

Dissertation on the Topic of
Analysis on Global Aspects of Organ Trafficking



INSTITUTE OF LAW, NIRMA UNIVERSITY

**AS A PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE
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UNDER THE GUIDANCE OF

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(CRIMINAL AND SECURITY LAWS)

Declaration

“I declare that the dissertation hereby submitted by me for the L.L.M degree at the Institute of Law, Nirma University,Ahmedabad is my own independent work and has not previously been submitted by me at another university/faculty.”

“I do hereby declare that, the text and material taken from other sources including but not limited to books , journals and web have been acknowledged, referred and cited to the best of my knowledge , ability and understanding.”

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CERTIFICATE

This is to certify that the dissertation titled “*Analysis on the Global aspects of Organ Trafficking*” has been prepared by Ritvi Dhakar under my supervision and guidance. The dissertation has been carried out by her after careful research and investigation. The work of the dissertation is of the standard expected of a candidate of Masters of Law [LL.M] in Criminal and Security Laws and I recommend it be sent for evaluation.

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Criminal and Security Laws

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List of Abbreviations

AIR	ALL INDIA REPORTER
ALL	ALLAHABAD
BJP	BHARTIYA JANTA PARTY
BOM	BOMBAY
CH	CHAPTER
CJ	CHIEF JUSTICE
No	NUMBER
P	PAGE
UK	UNITED KINGDOM
USA	UNITED STATES OF AMERICA
V	VERSUS
VS	VERSUS
THB	TRAFFICKING OF HUMAN BEINGS
UN	UNITED NATIONS
APOV	ABUSE OF THE POSITION OF VULNERABILITY
AC	AUTHORIZATION COMMITTEE
BMA	BRITISH MEDICAL ASSOCIATION
CASKP	CHARITY ASSOCIATION FOR THE SUPPORT OF KIDNEY PATIENTS
CFSD	CHARITY FOUNDATION FOR SPECIAL DISEASES
WHO	WORLD HEALTH ORGANIZATION
WMA	WORLD MEDICAL ASSOCIATION
DOI	DECLARATION OF ISTANBUL
ISN	INTERNATIONAL SOCIETY FOR NEPHROLOG

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CHAPTER 1

INTRODUCTION AND RESEARCH

METHODOLOGY

CHAPTER 1

INTRODUCTION AND RESEARCH METHODOLOGY

Executive Summary

This dissertation further expands a deep analysis on the global phenomenon of human organ trafficking. It studies in depth the policies, statutory measures, views of renowned scholars around the globe. The case studies reveal the lessons learnt and further steps to be taken at the international level.

Globalization of Trafficking

The problem of human organ trafficking has spread like a web around the world. Whether it be a Super power like USA or major underdeveloped Asian countries both suffer at the same level.

Before 2000, the problem of Organ trafficking was mainly limited to India and major South Asian countries. The major recipients were the Arab Countries, Japan and other Asian countries.

But after 2000, it started spreading swiftly throughout the world. It is to a large scale promoted by Israeli doctors and patients which has developed the trade in the regions of Eastern Europe and Russia. Now it has started shifting to economically, politically and socially unstable countries.

Different ways of Organ Trafficking

The term 'trafficking in organs' refers to commercial transactions with human body parts that have been removed from a living or a dead body grouped with whole range of illegal activities.

It constitutes:

- Transplant Tourism (travel abroad)
- Human trafficking for Organ Transplantation (THBOR)
- Trafficking in Organ tissues and cells.

Criminalization of Organ Trafficking

Countries all over the world have widely accepted the term defined by the UN Palermo protocol in 2000. Under this framework trafficking in organs is considered to be a sub category of trafficking in human beings (THB). In 2008 Declaration of Istanbul framed out the guidelines for health professionals, hospitals and physicians.

According to a study conducted by the World Health Organization, about 10% of Organ Transplants are conducted by illicitly trafficked organs.

Modus Operandi of Organ Traffickers

By studying recently prosecuted trafficking cases, it can be analyzed that money is the driving force behind these transactions. Analysis of the recently prosecuted trafficking cases have provided in depth knowledge about the modus operandi of the traffickers.

The study also shows that illicit transplant carries considerable medical, psychological, social and economic risks to both the parties.

Legal framework against Organ trade

The Chapter 4 of this dissertation gives an overview of the existing International framework against human organs and tissues i.e. World Health Organization, World Medical Association, Declaration of Istanbul and UN Palermo protocol.

Lessons learnt from International Case studies

Chapter 5 describes the reality of Organ Trafficking around the world. These cases demonstrate the :

- Transnational character
- Modus Operandi
- Loopholes and pitfalls in the law
- Difficulty in bringing witness for the prosecution

Conclusions and Suggestions

In the final chapter the number of lessons and observations learnt from the topic of Organ Trafficking are summarized.

The suggestions offered are very practical and aim to make the law enforcement mechanism very efficient and effective.

Introduction

Statement of Problem

Organ trafficking being the least understood and investigated form of human trafficking. It is a growing international problem with transnational dimensions. Organ trafficking involves the intersection between the criminal world of traffickers, poor donors, sick recipients and untrained medical staff.

A combination of poverty, inequality, and an growing corruption makes India a fertile ground for this trade.

At one end, there are never ending amount of desperately poor people who see the sale of a kidney as a possibility to raise cash, and at the other end, there are rich patients in need of a kidney and some of the world's best medical facilities to perform the actual operations. The trade in organs was prohibited in 1995 by law in many of the Indian states, but the trade, having gone underground, continues to flourish. This thesis explores the dimensions of organ trafficking, global patterns and physical and psychological harm to victims. It concludes with a discussion of domestic and international instruments used to regulate the trade in organs, and examines whether or not legal instruments can be effective in regulating and controlling this trade.

Research Objective

The Research Objective is to analyze whether can one regulate this area of the black market or will it continue to prosper despite any regulations being put in place?

The main objective will then be to discuss the various options available to possibly curb the black market trade in organs.

The Specific Objectives are:

To analyze the international options available to possibly curb the black market trade in organs

To analyze the policy to ban organ trade in India

Research Questions

- Why is Organ Trade a major area of concern: International and Indian perspective?
- What are the major negative aspects in the international and national system which is acting as a barrier in the abolition of Organ Trafficking?

Hypothesis

The question is whether or not such a market in human organs can be turned from an illegal market to a fully regulated legal market in such organs for the purpose of increasing organ supplies for transplantation and thereby decreasing illegal sales.

Sources of Data

- Secondary data sources available in form of previous researches by individuals and organizations, media news items, various government publications & gazette notifications (specially for policy documents), RTI-Right to Information .
- Government of India (GoI) documents/websites.
- Academic literature from the sources like- International/National Journals, Economic and Political Weekly.
- On-line library and Search Engines like ‘Google Scholar’ and ‘JStor’ etc.

Review of Literature

1. Cherry MJ. Kidney for sale by owner: *human organs, transplantation, and the market*. Washington: Georgetown University Press; 2005.
2. *Resolution on human organ and tissue transplantation*. Geneva: WHO; 2004 (WHA 57.18).
3. Endo F. Organ plan poses ethical issues; new RP scheme to allow kidney trading aims to close back market. Daily Yomiuri.

4. Walsh D. *Transplant tourists flock to Pakistan, where poverty and lack of regulation fuels trade in human organs.*
6. WTO agreements and public health: a joint study by the WHO and the WTO secretariat. Geneva: WHO, World Trade Organization; 2002.
7. Haviland C. Nepal's trade of doom. BBC News. 2004 Sep 21. 8. Kates B. Black market in transplant organs, donors smuggled into US to sell body parts. Daily News. 2005 Aug 25.
9. McLaughlin A, Prusher IR, Downie A. *What is a kidney worth?* Christian Science Monitor.
10. Transplantation of Human Organs Act, India; 1994, Act No. 42.

Organ Trafficking : Origin

A hundred years prior social insurance experts would have snickered at the thought that you could expel an organ from one individual and transplant that organ into someone else's body and toward the finish of this procedure still have the two individuals alive and solid. Not just has such organ transplantation now turned into a reality in the public arena yet propelled restorative innovation today even takes into account the transplantation of various real organs and other tissue what's more, materials from living or cadaveric human and creature givers to destitute organ recipients.¹

Despite the fact that restorative science and innovation has developed enough to complete organ transplants in the current society, it should in any case be viewed as fairly a supernatural occurrence. The simple first kidney transplant as it were occurred in 1954 when **Doctor Joseph Murray** and his nursing staff transplanted a kidney in the United States of America at the Massachusetts General Hospital where the organ contributor and beneficiary were indistinguishable twins.²

In 1967 the main heart transplantation ever on the planet was performed by **Specialist Christian Barnard** in the Republic of South Africa. The beneficiary of this organ figured out how to carry on a further 18 days before passing on. Specialist Barnard at that point played out another heart transplant in 1968 where the organ beneficiary lived for an entire 563 days.³

As scientific innovation and immunosuppressive drugs enhanced throughout the years this survival rate expanded drastically.

Today organ transplants are executed as though the system is increasingly a schedule than an extraordinary occasion.

This normal system of the therapeutic transplantation of organs from one living or dead body to another living body has caused real deficiencies in organs accessible for these transplantations and this has thus prompted a flourishing underground market in human organ deals and illicit organ acquisition exercises and organ transplantations.

¹ <http://www.who.int/transplantation/xeno/en/>

² Prottas 1994: 2; Machado 1998: 1

³ <http://www.odf.org.za/pages/facts.html>

Enactment in South Africa, for motivations behind illuminating the matter of unlawful organ deals and the explanation behind the organ lack, is managed inside and out later in this thesis. Moreover enactment in nations, for example, the United Conditions of America, the United Kingdom and different nations, for example, Australia and Brazil is managed as a result of the way that every one of these nations have similar issues with respect to organ lack and enactment characterizing the offering of substantial organs as illicit.

What is additionally taken a gander at is the way organ trafficking in these different nations is identified with sorted out wrongdoing. All through history the body has been abused through installment by means of utilizing the human body for work, at that point abusing the body through sex and now misusing the body through the deal and utilization of substantial organs.⁴

Trafficking in individuals, which incorporates organ trafficking, is the third biggest wellspring of benefit to composed wrongdoing bunches achieving sums of more than 12 billion US dollars for each year and answers for the issue of organ trafficking as a composed wrongdoing will in this manner must be managed with.⁵ Human trafficking is a tremendous issue overall in view of the absence of usage of enactment criminalizing such an action and in light of the fact that it is a nearly hazard free action in regards to the location and indictment of the sorted out wrongdoing bunches accountable for human trafficking.⁶ The Republic of South Africa, close by different nations, confirmed the United Nations "Palermo Protocol" with respect to trafficking in humans.⁷

⁴ Truong 2001: 8.

⁵ <http://lsa.unisa.ac.za/news/archive/august/vol4/human.html>

⁶ <http://lsa.unisa.ac.za/news/archive/august/vol4/human.html>

⁷ <http://lsa.unisa.ac.za/news/archive/august/vol4/human.html>

CHAPTER 2

**CONCEPTUAL
DEFINITIONS AND
DEFINING MEDICAL
TERMINOLOGY**

Chapter 2

Conceptual Definitions and Defining Medical Terminology

Trafficked person

Victim of trafficking; any natural person who has been subject to trafficking in persons.

Organ supplier

A person who supplies an organ.

Organ recipient

A person who receives an organ transplant, also known as patient.

Organ donor

A person who donates one or several organs, whether the donation occurs during lifetime or after death ⁸.

Organ seller

A person who benefits financially and/or materially when an organ is removed from that person's body.

Black market of organs

An illegal market for organs, which market coexists with the legal systems for organ retrieval.

Transplant commercialism

A policy or practice, in which an organ is treated as a commodity by being bought or sold or used for material gain ⁹.

⁸ European Parliament and the Council of the European Union. Standards of quality and safety of human organs intended for transplantation. In: European Union, editor. L 207/14 Brussels: Official Journal of the European Union 2010.

⁹ The declaration of Istanbul on organ trafficking and transplant tourism. Transplantation. 2008;86(8):1013-8.

Travel for transplantation

The movement of organs, donors, recipients or transplant professionals across jurisdictional borders for transplantation purposes ¹⁰.

Organ advertising

Advertising the need for, or availability of, organs or tissues, with a view to offering or seeking financial gain or comparable advantage ¹¹.

Organ

A differentiated part of the human body, formed by different tissues, that maintains its structure, vascularization and capacity to develop physiological functions with a significant level of autonomy. A part of an organ is also considered to be an organ if its function is to be used for the same purpose as the entire organ in the human body, maintaining the requirements of structure and vascularization .

Organ transplantation

A process intended to restore certain functions of the human body by transferring an organ from a donor to a recipient ¹³.

Abuse of a position of vulnerability

APOV shall mean either, “any situation in which the person involved believes he or she has no real and acceptable alternative but to submit”, or: “taking advantage of the vulnerable position, in which a person is placed in virtue of: having entered the country illegally or without proper documentation; pregnancy or a physical or mental disease or disability of the person, including addiction to the use of any substance; reduced capacity to form judgments by virtue of being a

¹⁰ The declaration of Istanbul on organ trafficking and transplant tourism. Transplantation. 2008;86(8):1013-8.

¹¹ Council of Europe. Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin. Strasbourg 2002 24-I-2002

¹² European Parliament and the Council of the European Union. Standards of quality and safety of human organs intended for transplantation. In: European Union, editor. L 207/14 Brussels: Official Journal of the European Union 2010.

¹³ European Parliament and the Council of the European Union. Standards of quality and safety of human organs intended for transplantation. In: European Union, editor. L 207/14 Brussels: Official Journal of the European Union 2010.

child, or having an illness, infirmity; physical or mental disability; promises or giving sums of money or other advantages to those having authority over a person; being in a precarious situation from the standpoint of social survival; other relevant factors.”¹⁴

Coercion

Coercion is an umbrella term, used in the trafficking context to refer to a range of behaviors including violence and threats, as well as APOV ¹⁵. Many definitions of it exist ¹⁶. For the purpose of our study, we use the following definition: ‘Coercion’ shall mean the use of force or threat thereof, and some forms of nonviolent manipulation or threat thereof, for the purpose of (including but not limited to) organ removal ¹⁷.

Deception

‘Deception’ shall mean any conduct that is intended to misrepresent information or to give false information to a person ¹⁸.

Exploitation

Whereas the UN Model Law defines different instances of exploitation, including ‘forced labor’, ‘slavery’, and ‘practices similar to slavery and servitude’, it lacks a definition of ‘removal of organs’ in the context of exploitation ¹⁹. ‘Exploitation of prostitution of others’, for instance, is defined as “the unlawful obtaining of financial or other material benefit from the prostitution of another person”²⁰. For the purpose of this study and in the context of ‘exploitation’, ‘organ removal’ is defined as follows: “Exploitation of a person for the purpose

¹⁴ United Nations Office on Drugs and Crime. Model Law against Trafficking in Persons 2009 [cited 2013 15 May]: Available from: <http://www.refworld.org/docid/4a794e432.html>.

¹⁵ Office of the High Commissioner of Human Rights. Recommended Principles and Guidelines on Human Rights and Human Trafficking, available at: <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

¹⁶ United Nations Office on Drugs and Crime. Model Law against Trafficking in Persons 2009 [cited 2013 15 May]: Available from: <http://www.refworld.org/docid/4a794e432.html>.

¹⁷ Schloenhardt AG, Samantha. Trafficking in persons for the purpose of organ removal: International Law and Australian Practice. Criminal Law Journal. 2012;36(3):145-58

¹⁸ Schloenhardt AG, Samantha. Trafficking in persons for the purpose of organ removal: International Law and Australian Practice. Criminal Law Journal. 2012;36(3):145-58.

¹⁹ United Nations Office on Drugs and Crime. Model Law against Trafficking in Persons 2009 [cited 2013 15 May]: Available from: <http://www.refworld.org/docid/4a794e432.html>.

²⁰ United Nations Office on Drugs and Crime. Model Law against Trafficking in Persons 2009 [cited 2013 15 May]: Available from: <http://www.refworld.org/docid/4a794e432.html>.

of organ removal shall mean the unlawful gain of financial or other material benefit as a result of the removal of an organ from another person.”

Defining medical terminology

Defining brain death

Brain death can be defined as that position in the human life when functioning of the brain, in other words in the cerebrum, cerebellum and brainstem, irreversibly fails and normal brain functioning can no longer continue.²¹ The medical criteria used to measure brain death is non-spontaneous breathing, the absence of reflexes and other spontaneous movements as well as the absence of responses to external stimuli for approximately 24 hours.²²

In the case of *S v Williams*²³

The court never decided on the issue of whether or not the medical view of when death occurs, being when there is brainstem death, should be established in law as well. In this case the court simply decided that the customary view of when death occurs should be used; that is when respiration and blood circulation are no longer present.

²¹ Machado 1998: 208.

²² Forsythe 2001: 30.

²³ 1986 (4) SA 1188 (A).

In *Clarke v Hurst NO and Others*²⁴ Judge Thirion said:

“In S v Williams²⁵ the life-sustaining procedures were held to have been unsuccessful even though they achieved the maintenance of the patient’s heartbeat, blood circulation and respiration. The decision must therefore be seen as authority for the view that the mere restoration of certain biological functions cannot be regarded as the saving of the patient’s life. The maintenance of life in the form of certain biological functions such as the heartbeat, respiration, digestion and blood circulation but unaccompanied by any cortical and cerebral functioning of the brain, cannot be equated with living in the human or animal context.”

Definition of organ transplantation

Transplantation can be defined as the remedial replacement of an organ or other bodily tissue which has permanently stopped working with that of a healthy organ or body tissue which is functioning in a proper manner. Such transplantation can occur where an organ is removed from a cadaveric human or animal donor to the organ recipient or from a living human or animal donor to the organ recipient.²⁶

Definition of organized crime

Leong²⁷ says that on the one hand ‘organized crime’ refers to a explicit set of crimes such as gambling, prostitution and drug trafficking as well as other related crimes. On the other hand she defines it as an infiltration of rightful business by organized crime. She also states that the term ‘*organized crime*’ encompasses groups such as the Mafia, Triads and other underground societies and that the reason for not being able to define organized crime across the world is because organized crime means different activities to different people in different societies.

²⁴ 1992 (4) SA 630 (D): 659.

²⁵ 1986 (4) SA 1188 (A).

²⁶ Machado 1998: 15.

²⁷ 2004: 19.

Definition of organized crime group

The United Nations Convention against Transnational Organized Crime defines organized criminal groups as follows:

*“Organised criminal group’ shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit (Article 2 of the United Nations Convention against Transnational Organised Crime).”*²⁸

Definition of organ trafficking

Trafficking was initially defined in international law during the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons.²⁹ This definition supplements the United Nations Convention of 2000 Against Transnational Organised Crime.³⁰

Known as the ***‘Palermo Protocol’*** or the ***‘Trafficking Protocol’***, this is the most broadly recognized definition of trafficking and provides an indispensable basis for reformation of international law . The definition reads as follows:³¹

²⁸ http://www.rcmp.ca/ccaps/traffick_e.htm: 13/12/2006; http://www.unodc.org/unodc/en/trafficking_persons_report_2006-04.html

²⁹ http://www.unodc.org/unodc/en/trafficking_protocol.html: 5/10/2006. Article 3 defines trafficking as follows: “The recruitment, transportation, transfer, harboring or receipt of persons by improper means, such as force, abduction, fraud or coercion, for an improper purpose, like forced or coerced labor, servitude, slavery or sexual exploitation.” The definition then is intended to include a wide range of activities where human exploitation takes place under duress and involving some kind of transnational aspect.

³⁰ http://www.rcmp.ca/ccaps/traffick_e.htm: 13/12/2006.

³¹ <http://lsa.unisa.ac.za/news/archive/august/vol4/human.html>: 21/02/2006. This protocol has been ratified by countries such as Argentina, Brazil, Moldova, Philippines, Russia, Romania, Turkey, United States of America and the Republic of South Africa but not by Iran. India and Israel have gone as far as to sign the protocol but have not as yet ratified it. The effect of the ratification of the protocol by South Africa and other countries means that they have adopted the regulations within the protocol and that such regulations are now to be implemented within South Africa and the other countries who have ratified the protocol. http://www.unodc.org/unodc/en/trafficking_persons_report_2006-04.html: 19/09/2006. This definition is also the definition provided in Article 3(a) of Directive 2006/618/EC of the European Parliament and of the Council of 24 July 2006.

a) Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

b) The consent of a victim of trafficking in persons to the intended exploitation by such means as sexual exploitation, forced labor or services and other illegal methods of trafficking³² will be irrelevant where any of these illegal methods have been used.

c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the illegal methods mentioned above.

The definition is clear about the fact that threat or use of force, coercion, abuse of position of vulnerability or the receiving of payments or benefits in order to gain consent from a person, even if such consent is not regarded as a relevant factor is such trafficking, will be considered as the gaining of consent for the purpose of trafficking.³³

Conclusion

All of the definitions discussed make it adequate to summarize that organized crime and organ trafficking affects the public at large directly or indirectly in a particular country and all over the world.

³² Here the words 'illegal methods of trafficking' can be interpreted to include organ trafficking as a means of trafficking whereby people who sell or buy their bodily organs cannot be seen as having consented to such selling or buying.

³³ www.unicef.org/protection/files/child_trafficking_handbook.pdf
www.rcmp.ca/ccaps/traffick_e.htm.

Organised crime, although prima facie seeming to work through legal businesses, has a traumatic effect on the individual , the family, and the society at large because the plan is to cause harm and destruction through actual illegal activity.³⁴

³⁴ Mills and Ware 2004: 394.

CHAPTER 3

COMPARATIVE PENAL

LEGISLATIONS OF THE WORLD

Chapter 3

Comparative Penal Legislations in the world

India

The Transplantation of Human Organs act, 1994, was enacted in India to stop the trade and clear the legal decks to enable a cadaver based human organ donation programme to be put in place. However, a series of cases is reported and identified about misuse of section 9(3) of the Transplantation of Human Organs act, 1994, which permitted a person to donate his or her kidney out of love or emotional attachment to the recipient. Long titles of the act and preamble both clarify the intent of the act is to prevention of commercial dealings in human organs and for matters connected therewith or incidental thereto.

Further it conveys that it is intended to provide the framework for the regulation of removal, storage and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs. Section 3, 4, 5 and 6 of the act tries regulating and monitoring commercialization of organ donation. It had created the control of authority about when organ can be removed from the body of donor. It had also tried to monitor the act of removal of organ and lays down limitations on hospital in cases of removal of the organ. However, the act had suffered from several limitations like under Section 3(2); near relative can donate without any monetary transactions indirectly permitting illegal kidney marriages.

A further problem is that The Act is noncognisable (The Act: Section 22). This means that the police can not launch an independent investigation into a claim of organ trade, but have to wait for action to be taken by The Appropriate Committee³⁵. According to Professor Nagaraj³⁶, a law is made noncognizable when either a) there is no urgency or b) when the legislators want the juridical magistrate to control the investigation. Normally, when a law is non-cognizable a private person and the police can go directly to the Judicial Magistrate, who can then launch an investigation. But under this law, the Juridical Magistrate has to wait 60 days for the Appropriate Committee to do its own investigation. This impedes swift investigations

³⁵ This is another regulative institution set up by the state Government under this law to ensure that that transplant hospitals are up to standards and to investigate any complaint of breach of the law (Section 13).

³⁶ From the National Law School of India

of complaints of organ trade, thereby weakening enforcement of the law. The Act is also problematic from the gender inequality point of view. Due to the very weak position of women in Indian society, including spouses in the category “related donors³⁷” (who do not require the permission from the Authorisation Committee), is very problematic. It must be remembered that organ transplants in India are performed by the private health care sector, and therefore it is only available to the middle and upper classes. Hence this discussion only pertains to this group of women. According to a recent PhD thesis conducted by lecturer Anju Vali Tikoo at Delhi University³⁸, there is a gender misbalance in the statistics of Delhi hospitals. More than 80 % of the organs are donated by women whereas 65 % of the recipients are men. The proposed solution is to exclude spouses from the ‘related donors’ category, but this solution is in my opinion inadequate. The Act states that any decision to donate an organ must be taken without any pressure or coercion. This pressure referred to come from family, friends and medical personnel, but fails to take the reality of the Indian society into consideration.

Middle class women in India generally live in dependency relationship with their husband³⁹. Consequently it is in the wife’s best interest to donate, thereby ensuring future family income. She may not be coerced by her surroundings as such, but by her general weak position within the Indian society, and so she does not have much choice. Therefore, even if spousal donations were to be approved by the AC, I do not believe it would change the statistics significantly.⁴⁰ The final major problem with the law is that since the organ trade is banned (The Act: Section 19) the poor are not able to complain anywhere if they are cheated by doctors and middlemen, because selling a kidney is a violation of the law and is punishable with 2 - 7 years imprisonment and a fine from Rs. 10,000 to Rs. 20,000.

³⁷ Besides spouse the category includes son, daughter, father, brother and sister

³⁸ The Hitwada Organ Transplant: Women are Major Donors New Delhi, October 14th 2004

³⁹ For a discussion on how in the lower middle class the wife’s income is continued to be perceived as supplementary under the patriarchal dominance please see Kibria, Nazli: 1995 For a discussion on the emancipation of poor women through work in Tamil Nadu India please see Sivakami M.: 2002

⁴⁰ For a discussion of the concern for spousal donations see also Bhowmik, Dipankar et.al.: 1999

United Kingdom

There is a similar enactment in the United Kingdom relating to organ donation and transplantation, which punishes an organ giver for the transplantation of his or her organs.

Section 1 of Great Britain's Health Organization Transplantation Act⁴¹ reads as follows in regard to payment for human organs:

“A person is guilty of an offence if in Great Britain he-

(a) makes or receives any payment for the supply of, or for the offer to supply, an organ which has been or is intended to be removed from a dead or living person and is intended to be transplanted into another person whether in Great Britain or elsewhere;

(b) seeks to find a person willing to supply for payment such an organ to be used for transplantation purposes or offers to supply such an organ for payment;

(c) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, such an organ; or

(d) takes part in the management or control of a body of persons corporate or unincorporate whose activities consist of or include the initiation or negotiation of such arrangements.

(2) causes to be published or distributed, or knowingly publishes or distributes an advertisement-

(a) inviting persons to supply for payment any such organs that are to be used for transplantation or offering to supply any such organs for payments; or

(b) indicating that the advertiser is willing to initiate or negotiate any such arrangement for the sale or purchase of an organ to be used for transplantation..

The Human Organ Transplant Act of 1984 also stated that offering financial compensation for the supplying of any human organ was against the law. This Act has since been repealed by the

⁴¹ Act of 1989

Human Tissue Act, Ch. 30 of 2004⁴² in which section 32 prohibits commercial dealings in human material for transplantation purposes.

The section states the following: “A person commits an offence if he –

- a) gives or receives a reward (either financial or material advantageous) for the supply of, or for an offer to supply, any controlled material;
- b) seeks to find a person willing to supply any controlled material for reward;
- c) offers to supply any controlled material for reward;
- d) initiates or negotiates any arrangement involving the giving of a reward for the supply of, or for an offer to supply, any controlled material;
- e) takes part in the management or control of a body of persons corporate or unincorporated whose activities consist of or include the initiation or negotiation of such arrangements.”

For purposes of the above section “controlled material” is defined by section 32(8) and 32(9) as material which includes human cells removed from the human body for purposes of transplantation excluding gametes, embryos and interestingly material which is subject to property because of an application of human skill.

Section 32(2) of the Act⁴³ further makes it an offence if one publishes or advertises (whether to the general public or to one individual) that you are willing to sell or buy any human material for purposes of transplantation.

Section 32(6)(a) and 32(7) however respectively makes payment for transport, removal, preparation, preservation and storage of bodily material for transplantation purposes as well as the reasonable compensation for loss of earnings and expenses incurred by the donor acceptable.

⁴² Section 69 of this Act states that the substantive provisions of the Act will only come into force on days appointed by the Secretary of State by order and that the full implementation of the Act is not expected to be before the end of 2006.

⁴³ Human Tissue Act of 2004.

In the United Kingdom the punishment for contravention of the above legislations and the illegal act of organ trafficking and black markets in human organs is normally 3 months imprisonment and or a fine.⁴⁴ However well formulated this legislation is it does not help the 600 patients who have already died resulting from a British waiting list for organs that in 2003 was already standing at a staggering amount of 6 000 patients.⁴⁵

In 1990 a British specialist, **Raymond Crockett** was denied from honing pharmaceutical in Britain for his restorative unfortunate behavior for orchestrating the offer of kidneys from two Turkish residents for between 2,000 and 3,000 pounds sterling and later transplanting these kidneys into British residents at a cost of 66, 000 pounds sterling for every organ recipient.⁴⁶

Johnson⁴⁷ recommends that in Britain and in other parts of the world too, is that an excess of consideration is set on cadaveric donation rather than teaching British society about giving organs while they are as yet alive. He relates this back to performance and blames the law as well the law makers for not making it possible to give organs, for instance a kidney, while one is alive to an petty supporter without special consent from the Minister. This enactment is like an enactment in a major number of the world's driving transplant nations including South Africa. Johnson remarks encourages that to increase organ donation in Britain the government should majorly concentrate on a significant expansion of transplant units and transplant coordination system all over the world . Financing of bigger and more scattered organ transplant units is one technique in which the organ supply can be expanded in Britain in particular.⁴⁸

The Human Tissue Act, Ch. 30 of 2004 was set for amendment in August 2006.⁴⁹ This amendment will presumably assist the British Medical Association with their problems regarding organ shortages.⁵⁰ The provisions of the old sections of the Act stated that even where a person explicitly stated that he or she wishes to donate their organs after death, that the family of such person must still give their consent before the organs of the organ donor

⁴⁴Kishore 2005: 364.

⁴⁵ Daily News: 2003.

⁴⁶ Kishore 2005: 365

⁴⁷ 1996: 1357.

⁴⁸ Wight and Cohen 1996: 989-990

⁴⁹ Daily Mail (United Kingdom): 2006. These amended provisions of the Human Tissue Act Ch. 30 of 2004 are not yet available.

⁵⁰ Daily Mail (United Kingdom): 2006.

may be harvested.⁵¹ The amended provisions will make the wishes of the organ donor final and the family will no longer have the right to further consent to or refuse such organ donation.⁵²

A spokesperson for the British Medical Association commented on this newly amended legislation stating the following:

*“The BMA is deeply worried about the shortage of organs for transplantation and the loss of life as a result. People should be able to decide what happens to their tissue or body after death and the BMA would encourage individuals to make that decision and talk to their relatives about their wishes. If people have indicated their preferences their wishes should be respected. It would also help relatives at a very difficult time of bereavement.”*⁵³

United States of America

The United States of America has similarly discovered a need to control organ trade and transplantation has received a not as much as strict way to deal with the installment for organs utilized for transplantation purposes. In any case, installment for organs is still viewed as unlawful.

The National Organ Transplant Act⁵⁴ states as follows regarding the sale of human body parts:

“It shall be unlawful for any person to knowingly acquire, receive or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.”

The word “knowingly” in the above mentioned piece of legislation suggests that if one sells or purchases a human organ for transplantation while actually believing that such sale or purchase is legal that one would in this event not be found guilty of contravening this Act.⁵⁵ It further

⁵¹ Section 27 of the Human Tissue Act, Ch. 30 of 2004 stated in subsection (1) that in a code of practice dealing with consent the Human Tissue Act must lay down standards relating to obtaining consent from a person in a qualifying relationship to the organ donor. Subsection (4) sets out the hierarchy of people close to a deceased person who are eligible to give appropriate consent to organ donation of the deceased person.

⁵² Daily Mail (United Kingdom): 2006.

⁵³ Daily Mail (United Kingdom): 2006.

⁵⁴ Act 42 U.S.C. of 1984: section 274(e)

⁵⁵ National Organ Transplant Act of 1984.

implies that if a person is buying and selling organs without the knowledge of his criminal accountability then he is free from every punitive action.⁵⁶

A nongovernmental organization, known as ***Organ Watch***, is based at the University of California, Berkeley and they investigate and monitor reports of violations regarding the procurement and distribution of bodily organs for transplantation purposes.⁵⁷

The ***Bellagio Task Force***,⁵⁸ a part of the Organ Watch Organization, located and well-known in the United States of America finished their argument against commercialization of human organs by stating:

“That existing social and political inequities are such that commercialization would put powerless and deprived people at still graver risk. The physical wellbeing of disadvantaged populations, especially in developing countries, is already placed in jeopardy by a variety of causes, including the hazards of inadequate nutrition, substandard housing, unclean water and parasitic infection. In these circumstances, adding organ sales to this roster would be to subject an already vulnerable group to yet another threat to its physical health and bodily integrity. Because persons selling their organs would be drawn exclusively from the economically deprived, regulation cannot prevent fundamental abuses. Transparency and fairness cannot be assured.”

In the case of ***U.S. v Wang***⁵⁹ the accused was charged with the contravention of section 274(e) of the National Organ Transplant Act⁶⁰ which prohibits the selling of human body parts which affects interstate commerce.

Wang conspired to sell the organs, particularly corneas, of executed Chinese prisoners to United States citizens for use in organ transplantations. Due to the failure of government to collect real evidence against Wang or to properly record telephonic conversations between

⁵⁶ National Organ Transplant Act 42 U.S.C. of 1984.

⁵⁷ <http://sunsite.berkeley.edu/biotech/organswatch/pages/cadraft.html>: 20/09/2004.

⁵⁸ Rothman et al. 1997: 2741. The Bellagio Task Force, as explained earlier, is an international group of people consisting of medical surgeons, human rights activists and social scientists, dealt in their report on issues such as transplantation, bodily integrity and international organ trafficking

⁵⁹ Not reported F. Supp. 2d 1999 WL 138930 (S.D.N.Y.)

⁶⁰ Act 42 U.S.C. of 1984.

Wang and other accused the court dismissed the charges against Wang and other accused persons.

Iran

In 2002 the buying and selling of kidneys in Iran was reported to be regulated by a legal process.⁶¹ The trade is structured and controlled by two government-financed NGOs

- Charity Association for the Support of Kidney Patients (CASKP) and

-the Charity Foundation for Special Diseases (CFSD).

The responsibility of CASKP is to put prospective recipients and donors in contact with each other, and prearranged health check to guarantee the compatibility of donors and recipients and the psychological stability of donors. After the transplantation the CFSD is required by law to pay the donor a sum of \$1, 219, which is provided through governmental funds. Recipients often assure donors secure forms of employment or money in the form of compensation after the transplant.⁶²

The organ transplantation statutes have recently been amended in Iran to prohibit such organ purchases and sales. The law however allows donation before death among relatives as well as non-relatives in order to reduce the deaths due to lack of organs.⁶³

Sri Lanka

The *Sri Lankan Legal Division* was founded in 1967 and continues to provide guidance on matters of international law to all branches of the Ministry:

- Sri Lanka Diplomatic Missions abroad

⁶¹ <http://www.flonnet.com/fl1907/19070730.htm>: 30/06/2005; Larijani, Zahedi and Ghafouri-Fard 2004:2540

⁶² <http://www.flonnet.com/fl1907/19070730.htm>: 30/06/2005; Larijani, Zahedi and Ghafouri-Fard 2004:2540

⁶³ Bagheri 2005: 4160; Larijani, Zahedi and Ghafouri-Fard 2004:2540.

Other Ministries and Government Departments involved in foreign transactions, covering a wide range of issues including foreign development assistance, international trade, shipping and civil aviation and security related matters.⁶⁴

Since 1967 Sri Lanka has also implemented legislation to deal with the organ trade and other matters of donation for transplantation in Sri Lanka. *Act 48 of 1987* states in *Section 17* that no person can buy, sell or dispose of any bodily tissue or bodily organs for the purposes of organ transplantation for valuable consideration.⁶⁵

Australia

Australia due to its specific health care system and strict Legislative and Administrative sanctions against Organ Trade has relatively few incidents of illegal organ trade compared with other countries around the world.⁶⁶

Section 38 to section 40 of the Human Tissue Act of 1982 in Victoria makes the selling , purchasing or advertising of any human tissue or organs for organ transplantation is considered as an offence unless the government grants the permission.

Punishment for buying and selling of human tissues and organs : Fine of \$ 5,000

Punishment for purchase and sale of such human tissues and organs: Fine of \$10,000 Australian dollars or six months imprisonment will be given.

Punishment for advertisement purchase or sell human tissue for the purpose of organ transplantation : Fine of \$5,000⁶⁷

The Transplantation and Anatomy Act⁶⁸ of South Australia also prohibits the selling of bodily tissue.⁶⁹ Here in the phrase '*Selling of bodily tissue*'⁷⁰ "tissue" includes an organ or part of a human body or a substance taken from the human body or any part thereof.

⁶⁴ <http://www.slmfa.gov.lk/division.asp?mode=viewdivisiondetails&ID=DV06>

⁶⁵ Act No. 48 of 11 Dec 1987. Currently no other information is available regarding this Act and its proper citation.

⁶⁶ King and Smith 1998: 5.

⁶⁷ Human Tissue Act 9860 of 1982.

Unlike other countries around the globe Australia due to its stringent laws and disciplined administrative authorities did not cater to any case before 1998 on organ transplantation, except for one case in 1990 where a Bangladeshi student wanted to sell his kidney to the Royal Melbourne Hospital. But the hospital immediately considering it illegal and unethical declined the offer.⁷¹

⁶⁸ Act 11 of 1983.

⁶⁹ Section 35(1) and 35(2) of the Transplantation and Anatomy Act 11 of 1983 states the following contracts will be void: “(1) Subject to this section, a contract or arrangement under which a person agrees, for valuable consideration, whether given or to be given to himself or to another person –

(a) to the sale or supply of tissue from his body or from the body of another person, whether before or after his death or the death of the other persons, as the case may be;

(b) to the post-mortem examination or anatomical examination of his body after his death or of the body of another persons after the death of the other person, is void.

(2) A person who enters into a contract or arrangement referred to in subsection

(1) is guilty of an offence and liable to a penalty not exceeding five thousand dollars.” Section 35(7) of the Act above then specifies that: “A person shall not knowingly –

(a) publish or disseminate by newspaper, book, broadcasting, television, cinematograph or other means; or

(b) exhibit to the public view in any place, an advertisement relating to the selling or buying in Australia of tissue or of the right to remove tissue from the bodies of persons unless the advertisement and the form and wording thereof have been approved in writing by the Minister and the advertisement contains a statement to that effect.”

The Human Tissue Act 164 of 1983 of New South Wales in section 32 also prohibits the trading in tissue. Under section 24 of the Human Tissue Transplant Act of 2005 of the Northern Territory and section 27 of the Human Tissue Act 118 of 1985 of Tasmania certain contracts and arrangements are prohibited from being entered into.

These include contracts and arrangements for the sale or supply of tissue from the body of another human person.

The Transplantation and Anatomy Act of 1979 of Queensland also under section 40 to section 42 prohibits the unauthorised buying or selling or advertising to buy tissue. Under section 29 of the Human Tissue and Transplant Act of 1982 of Western Australia one is also prohibited from trading in tissue and under section 30 one is prohibited from placing advertisements relating to the buying of such tissue

⁷⁰ These statutes include section 3 of the Human Tissue Act 9860 of 1982 of Victoria, section 3 of the Transplantation and Anatomy Act 11 of 1983 of South Australia, section 4 of the Human Tissue Act 164 of 1983 of New South Wales, section 4 of the Human Tissue Transplant Act of 2005 of the Northern Territory, section 3 of the Human Tissue Act 118 of 1985 of Tasmania and section 3 of the Human Tissue and Transplant Act of 1982 of Western Australia. Section 4 (1) of the Transplantation and Anatomy Act of 1979 of Queensland, however, defines “tissue” as follows:

“Tissue means -- (a) an organ, blood or part of—

(i) a human body; or (ii) a human foetus; or (b) a substance extracted from an organ, blood or part of—

(i) a human body; or (ii) a human foetus; but does not include—

(c) immunoglobulins; or (d) laboratory reagents, or reference and control materials, derived wholly or in part from pooled human plasma.

⁷¹ King and Smith 1998: 3.

Brazil

In Brazil, among the common people the concept of “Compensated Gifting” is very popular.

Often the prospective donors in the greed of receiving permanent employment, secured housing and other material benefits from the recipients easily give consent to sell their organs.⁷²

At present in Brazil the *Constitution of the Federative Republic of 1988* states in *Section 199* that organs and other tissue removed for purposes of organ transplantation, therapy or research are prohibited from being the subject of commercialization.⁷³

It has been recommended in this way that remuneration for the sensible estimation of the organ and remuneration for restorative costs and different misfortunes of the giver does not fall under the prohibitory segments of various Acts in different nations and this isn't the aim of the lawmaker in these nations.

Egypt

The Egyptian Parliament's legislative committee revised the Egypt's Organ Transplant Law which further included harsher punishments in the statutes.

Egypt passed the laws relating to Organ Transplantation in 2010 to attempt to check the exchange of organs. Many poor people in Egypt sell their kidneys to fulfill their daily necessities.

Article 6 of Law no. 5 restricts the sale and purchase of human organs and tissues.

Amendments:

Article 17: Any person who removes an Organ from the human body with the expectation of illegally transplanting it.

⁷² <http://www.flonnet.com/fl1907/19070730.htm>: 27/06/2005.

⁷³ Constitution of Federative Republic 5 Oct 1988.

Punishment : Fine minimum LE 5,00,000 and maximum LE 1million and imprisonment of 10 years.

If this further causes death

Punishment: Life detainment and fine of LE 5,00,000 and LE 1 Million

Demonstration on a living person

Punishment: Imprisonment of 7 years and if this results in the death of the Benefactor then strict detainment and fine of LE 1,00,000 to LE 2,00,000.

Article 18,19,20, 23 and 24 were additionally affirmed for harsher disciplines.

The World Health Organization (WHO), which has been observing transplant tourism around the world, considers Egypt as "a center" for organ trafficking positioning it among the best five nations across the world.

As indicated by WHO, Egypt is the best organ transplant showcase in the Middle East.

Before 2010 amendment 15month sentence for a specialist discovered blameworthy of inclusion in unlawful organ transplantation was the harshest punishment.

Article 2 of Law No. 5 stipulates that it isn't permitted to transplant an organ or part of an organ or tissue to another individual except if this is important to spare the life of the individual to whom the organ is being transplanted, on condition that there is no elective method for sparing the life of the patient and it doesn't represent any peril to the contributor.

Article 3 restricts transplanting organs from Egyptians to nonEgyptians, except if the benefactor and the beneficiary have been related or married for no less than three years. .

Article 20: Those discovered blameworthy of disregarding the law, notwithstanding a money related punishment of amongst LE50,000 and LE200,000.

The fundamental standard in the Egyptian law is that any transplantation that happens ought to have been given by the beneficiary's relatives. In any case, for the situation that the benefactor

is a nonrelative, the law expresses that a board be made to guarantee that there are no infringement of the Egyptian law.

In 2009, Egyptian authorities caught 12 specialists and eight medical attendants associated with a global organ trafficking ring. Four authorized private healing centers and six research centers were discovered being an active part of the global trade, and the police found a large amount of gold in the ownership of the guilty parties.

Chapter 4

The ethical and legal framework **against organ trade**

Chapter 4

The ethical and legal framework against organ trade

Introduction

In the past decades a number of International standards have been developed to create a comprehensive ethical and legal framework, consisting of guidelines and binding legal instruments, that make it possible to :

- a) prohibit trade of human body parts, and
- b) combat and prevent trafficking in human beings (THB),

including for the removal of organs, and protect and assist victims of trafficking.

International organizations, such as the:

The United Nations General Assembly,

The World Health Organization,

The World Medical Association,

The Transplantation Society and the International Society of Nephrology (in the joint Declaration of Istanbul)

All have made important provisions to help curb the growing problem of human trafficking and organ trafficking.

World Health Organization

Between 1987 and 2010 the WHO (and its World Health Assembly) has been working towards ethical standards in the field of human organ and tissue donation and transplantation.

In 1991 the first version of the Guiding Principles on Human Organ Transplantation was adopted: focusing on key issues such as free and voluntary informed consent and non-commercialization of human organ and tissues⁷⁴.

These Guiding Principles were updated in 2008, expanding the prohibition of sale or purchase of organs, and concentrating on the relationship between organ sales and human trafficking.

In 2010 a revised version of the Guiding Principles has been published, which has adopted *'measures to protect the poorest and vulnerable groups from transplant tourism and the sale of organs and tissues.'* The revised Guidelines called for special attention to the international trafficking in human organs and tissues⁷⁵.

The WHO guidelines are not legally binding on the member countries but provide uniform guidance to health authorities and professionals around the globe.

World Medical Association

As early as **1985** the World Medical Association (WMA) had issued a ***Statement on Live Organ Trade***⁷⁶, stating the WMA *'condemns the purchase and sale of human organs for transplantation, and calls on governments to take effective steps to prevent the commercial use of human organs.'*

And in October **2000** the World Medical Association (WMA) adopted its ***Statement on Human Organ Donation and Transplantation***. It promoted ethical principles to give guidance to medical associations, physicians and other healthcare providers in issues relating to organ

⁷⁴ WHO, World Health Assembly. Resolution WHA 42.5 on 'preventing the purchase and sale of human organs', and Resolution WHA44.5 on 'Guiding principles on human organ transplantation', 1991.

⁷⁵ WHO 2010, Revised Guiding Principles on Human Cell, Tissue and Organ Transplantation. Resolution WHA 63.22

⁷⁶ WMA Statement on Live Organ Trade, 1985.

donation and transplantation. Main concentration was on the universal principle of non-commercialization of human organs.

Paragraph 30 of the WMA Statement said: *'Payment for organs must be prohibited. A financial incentive compromises the voluntariness of the choice and the altruistic basis for organ donation. Furthermore, access to needed medical treatment based on ability to pay is inconsistent with the principles of justice. Organs suspected to have been obtained through commercial transaction must not be accepted for transplantation. In addition, the advertisement of organs in exchange for money should be prohibited.'*

In October 2006, the WMA General Assembly revised its Statement and reiterated its prohibition of commercialism⁷⁷. It also provides guidelines like WHO to health professionals and physicians and is also not legally binding.

The Declaration of Istanbul

The Declaration of Istanbul (DOI) to guide the professional behavior of physicians and health care institutions⁷⁸ and is not a legally binding treaty.

It provides a set of moral principles to govern organ donation and transplantation in general, as well as practice proposals to combat, curb and prevent human organ trafficking⁷⁹.

It is similar to the Declaration of Helsinki that was adopted by the World Medical Association in 1964. The voluntary nature of the DOI does not, however, prevent the incorporation of its principles into national legislation and regulations.

The immediate cause for setting up the DOI in 2008, was the growing awareness of the global phenomenon of organ trafficking which was defaming the image of health professionals and hospitals. Using the organs from poor, vulnerable and poorly compensated 'donors', originating mainly from Pakistan, India, Egypt, the Philippines, China and Colombia.

⁷⁷ WMA Statement on Human Organ Donation and Transplantation, adopted by the 52nd WMA General Assembly in Edinburgh, October 2000.

⁷⁸ Danovitch GM, Chapman J et al., Organ trafficking and transplant tourism: the role of global professional ethical standards – The 2008 Declaration of Istanbul. *Transplantation*, 2013; 95: 1306-12.

⁷⁹ 6 Steering Committee of the Istanbul Summit, Organ trafficking and transplant tourism and commercialism: the Declaration of Istanbul, *Lancet* 2008; 372: 5-6.

In reaction to this, the Transplantation Society, together with the International Society for Nephrology (ISN), developed the DOI as a guidance declaration.

United Nations Palermo Protocol

The United Nations Palermo Protocol is an addition to the UN Convention against Transnational Organised Crime of May 2000⁸⁰. Its full title is: ***'Protocol to prevent, suppress and punish trafficking in persons especially women and children'***, which makes it crystal clear that it concentrates on trafficking of human beings (THB).

The Protocol gives a inclusive definition of THB in Article 3(a), and includes trafficking for the elimination of organs as a form of exploitation of persons .

As it has been described before, the main concept in this protocol provides that for *'trafficking in human beings'* to be recognized as organized crime it must necessitate all of three elements:

- an action (recruitment, transport),
- the means used to achieve that action (deception, fraud, coercion), and
- the purpose (exploitation in case of organ removal)⁸¹ .

Because of its extensive definition and extent of what constitutes *'trafficking in human beings'*, this Protocol has been adopted by other international and European organizations as the foundation for law enforcement procedures against human and organ trafficking.

⁸⁰ UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against transnational organised crime (Palermo Protocol), 2000.

⁸¹ UNODC ,United Nations Convention against Transnational Organized Crime and the Protocols thereto, Vienna 2004.

Weakness of the Palermo Protocol

Although it has served as a good instrument, the Palermo Protocol also has an inherent weakness. The Protocol was established mainly to take action to the hazard posed by global organized crime networks dealing in human trafficking.

However, from the perception of illegal organ removal and transplantation in broad, it is by no way always clear that alleged commercial transplants fulfill the notion of '*trafficking*' and that these acts fulfill the three criteria.

For instance, in cases of transplant tourism relating to Filipino organ sellers, it may be hard to prove that these sellers were actually trafficked (e.g. use of force); therefore these organ sales (although illegal) cannot be easily proved as THBOR, and charged as a trafficking offence (under the terms of the Palermo Protocol or national antitrafficking legislation). This makes the investigation and prosecution much more difficult.

CHAPTER 5

INTERNATIONAL CASE-STUDIES **AND OBSERVATIONS**

Chapter 5

International Case – Studies and Observations

South Africa – The Net care Case

Start of investigation: 2003

Charges: fraud; forgery; uttering; unlawful acquisition; use or supply of tissue, blood or gamete (minors); use or possession of proceeds unlawful activities; illegal receipt of payments (minors)

“After seven years of obfuscation and denial, South Africa's largest private healthcare group, Net care, finally confessed to its role in a cash for kidneys scheme and to benefiting from associated international trafficking of living donors. Net care's conviction in the Durban commercial crimes court is said to be a world first -- no other hospital group has been found guilty of supporting an organized trafficking scheme dealing in organs.”⁸²

Signals of Illegal Activities

In 2003, out of an act of conscience, a whistle blower told the police about illegal transplantation that took place at Net care's hospital, St. Augustine's located at Durban⁸³.

It was also suspected that illegal transplants also took place in Cape Town and Johannesburg.

In further investigations, an American anthropologist, a South African transplant surgeon and surgeons from other countries also accused Net care and its transplant surgeons.⁸⁴

⁸² Kockett F. Israel & South Africa: Netcare coughs up about illegal organ trafficking. Mail & Guardian Online.

⁸³ vv

⁸⁴ Scheper Hughes N Rotten Trade: Millennial Capitalism, Human Values and Global Justice in Organ Trafficking. Journal of human rights.2003

Criminal Investigation

When the police found about the illegal transplantations going on at Netcare's hospital, St Augustine; they first researched transplant in general and the law regulating it, The Human Tissue Act.

An Organ Broker, a local coordinator, a nephrologist, a transplant coordinator and a translator was consequently arrested.

Modus Operandi

The illegal transplants at St. Augustine's started when an Israeli Organ broker approached Netcare in 2001. His proposition was that he would provide well paying Israeli patients in need of Kidney and paid suppliers willing to sell one of their kidneys. Netcare would provide transplant services.

In South Africa at this time there was a ministerial policy in place that required all transplants between non related donors and recipients to obtain prior approval from a Ministerial Advisory Committee.

Netcare and its accomplices made all suppliers and recipients sign papers that said they were related when in fact they were not.

Laws and charges

At the time of the illegal transplantations at St. Augustine's, South Africa did not have legislation specifically prohibiting trafficking in persons for the purpose of organ removal. Two laws were applied, The Human Tissue Act (dating from 1983), and the Prevention of Organised Crime Act (dating from 1998). None of them were well suited to the situation. The Human Tissue Act "was old and badly written", as one of the respondents expressed it [R]. One of the main loopholes in this law was that it only targeted persons or organizations that received financial remuneration for an organ. The buying of organs was thus not illegal. It was also not illegal for so-called authorized institutions to accept money for an organ [D2]. The charges that were brought, varied to some extent between the defendants. But in the charge

sheet issued in 2010 –

which contained charges against Netcare, the 2 transplant coordinators, the 4 surgeons, the nephrologist and one of the interpreters –

the majority of charges that were used were specified. These were: fraud, forgery, uttering, unlawful acquisition, use or supply of tissue, blood or gamete (minors), use or possession of proceeds from unlawful activities, and illegal receipt of payments (minors) [D1, D2].

Judgment

Since 2003, 12 people have appeared in court records, 12 have been indicted and 6 have been convicted. In 2010 the Netcare health group was convicted. Netcare was fined Rand 4-million (approximately US\$380.000) for its role in 109 illegal operations at St Augustine's involving nonrelated donors and recipients. Five of these operations involved minors, which is also illegal, even with parental consent. Netcare also forfeited R3,8million (approximately US \$345.000) to the Assets Forfeiture Unit. In terms of the plea agreement finalised in court, criminal charges were withdrawn against Friedland as Netcare's chief executive [R, D1]. The 4 surgeons and 2 transplant coordinators who were accused of involvement in the illegal transplants were arrested in 2004 and 2005 but released on bail. In 2011 they requested a permanent stay of prosecution to the KwazuluNatal High Court in Durban which was granted to them on 14 December 2012 [R, D3]. The court granted them the permanent stay because of *“an inordinate delay in doing what had to be done to facilitate the beginning of the trial and driving it to its conclusion”* .

Republic of Kosovo - The Medicus Clinic Case

Start of investigation: 2008

*Charges: Trafficking in persons, organized crime, unlawful exercise of medical activity, abusing official position or authority, grievous bodily harm, fraud, falsifying documents
falsifying official documents*

“An EU-led court in Kosovo has found five people guilty in connection with a human organ-trafficking ring. The five are accused of carrying out dozens of illegal transplants at the Medicus Clinic in the capital, Priština. Meanwhile two former government officials also charged in the case have been cleared of involvement.”⁸⁵

Modus operandi

In March 2005 the urologist/owner of Medicus Clinic (U) attended the twentieth Annual Congress of the European Association of Urology in Istanbul, Turkey. There he discussed the need to make kidney transplants available for the Kosovo people. These transplants at the time did not take place, due to a lack of medical expertise in transplant surgery.⁸⁶

After expressing his desire to receive assistance in locating a medical expert, he was provided the contact details of a Turkish transplant surgeon (V) [D1] U and V contacted each other. Together with X (the director of Medicus) and an Israeli organ broker (M) they planned to perform kidney transplants in Kosovo. In December 2007 U applied for V to be licensed as a nonKosovar health professional, which was granted by the Ministry of Health (MOH) in January 2008.

The organ suppliers came from Israel (4), Turkey (3), Moldova (1), Russia (3), Ukraine (2), Kazakhstan (1) and Belarus (1). Of 9 individuals' their nationality is unknown [D3]. Most were 20...30 years old.

⁸⁵ BBC News Europe, Medicus: 5 guilty in Kosovo Human Organ Trade Case.

⁸⁶⁸⁶ European Commission Directorate General Home Affairs, Prevention of and fight against crime 2007-2013. Action grants 2011. Targeted against proposals.

Recipients came from Ukraine (1), Israel (14), Turkey (1), Poland (1), Canada (1) and Germany (1). Of 5 recipients the nationality is as yet unknown. Recipients were generally over 50 years of age. They were ill and desperate for a solution to save them from years of dialysis.

Judgment

On 29 April 2013 U and X were found guilty of trafficking in persons and organized crime. The other accused (including U) were found guilty of unlawful exercise of medical activity. The charges abusing official position, grievous bodily harm, fraud and falsifying documents were rejected. U received 8 years imprisonment and €10.000 fine. X received 7 years and 3 months, and a €10.000 fine.

United States – The Rosenbaum Case

Start of investigation: 2008

Charges: brokering in human organs and conspiracy

“ The man, Levy Izhak Rosenbaum, pleaded guilty for Organ Trafficking in United States; admitted in federal court that he had brokered three illegal kidney transplants for people in New Jersey in exchange for payments of \$120.000 or more. ”⁸⁷

Signals of illegal activities

In 1999 the FBI initiated ‘Operation Bid Rig’: an extensive investigation into corruption of several public officials in New Jersey and money laundering in tax evasion within the orthodox Jewish community. One of the involved (“D”) was running a fraudulent investment operation in real estate. When his scheme collapsed in 2006, he was arrested and ‘turned into’ a FBI informant. D fully committed himself to the operation. In February 2008, he suddenly informed the FBI that his wife’s grandfather was purchasing a kidney through an organ broker named Levy Izhak Rosenbaum.⁸⁸

Modus operandi

It was established in court that Rosenbaum had been brokering in kidneys since at least 2001, as a defendant’s witness stated that he had received a kidney from a paid supplier in that year [D1]. The undercover operation revealed Rosenbaum’s modus operandi. First, he would ask the recipient who approached him for help for a blood sample to find a matching ‘donor’ willing to sell a kidney, who typically would be located by his associates in Israel. Rosenbaum would arrange for the supplier to travel to and be housed in the United States, where he or she was looked after by one of his associates throughout the pretransplant procedures. Rosenbaum would help the patient and the supplier to coordinate a cover story to mislead hospital staff into believing that the donation was a purely voluntary act. Finally, he would demand full payment by the date of the transplant.

⁸⁷ The associated press. Guilty plea of charges of selling kidneys, New York Times, 2011.

⁸⁸ Scheper Hughes N. The Body of the Terrorist: Blood Libels, Bio-Piracy and the Spoils of the war at the Israeli Forensic Institute, Social Research, 2011.

Judgment

The Judge determined an imprisonment of 30 months for Rosenbaum and he did not appeal further. The prosecutions in South Africa, Kosovo, USA and Israel were successful but leave room for improvement. ⁸⁹

⁸⁹ Scheper Hughes N. Portrait of Gaddy Tauber; Organs Trfficker Holocaust Survivor, Berkley, Review of Latin American Studies,2006

The Gurgaon Trafficking Network, India

Start of Investigation: 2008

The Gurgaon organ trafficking case counts among the most extensive trafficking scandals worldwide⁹⁰. This operation came to light in January 2008 when local police arrested several people who were accused of recruiting poor pavement dwellers in Moradabad and dealing in illegal transplant activities.

The initial investigation led to the industrial township Gurgaon, near Delhi, where the key-figure in the operation was Amit Kumar, who owned a residential building and a guesthouse in that part of the town.

Amit Kumar and two of his associates (his brother Jeevan and medical doctor Upendra Aggarwal) escaped being arrested after they had been tipped-off by local police.

In view of the scale and nature of the scandal, the investigation was handed over to the Indian Bureau of Investigation (CBI). The Gurgaon court issued arrest warrants for the Kumar brothers. In cities close to Delhi, two more hospitals and ten laboratories were found to be involved in the illegal transplant activities.

CBI alerted Interpol, who issued an international Red Alert notice for the Kumar brothers. Jeevan Kumar was arrested soon after in Mumbai; Amit Kumar was arrested by special police early February 2008 in a wildlife park in Nepal. As he was carrying a considerable amount of cash with him, he made an unsuccessful attempt to bribe the police for his release. He denied all involvement in criminal activity.

Signals of Illegal activities

According to the police investigators, the trafficking network had been in operation for at least seven years and around 400-500 transplants may have been carried out⁹¹. The majority of recipients had been Indian kidney patients, but since 2005 more and more foreign recipients had been transplanted (from

⁹⁰ Infochange Public Health, Will the law against organ sale remain a moral victory? www.infochangeindia.org, 2009.

⁹¹ The Sydney Morning Herald, March 2, 2010. www.smh.com.au

the USA, the UK, Canada, Australia, Saudi Arabia, and Greece). Amit Kumar, who was seen as the main broker ('king-pin' in Indian newspapers).

Modus Operandi

The charges filed against the Kumar brothers and the close associates included: causing grievous bodily harm, wrongful confinement and criminal conspiracy. During the trial a number of surprising facts came to light.

Neither of the Kumar brothers had ever had any medical training, but they had performed hundreds of transplants and organ removals. It also came out that Amit Kumar and his brother had been previously arrested four times for dealing in illegal organ trade in several other states; each time they had been released on bail.

Judgment

In March 2013, a CBI special court convicted five of the ten defendants, acquitting the other five. Amit Kumar and medical doctor Upender Dublesh were sentenced to seven years imprisonment and a fine for criminal conspiracy, criminal intimidation, running a clandestine hospital facility without a licence and forgery of documents⁹².

Included in that sentence were 4.5 years imprisonment for organ trade and four years for removing organs without valid consent. A lab technician and two local recruiters were also sentenced to 4.5 years imprisonment. Three of the organ suppliers (victims) were paid a financial compensation, because they had acted as witnesses for the prosecution. The Court gave as a reason for the high sentences that there had been a very serious breach of trust in the medical profession.

⁹² ZeeNews March 22, 2013. www.zeenews.india.com. The Hindustan Times, 23 March 2013. www.hindustantimes.com

Suspected cases of organ trafficking

In the past decade approximately a dozen cases of THBOR have been investigated and prosecuted internationally. However, there is an unknown number of cases where police, border control or immigration officers have been confronted with potential cases of trafficking in persons, and where organ removal could have played a role. These cases often do not carry sufficient and convincing signals that justify further investigation, and these officers may not be well acquainted with this form of human trafficking. As a result, these suspected cases will not lead to any prosecution and conviction. So far there is no systematic (international) registration of such cases and no international cooperation for follow-up.

- In December 2014 the National Information Service of the Dutch Police published a study report on trafficking in organs and trafficking in human beings for the purpose of organ removal⁹³. It is reported that between 2005 and 2013 at least five crime reports have been made by the Dutch police involving foreign nationals who complained to have been threatened with organ removal.
- Two people declared that they had been trafficked to the Netherlands for the purpose of organ removal, in one case under threat of force. Three others declared they had come to the Netherlands seeking asylum or work; once in the Netherlands the job was not available and the smugglers demanded the debts to be paid off by giving up a kidney.

In none of these cases there were sufficient indications or evidence of human trafficking, reason why no further investigation was started. Other cases have raised suspicions that the Netherlands could be involved as a transit country for people trafficking for the purpose of organ removal.

- In 2005 border control/immigration officers at Schiphol International Airport questioned a Pakistani physician (transplant surgeon) travelling accompanied by three minors holding Pakistani passports that turned out to be fake. The man was arrested on suspicion of human trafficking, potentially for the purpose of organ removal. Further questioning revealed that the boys were Afghani nationals living in a refugee camp in

⁹³ Dutch Police, National Unit, Information Service. De Jong J. Organ trafficking and trafficking in human beings for the purpose of organ removal. An explorative study into the involvement of the Netherlands and Europe, December 2014.

Pakistan. They declared that their final destination was the UK, where they would work or go to school.

In spite of strong suspicions and indications it could not be proven that the boys were smuggled for the removal of their organs, or that they were coerced in any way. In appeal the Pakistani doctor was convicted to 16 months imprisonment for person trafficking, and possession of false identity papers. The Afghani boys requested asylum in the Netherlands, but subsequently left for an unknown destination. Similar cases have been reported in several other countries.

Conclusion

These cases demonstrate very clearly the ingredients for an organ trafficking network to operate successfully:

- Extreme poverty,
- entrenched corruption,
- desperate (but rich) patients on dialysis, and
- the possibility for transnational operation. It also shows that
- the lack of police cooperation between different states within these countries .
- Corruption and a close nexus with the local police and mafia avoids arrest.

OBSERVATIONS

Unfavorable impacts of the present organ exchange to living and cadaveric contributors

Exploiting poor people

Scholars feel that the offering of human organs to conceivable organ beneficiaries and organ obtainment organizations can possibly abuse poor people and burdened in a community.⁹⁴

Nancy Scheper-Hughes states in her report on Global Trafficking in Organs that:

"A market cost – even a reasonable one – on body parts abuses the edginess of the poor".⁹⁵

Cherry⁹⁶ can't help contradicting this announcement and is of the feeling that human pride can be better ensured by making a market in human organs than by not legitimizing such a market and utilizing customary obtainment and portion procedures.

Price⁹⁷ says that it isn't the reality of installment that endeavors a poor person be that as it may, the extent of such an installment. He says in this way that: "... it isn't 'wrongful utilize' yet 'unreasonable trade'". Price⁹⁸ additionally reasons that maybe it is profit making by the middle-class man through the selling of an organ that can be considered unethical and not the sale of the organ itself.

As it has just been contended, organ transplantations of any sort hindrance the poor in the public eye as they will never have the capacity to manage the cost of for themselves any future required organ transplant and also other transplantation costs.⁹⁹ There is likewise the way that the cutting edge hardware vital for such transplantation does not exist in poorer networks.

The current circumstance is as of now disadvantaging the poor in the public eye without notwithstanding having said the purchasing and offering of human organs. What's more, of course it can be presumed that it is the poor in the public eye who might will to offer their

⁹⁴ Slabbert and Oosthuizen 2005: 197;

<http://sunsite.berkeley.edu/biotech/organswatch/pages/cadraft.html>

⁹⁵ <http://sunsite.berkeley.edu/biotech/organswatch/pages/cadraft.html>

⁹⁶ 2005: 73.

⁹⁷ 2000: 393.

⁹⁸ 2000: 393.

⁹⁹ Slabbert and Oosthuizen 2005: 197; Cherry 2005: 80-81; Kishore 2005: 365.

organs in light of the fact that the wealthy in the public arena are as of now rich and have no craving to obtain such riches through the offering of one of their organs for what might be to them minor monetary profit.

The withholding of Medical Information

Where organ exchange happens there is an expanding danger of benefactors withholding data that could prompt the transmission of disease.¹⁰⁰ The European Union¹⁰¹ states that once the possibility of any motivating force is set in the psyche of the giver all together for him or her to give an organ, that such a contributor will never again be in the correct mentality to furnish restorative professionals or the donee with the right data in regards to any wellbeing related issues which could be conceivably perilous to the donee.

This will be a perpetual danger whether givers are under money related weight or not. Indeed, even where no monetary motivating force is given and an organ is taken from somebody by compel, particularly through sorted out wrongdoing bunches taking organs, the odds are pretty much nothing that any applicable restorative data about the benefactors wellbeing will be provided to the donee or other restorative staff if any wellbeing data is even accessible whatsoever around then. To finish up, it appears to be very clear that the goals of composed wrongdoing bunches isn't to furnish a beneficiary with a solid organ yet basically to furnish them with any organ.

¹⁰⁰ <http://organtx.org/ethics/sales/sales.htm> (Yahoo): 20/09/2004. According to Forsythe Human Immuno Virus (HIV) and Hepatitis B are two of the diseases that can be transmitted if medical information is withheld by a potential donor. Forsythe 2001: 28-29.

¹⁰¹ <http://www.elections2004.eu.int/highlights/en/503.html>: 30/06/2006. Decision 2000/96/Ec of the European Commission of the European Union lists a number of communicable diseases that can be transmitted from one person to another and that are relevant when one talks of transplantations and the withholding of medical information in the donation process. These communicable diseases include, for example, Human Immuno Virus (HIV)infection, Tuberculosis, Hepatitis A, Hepatitis B, Hepatitis C and other imported diseases such as cholera, malaria, viral haemorrhagic fevers and plague. Section 1 of the National Health Act 61 of 2003 of South Africa defines such communicable diseases to mean a disease resulting from an infection due to pathogenic agents or toxins generated by the infection due to direct or indirect transmission of the agents from the source of such infection to the host. It is deduced then that when one talks of any surgical intervention one has to take into account these communicable diseases.

Various dangers past the standard danger of joint dismissal will exist here for potential recipients.¹⁰² As talked about over these incorporate conceivable Human Immuno Virus (HIV) contamination and being tainted with Hepatitis B. In the prior 1990's logical articles showed up in diaries, for example, The Lancet what's more, Transplantation Proceedings detailing of poor therapeutic results where kidneys have been purchased from contributors contaminated with HIV and Hepatitis B.¹⁰³

One of the dangers innate to the contributor in the withholding of therapeutic data in underground organ deals is the way that the contributor will once in a while not be medicinally fit to give an organ for transplantation however that such data isn't known or isn't given to the individual or individuals evacuating the organ.¹⁰⁴ This conveys us at that point to issues identifying with the soundness of both the organ benefactor and the potential beneficiary.

The compromising of the donor and the recipient's health

The bargaining of the contributor's wellbeing and life by such offering of real organs is a noteworthy problem.¹⁰⁵ Most of the time when organs are evacuated from a giver and set on the organ market for exchange, such evacuation of the organ is never done under right supervision and guideline. Alongside this issue is the issue that the benefactor does not get the exceptional restorative consideration after the evacuation of such an organ, to the point that would assuredly be the situation if the organ was expelled legitimately in a appropriate restorative institution.¹⁰⁶

Likewise ordinarily a contributor is so edgy for the cash that a conceivable organ exchange can endower him with and the organ beneficiary thusly is so urgent for an organ for transplantation that they both disregard to take into thought regardless of whether they are

¹⁰² Forsythe 2001: 18.

¹⁰³ <http://www.journals.uchicago.edu/CA/journal/issues/v41n2/002001/002001.text.htm>: 27/09/2006. Other related diseases that can be passed on from the organ donor to the recipient if medical information is withheld include Cytomegalovirus which is a part of the herpes group of viruses and the Epstein-Barr virus which can result in fever, anorexia, headaches and fatigue. Forsythe 2001: 219, 222, 232.

¹⁰⁴ Forsythe 2001: 15; The Cape Times: 1998.

¹⁰⁵ Price 2000: 389.

¹⁰⁶ <http://assembly.coe.int/Documents/WorkingDocs/doc03/EDOC9822.html>.

restoratively fit to experience an activity for the evacuation of any organ or to get an organ transplantation.¹⁰⁷

An individual from the International Forum for Transplant Ethics expressed:

*"The poorer a potential seller, the more probable it is that the offer of a kidney will be worth any hazard there is."*¹⁰⁸

Further more Cameron and Hoffenberg¹⁰⁹ say:

"The fact that paid organ donation usually takes place under unsatisfactory medical circumstances has no bearing on the argument. If one accepts the practice, then well-organised programs in which the donor is properly apprised of risk, fully assessed and followed up, with results available for public audit, can and have been organised, for example, in India. It is the marginalisation of paid organ donation that leads to its performance in less than ideal circumstances."

Premature withdrawal of life support

There are conceivable situations where families are impacted to rashly pull back the life support system keeping in mind the end goal to give organs to other penniless patients.¹¹⁰ Often there is such a requirement for organs due to the tremendous lack that medicinal specialists and other nursing staff purposefully consult with families to 'let their friends and family kick the bucket' all together for a transplant to take place.¹¹¹ This is frequently not to the advantage of the giver all things considered benefactor is potentially still ready to get by for a considerable length of time before in the long run having restorative treatment withdrawn.¹¹²

¹⁰⁷ The Cape Times; 1998

¹⁰⁸ The Cape Times: 1998.

¹⁰⁹ 1999: 727.

¹¹⁰ Breyer 2003: 2; <http://organtx.org/ethics/sales/sales.htm> (Yahoo)

¹¹¹ Prottas 1994: 64-65

¹¹² Prottas 1994: 64-65.

The International Code of Medical Ethics of 1949,¹¹³ of the World Medical Association moreover states as one of the key obligations of a doctor that such doctor won't enable budgetary thought processes to impact his or her free and autonomous exercise of expert judgment for the benefit of his or her patients. Another essential obligation that can straightforwardly be connected to the issue of untimely withdrawal of life support or treatment is the obligation of a doctor to act just to the patient's advantage while giving restorative care which may, to keep the physical and mental enduring of the patient, have the impact of debilitating the physical and mental state of the patient.

Pressurized or coerced donations

The organ exchange could create an arrangement of monetarily pressurized transplants whereby a donor will offer an organ out of a urgent requirement for money.¹¹⁴ The giver will then be constrained into offering his organs automatically. This thusly prompts inquiries of lawfulness and whether the benefactor really assented to offering his organs.¹¹⁵ The contention, be that as it may, does not stand much ground in light of the fact that the offering of cash to somebody to purchase organs does not really pressurize them to offer the organ.

GarwoodGowers¹¹⁶ states:

*"On the off chance that they feel weight by being offered cash it is their own longing for cash that is influencing them, not simply the cash or the individual offering it."*¹¹⁷

¹¹³ <http://www.wma.net/e/policy/c8.htm>.

¹¹⁴ <http://www.flonnet.com/fl1907/19070730.htm>

¹¹⁵ <http://www.flonnet.com/fl1907/19070730.htm>: 27/06/2005. The ethical issue of giving consent for organ donations and legislation dealing with such consent will be discussed in a later chapter

¹¹⁶ 1999: 178.

¹¹⁷ As will be discussed in further detail in a later chapter, one must also consider the issue of informed consent when discussing consent as given by organ donors for the removal of their organs. Section 7(3) of the National Health Act 61 of 2003 of South Africa defines such informed consent to mean consent for the provision of a specified health service, such as organ removal and transplantation, given by a person with the legal and necessary capacity to do so.

Reduction in Voluntary Donations

Commerce in human organs may very well lead to a reduction in voluntary donations and ultimately a decline in altruistic donations because of the fact that a financial incentive to donate compromises the voluntariness of the choice to donate an organ and the altruistic basis for organ and tissue donation.¹¹⁸

The increase in illegal activities to gain people's organs

It has been suggested that there might be an increase in activities such as organ stealing and murdering of people for the purposes of procuring their organs which will result because of the sudden increase in the value of such organs.¹¹⁹ The fact that there is an organ shortage already leads to underground markets and organised crime groups selling organs and body parts obtained from murdered organ donors, coerced organ donors and other donors who do not wish to voluntarily sell or even donate their organs and tissue.¹²⁰ For this reason a properly regulated organ trade system should ensure that organ stealing, kidnapping and murdering for the obtaining of human organs will not happen.

Conclusion

All these arguments against the legalisation of commerce in human organs are useless myths, as today even without legalising such a market in organs, poor people are exploited on black markets,¹²¹ people are killed for their organs¹²² and even a voluntary donor's life is compromised when donating any organ.¹²³ From all the above arguments that have been counterargued the question is then not whether a trade in human organs is harmful to any one person but whether in the end such a practice and method of procuring organs will be harmful to society as a whole.¹²⁴

¹¹⁸ Kishore 2005: 364.

¹¹⁹ Price 2000: 389; Slabbert and Oosthuizen 2005: 196.

¹²⁰ There are also alleged cases where human organs have been stolen and sold in South Africa for witchcraft purposes. Labuschagne 2001: 354.

¹²¹ Slabbert and Oosthuizen 2005: 196-197.

¹²² Labuschagne 2001: 354.

¹²³ Slabbert and Oosthuizen 2005: 198.

¹²⁴ <http://www.flonnet.com/fl1907/19070740.htm>.

CHAPTER 6
INNOVATIVE IDEAS AND
OPINIONS BY DIFFERENT
SCHOLARS

Chapter 6

Innovative ideas and opinions in increasing organ donor figures

Introduction

This chapter highlights specific ways in which the organ supply can be increased to a level acceptable to meet present demands for such organs. Methods are also indicated on how proper distribution of bodily organs can be maintained without diminishing basic human rights and without exploiting the poorer members of society. It is worthwhile mentioning that all of the methods discussed in this chapter should not be sought individually but that these methods should be used collectively as a way in which to increase organ supplies.

Rewarded gifting

India People in India are challenging the government to revise the Transplantation of Human Organs Act of 1986.¹²⁵ The Indian Society for Organ Transplantation has gone as far as to suggest monetary compensation to donors of organs.

Dr. K.K. Malhotra, president of the society and senior consultant, said:

*"Several countries in the West have adopted the practice of giving some kind of incentive to donors, be it in the form of wages for the number of work days lost in the course of the operation or health insurance for the donor or a family member in case of cadaver transplants."*¹²⁶

Dr. R.V.S. Yadav, former president of Indian Society for Organ Transplantation, stressed that it was not right to expect a donor to give a part of his body without any incentive. *"The Organ Transplant Act¹²⁷ is a verbatim copy of the British Act,¹²⁸ which does not take into account the fibre of the Indian society or the economic differences between the two countries,"* he pointed out.¹²⁹

¹²⁵ The Times of India: 2004.

¹²⁶ The Times of India: 2004.

¹²⁷ Referring to the repealed Transplantation of Human Organs Act of 1986. This Act was replaced by the Transplantation of Human Organs Act 42 of 1994 of India.

¹²⁸ Referring to the repealed Human Organ Transplant Act of 1984 of Britain. This Act was replaced by the Human Tissue Act of 2004 of Britain.

¹²⁹ The Times of India: 2004.

According to Yadav, once the law "*recognises such compensations, the availability of organs would increase and the concept of organ trade will no longer exist.*"¹³⁰

He added: "*There is also the need to promote cadaver donations.*"¹³¹ Payment made to such cadaveric donors can then be paid, after subtracting funeral expenses and other medical expenses, into their estates for use by the surviving spouse and his children or used to contribute to charity organisations.¹³²

Canada

The Canadian Government is exploring the idea of compensating organ donors financially for living organ donation as well.¹³³ Such ideas create a fine line between organ donation and organ trade. However, officials from the Quebec Health Department mentioned that such compensation will not be for the payment of organs but for the payment of losses suffered by the organ donor by way of, for example, loss of income for the number of days needed for recovery after donating an organ and any other expenses that might arise as a result of the organ donation. They are adamant that the idea behind such compensation is not to create a market in organ trading. These ideas and opinions arise from shocking statistics that only approximately 15% of kidney transplants in Quebec for 2004 came from living organ donors.¹³⁴

¹³⁰ The Times of India: 2004.

¹³¹ The Times of India: 2004.

¹³² <http://www.organselling.com/index.htm>:

¹³³ The Toronto Star: 2003

¹³⁴ The Toronto Star: 2003.

National organ donor registry

The first solution in combating organ trafficking and increasing the organ supply, especially in South Africa, is to create an effective national organ donor registry.⁵⁸³ People willing to donate their organs can even be paid a certain fixed monetary amount to register with an organ donor foundation for purposes of future organ donation.¹³⁵

A further possibility is that living donors, after donation, or people signing the registry, who will be donating after death, can be immediately placed at the bottom of the waiting list as potential organ recipients. As they near the front of the list they can be bypassed until such a future time when they will also possibly be in need of an organ transplant. This will ensure that unfair distribution is not a factor in affording an organ donor the opportunity of receiving an organ on the basis of him or her previously having donated an organ or expressing the willingness to donate an organ.¹³⁶

If, however, a potential donor decides to remove him or herself from the donor registry, they will also be immediately removed from the waiting list for potential organ transplants. Such a national organ donor registry will additionally increase the chances of organ procurement organizations in finding suitable organ donors to match potential recipients because of the fact that all the medical information needed to match donor with recipient will be in a fixed database.¹³⁷

Education regarding organ donation

One way to improve communication and knowledge in the issue of procuring more human organs for transplantation is via public educational programmes where organ donation and its positive effects on society must be emphasised.¹³⁸ Educational programmes can also be used to

¹³⁵ Haddow 2006: 325. A study done by Haddow including interviews with nineteen Scottish families who's deceased family members had all donated organs generally preferred the system of presumed consent to organ donations above financial incentives. This system of presumed consent in a particular country assumes that all citizens in that country will be organ donors. If the citizens do not wish to donate their organs, either while living or after death, they specifically need to opt-out of the donation process.

¹³⁶ In Singapore, which has currently adopted a presumed consent law, an organ donor is given priority when it comes to receiving an organ if he or she is in need based on the fact that he or she has previously donated an organ themselves. Bagheri 2005: 4161

¹³⁷ Calandrillo 2004: 128 and Machado 1998: 47. The idea of creating a national organ donor registry can work equally well when procuring cadaveric organs for donation.

¹³⁸ Prottas 1994: 75.

decrease organ demand by teaching people to live healthier lives and take responsibility for their own bodies and the effect that their lifestyles and activities have on their bodies and bodily organs.¹³⁹

Calandrillo¹⁴⁰ is further of the opinion that if hospital staff and health care workers were better trained to request donations from the deceased's family members while such families are in the grieving process that this would stimulate an increase in organ donations and better develop donor management processes.

Often this problem causes potential donors to go unnoticed and potential organ transplantations are then never realized. He believes that society needs to be educated about the shortage in organs available for transplantation and that people need to realize that the many myths surrounding organ donation are just that – myths.¹⁴¹

People need to be given guidelines as to who may donate organs, which organs can be donated, which organs can be donated while one is alive and which can be donated only after death and in general simply educated about the specific medical procedures and processes of organ donation and transplantation. Further if people would like to donate their organs while they are alive, they should be specifically told about all the potential risks of donating or selling their organs so that donors can make a truly informed choice about organ donation so as not to regret it in the future.¹⁴²

Compensating a donor for actual expenses and pain and suffering

This idea of remunerating people for organ donation or contribution in the organ gift process could likewise work in national clinics by giving motivators to attendants and therapeutic experts who are prepared to do and all things considered do in the end get the biggest number of organ givers in for case multi month. This could prompt attendants and nurses being ready to all the more regularly ask from the expired family whether or not they have considered organ gift of the perished relative's substantial organs. By offering motivating forces to

¹³⁹ Cherry 2005: 76.

¹⁴⁰ 2004: 70.

¹⁴¹ Calandrillo 2004: 129.

¹⁴² Calandrillo 2004: 102. This idea of educating the public about organ donation and transplantation can also work equally well when procuring cadaveric organs for donation.

attendants and restorative experts they will be incited to energize relatives about the advantages of giving the perished relative's organs and future advantages of themselves getting to be organ givers.¹⁴³

Transplant or Donor Cards

Another idea for the increase in organ donation brought by Thukral and Cummins¹⁴⁴ is that of a "transplant card". The card holder would therefore be an organ giver and in addition being qualified for accepting organs in the request in which he agreed to accept the "transplant card".

The essential point of this card is to expand organ supplies for transplantation as well as to give organs to destitute patients through fair portion of organs to those patients as of now owning the "transplant cards".

This technique would then be able to be utilized to furnish organ contributors with the assurance of future organs being given to them when they require it rather than giving such an organ benefactor money related pay for his gift. So also all drivers ought to have their organ benefactor status imprinted on their driver's permit furthermore, in the event that they deny they may not get an organ gift themselves.¹⁴⁵

This may appear like a cruel punishment for not turning into an organ giver but rather actually if nobody gives organs there will be no organs accessible to organ beneficiaries for transplantation, paying little respect to whether such beneficiaries are organ donors or not.

This procedure of remuneration utilizes fiscal impetuses without putting a cost on life or the human body. Be that as it may, this proposed strategy to increase organ donation isn't without defects.

The money related and authoritative framework expected to keep up this strategy for acquiring organs would be galactic. Another issue would be the unequal and unlawful disavowal of

¹⁴³ Numerous other ideas exist for the compensation of donors as to not exploit only the poor in society. For example donors could be given tuition subsidies for their children, reduced medical aid prices and their payment can even be placed in the donor's favorite charity if they so wishes. Prisoners in the Philippines, where the commerce in human organs and tissues is legal, receive a reduced sentence upon donating a kidney for example. Halstead and Wilson 1991: 4, 6.

¹⁴⁴ 1990: 194.

¹⁴⁵ Garwood-Gowers 1999: 184.

organs to patients who have, not because of reasons on their part, not agreed to accept the "transplant card"

Futures market or donation contracts

What is called a 'futures market' in human organs is yet another example of how the regulated organs trade can be successful.¹⁴⁶ This market works by allowing people interested in donating organs to sign a contract authorizing the removal and transplantation of their organs once such a person is deceased. The contract, however, consists of the selling of these organs while the person is still alive and once the contract is signed such a person will receive money, either on a monthly basis or in a once off payment, for the future sale of his or her organs.¹⁴⁷

The amount for which the organ is sold could, as suggested above, be divided up into monthly payments made to the donor who can be used while the person is still alive. This ensures regular

contact with the transplant organization which will guarantee the future donation of the organs.

If the contract is breached or the donor no longer wants to donate his organs after death a repayment for the value that has been paid to date, at interest, can be made to the transplant organization.¹⁴⁸

This system has the following advantages:¹⁴⁹

It ensures that people do not sell their organs simply because of a need for monetary compensation.

This proposed system, if regulated properly, should eliminate the possibility that people will be murdered for their organs to be sold on the black market.

¹⁴⁶ Calandrillo 2004: 108; <http://www.organselling.com/index.htm>

¹⁴⁷ <http://www.organselling.com/index.htm>.

¹⁴⁸ <http://www.organselling.com/index.htm>.

¹⁴⁹ <http://www.organselling.com/index.htm>.

The decision to donate is made well ahead of the time of death which removes the unpleasant process of gaining consent from family members at the time of death before being able to harvest and transplant the organs.

Because the decision is made years before the actual donation takes place it ensures that donors make a rational choice at a non-stressful time in their lives about donating organs.¹⁵⁰

Conscription

If such a process of conscription is to be effective it must be controlled by non governmental organizations and institutions in order to eliminate the possibility of further corrupt or illegal activities between various governmental institutions and to keep the constitutional rights of bodily and psychological integrity of donors intact.

¹⁵⁰ Halstead and Wilson 1991: 6. Blumstein agrees with such future's markets or donation contracts and says that by compensating the donor of an organ or organs one is respecting and validating the right of the seller to sell and the buyer to buy and enter into a contract with one another while saving the recipients life. He states further that the seller of an organ is in no way being benefited by making such sales illegal. Blumstein 1993: 18, 23.

Chapter 7

Conclusion and Suggestions

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Conclusion

This chapter sums up the major observations from the dissertation– suggestions for future steps will be further made .

The main cause of trafficking: organ shortage

There can be no doubt that trafficking in organs is caused by, and will persist, because there is a worldwide shortage of donor organs available for transplantation. Individual countries as well as international organisations are putting a lot of effort into trying to achieve a level of self-sufficiency in organ donation and transplantation, by such measures as promoting public awareness, to improve the willingness to donate, and fostering international cooperation and exchange of organs. However, this is not going to succeed in the short run.

Another aspect that deserves better consideration is that the developed societies (North America, Europe, Australia, Gulf States) must be more aware that they bear a heavy responsibility for the fact that trafficking in organs continues, because it is mainly the citizens of their countries that seek to obtain kidneys (and other organs) abroad. The fact that the trafficking and illegal transplants to a large extent (but not exclusively) take place in third world developing countries and target impoverished vulnerable populations, does not give wealthy developed countries the moral excuse to look the other way and stay idle. It is in fact the money coming from recipients that drives and sustains the whole trafficking business. As the ethnologist and trafficking researcher Nancy Scheper-Hughes has remarked: *“It is ethically unacceptable that we allow a world cut in two, where a wealthy minority of the globe’s inhabitants use the poor majority as a source of spare body parts.”*¹⁵¹

¹⁵¹ Nancy Scheper Hughes

The scope of trafficking in organs

Over the past decades there have been ample debates over the definition and scope of trafficking in organs. International organizations, such as the UN, have focused primarily on the trafficking of human beings for the purpose of organ removal (THBOR). This is understandable, as trafficking in persons (for sexual exploitation, prostitution, forced labour etc.) has over the past decades become a growing global and also a European problem, and the development of a suitable legal framework and effective law enforcement instruments has been principally beleaguered towards this crime. However, in practice it has been shown that THBOR does by no means cover the whole occurrence of trafficking in organs and that some forms of trafficking (e.g. organs from living and deceased people that have already been removed, illicit organ amputation without force or coercion, trafficking in human tissues and cells) are often ignored and escape prosecution.

The CoE Convention alongside trafficking in human organs, that has been adopted freshly and is opened for signature since early 2015, aims to avoid these lacunas and may offer a much needed legal implementation to balance the existing more THBOR-focused instruments. The next major dispute will be the accomplishment of the current lawful instruments into national laws.

Stress on battling and preventing THBOR

A report by the Dutch National Police has showcased a number of detected and suspected cases which is just the start. As India, has already taken strict measures to remove the trafficking in persons from the ground level, which has further prevented many, Indian states to be the hub of human trafficking.

Despite taking stringent measures in detecting and disrupting trafficking networks, it cannot be denied that an unknown number of cases on organ trafficking goes undetected.

Another method to prevent Organ Trafficking is to gather all the information about the potential and future risks from the commercial exchange of organs. Many researches at the National and International level shows that major health and social outcomes and consequences are faced by

the Donor and Donee of kidney through illegal organ transplant, as a result of their kidney removal.

A much needed approach for better awareness and education needs to be promulgated amongst the youth, unemployed, poor and illiterate people. The risk of becoming the target of Criminal Organisations and terrorist groups as a potential organ market has increased in India because of poverty, illiteracy, lack of awareness and financial and economic crisis.

Better collaboration with NGO's (Both National and International) is the need of the hour to take these educational and awareness programs to the next level.

Health Professionals on whom most of the patients rely on , sometimes also contribute directly or indirectly to the rackets of Organ Transplantation:

- 1) By persuading their patients for seeking a transplant abroad.
- 2) Giving them counseling and encouraging them for Organ Transplantation.
- 3) Performing blood and tissue tests.
- 4) Providing patients medical records to illegal traffic organizations.

In this way unintentionally many of the physicians and health professionals facilitate Transplant tourism and majority of the times with best of intention for the patient's recovery and health.

However strict actions are needed to be and stringent rules and regulations need to be formulated to maintain the privacy of the patient's health and medical reports. A compulsory training schedule of one year is needed to be prepared for the surgeons and nephrologists.

The National and International transplant societies need to hold seminars for health professionals minimum once or twice in a year and develop a Uniform regime for the doctors and surgeons for before and after care of transplant recipients.

Stringent Law enforcement and criminal proceedings

The main drive behind the trafficking and removal for organs is the urge for money. Several decided cases have proved the enormous profits from trafficking and removal for organs. It further gives an opportunity to police authorities to break down on a trafficking network by tracking the monetary flows from the illegal organ buyers to the brokers.

An effective deterrent by law enforcers of seizure and confiscation of goods and real estate acquired by the money from the trafficking offences and further utilizing them for framing and implementing a strong training system is a needed initiative by the law enforcement authorities.

A warning

The prevention of trafficking in organs and illegal transplants has been to a great extent successful in the presiding years, in India as well as in other parts of the world. However, there is a drawback to this success: better and tougher investigation and prosecution combined with more effective prevention, have reduced trafficking not made trafficking in organs wither away.

The traffickers and brokers shift to other countries. The most efficiently emerging parts are Latin America, North Africa and South East Asia. These are the emerging areas with widespread corruption and political instability creating a good ground for traffickers. The New target ¹⁵² of UN and other international and national organizations is to increase the supply of legally retrieved organs .

Suggestions

The following are suggestions to take a series of next steps and actions to combat and prevent trafficking in organs.

✓ Continue priority actions to increase organ availability

The root cause of trafficking in human organs is still the gap between the need for transplantable organs and the actual numbers that come available. Even within India there are huge differences between states regarding the actual numbers of organs that are donated for transplantation, and in the length of the waiting lists. Most countries still have a long way to go to reach a state of selfsufficiency. Actions to combat and prevent trafficking in organs should therefore not only focus on improving law enforcement against traffickers, but also on increasing organ availability. There are a number of potential approaches that could be considered by United Nations in order to support member states in increasing the availability of organs.

✓ ***Increase deceased donation to the full potential***

There are several actions on the country level on *Transplantable organs* that has shown to be successful in increasing the number of available organs. The training and appointment of transplant donor coordinators is one of the success factors behind the so called Spanish Model. However, in a number of Indian states the numbers of coordinators are still insufficient. Another approach is the introduction of DCD donation (donation after circulatory death). In many countries the number of brain dead donors (DBD) is structurally decreasing; countries like the UK, the Netherlands, Belgium, and Spain are now compensating for the lack of DBD donors by introducing DCD donation. But, still the majority of member states rely only on DBD donation. A third approach is the use of innovative machine preservation techniques to improve the quality of retrieved organs (especially from extended criteria donors) and reduce the discard rate because of high rate of damage¹⁵³.

The Indian Government needs to support its member states by encouraging them to establish national action plans for increasing deceased donation and monitor the progress.

✓ ***Increase living kidney donation.*** Several member states have considerably improved their kidney transplant rate by increasing the number of living donor kidney transplants (UK, the Netherlands, Sweden).

✓ ***Increasing public awareness*** : The positive aspects of organ donation and transplantation should be a continuous effort (see the loss of public trust after the German transplant scandal). One way to increase public awareness and increase the knowledge on donation and transplantation among members of the general public is to introduce tailormade education programmes at the primary and secondary school level (the Netherlands has conducted very promising pilot studies in this field). The Indian Government should support the development and implementation of such education programs throughout the country.

¹⁵³ Consortium for Organ Preservation in Europe (COPE), funded by Seventh Framework Programme, 2013

The Indian policies should concentrate on the issue of trafficking and commercialization of human organs, not only from the perspective of law enforcement but also by striving to increase the full potential of organ donation and transplantation. The Indian parliament should align itself with this broad focus.

✓ ***Speed up the implementation of anti-trafficking policy in national law***

In a number of countries around the world including India the implementation of proper Directives and Conventions is lagging behind. Countries should make better and accelerated efforts to implement European Directives and Conventions against trafficking in organs into their domestic law. There is also a need for harmonization of national laws on the aspect of criminalization of trafficking offences and applying sanctions (in transplant laws as well as in penal codes). The governments around the world should encourage the national competent authorities to monitor this process more strictly. Where relevant member states who have not yet done so, should be encouraged to complete ratification of international treaties relevant to fighting THB (for organ removal). The Commission is to monitor the progress of the implementation of the related legislation, in addition the Indian Parliament should exercise its power of scrutiny over the Commission by stressing to the Commission the importance of swift and full implementation of the relevant legislation.

✓ ***Legislation should cover all forms of illegal organ removal***

For an effective response against the illicit removal and use of human organs, the domestic legislation should criminalize the whole range of offences related to trafficking in organs: trafficking in persons for the purpose of organ removal, as well as illicit removal and commercialization of organs from both living and deceased persons. The UN, with the support of the national competent authorities of all the member states, should initiate a study on the quality of current domestic legislation of member states.

✓ ***Recipients are morally and criminally liable***

Whereas suppliers of organs in trafficking cases are generally considered to be victims and given due assistance and protection, the recipients of these organs must be held morally responsible for aiding and abetting trafficking in organs, and stronger measures must be taken to discourage and deter transplant tourism. Currently, in law enforcement against organ trafficking, there is no consensus on the legal position of these recipients. The general approach is to hold recipients criminally liable in cases where the victims suffer serious health damage.

The Indian government should encourage a (Horizon 2020) study to better define the moral and legal position of recipients in organ trafficking.

✓ ***Focus more on role of health professionals***

Trafficking in human organs and commercial transplants could not take place without the cooperation and involvement of health professionals. However, current anti-trafficking legislation and law enforcement is not always clear when these health professionals are criminally liable and when not. The government should encourage that more attention by law enforcement should be given to the role of health professionals as accomplices in criminal trafficking networks. Stronger sanctions (fines, striking off the medical register, imprisonment) against health professionals who perform illegal transplants will act as deterrent. On the other hand, health professionals should be counseled how to avoid becoming accomplices by (unintentionally) facilitating patients to seek an overseas transplant.

✓ ***Develop a Code of Conduct for health professionals***

The government should encourage Indian medical associations and transplant societies to develop a Code of Conduct for health professionals and transplant centres on how to deal with patients who intend to travel abroad to obtain an organ, and when they return for posttransplant care. This could take the form of a joint study with the National Human Rights Commission and other professional medical associations on the responsibility of transplant professionals. Some interesting initiatives in this respect have already been

taken in Canada¹⁵⁴

✓ ***Collect data on transplant tourists***

So far there is hardly any reliable data from the Ministry of Tourism, and at the regional level, on the number of patients who acquire a transplant outside the framework of the domestic transplantation system. The government should encourage the national competent authorities to collect this data. From the safety point of view (e.g. donor-derived communicable diseases, infections) it would be advisable to enter the fact that a patient has obtained an organ abroad into his medical record. The Indian government should also encourage Ministry of Health and Tourism to provide more data specifically on organ trafficking and transplant tourism in its report on Trafficking in Human Beings in the country.

✓ ***Improve the organ traceability system***

Countries must ensure that the traceability system for human organs is so tight that no illicitly obtained/removed organ can enter the domestic transplant system undetected and unaccounted for. The government, with the help of the national competent authorities, should monitor the effectiveness of this system.

✓ ***Prohibit reimbursement of illegal transplants***

Until recently health insurance agencies in several countries across the globe were reimbursing illegal transplants performed overseas. This reimbursement of illegal transplants performed abroad is unacceptable and must be legally prohibited. The government, with the support of the national competent authorities, should set up a monitoring system to ensure that only overseas transplants from legally obtained organs are reimbursed (e.g. from genetically or emotionally related family members).

¹⁵⁴ J.S. Gill et al., Policy Statement of the Canadian Society of Transplantation and Canadian Society of Nephrology on Organ Trafficking and Transplant Tourism, 2010.

✓ ***Seize criminal proceeds of trafficking***

The Indian government should encourage that (inter)national law enforcement agencies against organ traffickers have the legal instruments to seize the criminal proceeds of trafficking in organs. Following the proposal by Europol, these proceeds can be used to increase the training and expertise of antitrafficking forces, or may be used to compensate victims of trafficking.

✓ ***Develop indicators for recognizing trafficking incidents***

National and international law enforcement agencies should make efforts to develop practical indicators for recognizing signals of (attempted) trafficking in organs.

✓ ***Prohibit solicitation***

Solicitation for selling and buying organs through the internet and social media is becoming a huge threat to the regular domestic donation and organ allocation system, and is difficult to control. This solicitation is also increasing fast into a crossborder phenomenon, linking recipients (potential buyers) to willing organ sellers.

The Indian government should develop effective barriers against (online) solicitation to buy or sell human organs. The government should initiate and fund a wide study on this topic.

✓ ***Develop a legal framework for tissues and cells***

There is as yet no suitable legal framework to effectively address trafficking and commercialization of human tissues and cells, which is a growing problem. The government should encourage the development of such a legal framework.

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