



Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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**Trafficking in persons for the purpose of removal
of organs**

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Background paper prepared by the Secretariat

I. Introduction

1. In its decision 4/4, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (Organized Crime Convention) acknowledged that the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking in Persons Protocol), supplementing the Organized Crime Convention, was the principal legally binding global instrument to combat trafficking in persons. The Conference further decided to establish an open-ended interim working group, in accordance with article 32, paragraph 3, of the Organized Crime Convention, and rule 2, paragraph 2, of the rules of procedure for the Conference, to be chaired by a member of the Bureau, to advise and assist the Conference in the implementation of its mandate with regard to the Trafficking in Persons Protocol.
2. In resolution 5/2, the Conference decided that the working group should hold at least one intersessional meeting prior to the sixth session of the Conference and present its recommendations to the Conference on whether the working group should be extended and, if so, proposed areas for future work.
3. The first, second and third sessions of this working group were held in Vienna, Austria from 14 to 15 April 2009, from 27 to 29 January 2010 and on 19 October 2010 respectively.
4. The present background paper was prepared by the Secretariat to aid in the discussion of the fourth session of the working group.

* CTOC/COP/WG.4/2011/1.



II. Issues for discussion

5. States may wish to address the following issues, among others, in discussing the issue of trafficking in persons for the purpose of removal of organs:

- Are there loopholes in international and national law regarding trafficking in persons for the purpose of removal of organs and related issues?
- Are there clear current trends and patterns regarding trafficking in persons for the purpose of removal of organs?
- What are the root causes to trafficking in persons for the purpose of removal of organs?
- Does recruitment among those who are desperately poor constitute abuse of a position of vulnerability in the context of trafficking in persons for the purpose of removal of organs?
- Which actors are relevant in the process? How might they be identified and distinguished from each other? What is their relationship and role in the trafficking process?
- What key points may be made regarding differentiating offenders from victims and “bystanders” of organ trafficking schemes? What is the role of a recipient of an organ?
- What are the modus operandi? What are the forms of recruitment used by offenders?
- How can trafficking in persons for the purpose of removal of organs be prevented? What types of regulation or practice might be in place that present obstacles to recruitment of victims?

III. Guidance for response

A. Definitions

6. Article 3 (a) defines trafficking in persons:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring 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.”

7. Trafficking in persons, including for the purpose of removal of organs is to be criminalized under the Trafficking in Persons Protocol, article 5. Also attempt, participation, organizing and directing other persons in the commission of trafficking in persons for the purpose of removal of organs are to be criminalized. In

addition to liability of natural persons for the crime, the Organized Crime Convention requires the establishment of liability of legal persons. In case of medical establishments where trafficking in persons for the purpose of removal of organs takes place, liability needs to be established for both natural and legal persons.

8. The Protocol does not take into consideration trafficking in human organs separate from the donor. The incidence of trafficking in organs versus trafficking in persons for the purpose of removal of organ is not known. However, as it is often not possible to preserve organs for long periods, trafficking in persons for the purpose of removal of organs can be assumed to constitute a considerable portion of cases.¹

9. Organs commonly transplanted include kidney, liver, heart, lung and pancreas.² The organ most frequently given by a living donor is kidney as humans have two kidneys. Also parts of other organs including liver, lung, pancreas can be transplanted from living donors. Also a variety of tissues and cells are routinely implanted for a wide range of procedures.³ Tissues and cells are however not covered by the Trafficking in Persons Protocol, hence falling outside the scope of this background paper.

B. The issue of consent

10. Trafficking in persons for the purpose of removal of organs thrives from shortage of organs for transplantation purposes. This demand is coupled with supply, often artificially created by organ “brokers”, recruiting donors from among vulnerable populations. Such donors often consent to the removal of their organs, and may in some cases even receive the agreed payment for them. However, as is common in situations of trafficking for any exploitative purpose, the provision of the “service” is often driven by poverty and the use of improper means such as abuse of a position of vulnerability.

11. Article 3 (b) of the Protocol refers to the issue of consent:

“The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forward in subparagraph (a) have been used.”

12. It is legally impossible to consent when the consent has been obtained through improper means, as outlined in Article 3 (a) of the Protocol. Those means are threat

¹ Once blood ceases to flow to the organ due to severance of arteries or death, the organ begins to deteriorate rapidly from the lack of oxygen. The transplantation process must take place in a very short period of time because organs with long ischemic periods become unsuitable for transplantation. Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs, Joint Council of Europe/United Nations Study (Directorate General of Human Rights and Legal Affairs: Council of Europe, 2009), p. 25. Ischemia is the deficient supply of blood to an organ, which leads to tissue degeneration. See Ischemia, Medline Plus, Merriam-Webster Dictionary. Available at: www.merriam-webster.com/medlineplus/ischemia.

² Global Observatory of Donation and Transplantation (www.transplant-observatory.org).

³ Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs, Joint Council of Europe/United Nations Study (Directorate General of Human Rights and Legal Affairs: Council of Europe, 2009), p. 17.

or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

13. Consent of the victim can be a defence in the domestic law, but as soon as the use of any of the means of trafficking is established, that consent becomes irrelevant and consent-based defences cannot be sustained. In other words, what might appear to be consent by a victim is nullified or vitiated by the application of any improper means by the trafficker. Furthermore, consent of the victim at one stage of the process cannot be taken as consent at all stages of the process and without consent at every stage of the process, trafficking has taken place.

14. In the situation of organ removal, many people consent to the removal of their organ, but there may be deception as to the amount of payment for the organ or there will be no payment at all. They also may not be fully informed as to the nature of the procedure, recovery and the impact of the organ removal on their health. Alternatively, consent may be obtained through varying degrees of coercion or, in many cases, abuse of a position of vulnerability.⁴ The term “abuse of a position of vulnerability” is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.

15. Another legal question is whether the subject has the capacity to consent to removal of organs. Article 3 (c) of the Trafficking in Persons Protocol makes the consent of a child irrelevant, and the capacity to consent may be further restricted under the national laws of a particular State. It should be noted that removal of organs from children with the consent of a parent or guardian for legitimate medical or therapeutic reasons should not be considered exploitation.⁵

C. Actors involved in trafficking in persons for the purpose of removal of organs

16. The commission of this crime can be distinguished from other forms of trafficking in persons in terms of the sectors from which traffickers and organ “brokers” derive; doctors and other health-care practitioners and ambulance drivers can be involved in organ trafficking in addition to those involved in other criminal trafficking networks.

⁴ Pearson, Elaine, ‘Coercion in the Kidney Trade? A background study on trafficking in human organs worldwide’ Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, April 2004, p. 5. Available at www.gtz.de/de/dokumente/en-svbf-organ-trafficking-e.pdf.

⁵ There are two main systems for retrieving organs from cadavers: a) Presumed consent (opting out): an organ can be removed from a deceased person for the purpose of transplantation unless the person has registered objections; or b) Express consent (opting in): organs are only removed for the purpose of transplantation where the person has expressed a will to donate organs. The former system of presumed consent is widely applied. In both systems, where there is no indication as to the person’s wishes, the family of the deceased person could be asked to authorize the removal of organs. E/CN.15/2006/10, paragraph 27-28, 21 February 2006, International Cooperation in combating transnational crime: preventing, combating and punishing trafficking in human organs.

17. Given the complex nature of transplant transactions, a range of skills from various sectors of society is required including, but by no means limited, to the following:

- Medical directors of transplant units
- Hospital and medical staff
- Technicians in blood and tissue laboratories
- Dual surgical teams working in tandem
- Nephrologists
- Post-operative nurses
- Travel agents and tour operators to organize travel, passports and visas
- Medical insurance agents
- Organ hunters (to recruit “donors” locally or internationally from among vulnerable populations)
- Faith-based organizations and charitable trusts, which sometimes call upon organ brokers

18. These actors, both natural and legal persons, may play various roles in the process of trafficking, including participation as well as organizing and directing other persons to commit the crime of trafficking in persons for the purpose of removal of organs.

D. Modus operandi of traffickers

19. In the context of trafficking in persons for the purpose of removal of organs, there are various ways and means through which organs can be obtained, including the following modus operandi:⁶

- Victims may agree to sell their organ and enter into a formal or informal contract to do so, but they are not paid at all or in full.
- A person may be deceived by a broker or a surgeon as to the procedures and consequences of the organ removal (e.g. they may tell the victim that the operation is minor, that they can return to work immediately and/or that they will not suffer adverse affects from the removal of e.g. one “dormant” kidney).
- A person may be given the “option” to sell an organ in exchange of a debt or threatened or coerced into doing so.
- In some cases, victims may be put under anaesthetic and wake to find their organ has been removed.

⁶ Pearson, Elaine, ‘Coercion in the Kidney Trade? A background study on trafficking in human organs worldwide’ Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, April 2004, pp.10-11, available at www.gtz.de/de/dokumente/en-svbf-organ-trafficking-e.pdf.

- In transplant tourism desperate patients and equally desperate organ sellers travel and face insecurity regarding conditions in the medical facilities and frequently substandard medical practices to obtain or donate organs.⁷

20. More often than not it is the poor who are approached by brokers with promises of financial freedom, promises that are often not kept.⁸ Many of these donors receive little or no follow-up treatment, a fraction of the promised price, and experience serious health complications.⁹ According to one study, the majority of commercial living-donors who sold a kidney to repay a debt reported no economic improvement in their lives, as they were either still in debt or were unable to achieve their objective in selling the kidney. According to the same study, 94 per cent regretted their donation.¹⁰

IV. International guidance

21. GA Resolution “Preventing, combating and punishing trafficking in human organs,” (A/Res/59/156) the United Nations General Assembly deplores the commercialisation of the human body and urges the Member States to adopt the necessary measures to prevent, combat and punish the illicit removal of and trafficking in human organs. It encourages the States to exchange experience in and information on preventing, combating and punishing trafficking in human organs.

22. GA Resolution “Trafficking in Women and Girls” (A/Res/65/190) “calls upon Governments to take appropriate measures to address the factors that increase vulnerability to being trafficked, including poverty and gender inequality, as well as other factors that encourage the particular problem of trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriage, forced labour and organ removal, in order to prevent and eliminate such trafficking, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punishing perpetrators, including

⁷ Nancy Scheper-Hughes, ‘Illegal Organ Trade: Global Justice and the Traffic in Human Organs’ (forthcoming).

⁸ See Elaine Pearson, ‘Coercion in the Kidney Trade? A background study on trafficking in human organs worldwide’ (Deutsche Gesellschaft für Technische Zusammenarbeit: Eschborn, Germany, 2004), pp. 10-11; see also Erica D. Roberts, Comment, *When the Storehouse is Empty, Unconscionable Contracts Abound: Why Transplant Tourism Should Not Be Ignored*, 52 Howard L.J. 747, 782-83 (2008-2009).

⁹ Jennifer M. Smith, “*Dirty Pretty Things*” and the Law: *Curing the Organ Shortage & Healthcare Crises in America*, 12 Chap. L. Rev. 361, 375-76 (2008-2009); Jeffrey P. Kahn, *Studying organ sales: short term profits, long term suffering*, CNN Health, October 1, 2002. Available at http://articles.cnn.com/2002-10-01/health/ethics.matters.selling.organs_1_kidney-donors-organ-sales-organ-donors?_s=PM:HEALTH (Accessed on February 24, 2011). “[T]he underlying motivation of most paid kidney donors is poverty and ... lasting economic benefit after donation is limited or even negative because of the limited employability of such patients and the perceived deterioration of their health.” Yosuke Shimazono, ‘*The state of the international organ trade: a provisional picture based on integration of available information*,’ 85 Bulletin of the World Health Organization 955, 958 (Dec. 2007).

¹⁰ D. A. Budiani-Saberi and F. L. Delmonico, Organ Trafficking and Transplant Tourism: A Commentary on the Global Realities, 8 American Journal of Transplantation 925, 927-28 (2008) (the responses were consistent across studies in Egypt, India, Iran (Islamic Republic of), Pakistan and the Philippines).

public officials engaging in or facilitating human trafficking, through, as appropriate, criminal and/or civil measures”.

23. COP Resolution 5/2 (CTOC/COP/2010/17) invites “States parties, States represented by observers at sessions of the Conference and relevant international organizations to provide the Secretariat with up-to-date information and available statistical data related to the offence of trafficking in persons for the purpose of organ removal, in order to better support evidence-based approaches to the prevention, detection and prosecution of such crime, as well as the provision of specialized, coordinated assistance and compensation for victims of the trafficking”.

24. Report of the Secretary-General to the Commission on Crime Prevention and Criminal Justice on preventing, combating and punishing trafficking in human organs (E/CN.15/2006/10) states that “the extent of the relationship between trafficking in organs and trafficking in persons (and other forms of organized crime) is unclear”. It highlights the link between unemployment, lack of education and poverty, and vulnerability to such crimes, and states that while cases of persons trafficked for the purpose of organ removal are not common, some have been reported. The report further states that there is no conclusive evidence regarding the trafficking in children for the purpose of organ removal, but that many abducted or missing children have subsequently been found dead, their bodies mutilated and certain organs removed. The report notes here that it is medically possible to transplant a child’s organ into an adult’s body. In subsequent paragraphs the use of organs for use in witchcraft practices is flagged.

25. WHO guiding principles on human organ transplantation stipulate that “Cells, tissues and organs should only be donated freely, without any monetary payment or other reward of monetary value. Purchasing, or offering to purchase, cells, tissues or organs for transplantation, or their sale by living persons or by the next of kin for deceased persons, should be banned. The prohibition on sale or purchase of cells, tissues and organs does not preclude reimbursing reasonable and verifiable expenses incurred by the donor, including loss of income, or paying the costs of recovering, processing, preserving and supplying human cells, tissues or organs for transplantation.”¹¹

26. Council of Europe’s Convention on Human Rights and Biomedicine (CETS No. 164) stipulates that “The human body and its parts shall not, as such, give rise to financial gain”. The Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin (CETS No. 186), article 22, expressly prohibits organ and tissue trafficking.

27. The Commonwealth of Independent States (CIS) Agreement on Cooperation in Combating Human Trafficking, Trafficking in Organs and Tissues is a regional instrument signed by CIS Prosecutor General Offices in 2009 and it aims to facilitate anti-human trafficking regional cooperation between the members of CIS. Furthermore, the Programme on Cooperation of CIS against human trafficking for 2011-2013 (approved by the heads of CIS Members in 2010) assigns the members of CIS to implement coordinated measures on identification, suppression and

¹¹ WHO, guiding principles on human organ transplantation, guiding principle 5. Available at www.searo.who.int/LinkFiles/BCT_WHO_guiding_principles_organ_transplantation.pdf.

investigation of cases of organ trafficking and tissues for transplantation purposes during 2011-2013.

28. The Iberoamerican Network/Council of Donation and Transplantation (RCIDT) Declaration against transplant tourism in Latin America recommends that governments of member States oppose and/or take measures in their legislation to control and sanction the promotion of and publicity for transplant tourism, “as these practices promote inequity, exclusion and social injustice, and violate human rights of national recipients”.

29. Declaration of Istanbul on Organ Trafficking and Transplant Tourism of 2008 points out that all countries need a legal and professional framework to govern organ donation and transplantation activities, as well as a transparent regulatory oversight system that ensures donor and recipient safety and the enforcement of standards and prohibitions on unethical practices, which are partly an undesirable consequence of the global shortage of organs for transplantation. It recommends that all countries should implement measures to meet the transplant needs of their residents from donors within their own population or through regional cooperation and that the therapeutic potential of deceased organ donation should be maximized.

Annex

Key tools and recommended resources

UNODC Model Law against Trafficking in Persons

The Model Law against Trafficking in Persons has been developed to assist States in implementing the provisions contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (UNTOC). The Model Law covers not only the criminalization of trafficking in persons and related offences, but also the different aspects of assistance to victims as well as establishing cooperation between different state authorities and NGOs. Each provision is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples. The definition of trafficking in persons in article 3 (a) of the Protocol refers to the removal of organs as one of the forms of exploitation.

www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf

Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto

The main purpose of the legislative guides is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The guides lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The guides have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

Combating Trafficking in Persons: A Handbook for Parliamentarians

The Inter-Parliamentary Union (IPU) and UNODC, in the framework of UN.GIFT, developed the publication Combating Trafficking in Persons: A Handbook for Parliamentarians. The Handbook contains a compilation of international laws and good practices developed to combat human trafficking and offers guidance on how national legislation can be brought in line with international standards. It outlines measures to prevent the commission of the crime, to prosecute offenders and to protect its victims. Chapter 2.7 of the Handbook deals with trafficking in human organs.

www.unodc.org/documents/human-trafficking/UN_Handbook_engl_core_low.pdf

UNODC Toolkit to Combat Trafficking in Persons

In pursuit of the goals of preventing and combating trafficking in persons, protecting and assisting its victims and promoting international cooperation to these ends, the UNODC Toolkit to Combat Trafficking in Persons seeks to facilitate the

sharing of knowledge and information among policymakers, law enforcers, judges, prosecutors, victim service providers and members of civil society who are working at different levels towards these same objectives. Specifically, the Toolkit is intended to provide guidance, showcase promising practice and recommend resources in thematic areas. Tool 9.19 deals with trafficking in persons for organ removal.

www.unodc.org/unodc/en/human-trafficking/2008/electronic-toolkit/electronic-toolkit-to-combat-trafficking-in-persons---index.html
