TRAFFICKING IN PERSONS FOR THE PURPOSE OF ORGAN REMOVAL

INTRODUCTION

Worldwide, an acute shortage of human organs for transplantation prevails.\(^1\) The gap between the growing demand for organ transplants and the limited supply is a contributing factor to increased abuses in the transplant process, including resorting to trafficking in persons for unlawfully obtaining organs.

This issue brief provides an overview of trafficking in persons for the purpose of organ removal (TIP for OR), its scope and impact. It further provides recommendations for States and practitioners on how to tackle this issue.

SCOPE OF THE CRIME

As with trafficking in persons generally, it remains challenging to accurately estimate the scope of trafficking in persons for the purpose of organ removal. The UNODC Global Reports on Trafficking in Persons note that between 2010 and 2018, approximately 300 victims of trafficking in persons for the removal of organs were detected across multiple countries.\(^2\) The latest data available confirms that trafficking for the purpose of organ removal has been reported in North Africa, South and South-East Asia, Central America and Europe.\(^3\) In comparison to other forms of trafficking in persons, this specific phenomenon is far less common. The most obvious reason for this is the high medical skill level required to perform the organ removal.

It is important to note, however, that current official figures of its prevalence certainly underrepresent the magnitude of this phenomenon. Notably, there are a series of difficulties associated with detecting and adjudicating this crime, such as its characteristic occurrence in legitimate medical settings where it can thus be easily disguised. A failure to detect and report, as well as the geographical spread of TIP for OR, are becoming growing concerns for

\(^1\) For more information see WHO-ONT Global Observatory on Donation and Transplantation (GODT): [http://www.transplant-observatory.org/](http://www.transplant-observatory.org/).


the international community, thus the issue warranting further attention.

MAIN TRENDS

The organs reportedly removed from victims in TIP for OR cases are kidneys, and, less commonly, parts of livers. Male victims are reported more frequently than women. Children may also be victimized by organ traffickers. Perpetrators of trafficking in persons often belong to complex organized criminal networks, including those acting on a transnational scale. The peculiarity of this form of trafficking, however, lies in the fact that, due to its specific medical nature, it often also involves health sector professionals, including surgeons, anaesthetists, nephrologists, nurses, ambulance drivers and other medical specialists. In certain cases, it will include the management of hospitals, transplant centres, laboratories and other medical facilities staff and insurance companies. These professionals may at times belong to the organized criminal networks, or participate in the activities of such groups and otherwise commit serious offences for their benefit. Reportedly, the one-off illicit profits generated by this type of crime may be much higher than that made by other forms of trafficking, and therefore, may constitute an attractive business for a wide range of actors.

According to UNODC, victims are, on average, young adult males around 30 years old, with most of the recipients being adult males as well. The primary victimization of men has been found to entail a number of implications for women and girls, as studied male victims were in some instances no longer able to provide for their families.

Notwithstanding men predominantly being the detected victims of TIP for OR, in specific contexts women are also affected by this form of exploitation. Cases were registered where male spouses obliged their female spouses to donate their organs, with the most frequent reason being that the man is the breadwinner and/or in some cases ill.

As such, there seem to be significant gender dimensions related to trafficking in persons for organ removal that should be taken into account when developing relevant responses. In this regard, further sex disaggregated data is needed to assess how this form of trafficking

---

8 UNODC, Assessment Toolkit, p.41.
9 The reasons varied and included depression, long-term physical pain, disability and the inability to perform manual labour or other jobs available to them. In those instances, women had to be the main family providers, which, in some cases, also negatively affected children. See OSCE, Occasional Paper No.6, p.21.
disproportionately affects women, girls, men and boys because of their gender.

Overall, available data shows that victims of TIP for OR tend to be individuals in a situation of acute vulnerability, including undocumented migrants, refugees, detainees and/or people living in hardship or extreme poverty. A lack or low level of education also seems to be a common characteristic for victims of this crime.

TRAFFICKING FOR THE PURPOSE OF ORGAN REMOVAL AND ORGAN TRAFFICKING: TWO SEPARATE CRIMES

Trafficking in persons for the purpose of organ removal and organ trafficking are often confused in public debate and are frequently used interchangeably by the media and within the medical community. These, however, are two distinct crimes, which are governed by separate but complementary legal frameworks, as illustrated in the following sections.

Despite the legal differences between the two crimes, the fact that both legal frameworks may be applicable when an organ is illicitly removed from a living organ donor may give rise to a number of challenges in the correct adjudication of these cases that may have serious consequences for victims.

Beyond organs, it is worth noting that both surrogacy and trafficking in tissues and cells, have been subjects of discussions related to trafficking in persons for the purpose of organ removal. Given that a common understanding of any linkages is lacking, these issues should be taken forward for further discussion and clarification by the community of practice.

LEGAL FRAMEWORKS ADDRESSING TRAFFICKING FOR THE PURPOSE OF ORGAN REMOVAL

Trafficking in persons for the purpose of organ removal is criminalized in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking in Persons Protocol). The Trafficking in Persons Protocol makes clear in Article 3 that “organ removal” is one of the stipulated forms of exploitation that ought to be prohibited in national laws.

According to the Trafficking in Persons Protocol, the offence thus involves:

(i) The recruitment, transportation, transfer, harbouring or receipt of persons;

(ii) Through 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 of benefits to achieve

children, including child prostitution, child pornography and other child sexual abuse material (A/HRC/37/60).
the consent of a person having control over another person\textsuperscript{14};

(iii) For the purpose of exploitation through removal of organs.

At the regional level, the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings, the European Union (EU) Directive 36/2011 of the European Parliament and of the Council on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and the ASEAN Convention Against Trafficking in Persons, Especially Women and Children recognize organ removal as a form of trafficking-related exploitation.\textsuperscript{15}

In contrast to the crime of organ trafficking, which is briefly outlined below, the object of TIP for OR, as per the agreed international legal framework, are the persons who are being trafficked.

\section*{LEGAL FRAMEWORKS ADDRESSING ORGAN TRAFFICKING}

The crime of organ trafficking commonly refers to the illicit trade or exchange of organs for financial or other material gain, and thus, does not include the trafficking of the person whose organ is being removed. Although the vast majority of countries prohibit the sale, purchase, commercial dealing or removal of organs without valid consent in national legislation, an international consensus on which activities constituted trafficking in organs did not exist prior to the adoption of the CoE Convention against Trafficking in Human Organs. This is, currently, the most notable standard-setting instrument to prevent and combat trafficking in human organs by providing for the criminalization of related acts, protecting the rights of victims and facilitating national and international cooperation on the issue. “Trafficking in organs” covers a range of illicit practices associated with the removal of organs from living or deceased donors including:

\begin{itemize}
  \item (i) Removal of organs without free, informed and specific consent;
  \item (ii) Removal of organs for financial gain or comparable advantage;
  \item (iii) Implantation or other use of illicitly removed organs;
  \item (iv) Preparation, preservation, storage, transportation, transfer, receipt, import and export of such illicitly removed organs;
  \item (v) Illicit solicitation or recruitment of organ donors or recipients; and
  \item (vi) Offering and requesting of undue advantages to or by healthcare professionals or officials with a view to performing or facilitating such removal or implantation and other use;
\end{itemize}

\textsuperscript{14} Noting that, in the case of children, the ‘means’ are not necessary to constitute trafficking. For more information on trafficking in children see ICAT, Issue Brief on Trafficking in Children: https://icat.un.org/sites/default/files/publications/icat-ib-06-trafficking_in_children.pdf.

\textsuperscript{15} CoE, Convention on Action against Trafficking in Human Beings, Article 4 (a); EU and CoE Directive 36/2011, Article 2(3); and ASEAN Convention Against Trafficking in Persons, Especially Women and Children, Article 2(a).
(vii) Attempting to commit or aiding or abetting the commission of any of these criminal acts.

Importantly, the organ trafficking framework complements the TIP for OR framework by criminalising additional activities which previously escaped prosecution, such as (1) commercial dealings with human organs when the living donors had not been subjected to any of the illicit means listed in the definition of human trafficking; (2) illicit organ removal from deceased persons; and (3) manipulation (e.g. preparation, transportation) and use (normally implantation) of an organ that was illicitly removed.

Another regional framework prohibiting the sale of organs is the CoE Convention for the Protection of Human Rights and Dignity of Human Beings with regard to the Application of Biology and Medicine, which states that, “the human body and its parts shall not, as such, give rise to financial gain”. Further, the CoE Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin, adopted in 2001, extended its provisions to many issues associated with organ and tissue transplantation, including a prohibition on the practice of organ trafficking. That protocol noted that the practice infringes human rights, exploits vulnerable persons and undermines public trust in the transplant system.

An important guidance instrument on the issue of organ trafficking is the 2018 Declaration of Istanbul on Organ Trafficking and Transplant Tourism (Declaration of Istanbul). The Declaration, providing ethical guidance to policymakers and professionals in the field, adopts the same definition of organ trafficking as that of the CoE Convention. The Declaration makes a clear distinction between the crime of organ trafficking and the crime of trafficking in persons for the purpose of organ removal, whose definition in the document is fully aligned with the Trafficking in Persons Protocol.

ORGAN TRAFFICKING AND TRAFFICKING FOR THE PURPOSE OF ORGAN: OVERLAPPING ELEMENTS

While trafficking in persons for the purpose of organ removal and organ trafficking are governed by separate legal frameworks, factual elements

---


17 See Article 22.

18 The Istanbul Declaration is a non-legally binding instrument which was first adopted in 2008 and later updated in 2018. The Declaration was endorsed by a significant number of professional societies associated with transplantation medicine across the world and has therefore acquired prominence as an instrument for guidance in the field of transplantation. The 2008 edition, developed at an international summit convened by The Transplantation Society, contained a definition of “transplant commercialism”, which has later been updated to be included under the definition of “organ trafficking”. In addition, the earlier edition did not feature a definition of trafficking in persons for the purpose of organ removal. For more information see: https://www.kidney-international.org/article/S0085-2538(19)30033-X/fulltext.
of these distinct crimes may overlap, in particular when an organ is illicitly removed from a living donor in the absence of valid consent. The issue of consent may arise in both TIP for OR cases and cases of organ trafficking. From a legal perspective, consent may be invoked as a defence strategy as a way of shifting focus from the perpetrator’s behaviour to that of the victim. In the case of organ trafficking, establishing that an organ has been removed with the free, informed and specific consent of the person from whom it was removed\textsuperscript{19}, and that it was not done for financial gain, may be crucial to establishing whether or not the offence of organ trafficking has been committed. In cases of TIP for OR, according to the Trafficking in Persons Protocol, consent of victims to their organs being removed will be legally irrelevant in all circumstances where the illicit “means” stipulated in the Protocol have been used.

In practice, both victims of TIP for OR and organ trafficking may appear to give consent to organ removal by, for instance, signing consent forms. Such consent may, however, as noted above, be obtained illicitly (i.e. lack of understanding as to the actual contents of the form, lack of relevant information, etc.) and thus have no legal value. Additionally, in reality, means such as deception, coercion, fraud and/or abuse of a position of vulnerability are very often used by the offenders to obtain consent in cases of organ trafficking, making it challenging to clearly draw a line between the two criminal conducts.

The abuse of a position of vulnerability - one of the stipulated means of trafficking in persons noted in the Trafficking in Persons Protocol - is particularly relevant in cases of TIP for OR, as victims of this form of trafficking are often from extremely economically or socially vulnerable groups and may have no realistic alternative than submitting to the exploitation.\textsuperscript{20} It is common, however, that the abuse of a position of vulnerability is used by traffickers in conjunction with other means, especially deception and fraud, whereby, for example, the seriousness of the medical procedure or its health effects in the aftermath are downplayed to the potential victim, and/or false promises of high financial gains are made.\textsuperscript{21}

IMPLICATIONS FOR VICTIMS

As the crime of organ trafficking is relatively easier to investigate, prosecute and adjudicate than TIP for OR, which instead requires the establishment of a number of relevant elements difficult to ascertain (for example the use of deception and abuse of a position of vulnerability by traffickers), cases might not be pursued by the authorities under the trafficking in persons framework. Doing so fails to acknowledge the extreme vulnerability of victims and their transplantation activities to prevent organ sale and purchase: https://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf?ua=1.

\textsuperscript{19} See World Health Organization, Guiding Principles on Human Cell, Tissue and Organ Transplantation of the World Health Organization (2010), Guiding Principle 3. The WHO Guiding Principles provide guidance for organ transplantation from both deceased and living donors, including regarding standards of consent to donation and organ allocation, as well as regulating donation and

\textsuperscript{20} OSCE, Occasional Paper No.6, p. 7.

\textsuperscript{21} Ibid., p. 15.
exploitation, and can have negative consequences for them.

In TIP for OR, organ suppliers are victims of trafficking in persons, and, as such, they should not be subject to arrest, charge, detention, prosecution, or be penalized or otherwise punished for illegal conduct that they committed as a direct consequence of being trafficked (known as the non-punishment principle). However, under the organ trafficking framework, organ suppliers/sellers can be liable to criminal prosecutions in certain jurisdictions. As such, if cases of trafficking in persons are wrongly classified as cases of organ trafficking, victims might risk prosecution and conviction for having engaged in organ trafficking. Treating victims as offenders may further jeopardize their ability to receive adequate protection and assistance to which they are entitled in accordance with the Trafficking in Persons Protocol and other treaties, as well as accessing a number of other rights, including access to justice and compensation.

Moreover, sentences for organ trafficking offences are typically lower - usually around 2-3 years - than those imposed for TIP for OR, which effectively means that perpetrators of TIP for OR may receive lighter punishments vis-à-vis the seriousness of the illicit act committed.

Criminal justice practitioners should, therefore, have a thorough understanding of the factual circumstances surrounding a specific case, paying particular attention to the issue of consent and the means used by the offenders, as well as an understanding of the relevant frameworks that best address the facts.

KEY CHALLENGES ASSOCIATED WITH TRAFFICKING IN PERSONS FOR THE PURPOSE OF ORGAN REMOVAL

Several challenges are associated with effectively detecting and responding to TIP for OR. In addition to the complexities of prosecuting TIP for OR under existing anti-trafficking frameworks, knowledge of the extent of this poorly detected and underreported phenomenon is limited. Data collection initiatives are scarce and distinction between cases of TIP for OR and cases of organ trafficking is a complex exercise. The limited visibility that TIP for OR has in the trafficking spectrum has resulted in a limited prioritization of this crime in national anti-trafficking programmes and policies, which, in turn negatively impacts the types of responses provided.

An additional challenge in the investigation of TIP for OR is the transnational character of this form of trafficking, as illegal transplants are usually performed in different countries than the victims’

---

22 See ICAT, Issue Brief on Non-Punishment of Victims of Trafficking: https://icat.un.org/sites/default/files/publications/19-10800_icat_issue_brief_8_ebook_final.pdf. The principle of non-punishment has evolved at the international and regional level in the past decades as it is gaining traction as a number of jurisdictions as a fundamental right of victims of this crime.

countries of origin. In this context, the lack of systems to track transplantations and share information within and across States, as well as uncertainty regarding the limitations around medical professional confidentiality and the obligation for healthcare professionals and other actors to report on TIP for OR indicators when performing organ transplantations or caring for (potential) transplant recipients or organ donors, are obstacles to the successful identification of victims and prosecution of traffickers.  

Difficulties associated with establishing victimhood also exist due to the fact that, in some jurisdictions, the definition of trafficking in persons in domestic law does not necessarily contain all the illicit means listed in the Trafficking in Persons Protocol. In those instances, as noted, the offence of organ trafficking may be much easier to prove, allowing prosecution of perpetrators. It remains, however, up to domestic law to decide whether an organ supplier under the organ trafficking framework is to be granted the status of victim, with potential implications for the provision of adequate assistance. As TIP for OR is based on the principle of supply and demand, a key concern in tackling this crime is reducing the demand for organs by illicit means. Given that the discrepancy between organ availability and demand remains incredibly high, weak national transplantation systems, the lack of government support to transplantation programmes and access to legal and ethical forms of organ donation are key challenges in preventing TIP for OR.

Further, victims of TIP for OR are often in a situation of extreme vulnerability and might lack options or be otherwise forced to submit to the removal of organs through coercion, violence and other means. Situations of crises, such as conflict, economic crises, health and environmental emergencies, can further exacerbate existing vulnerabilities and societal inequalities and drive more victims into this form of exploitation.

RECOMMENDATIONS

ICAT proposes the following recommendations for States and all relevant stakeholders involved in tackling TIP for OR:

- **Ensure comprehensive anti-trafficking laws that prohibit all forms of trafficking in persons**, including for the purpose of organ removal.
- **Provide for deceased organ donation** to shift the burden from living donors to deceased donors and develop transplantation systems to increase States’ self-sufficiency.

---


25 World Medical Association, Statement on Measures for the Prevention and Fight against Transplant-related Crimes (2020): [https://www.wma.net/policies-post/wma-statement-on-measures-for-the-prevention-and-fight-against-transplant-related-crimes/](https://www.wma.net/policies-post/wma-statement-on-measures-for-the-prevention-and-fight-against-transplant-related-crimes/). The preamble of the statement advises that in 2017, almost 140,000 solid organ transplants were performed worldwide. Although impressive, this activity provided for only 10% of the global need for transplanted organs.

26 See OSCE, OHCHR and WHO, Expert Meeting Highlights, pp. 2-5.

▪ Adopt ethical and transparent regulations governing organ donations, both from living and deceased donors.

▪ Establish national transplant registries, and ensure recording of all donations and transplantation procedures to ensure transparency, traceability and the appropriate care of patients, as well as to obtain data and prevent abuse of transplantation systems by traffickers, and regularly audit the registries.

▪ Establish criteria for the authorization by official bodies of medical facilities to perform donations and transplantations, and subject them to official oversight, including audits and inspections, to ensure the transparency of their operations.

▪ Undertake data collection to assess the extent and severity of the phenomenon of TIP for OR, including the main trends and profiles of perpetrators and victims, root causes and contributing factors, as well as the gender dimensions of the crime, in order to support the development and implementation of evidence-based measures.

▪ Ensure that TIP for OR is given appropriate attention within anti-trafficking programmes and policies, and that efforts to address it are provided with adequate resources.

▪ Strengthen prevention and awareness efforts, including by: (i) developing targeted guidelines to support the identification and reporting of cases; (ii) reducing vulnerabilities to this crime, including by addressing root causes of organ trafficking and TIP for OR.

▪ Develop clear frameworks for healthcare and other professionals to report suspected or confirmed incidents of TIP for OR and of organ trafficking to the appropriate national authorities, while respecting patient confidentiality.

▪ Deliver specialized training on TIP for OR to relevant actors such as law enforcement, judicial authorities, healthcare personnel, hospital administrators, to strengthen national capacities to detect, investigate and prosecute such forms of trafficking. Trainings should cover, among others, acceptable forms of evidence in the medical field, as well as on legal differences between TIP for OR and the crime of organ trafficking.

▪ Promote cross-border cooperation for cases of TIP for OR, including through financial investigations into the illicit flows resulting from such trafficking.

▪ Ensure that victims of TIP for OR are provided with appropriate and urgent healthcare, as well as physical, psychosocial, legal and educational services, taking into consideration their vulnerabilities, rights and needs, and ensure that child victims are treated in their best interest.

▪ Ensure a human rights-based, victim-centered and trauma-informed approach when dealing with victims of TIP for OR in the context of criminal proceedings, with a view to minimizing the re-traumatization and empowering victims, and ensure child-friendly proceedings when children are involved as victims or witnesses.
▪ *Ensure that victims of TIP for OR are not punished for illegal conduct* (such as for accepting financial benefits or advertising willingness to sell), which they committed as a direct consequence of being trafficked.

▪ *Ensure that victims of TIP for OR are granted access to compensation and other remedies*, including through the forfeiture of proceeds or instruments of crime to facilitate victim restitution.

▪ *Identify and prosecute all actors who knowingly engage in TIP for OR*, regardless of their status and including legal persons (i.e. physicians, brokers, medical staff, pharmaceutical and insurance companies).
KEY RESOURCES

WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation (WHA Resolution 63.22)

United Nations General Assembly resolutions 73/189 (2018) and 75/195 (2020) on Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs

UNODC, Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal (to be published)

UNODC, Global Report on Trafficking in Persons (2020)

UNODC, Global Report on Trafficking in Persons (2018)

OSCE, Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region: Analysis and Findings (2013)


UNODC, Assessment Toolkit: Trafficking in Persons for the Purpose of Organ Removal (2011)

Council of Europe and United Nations, Joint Study on Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs (2009)


This Issue Brief has been developed in consultation with the World Health Organization and published through the generous contribution of the United Kingdom. The material has not been formally edited.

WHAT IS ICAT?

The Inter-Agency Coordination Group against Trafficking of Persons (ICAT) is a policy forum mandated by the General Assembly to improve coordination among United Nations agencies and other relevant international organisations to facilitate a holistic and comprehensive approach to preventing and combating trafficking of persons. ICAT was formally established in March 2007, pursuant to General Assembly resolution 61/180. ICAT consists of 30 organizations and entities as of November 2021.

Follow ICAT: twitter.com/ICAT_News http://icat.un.org/ icat@un.org