highlighted reports that the rise in China's organ transplant numbers correlated with the onset of the crackdown on Falun Gong, and he requested China to fully explain the source of organs to dispel allegations that prisoners were being killed for their organs.¹³⁹

¹³⁴ Ethan Gutmann, *The Slaughter: Mass Killings, Organ Harvesting, and China's Secret Solution to Its Dissident Problem*, ch 1 (PDF) https://endtransplantabuse.org/wp-content/uploads/2017/08/Slaughter_ChapterOne.pdf, accessed 26 August 2025.

¹³⁵ China Tribunal, 'Judgment' (1 March 2020), paras 165–166, https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf accessed 1 September 2025.

¹³⁶ *ibid*, p 77, cases of disappearance and cremation without return of bodies.

¹³⁷ *ibid* para 461.

¹³⁸ *ibid*, para 427.

¹³⁹ Manfred Nowak, 'Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (UN Doc A/HRC/4/33/Add.1, 20 March 2008), see China, <https://digitallibrary.un.org/record/595561> accessed 4 September 2025.

The Chinese authorities continued to assert that all organ sources were lawful, but did not provide detailed data to refute the discrepancy.¹⁴⁰ In November 2008, the UN Committee Against Torture issued its concluding observations during China's fourth periodic review.¹⁴¹ The Committee explicitly addressed allegations that Falun Gong practitioners have been used for organ transplants and noted the exhaustive reports addressing it, and urged China to ensure full transparency of organ sources, to conduct an independent investigation, and to prosecute those responsible.¹⁴²

These concluding observations are authoritative, but non-binding recommendations issued under the Convention's Article 19 reporting procedure, meaning they interpret China's binding CAT obligations, but are not themselves judicial decisions.¹⁴³ China has also reserved opting out of Article 20 inquiries and has not made an Article 22 declaration, so its engagement with the Committee proceeds primarily through periodic reporting, and then enabling individuals from filing complaints.¹⁴⁴

2.2 Treatment of Uyghur Muslims

The targeting of Uyghur Muslims in the Xinjiang Uyghur Autonomous Region (*XUAR*) by China is rooted in a combination of political, ideological, and strategic imperatives. The Uyghurs' distinct ethnic religious identity, marked by their Turkish language, Islamic faith, and cultural traditions, has long been perceived by China as incompatible with its vision of national unity and social harmony.¹⁴⁵

Following the collapse of the Soviet Union and the rise of the Central Asian independence movements, Beijing increasingly securitized ethnic identity in Xinjiang, branding the expres-

¹⁴⁰ Torsten Trey, 'Need for Transparency and International Scrutiny Remains' (2016) *The American Journal of Transplantation* (Perspective) <https://pmc.ncbi.nlm.nih.gov/articles/PMC5096240/>, accessed 26 August 2025.

¹⁴¹ UN Committee against Torture, *Concluding observations of the Committee against Torture: China* CAT/C/CHN/CO/4 (12 December 2008), para 25(c), <https://www.refworld.org/policy/polrec/cat/2008/en/64696> accessed 26 August 2025.

¹⁴² *ibid.*

¹⁴³ OHCHR, *Fact Sheet No 30/Rev.1: The United Nations Human Rights Treaty System* (August 2012) <https://www.refworld.org/reference/themreport/ohchr/2012/en/98090>, accessed 26 August 2025.

¹⁴⁴ United Nations Treaty Collection, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (status, China—reservations/declarations) https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=en&mtdsg_no=IV-9&src=ind, accessed 26 August 2025; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, p 199.

¹⁴⁵ Gardner Bovingdon, *The Uyghur Challenge to Chinese Rule: The Politics of Identity in Xinjiang* (Columbia University Press 2010), Ch 1.

sion of Uyghur culture and religious beliefs as indicators of separatism or extremism.¹⁴⁶ These anxieties were exacerbated by violent incidents such as the 2009 Urumqi riots, in which nearly 200 people were killed, hardened state policy, and the government used it to justify sweeping counter – terrorism legislation and intensified surveillance.¹⁴⁷ This led to China passing the 2015 Counter Terrorism Law, allowing broad surveillance and detention powers.¹⁴⁸

Since 2016, the government has expanded these policies into what it terms “preventive counter – terrorism” and “vocational education”, resulting in the establishment of internment camps where an estimated one million Uyghurs and other minorities have been subject to ideological indoctrination, surveillance, and systematic repression.¹⁴⁹

As documented by Darren Byler, these policies involve biometric surveillance, compulsory ideological re-education, and stripping of cultural and religious identity, all implemented through penitentiary architecture of so-called re-educational centers.¹⁵⁰ While the Chinese government asserts that such measures are lawful responses to terrorism and poverty, multiple UN bodies and independent experts have identified the campaign as a form of arbitrary detention and cultural erasure.¹⁵¹

The strategic importance of Xinjiang within China’s Belt and Road Initiative further motivates the state to exert strict control over the region and suppress perceived dissent. As a vital gateway to Eurasia, Xinjiang borders eight countries – Mongolia, Russia, Kazakhstan, Kyrgyzstan, Tajikistan, Afghanistan, Pakistan, and India, making it central to China’s plan to enhance trade corridors westward, i.e., trade routes under the Road Initiative.¹⁵²

¹⁴⁶ Eva Pils, ‘China’s Turn to Law as an Instrument of Oppression’ (2018) 20 *Journal of Democracy*, 198.

¹⁴⁷ Human Rights Watch, *Eradicating Ideological Viruses: China’s Campaign of Repression Against Xinjiang’s Muslims* (Report, 9 September 2018).

¹⁴⁸ Eva Pils, ‘China’s Turn to Law as an Instrument of Oppression’ (2018) 20 *Journal of Democracy*.

¹⁴⁹ Darren Byler, *Terror Capitalism: Uyghur Dispossession and Masculinity in a Chinese City* (Duke University Press 2021) pp 45–50.

¹⁵⁰ *ibid*, pp 2-5.

¹⁵¹ OHCHR, *Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China* (31 August 2022); State Council Information Office (PRC), *Vocational Education and Training in Xinjiang* (White Paper, 17 August 2019),

https://english.www.gov.cn/archive/whitepaper/201908/17/content_WS5d57573cc6d0c6695ff7ed6c.html, accessed 26 August 2025; OHCHR, ‘Xinjiang report: China must address grave human rights violations and the world must not turn a blind eye, say UN experts’ (Press Release, 7 September 2022) <https://www.ohchr.org/en/press-releases/2022/09/xinjiang-report-china-must-address-grave-human-rights-violations-and-world>, accessed 26 August 2025; UN Working Group on Arbitrary Detention, *Opinion No 88/2022 (China)*, UN Doc A/HRC/WGAD/2022/88 (adopted 19 September 2022; pub. 20 March 2023) <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session95/A-HRC-WGAD-2022-88-China-AEV.pdf>, p 2, accessed 26 August 2025.

¹⁵² National Development and Reform Commission (NDRC), *Chronicle of Events of the Belt and Road Initiative* (19 August 2021).

It is also rich in energy and agricultural resources, notably coal, gas, and cotton, making the region economically vital. Interest in Xinjiang is perceived by Chinese authorities not only as a domestic security issue, but also as a strategic threat to national development and global trading, leading to erasing all possible repression of the local population.¹⁵³

As aforementioned, since 2016, Xinjiang authorities have implemented a program known as “Physicals for All”. Officially presented as a free annual health check initiative for the population, it in fact involved the systematic collection of biometric and genetic data from millions of residents.¹⁵⁴ HRW reported that Xinjiang government offices, with the participation of the police, gathered DNA samples, fingerprints, iris scans, and blood type data from virtually all residents aged 12 to 65 as part of these compulsory physical exams.¹⁵⁵ People had no ability to opt out, and in many cases were not even informed that their blood drawn at a clinic would be used for DNA sequencing or stored in police databases.¹⁵⁶ The collected biodata, especially DNA profiles and blood types, could potentially have dual use, i.e., Chinese authorities claim it is for crime detection and administrative control, but it would also be immensely facilitate organ donation.¹⁵⁷ By building a genetic database for Uyghurs, any given detained individual’s tissue type could theoretically be matched to a waiting transplant recipient in need of a compatible organ.

There are documented instances of camp inmates being subjected to extensive medical tests without explanation.¹⁵⁸ According to a communication by UN human rights experts, detainees from minority communities in China, including Uyghurs, have been forcibly subjected to blood tests, ultrasounds, X-rays, and other organ examinations, without their consent.¹⁵⁹

¹⁵³ ‘Xinjiang geostrategic importance and China rapid development in the region’ *The Financial Daily* (26 November 2024) <https://thefinancialdaily.com/xinjiang-geostrategic-importance-and-china-rapid-development-in-the-region/>, accessed 26 August 2025.

¹⁵⁴ Human Rights Watch, ‘China: Minority Region Collects DNA from Millions’ (News Release, 13 December 2017) <https://www.hrw.org/news/2017/12/13/china-minority-region-collects-dna-millions>, accessed 26 August 2025.

¹⁵⁵ *ibid.*

¹⁵⁶ *ibid.*

¹⁵⁷ UN Human Rights Office, *China: UN human rights experts alarmed by ‘organ harvesting’ allegations* (14 June 2021) para 3.

¹⁵⁸ Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China (*China Tribunal*), ‘Judgment’ (1 March 2020) (see esp. “Evidence of Medical Testing of Falun Gong Practitioners and Uyghurs”, pages 62-66: routine blood tests, ultrasound, X rays; detainees were not told the purpose), https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf, accessed 26 August 2025; Human Rights Watch, ‘Eradicating Ideological Viruses’: China’s Campaign of Repression Against Xinjiang’s Muslims’ (September 2018) https://www.hrw.org/sites/default/files/report_pdf/china0918_web.pdf, accessed 26 August 2025.

¹⁵⁹ *ibid.*, para 62.

This is strikingly reminiscent of the Falun Gong scenario and heightens suspicions that Xinjiang's internees are being treated as a living organ bank.¹⁶⁰ Indeed, a resolution by the European Parliament in 2022 recorded that detained Uyghurs, Christians, and others are “*frequently arrested without being informed of the reasons, and forcibly subject to medical examinations*”, and that reports of these practices “*have raised significant concerns as to their potential role in supplying a state-sanctioned forced organ transplantation*”.¹⁶¹

Another relevant data point is the continuing short waiting time advertised by some Chinese hospitals for organ transplants, even after the 2015 reforms, measured in days and weeks.¹⁶²

While direct, publicly verifiable evidence of organ harvesting from Uyghurs remains limited, in large because Xinjiang is effectively closed off to independent investigators and experts, the evidence is mounting. In June 2021, a group of UN experts, including the Special Rapporteurs on torture, minority issues, and freedom of religion, went public with a formal statement of alarm, declaring they were “*extremely alarmed*” by credible information that Uyghurs and other minorities may be used as a source of organs.¹⁶³ The experts appealed to the government to allow the independent monitoring by international human rights bodies of Chinese prisons and transplant centres, a call that, to this date, China has not answered.

Chinese authorities claim that the Xinjiang camps are benign vocational training facilities and that any allegations of abuse are fabrications aimed at discrediting China.¹⁶⁴ In 2019, Chinese officials invited a limited delegation of foreign diplomats to select Xinjiang sites in an attempt to counter reports of atrocities, but these highly controlled visits did little to address concerns.¹⁶⁵

¹⁶⁰ European Parliament, ‘*Reports of continued organ harvesting in China*’ (European Parliament resolution of 5 May 2022) P9_TA(2022)0200 (2022/2657(RSP)), pts D, I. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022IP0200>, accessed 26 August 2025.

¹⁶¹ *ibid.*

¹⁶² American Public Health Association, ‘Building a Public Health Response to Organ Transplant Abuse in China’ (Policy Statement, 23 October 2020; posted 13 January 2021), [4]–[5], <https://www.apha.org/policy-and-advocacy/public-health-policy-briefs/policy-database/2021/01/13/building-a-public-health-response-to-organ-transplant-abuse-in-china>, accessed 26 August 2025.

¹⁶³ OHCHR, ‘China: UN human rights experts alarmed by “organ harvesting” allegations’ (Press Release, 14 June 2021) <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations>, accessed 26 August 2025.

¹⁶⁴ Al Jazeera, ‘Leaked Chinese documents show details of Xinjiang crackdown: NYT’ (18 November 2019) <https://www.aljazeera.com/news/2019/11/18/leaked-chinese-documents-show-details-of-xinjiang-crackdown-nyt>, accessed 26 August 2025.

¹⁶⁵ Frederik Kelter, ‘China targets friendly media, diplomats to “tell story of Xinjiang”’ *Al Jazeera* (2 January 2024) <https://www.aljazeera.com/news/2024/1/2/china-targets-friendly-media-diplomats-to-tell-story-of-xinjiang>, accessed 26 August 2025.

Crucially, China has refused to grant unfettered access to Xinjiang for UN investigators or independent medical experts. The OHCHR was only permitted a brief, constrained visit in May 2022, which fell short of unfettered or sustained mission access.¹⁶⁶ In August 2022, the OHCHR published its landmark Xinjiang report, concluding that the extent of arbitrary detention, discrimination and surveillance may constitute crimes against humanity.¹⁶⁷ The report also highlighted that access to credible information remained limited, and that reprisals against activists and witnesses continued to obstruct independent monitoring efforts.¹⁶⁸

Chapter III – Forced organ harvesting Under IHRL

3.1 International Human Rights Framework applicable to forced organ harvesting

China's obligations concerning forced organ harvesting derive from multiple sources of IHRL. The core frameworks include ICCPR,¹⁶⁹ CAT,¹⁷⁰ customary international law,¹⁷¹ and *ius cogens* norms,¹⁷² as well as interpretative guidance from the VCLT.¹⁷³

Although China has not ratified the ICCPR, it is a signatory (as of 1998) and thus bound under Article 18 of VCLT, i.e., “*to refrain from acts which would defeat the object and purpose*” of the ICCPR.¹⁷⁴

¹⁶⁶ Amnesty International, ‘China: UN human rights chief must seize critical opportunity to address crimes against humanity in Xinjiang’ (Press Release, 23 May 2022) <https://www.amnesty.org/en/latest/news/2022/05/un-visit-china-uyghur/>, accessed 26 August 2025.

¹⁶⁷ International Service for Human Rights, ‘Two years after Xinjiang findings, UN rights chief reports “limited access to information”, “reprisals” against activists’ (News, 27 August 2024) <https://ishr.ch/latest-updates/china-two-years-after-xinjiang-findings-un-rights-chief-reports-limited-access-to-information-reprisals-against-activists/>, accessed 26 August 2025.

¹⁶⁸ *ibid.*

¹⁶⁹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

¹⁷⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

¹⁷¹ International Law Commission, ‘Draft conclusions on identification of customary international law, with commentaries’ (2018) https://legal.un.org/ilc/texts/instruments/english/commentaries/1_13_2018.pdf accessed 4 September 2025.

¹⁷² International Law Commission, ‘Draft conclusions on peremptory norms of general international law (*ius cogens*), with commentaries’ (2022) UN Doc A/77/10 https://legal.un.org/ilc/texts/instruments/english/commentaries/1_14_2022.pdf accessed 4 September 2025.

¹⁷³ Vienna Convention on the Law of Treaties (concluded 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 31–33.

¹⁷⁴ United Nations Treaty Collection, ‘International Covenant on Civil and Political Rights (IV-4) – Status’ (accessed 27 August 2025), https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=en&mtdsg_no=iv-4&src=ind; Vienna Convention on the Law of Treaties (concluded 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 18.

The ICCPR's object and purpose include the protection of fundamental rights such as the right to life, and the prohibition of torture, and China's alleged policy of executing prisoners of conscience for organ removal blatantly contravenes those core aims.¹⁷⁵ In addition, many of the rights in ICCPR are widely accepted as part of customary international law, binding on all states regardless of treaty ratification.¹⁷⁶ China is also a State Party to the CAT (as of 1988),¹⁷⁷ which imposes explicit, legally binding duties to prevent, criminalise and punish acts of torture and cruel, inhuman or degrading treatment.¹⁷⁸

Importantly, the prohibitions on arbitrary deprivation of life and on torture are not only treaty-based but also have peremptory character under international law.¹⁷⁹ A peremptory norm (*ius cogens*) is one from which no derogation is permitted.¹⁸⁰ The absolute ban on torture is universally recognised as *ius cogens*.

As the ICTY observed, the prohibition of torture “*has become one of the most fundamental standards of the international community,*” so much so that any law or act authorising torture is void ab initio.¹⁸¹ The obligation to respect the right to life likewise holds *erga omnes* character, meaning it is owed to the international community as a whole, and arbitrary killings (especially on a widespread, systematic scale) violate norms that permit no exception. In practical terms, this means China cannot justify or exempt itself from these obligations by invoking domestic law, state sovereignty, internal security, or any other rationale.¹⁸² Even in times

¹⁷⁵ International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 6–7.

¹⁷⁶ UN Human Rights Committee, *General Comment No 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant* UN Doc CCPR/C/21/Rev.1/Add.6 (4 November 1994) paras 8, 25 <https://hrlibrary.umn.edu/gencomm/hrcom24.htm>, accessed 26 August 2025.

¹⁷⁷ United Nations Treaty Collection, ‘CAT (IV-9): China—Ratification 4 October 1988; entry into force 3 November 1988’ <https://treaties.un.org/pages/showdetails.aspx?objid=080000028003d679>, accessed 26 August 2025.

¹⁷⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (arts 2, 4, 12–13, 16).

¹⁷⁹ UN Human Rights Committee, *General Comment No 29: States of Emergency (article 4)*, UN Doc CCPR/C/21/Rev.1/Add.11 (31 August 2001) para 11 (recognising the peremptory nature of some fundamental rights incl. arts 6–7) https://www.rulac.org/assets/downloads/General_Comment_29.pdf, accessed 27 August 2025.

¹⁸⁰ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 53.

¹⁸¹ *Prosecutor v Furundžija* (Trial Chamber Judgment) ICTY-95-17/1-T (10 December 1998) paras 153–156.

¹⁸² International Law Commission, *Draft conclusions on peremptory norms of general international law (ius cogens)*, with commentaries (2022) concls 17–18 https://legal.un.org/ilc/texts/instruments/english/draft_articles/1_14_2022.pdf, accessed 27 August 2025

of emergency, or armed conflict, human rights law forbids derogation from the right to life and the ban on torture, and *ius cogens* norms bind all states at all times.¹⁸³

In particular, the right to life and the prohibition of torture and other cruel and degrading treatment are the pivotal human rights norms implicated by forced organ harvesting, and they must be analysed as a tandem, as the conduct in question arguably violates both.

3.2 The right to life: Scope of obligations and breach by forced organ harvesting

Article 6 of the ICCPR provides that “Every human being has the inherent right to life” and that this rights “shall be protected by law” and “no one shall be arbitrarily deprived of life”.¹⁸⁴ Even though China has not ratified ICCPR, this fundamental right is also affirmed in Article 3 of the UDHR, and it is widely regarded as a core customary norm obliging all states to respect human life.¹⁸⁵

IHRL interprets the right to life broadly as the “supreme right” underpinning all other rights.¹⁸⁶ States must not only refrain from unlawful killings, but also affirmatively protect life. The HRC and jurisprudence have elaborated that the right to life imposes a tripartite obligation on states: to respect, protect, and fulfil the right to life.¹⁸⁷

The obligation to respect requires the state itself to refrain from unjustly taking life. This includes prohibiting extrajudicial, summary, or arbitrary executions by state agents. China is bound not to carry out killings, except in accordance with the law, and even then, only under

¹⁸³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 4(2) (no derogation from arts 6–7, incl. the right to life and prohibition of torture), *Prosecutor v Furundžija* (Trial Chamber Judgment) ICTY-95-17/1-T (10 December 1998) para 146.

¹⁸⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 6(1)–(2).

¹⁸⁵ United Nations Treaty Collection, ‘International Covenant on Civil and Political Rights (IV-4) – Status’ (accessed 27 August 2025), https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=en&mtdsg_no=iv-4&src=ind; UPR-Info Annex noting ‘ICCPR: China (signature, 1998)’, https://upr-info.org/sites/default/files/country-document/2024-01/A_HRC_WG.6_45_CHN_2_China_Annex_EN.pdf, accessed 27 August 2025; Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) art 3.

¹⁸⁶ Human Rights Committee, ‘General Comment No 36: Article 6 (Right to Life)’ (30 October 2018) CCPR/C/GC/36, paras 2, 7, 21–26, <https://www.refworld.org/legal/general/hrc/2019/en/123145>, accessed 27 August 2025.

¹⁸⁷ Human Rights Committee, ‘General Comment No 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ (26 May 2004) CCPR/C/21/Rev.1/Add.13, paras 6–8, 10, <https://www.refworld.org/legal/general/hrc/2004/en/52451>, accessed 27 August 2025.

strict conditions (e.g., death penalty only for the “most serious crimes” after full due process, as specified in ICCPR, art. 6(2)).¹⁸⁸

In the context of forced organ harvesting, China (through prison authorities, security forces, or surgeons acting on official orders) is itself allegedly killing detainees to harvest organs. Such deliberate killing of individuals in custody, without legal basis or due process, would amount to the paradigm case of an arbitrary deprivation of life.¹⁸⁹ International bodies have explicitly characterised “*the killing of detained religious or political prisoners for the purpose of selling their organs*” as an “*egregious and intolerable violation of the fundamental right to life*.”¹⁹⁰ China’s conduct therefore plainly breaches the duty to respect the right to life, as it is the state itself orchestrating the lethal harm.¹⁹¹

The obligation to protect requires the state to safeguard people from being killed by others, by exercising due diligence, for example, by enacting and enforcing criminal laws against murder, and by investigating potentially unlawful deaths.¹⁹² Even if one were to assume that organ harvesting killings were perpetrated by officials or criminal networks without high-level authorisation, China would still be obliged to prevent, investigate, and punish such acts.¹⁹³ In reality, however, the allegations point to state policy and institutional involvement in organ harvesting.¹⁹⁴

China’s failure to protect the victims is manifest in the fact that it is the ultimate orchestrator of the harm. Moreover, China has failed to investigate or ensure accountability for organ har-

¹⁸⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 6(2); Human Rights Committee, ‘*General Comment No 36: Article 6 (Right to Life)*’ (30 October 2018) CCPR/C/GC/36, paras 35-36, <https://www.refworld.org/legal/general/hrc/2019/en/123145>, accessed 27 August 2025.

¹⁸⁹ European Parliament, *Joint Motion for a Resolution on Organ Harvesting in China* (11 December 2013) RC-B7-0562/2013, recitals B, F, https://www.europarl.europa.eu/doceo/document/RC-7-2013-0562_EN.html, accessed 27 August 2025.

¹⁹⁰ *ibid*, recital G; European Parliament, *Reports of continued organ harvesting in China* (Resolution of 5 May 2022) P9_TA(2022)0200 (2022/2657(RSP)), recital F https://www.europarl.europa.eu/doceo/document/TA-9-2022-0200_EN.html, accessed 27 August 2025.

¹⁹¹ Human Rights Committee, *General Comment No 36: Article 6 (Right to Life)* (30 October 2018) CCPR/C/GC/36, paras 6–12 (state duty to respect; arbitrariness), <https://www.refworld.org/legal/general/hrc/2019/en/123145>, accessed 27 August 2025.

¹⁹² *ibid*, paras 27, 28.

¹⁹³ *ibid*.

¹⁹⁴ Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China (*China Tribunal*), ‘Judgment’ (1 March 2020) (findings on systematic, state-linked practice), https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf, accessed 01 September 2025; European Parliament, *Reports of continued organ harvesting in China* (Resolution of 5 May 2022) P9_TA(2022)0200, citing the China Tribunal and expressing concern about state involvement <https://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX%3A52022IP0200>, accessed 27 August 2025..

vesting deaths. Indeed, it denies the allegations and punishes whistle-blowers, thereby breaching the protective duty which requires impartial investigation of suspicious deaths and holding perpetrators accountable.¹⁹⁵

The obligation to fulfil entails taking positive measures to facilitate and promote life, such as establishing effective legal frameworks, institutions, and safeguards to prevent arbitrary killings and other human rights violations. In the ICCPR, this is captured by the requirement to “ensure” the rights recognised (ICCPR, art. 2(1)).¹⁹⁶ In practice, the obligation to fulfil the right to life, for example, could include ensuring transparency in the death penalty system, monitoring places of detention, and allowing independent scrutiny to prevent abuses. China’s secretive transplantation system, with a lack of transparency or independent oversight, contravenes this aspect.¹⁹⁷

3.3 The prohibition of Torture, and Cruel, Inhuman or Degrading Treatment

Parallel to the right to life, the practice of forced organ harvesting implicates the absolute prohibition of torture and cruel, inhuman, or degrading treatment or punishment. Article 7 of the ICCPR categorically states that “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*”¹⁹⁸ Unlike some other rights, this prohibition admits no exceptions or derogations, it protects all individuals, including prisoners.¹⁹⁹ China, by virtue of having signed the ICCPR and ratified CAT, is obliged to uphold this norm. Moreover, the prohibition of torture is universally binding as a matter of custom and *ius cogens*.²⁰⁰

¹⁹⁵ Committee against Torture, *Concluding observations on the fourth periodic report of China* (12 December 2008) CAT/C/CHN/CO/4, para 25, <https://hrlibrary.umn.edu/cat/observations/china2008.html>, accessed 27 August 2025; OHCHR, ‘China: UN human rights experts alarmed by “organ harvesting” allegations’ (Press Release, 14 June 2021) (urging transparency, independent monitoring and accountability) <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations>, accessed 27 August 2025; International Service for Human Rights, ‘Two years after Xinjiang findings, UN rights chief reports “limited access to information”, “reprisals” against activists’ (News, 27 August 2024) (noting reprisals and denial/obstruction) <https://ishr.ch/latest-updates/china-two-years-after-xinjiang-findings-un-rights-chief-reports-limited-access-to-information-reprisals-against-activists/>, accessed 27 August 2025.

¹⁹⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 2(1).

¹⁹⁷ Torsten Trey and others, ‘Transplant Medicine in China: Need for Transparency and International Scrutiny Remains’ (2016) 16 *American Journal of Transplantation* 3115, <https://pmc.ncbi.nlm.nih.gov/articles/PMC5096240/>, accessed 27 August 2025.

¹⁹⁸ International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 7.

¹⁹⁹ *ibid.*, art 4(2).

²⁰⁰ United Nations Treaty Collection, ‘International Covenant on Civil and Political Rights (IV-4): Status—China (signature)’ https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=en&mtldsg_no=iv-4&src=ind, accessed 27 August 2025; United Nations Treaty Collection, ‘Convention against Torture (IV-9): China—ratification 4 October 1988; EIF 3 November 1988’

CAT provides the authoritative definition of torture in its Article 1. Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for certain purposes, such as obtaining information or a confession, punishing them, intimidating or coercing them, or for any reason based on discrimination, when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of a public official or person acting in an official capacity.²⁰¹

Several elements of this definition are notable: 1) it encompasses both physical and mental pain or suffering, 2) it requires intentional infliction, 3) it must involve some purpose like those listed (which are broad, including intimidation and discrimination), and 4) it is limited to conduct involving government officials (directly or indirectly). Additionally, even if an abusive act does not meet the strict definition of “torture” (for example, lacking a specific purpose), it may still constitute cruel, inhuman or degrading treatment under IHRL, which likewise is prohibited (CAT, art 16, ICCPR art. 7).²⁰² Crucially, under CAT Article 2(2), “*No exceptional circumstances whatsoever (whether a state of war, internal instability, or other public emergency) may be invoked to justify torture*”, and Article 2(3) rejects any defence of superior orders.²⁰³ Thus, even if Chinese officials argued that national security or prison regulations necessitated such harsh measures, it would be absolutely impermissible in law.

Applying these principles, there is a strong basis to conclude that forced organ harvesting involves torture or other cruel, inhuman treatment of the victims, both before and during the act of organ extraction. The victims endure extreme physical agony and mental terror as part of the organ procurement process. Reports indicate that detainees are subject to repeated medical tests without any consent, effectively to assess their organs’ suitability.²⁰⁴ These practices

<https://treaties.un.org/pages/showdetails.aspx?objid=080000028003d679>, accessed 27 August 2025; International Law Commission, *Draft conclusions on identification and legal consequences of peremptory norms of general international law (ius cogens), with commentaries* (2022), https://legal.un.org/ilc/texts/instruments/english/commentaries/1_14_2022.pdf, accessed 27 August 2025.

²⁰¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 1.

²⁰² *ibid*, art 16, International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 7.

²⁰³ *ibid*, art 2(2)-(3).

²⁰⁴ Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China (*China Tribunal*), ‘Judgment’ (1 March 2020) pp 62–66 (evidence of medical testing; organ procurement practices) https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf, accessed 01 September 2025; OHCHR, ‘China: UN human rights experts alarmed by “organ harvesting” allegations’ (Press Release, 14 June 2021) <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations>, accessed 27 August 2025.

allegedly occur alongside brutal custody conditions that involve torture and abuse, aimed at breaking their will, as documented in the persecution of Falun Gong practitioners and Uyghur Muslims.²⁰⁵

3.3.1 Intentional infliction of severe pain

The act of harvesting organs itself (especially if done from living prisoners or shortly after executing them) inflicts excruciating physical pain. Eyewitness accounts and tribunal findings have suggested that, in some cases, organs were removed from prisoners who were not fully anesthetized or who were killed by the organ removal procedure itself, effectively being dissected alive.²⁰⁶

Even if a prisoner is first executed (e.g., by a gunshot or lethal injection) before organ removal, the overall process surrounding their execution can amount to torture.²⁰⁷ Execution followed by organ removal indeed does not immunise the surrounding conduct from the prohibition of torture. International bodies assessed the totality of the treatment and concluded that prolonged fear and anguish on death row, secrecy around timing, the medicalised choreography of execution, and methods risking acute suffering can cumulatively meet the threshold of torture or inhuman treatment. The ECtHR has recognised the “death-row phenomenon” as inhuman, HRC has, also, condemned painful or degrading executions and the UN Special Rapporteur on Torture has stressed that all execution practices must comply with the absolute ban on torture.²⁰⁸

²⁰⁵ Human Rights Watch, *Eradicating Ideological Viruses”: China’s Campaign of Repression Against Xinjiang’s Muslims* (9 September 2018) <https://www.hrw.org/report/2018/09/10/eradicating-ideological-viruses/chinas-campaign-repression-against-xinjiangs-muslims>, accessed 27 August 2025; Amnesty International, *‘Like We Were Enemies in a War’: China’s Mass Internment, Torture, and Persecution of Muslims in Xinjiang* (5 June 2021) <https://www.amnesty.org/en/documents/asa17/4137/2021/en/>, accessed 27 August 2025.

²⁰⁶ Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China (China Tribunal), Judgment (1 March 2020) 149–150 (conclusions on medical testing and organ supply), and witness evidence at 210–269 & 316–343 (blood tests/ultrasound without explanation), https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf, accessed 01 September 2025; Matthew P Robertson and Jacob Lavee, ‘Execution by organ procurement: Breaching the dead donor rule in China’ (2022) 22 *American Journal of Transplantation* 1804–1812 <https://pubmed.ncbi.nlm.nih.gov/35377533/>, accessed 27 August 2025 (finding cases where heart removal was the proximate cause of death), accessed 25 August 2025.

²⁰⁷ *Soering v United Kingdom* App no 14038/88 (ECtHR, 7 July 1989) (death-row phenomenon and Article 3), paras 92, concurring opinion of Judge DeMeyer; *Chitat Ng v Canada* (Human Rights Committee) Communication No 469/1991, UN Doc CCPR/C/49/D/469/1991 (7 January 1994) paras 16.2, 16.4; UN Special Rapporteur on Torture, *Interim report* (9 August 2012) UN Doc A/67/279 (methods and practices surrounding executions must comply with the absolute prohibition of torture) <https://docs.un.org/en/A/67/279>, accessed 09 September 2025.

²⁰⁸ *ibid.*

By the same logic, a secret policy whereby detainees live with the knowledge that they may be killed at any moment for their organs, or see fellow prisoners taken away to be organ harvested, creates a state of constant psychological terror. This *intentionally inflicted mental suffering satisfies* the definition of torture (inflicted to intimidate or coerce the group or based on discrimination against them for their religion/ethnicity).²⁰⁹ The UN Special Rapporteur on Torture and the UN Committee Against Torture have indeed expressed grave concern that the allegations of organ harvesting from prisoners in China, if true, represent torture or ill-treatment, and they have called on China to ensure accountability and transparency and to punish those responsible.²¹⁰

3.3.2 Purpose and discrimination

The purposes being forced organ harvesting aligns with those listed in the CAT definition.²¹¹ Evidence suggests that the victims were being targeted for any reason based on discrimination (one of CAT's enumerated purposes), including religion or ethnicity.²¹² They were killed because of their religious or ethnic identity. Additionally, the practice is used to punish prisoners of conscience for their disfavoured beliefs, and to intimidate and coerce both the individuals and their communities, purposes that satisfy the *purpose* element of torture under CAT.²¹³ Even if profit were a primary motive (supplying organs for transplant tourism), the discriminatory selection of victims and the involvement of officials would still categorise the abuse as torture, and the prohibited purpose need not be the only or predominant motive.²¹⁴ At the very least, it is inhuman and degrading treatment within the meaning of CAT Article 16, as it utterly disregards the dignity and bodily integrity of the victims, treating them as expendable

²⁰⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 1 (mental suffering, purposes incl. intimidation and discrimination; public-official involvement).

²¹⁰ OHCHR, 'China: UN human rights experts alarmed by "organ harvesting" allegations' (Press Release, 14 June 2021) <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations>, accessed 27 August 2025; Committee against Torture, *Concluding observations on the fourth periodic report of China* (12 December 2008) UN Doc CAT/C/CHN/CO/4, para 25 (noting allegations of transplants from Falun Gong detainees and calling for clarification and investigation) <https://hrlibrary.umn.edu/cat/observations/china2008.html>, accessed 27 August 2025.

²¹¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT) art 1.

²¹² European Parliament, 'Reports of continued organ harvesting in China' P9_TA(2022)0200 (5 May 2022) https://www.europarl.europa.eu/doceo/document/TA-9-2022-0200_EN.html accessed 27 August 2025.

²¹³ Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China (China Tribunal), Judgment (1 March 2020), https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf, accessed 01 September 2025.

²¹⁴ *Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (Appeal Judgment) ICTY-96-23 & 23/1-A (12 June 2002) paras 138–154.

means to harvest organs.²¹⁵ In the end, certain research indicates that, in some cases, organ removal itself was the proximate cause of donors' deaths, underscoring the severity of the abuse.²¹⁶

3.3.3 State involvement

All available information points to the involvement of China and its actors, police, prison wardens, doctors in state or military hospitals, and court or security officials, either directly performing the organ removal or by facilitating it.²¹⁷

On the evidence, the Tribunal found beyond a reasonable doubt that this is a state-sanctioned or, at least, state-acquiesced practice, not random criminality,²¹⁸ a conclusion also noted by the European Parliament.²¹⁹ Under CAT, torture is engaged where public officials commit, instigate, consent to, or acquiesce in such acts, whereas acquiesce includes situations in which authorities knew or ought to have known and failed to exercise due diligence to prevent, investigate, or punish the perpetrators.²²⁰

Given these factors, forced organ harvesting would qualify as an act of torture in many, if not most, cases. Where one was to argue that the full definition of torture is not met (e.g., instantaneous death or lack of a specific "purpose"), the conduct would still amount to cruel or in-

²¹⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 16.

²¹⁶ Matthew P Robertson and Jacob Lavee, 'Execution by organ procurement: Breaching the dead donor rule in China' (2022) 22(7) *American Journal of Transplantation* 1804–1812, doi:10.1111/ajt.16969. Open-access summary: <https://pubmed.ncbi.nlm.nih.gov/35377533/> accessed 27 August 2025.

²¹⁷ US House of Representatives, *H.Res 343* (114th Congress, agreed to 13 June 2016) 'Expressing concern regarding persistent and credible reports of systematic, state-sanctioned organ harvesting ...', preambular clauses (implicating 'domestic security services and military hospitals'). <https://www.congress.gov/bills/114/congress/house-resolution/343/text> accessed 27 August 2025; European Parliament, 'European Parliament resolution of 5 May 2022 on the reports of continued organ harvesting in China' (2022/2657(RSP)), P9_TA(2022)0200', esp recitals H–L and points 1, 5–6 (state-sanctioned; families prevented from claiming bodies). https://www.europarl.europa.eu/doceo/document/TA-9-2022-0200_EN.html accessed 27 August 2025.

²¹⁸ Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China (China Tribunal), Judgment (1 March 2020) paras 479–481.

https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf, accessed 01 September 2025.

²¹⁹ European Parliament, 'European Parliament resolution of 5 May 2022 on the reports of continued organ harvesting in China' (2022/2657(RSP)), P9_TA(2022)0200', esp recitals H–L and points 1, 5–6 (state-sanctioned; families prevented from claiming bodies). https://www.europarl.europa.eu/doceo/document/TA-9-2022-0200_EN.html accessed 27 August 2025.

²²⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, arts 1, 1, 16; Committee against Torture, 'General Comment No 2: Implementation of Article 2 by States Parties' (24 January 2008) UN Doc CAT/C/GC/2, paras 17–18 <https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcgc2-general-comment-no-2-2007-implementation>, accessed 27 August 2025.

human treatment, given the fact that under the ICCPR, ill-treatment need not be inflicted for a specific “purpose”, and what matters is severity and official involvement.²²¹

From all above mentioned, even when the full torture definition is disputed, the practice constitutes cruel and degrading treatment, and arbitrary deprivation of life, and the concealment of fate and mishandling of remains also inflict independent Article 3 harms on relatives. Taken together, these findings trigger the strongest duties under international law, i.e., prevention, investigation, accountability, and effective remedy for victims and their families.

3.4 Organ removal after execution: Torture or Ill-Treatment of the deceased?

A nuanced question arises when organs are harvested *after* a victim has been executed (i.e., post-mortem removal). If a prisoner is first put to death (for example, by lethal injection or gunshot), and then their organs are removed, can this still amount to torture or cruel, inhuman, or degrading treatment under international law?

Torture, by definition, entails the infliction of severe pain or suffering upon a *living* person, one who can experience that pain.²²² Once a person has died, they are no longer a sentient rights-holder capable of suffering.²²³ Accordingly, removing organs from the corpse does not inflict severe pain or suffering on that individual. In strict terms, one cannot torture a dead body. Therefore, organ procurement that occurs entirely post-mortem would not constitute torture *vis-à-vis* the deceased, since the essential element of a victim’s suffering is absent.²²⁴ This point is reflected in the CAT’s definition of torture, which presupposes a living victim (a person), and does not speak to treatment of remains.²²⁵

However, the analysis does not end there. While the deceased prisoner cannot personally experience ill-treatment, such practice can implicate other human rights considerations and may

²²¹ UN Human Rights Committee, *General Comment No 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)* (10 March 1992), para 4 (Article 7 contains no ‘purpose’ requirement; focus on severity/official responsibility). <https://www.refworld.org/legal/general/hrc/1992/en/11086> accessed 27 August 2025.

²²² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 1.

²²³ OHCHR, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Rev 2, 2022) HR/P/PT/8/Rev.2 (definition premised on pain/suffering inflicted “on a person”) https://www.ohchr.org/sites/default/files/documents/publications/2022-06-29/Istanbul-Protocol_Rev2_EN.pdf accessed 27 August 2025.

²²⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 1.

²²⁵ *ibid*; APT (Association for the Prevention of Torture), ‘*What is torture?*’ (CAT art 1 quotation; scope limited to acts against a person) <https://www.apr.ch/torture-prevention/what-torture> accessed 27 August 2025.

still be deemed cruel and degrading in a broader sense, particularly with regard to the dignity of the dead and the suffering of family members.²²⁶

IHRL increasingly recognises that the way a body is handled after execution can engage the rights of others or offend the inherent dignity owed to all humans. In addition, the treatment of victims' remains and the secrecy surrounding their fate raise further human rights concerns. Reports indicate that families are prevented from claiming bodies or learning the truth about the cause of death, which then leads to the state's obligation to respect and protect the bodies of the deceased and the rights of relatives to truth, mourning, and justice.²²⁷

The ECtHR has likewise held that official concealment of a loved one's fate can amount to inhuman treatment of family members.²²⁸ The doctrine crystallised in disappearance case law, i.e., the essence of an Article 3 violation for family members lies in the authorities' reactions and attitudes, when relatives seek the truth, not only in the underlying violation against the disappeared person.²²⁹

In assessing such claims, the ECtHR looks to the closeness of the family tie, the duration and intensity of uncertainty and anguish, the relative's involvement in efforts to obtain information, and whether the authorities' response was indifferent, obstructive, or dismissive.²³⁰

²²⁶ Human Rights Committee, 'General Comment No 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life' (30 October 2018) UN Doc CCPR/C/GC/36, para 56, <https://www.refworld.org/legal/general/hrc/2019/en/123145>, accessed 27 August 2025; OHCHR, *Minnesota Protocol on the Investigation of Potentially Unlawful Death* (2016) (recognising post-mortem obligations to dignity and to families), paras 26–30 <https://www.ohchr.org/en/publications/reference-publications/minnesota-protocol-investigation-potentially-unlawful-death> accessed 27 August 2025.

²²⁷ European Parliament, 'European Parliament resolution of 5 May 2022 on the reports of continued organ harvesting in China (2022/2657(RSP)), P9_TA(2022)0200', esp recitals H–L and points 1, 5–6 (state-sanctioned; families prevented from claiming bodies). https://www.europarl.europa.eu/doceo/document/TA-9-2022-0200_EN.html accessed 27 August 2025; OHCHR, 'Protection and dignified management of the dead in war and peace are cornerstones of human dignity' (Press release, 26 June 2024). <https://www.ohchr.org/en/press-releases/2024/06/protection-and-dignified-management-dead-war-and-peace-are-cornerstones>, accessed 27 August 2025; OHCHR, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death* (2016) para 8(a)(b)(c), (duty to protect remains; rights of families to information and truth). <https://humanrightscommission.house.gov/sites/evo-sub-sites/humanrightscommission.house.gov/files/documents/MinnesotaProtocolInvestigationPotentiallyUnlawfulDeath2016%281%29.pdf> accessed 27 August 2025.

²²⁸ *Cyprus v Turkey* (ECtHR) (Grand Chamber, App no 25781/94, 10 May 2001) paras 154–158.

²²⁹ European Court of Human Rights, *Guide on Article 3 of the Convention – Prohibition of torture* (updated 28 February 2025) pt 2, p 17, https://ks.echr.coe.int/documents/d/echr-ks/guide_art_3_eng, accessed 27 August 2025.

²³⁰ *ibid*, paras 60, 61.

This is not automatic; however, where prolonged uncertainty is coupled with official stonewalling, the threshold is met.²³¹

Applying this framework, the ECtHR consistently finds continuing ECHR Article 3 violations, where state silence leaves families in prolonged anguish. For example, in *Imkayeva v Russia*, the ECtHR stressed that denying access to investigation files that could shed light on the fate of a disappeared family member aggravated the suffering and breached ECHR Article 3.²³²

The principle extends to the treatment of bodies and remains. While a corpse is not itself a bearer of Article 3 rights, the handling of remains can violate ECHR Article 3 in respect to other relatives, for example, when a parent is presented with a mutilated body, or where dismembered remains prevent burial with dignity.²³³

The UN HRC has noted, for example, that even when the deprivation of life is not arbitrary, failure to provide relatives with information on the circumstances of the death of an individual may violate their rights under ICCPR Article 7 (prohibition of ill-treatment), as could failure to inform them of the location of the body.²³⁴

In its General Comment No. 36 on the right to life, the HRC went further, stating that the authorities must inform the family of the date of execution, and must be able to receive back the remains.²³⁵ Such failures have been deemed to cause mental anguish to families, potentially amounting to inhuman or degrading treatment of the relatives.

In the context of China, there have been reports that executed prisoners' bodies, or ashes, are not returned to families, especially when organs have been removed, leading often to authorities citing "state secrets", or simply refusing to hand over the remains.²³⁶

²³¹ *Çakıcı v Turkey* [GC] App no 23657/94 (ECtHR, 8 July 1999), conclusion (violation) - (no automatic Article 3 victim status for relatives).

²³² *Imkayeva v Russia* App no 7615/02 (ECtHR, 9 November 2006) para 165 (denial of access to files exacerbating suffering).

²³³ *Khadzhaliyev and Others v Russia* App no 3013/04 (ECtHR, 17 November 2008) paras 121,122 (inability to bury dismembered/decapitated bodies properly).

²³⁴ Human Rights Committee, 'General Comment No 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life' (30 October 2018) UN Doc CCPR/C/GC/36, para 60. <https://www.refworld.org/legal/general/hrc/2019/en/123145>, accessed 27 August 2025.

²³⁵ *ibid*, para 44.

²³⁶ Amnesty International, *China's Deadly Secrets: Illegal use of state secrecy to obscure the death penalty* (2017) Index ASA 17/5849/2017 <https://www.amnesty.org/en/documents/asa17/5849/2017/en/> accessed 27

Thus, while the dead prisoner cannot be tortured in legal terms, the treatment of their bodies can implicate the ICCPR Article 7 rights of family members or others, constituting degrading treatment in their regard. Depriving a family of the opportunity to bury their loved ones has been condemned by human rights mechanisms as an affront to human dignity and a potential violation of the prohibition on ill-treatment.²³⁷

Additionally, if the execution itself was carried out in a perfidious manner, for instance, if the prisoner was executed in a way specifically designed to preserve organs, this blurs the line between execution and torture.²³⁸ There is evidence that in some cases, prisoners in China were killed by the very act of organ removal, i.e., they were not truly dead at the start of the harvesting procedure.²³⁹ In those instances, the ostensible execution merges with torture, since the cause of death is the organ removal itself (a process undoubtedly causing extreme agony).²⁴⁰

This scenario would squarely be torture leading to death, rather than a post-mortem issue.²⁴¹ But assuming a scenario where the execution was a separate act carried out in accordance with domestic procedure, and only afterwards are organs taken, the primary human rights violation lies in the deprivation of life, and in the violation of dignity and religious rights associated with handling the body.²⁴² From the perspective of international standards, the removal

August 2025; Human Rights Watch, *Organ Procurement and Judicial Execution in China* (1 August 1994) (documenting immediate cremation and non-return of bodies of executed prisoners), pt 5, <https://www.hrw.org/report/1994/08/01/organ-procurement-and-judicial-execution-china> accessed 27 August 2025.

²³⁷ Human Rights Committee, ‘General Comment No 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life’ (30 October 2018) UN Doc CCPR/C/GC/36, para 56 <https://www.refworld.org/legal/general/hrc/2019/en/123145>, accessed 27 August 2025.

²³⁸ Human Rights Watch, *Organ Procurement and Judicial Execution in China* (1 August 1994) sec VIII (‘The Process of Execution and Organ Removal’) <https://www.hrw.org/report/1994/08/01/organ-procurement-and-judicial-execution-china> accessed 27 August 2025.

²³⁹ Matthew P Robertson and Jacob Lavee, ‘Execution by organ procurement: Breaching the dead donor rule in China’ (2022) 22(7) *American Journal of Transplantation* 1804, 1808–10 <https://doi.org/10.1111/ajt.16969> (finding 71 reports in which the removal of the heart “must have been the proximate cause of the donor’s death”), accessed 27 August 2025.

²⁴⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 1 (defining torture as the intentional infliction of severe pain or suffering on a person), OHCHR, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (rev edn, 29 June 2022).

²⁴¹ Ibid [fn 283].

²⁴² Human Rights Committee, ‘General Comment No 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life’ (30 October 2018) UN Doc CCPR/C/GC/36, para 56 <https://www.refworld.org/legal/general/hrc/2019/en/123145>, accessed 27 August 2025.

of organs after execution is considered an affront to human rights and medical ethics, although one that is not easily classified as torture of the deceased.²⁴³

3.5 Organ removal after death and the Right to Life – Post-Mortem considerations

When examining forced organ harvesting in a situation where the victim has been executed first, it is necessary to disentangle the violation of the right to life from subsequent actions taken upon the body. The right to life, protected under Article 6 ICCPR and customary law, is the most fundamental right, and it obliges states not to arbitrarily deprive anyone of life.²⁴⁴

If a prisoner is executed for the purpose of harvesting organs or in a manner not consistent with international law, that execution itself is likely an arbitrary deprivation of life. For example, executing prisoners of conscience or using the death penalty for non-serious offences, or without due process, all render the killing “arbitrary” and unlawful.²⁴⁵ Any executions carried out in such circumstances violate the right to life. Even under China’s formal legal system, if prisoners sentenced to death are executed in greater numbers or at specific times to supply organs (e.g., timed around transplant demands), this would contravene the strict requirement that the death penalty be applied only for “most serious crimes” and in exceptional cases.²⁴⁶

Executions for organ procurement inherently fail this test; they serve for the purpose of extracting organs, and often target individuals on discriminatory grounds, making them *ipso facto arbitrary and unlawful*. Thus, the very act of executing someone to harvest organs is an egregious violation of the right to life.²⁴⁷

²⁴³ OHCHR ‘Belarus: UN Human Rights Committee condemns execution’ (11 March 2022) <https://www.ohchr.org/en/press-releases/2022/03/belarus-un-human-rights-committee-condemns-execution> accessed 27 August 2025; World Medical Association, ‘WMA Resolution on Organ Donation in Prisoners’ (originally adopted May 2006; revised and adopted October 2024) para 19, <https://www.wma.net/policies-post/wma-resolution-on-organ-donation/> accessed 27 August 2025.

²⁴⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

²⁴⁵ Human Rights Committee, ‘General Comment No 36, Article 6: Right to Life’ (30 October 2018) UN Doc CCPR/C/GC/36, paras 35–40, <https://www.refworld.org/legal/general/hrc/2019/en/123145>, accessed 27 August 2025.

²⁴⁶ *ibid*, para 35.

²⁴⁷ Human Rights Committee, ‘General comment No 36: Article 6 (Right to life)’ (30 October 2018) UN Doc CCPR/C/GC/36, esp paras 35 (death penalty only for “crimes of extreme gravity involving intentional killing”) and 52 (application may amount to arbitrary deprivation where incompatible with Covenant rights) <https://digitallibrary.un.org/record/3884724> accessed 4 September 2025; ECOSOC, ‘Safeguards guaranteeing protection of the rights of those facing the death penalty’ Res 1984/50, para 1 (“only for the most serious crimes”), UN human rights experts alarmed by “organ harvesting” allegations’ (14 June 2021) (noting targeting of specific ethnic, linguistic or religious minorities) <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations> accessed 4 September 2025.

However, once the person has been executed, the question is whether organ removal after death constitutes a further violation of the right to life. Generally, the right to life, as a human right, pertains to living persons; it is extinguished at the moment of death.²⁴⁸ International law does not recognise a right to life for the deceased, i.e., one cannot violate the right to life of a person who is already dead, because that right no longer has a living subject.²⁴⁹ Therefore, removing organs from a corpse does not, strictly speaking, amount to additional violation of that person's right to life.

The ECtHR has noted in analogous situations (such as handling bodies or autopsies) that the deceased victim is no longer a bearer of ECHR Article 2 rights, though other rights may come into play.²⁵⁰ The legal transition, then, is that at the moment of death, any ongoing abuse is no longer analysed under the right to life, but potentially under other norms, like the prohibition of ill-treatment or the rights of the deceased's family.

What remains pertinent is whether human rights obligations persist post-mortem in any form. IHRL does impose certain obligations on states with respect to those who have died, especially in the context of unlawful killings. One crucial obligation is the duty to investigate suspicious or unlawful deaths and to account for the whereabouts of the body.²⁵¹

As mentioned, the HRC in its General Comment no. 36 affirmed that families have a right to information and the return of the remains.²⁵² This implies that states must treat the bodies of the deceased with respect and facilitate closure for relatives. There is also an obligation to prevent desecration or misuse of corpses. Removing organs without consent can be viewed as a form of desecration or at least disrespect for the deceased's body.²⁵³ While IHRL treaties do not explicitly enumerate a right to "bodily integrity after death", a patchwork of norms (including the prohibition on degrading treatment and principles of human dignity) suggests that states should not treat human remains purely as commodities.²⁵⁴

²⁴⁸ Human Rights Committee, 'General Comment No 36, Article 6: Right to Life' (30 October 2018) UN Doc CCPR/C/GC/36 <https://www.refworld.org/legal/general/hrc/2019/en/123145>, accessed 27 August 2025.

²⁴⁹ *Pretty v United Kingdom*, App no 2346/02 (ECtHR, 29 April 2002) para 39.

²⁵⁰ *Imakayeva v Russia*, App no 7615/02 (ECtHR, 9 November 2006) paras 164–167.

²⁵¹ *El-Masri v The Former Yugoslav Republic of Macedonia* App no 39630/09 (ECtHR, 13 December 2012) paras 182–185.

²⁵² Human Rights Committee, 'General Comment No 36, Article 6: Right to Life' (30 October 2018) UN Doc CCPR/C/GC/36, para 28, <https://www.refworld.org/legal/general/hrc/2019/en/123145>, accessed 27 August 2025.

²⁵³ Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, OUP 2013) pp 203–205.

²⁵⁴ *ibid*, *Sabanchiyeva and Others v Russia* (Application No 38450/05, European Court of Human Rights, 6 June 2013), para 121.

In humanitarian law (which is instructive by analogy), outrages upon personal dignity, including mutilation of dead bodies, are prohibited as war crimes.²⁵⁵ In peacetime IHRL, the ethos is similar: the dead body must be treated humanely, and their families' cultural and emotional interests must be respected.²⁵⁶ UN experts have indeed framed China's organ harvesting as "the most egregious violation of human rights imaginable", noting that it "represents a profound violation of human rights" that does not end with the victim's death.²⁵⁷

Therefore, the legal transition from a right to life violation to other violations occurs at the moment of death. If the execution is wrongful, it is a completed breach of the right to life at that point. The subsequent organ removal does not compound the right to life violation, but it does engage a new set of legal issues. Primarily, the prohibition of degrading treatment and the right of the family to private and family life.²⁵⁸

One could say the situation transforms from a right to life issue into an issue of human dignity and the integrity of the dead. This practice breaches the state's duties to treat the deceased with respect and to spare the living from additional suffering. It can also constitute an affront to human dignity and, as such, can be seen as violating the prohibition of cruel and degrading treatment with respect to affected survivors or the general humane values protected by Article 7 of the ICCPR and analogous rules.²⁵⁹

Additionally, if executions are carried out for organ harvesting purposes, the very intertwining of the two means the act of killing was arbitrary, engaging state responsibility for violating the right to life and the absolute ban of torture, since the execution becomes a means to an illicit end.²⁶⁰

²⁵⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 34.

²⁵⁶ Geneva Convention I (12 August 1949) 75 UNTS 31, art 15.

²⁵⁷ UN Human Rights Council, 'China: UN human rights experts alarmed by "organ harvesting" allegations' (OHCHR, 14 June 2021) <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations>, accessed 28 August 2025.

²⁵⁸ *Imakayeva v Russia* App no 7615/02 (ECtHR, 9 November 2006) paras 164–167.

²⁵⁹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

²⁶⁰ UN Special Rapporteur on Torture, *Report to the General Assembly*, UN Doc A/63/175 (28 July 2008) para 50 <https://undocs.org/A/63/175> accessed 28 August 2025.

Thus, the removal of organs post-mortem is legally assessed not as torture of the deceased, but as a serious abuse implicating human dignity and rights of others, while underscoring the gravity of the original right to life violation that occurred at the moment of execution.²⁶¹

3.6 Prohibition of torture and arbitrary killing in Customary International Law

Both the ban on torture and the ban on arbitrary deprivation of life have risen to the highest level of international norms. They are firmly rooted in customary international law and are recognised as *ius cogens* (peremptory) norms.²⁶² *Ius cogens* norms are fundamental principles of international law, from which no derogation is permitted, and which are binding on all states, regardless of consent.²⁶³

The prohibition on torture is a classic example of such a norm. international courts and authorities have repeatedly affirmed this status. The ICJ, in the *Belgium v Senegal* case, stated that the prohibition of torture is a part of customary international law and has become a peremptory norm.²⁶⁴ This means that all states have an obligation *erga omnes* to refrain from torture and to repress it. No treaty, domestic law, or extraordinary circumstance can ever legalise torture.²⁶⁵ Even apart from treaties like CAT, the anti-torture norm binds China and all states by virtue of its peremptory character.

The ICTY in *Furundžija* case, similarly, observed that the torture prohibition has attained *ius cogens* status, noting its universal repudiation and the fact that it protects the core of human dignity such that it admits no exceptions.²⁶⁶ The practical consequence is that torture is universally criminalizable where universal jurisdiction often applies, and that officials who

²⁶¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 1; OHCHR, ‘Protection and dignified management of the dead in war and peace are cornerstones of human dignity’ (Press Release, 26 June 2024) <https://www.ohchr.org/en/press-releases/2024/06/protection-and-dignified-management-dead-war-and-peace-are-cornerstones> accessed 4 September 2025.

²⁶² International Law Commission, *Draft Conclusions on Peremptory Norms of General International Law (ius cogens)*, UN Doc A/74/10 (2019) ch V, https://legal.un.org/ilc/texts/instruments/english/draft_articles/1_14_2019.pdf accessed 28 August 2025.

²⁶³ *ibid*, conclusion 3.

²⁶⁴ *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal) (Judgment) [2012] ICJ Rep 422*, paras 99–100 <https://www.icj-cij.org/sites/default/files/case-related/144/144-20120720-JUD-01-00-EN.pdf>, accessed 28 August 2025.

²⁶⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 art 2(2).

²⁶⁶ *Prosecutor v Furundžija* (Judgment) ICTY-95-17/1-T (10 December 1998), paras 153–157.

commit or authorise it cannot invoke immunities or statutes of limitation in many jurisdictions.²⁶⁷

Likewise, the prohibition of arbitrary killing (extrajudicial, summary of arbitrary executions), is widely regarded as a norm of customary international law and, in modern doctrine, as a peremptory norm as well. The right to life is enumerated in all major human rights instruments and forms the bedrock of human rights.²⁶⁸

While lawful capital punishment is still permitted under certain strict conditions in human rights law, the arbitrary deprivation of life, meaning killing outside of those lawful parameters is absolutely forbidden. ILC, in its work on *ius cogens*, included the prohibition of arbitrary deprivation of life on the indicative list of peremptory norms, noting widespread recognition of its fundamental status.²⁶⁹

As *ius cogens* norms, these prohibitions not only bind China but also entail that other states have duties to refrain from assisting in any way and to cooperate to bring such violations to an end.²⁷⁰ Also, states should not be complicit by providing cover or resources for these practices, some states have even enacted laws banning “transplant tourism” to China to ensure they do not become accessories to organ abuse. For example, Spain amended its Criminal Code in 2010 to criminalise facilitating or promoting illicit organ transplants, even abroad, imposing terms up to 12 years for offenders. The law was further aligned with Council of Europe’s Santiago de Compostela Convention on organ trafficking.²⁷¹

Importantly, labelling these norms as *ius cogens* underscores the absence of any allowable exceptions or jurisdictions. With respect to torture, no invocation of state security, economic development, cultural relativism, or any other reason can be a lawful excuse.²⁷² This is reflected not only in moral terms, but also as a strict legal rule. In the organ harvesting scenario,

²⁶⁷ *ibid*, paras 155–156.

²⁶⁸ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) art 3, ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 6.

²⁶⁹ International Law Commission, *Draft Conclusions on Peremptory Norms of General International Law (ius cogens)*, UN Doc A/74/10 (2019), annex, conclusion 23.

²⁷⁰ *ibid*, conclusion 17.

²⁷¹ *Spain, Criminal Code* (as amended by Organic Law 5/2010 of 22 June) arts 156 bis–156 ter.; Spain ratifies Council of Europe Convention against trafficking in human organs (La Moncloa, 15 December 2020) <https://www.lamoncloa.gob.es/lang/en/gobierno/news/Paginas/2020/20201215convention-organs.aspx>, accessed 28 August 2025.

²⁷² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT) art 2(2).

some might attempt to argue (hypothetically) that executed prisoners “consented” or to that organ procurement serves as a societal medical need. Such arguments are entirely untenable in law: one cannot consent to torture under duress (any consent given by a death row inmate is inherently suspect), and utilitarian calculations (saving patients by scarifying prisoners) find no footing against peremptory norms.²⁷³

The value of human life and the inherent dignity of the person are deemed inviolable. Similarly, for the right to life, while capital punishment is not outlawed per se for states that have not abolished it, any deviation from strict conditions is unlawful. Targeting prisoners of conscience for execution to harvest their organs would be a form of arbitrary execution, which is unequivocally forbidden.²⁷⁴

The *ius cogens* status means that even agreements between states to allow such practices would be void, for instance, a bilateral treaty to exchange organs from executed prisoners would violate peremptory norms and be considered *null ab initio*.²⁷⁵ Forced organ harvesting, entailing as it does the torture and killing of individuals, if proven, would represent a direct affront to these peremptory norms.

3.7 State accountability (respect-protect-fulfil)

Under IHRL, states must respect (refrain from violating), protect (exercise due diligence to prevent, investigate and punish abusers), and fulfil (adopt laws, institutions and remedies to secure) the rights at stake.²⁷⁶

Here, that is the right to life and the absolute prohibition of torture and ill-treatment. These norms are non-derogable, even in emergencies, and the torture ban forms part of customary international law with peremptory force, meaning, states must organise their systems to prevent and redress violations and to provide effective remedies.²⁷⁷

²⁷³ *Prosecutor v Furundžija* (Judgment) ICTY-95-17/1-T (10 December 1998) paras 153–157.

²⁷⁴ Human Rights Committee, paras 40–41.

²⁷⁵ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 53,

²⁷⁶ Human Rights Committee, ‘General comment No 31: The nature of the general legal obligation imposed on States Parties to the Covenant’ (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13, paras 6–8 <https://digitallibrary.un.org/record/533996> accessed 4 September 2025

²⁷⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 4(2), 6, 7; Human Rights Committee, ‘General Comment No 29: States of Emergency (article 4)’ (31 August 2001) UN Doc CCPR/C/21/Rev.1/Add.11, para 15,) https://www.rulac.org/assets/downloads/General_Comment_29.pdf, accessed 27 August 2025; UN Committee Against Torture (CAT), *General Comment No 2: Implementation of article 2 by States parties* (24 January 2008)

In addition, as a signatory to the ICCPR, China bears the interim obligation not to defeat the Covenant's object and purpose, under VCLT art 18.²⁷⁸

Applied to allegations of forced organ harvesting, the duty to respect is engaged where killings or organ removals are carried out in custody or in concert with public authorities; such conduct violates the right to life and the prohibition of torture/ill treatment. UN Special Procedures have explicitly voiced alarm over credible reports targeting detainees, calling for independent scrutiny.²⁷⁹

The duty to protect requires effective prevention, oversight, investigation, and prosecution by competent, independent bodies. CAT has clarified that no exceptional circumstance can justify torture or ill-treatment, and that states must exercise due diligence to prevent, investigate, and punish such practices.²⁸⁰ Persistent secrecy around capital punishment data and organ procurement pathways frustrates accountability and runs counter to transparency and traceability standards, and this opacity has been documented by reports and repeatedly criticised by UN bodies.²⁸¹

The duty to fulfil entails creating a framework that guarantees non repetition, legislation and institutional safeguards ensuring traceability, independent monitoring of transplant systems, valid and informed consent, effective investigation into suspicious deaths or removals, and accessible remedies for victims' families. HRC underscores that protecting life requires such

UN Doc CAT/C/GC/2, paras 1, 5–6 (absolute, non-derogable prohibition; prevention obligations), <https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcgc2-general-comment-no-2-2007-implementation> accessed 4 September 2025; Human Rights Committee, *General Comment No 36: Article 6 (right to life)* (30 October 2018) UN Doc CCPR/C/GC/36, paras 2, 27–28, <https://www.refworld.org/legal/general/hrc/2019/en/123145>, accessed 27 August 2025.

²⁷⁸ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 18 (interim obligation not to defeat object and purpose of a treaty).

²⁷⁹ OHCHR, 'China: UN human rights experts alarmed by "organ harvesting" allegations' (Press Release, 14 June 2021), : <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations>, accessed 28 Aug 2025.

²⁸⁰ UN Committee Against Torture (CAT), *General Comment No 2: Implementation of article 2 by States parties* (24 January 2008) UN Doc CAT/C/GC/2, paras 1, 5–6 (absolute, non-derogable prohibition; prevention obligations), <https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcgc2-general-comment-no-2-2007-implementation> accessed 4 September 2025.

²⁸¹ Amnesty International, *China's Deadly Secrets: The hidden true scale of China's use of the death penalty* (10 April 2017) (on classification of execution data as state secrets and resulting opacity), <https://www.amnesty.org/en/documents/asa17/5849/2017/en/>, accessed 28 Aug 2025, CAT, 'Concluding observations on the fifth periodic report of China' UN Doc CAT/C/CHN/CO/5 (advance unedited version, 9 December 2015), para 17 and 30–31 (state secrecy/data concerns).

legal institutional measures and effective investigations and remedies, and these obligations apply at all times.²⁸²

In sum, if the factual record substantiates the allegations, the state's failure to respect, to protect through due diligence, and to fulfil through robust systems and remedies constitutes a serious accountability deficit under IHRL.

Chapter IV - ICL

4.1 The Rome Statute and China's Accountability

The Statute is the constitutive treaty of the ICC.²⁸³ While the ICL predates the Statute, it provides a leading codification of the four core international crimes – genocide, crimes against humanity, war crimes, and crime of aggression.²⁸⁴ As the ICC itself explains, its constitutive treaty confers jurisdiction over four main crimes,²⁸⁵ including crimes against humanity, defined as a serious violation like: murder, rape, imprisonment, enforced disappearances, enslavement, sexual slavery, torture, apartheid, deportation, etc, committed as a part of a large-scale attack against any civilian population.²⁸⁶

China, however, is not a State Party to the Rome Statute,²⁸⁷ having neither ratified nor acceded to the ICC treaty.²⁸⁸ As a result, the ICC cannot exercise jurisdiction over crimes committed on Chinese territory or by Chinese nationals. In practical terms, this means that, absent a UNSC (an avenue foreclosed by China's own veto power as a permanent member), the ICC has no direct authority to prosecute Chinese officials or citizens for alleged crimes. China's non-party status entails that it has no treaty-based obligations to cooperate with the ICC or to implement the Statute's provisions domestically.

²⁸² Human Rights Committee, *General Comment No 36: Article 6 (right to life)* (30 October 2018) UN Doc CCPR/C/GC/36, paras 2, 27–28, <https://www.refworld.org/legal/general/hrc/2019/en/123145>, accessed 27 August 2025.

²⁸³ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 1.

²⁸⁴ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 5(1); International Criminal Court, 'About the Court' (webpage) <https://www.icc-cpi.int/about/the-court> accessed 29 August 2025.

²⁸⁵ *ibid.*, art 7(1).

²⁸⁶ *ibid.*

²⁸⁷ *ibid.*

²⁸⁸ United Nations Treaty Collection, Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, Status of Ratification, China.

This proposition admits important exceptions. First, the ICC may exercise jurisdiction over alleged crimes by Chinese nationals if the conduct was committed, wholly or partly, on the territory of a State Party or of a non-party that has accepted jurisdiction under Article 12(3) (territorial jurisdiction).²⁸⁹ This includes cross-border crimes where a material element occurs on a State Party territory.²⁹⁰ Second, the ICC has jurisdiction where UNSC refers a situation under Chapter VII, as it did for Darfur and Lybia, and such referrals have also required non-party states to cooperate.²⁹¹ Third, crimes committed on board vessels or aircraft registered in a State Party fall under territorial jurisdiction.²⁹² In short, China's non-party status removed the default treaty basis for ICC jurisdiction and cooperation, however it does not categorically shield Chinese nationals from ICC jurisdiction where one of these gateways applies.

Against this legal backdrop, the present chapter examines whether alleged abuses in China, including unlawful detention, torture, persecution whether on political, religious or ethnic grounds, and nonconsensual organ removal, might amount to crimes against humanity under ICL.²⁹³ Many of those abuses (e.g., torture, arbitrary imprisonment, enforced disappearance, persecution of a group, etc.) correspond directly to the acts listed in Article 7 of the Statute.²⁹⁴ The central issue is whether they have been committed pursuant to a *widespread or systematic* attack directed against a civilian population, as defined in Article 7.²⁹⁵

In this regard, Chapter III has documented patterns of grave violations of human rights in China.²⁹⁶

²⁸⁹ *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 12(2)(a), 12(3); *Decision on the Prosecutor's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute* (Bangladesh/Myanmar) ICC, ICC-RoC46(3)-01/18-37 (PTC I, 6 September 2018), paras 64-72, and paras 74-79.

²⁹⁰ *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 12(2)(a), 12(3); *Decision on the Prosecutor's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute* (Bangladesh/Myanmar) ICC-RoC46(3)-01/18-37 (PTC I, 6 September 2018), paras 64-72, and paras 74-79.

²⁹¹ *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 13(b); UNSC Res 1593 (31 March 2005) UN Doc S/RES/1593 <https://docs.un.org/S/RES/1593%282005%29> accessed 29 August 2025; UNSC Res 1970 (26 February 2011) UN Doc S/RES/1970 <https://docs.un.org/S/Res/1970%282011%29> accessed 29 August 2025.

²⁹² *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 12(2)(a); *Situation referred to the ICC: Registered Vessels of Comoros, Greece and Cambodia* (situation page) <https://www.icc-cpi.int/comoros> accessed 29 August 2025.

²⁹³ *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 7(1), esp sub-para (e), (f), (h), (i), (k).

²⁹⁴ *ibid*, art 7.

²⁹⁵ *ibid*, art 7(2)(a).

²⁹⁶ OHCHR, *Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China* (31 August 2022) <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assessment.pdf>, accessed 29 August 2025.

Chapter IV now shifts the focus from individual human rights breaches (governed by IHRL) to their characterisation under ICL. A constellation of state-sponsored abuses will be examined, taken as a part of a large-scale, systematic campaign, and whether it can satisfy the Statute's threshold for crimes against humanity.

4.2 Crimes against humanity under Article 7 of the Statute (Chapeau)

Crimes against humanity represent some of the most serious violations of international law, and their modern definition and prosecution are largely framed by the Statute and its Article 7. Furthermore, crimes against humanity are among the most serious crimes of concern to the international community, as recognised in the preamble of the Statute to the ICC.²⁹⁷

Article 7(1) of the Statute defines crimes against humanity as certain prohibited acts, such as:

- a) Murder,
- b) Extermination,
- c) Enslavement,
- d) Deportation or forcible transfer of population,
- e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law,
- f) Torture,
- g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity,
- h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3 of Article 7, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this Article, or any crime within the jurisdiction of the Court,
- i) Enforced disappearance of persons,
- j) The crime of apartheid, and
- k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health, when committed as a part of widespread or systematic attack directed against any civilian population.²⁹⁸

²⁹⁷ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002), preamble.

²⁹⁸ *ibid.*, art 7(1).

Under Article 7 chapeau, liability for any of the foregoing acts arises only where the conduct is part of a “*widespread or systematic attack directed against any civilian population*”, where civilian population is the primary object, and that is, a course of conduct involving the multiple commission of such acts pursuant to or in furtherance of a State or organisational policy, where the perpetrator has knowledge of the attack in general terms, following that knowledge does not require awareness of all characteristics of the attack or precise policy details.²⁹⁹

4.3 Intent as a contextual element

Before specific acts under Article 7, the mental element for crimes against humanity should be framed around two layers: (1) contextual *mens rea*, meaning the accused’s knowledge that their conduct is part of a widespread or systematic attack directed against civilian population, and (2) any additional special intent or purpose demanded by particular crime against humanity sub-offences.³⁰⁰ As to the chapeau, international jurisprudence has consistently held that the perpetrator must know there is such an attack that their acts are part of it, and need not know all details of the attack, share its policy, or act from a particular motive.³⁰¹

In ICC practice this has been expressed as knowledge in “general terms”, and the Elements of Crimes clarify that the knowledge requirement should not be read as demanding proof of every characteristic of the attack.³⁰²

By contrast, *dolus specialis* operates only where a specific crime against humanity provision builds it in. most prominently, persecution requires the specific intent to discriminate on one of the listed grounds, and this intent cannot be presumed from the general discriminatory tenor of the attack but may be inferred from the surrounding facts when they substantiate discrimination *in concreto*.³⁰³

²⁹⁹ *ibid*, art 7(2)(a), see also Preparatory Commission for the ICC, *Elements of Crimes* (ICC-ASP/1/3, 2002) Art 7, Introduction, paras 2–3 and fn 6 (context elements apply to each CAH; knowledge “should not be interpreted as requiring proof [of] all characteristics” of the attack).

³⁰⁰ International Criminal Court, *Elements of Crimes* (2002; reprinted 2011) art 7, Introduction para 2 (knowledge of the attack) and art 7(1)(h) (discriminatory purpose for persecution).

³⁰¹ *Prosecutor v Kunarac et al* (Appeals Chamber) IT-96-23 & IT-96-23/1-A, Judgment (12 June 2002) paras 102–105, esp 102–104 (knowledge of attack; motives irrelevant).

³⁰² *Prosecutor v Laurent Gbagbo* (Pre-Trial Chamber I) ICC-02/11-01/11, Decision on the Confirmation of Charges (12 June 2014) paras 213–217, esp 217 (knowledge “in general terms”; Elements of Crimes fn 6).

³⁰³ *Prosecutor v Kordić & Čerkez* (Appeals Chamber) IT-95-14/2-A, Judgment (17 December 2004) paras 110–111 (specific intent to discriminate; inference standards).

Moreover, while a principal must possess the discriminatory intent, an aider and abettor need not share it; it suffices that they knowingly assist the crime, aware of the principal's discriminatory intent.³⁰⁴ Other crimes against humanity sub-offences also embedded purpose/intent elements without transforming the whole of crimes against humanity into a special-intent crime. For torture, customary and ICTY jurisprudence require that severe pain or suffering be inflicted for such purposes as obtaining information or a confession, punishment, intimidation or coercion, or discrimination of any kind.³⁰⁵

The Statute similarly stipulates that, for example, enforced disappearance requires the intention of removing persons from the protection of the law for a prolonged period.³⁰⁶ Conversely, offences such as murder, imprisonment, and other inhumane acts as crimes against humanity do not inherently require discriminatory intent; their mental element tracks the underlying offence, coupled with the chapeau knowledge of the attack.³⁰⁷

This structure keeps the contextual element conceptually distinct from any embedded *dolus specialis* or purpose elements, ensuring that analysis of each count isolates the awareness that conduct is part of the widespread or systematic attack, and any offence-specific intent (discrimination, maintenance of oppressive regime, coercive purposes, etc.) that the provision demands.³⁰⁸

4.4 Assessment of specific acts under Article 7

Having established the legal threshold and contextual background for crimes against humanity, the following section examines how specific acts (the ones corresponding to present allegations), attributed to Chinese authorities, align with individual categories under Article 7 of the Statute.

³⁰⁴ *Prosecutor v Krnojelac* (Appeals Chamber) IT-97-25-A, Judgment (17 September 2003) para 52 (aider and abettor must be aware of the principal's discriminatory intent; need not share it)

³⁰⁵ *Prosecutor v Kunarac et al* (Trial Chamber) IT-96-23 & IT-96-23/1-T, Judgment (22 February 2001) para 497 (torture purposes: information, punishment, intimidation/coercion, discrimination).

³⁰⁶ Rome Statute, art 7(2)(i) (enforced disappearance "intention of removing [the person] from the protection of the law"), see also art 7(1), (2) chapeau (contextual knowledge distinct from offence-specific intents).

³⁰⁷ *Prosecutor v Kupreškić et al* (Trial Chamber) IT-95-16-T, Judgment (14 January 2000) para 558 (discriminatory intent required only for persecution; motives otherwise not determinative).

³⁰⁸ Rome Statute, Art 7(2)(e); Preparatory Commission for the ICC, Elements of Crimes (2002) Art 7, *General Introduction*, paras 2-3; International Law Commission, *Draft articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019) paras 34–35.

To determine whether the allegations in China meet the legal definition of crimes against humanity, each relevant act must be assessed individually. The following analysis will examine acts of murder, torture, persecution, imprisonment, or other severe deprivation of physical liberty, enforced disappearance, and other inhumane treatment, based on the elements of *actus reus*, contextual element, and *mens rea*.

Under Article 7(1) of the Statute, crimes against humanity encompass several enumerated acts when committed as a part of a widespread or systematic attack against a civilian population, with knowledge of the attack.³⁰⁹ Each offence has three core elements: (1) the contextual element, (2) the *actus reus*, and (3) *mens rea*.³¹⁰

1. The *contextual element*, i.e., widespread/systematic attack: a “course of conduct” involving multiple acts “pursuant to or in furtherance of a State or organisational policy”, where “widespread” and “systematic” are disjunctive.³¹¹
2. The *actus reus*, i.e., the prohibited acts listed in Article 7(1);³¹² and
3. The *mens rea*, i.e., awareness/knowledge of the attack and intent to commit the act, meaning the perpetrator knew that the conduct was part of, or intended to be part of, a widespread or systematic attack directed against any civilian population.³¹³

4.4.1 Murder

Namely, to constitute a murder under Article 7(1)(a),³¹⁴ three core elements must be met:

- i. the act element (*actus reus*), meaning that the perpetrator has murdered one or more persons, and that the removal has caused death, or death was foreseen to facilitate organ procurement,
- ii. contextual element, requiring that the murder occurred as part of a widespread or systematic attack directed against any civilian population, and

³⁰⁹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002), preamble.

³¹⁰ International Criminal Court, *Elements of Crimes* (2011) Art 7—Introduction, paras 1–3.

³¹¹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 7(2)(a); International Law Commission, *Draft articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019) paras 10, 11, 14.

³¹² Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 7(1); International Criminal Court, *Elements of Crimes* (2011) Art 7—Introduction, *see also* International Law Commission, *Draft articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019) paras 10, 11, 14 paras (34)–(35).

³¹³ *ibid.*

³¹⁴ International Criminal Court, ‘*Elements of Crimes*’, art 7(1)(a).

- iii. mental element (*mens rea*), i.e., that the perpetrator knew that the conduct was part of such an attack.³¹⁵

Contextual element: The contextual element requires that the act is committed as a part of “widespread or systematic attack directed against a civilian population”, where a widespread attack refers to the large-scale nature of the conduct and the number of victims, and systematic attack involves the organised nature of the acts of violence and the questionability of their random occurrence.³¹⁶

The ICTY clarified in *Prosecutor v Kordić and Čerkez*, building on earlier jurisprudence, that a widespread attack refers to a large-scale nature of the attack and the number of targeted persons, while a systematic attack refers to the organised nature of the acts of violence and the improbability of their random occurrence.³¹⁷ Moreover, the ICTY in its paragraph 179, states that “a crime may be widespread or committed on a large scale by the cumulative effect of a series of inhumane acts, or the singular effect of an inhumane act of extraordinary magnitude.”³¹⁸

In the context of forced organ harvesting, allegations implicated state-run detention centres, military hospitals and centralised organ allocation systems, suggest a coordinated infrastructure that could meet the systematic requirement.³¹⁹ Furthermore, if evidence demonstrates a high volume of victims over a prolonged period, it would undoubtedly satisfy the widespread prong.

Having that in mind, Statute also requires that the attack is directed against a civilian population, not isolated individuals.³²⁰ The term “civilian population” is formed broadly and does not require the entire population to be targeted, but rather that the victims form part of a civilian group. The term, though, does not require the entire population of certain geographical

³¹⁵ *ibid.*

³¹⁶ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 7(1), 7(2)(a).

³¹⁷ *ibid* para 178, 182.

³¹⁸ *ibid*, para 179.

³¹⁹ China Tribunal (Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China), *Judgment* (1 March 2020), esp pp 132–133 (COTRS—national organ matching and allocation system) and pp 301–304, 309, 320, 333, 360, 384, 398, 458 (material concerning military and other hospitals), https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf accessed 4 September 2025.

³²⁰ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 7(1), 7(2)(a).

area to be attacked, rather it is sufficient to demonstrate that a significant number of individuals were targeted, or that the manner in which they were targeted reflects that the attack was directed against civilians as such (i.e. predominantly civilian in nature),³²¹ and not merely against a few isolated or randomly selected individuals.³²² Thus, in cases where organ harvesting is carried out as part of an orchestrated pattern, coordinated by or with the acquiescence of state authorities, the contextual element would be deemed as met.

Actus Reus: In the context of organ harvesting, if organs are removed from a living individual with knowledge that the procedure will result in death, this constitutes a direct and intentional killing, even if it does not resemble a traditional execution.³²³ This interpretation aligns with the definition in the ICC Elements of Crimes, which does not limit the form or method of killing, and thus do not restrict the form or method by which death is inflicted.³²⁴ As noted in the ICTY case *Prosecutor v Kordić and Čerkez*,³²⁵ murder as a crime against humanity may be committed by a positive act or by omission, the mental element is satisfied where the accused intended to kill or to cause grievous bodily harm with the reasonable knowledge that death was likely to result.³²⁶

The *mens rea* requires that the perpetrator knew their conduct was part of the widespread or systematic attack.³²⁷ This does not require that the perpetrator had knowledge of the entire policy or attack.³²⁸ As clarified in *Prosecutor v Bemba*, the perpetrator must merely be aware of the factual circumstances that established the attack's existence.³²⁹

The international jurisprudence has recognised that intent and knowledge may be inferred from patterns of conduct, i.e., it is not necessary to demonstrate direct orders or formal policies.³³⁰ Rather, they can be inferred from the factual circumstances of the case, including

³²¹ *Kunarac* (Appeals Judgment), paras 90–92, 180.

³²² *Kordić and Čerkez* (Trial Judgment), para 180.

³²³ International Criminal Court, *Elements of Crimes*, Art 7(1)(a) (Murder), n 7 (“‘killed’ is interchangeable with ‘caused death’”); Art 7(1)(b) (Extermination), n 8 (“different methods of killing, either directly or indirectly”).

³²⁴ *ibid.*

³²⁵ *Prosecutor v Dario Kordić and Mario Čerkez* (Trial Chamber Judgment) ICTY IT-95-14/2-T (26 February 2001) paras 235–236.

³²⁶ *ibid.*, para 236.

³²⁷ International Criminal Court, *Elements of Crimes* (2011) Art 7 ‘Introduction’, element 3.

³²⁸ International Law Commission, *Draft articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), para (34).

³²⁹ *Prosecutor v Jean-Pierre Bemba Gombo* (Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute) ICC-01/05-01/08-424 (PTC II, 15 June 2009), paras 126, 691.

³³⁰ *Prosecutor v Kordić and Čerkez* (Judgment) ICTY-95-14/2-T (26 February 2001) paras 182–183; International Law Commission, *Draft articles on Prevention and Punishment of Crimes against Humanity, with com-*

scale, repetition and consistency.³³¹ For instance, in *Prosecutor v Kunarac*, the ICTY Appeals Chamber explained that the accused does not have to be aware of the precise details of the attack, as long as he knows his actions are part of a broader campaign targeting civilians.³³²

The Courts have recognised that criminal intent and knowledge can be deduced from: the repetition of acts committed over time, the role and function of the accused, geographical spread and organised nature of the operations, coordinated character of the acts as well as failure to act in the face of systematic abuse when the perpetrator was in a position of authority.³³³ Therefore, in the context of organ harvesting, individuals involved in the consistent performance or hospital systems may be found to possess the requisite mens rea, even absent a formal policy or written directive. Their knowledge and intent can be established through patterns of conduct and institutionalised nature of the acts.³³⁴

4.4.2 Torture

From a comparative perspective, the prohibition of torture operates differently under IHRL and ICL. Under IHRL, CAT in its Article 1 defines torture by requiring both a prohibited purpose (e.g., obtaining information, punishment, intimidation or discrimination), and involvement of a public official.³³⁵ By contrast, in ICL, crimes against humanity of torture under the Statute turn on the intentional infliction of severe physical or mental suffering of a person in custody or control, and do not require either an official capacity element or a prohibited purpose, but does require custody control, reaffirmed by ICTY which stated that official capacity is not a constituent element of individual criminal liability for torture.³³⁶

As to the contextual threshold, IHRL binds states absolutely, and does not impose any “widespread or systematic” requirement, whereas ICL imposes individual criminal responsibility

mentaries (2019) para (34) and accompanying fns 137–140 (collecting ICC/ICTY authority that knowledge may be inferred from circumstances)

³³¹ *Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (Appeals Judgment) IT-96-23 & IT-96-23/1-A (ICTY, 12 June 2002) paras 93–97 (definitions of “widespread”/“systematic” and role of patterns).

³³² *Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (Appeals Judgment) IT-96-23 & IT-96-23/1-A (ICTY, 12 June 2002), paras 90–97.

³³³ International Law Commission, *Draft articles on Prevention and Punishment of Crimes against Humanity, with commentaries* (2019), para 35 & related discussion (inference from circumstantial indicators such as position in hierarchy, role, presence at scene, references to superiority, and the broader historical/political environment).

³³⁴ International Criminal Court, *Elements of Crimes* (2011) Art 7 ‘Introduction’, element 3.

³³⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 1.

³³⁶ *Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (Appeals Judgment) IT-96-23 & IT-96-23/1-A (ICTY, 12 June 2002) paras 145–153.

only where the Article 7 chapeau is satisfied, i.e., the conduct forms part of a widespread or systematic attack directed against a civilian population, with the knowledge of the attack.³³⁷

Finally, the enforcement generating state responsibility differs. IHRL operates through treaty bodies and regional courts, generating state responsibility, while ICL proceeds through criminal prosecution of individuals before the international tribunals. The ICJ has meanwhile affirmed, under CAT, the *aut dedere aut judicare* obligation and recognised the *ius cogens* character of the prohibition of torture.³³⁸

Under the Statute, torture as a crime against humanity is defined as “*intentional infliction of severe physical or mental pain or suffering upon a person in the custody or under the control of the accused*”, excluding pain or suffering inherent in or incidental to lawful sanctions. Crucially, the Statute’s definition does not require a prohibited purpose (e.g., obtaining information) nor official-capacity involvement.³³⁹

By contrast, CAT Article 1 defines torture as *the intentional infliction of severe pain or suffering for a specific purpose* (such as obtaining information, punishment, intimidation or discrimination), *by, at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity*.³⁴⁰

ICTY jurisprudence has clarified that while CAT’s “official capacity” language shapes state obligations, individual criminal liability for torture under ICL does not hinge on official capacity (including rape, that has repeatedly been recognised as torture, due to its inherent severity).³⁴¹

Regarding the *contextual element*, as with all Article 7 offences, torture must be committed as part of a widespread or systematic attack directed against a civilian population, with

³³⁷ International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 7; Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 7(1), 7(2)(a), 7(2)(e).

³³⁸ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (Judgment) [2012] ICJ Rep 422, paras 68–69, 99.

³³⁹ Rome Statute of the International Criminal Court, art 7(2)(e).

³⁴⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT), art 1.

³⁴¹ *Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (ICTY, Appeals Judgment, 12 June 2002) paras 145–153.

knowledge of the attack.³⁴² The ICC emphasized that the accused's knowledge may be inferred from patterns and methods of the conduct.³⁴³

The *actus reus* requires three material elements: (1) severe physical or mental pain and suffering, (2) the victim was in the custody or under the control of the perpetrator, and (3) the pain/suffering was not inherent in or incidental to lawful sanctions.³⁴⁴

The *mens rea* element means that the perpetrator must intend the underlying conduct that inflict severe pain or suffering and act with knowledge that the conduct is part of the Article 7 attack, unlike CAT, no specific purpose is required for torture as crimes against humanity.³⁴⁵

Where organs are removed from persons in custody or control, in a manner that intentionally inflict severe suffering and is embedded in a wider attack on civilians, the conduct satisfies torture as a crime against humanity. The method of harm is immaterial, meaning the Elements use “killed/caused death”, and impose no restrictions on the form by which severe suffering is inflicted.³⁴⁶ Reports of large scale, organised abuse in China, if proven, speak to the contextual threshold.³⁴⁷

4.4.3 Imprisonment and Enforced disappearance: definition and application

Under Article 7(1)(e) of the Statute, imprisonment or other severe deprivation of physical liberty is made out where the perpetrator imprisons or otherwise severely deprives one or more persons of physical liberty in violation of fundamental rules of international law, with knowledge that the conduct forms part of the Article 7 attack, and no special purpose is required.³⁴⁸

³⁴² Rome Statute of the International Criminal Court, art 7(1) and art 7(2)(a) (attack requirement).

³⁴³ *Prosecutor v Jean-Pierre Bemba Gombo* (ICC, PTC II, Decision Pursuant to Article 61(7)(a) and (b), 15 June 2009) para 193.

³⁴⁴ ICC, *Elements of Crimes* (2011/2013 cons.) Art 7—Introduction; Art 7(1)(f) (torture: severity; custody/control; lawful-sanctions exclusion; knowledge of attack).

³⁴⁵ *ibid*; Rome Statute of the International Criminal Court, art 30 (mental element: intent and knowledge).

³⁴⁶ *ibid*.

³⁴⁷ OHCHR, *Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, PRC* (31 Aug 2022). <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>, accessed 29 August 2025; OHCHR, ‘China: UN human rights experts alarmed by “organ harvesting” allegations’ (14 June 2021). <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations>, accessed 29 August 2025.

³⁴⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 7(1)(e), 7(1)(i), 7(2)(i), 7(1)(f), 7(2)(e); International Criminal Court, *Elements of Crimes* (2011/2013 cons), Art 7—Introduction; Art 7(1)(e); Art 7(1)(f); Art 7(1)(i)

By contrast, enforced disappearance under Articles 7(1)(i) and 7(2)(i) of the Statute, requires arrest/detention/abduction by or with authorisation, support or acquiescence of a State (or political organisation), followed by a refusal to acknowledge the deprivation of liberty or to give information on fate/whereabouts, with the intent to remove the person from the protection of the law for a prolonged period. This represents special intent (*dolus specialis*) that is not an element of imprisonment.³⁴⁹

The ICTY jurisprudence clarifies that detention is “arbitrary” when assessed against international standards, not merely domestic law, and may become unlawful through discriminatory application, incommunicado conditions, or absence of due process.³⁵⁰

Likewise, the ICTY further confirmed in *Kordić & Čerkez* case, that, for crimes against humanity, “imprisonment” means arbitrary imprisonment, so that lack of due process suffices to meet the material element.³⁵¹

An initially lawful detention can become unlawful, and thus arbitrary, if its legal basis lapses or required safeguards (such as judicial review, or access to counsel) are withheld, including through incommunicado conditions.³⁵² Finally, both the national law must be arbitrary, and its enforcement must not be arbitrary in the concrete case, meaning that discriminatory application will render detention arbitrary in the ICTY sense.³⁵³

Applied to China, the OHCHR’s 2022 assessment records large scale, organised deprivations of liberty in state-run “vocational education and training centres”, systemic due-process deficits, and withholding of information from families regarding detainees’ whereabouts and legal status, features if proven, the satisfaction of imprisonment under Article 7(1)(e) of the Statute, and where the acknowledgment/refusal and the prolonged removal intent are established, enforced disappearance under Article 7(1)(i).³⁵⁴

³⁴⁹ *ibid.*

³⁵⁰ *Prosecutor v Milorad Krnojelac* (Trial Judgment) ICTY IT-97-25-T (15 March 2002) paras 114–115.

³⁵¹ *Prosecutor v Dario Kordić and Mario Čerkez* (Trial Judgment) ICTY IT-95-14/2-T (26 February 2001) para 302.

³⁵² *Prosecutor v Milorad Krnojelac* (Trial Judgment) ICTY IT-97-25-T (15 March 2002) paras 114–115.

³⁵³ *ibid.*

³⁵⁴ OHCHR, *Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China* (31 August 2022) <https://www.ohchr.org/en/documents/country-reports/ohchr-assessment-human-rights-concerns-xinjiang-uyghur-autonomous-region> (PDF: <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>, accessed on 29 August 2025).

Compared with torture, whose core is the intentional infliction of severe physical or mental pain or suffering upon a person in custody or control of the perpetrator (and which in ICL does not require official capacity involvement or prohibited purpose), imprisonment and disappearance centre on deprivation of legal liberty and protection, not on the infliction of severe pain as such, though in practice they frequently enable or co-occur with torture in detention settings. Finally, for all three offences, the requisite knowledge of the attack, may be inferred from patterns and methods of operation, including scale, repetition and institutionalisation.³⁵⁵

4.4.4 Persecution

Under Article 7(1)(h) of the Statute, persecution requires: (1) a severe deprivation of fundamental rights, contrary to international law, and (2) that such deprivation be intentionally carried out on discriminatory grounds, namely political, racial, national, ethnic, cultural, religious, gender (as defined in Article 7(3)), or other grounds universally recognised as impermissible under international law, and occur in connection with another Article 7(1) act, or any other ICC crime, all within widespread or systematic attack.³⁵⁶

This means that discriminatory intent must be proven beyond all reasonable doubt (trial standard), and it must be based on political, racial, ethnic, cultural, religious, or gender grounds, as specified in the ICC's Elements of crimes.³⁵⁷

The *actus reus* of persecution consists of: severe deprivation of fundamental rights, contrary to international law, and that the acts must be committed in connection with any other act referred to in Article 7(1) or any other crime within the ICC's jurisdiction (*nexus*), ensuring that persecution is not applied to lesser forms of discrimination that fall short of the gravity required under ICL.

The nexus requirement (i.e., in connection with), means the persecutory conduct must be linked to any other act under Article 7(1), or to any other crime within the ICC's jurisdiction, as part of the same widespread or systematic attack.³⁵⁸ The nexus does not need to involve the same victim or the same incident, so long as the link is not remote and the acts form one

³⁵⁵ *Prosecutor v Jean-Pierre Bemba Gombo* (Decision pursuant to Article 61(7)(a) and (b)) ICC-01/05-01/08-424 (PTC II, 15 June 2009) para 193.

³⁵⁶ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, Art. 7(1)(h).

³⁵⁷ International Criminal Court, *Elements of Crimes* (2011) Article 7(1)(h).

³⁵⁸ *ibid* (elements incl. discriminatory grounds, "in connection with" any act in Art 7(1) or any other ICC crime; accompanying notes).

course of conduct within the attack.³⁵⁹ In practice, discriminatory measures that enable, accompany, or follow other Article 7 acts (e.g., mass detention, torture) satisfy the nexus when shown to be part of the same campaign.³⁶⁰

Not every impairment is included as an act of persecution, but only ‘severe’ deprivation of fundamental rights.³⁶¹ The standard for severity is the other individual crimes against humanity.³⁶² Both scholars and the tribunal stood at the point that the deprivation of rights should be viewed not an isolation, but as a manifestation of broader discriminatory practices, requiring analysis within their full contextual framework.³⁶³

The *mens rea* of persecution requires not only awareness of the victim’s group identity, but also the specific intent to discriminate on one of the prohibited grounds (i.e. *dolus specialis* – discriminatory intent).³⁶⁴ This means that the perpetrator must act with the conscious objective to deprive persons of fundamental rights because of their membership in a particular group, further affirmed in the case *Prosecutor v Katanga*.³⁶⁵ The discriminatory motive must be primary driving force behind the act, distinguishing persecution from other crimes that may accidentally affect specific groups.³⁶⁶

China might contend that the measures were instituted for the maintenance of public order and the prevention of terrorism, not for discriminatory purposes, as it did state.³⁶⁷ Yet under Article 7(1)(h) and 7(2)(g) the crime of persecution turns on: (1) severe deprivation of funda-

³⁵⁹ *Prosecutor v William Samoei Ruto et al.* (Decision on the Confirmation of Charges) ICC-01/09-01/11-373, 23 January 2012, paras 269–277 (persecution; nexus to other acts in Art 7(1) within the same attack).

³⁶⁰ *ibid.*

³⁶¹ Gerhard Werle and Florian Jessberger, *Principles of International Criminal Law* (4th edn, Oxford University Press 2020), para 1106; *Prosecutor v Blaškić (Judgment)* ICTY-95-14-A (29 July 2004), paras 138 et seq., 160; *Prosecutor v Kupreškić et al.* (Trial Judgment) ICTY IT-95-16-T, 14 January 2000, paras 619–621, 622–623.

³⁶² *Prosecutor v Blaškić (Judgment)* ICTY-95-14-A (29 July 2004), paras 135, 138 et seq., 160.

³⁶³ International Criminal Court, *Elements of Crimes* (2011/2013 cons), Art 7(1)(h) (Persecution) and accompanying notes (sets out elements; practice treats assessment of deprivation within full contextual framework, including patterns and cumulative effect).

³⁶⁴ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 7(1)(h), 7(2)(g) (persecution: severe deprivation of fundamental rights on discriminatory grounds)

³⁶⁵ *Prosecutor v Germain Katanga* (Trial Chamber II, 7 March 2014) ICC-01/04-01/07-3436-tENG, paras 807, 1104–1110.

³⁶⁶ *Prosecutor v Kupreškić et al* (Trial Judgment) ICTY IT-95-16-T (14 January 2000) paras 621–627, 636–639.

³⁶⁷ State Council Information Office of the PRC, *The Fight Against Terrorism and Extremism and Human Rights Protection in Xinjiang* (White Paper, 18 March 2019) https://english.scio.gov.cn/m/2019-03/19/content_74585093.htm, accessed 29 August 2025; State Council Information Office of the PRC, *Vocational Education and Training in Xinjiang* (White Paper, 16 August 2019) (centres established “to prevent the breeding and spread of terrorism and religious extremism”) https://english.scio.gov.cn/m/2019-08/16/content_75106484.htm, accessed 29 August 2025; State Council Information Office of the PRC, ‘China issues white paper on anti-terrorism, human rights protection in Xinjiang’ (News release, 18 March 2019) https://english.scio.gov.cn/whitepapers/2019-03/18/content_74584111.htm, accessed 29 August 2025.

mental rights, and (2) that this deprivation was intentionally carried out on prohibited discriminatory grounds, assessed within the same widespread or systematic attack and with the Article 7 nexus to other crimes.³⁶⁸

Both ICC and ICTY jurisprudence accepts that mixed motives do not negate liability where discriminatory purpose is a significant reason for the deprivation, and tribunals infer that purpose from selective application of measures, group-targeted rhetoric, patterns of mass detention and ill-treatment, and the consistency of practices across time and locations.³⁶⁹

Knowledge and intent may be inferred circumstantially from the methods and patterns of the campaign (e.g., standardised procedures, institutional coordination), without requiring proof that the accused knew every detail of the overall plan.³⁷⁰ Moreover, persecution's severity is benchmarked against other crimes against humanity and may be established cumulatively, i.e., by the aggregate effect of discriminatory restrictions on liberty, religion, movement, employment, and access to justice, rather than any single act in isolation.³⁷¹

Applied in the China context, evidence that Falun Gong and Uyghur Muslim civilians were systematically subjected to re-education, mass detention without due process, suppression of worship, and associated abuses, and that these measures enable or accompany other Article 7 acts (e.g., imprisonment, torture and killings linked to organ removal) within the same attack, would rebut a public-order justification of the State and support a finding of discriminatory persecution.³⁷²

³⁶⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 7(1)(h), 7(2)(g) (definition and grounds), and art 7(1) (chapeau).

³⁶⁹ *Prosecutor v Germain Katanga* (Trial Judgment) ICC-01/04-01/07-3436 (TC II, 7 March 2014) paras 1104–1110; International Criminal Court, *Elements of Crimes* (2011/2013 cons), Art 7(1)(h) (Persecution) (elements incl. discriminatory grounds and “in connection with” any Art 7(1) act or other ICC crime); *Prosecutor v William Samoei Ruto and Joshua Arap Sang* (Decision on the Confirmation of Charges) ICC-01/09-01/11-373 (PTC II, 23 January 2012) paras 269–277 (persecution; “in connection with” requirement; proof of discriminatory intent); Ministry of Public Security of the PRC, ‘Pro-Falun Gong Activities Prohibited’ (Notice, 22 July 1999) https://lt.china-office.gov.cn/eng/zt/jpflg/200405/t20040530_2911098.htm, accessed 29 August 2025.

³⁷⁰ *Prosecutor v Jean-Pierre Bemba Gombo* (Decision pursuant to Article 61(7)(a) and (b)) ICC-01/05-01/08-424 (PTC II, 15 June 2009) para 1094-1100, 1112-1113 and 1124-1125 (knowledge of the attack can be inferred from methods/patterns); *Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (Appeals Judgment) IT-96-23 & IT-96-23/1-A (ICTY, 12 June 2002) para, 102 (no need to know precise details of the attack).

³⁷¹ *Prosecutor v Dario Kordić and Mario Čerkez* (Trial Judgment) ICTY IT-95-14/2-T (26 February 2001) para 179 (widespread may arise by cumulative effect of inhumane acts).

³⁷² International Criminal Court, *Elements of Crimes* (2011/2013 cons), Art 7(1)(h) (Persecution) (elements incl. discriminatory grounds and “in connection with” any Art 7(1) act or other ICC crime); OHCHR, *Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, PRC* (31 August 2022) (mass detention; ideological “re-education”; restrictions on religion; due-process deficits). <https://www.ohchr.org/en/documents/country-reports/ohchr-assessment-human-rights-concerns-xinjiang-uyghur->

In the light above, alleged systemic targeting of Falun Gong practitioners, labelling them as “heretical cult”, or Uyghur Muslims as “terrorist threat”, evidenced by ideological re-education, mass detention, suppression of religious expression, and organ harvesting, demonstrates both *actus reus* and specific *mens rea* visualised in intentional discrimination, linked to group identity.³⁷³ These acts, if proven, represent not only severe violations of rights but are also demonstrably motivated by religious and political animus.³⁷⁴

4.4.5 Other inhumane acts

Crimes against humanity require that the conduct form part of a “course of conduct involving the multiple commissions of acts” directed against a civilian population and carried out pursuant to or in furtherance of a State or organisational policy.³⁷⁵

The policy need not be formal and may be inferred from coordinated patterns and the capacity of the State/organisation to carry the attack.³⁷⁶

This follows directly from Article 7(1) and Article 7(2)(a) from the Statute, the ICC Elements of Crimes, and the *Kenya* jurisprudence, where Pre-Trial Chamber II explained that “organisation” covers entities with the means and capability to mount such an attack and that policy may be proved circumstantially (repeated acts across time and locations, coordinating among official services).³⁷⁷

[autonomous-region](https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf) (PDF: <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>, accessed 29 August 2025).

³⁷³ OHCHR, *Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China* (31 August 2022) (mass detention, ideological “re-education”, restrictions on religious expression), see esp. paras 96-103, <https://www.ohchr.org/en/documents/country-reports/ohchr-assessment-human-rights-concerns-xinjiang-uyghur-autonomous-region> (PDF: <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>, accessed 29 August 2025); UN Special Procedures, ‘China: UN human rights experts alarmed by “organ harvesting” allegations’ (OHCHR Press Release, 14 June 2021) <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations>, accessed 29 August 2025; European Parliament, *Resolution of 12 December 2013 on Organ Harvesting in China* (2013/2981(RSP)) (refers to persecution of Falun Gong and other prisoners of conscience) P7_TA(2013)0603 https://www.europarl.europa.eu/doceo/document/TA-7-2013-0603_EN.html, accessed 29 August 2025.

³⁷⁴ *ibid*; *Prosecutor v Kupreškić et al* (Trial Judgment) ICTY IT-95-16-T (14 January 2000) paras 619–627, 636–639 (persecution as gross/blatant denial; gravity equal to other CAH; contextual/cumulative assessment).

³⁷⁵ Rome Statute of the International Criminal Court (ICC, consolidated May 2024) arts 7(1), 7(2)(a), 7(2)(i), 30; International Criminal Court, *Elements of Crimes* (2011, reprinted 2013) arts 7(1)(a), 7(1)(f), 7(1)(h), 7(1)(i), 7(1)(k) (and Art 7 chapeau).

³⁷⁶ Situation in the Republic of Kenya, PTC II, *Corrigendum of the Decision pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation* (31 March 2010) ICC-01/09-19-Corr, para 96.

³⁷⁷ *ibid*.

Within that context, Article 7(1)(k), functions as a residual category for conduct of comparable gravity to the enumerated crimes. Liability arises where: (1) the conduct causes “great suffering, or serious injury to body or to mental or physical health, (2) the harm is of a similar character and gravity to the enumerated crimes, and (3) the contextual elements of Article 7 are met.”³⁷⁸

Non-consensual medical interventions can meet this threshold where they produce lasting bodily impairment or profound mental trauma. Early and still-cited jurisprudence (Doctor’s Trial 1947), i.e. case *US v Brandt*, serves as an early source to the ICL.³⁷⁹ This tribunal found that non-consensual medical proceedings, including those resulting in permanent injury or death, constitute crimes against humanity, particularly when carried out systematically and without regard to individual autonomy.³⁸⁰ While early sources like the mentioned Doctor’s Trial are persuasive, the controlling law is the Statute and ICC jurisprudence confirming the residual role and similarity/gravity tests for Article 7(1)(k).³⁸¹ Under Article 30 of the Statute, the perpetrator must intend the underlying conduct and be aware that the resulting great suffering or serious injury will occur in the ordinary course of events.³⁸²

4.5 Assessment of underlying acts as a Crime against humanity

Do any of the underlying acts amount to crimes against humanity? The answer would be positive, if and when the chapeau is proved. On a record showing a widespread or systematic attack against civilians implemented pursuant to a State or organisational policy, the same factual matrix can sustain charges of murder, torture, persecution, and enforced disappearance as crimes against humanity, alongside the residual count for “other inhumane acts”, pleaded in the alternative to capture serious medical exploitation, not fully encompassed elsewhere. The chapeau can be established through circumstantial proof of coordinated patterns and institutional capacity, rather than a formal edict, consistent of central government, only an inferable policy attributable to State organs or a qualifying organisation, with the means to mount the attack.³⁸³

³⁷⁸ ICC, *Elements of Crimes* (2011, reprinted 2013) arts 7(1)(k) (and Art 7 chapeau).

³⁷⁹ *United States v Karl Brandt et al* (The Medical Case/Doctors’ Trial), Judgment (19 August 1947), *Trials of War Criminals before the Nuremberg Military Tribunals*, vol 2., pages 181-183, 222, 227.

³⁸⁰ *ibid.*

³⁸¹ Rome Statute of the International Criminal Court (ICC, consolidated May 2024) arts 7(1)(k), art 30.

³⁸² *ibid.*, art 30.

³⁸³ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, arts 7(1), 7(2)(a), 7(2)(i), 25, 30; International Criminal Court, *Elements of Crimes* (2011, reprinted 2013), arts 7(1)(a), 7(1)(f), 7(1)(h), 7(1)(i), 7(1)(k) and Article 7 Introduction; *Prosecutor v William Samoei Ruto*

On that footing, murder as crime against humanity is available where the evidentiary record supports that organ removal was the cause of death (for example, removal while the person was alive, or death induced to facilitate procurement of the organs). The ICC's Elements of Crimes are straightforward to meet where causation is proved. The *Katanga* case illustrates how Article 7(1)(a) is applied at confirmation and trial stages.³⁸⁴

For torture as a crime against humanity, the Statute and the ICC Elements of Crimes require intentional infliction of severe pain or suffering on a person in the custody or control of the perpetrator, without any prohibited-purpose element.³⁸⁵

By contrast, the ICTY, in *Kunarac* case, does require a prohibited purpose, such as obtaining information, punishment, intimidation, coercion, or discrimination.³⁸⁶ Accordingly, the ICC's "no purpose" crimes against humanity definition does not align with the ad hoc jurisprudence on that point, though both converge on the requirements of severity and intent.³⁸⁷

If it would be proven that organ removal was carried out on detainees under state custody or control, the intentional infliction of severe pain inherent in such non-consensual procedures would satisfy the ICC's definition of torture as a crime against humanity, even without a prohibited purpose.³⁸⁸

Persecution turns on discriminatory intent and severe deprivation of fundamental rights in connection with another Article 7 act or any ICC crime, and the case *Kupreškić*,³⁸⁹ and *Kordić & Čerkez*,³⁹⁰ provide the principal guidance on gravity and the discriminatory nexus (specific

et al, PTC II, Decision on the Confirmation of Charges pursuant to Article 61(7)(a) and (b) of the Rome Statute (23 January 2012) ICC-01/09-01/11-373-Red (see C. policy section), pages 66-84.

³⁸⁴ *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, PTC I, *Decision on the confirmation of charges* (30 September 2008) ICC-01/04-01/07-717 (murder as CAH applied), para 420-427.

³⁸⁵ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, art 7(2)(e), see also International Criminal Court, *Elements of Crimes* (2011, reprinted 2013), art 7(1)(f).

³⁸⁶ *Prosecutor v Kunarac, Kovač and Vuković*, ICTY Appeals Chamber, *Appeal Judgement* (12 June 2002) IT-96-23 & IT-96-23/1-A (paras 140–151).

³⁸⁷ *Prosecutor v Anto Furundžija* (Trial Judgment) IT-95-17/1-T (ICTY, 10 December 1998) paras 162–169.

³⁸⁸ International Criminal Court, *Elements of Crimes* (2011, reprinted 2013), art 7(1)(f).

³⁸⁹ *Prosecutor v Kupreškić et al*, ICTY Trial Chamber, *Judgement* (14 January 2000) IT-95-16-T (paras 606–607, 619–621).

³⁹⁰ *Prosecutor v Kordić & Čerkez*, ICTY Appeals Chamber, *Appeal Judgement* (17 December 2004) IT-95-14/2-A (persecution analysis), paras 101-117.

intent to discriminate on protected grounds).³⁹¹ If proven that authorities targeted detainees on protected grounds, and imposed severe deprivations such as detention with no due process or coercive medical interventions, linked to Article 7 acts, the elements of persecution could be met.³⁹²

In the end, enforced disappearance as crime against humanity requires arrest or detention by, or with State involvement, followed by refusal to acknowledge fate or whereabouts, with intent to remove the person from the protection of law for a prolonged period, and the Burundi Article 15 decision applied these elements, emphasising the two interrelated components (deprivation of liberty and denial of information), indicia of intent (secret detention), and the continuous nature of the offence while concealment persists.³⁹³

Evidence of arrests into State-run facilities coupled with systemic non-acknowledgement and concealment of detainees' fate or location over time, would possibly satisfy Article 7(1)(i).

Accordingly, once the chapeau is established, by inference from coordinated patterns and institutional capacity, the same factual matrix sustains crimes against humanity liability for listed crimes, with Article 7(1)(k) pleaded in the alternative to capture the medical exploitation harm without duplication. This cumulative charging strategy, grounded in the ICC's Elements of Crimes and reflected in cited jurisprudence, offers the most accurate juridical framing and potentially closes existing gaps.

4.6 Crimes against humanity as Customary and Peremptory norms (*ius Cogens*)

The prohibition of crimes against humanity is a rule of customary international law and, more than that, a peremptory norm (*ius cogens*). The ILC's 2022 work confirms both the method for identifying *ius cogens* and its legal consequences, and its annex lists the prohibition of

³⁹¹ *Prosecutor v Kupreškić et al* (Trial Judgment) IT-95-16-T (ICTY, 14 January 2000) paras 615–621, 627 (gravity; persecutory nexus; cumulative assessment).

³⁹² International Criminal Court, Elements of Crimes (2002/2011), art 7(1)(h) (esp. element 4: “in connection with any act referred to in article 7(1) ... or any crime within the jurisdiction of the Court”); *Prosecutor v Kordić and Čerkez* (Trial Judgment) IT-95-14/2-T (ICTY, 26 February 2001) paras 188–191, 211–214 (connection debate; discriminatory intent as *mens rea* for persecution).

³⁹³ *Situation in the Republic of Burundi*, PTC III, *Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation”* (9 November 2017; decision of 25 October 2017), ICC-01/17-9-Red (paras 117–133; 172–175).

crimes against humanity among norms previously treated as peremptory, entailing non-derogation and the nullity of conflicting acts.³⁹⁴

Customary international law arises from general practice accepted as law (*opinio iuris*), and, in principle, admits the persistent objector doctrine. They may be modified by contrary subsequent practice and potentially admit a persistent objector.³⁹⁵

By contrast, *ius cogens* norms are a subset of general international law that protect fundamental values, and are hierarchically superior, they bind all States without exception, and cannot be displaced by treaty, custom or unilateral acts, and do not allow persistent objection.³⁹⁶

In doctrinal shorthand: all *ius cogens* are customary but not all customary rules are *ius cogens*.³⁹⁷ The latter carry hierarchical superiority and invalidate inconsistent rules, rather than merely prevailing in a conflict.³⁹⁸

In the light of forced organ harvesting allegations in China, UN Special Procedures (2021) publicly expressed alarm at detailed allegations of forced organ harvesting targeting detained minorities, urging China to respond transparently.³⁹⁹

The European Parliament (2022) condemned reports on continued organ harvesting and urged EU action, referencing earlier documentation and hearings.⁴⁰⁰ Furthermore, the Tribunal

³⁹⁴ International Law Commission (ILC), Draft Conclusions on Peremptory Norms of General International Law (Jus Cogens) (2022), esp concls 2, 17–19; International Law Commission (ILC), *Report*, 73rd session (2022) A/77/10 (Advance), Annex—non-exhaustive list: includes the prohibition of crimes against humanity, p 89; commentary explaining prior ILC references to CAH as jus cogens. pp 194–195; International Law Commission (ILC), *Commentaries to the Draft Conclusions on Jus Cogens* (2022), incl. concl 5 (most peremptory norms are based in custom) and concl 14(3) (persistent objector inapplicable).

³⁹⁵ International Law Commission (ILC), *Draft Conclusions on Identification of Customary International Law* (2018), concls 2–3 (two elements) and general commentary.

³⁹⁶ International Law Commission (ILC), *Draft Conclusions on Peremptory Norms of General International Law (Jus Cogens)* (2022), esp concls 2, 17–19 (nature; erga omnes; circumstances precluding wrongfulness); International Law Commission (ILC), *Draft Conclusions on Identification of Customary International Law* (2018), concls 2–3 (two-element approach); International Law Commission (ILC), *Jus Cogens Draft Conclusions (Commentaries)* (2022), concl 14(3) and commentary (persistent objector rule does not apply).

³⁹⁷ *ibid.*

³⁹⁸ Vienna Convention on the Law of Treaties (1969), art 53 (voidness of treaties conflicting with jus cogens) and art 71 (consequences); International Law Commission (ILC), *Draft Conclusions on Peremptory Norms* (2022), concl 14(1)–(3) (no emergence of conflicting custom; persistent objector rule inapplicable).

³⁹⁹ OHCHR, ‘China: UN human rights experts alarmed by “organ harvesting” allegations’ (Press release, 14 June 2021). <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations>, accessed 31 August 2025.

⁴⁰⁰ European Parliament, *Resolution of 5 May 2022 on reports of continued organ harvesting in China* (2022/2657(RSP)). https://www.europarl.europa.eu/doceo/document/TA-9-2022-0200_EN.html, accessed 31 August 2025.

(2019) concluded, on the evidence before it, that forced organ harvesting from prisoners of conscience had occurred at scale, while not an intergovernmental court, it has been cited in policy fora.⁴⁰¹

If the underlying patterns meets Article 7's contextual chapeau, its classification as crimes against humanity would engage peremptory-law consequences that bind all States, irrespective of ICC membership, namely, *erga omnes* entitlement to invoke responsibility, duties of co-operation, non-recognition and non-assistance in the case of serious breach of a peremptory norm, and the structuring of prosecute-or extradite pathways where available under domestic or treaty law.⁴⁰²

4.7 Bridging IHRL and ICL

IHRL imposes continuous, state-facing obligations to respect, protect and fulfill core rights, including the right to life and the absolute ban of torture, and to investigate, prosecute, or extradite serious violations.⁴⁰³

By contrast, ICL attaches individual criminal responsibility for a bounded set of atrocity crimes when contextual thresholds are met (e.g., Article 7 chapeau –in a widespread or systematic attack against a civilian population pursuant to a State or organizational policy).⁴⁰⁴

In practice, the tracks meet where IHRL fact-finding documents large scale arbitrary detention, ill-treatment and lethal harm tied to such a policy, that material provides probative support for the Statute's Article 7 context and underlying acts, following forced organ harvesting, where proved, to be framed as murder, torture, enforced disappearance, persecution, or other inhumane acts as crimes against humanity.⁴⁰⁵

⁴⁰¹ China Tribunal (Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China), *Judgment* (1 March 2020) https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf accessed 4 September 2025.

⁴⁰² International Law Commission (ILC), *Draft Conclusions on Peremptory Norms of General International Law (Jus Cogens)* (2022), Conclusion 2; International Law Commission (ILC), *Responsibility of States for Internationally Wrongful Acts* (2001) arts 40–41; International Law Commission (ILC), *The obligation to extradite or prosecute (aut dedere aut judicare)* (Final Report of the ILC, 2014), esp pp 1–3.

⁴⁰³ International Covenant on Civil and Political Rights (1966) arts 2, 6–7; UN Human Rights Committee, *General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (26 May 2004) CCPR/C/21/Rev.1/Add.13.

⁴⁰⁴ International Criminal Court, Rome Statute of the International Criminal Court (consolidated May 2024) art 7; International Criminal Court, *Elements of Crimes* (ICC 2013) (arts 7(1)(a), (e), (f), (h), (i), (k); Intro to art 7).

⁴⁰⁵ International Criminal Court, Rome Statute of the International Criminal Court (consolidated May 2024) art 7 (consol. May 2024); OHCHR, *Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, PRC* (31 August 2022) para 148 (noting that certain patterns “may constitute international crimes, in par-

IHRL positive duties to investigate, prosecute, provide remedies, and prevent refoulement, operationalize accountability pathways that align with ICL's complementarity logic and with domestic universal-jurisdiction frameworks, enabling national courts to act even absent ICC venue (e.g., Germany's VStGB and the *Anwar R.* conviction for crimes against humanity).⁴⁰⁶

At the level of legal hierarchy, the ILC's 2022 work on *ius cogens* underscores that crimes against humanity implicate peremptory norms, triggering consequences of non-derogation, non-recognition, non-assistance, and cooperation to end serious breaches,⁴⁰⁷ while its Draft Articles on Crimes Against Humanity codify States' duties to prevent, criminalize and cooperate,⁴⁰⁸ together furnishing the normative "bridge" that connects IHRL obligations with ICL accountability in forced organ harvesting cases.

Finally, adjacent cooperation regimes are the point where the bridge takes effect in practice, even for China's conduct. Practically, it lies in the point where state-facing IHRL duties are converted into criminal-process leverage through procedural tools like: (1) targeted sanctions that immobilize travel and assets and compel reporting, under the EU's horizontal human-rights regime (e.g., Decision (CFSP) 2020/1999,⁴⁰⁹ Regulation (EU) 2020/1998),⁴¹⁰ and (2) parallel "Magnitsky" frameworks⁴¹¹ in the US, UK,⁴¹² and Canada,⁴¹³ which immobilize travel and assets and impose reporting and co-operation duties, thereby generate evidentiary leads and preserve proceeds for later seizure.

ticular crimes against humanity") <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assessment.pdf>, accessed 04 September 2025.

⁴⁰⁶ Germany, *Code of Crimes against International Law (VStGB)* (eng transl) §§ 1, 7; Higher Regional Court (Koblenz), Judgment 1 StE 9/19 (Anwar R.) (13 January 2022) (IIIM, *Unofficial English Translation of Key Parts*, 9 July 2025), https://iiim.un.org/wp-content/uploads/2025/07/1StE9_19-Judgment_Unofficial-IIIM-Translation_ENG.pdf, accessed 31 August 2025.

⁴⁰⁷ International Law Commission, *Draft Conclusions on Peremptory Norms of General International Law (Jus Cogens)*, with commentaries (2022) esp Conclusions 2, 17–19.

⁴⁰⁸ International Law Commission, *Draft Articles on Prevention and Punishment of Crimes against Humanity* (2019) and *Commentaries* (2019), arts 3–6.

⁴⁰⁹ Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, OJ L 410I/13.

⁴¹⁰ Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, OJ L 410I/1.

⁴¹¹ United States, Global Magnitsky Human Rights Accountability Act, Pub L 114-328, Subtitle F (2016), see section 3.

⁴¹² United Kingdom, Global Human Rights Sanctions Regulations 2020 (SI 2020/680), see part 2.

⁴¹³ Canada, Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), SC 2017, see section 4, orders and regulations.

Finally, having in mind that China is party to the UN Convention Against Transnational Organized Crime,⁴¹⁴ and the Trafficking in Persons Protocol (both binding on China),⁴¹⁵ trafficking for the purpose of organ removal counts as exploitation, unlocking extradition, mutual legal assistance and confiscation/asset recovery routes to move suspects, evidence and money across borders.⁴¹⁶

In sum, these sanctions levers and UN Convention Against Transnational Organized Crime as well the Trafficking in Persons Protocol cooperation tools, turn the State IHRL duties into concrete actions, delivering ICL grade accountability for forced organ harvesting, even where ICC jurisdiction is unavailable.

Conclusion

On the present record, the alleged practices, i.e., systematic detention of Uyghur Muslims and Falun Gong practitioners, can meet the Statute's Article 7 definitional and evidentiary thresholds, where proved, for murder, torture, enforced disappearance, persecution, and other inhumane acts.⁴¹⁷ Applying the ICC's Elements of Crimes clarifies how conduct, consequences and context map onto the underlying acts and the chapeau requirements.⁴¹⁸

Responsibility operates on parallel tracks. At the state level, responsibility arises under ICL's International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (further referred to as "ARISWA") for cessation, non-repetition, reparation,⁴¹⁹ and where peremptory norms are engaged, all states have a legal interest *erga omnes*, and additional consequences follow.⁴²⁰

⁴¹⁴ United Nations Convention against Transnational Organized Crime (UNTOC) (2000), arts 13, 16, 18.

⁴¹⁵ United Nations, 'United Nations Convention against Transnational Organized Crime — Status (Chapter XVIII.12)' UN Treaty Collection (showing "China: 12 Dec 2000 (signature); 23 Sep 2003 (ratification)") https://treaties.un.org/pages/viewdetails.aspx?chapter=18&clang=en&mtdsg_no=xviii-12&src=treaty, accessed 31 August 2025; Protocol to Prevent, Suppress and Punish Trafficking in Persons, art 3, supplementing UNTOC—status (showing China as a party), <https://treaties.un.org/doc/publication/mtdsg/volume%20ii/chapter%20xviii/xviii-12-a.en.pdf> accessed 31 August 2025.

⁴¹⁶ *ibid.*

⁴¹⁷ *ibid.*, arts 7(1), 7(2), 12, 13(b), 25.

⁴¹⁸ International Criminal Court, *Elements of Crimes* (2011) General Introduction (Art 7) & Art 7 sections.

⁴¹⁹ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001), arts 30–31 & commentary paras (1)–(3), (9)–(13); art 31 & commentary paras (3)–(4), (9), (11); general commentary para (7) on the distinctness of State/individual responsibility.

⁴²⁰ ILC, *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (jus cogens), with Commentaries* (2022), concl 17(1)–(2); concl 19(1)–(2) & commentary paras (1)–(2), (12)–(13).

At the individual level, ICL attaches liability to natural persons for core crimes through the Statute's general part.⁴²¹

Concurrently, IHRL imposes continuous duties: to respect, protect and fulfil the right to life and the absolute ban on torture and ill-treatment under the ICCPR,⁴²² and CAT,⁴²³ and to prevent, investigate and punish enforced disappearance under the International Convention for the Protection of All Persons from Enforced Disappearance.⁴²⁴ These obligations operationalise investigation, non-refoulement, cooperation, and mutual legal assistance, and complement individual criminal responsibility as well as domestic proceedings on the basis of universal jurisdiction.⁴²⁵

Importantly, this legal characterisation is not merely symbolic. Recognising gravest human rights violations as crimes against humanity elevates them to the highest threshold of international condemnation and triggers a legal duty for states and international bodies to act.⁴²⁶ While China's non-party status means the ICC lacks territorial/national jurisdiction absent a UNSC referral, other avenues remain available, notably domestic prosecutions under universal jurisdiction and the creation of ad hoc accountability mechanisms.⁴²⁷

Ethical and policy instruments further specify standards. The WHO Guiding Principles underscore safety and transparency as governance baselines,⁴²⁸ while the Declaration of Istanbul codifies prohibitions on organ trafficking and transplant tourism and requires oversight that ensures standardisation, traceability, transparency, quality, safety, fairness, and public trust.⁴²⁹ These have catalysed statutory reforms, like in Israel's Organ Transplant Act 2008, criminal-

⁴²¹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, arts 7, 12, 13(b), 25.

⁴²² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 6–7.

⁴²³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, arts 2, 3, 12, 16.

⁴²⁴ International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010), arts 1, 12.

⁴²⁵ European Parliament Resolution of 5 May 2022 on reports of continued organ harvesting in China (P9_TA(2022)0200), paras 1–3, 4–12, [European Parliament resolution of 5 May 2022 on the reports of continued organ harvesting in China \(2022/2657\(RSP\)\)](#), accessed 31 August 2025.

⁴²⁶ ILC, *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (jus cogens), with Commentaries* (2022), concl 17(1)–(2); concl 19(1)–(2) & commentary paras (1)–(2), (12)–(13).

⁴²⁷ European Parliament Resolution of 5 May 2022 on reports of continued organ harvesting in China (P9_TA(2022)0200), para 3, [European Parliament resolution of 5 May 2022 on the reports of continued organ harvesting in China \(2022/2657\(RSP\)\)](#), accessed 31 August 2025.

⁴²⁸ World Health Organization, *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation* (endorsed WHA63.22, 2010), Guiding Principles 10–11.

⁴²⁹ Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2018 edn), Principles 3, 6, 10–11.

ising trade and restricting reimbursement of illicit transplant tourism.⁴³⁰ Also, Taiwan's 2015 amendments banned the use of executed prisoner organs and transplant tourism imposed sanctions for non-compliance.⁴³¹ In the end, Spain, in its Article 156 bis of the Criminal Code, criminalised the trafficking of human organs, including promoting, facilitating, advertising, or executing the trade, with penalties of six to twelve years imprisonment where the organ is from a living person, and three to six years where it is from a deceased person.⁴³²

Accordingly, viable next steps include adopting domestic offences with traceability and reporting aligned with WHO and Istanbul standards, structuring cooperation channels and evidence preservation consistent with ARISWA duties,⁴³³ leveraging *erga omnes* consequences under *ius cogens* consequences,⁴³⁴ using targeted independent fact-finding that links IHRL pattern evidence to ICL contextual elements, under Article 7.⁴³⁵

In conclusion, the legal framework provided by ICL, most notably Article 7 of the Statute, offers a robust basis for the assessment of China's alleged conduct. Provided sufficient, reliable evidence, a compelling case for crimes against humanity could be advanced, reaffirming the proposition that no State lies beyond accountability for atrocity crimes, and that both State and individual responsibility can be engaged in parallel.⁴³⁶

⁴³⁰ Israel, Organ Transplant Act 2008, ss 4–6 (criminalisation; restrictions on reimbursement/transplant tourism).

⁴³¹ Human Rights Sub-Committee, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism* (Parliament of the Commonwealth of Australia 2018) app D 'Overseas legislative approaches to prohibit transplant tourism' https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/244_Joint_Committees/JFADT/Foreign_Affairs_Defence_and_Trade/Organ_Harvesting_Inquiry/Appendix_D.pdf accessed 31 August 2025.

⁴³² Spain, Criminal Code (Código Penal), art 156 bis, [Criminal Code 2016.pdf](#), accessed 31 August 2025.

⁴³³ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001), art 30.

⁴³⁴ International Law Commission, *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (ius cogens), with Commentaries* (2022), concl 17-19.

⁴³⁵ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 7(1).

⁴³⁶ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 7; International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001), general commentary para (7) on the distinctness of State/individual responsibility.

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