



**UNODC**

United Nations Office on Drugs and Crime

## ASSESSMENT TOOLKIT

# Trafficking in Persons for the Purpose of Organ Removal



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## Abbreviations and Acronyms

CoE	Council of Europe
EGM	Expert Group Meeting
NGO	Non-governmental organization
OSCE	Organization for Security and Co-operation in Europe
WHA	World Health Assembly
WHO	World Health Organization
UN	United Nations
UNODC	United Nations Office on Drugs and Crime

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## Scope, Objectives and Structure of the Assessment Toolkit

The present toolkit deals with trafficking in persons for the purpose of organ removal, as defined by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, (Trafficking in Persons Protocol), supplementing the United Nations Convention against Transnational Organized Crime (Organized Crime Convention).

Terms like ‘organ trafficking’, ‘illegal organ trade’, ‘transplant tourism’, ‘organ purchase’ and others are often used interchangeably with trafficking in persons for the purpose of organ removal, even where they would not refer to the same phenomenon. Any conduct described by such terms will only be within the scope of this toolkit, if it meets the definition provided by the Trafficking in Persons Protocol.

**According to Article 3(a) of the Trafficking in Persons Protocol** ‘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**.<sup>1</sup>

Trafficking in persons for the purpose of organ removal is not a new phenomenon. Over the years, the crime has received significant attention from media, NGOs, academia and also from international and regional actors such as the Special Rapporteur on trafficking in persons, especially in women and children<sup>2</sup> and the Special Representative and Co-ordinator for Combating Trafficking in Human Being Organisation for Security and Co-operation in Europe.<sup>3</sup> The issue was also taken up at the UN Economic and Social Council and the General Assembly, which, e.g., in 2013 adopted resolutions that *inter alia* request UNODC to collect and analyse information on trafficking in persons for organ removal and encourage Member States to provide to UNODC evidence-based data on patterns, forms and flows of trafficking in persons, including for the purpose of the removal of organs respectively.<sup>4</sup>



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Despite the general interest in the issue, the crime remains a hidden, underground activity and seems to be greatly underreported. Trends, patterns, modus operandi, the interaction of the various actors involved in the crime and other issues may not be well understood. That is not unusual for trafficking in persons cases in general, however, trafficking in persons for organ removal has some specific features that may make it even more difficult to identify and tackle the problem. Among those are e.g. the very technical nature of the some of the processes and the possible involvement of professionals from the medical sector. Trafficking in persons for organ removal is definitely a quite distinct form of trafficking that requires special knowledge and skills to understand and address it.

UNODC, in an effort to support international efforts to better understand and tackle the problem, decided to organize a first expert group meeting in June 2010 that helped to identify the tools needed to do so. Participating experts recommended the development of an assessment toolkit. Based on this decision, UNODC developed a draft assessment toolkit which was reviewed by a second expert group meeting that took place in December 2013.

The toolkit aims to provide both a general overview of trafficking in persons for the purpose of organ removal and specific tools to assist concerned actors with assessing the phenomenon. The structure of the toolkit reflects this two-pronged approach in that its first part seeks to inform about the context in which trafficking in persons for organ removal can take place, the relevant legislative framework and international guidance, actors and modi operandi as well as good practice responses. The second part has very specific questionnaires that aim to allow for a better understanding of and a more systematic collection of data on the crime.

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## **PART 1 – Trafficking in Persons for the Purpose of Organ Removal**

### **1. Introduction**

#### **1.1. Basic information on organ transplantation**

Organ transplantation is one of the most remarkable medical inventions of the twentieth century. Ever since the first successful transplants in the 1950s, organ transplantation has saved and prolonged the lives of thousands of patients. Regarded as a risky and experimental procedure until the 1980s, today it is a worldwide practice, conducted in hospitals in almost 100 countries all over the world.<sup>5</sup> Survival rates of transplant patients have risen significantly over the past decades. According to the Global Observatory and Database on Donation and Transplantation – the product of a collaboration between WHO and the Spanish National Transplant Organization - about 118,127 so-called solid organ transplantations (kidney, liver, heart, lung, pancreas, small bowel) were performed in 2013, the majority of which, about 79,000, were kidney transplants, followed by about 25,000 liver transplants.<sup>6</sup> Kidney transplantation thus has to be considered the most frequently carried out transplantation around the world.

Human organs for transplants have two sources, deceased donors and living donors. Ultimately, human organs can only be derived from a human body, and thus any action in the field of organ transplantation must be carried out in accordance with the highest ethical and professional standards.

#### ***Deceased Donation***

There are professional, ethical and legal regulations that govern the procurement of deceased donor organs and that state the conditions under which such organs are allocated. Deceased or post-mortem donation can take place from donors after brain death and after circulatory death.<sup>7</sup>

Procurement of deceased donor organs occurs according to two different consent systems: explicit consent (opting in) and presumed consent (opting out). In opt-in donation systems only those who have given explicit consent can be donors. The opt-in system requires each individual or, their relatives once the person has died, to make a conscious choice to donate organs. An opt-out donation system *presumes* consent to the donation, unless the person had expressed his or her refusal, so that any person who has not refused donation is considered a donor.<sup>8</sup> Countries such as

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Spain, Belgium and Austria have adopted presumed consent systems. The Netherlands, Germany, United States and Switzerland, e.g., have explicit consent systems.

Allocation of deceased donation should occur according to the principles of justice (a fair opportunity for everyone in need of an organ transplant<sup>9</sup>), utility (each organ should be transplanted into a recipient in whom it will survive the longest) and the absence of conditionality,<sup>10</sup> meaning an individual donor cannot determine particular recipients.

Due to the increasing organ scarcity but also due to progress made in the medical field, an increasing number of organs are now donated that would have been considered unsuitable for transplantation 20 years ago. This includes organs from donors older than 70 years, from non-heart beating donors, from donors with hypertension or diabetes and organs that suffered a long cold ischemia time.<sup>11</sup>

### *Living Donation*

The shortage of deceased donor organs has resulted in living donation - especially live kidney donation - becoming the most important alternative to fulfil the need of the increasing number of patients in need of transplantation. While other forms of live donation of other organs are possible, they involve more risks for donors and their numbers thus remain limited.

For many years living kidney donation was commonly restricted to genetically related adults. Due to the advancements in transplant technology and excellent results in live kidney donation, the donor pool has expanded over the last three decades from genetically related donors to spouses, friends, acquaintances and even anonymous donors. The need to expand the living donor pool is recognized by transplant professionals and international organizations worldwide. While the World Health Organization first declared in 1991 that living donors 'in general should be genetically related to the recipient', it advised in 2010 that 'living donors should be genetically, legally or emotionally related to their recipients'.<sup>12</sup> By 2012, genetically unrelated donors accounted for 2838 out of 5617 (50%) of live kidney donation in the United States<sup>13</sup> and 653 out of 1380 (47%) in the Eurotransplant (covering Austria, Belgium, Croatia, Germany, Hungary, Luxembourg, the Netherlands and Slovenia).<sup>14</sup>

## **1.2. International standards governing donation and transplantation**

The **World Health Organization (WHO)** issued "**Guiding Principles on Human Cell, Tissue and Organ Transplantation**", which the 63<sup>rd</sup> World Health Assembly

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endorsed in May 2010 through resolution WHA63.22. These principles govern the removal of organs from both deceased and living donors for the purpose of transplantation. They provide key international standards such as:

**In the case of deceased donor donation:**

- the need for the consent or lack of objection from the deceased donor;
- the need to avoid a conflict of interest of physicians by prohibiting that physicians who determine the death of a potential donor would be involved in removing an organ from that donor or in the care of the intended recipient;
- the need to develop deceased donor programmes;

**In the case of living donor donation:**

- **living donors should be**, in general, genetically, legally [*e.g. spouses*] or emotionally **related** to their recipients (unless such related persons and recipient do not match well immunologically);
- living donors have to give **informed and voluntary consent**;
- living donors should act **willingly and free of any undue influence or coercion** and need to be **informed of the probable risks, benefits and consequences** of the donation in a **complete and understandable** fashion;
- the need to ensure professional **care of donors** and well-organized **follow-up**;
- the need to strictly apply and monitor criteria for donor selection and to allocate organs based on clinical criteria and ethical norms, not financial considerations;
- organs shall not be removed from minor (and legally incompetent) donors, except when such is allowed under national law for narrowly defined cases;
- organs should only be donated freely, **without any monetary payment** or other reward of monetary value (except for the reimbursement of reasonable and verifiable expenses incurred by the donor, such as loss of income);
- **purchasing, or offering to purchase organs for transplantation, or their sale**

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**by living persons** should be banned. **Physicians and other health professionals should not engage in transplantation procedures, and health insurers and other payers should not cover such procedures**, if the organs have been **obtained through exploitation or coercion of, or payment to**, the donor;

- advertising the need for or availability of organs, with a view to offering or seeking payment to individuals for their organs, should be prohibited. **Brokering** that involves payment to such individuals **should also be prohibited**. (This does not affect, however, the legitimate promotion of altruistic donation of organs by means of advertisement or public appeal in line with domestic regulation;
- all health care facilities and professionals involved in cell, tissue or organ procurement and transplantation procedures **should be prohibited from receiving any payment exceeding** the justifiable fee for the services rendered;
- the need for **donation and transplantation** activities to be **transparent** and open to scrutiny, while protecting the personal anonymity and privacy of donors and recipients.

There are also other international professional guidelines, recommendations and principles that seek to develop universal standards concerning organ donations, namely the **Consensus Statement of the Amsterdam Forum on the Care of the Living Donor**<sup>15</sup> and the **Declaration of Istanbul on Organ Trafficking and Transplant Tourism**,<sup>16</sup> with the latter governing both living and deceased donation (for these documents see also tool 1 of this handbook and section 2.5 respectively).

### **1.3. A market for trafficking in persons for organ removal**

Despite strategies to enlarge the donor organ pool, organ scarcity developed into a worldwide problem. Transplantation is becoming a victim of its own success, with demand for organs far outpacing supply.

As mentioned above, (under 1.1), the Global Observatory on Donation and Transplantation informed that in 2013 there were circa 118,127 solid organs transplanted globally, indicating that this was an increase of about 2.98% compared to 2012 and that the number of transplants may have met only about 10% or less of the global needs. In the Eurotransplant region (see also 1.1), at the end of 2012 more than 10,000 patients were registered on the waiting list for an organ.<sup>17</sup>

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According to the European Commission, in 2007, there were 65,000 patients waiting for a kidney transplant in the European Union; 25,000 transplants took place annually, 120,000 patients were on kidney dialysis. This resulted in a waiting time of 3-5 years, with a mortality rate of up to 30%.<sup>18</sup> In the United States, according to the United States Department for Health and Human Services, there were, as of 6 January 2014, 120,999 candidates waiting for organs (77,073 of whom are active waiting list candidates), but only 10,587 donors registered in the U.S. as of March that year.<sup>19</sup>

Under these circumstances of severe organ scarcity, desperate patients may seek strategies to obtain organs illegally, outside legal transplantation frameworks. With an increased demand for organs comes their increased potential profitability, fuelling the desire of some people to trade and sell. As a result, next to altruistic procurement systems of organ supply, a black market coexists to meet the demand that altruistic systems fail to fulfil.

Some of the first accounts of organ purchases and sales date from the late 1980s by transplant doctors in the Gulf States who were confronted with patients with needs for medical follow-up, who had received transplants of purchased kidneys in India. Around the same time, Scheper-Hughes wrote about 'body snatching rumours' that she picked up during her ethnographic research in Brazil.<sup>20</sup> Most of such accounts of in the 1990s were not taken very seriously, though.

From the beginning of the twenty-first century, more and more researchers began to report on negative outcomes of people from various countries selling their kidneys. An increasing number of physicians published articles on the medical outcomes of the so-called 'transplant tourism'. Some 'supply' countries, where organ suppliers come from (mainly in Asia and North Africa then), and 'demand' countries, where recipients come from (mainly countries in North America, Europe and the Near East) as well as countries where the transplants take place, were identified. In addition, there were cases reported of domestic purchases and sales.

In 2007, WHO estimated that out of all transplants worldwide, 5–10% were conducted illegally.<sup>21</sup> In 2011, it was estimated that the illicit 'organ trade' generated illegal profits between USD 600 million and USD 1.2 billion per year.<sup>22</sup> Underground 'organ markets' present a significant threat to the security of national organ donation systems, eroding the image of transplantation and public confidence in organ transplantation worldwide.

More and more research reports and press articles started to inform about conducts amounting to trafficking in persons for the purpose of organ removal, and the harmful physical, psychological and emotional effects on 'donors', who sell their

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organs on the black market to alleviate their poverty. It was shown how middlemen would coerce, deceive or otherwise exploit vulnerable persons into selling their organs; they would contribute, directly or indirectly, to their victimization, including damage to health, stigmatization and further impoverishment. The Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings of the OSCE, in its report on trafficking in human beings for organ removal (2013), states that although several of these cases remain pending and information about many of these cases is limited, the available information corroborates that many of these instances could involve trafficking in persons for their organs.<sup>23</sup> Current research also illustrates the involvement of organized networks that bring together willing recipients and their 'suppliers'. Today, such organized networks have been reportedly uncovered in various regions of the world, including the Middle East, Southern Africa and South East Europe.

In July 2010, the United Nations General Assembly adopted the Global Plan of Action to Combat Trafficking in Persons (A/RES/64/293). Based on its request for an expanded knowledge base on trafficking in persons, UNODC was given the mandate and duty to collect data and report biennially on trafficking in persons patterns and flows at the national, regional and international levels. As part of its global data collection on trafficking in persons, UNODC also systematically collects official data on detected cases of trafficking in persons for organ removal. Between 2007 and 2013, 100 cases of such trafficking were detected by the national criminal justice systems and reported to UNODC by 20 countries in all regions of the world. According to the data available to UNODC, the vast majority of the victims detected are males. In its 2014 Global Report on Trafficking in Persons UNODC indicates that during the reporting period, (2010-2012), cases of trafficking for organ removal were detected and reported by 12 countries and that the victims of this type of exploitation account for about 0.2 per cent of the total number of detected victims.

It can be assumed, though, that what can be seen is just the tip of the iceberg, since available data concerns reported cases only. Due to an absence of reliable information, the global scale of trafficking in persons for organ removal remains unknown. This lack of reliable data has been recognized by other organizations and independent experts, including the OSCE, the United Nations Special Rapporteur on trafficking in persons, especially women and children, as well as jointly by the Council of Europe and the United Nations in their report on trafficking in organs tissues and cells (on the latter see also section 2.4).<sup>24</sup>

In order to collect and disseminate information on human trafficking prosecutions and convictions from all over the world, UNODC also developed the Human Trafficking Case Law Database as a public online tool. As presently the only global

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public record of human trafficking crimes, the database serves as an essential tool to increase the visibility of successful prosecutions, identify global patterns, and promote awareness of the realities of this devastating crime. The database currently consists of about 1,200 cases from 90 countries, with twelve cases concerning trafficking in persons for the purpose of organ removal.

#### **1.4. Need for a strengthened response**

The scarcity of evidence-based data on trafficking in persons for the purpose of organ removal can result in a lack of knowledge about the modus operandi of criminal networks, experiences of organ sellers, buyers and doctors, the criminal involvement of transplant professionals, the collusion and corruption within hospitals, possible manipulation of medical insurers, etc. Although research at the international, regional and national levels, exists and a number of experts have strong knowledge and information about trafficking for organ removal, this information is hardly reaching key stakeholders such as judicial authorities and law enforcement officials. For reasons related to the medical confidentiality, transplant professionals also do not share information when they encounter indications of potential illegal transplant activity, for instance regarding patients who return from alleged illicit transplant operations abroad.

As a result of the lack of existing partnerships and exchange of information, there is little awareness of the crime among criminal justice and law enforcement practitioners as well as policy makers. Consequently, trafficking in persons for organ removal does currently not seem to be on the 'enforcement agenda' of key stakeholders. This hampers an effective enforcement of legislation that criminalizes the phenomenon in line with the Trafficking in Persons Protocol, as well as non-legislative responses. Allowing organized crime networks to continue organ-related crimes with impunity, however, allows the threat of victimization of the world's poorest and most vulnerable populations to increase.

A strengthened response should therefore, in a first step, focus on increasing evidence-based knowledge, raising awareness amongst target groups and improving and enforcing legislative and non-legislative measures against the crime of trafficking in persons for the purpose of organ removal.



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## 2. International Legal and Other Instruments

### 2.1. Definition of trafficking in persons for the purpose of organ removal

The **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**, (Trafficking in Persons Protocol) supplementing the United Nations Convention against Transnational Organized Crime (Organized Crime Convention) requires States parties, in article 5, to criminalize trafficking in persons for organ removal as defined in article 3. The Trafficking in Persons Protocol is the first international legal instrument that gives a definition of trafficking in persons for the purpose of organ removal.

According to article 3(a) of the Trafficking in Persons Protocol:

‘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**.

This definition can be broken down in three constituent elements:

The **act** (what is done)

Recruitment, transportation, transfer, harbouring or receipt of persons

The **means** (how it is done)

Threat or use of force, coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, or giving or receiving of payments or benefits to achieve the consent of a person in control of the victim

The **purpose** (why it is done)

For the purpose of exploitation, including the removal of organs.

Under the Trafficking in Persons Protocol, all three elements must be present to

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constitute 'trafficking in persons'. The only exception is the case of trafficking in children, when, according to article 3(c) of the Protocol, the 'acts' and 'purpose' elements are sufficient to establish the crime of human trafficking, and no 'means' need to be involved.

Trafficking in persons for organ removal is also defined and prohibited in other international/regional instruments, such as

- The ***Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography***,<sup>25</sup> (see also 2.3);
- The ***Council of Europe (CoE) Convention on action against trafficking in human beings***.<sup>26</sup> The Convention applies the definition of trafficking in persons as laid down in the UN Trafficking in Persons Protocol and seeks to strengthen the protection afforded by the Protocol and other international instruments. The treaty is open for signature by the 47 CoE Member States, the non-member States that have participated in its elaboration and by the European Union, as well as for accession by other non-member States.<sup>27</sup>
- The ***Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims***.<sup>28</sup>

## 2.2. The issue of consent

Article 3(b) of the Trafficking in Persons Protocol emphasizes that the consent of the victim to the intended exploitation shall be irrelevant where any of the means set forth in subparagraph (a) have been used, that is 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.

Consent is the ethical cornerstone of all medical interventions and therefore also of particular relevance for the issue of organ removal. The WHO "Guiding Principles on Human Cell, Tissue and Organ Transplantation", (see above under 1.2) indicate in Guiding Principle 3 that "live donations are acceptable when the donor's informed and voluntary consent is obtained" and that "live donors should be informed of the probable risks, benefits and consequences of donation in a complete and understandable fashion; they should be legally competent and capable of weighing the information; and they should be acting willingly, free of any undue influence or coercion." The Principle emphasizes the need for a real and well-informed choice, "which requires full, objective, and locally relevant information and excludes

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vulnerable persons who are incapable of fulfilling the requirements for voluntary and knowledgeable consent.” Other international guidance provides that in cases of organ removal from a living donor, the necessary consent must have been given expressly and specifically in written form or before an official body.<sup>29</sup>

In cases of trafficking in persons for organ removal, victims may be recruited through deception, not being fully informed as to the nature of the procedure, the recovery and the impact of the organ removal on his or her health. Their consent may also be obtained through coercion or abuse of a position of vulnerability.

According to the Interpretative Notes on Article 3 of the Trafficking in Persons Protocol, as included in the Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Organized Crime and the Protocols thereto, 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. The 2012 UNODC “Guidance Note on ‘abuse of a position of vulnerability’ as a means of trafficking in persons in Article 3 of the Trafficking in Person Protocol” indicates that the ‘mere existence of proven vulnerability is not sufficient to support a prosecution that alleges the abuse of a position of vulnerability as the means by which a specific ‘act’ was undertaken. In such cases both the existence of vulnerability and the abuse of that vulnerability must be established by credible evidence.’ [...] ‘The existence of vulnerability is best assessed on a case-by-case basis, taking into consideration the personal, situational or circumstantial situation of the alleged victim’.

Experts at UNODC’s expert group meetings indicated that in cases of trafficking for organ removal, for law enforcement and prosecution proving lack of consent may be a kind of cumulative process, when the issue may have to be approached from a number of angles until a weight of evidence could be accumulated. They also considered it useful for donors having to sign medical consent forms concerning the donation in the presence of a medical doctor.

### **2.3. Trafficking in children for organ removal**

As mentioned above, the Trafficking in Persons Protocol states that if the victim is a child, that is a person below the age of 18, consent is irrelevant regardless of whether any improper means (such as deception, force, abuse of a position of vulnerability) have been used. That means, trafficking in children for organ removal only requires that there is an act (recruitment, transport, transfer, harbouring or receipt of a child) for the purpose of exploitation through organ removal.

The Optional Protocol on the sale of children, child prostitution and child

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pornography (2000) to the UN Convention on the Rights of the Child (1989), in article 3(1)(a)(i)(a.), requires States parties to prohibit, in the context of sale of children as defined in article 2, offering, delivering or accepting, by whatever means, a child for the purpose of transfer of organs of the child for profit.

#### 2.4. Trafficking in persons for the purpose of organ removal versus organ trafficking

The terms organ trafficking or trafficking in organs and trafficking in persons for organ removal are often used interchangeably. Trafficking in persons for organ removal, however, is specifically defined in the Trafficking in Persons Protocol, and does not encompass the term trafficking in organs or organ trafficking.

In 2008, the Council of Europe and the United Nations agreed to prepare a “Joint Study on trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs”. The Joint Study was published in 2009 and identified a number of issues related to the trafficking in human organs, tissues and cells which deserved further consideration.

**In summary, the Joint CoE/UN Study concluded the following:**

- ***Trafficking in organs and trafficking in persons for organ removal are different crimes***, though frequently confused in public debate and among the legal and scientific communities. In the case of trafficking in organs, the object of the crime is the organ, whereas in the case of human trafficking for organ removal, the object of the crime is the person. Trafficking in organs may have its origin in cases of human trafficking for organ removal, but organ trafficking will also frequently occur with no link to a case of human trafficking. The mixing up of these two phenomena could hinder efforts to combat both phenomena and provide comprehensive victim protection and assistance.
- Both the Trafficking in Persons Protocol and the Council of Europe Convention on action against trafficking in human beings provide a consistent and unanimous definition of trafficking in persons and effectively address the issue of human trafficking, including for the purposes of organ removal. There was thus ***no need for an additional international legal instrument dealing specifically with human trafficking for organ removal.***
- There was, however, no single definition of trafficking in organs that had achieved international consensus, even though such consensus was

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essential to combatting the practice. Additionally, none of the existing international legal instruments addressed the consensual removal of organs for financial gain or comparable advantage and/or outside of the approved domestic systems. ***The report identified a need to develop a dedicated international legal tool, which builds on an agreed upon definition of trafficking in organs, includes provisions for the criminalization of this practice, along with provisions targeted to its prevention, and to victim protection and assistance.***

Ultimately, the Committee of Ministers of the Council of Europe (CoE)<sup>30</sup> established an ad-hoc Committee of Experts on Trafficking in Human Organs, Tissues and Cells and tasked it with the elaboration of a draft criminal law convention against trafficking in human organs. The ad-hoc Committee held a total of four meetings and elaborated a draft Convention against Trafficking in Human Organs. The draft text of the Convention was finalised by the European Committee on Crime Problems in December 2012. The Council of Europe Convention against Trafficking in Human Organs was eventually adopted by the Committee of Ministers in Strasbourg, on 9 July 2014.

Thus far, the Council of Europe Convention against Trafficking in Human Organs<sup>31</sup> is the only international treaty<sup>32</sup> that specifically deals with trafficking in human organs, seeking to prevent and combat trafficking in human organs, to protect the rights of victims and to facilitate co-operation at both national and international levels.

The Convention defines as trafficking in human organs any of the following activities, when committed intentionally:

- The illicit removal of organs:
  - removal without the free, informed and specific consent of the living donor, or, in the case of the deceased donor, without the removal being authorized under its domestic law, OR
  - where in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage, OR
  - where in exchange for the removal of organs from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage.
- The use of illicitly removed organs;
- The illicit solicitation or recruitment (of organ donors or recipients), or the offering and requesting of undue advantages;
- The preparation, preservation, storage, transportation, transfer, receipt,

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- import and export of illicitly removed human organs;
  - Aiding or abetting and attempt.

Parties to the Convention shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law the practices mentioned above. Parties shall also consider taking the necessary legislative or other measures to establish as a criminal offence under its domestic law, when committed intentionally, the removal or the implantation of human organs from living or deceased donors where performed outside of the framework of its domestic transplantation system, or in breach of essential principles of national transplantation laws or rules. The Convention also requires States parties to take the necessary legislative or other measures to:

- ensure corporate liability if certain conditions are met (i.e. the offence is committed by a person in a leading position);
- punish the offences described in the Convention through sanctions which are effective, proportionate and dissuasive;
- consider a set of circumstances as aggravating:
  - the offence caused the death of, or serious damage to the physical or mental health of the victim;
  - the offence was committed by persons abusing their position;
  - the offence was committed in the framework of a criminal organisation;
  - the perpetrator has previously been convicted of offences established in accordance with this Convention;the offence was committed against a child or any other particularly vulnerable person.

While in theory, the differences between trafficking in persons and trafficking in human organs might be clear, the crimes might not be that easy to distinguish in practice. It requires special efforts to establish the relevant facts to identify, investigate, prosecute and adjudicate cases of trafficking in persons for organ removal as such. (That is to establish a lack of valid consent, deception, abuse of a position of vulnerability, etc.)

Some experts at UNODC's expert group meetings suggested that while there is a clear need to distinguish both crimes (to provide adequate criminal justice responses), there is also a need to promote the legal instruments against both trafficking in human organs and trafficking in persons for organ removal, to have a more effective, comprehensive legal framework against illegal transplant activities.

## **2.5. Prohibition of financial gain**

As mentioned above, Guiding Principle 5 of the WHO Guiding Principles on Human

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Cells, Tissue and Organ Transplantation requires 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.

According to the commentary of Guiding Principle 5 provided in the WHO Guiding Principles, (as endorsed by the 63<sup>rd</sup> World Health Assembly in 2010, by resolution WHA63.22),

“payment for cells, tissues and organs is likely to take unfair advantage of the poorest and most vulnerable groups, undermines altruistic donation, and leads to profiteering and human trafficking. Such payment conveys the idea that some persons lack dignity, that they are mere objects to be used by others. [...]

This Principle permits compensation for the costs of making donations (including medical expenses and lost earnings for live donors), lest they operate as a disincentive to donation. The need to cover legitimate costs of procurement and of ensuring the safety, quality and efficacy of human cell and tissue products and organs for transplantation is also accepted **as long as the human body and its parts as such are not a source of financial gain.**

Incentives that encompass essential items which donors would otherwise be unable to afford, such as medical care or health insurance coverage, raise concerns. [...]

Each jurisdiction will determine the details and method of the prohibitions it will use, including sanctions which may encompass joint action with other countries in the region. The ban on paying for cells, tissues and organs should apply to all individuals, including transplant recipients who attempt to circumvent domestic regulations by travelling to locales where prohibitions on commercialization are not enforced.”

As for the difference between “compensation” and “incentive”, experts contributing to the development of the present toolkit, indicated that European

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Union definitions suggest that “compensation” is the reparation strictly limited to making good the expenses and inconveniences related to donation,<sup>33</sup> while “incentive” is an inducement/stimulus for donation with a view of seeking financial gain or comparable advantage.

The sale and purchase of organs is also prohibited by the **Council of Europe Convention on Human Rights and Biomedicine** (also known as the Oviedo Convention).<sup>34</sup> The Convention, which entered into force in December 1999, is not only open for signature by the member States of the Council of Europe, but also the non-member States which have participated in its elaboration and by the European Community. Article 21 of the Convention states that ‘the human body and its parts shall not, as such, give rise to financial gain’.

Also the **Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin** declares, in article 21, that the human body and its parts shall not, as such, give rise to a financial gain or comparable advantage.<sup>35</sup> It clarifies that this does not prevent payments which do not constitute financial gain, such as compensation of living donors for loss of earnings or other justified expenses, payment for legitimate medical or technical services rendered and compensation in cases resulting in damage. In article 21(2) the additional protocol states that advertising the need for, or availability of, organs or tissues, with a view to offering or seeking financial gain or comparable advantage, shall be prohibited. Article 22 of the additional protocol prohibits illicit trafficking in organs of human origin because such practices exploit vulnerable people and may undermine people’s faith in the transplant system.<sup>36</sup> The preamble to the Additional Protocol to the Convention on Human Rights and Biomedicine acknowledges the risks posed to vulnerable persons by the shortage of organs and tissues available to those who demand them. It states that organ and tissue transplantation should take place under conditions protecting the rights and freedoms of donors, potential donors and recipients of organs and tissues, that institutions must be instrumental in ensuring such conditions and that there is a need to protect individual rights and freedoms and to prevent the commercialization of parts of the human body involved in organ and tissue procurement, exchange and allocation activities.<sup>37</sup>

Also the **Charter of Fundamental Rights of the European Union**, (2000/C 364/01) in article 1 on human dignity and article 3 on the right to the integrity of the person, refer to the prohibition on making the human body and its parts as such a source of financial gain.



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## 2.6. Non-legally binding instruments

There are also non-binding declarations and recommendations – in addition to the 2010 WHO Guiding Principles highlighted above - that seek to define and call for the criminalization of various conducts related to organ removal and transplantations – conducts that might be conducive to or amount to trafficking in persons for organ removal. These instruments set strong standards against illegal transplantations, being recognized and endorsed by transplant societies worldwide.

An International Summit on Transplant Tourism and Organ Trafficking, convened by more than 150 representatives of scientific and medical bodies from around the world, government officials, social scientists, and ethicists in Istanbul, Turkey, in 2008, formulated **The Declaration of Istanbul on Organ Trafficking and Transplant Tourism**, (already mentioned in section 1.4).<sup>38</sup>

According to its preamble, the declaration builds upon the UN Universal Declaration of Human Rights, and follows up on the 2004 World Health Assembly Resolution 57.18 on human organ and tissue transplantation,<sup>39</sup> that urges member states “to take measures to protect the poorest and vulnerable groups from ‘*transplant tourism*’ and the sale of tissues and organs, including attention to the wider problem of international trafficking in human tissues and organs”.

The Istanbul Declaration offers definitions for organ trafficking, transplant tourism and transplant commercialism. It also outlines ethical principles and fundamental requirements for organ donation and transplantation. In its “Proposals” section, it suggests measures and strategies to meet the ethical goals of the declaration and clarification of important issues such as reimbursement of donation costs. The Istanbul Declaration defines *organ trafficking* as “the recruitment, transport, transfer, harbouring or receipt of living or deceased persons or their organs 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 to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation”.<sup>40</sup> It further identifies *transplant commercialism* as a “policy or practice in which an organ is treated as a commodity, including by being bought or sold or used for material gain”. It moreover defines *travel for transplantation* as “the movement of organs, donors, recipients or transplant professionals across jurisdictional borders for transplantation purposes” and states that “travel for transplantation becomes *transplant tourism* if it involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centres) devoted to providing transplants to patients

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from outside a country undermine the country's ability to provide transplant services for its own population.”

The declaration has been endorsed by more than a 100 governmental and professional organizations, working in the field of organ transplantation, globally.<sup>41</sup> To promote and monitor the implementation of the declaration, the *Declaration of Istanbul Custodian Group* has been established in 2010, consisting of experts from various professional and geographical regions.

Also in 2008, the Recommendations on the Prohibition, Prevention and Elimination of Organ Trafficking in Asia (*Taipei Recommendations*) resulted from the work of the “Asia Task Force on Organ Trafficking” (established by the National Taiwan University, consisting of fourteen independent expert scholars from the fields of medicine, ethics, law, philosophy and social science scholars from Asia and other parts of the world). Like the Declaration of Istanbul, the Taipei Recommendations are aimed at making practices in organ donation and transplantation ethical and just, including through reducing vulnerability of persons to organ-related crimes.<sup>42</sup>

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### 3. Overview of Persons Involved

Trafficking in persons for the purpose of organ removal is distinctly different from other forms of trafficking in persons, not least because organ removal is a medical intervention that involves a range of professionals from the medical sector. This section provides an overview of persons that can be involved in trafficking for organ removal, be it as perpetrators, as victims, or - as organ recipients.

Information provided in this section is largely based on input from experts provided at the two expert group meetings conducted to develop this toolkit and recent major reports.<sup>43</sup>

Also UNODC's online Human Trafficking Case Law Database, mentioned earlier, provides some insights. At the time of the finalization of the current toolkit, the database contained about 1,200 cases from 90 countries, with twelve cases concerning trafficking in persons for the purpose of organ removal.<sup>44</sup>

The database contains e.g. the following case: In November 2010, under the authority of the National Director of Public Prosecution, a health care company that operates private hospitals in South Africa, entered into an agreement whereby it pleaded guilty to 102 counts related to charges stemming from having allowed its "employees and facilities to be used to conduct [...] illegal kidney transplant operations". Where the public interest was concerned, the agreement noted "that a company, such as the accused company, guilty of an offence such as this, should be convicted and punished and more particularly, that that conviction and punishment should take place in open court for society as a whole to come to know and understand that the prosecuting authorities and the Department of Health will not tolerate breaches of the code of conduct and standards of ethics and compliance with the law required in a civilised society."

The agreement then sets out the penalty imposed: a confiscation order of approximately USD 470,000 amounting to the benefit the company derived from the offences, plus a sentence of approximately USD 495,000, amounting to fines for each of the counts to which the company pleaded guilty. A number of other charges were laid against a hospital operated by the company, the CEO of the company, as well as four transplant doctors, a nephrologist, two transplant administrative coordinators, and an interpreter. The admission of guilt related to 109 illegal kidney transplant operations that took place between June 2001 and November 2003. The scheme involved patients from another country in need of kidney transplants who would be brought to South Africa for transplants performed at the hospital of the

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health care company. While the kidneys supplied originally came from the same country as the organ recipient, 'later citizens from other countries were recruited as their kidneys were obtainable at a much lower cost'.

The broker, who was in charge of the recruitment of both kidney suppliers and recipients, has not been charged. He set a fee of between USD 100,000 and USD 120,000 for recipients and paid the original 'suppliers' of kidneys USD 20,000. However, later on in the scheme, other victims received on average of USD 6,000. [...] While the health care company was paid up-front for its participation in the illegal kidney transplantations, the people supplying the healthy kidneys were paid after the organ removal and in cash.

***[State v. Netcare Kwa-Zulu Limited; UNODC Human Trafficking Case Law Database, [www.unodc.org/cld](http://www.unodc.org/cld)]***

In another case, there was an advertisement in a newspaper that called for kidney donations and promised compensation. Consent of the victims was obtained without providing them with full medical information. The defendant recruited especially poor and uneducated victims.

Two of the victims were convinced to stay for several days in the home of the defendant (so the defendant could supervise them, limit their movements and prevent them from leaving) and were then taken to the main international airport of the country. From the airport they were flown to an Eastern European country, accompanied by one of the defendant's accomplices.

The victims were deceived as to: the identity of the defendant (who represented himself as a knowledgeable physician), the medical dangers of the operation (they were promised the procedure was easy and would leave only a small scar) and the remuneration (they were promised USD 7,000 each, but not one received this sum). Two victims received half of the promised sum at some point and even this was later taken by the defendant and never returned. One victim received USD 500, another one USD 3,500, but never received the rest of the money and two other victims did not receive anything. When the victims had been taken to defendant's home, it was claimed that they owed him for rent and food. In addition to this they were not given any medical treatment upon return to their home country. They were threatened that if they complained to police they would be arrested, since what they did was an offence. Moreover, when one victim demanded her money, she was physically assaulted by one of the defendants. Some victims were flown to a country, where their kidneys were removed.

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Some of them continued to suffer pain and weariness long after the operation. One victim was a single mother, illiterate and working as a cleaner. She was invited to live in the house of the recruiter for several days before the surgery. She was not allowed to leave the house alone for several days and her passport was withheld by the defendants, to prevent her from running away. Another victim was in emotional and mental distress and in conflict with his parents when he saw the advertisement. He was invited to live in the house of one of the defendants for several days. He was told that he would gain a lot of money. After he received the payment (half of what was promised), the money was taken by the defendants for "expenses" and "debts". The defendants threatened that the police would arrest him should he complain. He was so afraid that he did not turn to medical treatment to remove the stitches from the surgery, but rather cut them in his own kitchen with a knife.

The defendant was found guilty of trafficking in persons for organ removal (and other offences including grievous injury, abuse of vulnerable population and obtaining something by deceit under aggravating circumstances).

***[J.A. vs. State of Israel; UNODC Human Trafficking Case Law Database, [www.unodc.org/cld](http://www.unodc.org/cld)]***

In one case, the defendant coerced the victim to sell his kidney for money and sent him to a person in another country who would make the necessary arrangements. When the victim's brother found out, he filed a claim against the defendant. The defendant was convicted of involvement in the selling or giving up an organ in exchange for money which is prohibited under the national law. The court sentenced the defendant to eight months in prison, but due to his young age and out of sympathy for his family, his sentence was commuted to one month.

***[Case No 1725/2008; UNODC Human Trafficking Case Law Database, [www.unodc.org/cld](http://www.unodc.org/cld)]***

It is important to note that there are no uniform or clearly established roles and tasks of actors involved in trafficking in persons for organ removal. The relationships among the different actors are complex and varying, with some individuals occasionally acting in multiple roles, e.g., somebody who buys an organ could be a recruiter but also an organ recipient.

Based on available sources, the following actors can be identified:

- Recruiters (other terms used include brokers, organizers, connectors, coordinators, middlemen, kidney hunters, etc.);

- Medical professionals (including specialist doctors such as surgeons and nephrologists [medical doctors who specialize in kidney care and treating diseases of the kidneys], as well as nursing staff and other medical staff);
- Other private and public sector facilitators (such as hospitals, transplant centres, laboratories and other medical facilities, as well as their staff, insurance companies, travel agencies, airlines and their staff, as well as guards, drivers, service providers, law enforcement officials, translators, etc.);
- Although organ recipients ('patients', 'buyers') have largely not been found to be perpetrators of trafficking in persons for organ removal, they may have been knowingly or unknowingly involved as recipients of organs that come from trafficking victims.
- Victims of trafficking in persons for organ removal (also 'donors', 'victim-donors', 'sellers', 'organ suppliers') are not to be considered actors within the trafficking schemes. They may, however, take on active roles, e.g. by approaching brokers, offering their kidney for sale.

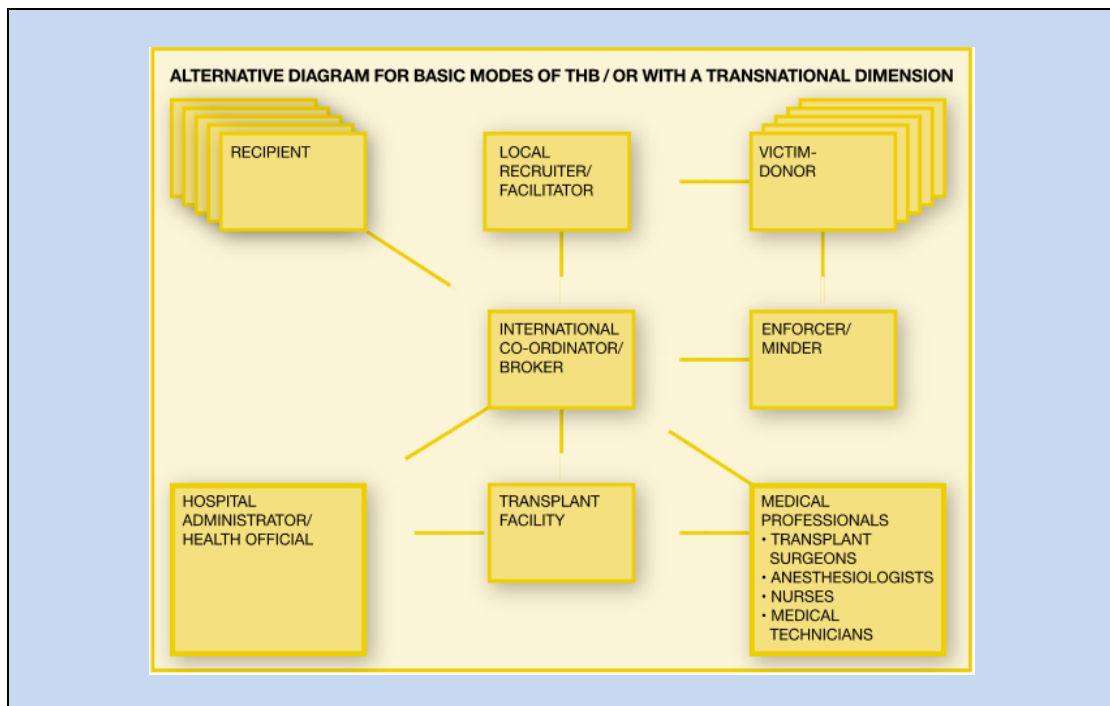


Figure 1: Building on the diagram provided by Shimazono (see figure 2), the OSCE presents this alternative diagram that focuses on the central participants from a law enforcement perspective.<sup>45</sup>

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### 3.1. Recruiters (and brokers)

As with human trafficking for other exploitative purposes, victims of trafficking for the purpose of organ removal are often recruited from vulnerable groups. Experts at the UNODC expert group meetings pointed out that victims of this type of crime would often live in extreme poverty. The work of the recruiter would be to identify vulnerable people and to persuade them into selling one of their organs, usually a kidney. Recruiters would usually be very skilled at gaining the trust of victims in order to influence them. Often, recruiters would be selected to perform this function because of their likely appeal to potential victims. They may come from the same social and economic background as those they recruit. Extreme poverty can also drive people to recruit relatives or close friends. Recruiters may also often come from the same ethnic group as their victims, increasing their capacity to connect to and gain the trust of victims. People from economically and socially deprived areas may on their own initiative approach recruiters, lured, however, by newspaper ads, posters or informants, which, in turn, would usually be paid for by other organizers involved in the trafficking.

Research and media reports often use the term *broker* to refer to one of the main actors in trafficking in persons for organ removal and related conduct. Experts at the expert group meetings confirmed that there is not an agreed definition of what constitutes a broker. They agreed, though, that brokers would usually be seen as being involved in a wider range of activities than the just the recruitment, by e.g. being the link between patients, ready to pursue an organ outside the transplantation systems, organ suppliers, recruited from underprivileged, impoverished backgrounds and, not to forget, surgeons, ready to perform organ transplants in breach of legal and ethical standards. For this, brokers would need to be well-connected and linked up with hospitals and other health care facilities. Brokers would be the ones to actually run a trafficking network, often being in a position to set the prices for organs.

Brokers may recruit local organ suppliers directly or employ recruiters who may, as mentioned before, spread the word through newspaper ads and other means. Among these recruiters may even be victims of trafficking for organ removal, who would be used by brokers to persuade others into selling their organs, knowing that often these people have no alternatives than to submit to their exploiters.

Potential organ suppliers will not be told about the risks and consequences of the removal of an organ, but rather be persuaded through the prospects of a better life. Experts at UNODC's expert group meetings informed that some recruiters and brokers would tell the potential victims outright lies such as e.g. that a removed kidney can grow again, that two kidneys are not foreseen by nature, that there are

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two kidneys, a smaller and a bigger one and that only the small one would be removed, etc., knowing that the person may not be knowledgeable at all about these things. Recruiters may also know the personal living conditions of potential victims and that they might be e.g. heavily indebted and they may promise them big cash benefits. In reality, however, the experts at the expert group meetings indicated, the organ suppliers would usually not receive the promised amount, getting far less than originally agreed, if anything at all. The participation of the supplier, based on what seems to be valid consent, however, makes it difficult, if not impossible for organ suppliers to pursue claims for money not received.

Deception also occurs in terms of health support: many suppliers do not receive the promised post-operative and longer-term care. Very often, such care would not even be promised - with either no explanation at all or by downplaying any possible negative health impact, so that potential suppliers would often be totally misled about the procedure of organ donation, its risks and long-term consequences, the need for follow-up care, as well as the psychological and everyday life impact of the removal of an organ.

Methods of recruiting and controlling victims could be similar to methods used in other types of trafficking in persons. Experts mentioned e.g. false promises of employment abroad, withholding of passports, use of threats and physical abuse. To ensure that organ suppliers would not return home before their kidney is removed, brokers would also pressurize them by claiming that once costs have been incurred from medical examinations and expectations on the part of the buyer have been raised, decisions on the organ removal cannot be revoked. Experts at the expert group meetings suggested that (threat of) force can be used to induce initial compliance, and coercive techniques like emphasizing the desperation of the dying recipient or withholding of passports, to ensure that individuals do not back out. 'Donors' are also reminded about their future and their children's future, should they consider dropping out.

Experts also referred to examples in which people approached brokers themselves, insisting on the arrangement of the organ sale. Some of them might have even been upset if they were deemed ineligible for providing an organ. An active role in approaching brokers, however, does not automatically rule out the possibility of trafficking in persons, as long as these persons are recruited, transferred, received etc. by means of coercion, deception, abuse of a position of vulnerability, etc. for the purpose of exploitation, as specified in the UN Trafficking in Persons Protocol. People, who actively seek to sell their kidneys, may not have arrived at or affirmed that decision had they been properly informed about the risks and health



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consequences. And an active role on the side of a possible supplier does of course not rule out the abuse of a position of vulnerability by the recruiters and brokers.

As with other types of human trafficking, the investigation and prosecution of trafficking for organ removal proves to be very challenging, especially as in many cases, recipients, suppliers and other actors along the chain may not be willing to cooperate and provide corroborating testimonies.

### 3.2. Medical professionals

Specialist doctors such as transplant surgeons, nephrologists (*kidney specialists*) and anaesthesiologists play a key role in organ transplantation. Of all actors, however, probably least is known about the involvement of transplant professionals and other medical personnel in trafficking in persons for the purpose of organ removal. Also nurses and other assistants of the surgical team may be involved.

One of the first charges against transplant professionals (*and facilities, see below*) were filed in 2004 by a South African court, in a case that concerned over one hundred illegal kidney transplants involving purchased organs – the **Netcare Case**. This case is included in UNODC’s Human Trafficking Case Law Database<sup>46</sup> [**“State v. Netcare Kwa-Zulu Limited”**] and one of the key investigators of this case participated in UNODC’s expert group meetings.

According to the South African Human Tissue Act No. 65 of 1983, “no person [...] may receive any payment in respect of the import, acquisition or supply of any tissue or gamete for or to another person for any of the purpose referred to in section 4(1) or 19”. A ministerial policy in respect of organ transplants states that “for unrelated living donors, in order to reduce the possibility of abuse, applications to perform transplantation must be approved by the Ministerial Committee established for this purpose”. The Human Tissue Act also provides that any person who acquires, uses or supplies a body of a deceased person or any tissue blood or gamete of a living or deceased person in any other manner, or for any other purpose than that permitted by this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding ZAR 2,000,000, or to imprisonment for a period not exceeding one year, or both that fine and that imprisonment”.

A nephrologist involved in the Netcare Case pleaded guilty to ninety counts of contravening Section 34 (a) of the (*South African*) Human Tissue Act, in acting in common purpose with other persons by unlawfully acquiring, using or supplying kidneys of living persons, in that the suppliers were paid for their kidneys in

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contravention of Section 28(1) of the said Act. The nephrologists got fined 150,000 South African Rand. Charges were then also laid against two transplant administrative coordinators and four transplant surgeons. At the end of 2012, the Durban High Court ordered a permanent “stay of proceedings”, permanently halting further legal process in the trial.

The experts in UNODC’s expert group meetings also reminded of a case in 2007, where an arrest of a foreign transplant surgeon took place in Turkey, for performing illegal transplant operations in Turkey. It remained unclear, however, what charges he was arrested for and whether he was convicted or not. Other charges and convictions of transplant professionals mentioned by the experts, took place in India against a transplant surgeon and against doctors in Brazil. In June 2013, a Costa Rican surgeon was arrested, suspected of running an international transplant ring with links to Israel and Eastern Europe.<sup>47</sup>

However, as mentioned above, experts suggested that surgeons, who perform illegal organ transplantations that involve financial gain over organ purchases, are generally not known to get indicted, or extradited following requests by prosecution authorities. The 2014 UNODC Global Report on Trafficking in Persons states that despite legislative progress made concerning the crime of trafficking in persons, globally, there are still very few convictions for trafficking in persons. The low number of convictions may reflect the difficulties of the criminal justice systems to effectively respond to trafficking in persons. Experts agreed that impunity also prevails especially in the field of trafficking in persons for organ removal and especially among those medical professionals that would be involved in the crime. It was mentioned that it still seems to present an obstacle for law enforcement and criminal justice to initiate investigations against members of a highly regarded medical profession.

Another case that was discussed at large during the expert group meetings was the “Medicus Case”, in which anaesthesiologists, surgeons and a senior clinic administrator were indicted, and other medical staff was added to the prosecutor’s witness list:

**Case Study: Medicus Clinic**

The involvement of transplant doctors in organized, illegal transplant operations was revealed in 2008 at the ‘Medicus Clinic’ in Pristina, Kosovo. Throughout 2008, a network consisting of transplant surgeons, anaesthesiologists, urologists, other medical doctors and their staff, as well as organ brokers and local “fixers”, that is people who helped to match possible organ suppliers and recipients, recruited

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approximately 30 persons from Russia, Moldova, Kazakhstan and Turkey who were transported to the Medicus Clinic in Kosovo for the removal of their kidneys. The victims were given false promises of up to USD 20,000 for their kidneys. Their organs were transplanted into foreign patients, who paid up to USD 200,000.

A transplant surgeon, who has received high media attention for allegedly performing up to 3,000 commercial transplants between unrelated donors and recipients, played a key role in the syndicate, flying into Kosovo regularly to perform most of the transplantations.

In 2010 the Special Prosecution Office in Kosovo charged seven persons, amongst which was also a government official, with trafficking in persons, participation in organized crime, unlawful exercise of medical activity, abusing official position or authority, grievous bodily harm, fraud and falsifying (official) documents. International arrest warrants were released against the transplant surgeon, and an Israeli broker. It might be the largest prosecuted case in this field to date.

According to the lead prosecutor, the victims were “transported by means of threat or use of force or other forms of coercion, by fraud or deception, by the abuse of power or use of the donor victims positions of vulnerability, or by giving or receiving of payments or benefits to achieve the consent of those persons for the removal of their organs (kidneys), for the purpose of the exploitation of the donor victims”. A conduct covered by the international definition of trafficking in persons provided by the UN Trafficking in Persons Protocol.

In April 2013 five of the seven accused were convicted, including the clinic’s director (a medical doctor) for trafficking in persons and organized crime, with prison sentences. Two defendants were acquitted. (The head of the clinic was found guilty on charges of organized crime, trafficking in persons and co-perpetration. He was sentenced to a punishment of eight years imprisonment and a fine of EUR 10,000. He was prohibited from exercising a professional urologist for the period of two years. Also his son (an economist) was found guilty on charges of trafficking in persons and organised crime. He was sentenced to seven years and three months imprisonment and a fine of EUR 2,500. Three medical doctors were found guilty on the count of grievous bodily harm. They were sentenced to imprisonment between one and three years. One was prohibited from practicing as anaesthesiologist for the period of one year.

In order to obtain the convictions, the investigating authorities under the lead of the Head of the Special Prosecution Office Kosovo, carefully secured, collected and corroborated evidential materials, such as flight records, as well as anaesthesiology, laboratory and surgery records and utensils, so as to document, as complete as

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possible, medical interventions and the arrival and departure by plane and presence at the clinic of alleged organ suppliers, organ recipients and doctors. They examined and collected evidence from operating theatres, forensic evidence, investigated the clinic's licensing history. They also traced and examined electronic mail communication, e.g. between the local head of the clinic and the foreign surgeon; they moreover sought international legal assistance from the countries involved.

What triggered the investigations into this case and the raid of the Medicus Clinic, was the collapse of a 23-year-old man, who fainted in front of customs officials at Pristina (Kosovo) airport in November 2008, while waiting for his international flight. When officials raised his shirt they discovered a fresh scar on his abdomen.

### 3.3. Actors in the health care and other sectors

#### *Hospitals*

Experts informed that hospitals may operate as brokers, while also providing accommodation for both recipients and suppliers. Potential organ suppliers may at times also directly approach medical facilities, especially those that are presumed to be involved in illegal transplantation business. The South African Netcare case mentioned above and discussed in depth at the UNODC expert group meetings, is one of possibly few cases where a hospital was held liable for its involvement in illegal transplants. In fact in the Netcare case, the health care company that operates the private hospital involved, entered into an agreement whereby it pleaded guilty to 102 counts related to charges of having allowed its "employees and facilities to be used to conduct [...] illegal kidney transplant operations". The hospital group admitted receiving 3.8 million South African Rand from an illegal organ trafficking syndicate. In a statement, the company acknowledged that "payments must have been made to the donors for their kidneys and that certain of the kidney donors were minors at the time that their kidneys were removed." The company was fined 20,000 South African Rand for contravening the Human Tissue Act and four million rand for being in receipt of monies derived from the kidney transplants and participating in unlawful activities under the Prevention of Organised Crime Act".<sup>48</sup>

Article 10 of the UN Organized Crime Convention requires states parties to take the necessary steps, in accordance with their fundamental legal principles, to provide for the liability of legal persons, that is corporate liability, for, among others, participation in serious crimes involving an organized criminal group and for the offences established in line with the Trafficking in Persons Protocol. This liability can

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be criminal, civil or administrative. Under article 10, paragraph 3, of the Organized Crime Convention, the liability of legal entities must be established without prejudice to the criminal liability of the natural persons who committed the offences. The liability of natural persons who perpetrated the acts, therefore, is in addition to any corporate liability and must not be affected at all by the latter.

Criminal liability of legal persons such as health care facilities can be established if hospitals or its employees are deliberately involved in trafficking in persons for organ removal. However, hospitals and its staff may unknowingly be involved in carefully scripted trafficking activities. Experts were, however, not sure that this can happen at a large scale, even though brokers are known to assist the recipient and supplier in coming up with carefully scripted cover up stories that shall help mislead hospital personnel who are uninformed of the illegal undertakings, into believing that the donation is a purely voluntary act, or forge legal documents that indicate that the donation is between relatives.

Although some experts mentioned the possible involvement of state hospitals, for the most part they felt that illegal organ transplantations usually take place in private hospitals.

#### *Other health service providers*

Potential organ donors will have to undergo blood, urine and other medical tests to determine suitability for donation and if they are a match to a recipient. In this regard, other possible facilitators mentioned by the experts were laboratories and facilities that are involved in determining the match between suppliers and recipients. According to the experts, tests that need to be conducted prior to transplantation are often carried out in laboratories attached to the hospitals where the transplantations take place, but also in other laboratories. The experts informed that suppliers would often be either directly approached by or recommended to such facilities, or seek out such providers themselves. Laboratory technicians may play their part of the work required to bypass legal and ethical standards; they may knowingly support brokers in matching a vulnerable, inadequately informed donor to a recipient. Laboratories may also take on “brokering” functions, by spreading the word of the benefits of organ sales among possible organ suppliers and recipients and establishing contacts with organ brokers.

Such service providers may e.g. be in the country of origin of the organ supplier, or the country where the operation takes place. Experts at UNODC’s expert group meetings stated that the matching facilities and the communication between them and the operation team may present investigative opportunities.

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### *Health insurances*

Also health insurance companies may play a part in the trafficking undertakings. Costs for living donor surgery, hospitalization, diagnostic tests and evaluation might be covered by the recipient's insurance. It has been mentioned in the expert group meetings, that there are reports of health insurances that encourage patients in need of an organ transplant, to get the operation done abroad, when there is a prospect of this alternative being considerably less expensive. So ultimately health insurances might promote and support – or be susceptible to promoting and supporting - the purchases of organs from vulnerable donors who may not have provided valid consent. It is, however, unknown whether and to what extent insurance companies facilitate or are, knowingly or unknowingly, involved in trafficking in persons for organ removal.

### *Additional possible actors and facilitators*

According to the experts at UNODC's expert group meetings, in addition to transplant experts and professionals from the health care sector in the wider sense, other actors in trafficking for organ removal could also include travel agencies specialized in medical tourism, translators, as well as corrupt law enforcement officers. Experts from the OSCE also presented the role of drivers, minders and the like, actors who would have mere supporting roles in networks, functions that would be relatively minor but necessary to a network's undertaking.

Minders are the ones to accompany organ suppliers and recipients, who are from countries that are different from the country in which the operation takes place, during their travel to and from the transplant operations. Also translators are needed in situations where medical personal, brokers, suppliers and recipients originate from different countries.

The **Netcare Case** mentioned earlier, in which a hospital was held liable for its involvement in illegal transplants, involved also a translator.

The defendant was employed by the transplant facilitator to provide translation and interpretation service between the kidney recipients and local hospital staff and participating doctors. It was held that the defendant knew that the recipients and the suppliers of the kidneys were not related to one another. Furthermore, he knew that the kidney suppliers were being paid for the supply of their kidneys and at all times that it was illegal in terms of the Human Tissue Act for kidney suppliers to receive money for the sale of their kidneys. The Court thus found that the defendant acted in a common purpose with the other persons involved in carrying

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out the illegal action.

*[State v. Ziegler, 2010; UNODC Human Trafficking Case Law Database, [www.unodc.org/cld/en/case-law/zaf/2010/state\\_v.\\_ziegler.html](http://www.unodc.org/cld/en/case-law/zaf/2010/state_v._ziegler.html)]*

As for the possible involvement of corrupt law enforcers, experts of the expert group meetings concluded that such could be necessary to facilitate the movement of organ suppliers across borders. According to the experts, immigration and customs officials might receive bribes for not reporting forged travel documents or to 'secure' border crossing. There have also been reports of local politicians and police whose family members and friends function as brokers. These government officials may receive payments from hospitals, doctors and other agencies 'in exchange for recommending them to handle various aspects or phases of kidney transplantation'.<sup>49</sup> Experts also mentioned that some medical professionals and hospitals involved in illegal organ transactions would establish close links with law enforcers to ensure poor enforcement of existing rules governing transplantations.

Finally, the expert group meetings considered the possible connections of bankers, lawyers, pharmaceutical companies, religious organizations and charitable trusts, patient organizations, embassy staff, advertisers for online and print advertisements. Little remains known, however, about the actual involvement of such actors and their modus operandi and actual connection to the main organizers of the trafficking in persons for the purpose of organ removal. Also transport companies (commercial carriers), including airlines have been mentioned. They may unlikely be aware tickets are being bought for the purpose of illegal organ removal and transplantation without the matter being brought to their attention. Once it is, however, and they continue to issue tickets they risk becoming involved in a trafficking network.

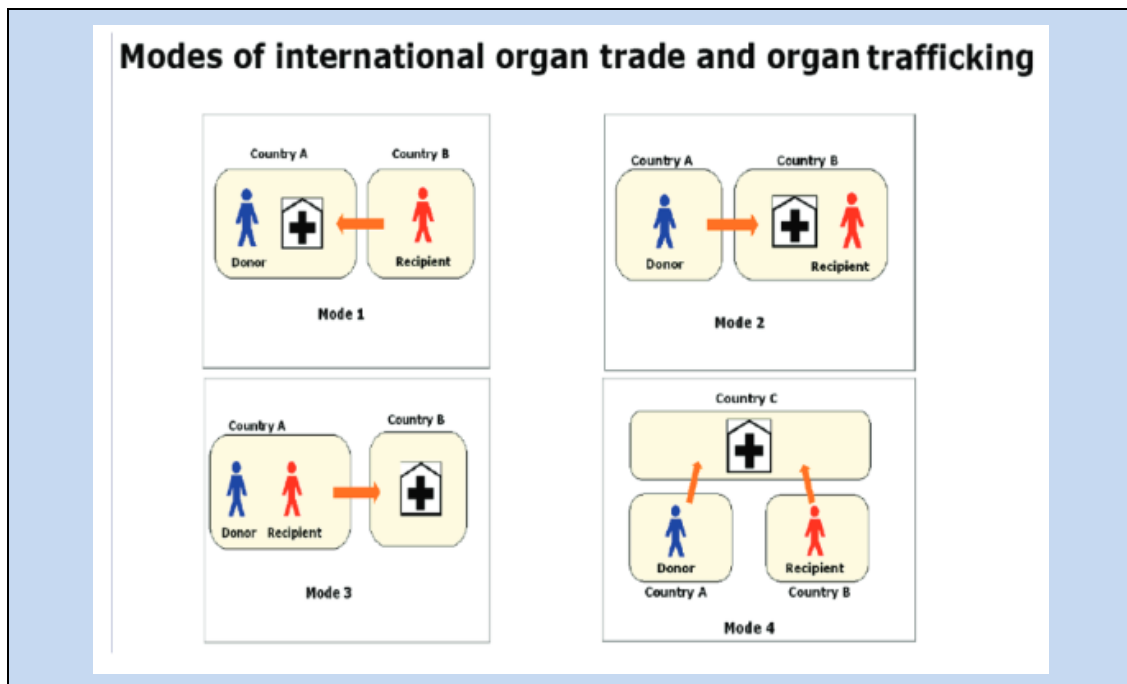
### **3.4. Organ recipients**

The expert group meetings indicated that there are domestic cases of trafficking in persons for the purpose of organ removal, however, most commonly discussed seem to be cases in which recipients travel in order to receive donor organs they buy.

The preamble of the 2010 WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation indicates that "the growing ease of international communication and travel has led many patients to travel abroad to medical centres that advertise their ability to perform transplants and to supply donor organs for a single, inclusive charge." Both the World Health Assembly Resolution 57.18 on human organ and

tissue transplantation of 22 May 2004, and the Declaration of Istanbul on Organ Trafficking and Transplant Tourism seek to address “transplant tourism”, urging states to take measures to protect the poorest and vulnerable groups from this phenomenon. (The Declaration of Istanbul indicates that “travel for transplantation becomes transplant tourism if it involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centres) devoted to providing transplants to patients from outside a country undermine the country’s ability to provide transplant services for its own population.”)<sup>50</sup>

Shimazono presents four modes of transplant tourism:<sup>51</sup>



**Figure 2: Shimazono (2007); Mode 1: a recipient travelling from Country B to Country A where the donor and transplant centre are located; Mode 2: a donor from Country A travelling to Country B where the recipient and transplant centre are located; Mode 3: a donor and recipient from Country A travelling to Country B where the transplant centre is located; Mode 4: a donor from Country A and a recipient from Country B travelling to Country C where the transplant centre is located.**

It should be noted that though this diagram refers to ‘modes of organ trade and trafficking’ it may also be relevant to trafficking in persons for the purpose of organ removal.

It is difficult to conclude, however, that a majority of patients travelling abroad for transplantations obtained the transplants illegally, or from trafficked persons.

Until now, little is known about prosecutions or convictions of organ recipients concerning an involvement in trafficking in persons for the purpose of organ removal. As for the cases mentioned above, in the Netcare Case in South Africa, a foreign organ recipient was arrested and fined for illegal organ purchase after



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undergoing an illegal kidney transplant in Durban. The patient was fined USD 800 by the Durban magistrate.<sup>52</sup> As for the Medicus Case, in 2008, a patient was arrested in Kosovo after receiving an illegal transplant from a paid donor at the Medicus Clinic, but was released by the police after his statement was taken. Recipients who were transplanted at the Medicus Clinic gave testimonies during the trial but were not indicted themselves. The foreign chief doctor and the foreign broker involved in the case, both accused of people trafficking and organized crime, too, were listed as fugitives wanted by Interpol after the indictment in the case was raised in June 2011.

### *Common characteristics*

Persons who decide to buy an organ may be very desperate for a transplant. They may feel no longer or not at all able to bear dialysis to cleanse their blood. They may want to bypass transplantation waiting lists. Some may be considered unsuitable and not fit for transplants. Others may not want to burden their relatives with an organ donation.

Discussions at the UNODC expert group meetings also showed that there might be disproportionate demand from some ethnic groups due to disproportionate rates of certain illnesses among these groups, e.g. where a sudden introduction to “western diet” has led to increases in diabetes.

Experts mentioned that patients returning from transplantations abroad may suffer from various forms of post-operative complications, e.g. infections. Experts also reported that the survival period of patients and organs of transplants done in a foreign country may be shorter than for transplants carried out domestically (with the organ from a related donor). In many cases, the recipients may not have the medical records from the transplant country, or the records may be incomplete, and there may be problems in translation. They may not have much information about the organ and the health of the organ supplier either.

Patients who return from transplants overseas receive the same medical care as all other transplant patients, even when there are suspicions of organ purchase. Experts of the expert group meetings were not aware of cases where doctors reported their patients after purchasing an organ.

### *Organ retrieval*

Not much is known about how patients go about buying an organ. Some of those who decide to undergo transplantation abroad may travel there with the help of brokers. Experts also informed that some patients may travel on their own, e.g. to countries that they for one or another reason relate to, be it because they are

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nationals of the country, have friends or family there, or because they used to work or live there. Others head for particular destinations based on recommendations from other patients. Some may be assisted by family or friends. As mentioned before, however, experts at the expert group meetings emphasized that not all patients may travel abroad to buy organs.

It seems difficult to ascertain how and who patients pay for organs and organ transplantations: the organ suppliers, the brokers, the hospitals, the doctors, etc. As mentioned above, the WHO Guiding Principles on Organ Transplantation refer to “medical centres that advertise their ability to perform transplants and to supply donor organs for a single, inclusive charge.” However, not much analysis has been done regarding the money flows.

### *Perpetrator or “victim”? Recipients’ involvement in trafficking in persons for their organs*

Recipients may play an active role in trafficking in persons for the purpose of organ removal. Not much is established, however, on how much recipients know about the organ suppliers. The recipients would promise to bear all expenses and compensate the donors well – but they may not do that in direct interaction with the organ supplier, but through a middleman such as a broker. Not much is known about how brokers inform recipients about the donor either. Recipients may have a general idea of the extreme poverty the ‘donor’ may be in, but may assume that through a voluntary act of organ donation, for which fully informed consent was provided and payment received, the donor may actually be able to escape his poor living conditions. So the recipient may consider the deal as mutually beneficial.

Indeed, state practice suggests that recipients are not perceived as perpetrators of trafficking in persons for organ removal. Experts at UNODC’s expert group meeting suggested that it might be very difficult in most cases to prosecute a recipient, not least due to inherent sympathy with their predicament. They also indicated that cases of amoral persons, who actively and unscrupulously arranged for a transplant, may reflect a very small majority of recipients. It was assumed that the morality and motivation of recipients is likely to be very variable. Experts largely agreed that a balanced should be struck; they did not want to see recipients being stereotyped as one thing or another. It was mentioned that there should be a distinction between a recipient participating in “transplant commercialization” (buying an organ) and participating in trafficking in persons for organ removal. While most recipients may know they are buying an organ when they go for a ‘transplant package’ overseas, they may probably be unaware of any trafficking in persons for organ removal.

### 3.5. Cooperation among actors

#### Trafficking in persons for organ removal as a form of organized crime:

Given the possible collaboration among the various actors mentioned above, which may often take place across borders, experts at the expert group meetings also suggested that criminal justice practitioners may wish to consider cases of trafficking in persons for the purpose of organ removal as cases of organized crime, which may provide additional investigative techniques and means of international cooperation. According to article 2(a) of the UN Organized Crime Convention an “organized 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.

According to UNODC’s 2014 Global Report on Trafficking in Persons, criminals who commit trafficking in persons crimes can act alone, with a partner or in different types of groups and networks. The more complex and more transnational trafficking operations are, the more likely they require concerted actions of several actors, that is some degree of organization. The Global Report also suggests that a typology including three different trafficking types as shown below is emerging:

Small local operations	Medium subregional operations	Large transregional operations
Domestic or short-distance One or few traffickers Small number of victims Limited investment and profits No travel documents needed for border crossings No or very limited organization required	Within the subregion or neighbouring subregions Small group of traffickers More than one victims Some investments and some profits depending on the number of victims Border crossings with or without travel documents Some organization needed depending on border crossings and number of victims	Long distance between different regions Traffickers involved in organized crime Large number of victims High investments and high profits Border crossings always require travel documents Sophisticated organization needed to move large number of victims long distance

As for trafficking in persons for organ removal, however, little is known about the organization and structures of the trafficking networks. They may be well-organized, to some extent hierarchical networks, but also have some improvised elements, with some actors coming in rather spontaneously. (Such as low-level, local recruiters, who might be quite easy to replace.)

Discussions at the UNODC expert group meetings revealed, among other things, that the scheme operating in South Africa (Netcare Case) was high-level organized

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crime that involved a head of the group, who had an agreement with the hospital and who recruited low-level persons to maintain a distance to the organ suppliers.

Some brokers, doctors, former kidney suppliers and government officials may also operate individually. While there is to date not much detailed, or rather evidence-based, information on the individual role of most actors involved in trafficking in persons for organ removal, the degree of cooperation among these actors remains even less clear. Experts indicated that a strong cooperation seems to exist between brokers and hospitals.

Many aspects of the 'trafficking chain' such as the process of transportation and accommodation of recipients and suppliers remain largely unknown as well.

### 3.6. Organ suppliers

#### *Common characteristics*

The nationalities of organ suppliers vary, but they seem to be predominantly from poor countries, or countries in transition or countries with a large proportion of the population living below the poverty line. Origin countries may often lack legislative and non-legislative, institutional frameworks to effectively prohibit and prosecute trafficking in human beings for the purpose of organ removal.

The profiles of victims of trafficking in persons may vary from case to case: men, women and children, well educated, illiterate, from very poor countries, as well as from developed countries, etc. get trafficked.

The same could be said about victims of trafficking in persons for organ removal. However, for victims of this type of trafficking it may be possible to make out some common characteristics. In addition to coming from poor backgrounds, they may (concrete data is lacking, though!) in general have rather low levels of education. Interestingly, experts also mentioned that organ suppliers, who are ready to sell an organ, may be relatively young, on average maybe around 30 years old. This may not come as a surprise, given the medical needs - on the organ market, kidneys from young suppliers will be most desired. Discussions at the UNODC expert group meetings also revealed that the majority of victims of trafficking for organ removal might be men. This is corroborated by data available to UNODC, where the majority of victims in cases reported between 2007 and 2013 concerned men. Available data, however, concerns reported cases. In general it seems that most organ suppliers would be in a position of vulnerability, without, however, regarding themselves as such.

Experts also called to mind that organ suppliers will usually receive less money than

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they were promised before the operation. The amount of money that suppliers do receive varies extensively. In the worst case they may not get anything of the promised payment, sometimes part of what has been promised. Sometimes their share may have been very small from the beginning and they may receive that money in full. For a majority of suppliers, selling an organ may actually not improve their economic situation. Rather, it may even worsen: it has been reported that many organ suppliers who have sold their organs under deceptive conditions may have a hard time finding work and suffer post-operative complications and health issues. Many may also suffer psychologically: they may experience existential as well as health anxiety; feelings of hopelessness; violated bodily integrity and depression. Back in their home countries, many may also experience social isolation, stigmatization and shame, and, given that there might not be an overall, tangible improvement of their life, regret ever selling an organ.

#### Case Study: Netcare Case, South Africa

The profile of a kidney supplier based on his statement<sup>53</sup>

The kidney supplier, male, and 28 years old had been unemployed for a year at the time his statement was taken. He had a history of part-time jobs as a mechanic, had a girlfriend, 3 sons, 4 sisters and 1 brother. He came from Brazil and spoke only Portuguese. He was involved in a car accident that he was test-driving. When he had it repaired, a police man asked him how he was going to pay for the damages. The police man then offered him the option to sell his kidney. It seemed to him the “perfect opportunity to settle his debts”. Nobody explained the possible consequences of an organ sale to him.

The supplier's understanding was that he was going to be paid for his kidney. He did not pay for his ticket to travel to or accommodation in South Africa: it was all paid for him. He was instructed to say that he was on holiday in South Africa. Upon arrival at the airport he was searched thoroughly for drugs, and then was released. He stayed at a beachfront flat. Prior to the donation he was asked to sign consent forms, which he did in the flat and not at the hospital.

He was explained that the form was a common procedure. He was shown where to sign. The forms that he signed said that there was a relationship between him and the recipient, and he signed that he agreed to the donation. He had to sign quite a few forms; one of them explained the law. The forms were not complete, presumably because they did not yet know who the recipient would be.

The supplier was not informed that one of his ribs would be removed during the surgical removal of his kidney. He was only told after the operation. The procedure and consequences were not explained to him. He was not given advice about his post-operation lifestyle, about averting risks post-donation, diets, etc. The transplant surgeon told him that there were no risks and that he saved the life of a patient. He was paid USD 5000 in the hospital from someone who was not really a

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recruiter or broker, but who was in charge of the organ transplantation programme. He was again asked to sign a form that said he received USD 7500. He did not meet the recipient (who came from Israel).

The translator played an important role. She instructed the organ supplier that if anyone asked, he should say that he was related to his recipient. She was not an official translator; she was not formally employed.[According to one of the lead investigators of the Netcare Case, the translator was a private person, who happened to speak the language of the ‘ donor’, that is Portuguese.]

The organ supplier returned to Brazil and never received the remaining USD 2500. He did not receive aftercare or medical check-up. He paid off some of his debts and he extended his house/room (low cost housing). He still lives there. He feels his health is worse after the operation. He only told his girlfriend about the sale. He has regrets, and would not do it again given what he knows now. His health is worse off. He did it because he was desperate for money.

### *Recruitment of victims*

There are several ways in which organ suppliers may be recruited into an illicit or illegal transplant scheme. Commonly, would-be donors are approached by a third party, such as recruiters, brokers, etc. see above.

#### **Case Study: Medicus Clinic Case**

##### **Testimony of A.K.<sup>54</sup>**

A.K. gave evidence before the court. In 2008 he did not have enough money to pay for his university studies so he had to stop attending his chosen course. He was depressed and also his father had a serious health condition. He was searching online for money as he wanted to pay for treatment for his father’s condition and he found a Russian medical message board that stated “Become a donor of a kidney for some money!”. He sent an email to the address provided and the next day received a response with an offer of EUR 10,000 for a kidney [...].

He was then contacted by phone by a man claiming to be named ‘Jurij’. They spoke about the kidney transplant and he was told they needed to meet “to be prepared and do some analyses” on blood group, HIV, Hepatitis A and C, as well an ultra sound examination. This was done in his local clinic and he then had to send on the results and a scan of his passport [...] After arrival at Medicus A.K. signed some papers, he testified that he thinks they were in English but he did not read them and he just had a quick look at the last page [...]. During his recovery he saw Jurij there at his bedside and after he left he found USD 8,000 in his bag [...]. As he left the clinic he was told if he had problems with customs he should show them

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the letter he was provided with. Jurij had told him he would meet him in Istanbul, however, he did not appear with the USD 2,000 that were still due. A.K. had no option but to head onwards to his hometown. On arrival there he was sick and could not lift anything. Now he claims his body is ok but once or twice a month he has pain in the operated area once drinking too much liquid [...].

After 5 days in his hometown or possibly a week, Jurij contacted him and said he would pay him the remaining USD 2,000 USD he owed him and then USD 1,000 for every person he would recruit for him. A.K. refused as he did not want to do this and “he did not want problems with the law” [...]. After that Jurij rang him five or six times but he continued to refuse. After the third conversation Jurij sent him USD 500 through Western Union. However following that, the next time Jurij contacted him he told him not to talk to the police if he was contacted by them and at the end of the conversation “he said he had long hands and can reach me anywhere”. “It looked like a threat”, “a threat to my health and my life” In the last conversation they had Jurij said to him ‘if you go to the police you can disappear”.

Often, it seems as though the level of coercion from the side of brokers or recruiters is rather low at the time of recruitment. Initially, organ supplier may want to donate their organ voluntarily. However, this voluntariness must be viewed in the context of the dire straits and lack of options that suppliers often face, which may often cause them to frame their act of selling an organ as an act of last resort. Moreover, suppliers who have attempted to pull out after initially having agreed to be suppliers may often experience coercion.

Different forms of deception are also common. Brokers or recruiters deceive suppliers into accepting a low price for their organ and into believing the operation to be risk-free, that a second kidney is not needed, that removed kidneys would grow back, etc. Experts at UNODC’s expert group meetings also recalled cases in which more extreme forms of deception have been used, where several organ suppliers were actually lured to travel abroad with the promise of a job, only for them to realize upon their arrival, that the purpose of their recruitment was to get their organs.

Only a few days after the operation organ suppliers commonly return home to the poor conditions from where they came, without receiving anything but minimal post-operative care (if at all) and without the financial means to access local health institutions.<sup>55</sup>

Despite the relative scarcity of information available, and despite the fact that only a couple of articles discuss the phenomenon of illegal transplants as trafficking in

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persons, it is quite apparent that many of the cases reported in the literature constitute examples of trafficking in persons for organ removal. Even some of the cases listed in UNODC's online Human Trafficking Case Law Database ([www.unodc.org/cld](http://www.unodc.org/cld)) as cases of trafficking in persons for organ removal were not originally handled as such. However, cases are included in the database when all the three constituent elements (act/improper means/purpose of exploitation) of the internationally agreed upon definition of trafficking in persons are present, even though the case may have been prosecuted not under trafficking-specific national legislation.

And indeed, often organ suppliers who sell their organs may have been recruited, transported, transferred, harboured and/or received by persons – recruiters, brokers, recipients, doctors etc. – who may abuse their position of vulnerability, frequently deceive them, and on occasion coerce them into parting with one of their organs.

Experts at UNODC's expert group meetings, however, pointed out that only few studies and media reports examine the issue of organ deals with a view to exploring their possible linkages to and appearances as trafficking in persons for organ removal. Often cases might be simplified, which may risk complicating the identifications of cases that do not fit squarely into this discourse. Experts emphasized that there were important variations globally that may not get visible enough.



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## 4. Good Practice Responses and Recommendations

The international (transplant) community has developed standards and guidelines to govern transplantation, to regulate care for donors and to thereby prevent organ-related crimes, including trafficking in persons for the purpose of organ removal. Of particular relevance are the *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*, as well as the *Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, which have been introduced earlier in the present handbook. It is strongly recommended to consult these tools when developing and implementing measures to prevent and counter trafficking in persons for organ removal and related conduct.

### 4.1. Prevention

- As with all forms of trafficking in persons, preventing trafficking for the purpose of organ removal requires that root causes be addressed to reduce people's vulnerability to falling victim to it in the first place. States should take measures to alleviate the factors that make people vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity. As poverty seems to be a prevailing feature in trafficking in persons for the purpose of organ removal, it needs to be addressed through sustainable and empowering poverty-alleviation programmes targeted at communities which are vulnerable to being recruited as donors.
- Measures undertaken to prevent trafficking in persons for organ removal should also address the demand for irregularly procured organs. This would require States to promote, e.g., healthy lifestyle to reduce demand caused by organ failure.
- Countries should also strive to optimize both deceased and living donations. Measures should include the provision of comprehensive information to potential donors, to family members of deceased (potential) donors, as well to potential organ recipients. Awareness raising programmes should inform potential donors and recipients of the risks and benefits of live kidney donation.

#### *Awareness raising on the risks of trafficking in persons for the purpose of organ removal*

Prevention efforts also require that awareness of the crime of trafficking for organ

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removal is raised among people who are vulnerable to falling victim of it, as well as among people who knowingly or unknowingly participate in the crime and those who come into contact with it and could act to stop it.

- Governments, hospitals and/or transplant centres, civil society, non-governmental organizations and international organizations should undertake education and awareness raising initiatives targeting persons who are vulnerable to exploitation by traffickers as potential donors.
- Prospective recipients of purchased organs should be informed of the medical, ethical and legal risks. Hospitals and/or transplant clinics might wish to distribute the brochure of the Declaration of Istanbul Custodian Group, *'Thinking of Buying a Kidney? Stop. What you need to know'*<sup>56</sup> to patients who consider buying a kidney.
- Awareness raising materials could also be distributed/displayed at immigration areas, such as airports, indicating that people travelling abroad to buy or sell a kidney expose themselves to great risks.
- Awareness should be raised among medical and health professionals and others who may come into contact with trafficking in persons for organ removal. Such awareness raising initiatives should aim to sensitize target audiences as to the ethical and social issues relating to trafficking in persons for organ removal, as well as laws pertaining to organ donation and transplantation.
- Awareness raising initiatives should also target potential whistle-blowers in medical institutions, or in other organizations. Such whistle-blowers should be able to report anonymously and confidentially, with legal protection from employer reprisal/retaliation, as well as easy reporting access. They should be made aware of the protections in place for them in the event that they report suspicions and/or otherwise assist criminal justice authorities.
- The media could play a role in raising awareness of and thereby preventing organ-related crimes by ensuring that reporting about trafficking in persons for the purpose of organ removal and related conduct is accurate and evidence-based. Print and online media could also be the target of training and awareness raising measures to prevent them from allowing advertisements that offer organs to buy or to sell and commercial transplantations.
- Awareness should also be raised among law enforcement about the crime of trafficking in persons for organ removal. This could also include drawing

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attention to the role of print media and internet, including newspapers and websites that allow advertisements of people offering to sell or buy an organ, and advertisements that offer commercial transplantations without mentioning the origin of the donor organ(s).

- Awareness might also need to be raised amongst commercial carriers, (transport companies), e.g. airlines, on competent offices to which they may be able to report suspicious observations that could point towards irregular transplantation activities.

#### 4.2. Legislation

Lack of specific and adequate (extra-territorial) legislation on trafficking in persons at the national level could present a major obstacle in combating trafficking in persons. Relevant legal definitions and procedures need to be harmonized at national, regional and international levels in accordance with international standards.<sup>57</sup> States, in coordination with relevant stakeholders, should develop a legal framework that is consistent with international instruments and standards, and does not jeopardize organ donation and transplantation.

- International instruments that are relevant to trafficking in persons for the purpose of organ removal, including the Trafficking in Persons Protocol, should be ratified or acceded to and implemented.
- Legislation should be appropriately drafted and/or amended in line with these instruments. Such legislation should clearly establish the criminal offence of trafficking in persons for the purpose of organ removal and clearly define prohibitions as well as allowable practices pertaining to organ removal and transplantation. In drafting and/or amending legislation, particular attention should be paid to ensuring that laws do not allow loopholes for exploitation and corruption and that they have extra-territorial jurisdiction.
- It should be made sufficiently clear under the law that consent to the organ removal is irrelevant where one of the improper/illegal means is present. Legislation should also ensure that hospitals can be held liable for their involvement in trafficking in persons for organ removal.
- Advertising (including electronically and through print media) the selling, buying or brokering of organs should be prohibited.<sup>58</sup>

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### 4.3. Regulation and monitoring

Traffickers exploit the fact that countries do not have transparent and transparently audited, regulatory transplant systems. Measures against trafficking for the purpose of organ removal would thus also require that systems and frameworks be put in place that regulate and monitor organ donation and transplantation. Such frameworks should function to identify potentially illegal transplant activities and potential victims of trafficking before their organs are removed.

- The primary objective of transplant policies and programmes should be optimal short-term and long-term medical care to promote the health of both donors and recipients in accordance with the principles of beneficence and non-maleficence to both the donor and the recipient (“do no harm”).
- States, in cooperation with civil society, the medical sector, non-governmental organizations and international organizations, should ensure transparency and accountability in all regulations and practices concerning organ transplantation, and improve the safety and efficacy of donation and transplantation by applying and promoting international best practices.
- Civil society could play a leading role in promoting public discussions, conducting research and monitoring organ donation and transplantation including with a focus on the organ-related crime of trafficking in persons for the purpose of organ removal. Members of the medical and health-care sector could support civil society in this role, and act to ensure that organs are not procured through financial transactions.
- States may want to establish oversight and monitoring tools such as independent ethics review committees. States should generally seek to improve the quality of oversight of both state and private hospitals.
- Prior to organ removal, potential donors must receive complete medical and psychological counselling and evaluation so as to receive full information about the donation process and the risks and consequences thereof in accordance with international regulations.<sup>59</sup> Such counselling should ensure that the potential donor is able to give free and fully informed consent. The counselling should also provide information concerning post-operative health care needs.
- Hospitals shall be required to keep consent forms signed by donors.
- Training should be delivered to persons who encounter potential organ donors, to increase their capacity to identify potential victims of trafficking

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in persons. For instance, persons who conduct psycho-social evaluation may be able to identify potential trafficking victims by assessing the donor's motivations for organ donation, decision-making process, financial and emotional support, behavioural and psychological health and relationship with the recipient, as well as his or her understanding of the process and its consequences.<sup>60</sup>

- Health insurance companies should be discouraged from reimbursing the costs of transplants abroad if the source of the organ cannot be identified. With regards to living donor transplants they should consider only reimbursing transplants abroad if the donor is genetically related to the patient, a spouse of a registered partner.<sup>61</sup>
- In general, stakeholders that could have some relevance for trafficking for organ removal might have to be informed of indicators of the crime. There might also be value in these stakeholders establishing voluntary codes of conduct.

#### 4.4. Detection, investigation, prosecution and adjudication

Trafficking in persons is a transnational crime that requires a transnational criminal justice response. The Trafficking in Persons Protocol sets out to assist States Parties to rally a common response so that criminal traffickers cannot commit crimes with impunity. It establishes a framework for States Parties to adopt legislative and other measures against the crime of trafficking, including through information exchange and training.

Criminal justice experts at the expert group meetings that UNODC organized to develop the present toolkit, noted, that if files of irregular transplants are compared with the files concerning regular transplantations, anomalies would become 'very obvious'. They agreed, though, that law enforcers and criminal justice practitioners face considerable challenges in detecting, preventing and responding to trafficking in persons for organ removal.

Among these **challenges** are:

- The often transnational nature of the crime, with donors coming from one country, recipients possibly from another, and maybe brokers from yet another one, the transplantation taking place in a country different from all these countries, etc.; the crime scene would therefore be different from where donors and recipients live – an ideal setting for criminals.

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- The crime may take place within legitimate sectors.
  - Victims are often reluctant to contact authorities out of fear for the safety of themselves or their families in the event that traffickers retaliate.
  - Victims of trafficking may also fear prosecution for their own role in the process, especially when they have taken or agreed to take money, crossed borders illegally, etc.
  - People who may come into contact with victims of trafficking for organ removal may lack the awareness and resources necessary to identify them as such as well as possible indicators.

**Red flags** that point towards trafficking in persons for organ removal – that is things law enforcers and criminal justice practitioners have to pay attention to (as identified by experts who participated in the expert group meetings UNODC organized to develop this toolkit) – include (but are not limited to):

- Lack of documentation of donor consent; lack of consent forms signed by organ donor for any given organ donation; as well as lack of social reports and psychological reports on the donor;
- Foreign names of donors;
- Somebody with a fresh (48 hours or less) nephrectomy (kidney removal) going on an airplane;
- Immigration authorities seeing a lot of migration to/lots of invitation letters from a particular hospital;
- Groups of people arriving at the same time and put at airport hotel;
- Person arriving at airport with huge amounts of cash strapped around body;
- Persons (that is potential organ suppliers) arriving at the airport claiming they come for medical consultations, but unable to provide any additional information on these consultations, or medical records, etc.

**Sources of evidence include:**

- Transplantation registry of hospitals – has there been a sudden/recent

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increase of live transplants?

- Consent forms signed by donors (and lack thereof);
  - Border and customs officials are in a unique position to be able to search persons and their belongings without search warrant. They may find medical equipment, medication and other utensils needed for surgeries, as well as medical records. The searches may not trigger any instant reactions, but could build up suspicions and gather intelligence.
  - Email records (e.g. between brokers and medical doctors, etc.).
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- Law enforcers are at the frontline concerning the identification of both trafficking victims and traffickers. Police officers, customs, immigration and border officials should be provided with training that equips them to identify potential and actual victims as well as perpetrators of trafficking in persons for the purpose of organ removal. The nature and indications of trafficking in persons for the purpose of organ trafficking – which may have to be compiled specifically - should be known at customs. Identification efforts should also include the investigation of online and printed organ selling/buying advertisements, and websites of transplant clinics offering commercial transplants without mentioning of the organ source.
  - Hospitals and other medical facilities often present an exotic, unusual environment for police. Law enforcers need to be trained to have the skills to manage such crimes scenes. To this end, police should establish cooperation with experts from the Ministry of Health and its sub-departments and offices. Also the cooperation with departments of medical forensics experts at law enforcement agencies will be useful.
  - Many States to date have developed lists of indicators that can help law enforcement and criminal justice practitioners to better detect and identify trafficking in persons and its victims. These should be extended to include indicators to identify trafficking in persons for organ removal.
  - People working in the health and medical sectors should be empowered and given opportunities to identify and report colleagues who are involved in trafficking in persons for the purpose of organ removal. Such reporting should be able to be done anonymously so as to remove fears of professionals or others of consequences for them in making such reports. Appropriate witness protection mechanisms should be utilized to protect such persons from retaliation by traffickers.

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- Governments could consider changing customs or immigration forms to include a question about a person's reason for travel (*medical tourism*) to enable border guards to follow up on potential indicators for irregular transplantation activities.
  - Non-criminalization/non-punishment of victims of trafficking for the purpose of organ removal, including recipients, is necessary to encourage them to approach authorities.

#### 4.5. Protection and assistance

As with all measures taken to combat trafficking in persons, victim protection and assistance is paramount. Victims are often reluctant to cooperate with law enforcement agencies for fear of retaliations from traffickers, for fear of being considered a criminal, out of shame and other reasons. Lack of adequate protection and support for victims and witnesses may hamper investigations, prosecutions and court proceedings. Protection and assistance of victims is also crucial for victims to move on with their lives and not to fall themselves into organ brokering as a means of earning a living or become re-victimized in other forms of trafficking in persons.

- Where medical and health care practitioners suspect that a person could potentially be a victim of trafficking in persons for the purpose of organ removal, they should refer that person to providers of protection and assistance services. Specific protection and assistance services should be made available to victims of trafficking for the purpose of organ removal that cater to their individual, specific needs.
- Where a victim of trafficking has survived organ removal, his or her physical and psychological support needs to be ensured by providing medical care, counselling and support. Such support may include long-term follow up and care to address their psychological injuries from having been trafficked and their physical injuries from having had an organ removed.
- Victims of trafficking in persons for the purpose of organ removal should be supported to take action against traffickers by supporting investigation and prosecution. Such support requires that trafficked persons be given an adequate period of time to recover and the opportunity to consult with appropriate advisers to assist in decision-making regarding cooperation with law enforcement and their participation in judicial proceedings. Such should be done in an environment that allows them to reflect on the procedural and administrative implications of his or her status and make decisions accordingly. Victims could be simultaneously given the opportunities to both



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access services (including those provided by NGO partners) and cooperate with law enforcement to tell them what happened.

- Gender issues relevant to providing psychosocial counselling to victims of trafficking for the purpose of organ removal need to be addressed. According to UNODC, (see section 3.4), men are specifically affected as victims of trafficking in persons for organ removal. In general not much is known about trafficking in men and the protection and assistance needs of men. Consequently, also with regard to trafficking in men for organ removal, more research would need to be done on the psychosocial impact on male victims of trafficking in persons for organ removal.
- Service providers should cooperate in the provision of support and assistance to cater for the specialized needs of persons who might be/are victims of trafficking in persons. Such cooperation should be aimed at improving the level of support given to victims, and better understanding the nature of their victimization.
- Non-criminalization/non-punishment clauses should be applicable to victims of trafficking in persons for the purpose of organ removal. Neither the Transnational Organized Crime Convention nor its Trafficking in Persons Protocol make non-criminalization mandatory, but according to its article 2(b), one of the purposes of the Protocol is to “protect and assist the victims of such trafficking, *with full respect for their human rights*”. There are various non-binding guidelines, declarations and resolutions which call on States to prevent trafficked persons from being prosecuted. Non-criminalization is also an important means of securing victim cooperation in investigation and prosecution of traffickers. The UNODC Model Law against Trafficking in Persons provides a provision on non-liability [non-punishment] [non-prosecution] of victims of trafficking in persons, which uses two different criteria: causation (the offence is directly connected/related to the trafficking) and duress (the person was compelled to commit the offences).<sup>62</sup>
- States should ensure that its domestic legal system contains measures that offer victims the possibility of obtaining compensation for damages suffered and should establish appropriate procedures to provide access to compensation and restitution for victims of trafficking in persons for the purposes of organ removal. Mechanisms to trace assets of traffickers and provide compensation should be put in place. Challenges which victims may face in accessing compensation should be addressed, including the lack of

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awareness about compensation and/or lack of access to information and resources necessary to seek compensation.

#### 4.6. Cooperation and coordination

One of the key purposes of the Trafficking in Persons Protocol is to promote cooperation between States Parties in order to prevent and combat trafficking in persons, prosecute its culprits and protect its victims. Organ donors and recipients may come from different countries. Brokers may be based in another country with surgeons and medical facilities yet again located elsewhere. Operations may be continually relocated to avoid detection by law enforcement. The transnational nature of trafficking in persons for the purpose of organ removal requires international cooperation. Further, given the complexity of the crime and its interrelation with other crime types, cooperation must involve a wide, multidisciplinary range of actors from legal, health, medical, academic and other sectors.

- Where the crime is only addressed in *one* country without taking a cooperative approach with *other* countries, it may simply divert elsewhere. This fact hails a need for cooperation between countries, in developing sustainable prevention strategies, so that traffickers are unable to simply move their operations to areas where legislation and investigation is weak. International cooperation should also seek to establish rules pertaining to overseas transplantation and to pursue international consensus and policy harmonization.<sup>63</sup>
- Member States should exchange information on trafficking in persons for organ removal to enable evidence based responses. They may also develop common guidelines and jointly-agreed indicators.
- To facilitate multidisciplinary cooperation, member States and/or civil society groups should compile an inventory of NGOs, civil society groups, academics, government health, justice ministries and others who may be active in relation to organ-related issues. Such a list should be disseminated among those individuals and other actors who appear on it.

#### 4.7. Data collection and research

There is inadequate information available about trafficking in persons for the purpose of organ removal. This lack of knowledge hails the need for increased data collection and research on trafficking in persons for the purpose of organ removal.

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- More research is needed on trafficking in persons for the purpose of organ removal in respect of issues including the extent of trafficking in persons for organ removal; the modus operandi of traffickers (including recruitment methods); the profiles of people vulnerable to falling victim; profiles and extent of involvement of recipients; trafficking routes used; access to justice available to trafficking victims, etc. In general, more medical, social and scientific research must be conducted into the crime and related conducts.
  - Governments, civil society, and non-governmental organizations should collect data on and research trafficking in persons for the purpose of organ removal. Such research may seek to clarify the relationship between the commercialization of organs and trafficking in persons for the purpose of organ removal.
  - Data should also be collected on the outcomes and long-term impact of irregular/illegal organ transplantations.
  - Further studies and exchange of information should be conducted to identify which factors and systems bear risks of exploitation and trafficking, in countries that are involved in illegal transplantations either as countries of origin for organ suppliers, or as countries of origin for organ recipients, or as countries in which illegal transplantations take place.
  - The role of law enforcement agencies in investigating, gathering more information and sharing intelligence about possible cases of trafficking in organs or trafficking in persons for the purpose of organ removal should be strengthened. Such information and intelligence should also focus on means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, and the links between and among individuals and groups engaged in trafficking in persons for the purpose of organ removal, as well as the possible means of detecting them.

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## **PART 2 – Assessment Tools**

### **1. Introduction**

The complexity of the crime of trafficking in persons for the purpose of organ removal and the inadequate understanding of the phenomenon by those who could prevent and address it, enables organized crime groups to continue their business with relative impunity.

The purpose of this assessment toolkit is to assist users in assessing incidences of trafficking in persons for organ removal and which settings that could encourage or prevent this crime. The assessment tools do not necessarily intend to assist and guide concrete parts of actual criminal investigations, though there are assessment questionnaires that deal with the identification of cases of trafficking for organ removal.

In line with the Trafficking in Persons Protocol, the overall objective of the Assessment Toolkit is to strengthen prevention, protection and prosecution. To this end, the tools below are offered to aid in the assessment of a given situation and/or system, so as to improve evidence-based knowledge of the crime and related issues that will in turn enable a tailored response to trafficking for the purpose of organ removal and appropriate technical assistance.

#### **Who are the assessment tools for?**

The tools are designed for use by both the service sectors, such as the health sector and public sector actors traditionally involved in the response to human trafficking” (such as law enforcement, customs and immigration). The questionnaires can also be used by academia, researchers and policy makers, among others.

#### **How can the assessment questionnaires be used?**

Ultimately it is for the individual user to determine how the tools can be used most effectively. The Assessment Toolkit offers guidance only, providing users with an outline for further inquiry. The tools may inform each other, that means that questions from one tool might be relevant for another.

The relevance of the tools and how they are used will vary depending on the local country context. The questions offered in the assessment tools are a combination of points that should be researched independently by the user, and questions that can be put to practitioners in relevant fields. Generally, questions should be addressed

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by both research and through practitioner interviewers to gather a detailed, balanced and nuanced picture of the situation in a given context.

Not all questions will apply in all situations, and other questions may be more useful than those provided here. Users are therefore encouraged to adapt questionnaires to situations as appropriate, for instance by omitting some questions, by adding others or by revising those that are provided. In any given interview, discussion or research situation, questions may be usefully derived from a combination of tools.

Finally it must be stressed that formal investigation and identification of traffickers should be left to specially trained and qualified criminal justice practitioners. The tools are meant to offer guidance on identifying possible trafficking in persons situations and issues as a starting point for informing evidence-based criminal justice and policy responses.

Each questionnaire is introduced with a box containing guidance as to the content and the intended use of the tool.

**Why** and for what the tool is relevant

**When** it might be useful to employ the tool

**Who** could use the tool

**How** might the tool be used

The boxes are followed by a series of questions and considerations to be applied in a given situation or directed to a specific person.

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## TOOL 1 - Recommendations on the care of living kidney donors

**Why:** Recognizing that the use of kidneys from the living donor needs to be performed in a manner that will minimize the physical, psychological, and social risk to the individual donor, the international transplant community agreed on the below recommendations.

**Going through these recommendations may help in assessing loopholes in existing systems and identify risks of abuse, exploitation and commercial transactions with organs.**

**When:** When assessing transplantation systems. When examining criminal cases to compare regular with irregular procedures.

**Who:** Policy makers, legislators, researchers, law enforcers and criminal justice practitioners, others.

**How:** Comparing the recommendations with the status quo.

### ***Recommendations of the 2004 Consensus Statement of the Amsterdam Forum on the Care of the Living Donor<sup>64</sup>***

*[Please note: "A Report of the Vancouver Forum on the Care of the Live Organ Donor: Lung, Liver, Pancreas, and Intestine - Data and Medical Guidelines" provides similar guidance for lung, liver, pancreas, and intestine donation<sup>65</sup>]*

***1. Prior to a live kidney donation to a potential recipient (known by the potential donor or not known in the circumstance of anonymous donation), the donor must receive a complete medical and psychosocial evaluation to include:***

- Quantification (as available) and assessment of the risk of donor nephrectomy [*kidney removal*] on the individual's overall health, subsequent renal function, and any potential psychological and social consequences including employability);
- Assessment of the suitability of the donor's kidney for transplantation to the recipient (anatomy, function, and risk for transmissible disease).

***2. Prior to donor nephrectomy, the potential donor must be informed of:***

- The nature of the evaluation process;
- The results and consequences/morbidity of testing, including the possibility that conditions may be discovered that can impact future healthcare, insurability and social status of the potential donor;
- The risks of operative donor nephrectomy, as assessed after the complete evaluation. These should include, but not be limited to: the risk of death,

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surgical morbidities, changes in health and renal function, impact upon insurability/ employability and unintended effects upon family and social life;

- The responsibility of the individual and health and social system in the management of discovered conditions (for example, if the donor is discovered to have tuberculosis, the donor should undergo treatment, the community has a responsibility to help the donor secure proper care with referral to an appropriate physician);
- The expected transplant outcomes (favourable and unfavourable) for the recipient and any specific recipient conditions which may impact upon the decision to donate the kidney;
- Disclosure of recipient specific information which must have the assent of the recipient

***3. The potential donor should be informed of alternative renal replacement therapies available to the potential recipient.***

***4. The potential donor should be capable of understanding the information presented in the consent process.***

***5. The decision to donate should be voluntary, accompanied by:***

- The freedom to withdraw from the donation process at any time;
- Assurance that medical and individual reasons for not proceeding with donation will remain confidential.

***6. After kidney donation, the transplant center is responsible for:***

- Overseeing and monitoring the postoperative recovery process of the donor until that individual is stable, including provision of care for morbidity that is a direct consequence of donor nephrectomy;
- Facilitating the long-term follow-up and treatment of the kidney donor with preexisting or acquired conditions (related to uninephrectomy) that are thought to represent a health risk such as - but not exclusive to—hypertension, obesity, diabetes, and proteinuria. In the absence of an established follow-up process for individuals with preexisting conditions that may possibly place the donor at health risk, organ donation should be avoided;
- Identifying and tracking complications that may be important in defining risks for informed consent disclosure;
- Working with the general healthcare community to provide optimal care/surveillance of the living kidney donor.

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### *A Donor Advocate*

In order to minimize the appearance of a “conflict of interest”, transplant centers should make efforts to assure that the medical and psychosocial assessments and the decision to donate incorporates health care professional(s) not involved in the care of the recipient. The concept of this recommendation is to provide a health care professional advocating the welfare of the potential donor. Procedural safeguards should be utilized and explored to minimize coercion and enhance autonomous decision-making, for example, by a “cooling off period” and assessment of donor retention of information.

### *Medical Judgment versus Donor Autonomy*

Donor consent and autonomy is necessary, but not sufficient, to proceed to kidney donation. Medical evaluation and concurrence is essential. Donor autonomy does not overrule medical judgment and decision-making.

### *Minors as Donors*

Minors less than 18 years of age should not be used as living kidney donors.

### *Donor Registry*

An international registry for “sentinel events” after living kidney donation should be established and maintained (including the recording of donor deaths or the need for dialysis or kidney transplantation by the donor). Appropriate prospective research should address the long-term outcomes of donors considered to be at potential increased risk for adverse events.



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## TOOL 2 – Direct questions for immediate assistance for victims

**Why:** To mobilize immediate assistance for potentially trafficked persons.

**When:** When there are indicators for a person – a possible victim of trafficking in persons for the purpose of organ removal –being in need of immediate assistance.

**Who:** Basically anybody who can get in touch with a person – a possible victim of trafficking in persons for the purpose of organ removal – being in need of immediate assistance, including frontline law enforcers and criminal justice actors, NGO workers, airport workers, medical doctors, etc.

**How:** It is key for the person asking to build trust with the person in potential need of immediate assistance. The answers to questions below do not conclusively determine that trafficking in persons or related crimes have or have not taken place. Positive responses are simply indicators that may suggest a situation of trafficking or other crime has taken place which may warrant further consideration and/or signify that police and/or victim service providers should be alerted.

In the event that persons in need of immediate assistance are identified, appropriately qualified persons should be contacted. To aid the rapid mobilization of such persons, appropriate information should be collected in advance and kept on hand for such situations.

- Are you injured? If yes, where and how are you injured?
- Do you need help?
- Does anyone else need help?
- Tell me what happened.
- Do you have a passport or other piece of identification?
- Is anyone threatening you? Has anyone threatened you?
- What were you told would happen? What actually did happen?
- Have you been asked to do anything you did not want to do?
- Are you alone here? A more open question would be: Who is here?
- Where are you staying? Who are you staying with?

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**Frontline officers and first responders should have with them a list of key contacts that would be most important for referrals, such as**

**Police:** \_\_\_\_\_

**Ambulance:** \_\_\_\_\_

**Human trafficking hotline:** \_\_\_\_\_

**Victim service provider:** \_\_\_\_\_

**Child protection provider:** \_\_\_\_\_

**etc.**

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## TOOL 3 – General considerations concerning interviews of organ recipients and suppliers in suspected cases of trafficking in persons for organ removal for criminal justice practitioners<sup>1</sup>

**Why:** This tool serves to gather information on suspected, concrete incidents of trafficking in persons for organ removal.

It could help to identify cases of trafficking in persons and to prepare and conduct interviews with organ suppliers and recipients. In cases of trafficking of persons for organ removal, the investigator will need to be prepared to interview two types of persons; the possible victim - that is the organ supplier - and the organ recipient.

**When:** When there are red flags/clues pointing towards a possible incidence of trafficking in persons for organ removal.

**Who:** This tool would be most useful for law enforcers and criminal justice actors.

**How:** The in-depth questions in this section are divided into the two categories of organ supplier and recipient.

Some questions may be formulated as closed questions, and it should be kept in mind that interviews with organ recipients and suppliers might get in the hands of the defence and that leading questions can be seriously challenged at court and should be avoided. Open questions to organ supplier and recipient could start with “please describe/please tell me (how/what/when/where/who etc.) ...”.

The focus of the investigator should be on identifying victims of trafficking in persons and on investigating traffickers that make such extraordinary levels of profit from this trade, as opposed to on possible criminal acts of both organ supplier and recipient for the sale and purchase of an organ.

### Organ supplier interview

#### *Biographical and family background*

1. Establish exact age and date of birth, nationality, family history and general lifestyle;

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<sup>1</sup>Largely developed by Mr. Paul Holmes, one of the experts at UNODC’s expert group meetings

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2. What were the organ supplier's economic circumstances at the time of his or her recruitment?
  3. What were the factors that prompted the organ supplier to agree to the proposed extraction?

### *Medical history*

1. Establish detailed general medical history prior to the organ removal;
2. What was the general state of health of the organ supplier prior to the organ removal?
3. Had s/he any record of any medical treatments? If so, which?
4. Had s/he received any medical treatment in relation to any problems concerning the relevant organ?

### *Contact with the traffickers/recruiters/brokers*

1. How did the organ supplier hear of the possibility to donate organs? Who contacted the organ supplier and what means were used to establish initial contact established with [recruiter, broker, ...]?
2. What was the location of any meetings? What did it look like?
3. What were the means of communication with the traffickers; personal contact, phone, email, fax?
4. What details were given concerning the identity of the organ recipient?
5. Can the organ supplier describe details of any blood/tissue matching procedures - medical appointments, visits to laboratories or clinics, taking of blood samples;
6. Was the organ supplier given any prior medical briefing as to his or her rights and the risks and consequences to health of the organ extraction?

### *Transportation*

1. What route was taken from home location to venue of the surgery?
2. How did the organ supplier travel (covertly or overtly)?
3. What was the method of transport, vehicle or carrier? Establish precise details;
4. Establish the full history and (where relevant) purchase of identity and or travel documents and visas used to facilitate the travel;
5. Was the organ supplier accompanied on the journey; if so, by whom?
6. Did the organ supplier complete any landing or departure cards at any stage in the journey?
7. Was the organ supplier met on arrival at the venue of the surgery; if so, establish full details and descriptions;
8. How did the organ supplier get from the point of arrival to the venue of the surgery? Establish full transfer details?

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### *Organ removal*

1. What was the location and description of the medical facility; hospital, private clinic? How did it look like?
2. Establish the identity/descriptions of the medical personnel involved;
3. Who else did the organ supplier meet? Did the organ supplier meet with the recipient?
4. Was any medical information provided as to the organ supplier's rights, the risks and consequences of the extraction? What information has been provided to the organ supplier? In which language was information provided? Did the organ supplier understand the information provided?
5. Did the organ supplier sign any documentation providing consent for the surgery and or acknowledgement of receipt of a briefing on the risks and consequences? What did the organ supplier sign? Was the organ supplier asked to sign any confidentiality agreement? In what language was the documentation?
6. Which organ was removed?
7. How long did the organ supplier stay at the medical facility?
8. What was the length and nature of post-operative care?
9. What medication was supplied to the organ supplier?
10. Establish details of the organ supplier's return journey to home;
11. Was any medical follow-up or post-transplant care provided to the organ supplier after s/he returned home?

### *Payment*

1. Was the organ supplier promised any payment? If so by whom? Was there a price for the organ that the organ supplier agreed to prior to leaving home? If so, what was the price?
2. Was the organ supplier told the price that the recipient was to pay? If he had known, would the organ supplier still have agreed to the sale?
3. Was any money paid in advance?
4. What was the method of payment, cash, bank transfer, money transfer; date, time and location of payment; by whom paid?
5. What has happened to the money since the date of payment?

### *Impact evidence*

1. What is the state of health of the organ supplier since the organ removal?
2. Has there been any impact on his or her health and lifestyle and if so what?
3. Are there any indications of deterioration in his or her health and if so which?
4. If available, establish details of medical treatment in relation to the health problems.

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### *Witnesses and suspects*

1. Establish details of all corroborative witnesses; family and friends, medical professionals at home location;
2. Establish detailed descriptions of all suspects involved in the crime; their relationships and roles; their association with each other;
3. Establish any specific incidents illustrating guilty knowledge, especially any incidents to show that the traffickers must have known that the organ supplier was not a family member or spouse of the recipient;
4. Obtain and related information, vehicles used, financial accounts, communications etc.

### **Recipient interview - if identified and available**

#### *Biographical and family background*

1. Establish exact age and date of birth, nationality, family history and general lifestyle;
2. Establish economic circumstances at the time of the illegal transplant.

#### *Medical history*

1. Establish a detailed medical history prior to the offence; general health, record of any medical treatments;
2. Establish detailed medical history in relation to any problems concerning the relevant organ; treatment centres and doctors, location of medical records;
3. What was the recipient's state of health and medical prognosis prior to the transplant?
4. What did the recipient believe the impact of the medical condition on life expectancy and lifestyle?
5. What exactly were the motivating factors to seek illegal transplant (outside the national regulatory transplant system)?

#### *Contact with the traffickers/recruiters/brokers*

1. By whom and by what means was initial contact established with the traffickers?
2. What was the location of any meetings? How did it look like?
3. What were the means of communication; personal contact, phone, email, fax?
4. What details were given concerning the identity of the organ supplier and the reasons for the donation?

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5. What blood and tissue matching procedures took place - medical appointments, visits to laboratories or clinics, taking of blood samples, etc.?
  6. Was the recipient provided with prior medical briefing as to his or her rights and the risks and consequences of the transplantation and if so with which?

### *Transportation*

1. What was the route from home location to venue of the surgery?
2. How did the recipient travel (covertly or overtly)?
3. What was the method of transport, vehicle or carrier,
4. Establish the full history and purchase of any identity and or travel documents and visas used to facilitate the travel
5. Were any departure or arrival immigration cards completed on the journey; if so, establish full details of venues and names used

### *Organ transplantation*

1. What was exact location of the medical facility; hospital, private clinic?
2. Establish the identity and description of the medical personnel involved;
3. Was any medical briefing provided prior medical briefing as to the rights, risks and consequences of the transplantation?
4. Did the recipient sign any documentation consenting to the surgery?
5. Was the recipient asked to sign any confidentiality agreement?
6. Which organ was provided?
7. How long did the recipient spend at the facility?
8. Did the recipient meet with the organ supplier at any stage and or does the recipient know the identity of the organ supplier
9. What was the length and nature of post-operative care?
10. What medication was supplied to the recipient?
11. Establish the details of return journey to home;
12. Did the recipient receive any post-transplant care provided at home? If so, establish full details

### *Payment*

1. What price was agreed by the recipient to purchase the organ?
2. What was the recipient's source of the money; did the recipient pay from own resources, borrow it or was the sum paid through private medical insurance;
3. What was the of method of payment; cash, bank transfer, money transfer; date, time and location of payment; to whom paid
4. Would the recipient have paid the price if s/he had known how much was paid to the organ supplier?

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### *Impact evidence*

1. Establish the state of health since the transplantation
2. What has been the impact on health and lifestyle?

### *Witnesses and suspects*

1. Establish details of all corroborative witnesses; family and friends, medical professionals at home location;
2. Establish detailed descriptions of all suspects involved in the crime; their relationships and roles; their association with each other;
3. Establish specific incidents illustrating guilty knowledge, especially any incidents to show that the traffickers must have known that the organ supplier was not a family member or spouse of the recipient;
4. Establish any related information, vehicles used, financial accounts, communications etc.



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## TOOL 4 – Identifying and understanding concrete, potential trafficking for organ removal situations<sup>2</sup>

**Why:** To gather information on actual situations of possible trafficking in persons for organ removal and identify cases of trafficking in persons and to bring some of potential indicators of the crime to light.

**When:** When there are red flags/clues pointing towards a possible incidence of trafficking in persons for organ removal. Parts of this tool can be useful for third party interviews.

**Who:** This tool would be most useful for law enforcers and criminal justice actors, but also other relevant actors who could interview suspected victims of trafficking for organ removal, organ recipients and other relevant third parties. There are several other stakeholders who may identify persons who might have been trafficked for organ removal. Such persons may include medical and health care practitioners, non-governmental service providers, social welfare representatives, embassy personnel, travel agents or persons involved in the travel industry.

The questions below may also be useful in known situations of trafficking in persons for the purpose of organ removal to enable researchers and others to paint a more complete picture of what has taken place.

**How:** Also for this tool the following has to be considered: Where used to interview organ suppliers/victims of trafficking for organ removal directly, interviewers using this tool should be mindful that the content of the interview might get in the hands of the defence in some way; they also need to consider that leading questions can be seriously challenged at court and should be avoided. Open questions to organ supplier/organ recipient/other third parties could start with “please describe/please tell me (how/what/when/where/who etc.) ...”.

### *Recruitment of organ supplier and means*

- In order to find out if s/he left the country of his or her own free will:
  - What was s/he told s/he would do? What did s/he actually do?
  - What were the circumstances in which s/he left her/his country?***[Please note that not every person trafficked for the purpose of organ removal had to leave his/her country of origin!]***

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<sup>2</sup>This tool is very similar to tool 3, providing some more detailed questions.

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- Was the organ supplier abducted/forced/coerced to leave the place?
    - If yes, how?
    - From where was s/he recruited or abducted?
  - Was any force used at any stage? If so by who?
  - How did s/he first find out about the person that made the arrangements/brought her/him here?
  - How did s/he come into contact with the recruiter(s)? Can s/he describe them? What did these persons call themselves?
  - How did the organ supplier come to be an organ supplier?
  - How did s/he meet the broker? Who approached who?
  - What was explained to the donor throughout the process? By who?
  - Was the organ supplier asked to introduce the broker to another potential organ supplier? Or to become a recruiter her/himself?
  - What was the organ supplier's socioeconomic situation and level of education at the time of recruitment/*(where relevant:)* before leaving?
  - What was the person thinking/expecting at the time of recruitment/*(where relevant:)* before leaving the place of origin?
    - How were his or her expectations different to the situation that eventuated?
  - What were the promised arrangements e.g. contract/owing money or favours/visa arrangements etc.?
  - Did the person fully understand what the arrangement would mean for him/her?
  - What was the organ donor explained about the function, use, shape etc. of the organ in her/his own body?
  - Was the victim told that s/he would have an organ removed? Under what conditions?

- 
- How was the organ supplier encouraged/persuaded etc. to 'donate' her/his organ? (Was s/he offered any payment? If so how by whom and how much?)
  - (*Where relevant:*) How was the organ supplier treated during the journey or upon arrival in the destination country? (Did s/he suffer threats or use of violence?)
  - What was organ supplier told about the need to know about his/her health status (if anything)?

### *Routes and travel*

- How did s/he get here?
  - Who knows s/he is here? [**Direct references to a possible victim's family are best avoided, to reduce the chance of distress.**]
  - How did s/he leave her/his country? (Covertly or overtly?) [**Please note that not every person trafficked for the purpose of organ removal had to leave his/her country of origin.**]
  - Where a person has been transported to another country, what was the person's immigration status upon arrival in the destination country?
  - What routes were taken?
  - What ports of departure, transit, arrival were used?
  - What modes of transport were used for each leg of the journey?
- Who did s/he travel with to the destination country? [**For instance: alone, with another person or people recruited by the same or other person, other?**]
- Who organized the journey? Did that person travel with the organ supplier?
- Did the organ supplier pay for his or her travel? If yes, how much? If no, who paid?
- Were any personal documents or other belongings taken away from her/him? By who?
- How long was the journey? How much time was spent in each city/country during the journey?

- 
- How were the conditions of the travel? What did s/he know about the conditions of the journey prior to embarking on it?
  - Where did s/he stay along the journey? Hotels or houses? Was s/he allowed to come and go? Could s/he communicate with who s/he wanted?
  - How many other people were present during the journey and upon arrival in the destination country? Who were these people?

#### *Costs, debts, documents*

- How was the travel arranged? [**Was there any third party arranging travel/ documents/work?**]
  - If arranged by a third party, what was the premise? (Professional agency/member of family/ friend/member of community, etc.)
- On which type of visa did s/he enter the destination country, if any? (For instance, tourist visa, work visa, spousal or other family visa, etc.)
- Did s/he use fraudulent documents for her/his journey to the destination country?
  - Which documents were used and how were they falsified?
- Did s/he pay for these documents?
- Did s/he incur any debt prior to leaving the country?
  - To whom? When? What for? How much?
- What was/would be the consequence of not paying off the debt?
- Was his or her passport or travel document taken away at any point of the journey?
  - If so, did he or she get it back? How? Under what conditions?

#### *Arrangements concerning organ supplier and recipient*

- What is/was the claimed (and the actual) relationship between the organ supplier and the recipient?
  - How has this relationship been verified? For instance, what do the organ supplier and the recipient know about each other?
  - Is kinship required by law for direct donation? If so, how is it proven?

- 
- Does the person have any family photos or other items which would suggest that a relationship exists?
  - Is the donor an employee, student, etc. of the recipient which could imply a potential conflict of interest?
  - In situations of spousal donation, how has non-duress / coercion been established?
  - What is the language/cultural background of the organ supplier? What is the language/cultural background of the organ recipient? (Where there is no common language, culture or background between the donor and recipient, further inquiries should be made as to motivations on both sides.)
  - Is there a power imbalance between the donor and the recipient? (For instance, where a student 'donates' to his or her teacher or where an employee 'donates' to his or her employer, there may be potential conflicts of interest or coercion.)

#### *Location considerations*

- In which country was the organ removal and transplantation carried out?
- Did the organ supplier have to travel for the purpose of having his or her organ removed? From where? What was the route taken? Who arranged the donor's travel? Who funded his or her travel?
- Did the recipient have to travel for the purpose of receiving the organ? From where? What was the route taken? Who arranged the recipient's travel? Who funded his / her travel? What was the cost of the journey / accommodation?
- Where was the organ transplantation carried out? In which facility / institute? Where in the facility / institute? At what time? (Where an organ transplant takes place after hours or in a discreet section of a hospital, this could be an indicator of an intention to carry out an irregular transplant.)
- Why was the transplantation carried out in this country? (For instance, to bypass the waiting list for organ donation or for insurance reasons.)

#### *Organ removal*

- Has the donor undergone an evaluation process?

- 
- Was the donor aware that the removal was about to take place? (If the donor did not know that a removal is about to take place or has taken place, this should be a clear sign of trafficking in persons for the purpose of organ removal.)
  - Where did the removal take place? (For instance, in a hospital, hospital basement, temporary facility, private home, unsure? Where the removal takes place outside of a medical facility, suspicions of trafficking should be raised.)
  - At what time did the removal take place? (Removals performed outside of normal working hours can be an indicator that attempts are being made to undertake the procedure covertly.)
  - Who was present at the removal?
  - Was the removal performed in accordance with standard practice? If not, why not? (The organ supplier may not know. This may have to be established by the interviewer through other sources of evidence.)
  - Was the surgical wound appropriately sutured with care taken to minimize scarring and infection? (Where a surgical wound is not carefully closed and cared for, the result could be significant scarring and /or infection. Therefore, physicians may be able to see from the type of scar from e.g. kidney removal whether or not the procedure was carried out carefully and appropriately with concern for how the organ supplier would recover and his or her wounds would heal.)
  - Was the organ supplier requested to sign any documentation before the actual removal of his or her organ? Where applicable: Did the organ supplier understand what he or she signed?
  - What was the organ supplier told about the risks of the operation and the post-operation needs?
  - Did the donor have a donor advocate (e.g. nurse, social worker, doctor, etc.)?

### *Quality of care*

- How quickly after the organ removal was the organ supplier discharged from the hospital/medical facility? (To establish if the organ supplier and/or the recipient were discharged from the facility earlier than the usual time for discharging patients following organ removal or transplantation.)

- 
- Was the operation and pre and post-operative care comparable quality for both the donor and recipient? (Poor quality care of the donor and high quality care of recipient may indicate that the transplantation is motivated by economic rather than health and ethical considerations.)
  - Was the donor registered for follow-up care?
  - What is the health condition of the donor following the organ removal? What was his or her rate of recovery? (For instance, unusually slow recovery and/or untreated complications could indicate poorly performed organ removal and or low/no follow up health care.)
  - What is the health condition of the recipient following the organ removal? What was his or her rate of recovery? (For instance, complications resulting from an incompatible organ could imply that appropriate checks were not performed before the transplantation was carried out.)
  - What follow-up health care was given to the organ supplier?
  - What follow-up psychological care was given to the organ supplier?
  - Who was responsible to follow up with and/or coordinate health care of the organ supplier following the removal?
  - Was the organ supplier required to travel to receive follow up care? If so, what resources were provided, if any, to facilitate the organ supplier's travel?
  - What is the organ supplier's current status in his or her community? Has it changed? Is s/he stigmatized?
  - Does he or she regret the organ donation?

### *Financial considerations*

- Was the transplantation paid for? If yes, how much did it cost?
- Who paid for the transplantation?
- Who received the payment?
- Was the payment documented? If so, where and by who? If not, why not?
- How was the payment made (i.e. cash, electronic transfer)?
- Was money deposited in a third country? To whom?

- 
- Was there any insurance coverage for the operation? If so, how much? If not, why not?
  - Was the organ supplier promised any payment? Did the organ supplier receive any payment? If so, was the amount received by the donor the same as the amount promised to him or her? Or has there been no payment when payment was promised?
  - Was some other reward, benefit or payment (non-monetary – e.g. a car) provided to the donor?



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## TOOL 5 – Considerations in evaluation of potential organ donors

**Why:** Several people may come across potential victims of trafficking in the course of evaluating organ suppliers including physicians, surgeons, medical and surgical directors, social workers, psychiatrists and bioethicists. Generally, there are two tiers of evaluation of organ suppliers, both of which present opportunities to identify possible victims of trafficking in persons for the purpose of organ removal.

- *First level evaluation:* social workers, psychiatrists, bioethicists.
- *Second level evaluation:* hepatologists (doctors specializing on treatment of liver, gallbladder, biliary tree, and pancreas)/nephrologists, surgeons, anesthetists, practitioners involved in blood/urine test, imaging, electrocardiography.

**When:** In the course of bioethics evaluation, the nature of the considerations addressed, may prove particularly useful in identifying possible victims of trafficking in persons for the purpose of organ removal among organ suppliers.

**Who:** The below considerations concern bioethics evaluation but are offered for all practitioners who may come into contact with victims of trafficking in persons among potential donors.

**How:** It is suggested that people involved in first and second level evaluation bear below considerations in mind in their work; appropriately tailored questions could potentially be incorporated into screening interviews and evaluations.

### *Psycho-social considerations*

**General question:** Is the potential donor a suitable candidate for organ transplantation?

**Underlying question:** Is the potential donor a potential victim of trafficking in persons?

- Does the donor have a medical record? (In questioning potential donors, evaluators should review medical record if one exists. If none exists, ask why.)
- What medications is a donor taking? Are any of them psychiatric?
- Ask the potential donor about his/her medical history. Does what he or she says comply with what is on his/her medical history?

- 
- Ask why s/he wants to be an organ donor. What reasons does the donor give for wanting to donate his or her organ?
  - Has s/he had a surgical procedure before?
  - Does s/he have medical insurance? For how long? Will late or long-term complications be covered?
  - Find out about any drugs or medical history of the potential donor. (The social worker will do the same; notes can be compared to see whether answers are consistent. If not, this could be an indication that responses are being fabricated and/or the potential donor has been coached.)
  - Find out whether spouse/family is supportive. (Again, the social worker will do the same, but notes can be compared for consistency. Also, questions about the family's support or lack thereof may offer insightful responses relative to trafficking in persons. Responses may hint at the family's financial need or their concerns about the welfare of the potential donor. Alternatively, the potential donor's concern for the welfare of his or her family may come to light.)
  - Ask about the potential donor's financial situation. (Financial problems such as recent bankruptcy, unemployment, significant debt or poverty can be an indicator of a potential trafficking situation or payment for organ or vulnerability to falling victim to trafficking.)
  - Does the potential donor want to donate part of their liver? If so, why not kidney? (He or she could have a renal (relating to kidney) problem/history of renal problem. Liver donation poses a higher risk than kidney donation – why is he or she choosing a higher risk procedure? The choice or lack of understanding thereof could be an indicator of a trafficking situation.)
  - Is the donor's motivation reasonable, understandable, and consistent with the motivations of other donors?

### *Donor's understanding*

**General question:** Does the potential donor understand the nature, process and consequences of organ removal?

**Underlying question:** Has the potential donor been misinformed or deceived about the nature, process and consequences of organ removal?

- For how long has the donor been contemplating donation?
- Does the potential donor appear to understand the information conveyed to them?
- What is the potential donor's level of knowledge about donation?
- Has adequate information been provided to the donor?

- 
- Does the donor fully understand the risks of the procedure? (Questions concerning whether or not the potential donor understands risks of a procedure go to issues of whether or not his or her consent is fully informed.)
  - Does the donor have adequate capacity for decision making?
  - Does the donor have realistic expectations regarding the amount of time needed for recovery and return to work?
  - Does the donor understand the success rate for transplant?
  - Has the donor made realistic plans for surgery and the recovery period?
  - What sort of physical, financial and emotional support does the donor have during the recovery period?

### *Behavioural considerations*

**General question:** Does the potential donor's behaviour give any cause for concern?

**Underlying question:** Does the potential donor's behaviour give any cause for concern that he or she may be a victim of trafficking in persons?

- Observe behaviour of potential donor. Is he or she:
  - Overly eager?
  - Extremely anxious?
  - Confused?
  - Fearful? Or conversely fearless?
  - Under influence of drugs or otherwise not of sound mind?
  - Show poor cognition?
  - Show poor knowledge about donation / transplantation?
- Does the donor ask inappropriate questions or make comments such as 'How much can I get paid for this?'
- Show signs of shame and victimization? (He or she may be experiencing stigmatization for having fallen victim to the crime.)
- How does the donor respond when risks are discussed with them?
- Do his or her responses appear to be rehearsed? (If the responses of the potential donor appear to be rehearsed or memorised, this could be an indicator of his or her having being 'coached' by the trafficker.)

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## TOOL 6 – Assessment of screening procedures

**Why:** Organ donors should be appropriately screened before they are accepted as eligible for organ donation. Screening should include medical checks and psychological evaluation. Medical checks should be performed by practitioners who are in no way involved in the organ removal and transplantation to avoid potential conflicts of interest and to protect procedures from possible infiltration by corrupt practices.

Where such checks have not been carried out on a potential organ donor or a person who has already had an organ removed, this can be a possible indicator of trafficking in persons.

**When:** This tool will be useful when there are red flags/clues pointing towards a possible incidence of trafficking in persons for organ removal.

Assessing screening procedures, even when there are no red flags/clues pointing towards a possible incidence of trafficking in persons for organ removal, could also help identify irregularities.

**Who:** Law enforcers and criminal justice experts, doctors and other medical professionals, service providers, researchers, and others.

**How:** This tool might be used together with tool 1 (“Recommendations of the 2004 Consensus Statement of the Amsterdam Forum on the Care of the Living Donor” and/or other existing national and international guidance on organ transplantation).

### *Assessment of medical checks*

- Were medical checks given to potential donors before the removal took place? (If medical checks were not given to the donor prior the removal taking place, this bad practice could suggest that person was identified and the removal took place through non-legitimate channels.)
  - If not, why not?
  - If so, what type of medical checks took place? Did the assessment include:
    - Medical, behavioural and travel history?

- 
- Medical examination and tests to ascertain fitness and suitability, and to assess risks to recipient?
  - Donor size and blood group, tissue type and any other information relevant for compatibility?
  - Pregnancy so as to avoid risks to unborn child in pregnant women?
  - Was the donor asked to produce documentation proving his or her age, medical history etc.?
  - Who performed the medical checks? (Medical checks should only be undertaken by physicians uninvolved in the removal, the transplantation or the care of the potential recipient.)
  - Was the medical check fully documented?
  - Was the written evaluation provided to the physician for his / her evaluation prior to undertaking the removal and subsequent transplantation?
  - Were minimum criteria for eligibility met? For instance, does the person have any lifestyle habits or traits that would have made him or her an unlikely eligible candidate for organ donation? (For instance, the donor is a smoker, substance abuser or is obese. Generally such characteristics would exclude a person from organ donation eligibility. Acceptance of such persons as organ donors notwithstanding these issues could indicate financial incentives.)

### *Psychological evaluation*

- What psychological or other evaluation was the donor given prior to the organ removal?
- Who performed the psychological evaluation / interview prior to the removal of the organ? (Evaluation / interview should only be undertaken by physicians uninvolved in the removal, the transplantation or the care of the potential recipient)
- Was anybody else present? Who?
- What was he or she asked?

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- If the donor could not speak the same language as the evaluator, was an interpreter provided? Was the interpreter someone not related to the donor or the recipient?
  - Were cultural and gender considerations taken into account in evaluating the donor?
  - After the initial screening, was the donor referred to an evaluation committee?
  - Was the donor given any medication during the evaluation? (For instance, in a trafficking situation, medicine could be given to donor by an evaluator to lower their blood pressure so as to pronounce them eligible for organ donation.)
  - Did psychological evaluation include examination of the relationship between the potential donor and the recipient?
  - Did the psychological evaluation include the reason / motivation for donation?
  - What was the nature of the information provided to the potential donor? Was it accurate?
  - Was anything signed by the donor? Did he or she understand what was signed?

#### *Documentation of screening*

- Was the medical and psychological evaluation fully documented?
- Was a standard questionnaire used to document the evaluation?
- Are there records of the evaluation of the donor? If not, why not?
- Where are records of evaluation kept?
- Who has access to these documents?
- Are documents complete? For instance, is psychological report included? Is the report complete? If not, why not? Is information about organ donor kept? Is information about organ donor complete or are there gaps of information?

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## TOOL 7 – Full and informed consent

**Why:** To assess a potential victim's consent to the organ removal and how it was obtained, so as to establish whether full and informed consent has been provided by the organ supplier to the organ removal.<sup>3</sup>

As per article 3 of the Trafficking in Persons Protocol, the consent of a person to the organ removal is irrelevant where any of the means - threat or use of force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, or giving or receiving payments or other benefits to achieve the consent of a person having control over another person – have been used.

In addition to the role that consent plays in trafficking in persons, the role that consent plays in organ removal must be considered. Where a person agrees to give his or her organ to another person, his or her consent to do so must be given in a way that is clear, whether it is written or in front of an official body. Such consent must be provided only after the person has been given adequate information and time to consider it, so that his or her consent is fully informed. In trafficking in persons situations, victims of organ removal may be coerced or deceived into giving written or other consent. A person may have been e.g. deceived as to the conditions (such as payment), the consequences to his or her long term health, his or her employability and productivity after the operation, etc.

It should also be noted that organ removal operations might require two different types of consent, one regarding the evaluation process of the donor and another one the actual surgical procedure.

**When:** This tool can help in revealing clues and evidence pointing towards trafficking in persons for organ removal. It would usually be used after an organ removal was performed.

**Who:** Law enforcers and criminal justice experts, doctors and other medical professionals, service providers, researchers, and others.

**How:** (Some of) the below questions can be posed to the organ supplier, as well as to medical personnel and other relevant professionals involved in the medical consent procedures for a particular transplantation.

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<sup>3</sup>It might not be easy to establish in a general manner what is normal and what is abnormal. What experts at UNODC's expert group meetings agreed though, is, that it is would e.g. not be possible that an anaesthesia team claims they did not know what the surgery was about.

- 
- Has the donor reached his or her decision free from coercion?
  - Did the donor fully understand the medical procedure that he or she was about to undergo, including potential risks?
  - Did anyone try to influence the donor to donate?
  - *(Where relevant, that is where a form has been signed:)* Before signing a consent form, was a face-to-face interview performed by an independent physician not involved with the transplant team? (If not, this may be an indicator of coercion or deception.)
  - If the donor was a minor, was appropriate counselling given to the donor and his or her parents/legal guardians before consent was obtained?
  - Was the donor explained their right to withdraw consent?
  - If there was a withdrawal of consent, has this been respected by the medical and other relevant professionals?
  - Has the donor freely given consent or has he or she been unduly influenced by the recipient, family members, members of the transplant team or others?
  - Has the donor freely chosen to donate, with no pressure, coercion or improper incentives to donate?
  - Was the donor offered any financial or material incentives to donate?
  - Was the threat or use of force used to obtain the donor's consent?
  - Did the donor feel pressured to consent by virtue of his relationship with the recipient or another person? (Please note that this can also be the case in legitimate donations.)
  - Has the donor in any way been deceived as to the nature, process and/or consequences of organ removal?
  - Was the donor fully informed about the nature and health-risks of the procedure, recovery and the impact of organ removal on his/her long-term health? Alternatively, has the person been misinformed about these issues?
  - Who asked the donor to consent?



- 
- How was the consent given by the donor / potential victim? (E.g. in front of committee/official body or informed written consent.)
  - Did the donor sign any form before or after the organ removal?
  - If the donor signed a consent form: did he or she understand the content of that form?
  - What language was the documentation in? What language does the donor speak/read?
  - Was the document explained to the donor? What was the explanation? Who provided the explanation?
  - How old is the donor? If the donor is a minor, what are the rules concerning informed consent of minors (their parents/legal guardians)? Have those been obeyed?
  - (*Where applicable/required:*) Did the donor give consent before an official body?
    - If not, why not?
    - If so, who is the official body comprised of? Do any persons in the body have an interest in whether or not the donor gives consent or not?

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## TOOL 8 - Identification of potential recipients of organs from trafficked persons

**Why:** Doctors and other persons may come into contact with recipients of a trafficked organ or an organ from a trafficked person. Some such recipients may return to their countries of origin and seek follow-up care in the recovery stage following transplantation. Others may require medical attention as a result of complications arising from poorly carried out transplantations or poorly-matched organs. Doctors or others may also come into contact with people prior to their receipt of an organ from a trafficked person, and be able to identify that a person is considering or has decided to obtain an organ outside legitimate procedures.

**It should be noted, however, that in the case of organ recipients having acquired or considering to acquire an organ outside the legal transplantation system, very little reporting is needed – there are usually no reporting mechanisms in place. It should also be noted that travel abroad for transplantations does not necessarily involve illegitimate purposes (there could, e.g. be a relative abroad). Countries should make an effort to document – maybe on an anonymous basis, to paying attention to the issue of confidentiality – who got an organ abroad. If patients know they will be reported they may not take good after-care.**

**Therefore the answers to this questionnaire maybe be used for research purposes, to inform the design and key messages of awareness raising campaigns among patients, and similar purposes.**

**Ideally, was would need to be found to use that information to get clues for possible cases of trafficking in persons for the purpose of organ removal.**

**When:** When there are signs that a patient has acquired or is considering to acquire an organ outside the transplantation systems. (When the only explanation for the drastic improvement of the health situation of a persons can be that that person received a transplant.)

**Who:** Medical doctors and other relevant medical professionals, service providers, researchers, and others. Possibly law enforcers and criminal justice experts.

**How:** Given the different range of situations, and the complexity of issues involved, the considerations below must be amended depending on the circumstance and depending on whether the person has already received an organ or not.

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### *Vulnerability considerations*

- What factors make him or her a likely or unlikely organ recipient? (e.g. age, health, waiting time) (A person who is unlikely to receive an organ may be more likely to seek alternative assistance to procure an organ than a person who is more likely to receive an organ through legitimate processes.)
- Does the person in need of an organ have a family network containing possible candidates for donation? (If no living donors can be found among the person's network or family he or she may want to look beyond.)

### *Transplantation*

- How did the recipient arrange his/her organ transplantation?
  - For instance, was a broker used?
  - How did the broker and the recipient find each other?
- Did the recipient request his/her medical records from doctor / health care or medical facility? For what purpose?
- In what country is/was the transplantation carried out? I.e. which country in relation to the recipient's country of residence?
- Where did the transplantation take place? For instance, did the transplantation take place in a medical facility or elsewhere? If in a medical facility, which one?
- What was the cost of the transplantation for the recipient?
- How much did the recipient pay for his or her organ transplantation?
- Did the recipient pay additionally for his or her travel?
- Who arranged travel and accommodation for the recipients? (Some trafficking operations arrange travel, accommodation and other services for recipients.)

### *Post-transplantation*

- How long after the transplantation was the recipient released?
- Is the recipient returning from overseas after having received an organ transplantation?

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- What information can the recipient provide about his or her transplantation, where it took place and who performed it? (Where a recipient has inadequate, incomplete or inaccurate information, this could be an indicator that the transplantation has been carried out illegitimately.)
  - Does the recipient return with adequate reports of operative events and risks of donor-transmitted infection or a donor-transmitted malignancy? (Some recipients of trafficked organs or organs from trafficked persons return home with inadequate reports of the operation and do not know of risks of donor-transmitted infection such as hepatitis or tuberculosis, or a donor-transmitted malignancy.)
  - Where does the recipient receive aftercare?
  - What is the health condition of the recipient after the transplantation? For instance, is the recipient experiencing unusual complications or infections? (Low quality of life following transplantation, or even resulting death could be a result of an incompatible kidney or a low-quality kidney. This in turn could indicate that appropriate checks were not carried out on the kidney or that the transplantation was not correctly carried out, potentially signifying financial rather than healthcare incentives for carrying out transplantation)
  - What does the recipient know about the donor?
    - Has the recipient had the opportunity to meet the donor?
    - What information about the donor has been provided to the recipient? For instance, does the recipient know about the donor's:
      - Health?
      - Nationality?
      - Education level?
      - Employment and socio-economic status?
      - Motivation for organ donation?

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## TOOL 9 – Legal assessment

**Why:** Weaknesses in the legislative framework concerning organ removal and transplantation as well as trafficking in persons, make a country attractive for exploitation by criminal networks involved in trafficking in organs and people for organ removal. Therefore it is useful to canvass a picture of the relevant legal framework involved, to both inform gaps in law that may be being exploited and to guide the processes of strengthening the legal system.

**When:** When reviewing/amending/creating relevant legislation on trafficking in persons/organ transplantations/care for donors, etc., seeking to identify loopholes, risks of abuse, exploitation and commercial transactions with organs.

**Who:** Legislators and policy makers, national coordinators on trafficking in persons, legal researchers and other relevant practitioners.

**How:** The following questions may be answered by means of legal research and/or through discussions with relevant practitioners.

### *Trafficking in persons legislation*

- Has the Trafficking in Persons Protocol been signed/ratified/acceded to?
- Have other relevant regional or international instruments been ratified/acceded to?
  - Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
  - Additional Protocol to the Convention on Human Rights and Biomedicine, on Transplantation of Organs and Tissues of Human Origin
  - Other (Please see section 2 of part 1 of the present toolkit.)
- Does the law criminalize trafficking in persons? Which law addresses the issue? (Stand-alone legislation/penal code/etc.)
- Does trafficking in person's legislation also address/criminalize trafficking for the purpose of organ removal?

- 
- Is the national legal framework in line with international standards, safeguard and relevant international instruments? (Please see section 2 of part 1 of the present toolkit.)
  - In the absence of specific legislation on trafficking in persons for the purpose of organ removal, which other criminal acts apply? E.g. irregular transplantation, assault, offences causing bodily injury, violation of transplantation laws, homicide, kidnapping, fraud, corruption, participation in organized crime?
  - What sanctions are imposed for crimes relating to trafficking in persons for the purpose of organ removal?
    - E.g. prison sentence of specified number of years
    - Revocation of professional licenses
    - Others, please specify

### *Criminal liability*

- Is liability established/ensured for organ brokers? Health care professionals? Other?
- Can recipients of organs held liable for acquiring organs outside the legal transplantation system?
- Where criminal liability is not established, can culprits be held civilly or administratively liable?
- Can medical/health care practitioners be held liable for willful blindness/failure to report? (For the latter, if so, where would they be able to report to?)

### *Liability of legal persons*

- Does the law establish the liability of legal persons (hospitals and other health and medical facilities, etc.)?

### *Jurisdiction*

- Where the crime or parts of the crime is committed outside the country, can extraterritorial jurisdiction be established? On what grounds? (E.g. Where committed by a national in another country).

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### *Organ transplantation legislation*

- How is organ transplantation regulated by law? Please specify.
- Are there other guidelines/regulatory structures governing transplantations? Please specify.
- Is specific legislation in place for donation and transplantation activities?
- Do penalties apply in the event of selling and buying of organs?
- Is there explicit prohibition of trafficking in persons for organ removal (and also organ trafficking) in the legal framework?
- Is traceability of organs specified by law?
- Is regulation at the federal, state, provincial, territorial, regional or local level?

### *Organ donation from living persons*

- Is it legal for living persons to donate organs?
  - If so, under what conditions? E.g. only if suitable organ cannot be obtained from deceased owner? Only if transplantation would not result in serious health consequences for the donor?
  - If so, under what conditions is it prohibited? E.g. if suitable organ can be obtained from deceased owner? If transplantation would result in serious health consequences for donor? If organ donor has mental disorder, if organ donor in custody, if organ imported from particular countries under particular circumstances.
- Which organs can be donated?
  - Liver
  - Kidney
  - Other
- Is payment for organs illegal?
  - If payment is legal, is the payment specifically regulated and how? Who regulates, monitors and administers payments?
- Is it possible to receive **compensation** for organ donation?

- 
- If so, what does the compensation cover? E.g. financial loss or the costs of the transplantation and of the necessary care for recovery?
  - What does the compensation not cover?
  - Who pays the compensation?
  - How is compensation calculated?
  - How is compensation regulated?
  - Can non-relatives of the recipient donate organs?
    - If so, under what conditions? E.g. where recipient has no relatives or where relatives are not suitable? After receiving information from two or more doctors? Upon approval / authorization by ethics committee? Other?
    - If not, what familial status is required? How is familial status proven?
  - What other criteria must be met to allow the donation of living organs from living persons?
    - Non-remuneration?
    - Minimum age?
    - Relationship between donor and recipient?
    - Voluntary donation?
    - Prior information about possible risks?
    - Anonymity?
    - Right to withdraw?
    - Other?
  - Is it legal for health insurances to cover expenses linked to the acquisition of an organ outside the legal transplantation system?
  - What are the criteria for **consent** for organ donation from a living donor?
    - Informed about the purpose and nature of the removal?
    - Informed about consequences and risks of the removal?



- 
- Voluntary, free from coercion and undue pressure?
  - Presence of witnesses such as magistrate or judicial authority?
  - Written consent?
  - Written report from ethical committee of hospital or other entity?
  - Consent of Minister of Health or other government body?
  - Other?
  - If **minors** are able to donate, under what conditions?
    - Where authorization from parents / guardians / legal representatives provided?
    - Only where recipient is a sibling?
    - Other?
  - Does law prohibit the **buying and selling** (outlaw the commercialization) of organs?
  - Is there a central transplantation institution or registry responsible for overseeing organ allocation and transplantation?
    - Does the state supervise and regulate decisions made by the institute/registry?
    - How is the institute/registry funded?
    - How is the institute/registry audited?
  - What other relevant government and non-government institutions, committees and/or other bodies are involved in organ donation and transplantation? What is their role?
  - How are state and private hospitals regulated, monitored and audited?

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## TOOL 10 – Assistance and protection measures in place for victims of trafficking in persons for organ removal<sup>4</sup>

**Why:** Weaknesses in the legislative framework concerning organ removal and transplantation as well as trafficking in persons, make a country attractive for exploitation by criminal networks involved in trafficking in organs and people for organ removal. Therefore it is useful to canvass a picture of the relevant legal framework involved, to both inform gaps in law that may be being exploited and to guide the processes of strengthening the legal system.

**When:** When reviewing/amending/creating relevant legislation on trafficking in persons/organ transplantations/care for donors, etc., seeking to identify loopholes, risks of abuse, exploitation and commercial transactions with organs.

**Who:** Legislators and policy makers, national coordinators on trafficking in persons, legal researchers and other relevant practitioners.

**How:** The following questions may be answered by means of legal research and/or through discussions with relevant practitioners.

- Is there a low threshold and transparent access to support and assistance structures for all persons presumed to have been trafficked, including those trafficked for the purpose of organ removal?
- Is the support system available to all trafficked persons, irrespective of their willingness to cooperate with the criminal justice system?
- Does the legal framework related to trafficking in persons contain provisions to secure support and assistance structures?
- Does the law allow for or have measures to do the following:
  - Assist victims in having their views and concerns presented and considered at appropriate stages of the criminal proceedings?
  - Provide victims with legal assistance?
  - Protect witnesses and relatives of witnesses or other persons close to them from potential retaliation and intimidation?

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<sup>4</sup> Based on UNODC Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking, 2010, Chapter VI

- 
- Provide for the physical safety of victims while they are in the territory of the State?
  - Provide assistance and protection to victims in cases of threat of retaliation or intimidation?
  - Provide victims and witnesses of trafficking access to witness protection programmes?
  - Provide for the physical protection of witnesses by, for example, relocating them and protecting their identity?
  - Protect the privacy and identity of witnesses, including by making legal proceedings confidential, conducting court proceedings in etc.?
  - Ensure that the best interests of child victims are adhered to?
  - Provide for legislation that ensures special treatment and additional measures to protect and support children throughout the criminal justice proceedings?
  - Does the legal framework provide victims with the right to receive assistance and support immediately?
  - Are there administrative prerequisites for accessing support and assistance structures? Is access to support and assistance structures conditional on the presumed trafficked person's willingness to cooperate with the police or with other competent authorities or do victims of trafficking in persons have unconditional access to services?
  - Are support and assistance structures implemented by governmental, nongovernmental or inter-governmental entities?
  - Do elements of support and assistance structures include the following:
    - Health care and health care counselling?
    - Medication?
    - Psychological assistance?
    - Legal assistance?
    - Employment assistance?
    - Support in dealing with authorities?

- 
- Counselling regulations, including principles of confidentiality, safety, informed agreement and choice, empowerment and non-victimizing attitudes?

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## TOOL 11 – Direct interview with public servants in the health sector

**Why:** Staff at Ministries of Health and from the health-related public service sector more generally, may be able to provide information about organ transplantation laws, regulations and procedures. Furthermore, government health departments may maintain data on organ transplantation and possible situations of trafficking in persons for organ removal or related crimes.

Interviews with relevant personnel at government ministries should always be tailored as appropriate to the circumstance. Some questions from other tools may usefully be incorporated into such interviews. As with all interviews, responses to questions should be substantiated with further research and analysis. Responses to interviews can be insightful not only for the reason of the substance of those responses, but also to gauge levels of awareness and understanding of issues discussed.

**When:** When assessing national transplantation systems, seeking to identify loopholes, risks of abuse, exploitation and commercial transactions with organs.

**Who:** Researchers, policy makers, staff from non-governmental organization, and other relevant professionals.

**How:** An interview record should be prepared, specifying e.g. the following:  
Interview conducted with: \_\_\_\_\_; Name / Title / Position / Department: \_\_\_\_\_;  
Interview conducted by: \_\_\_\_\_; Time, date, place and duration of interview;  
\_\_\_\_\_; Other persons present at interview: \_\_\_\_\_; Follow up actions: \_\_\_\_\_.

### *Organ transplantation*

- What legislation is currently in place with respect to organ transplant?
- How high is current demand for organs?
- *(Where applicable:)* What in your view is the reason for an increased demand/demand that exceeds the supply?
- What is the source of supply for organs?
- How many organs are transplanted each year?
- How many people die each year as a direct or indirect result of organ removal or organ transplantation?

- 
- Are registers of live donors kept? Where? Who keeps them?
  - Are registers of clinics that are certified to transplant organs kept?
  - What follow up care is given to recipients of organs?
  - What follow up care is given to living donors of organs?
  - How and by which stakeholders are organ transplantations and outcomes recorded in your country?
  - To what extent is law enforcement (made) aware of organ donation processes?
  - Which NGOs are relevant to organ donation?

Does the country have:

- an official body responsible for overseeing donation and transplantation at national level?
- a specific organization or institution responsible for national coordination?
- systems for the collection and analysis of data on donation and transplantation activities?
- surveillance system of adverse events in organ transplants recipients?
- surveillance system of donation complications in live organ donors?
- mechanisms to ensure donor safety and follow up?
- an organization or institution responsible for national coordination and surveillance system of adverse events?
- an organization or institution responsible for national coordination and surveillance system of donation complications in live organ donors?<sup>66</sup>

### *Medical tourism*

- Does medical tourism take place to / from the country?
- What type of medical tourism takes place?
- How is medical tourism regulated?
- What is the profit from medical tourism?

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*Trafficking in persons for the purpose of organ removal*

- Have there been any incidents of trafficking in persons for organ removal?
- Is data collected / disseminated on organ trafficking / possible trafficking in persons for the purpose of organ removal? Are data collecting mechanisms in place?

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## TOOL 12 – Direct interview with public servants in the justice sector

**Why:** Staff at Ministries of Justice and from the justice-related public service sector more generally, may be able to provide information about organ-related crimes such as trafficking in persons for the purpose of organ removal, as well as relevant legislation. Furthermore, government justice departments may maintain data on organ transplantation and possible situations of trafficking in persons for organ removal or related crimes.

**When:** When assessing criminal justice awareness of and responses to trafficking in persons for organ removal and issues related to it.

**Who:** Researchers, policy makers, staff from non-governmental organization, and other relevant professionals.

**How:** An interview record should be prepared, specifying e.g. the following:  
Interview conducted with: \_\_\_\_\_; Name / Title / Position / Department: \_\_\_\_\_;  
Interview conducted by: \_\_\_\_\_; Time, date, place and duration of interview;  
\_\_\_\_\_; Other persons present at interview: \_\_\_\_\_; Follow up actions: \_\_\_\_\_.

Interviews with relevant personnel at government ministries should always be tailored as appropriate to the circumstance. Some questions from other tools may usefully be incorporated into such interviews. As with all interviews, responses to questions should be substantiated with further research and analysis. Responses to interviews can be insightful not only for the reason of the substance of those responses, but also to gauge levels of awareness and understanding of issues discussed.

### *Trafficking in persons*

- How many prosecutions have been laid for trafficking in persons for the purpose of organ removal? Of those prosecuted how many have been of health and medical staff? (If the answer to this question is no, it might be difficult to get answers on many of the other questions.)
- Is information collected on trafficking in organs or trafficking for the purpose of organ removal? If not, why not?
- How many victims of trafficking for the purpose of organ removal are identified each year?



- 
- According to information available to you: Is your country an origin country of organ suppliers/organ recipients/organ brokers/a place where illegal/irregular transplantations are performed? Which are the countries connected to your country?
  - How many rescued victims of trafficking in persons for the purpose of organ removal have given evidence against their traffickers?
  - Are traffickers of persons for organ removal involved in other types of crime?
  - How much money is generated from trafficking in persons for the purpose of organ removal?
  - Does the money generated from trafficking in persons for the purpose of organ removal remain in the country?
  - Who is criminal responsibility for trafficking in persons for the purpose of organ removal attributed to? Can hospitals be held liable?
  - What role does corruption play in trafficking in persons for the purpose of organ removal?
  - How many prosecutions have been laid for trafficking in persons for the purpose of organ removal? How many convictions? Of those prosecuted/convicted, how many have been of health and medical staff?
  - Is data collected / disseminated on organ trafficking / possible trafficking in persons for the purpose of organ removal? Are data collecting mechanisms in place?
  - How are state and private hospitals in your country regulated, monitored and audited?
  - Are bilateral agreements in place to support cross-border investigations and financial investigations?
  - Does the government monitor recruitment practices (including through newspaper advertisements, internet) in your village / town / city / country to prevent recruitment of persons for the purposes of trafficking in organ removal?
  - What cooperation channels with criminal justice and health officials other countries exist?

- 
- Does the government speak to police or other government officials in other countries? I.e. relevant countries of origin, transit, destination? If so, what about? If not, why not?
  - What is the response of the government agency to trafficking in persons for the purpose of organ removal?

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## TOOL 13 – Direct interview with medical and health care professionals and staff

**Why:** Medical and health care professionals and staff at medical facilities are invaluable sources of information about organ removal and transplantation processes. They also may be able to offer insight into possible situations of illicit organ procurement and other illegitimate practices that take place in the sidelines of legitimate medical practice and may be of relevance to trafficking in persons for the purpose of organ removal.

**When:** When assessing national transplantation systems, seeking to identify loopholes, risks of abuse, exploitation and commercial transactions with organs.

**Who:** Researchers, policy makers, staff from non-governmental organization, and other relevant professionals.

**How:** An interview record should be prepared, specifying e.g. the following:  
Interview conducted with: \_\_\_\_\_; Name / Title / Position / Department: \_\_\_\_\_;  
Interview conducted by: \_\_\_\_\_; Time, date, place and duration of interview;  
\_\_\_\_\_; Other persons present at interview: \_\_\_\_\_; Follow up actions: \_\_\_\_\_.

Interviews with medical and health care professionals and staff at medical facilities should always be tailored as appropriate to the circumstance. Some questions from other Tools may usefully be incorporated into such interviews. As with all interviews, responses to questions should be substantiated with further research and analysis. Responses to interviews may be insightful not only for the reason of the substance of those responses, but also to gauge levels of awareness and understanding of issues discussed.

### *Function*

- What is your role/title?
- What are your duties?
- What is the role of your unit/department?
- What is your role in organ transplantation?

What are the relevant laws with respect to organ transplantation that are relevant to your work? (This question is aimed both at identifying relevant laws in place, and also to assess the practitioners' knowledge and awareness of relevant laws.)

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### *Organ transplantation*

- How many organs are transplanted at this facility?
- Where do transplanted organs come from? What is the source of transplanted organs?
- Who are the members of transplantation team and what are their roles?
- How many attending surgeons are available for transplants?
- What is the process of organ removal and transplantation?
- Is there a special nursing unit for transplant patients? (Donor and recipients)
- How many organs are transplanted on a monthly / yearly basis at the institution / facility?
  - Is this number significantly higher than the number of transplantations performed elsewhere? If so, why?
- Are medical facilities available for medical tourism?
  - If so, what services are in place for foreign patients?
  - How do facilities and services differ for foreign patients compared to local patients?
  - Does medical tourism extend to organ transplantation?
- How many foreign patients / organ recipients does the institution / facility treat?
  - Is this number significantly higher than the number of transplantations performed elsewhere? If so, why?
- How many foreign patients / organ donors does the institution / facility treat?
  - Is this number significantly higher than the number of transplantations performed elsewhere? If so, why?
- What is the average length of stay in the institute / facility for organ recipients?
- What is the average length of stay in the institute / facility for organ donors?

- 
- What post-operative care is given to organ recipients? Over what period?
  - What post-operative care is given to organ donors? Over what period?
  - Are transplant patients (donors and recipients) asked to participate in research studies?
  - What is the fee for services rendered in organ procurement or transplantation?
    - How is the fee for services determined?
    - Do fees differ depending on the nationalities of organ recipients?
    - What are fees used for?
  - Are any other payments offered or received in addition to the fee?
  - What financial coverage is accepted by the hospital?

#### *Living organ donors*

- Does the hospital perform living donor transplants?
- What is the process of evaluating a potential donor's eligibility for donation?
  - Who informs the donor about the transplantation process?
  - Where is the evaluation done?
  - Who performs the evaluation?
- How is the donor's level of understanding of the process and implications ensured?
- What ethical review procedures are in place?
- What is the organ recovery cost for a living donor?
- Who are the live organ donors? (age / sex / employment / income / nationality)
- Do live organ donors come from other countries?
  - Which countries?
  - How long do they stay in the country where the organ transplantation takes place?

- 
- What is the process for organ removal from live donors?
  - Do organ donors receive any financial benefit for donating organs?
    - If yes, how much?
  - How long do organ donors remain in the facility after his or her organ is removed?
    - What type of care does the organ donor receive during this time?

### *Organ recipients*

- Who informs the recipient about the transplantation process?
- Where do transplants take place? Who is involved?
- Who are the organ recipients? (age / sex / employment / income / nationality)
- Of persons who have received organ transplants at this facility, how many were from abroad?
  - Which countries did they come from?
  - How long do they stay in the country where the organ transplantation takes place?
- Do organ recipients pay for the organ they receive?
  - If yes, how much?
  - If yes, who receives the money that they pay?
- How long do organ recipients remain in the facility after the new organ is transplanted?
  - What type of care does the organ recipient receive in this time?
- Have there been instances of persons on organ waiting lists who are known to your facility travelling abroad for organ transplantations?
  - Where have they travelled to?
  - Have such movements been reported?
  - Have such persons returned to your facility for post-operative care?

- 
- What follow-up care do organ recipients of potentially illegally acquired organs receive?
    - Who do such patients come into contact with?
    - How might such information be referred to health authorities?
    - Would such information be assessed and possibly referred to other public officials, including criminal justice actors?

### *Trafficking in persons*

- Have there been any cases or possible of trafficking in persons for the purpose of organ removal?
  - If so, what was done in response to this situation?
- Is the institute / facility obliged to report instances of suspected organ trafficking or trafficking in persons for the purpose of organ removal?
  - If so, on what basis is such a report made to law enforcement?
  - To whom is such a report made?
  - What is the result of making such a report?
  - What is the consequence of failing to make such a report?
  - How many such reports have been made?

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## TOOL 14 – Direct interview with criminal justice practitioners

**Why:** Criminal justice practitioners such as investigators, prosecutors, border officers, magistrates and judges are at the frontline of the fight against human traffickers. As such they have invaluable expertise in the modus operandi of the crime, how it works, who benefits and who is victimized by it. Such practitioners may also be able to offer insight into gaps in legislation and processes which are exploited by traffickers and enable certain crimes to flourish.

**When:** When assessing trends and patterns of the crime of trafficking in persons for organ removal and criminal justice responses.

**Who:** Researchers, policy makers, staff from non-governmental organization, and other relevant professionals.

**How:** An interview record should be prepared, specifying e.g. the following:  
Interview conducted with: \_\_\_\_\_; Name / Title / Position / Department: \_\_\_\_\_;  
Interview conducted by: \_\_\_\_\_; Time, date, place and duration of interview;  
\_\_\_\_\_; Other persons present at interview: \_\_\_\_\_; Follow up actions: \_\_\_\_\_.

Interviews with relevant personnel at government ministries should always be tailored as appropriate to the circumstance. As with all interviews, responses to questions should be substantiated with further research and analysis. Responses to interviews can be insightful not only for the reason of the substance of those responses, but also to gauge levels of awareness and understanding of issues discussed.

General questions are offered for use in discussions with all criminal justice practitioners. Specific questions are then offered for interviews with investigators, prosecutors, magistrates and judges. Depending on the role of an interviewee and type of legal system in which they operate, some questions may be usefully adapted from different categories in a given interview. Additional questions may also be able to be adapted for discussions with criminal justice practitioners from other tools, e.g. the Legal Assessment tool.

### *General questions*

#### **Situation**

- Who are the actors involved in organ trafficking or trafficking in persons for the purpose of organ removal?



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- What is the modus operandi of trafficking in persons for the purpose of organ removal?
  - What is the profile of traffickers for the purpose of organ removal?
  - What is the profile of victims of trafficking for the purpose of organ removal?
  - What is the profile of recipients of organs from trafficked persons?
  - What are the key indicators of trafficking in persons for the purpose of organ removal?
  - What is the role of fraud and document falsification in organ trafficking and trafficking for the purpose of organ removal?
  - What is the role of corruption in organ trafficking and trafficking for the purpose of organ removal?
    - How can such corruption be identified and addressed?
  - What other crimes are involved in trafficking in persons for organ removal?

#### ***Awareness***

- How widespread is knowledge of trafficking in persons among investigators, prosecutors and judges?
- How widespread is knowledge of trafficking in persons for the purpose of organ removal among investigators, prosecutors and judges?
- What could be done to facilitate greater knowledge about trafficking in persons and trafficking in persons for the purpose of organ removal?

#### ***Legal Framework***

- What laws are in place concerning organ trafficking or trafficking in persons for the purpose of organ removal?<sup>67</sup>
- If there are no specific laws in place, which laws are used to address trafficking in persons, including trafficking in persons for the purpose of organ removal?

#### ***Cooperation***

- Which agencies do you cooperate with?

- 
- Does your agency share information about trafficking in persons cases with law enforcement agencies? If so, what type of information? With whom? Who does your agency *not* share information with? Why?
  - Does your agency cooperate with the following agencies? How? To what level of success?
    - Immigration
    - Customs
    - Police
    - Prosecutors
    - Magistrates / Judges
    - NGOs
    - Civil Society
    - Community groups / leaders
    - Other
  - Can you provide examples of successful cooperation with any of the above in relation to trafficking in persons for the purpose of organ removal?
  - How could inter-agency cooperation be improved?
  - Has your agency participated in any international cooperation or intelligence sharing programs addressing trafficking in persons? With which countries? Under what conditions?
    - Does your agency work with Interpol or other international organizations?
  - What kinds of cooperation would be beneficial to your work in respect of trafficking in persons?

***Challenges and Recommendations***

- What kind of information does your department / agency lack in its work to respond to trafficking in persons for organ removal?

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- What kinds of resources or access would help you in successfully responding to human trafficking for organ removal? Where do you think such resources are available?
  - What special challenges are involved in prosecuting trafficking in persons cases?
  - What special challenges are involved in prosecuting trafficking in persons for the purposes of organ removal?
  - Has your unit been able to meet these challenges? How? To what level of success?
  - What kinds of training, background knowledge or resources should be made available to law enforcement, immigration officials, prosecutors and judges to strengthen their response to trafficking in persons for the purpose of organ removal?
  - What practices would you like to see adopted in response to trafficking in persons for the purpose of organ removal?
  - What are the challenges in adopting such practices? What would facilitate the adoption of such practices?
  - What changes in law, sentencing or criminal justice practice do you think would be effective in responding to human trafficking for the purpose of organ removal?

#### *Specific questions for investigators*

- Please describe your rank and unit / department and your function within it. How long have you worked for this unit?
- Does a local or national law enforcement task force exist in your country to combat trafficking in persons? If so, does it address trafficking in persons for the purpose of organ removal?
- Is there a specialized agency to investigate organ trafficking and trafficking in persons for the purpose of organ removal? If not, which department has responsibility to investigate these offences?
- How long has your agency or office been involved in or investigated cases of human trafficking?

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- How do cases of trafficking in persons for the purpose of organ removal come to the attention of investigative agencies?
  - What agency/person takes the initiative in bringing cases to the attention of law enforcement?
  - What are the steps of investigation in a trafficking in persons for the purpose of organ removal case?
  - How many cases of human trafficking has your agency or offence investigated/solved?
  - How many officers are there within the unit working on trafficking in persons on a full time or part time basis?
  - Have you been given special training to investigate trafficking in persons? If so, did such training address trafficking in persons for the purpose of organ removal?
  - Are there manuals, guidelines or protocols within your department/unit on how to investigate human trafficking cases?
    - Do these resources address trafficking for the purpose of organ removal?
  - What resources are available for investigation of organ trafficking / trafficking for the purpose of organ removal? Are these resources adequate? Does your unit have adequate resources to investigate trafficking in persons cases? Specifically, is there:
    - Adequate manpower
    - Adequate expertise
    - Adequate funds
    - Adequate equipment
    - Adequate training / capacity building
  - What additional resources would be required? Specifically, what does your agency need to more effectively investigate trafficking in persons cases, in terms of:
    - Manpower

- 
- Expertise
  - Funds
  - Equipment
  - Training / capacity building
  - How many reports of potential organ trafficking or trafficking in persons for the purpose of organ removal are made?
  - How many investigations and prosecutions have been undertaken of organ traffickers or human traffickers for the purpose of organ removal?
  - Do you proactively or reactively investigate trafficking in persons for the purpose of organ removal?
  - What techniques are used to investigate organ trafficking / possible trafficking in persons for the purpose of organ removal?
    - Undercover operations?
    - Intelligence gathering?
    - Financial investigations?
    - Disruptive techniques (e.g. freezing assets of hospitals / doctors)?
    - Controlled deliveries?
  - Have investigations been made into delivery of highly specialized medical equipment to home or other addresses?
  - Is trafficking in persons considered to be a serious crime? How is it ranked in priority for investigation and prosecution?
  - Is trafficking in persons for the purpose of organ removal considered to be a serious crime? How is it ranked in priority for investigation and prosecution?
  - Please describe the challenges in identifying trafficking victims at points of entry and exit such as border crossings and airports?

*Specific questions for prosecutors*

- Please describe your position. How long have you worked as a prosecutor?

- 
- How do cases of trafficking in persons come to the attention of the prosecution department?
  - What are the steps taken to process a human trafficking case from investigation to prosecution?
    - Which agencies are involved at each step of the process?
  - Is there a specialized unit/department/agency in respect of trafficking in persons?
  - How many cases of human trafficking have there been in recent years?
    - Of these, how many involved trafficking in persons for the purpose of organ removal?
    - To what extent were investigations/prosecutors successful? Why/why not?
  - Have you been given special training to investigate / prosecute cases of trafficking in persons?
    - To what extent did this training address trafficking in persons for the purpose of organ removal?
  - Are there manuals, guidelines or protocols within your department on how to investigate/prosecute human trafficking cases?
    - To what extent do these resources address trafficking in persons for the purpose of organ removal?
  - Do you and your department/agency have adequate resources to address trafficking in persons cases? Specifically, is there:
    - Adequate manpower
    - Adequate expertise
    - Adequate funds
    - Adequate equipment
    - Adequate training/capacity building
  - What does your agency need to more effectively investigate/prosecute trafficking in persons cases, in terms of:

- 
- Manpower
  - Expertise
  - Funds
  - Equipment
  - Training / capacity building
- Is trafficking in persons considered to be a serious crime? How is it ranked in priority for investigation and prosecution?
  - Is trafficking in persons for the purpose of organ removal considered to be a serious crime? How is it ranked in priority for investigation and prosecution?

### *Specific questions for magistrates and judges*

- Please describe your position. How long have you worked as a magistrate or judge?
- How do trafficking in persons cases come to the attention of the tribunal?
- What are the steps taken to process a human trafficking case from investigation to prosecution?
  - Which agencies are involved at each step of the process?
- Is there a specialization among magistrates or judges within your country's court system with respect to handling trafficking in persons cases?
- How long has your tribunal / department been hearing trafficking in persons cases?
- How many magistrates / judges are there within your department / in the country who have expertise in judging cases involving trafficking in human beings?
- How many cases of trafficking in persons has your tribunal handled?
  - Of these, how many resulted in conviction of traffickers?
  - How many involved trafficking in persons for the purpose of organ removal?

- 
- Are you aware of any other trafficking in persons cases for the purpose of organ removal prosecuted in your tribunal / judicial division or elsewhere in your country?
  - Have you been given special training to judge trafficking in persons cases?
    - If so, did such training address trafficking in persons for the purpose of organ removal?
  - Are there manuals, guidelines or protocols within your tribunal / department on how to judge trafficking in persons cases?
    - If so, do these resources address trafficking in persons for the purpose of organ removal?
  - Does the court system have adequate resources to address trafficking in persons cases? Specifically, is there:
    - Adequate manpower
    - Adequate expertise
    - Adequate funds
    - Adequate equipment
    - Adequate training / capacity building
  - What does your tribunal / department need to more effectively judge trafficking in persons cases, in terms of:
    - Manpower
    - Expertise
    - Funds
    - Equipment
    - Training / capacity building
  - Is trafficking in persons considered to be a serious crime? How is it ranked in priority for investigation and prosecution?
  - Is trafficking in persons for the purpose of organ removal considered to be a serious crime? How is it ranked in priority for investigation and prosecution?



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## TOOL 15 – Direct interview with employees of health insurance companies

**Why:** Health insurance companies come into contact with persons in need of health care due to organ failure. Such persons may also make insurance claims in relation to transplantations that take place in their countries of residence, or those that place overseas where costs are lower. Insurance company employees can offer insight into how medical tourism works, and may be able to provide insight into the source of organs that are transplanted into those who embark on transplant tourism.

**When:** When assessing national transplantation systems, seeking to identify loopholes, risks of abuse, exploitation and commercial transactions with organs.

**Who:** Researchers, policy makers, staff from non-governmental organization, and other relevant professionals.

**How:** An interview record should be prepared, specifying e.g. the following:  
Interview conducted with: \_\_\_\_\_; Name / Title / Position / Department: \_\_\_\_\_;  
Interview conducted by: \_\_\_\_\_; Time, date, place and duration of interview; \_\_\_\_\_; Other persons present at interview: \_\_\_\_\_; Follow up actions: \_\_\_\_\_.

### *Questions*

- Does your company pay for medical value travel, health care or medical treatment abroad?
- If so, what type and with what conditions?
- In terms of transplantations abroad, what will insurance cover?
  - Removal and transplantation?
  - Post-operative care?
  - Post-operative care for donors?
  - Travel costs?
  - Accommodation?
  - Donor compensation or fees?
  - Rental of operating and recovery rooms and facilities?

- 
- Which transplant costs are covered by insurance where transplantations occur in-country?
  - Does insurance cover the cost of bringing a donor into the country for the purpose of organ removal? Does insurance cover the cost of post-operative care for donors?
  - What documentation is required to submit insurance claims?
  - On what basis will insurance claims for transplantation be rejected?
  - Does insurance cover medical tourism where service providers have been selected by the patient or only of those chosen and/or approved by the insurance provider?
  - Does the insurance provider cover costs where recipients have not provided their own donor as well as situations where they have provided their own donor?

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## TOOL 16 – Direct interview with civil society, social and NGOs workers, others

**Why:** Civil society organizations and NGOs may come into contact with victims and potential victims of trafficking in persons for the purpose of organ removal. They also may come into contact with persons who are in need of an organ. Such organizations may be active in respect of health issues, or in respect of trafficking in persons issues or may be concerned with economic and social development issues in typical countries of origin for trafficking victims. Regardless of which area of work puts a person into contact with survivors of organ removal or other vulnerable persons, there is much insight to be gleaned from those who work at the ground level with the people most affected by trafficking in persons for the purpose of organ removal.

**When:** When assessing national transplantation systems, seeking to identify loopholes, risks of abuse, exploitation and commercial transactions with organs, needs of donors, etc.

**Who:** Researchers, policy makers, staff from non-governmental organization, and other relevant professionals.

**How:** An interview record should be prepared, specifying e.g. the following:  
 Interview conducted with: \_\_\_\_\_; Name / Title / Position / Department: \_\_\_\_\_;  
 Interview conducted by: \_\_\_\_\_; Time, date, place and duration of interview;  
 \_\_\_\_\_; Other persons present at interview: \_\_\_\_\_; Follow up actions: \_\_\_\_\_.

### *Organization*

Number of years of operation:	
Function of organization:	
Vision / Goals of organization:	
Affiliation (international, regional, national, local, other):	
Staff:	
- Total number of full time staff	

<ul style="list-style-type: none"> <li>- Total number of part time staff</li> <li>- Total number of volunteers / others</li> </ul>	
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***Background information***

Please provide some background information about the role and activities in respect of trafficking in persons for the purpose of organ removal.	
Prevention:	
Awareness raising:	
Victim support and assistance:	
Other:	

***Beneficiaries***

What types of beneficiaries do you and/or your organization work with?	
Male / female:	
Adults / minors:	
Nationals / foreigners:	
Victims of trafficking in persons:	
Victims of trafficking in persons for the purpose of organ removal:	
Victims of other crimes:	
Other:	

***Services***

What services do you / your organization provide to beneficiaries?	
Medical assistance:	

Psychological assistance:	
Education assistance:	
Job and skills training assistance:	
Financial assistance:	
Repatriation and resettlement assistance:	
Protection from traffickers:	
Other:	
What has been the success of such programs?	
How could such programs be improved?	
Are trafficking victims (particularly for organ removal) referred to other organizations? Which ones? What services do they provide?	
How are victims of trafficking (particularly for organ removal) made aware of services provided by the organization?	
Through other victims:	
Word of mouth:	
Advertising:	
Outreach campaigns:	
Public Service Announcements:	
Internet:	
Other:	

### *Cooperation and coordination*

- How much coordination is there between NGOs in respect of trafficking in persons for the purpose of organ removal?

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- How much coordination is there between NGOs and government agencies in respect of trafficking in persons for the purpose of organ removal?
  - Which government agencies and NGOs liaise regularly?
  - Are there any functional coordination arrangements in place (e.g. MoUs, interagency policies) between NGOs and government departments concerning cooperation on the issue?
    - If so, what type of cooperation?
    - Is such cooperation successful? Why? Why not?
  - How could cooperation between NGOs be improved in response to trafficking in persons for the purpose of organ removal?
  - How could cooperation between NGOs and government departments be improved in response to trafficking in persons for the purpose of organ removal?

#### *Challenges and recommendations*

- What are the key challenges in addressing trafficking in persons for the purpose of organ removal in the country or context in which you work?
- How are these challenges addressed? To what level of success?
- How could these challenges be addressed?
- What kinds of training, background knowledge and resources would improve response?
- What best practice recommendations do you have for NGOs and government agencies in response to trafficking of persons for the purpose of organ removal?
- What are the challenges in adopting such practices? What would facilitate the adoption of such practices?
- What changes in law do you think would be effective in responding to human trafficking for the purpose of organ removal? Why?

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## TOOL 17 – Direct interview with embassy and consulates staff

**Why:** Employees of embassies and consultants have an overview of travel from and to the country they represent and as such may be able to offer insight as to who may be travelling for organ removal or transplantation purposes, and the means that such people use.

Embassies and consulates are also often active in collecting data about trafficking in persons more generally and may play a role in identifying persons who are potential victims of the crime. As with all interviews, responses to questions should be substantiated with further research and analysis. Responses to interviews can be insightful not only for the reason of the substance of those responses, but also to gauge levels of awareness and understanding of issues discussed.

**When:** When assessing occurrences, possible indicators and risks of trafficking in persons for the purpose of organ removal.

**Who:** Researchers, policy makers, staff from non-governmental organization, and other relevant professionals.

**How:** An interview record should be prepared, specifying e.g. the following:  
Interview conducted with: \_\_\_\_\_; Name / Title / Position / Department: \_\_\_\_\_;  
Interview conducted by: \_\_\_\_\_; Time, date, place and duration of interview;  
\_\_\_\_\_; Other persons present at interview: \_\_\_\_\_; Follow up actions: \_\_\_\_\_.

Depending on who is being interviewed, additional questions may also be able to be adapted for discussions with from Tool 9 – Legal Assessment.

### *Organ removal and transplantation*

- What is the extent of travel to / from the country for the purpose of organ donation / receipt?
- Where do organ donors come from? (Nationality / urban / rural / other)
- Who travels to make organ donations?
- Where do organ recipients come from? (Nationality / urban / rural / other)
- Who travels to receive organs?
- What types of visas are used by organ donors? How or where are visas issued?

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- What types of visas are used by organ recipients? How or where are visas issued?
  - What are the travel routes and means used by organ donors?
  - What are the travel routes and means used by organ recipients?
  - How long do organ donors remain in the country where the organ transplantation takes place?
  - How long do organ recipients remain in the country where the organ transplantation takes place?

### *Trafficking in persons*

- How do cases of human trafficking for the purpose of organ removal come to the attention of your embassy / consulate?
- How does your embassy / consulate address cases of trafficking in persons?
- How does your embassy / consulate address trafficking in persons for the purpose of organ removal?
- How many cases of human trafficking for the purpose of organ removal has your embassy / consulate encountered in recent years?
  - How many traffickers / victims were involved?
  - What services did the embassy / consulate provide to victims / the host country?
  - What measures were taken against traffickers or others involved?
- Does your embassy / consulate have adequate resources to deal with human trafficking cases:
  - Adequate manpower?
  - Adequate expertise?
  - Adequate funds?
  - Adequate equipment?
- What does your embassy / consulate need to be appropriately staffed or to have adequate resources against each category:



- 
- Manpower
  - Expertise
  - Funds
  - Equipment

### *Cooperation*

- How would you describe the cooperation between your government and other governments fighting human trafficking?
- If you have contact with other agencies with respect to the fight against trafficking, how would you describe the relationship?
  - Immigration
  - Customs
  - Other police
  - Prosecutors
  - Magistrates / judges
- With which other embassies / consulates do you cooperate to fight human trafficking or assist victims? Please describe this cooperation.
- What kinds of cooperation would your embassy / consulate like to see from embassies / consulates in other countries (please identify the countries and agencies) with respect to victims?
- What kinds of cooperation would your embassy / consulate like to see from embassies / consulates in other countries (please identify the countries and agencies) with respect to traffickers?
- With respect to investigations in the area of human trafficking, please identify and describe your cooperation with other agencies or agencies in other countries (please give names of countries and agencies and explain the conditions under which this occurred).
- How could cooperation be improved in cases of human trafficking?

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### *Challenges and recommendations for good practices*

- What kinds of resources or access would help you in successfully dealing with cases of human trafficking? Where do you think such resources are available?
- What special challenges are involved in dealing with human trafficking cases?
- Has your embassy / consulate been able to meet these challenges? How? How successfully?
- What have you or your embassy / consulate learned from trafficking cases in general?
- What remains to be learned?
- What practices would you like to see adopted to facilitate your embassy / consulate's work in the area of trafficking in persons, particularly for the purpose of organ removal?
- What would facilitate adoption of such practices?
- What prevents them from becoming adopted, used or made widespread?
- What single change in law, in sentencing or in law enforcement practice do you think would be most effective in future regarding cases of trafficking in persons, particularly for the purpose of organ removal?

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## TOOL 18 – Direct interview with employees of travel industry

**Why:** Travel agencies may be involved in arranging logistics of travel, visas and accommodation for persons who are travelling to donate or to receive organs. As such they may be able to offer insight into the workings of medical and transplant tourism, and assist in identifying possible gaps or weaknesses which may be susceptible to exploitation by traffickers.

**When:** When assessing possible indicators and risks of trafficking in persons for the purpose of organ removal. (When developing awareness raising materials targeted at the travel industry.)

**Who:** Researchers, policy makers, staff from non-governmental organization, and other relevant professionals.

**How:** An interview record should be prepared, specifying e.g. the following:  
Interview conducted with: \_\_\_\_\_; Name / Title / Position / Department: \_\_\_\_\_;  
Interview conducted by: \_\_\_\_\_; Time, date, place and duration of interview; \_\_\_\_\_; Other persons present at interview: \_\_\_\_\_; Follow up actions: \_\_\_\_\_.

### *General*

- Does your agency arrange medical tourism?
- If so, what aspects are you / your agency involved in?
  - Travel including flights and other logistics
  - Travel documentation including visas
  - Accommodation
  - Sightseeing tours in destination countries
- What types of medical tourism are you involved in? (e.g. cosmetic surgery, dental, organ transplantation)
- Do you work with regular partners/clients? I.e. hospitals / brokers? If so, where are your partners based? I.e. country of origin / destination / other?

### *Travel*

- Where do you arrange travel from / to?

- 
- If your agency is involved in organ transplantation, do you arrange travel for both the donor and the recipient?
  - Are donors and recipients from the same or from different countries?
    - If so, are they generally related? Do they travel together on the same flight etc.?
    - If not, where do donors and recipients generally come from?

### *Visas*

- Do you organize visas and other relevant documentation?
- What type of visas to organ donors travel on?

### *Accommodation*

- Generally, what is the length of stay in a destination country for an organ recipient?
- Generally, what is the length of stay in a destination country for an organ donor?
- What type of accommodation is arranged for the donor?
- What type of accommodation is arranged for the recipient?
- Do the donor and recipient generally stay in the same place? Why, why not?

### *Costs and payments*

- What is the cost of your services for the donor?
- What is the cost of your services for the recipient?
- Who pays the costs of your services for the recipient / donor?
- Who do you liaise with in organizing services? I.e. do you liaise with the donor / recipient directly? If not, who do you liaise with?

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## Endnotes

<sup>1</sup>United Nations, "Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime" in *Treaty Series*, vol. 2171, p. 227 Doc. A/RES/54/263 (15 November 2000).

<sup>2</sup>United Nations General Assembly, "A/68/256. 68th Session, Trafficking in Persons, Especially Women and Children, Note by the Secretary Secretary-General, Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, at P. 6/24," (2 August 2013), [www.ohchr.org/Documents/Issues/Trafficking/A-68-256-English.pdf](http://www.ohchr.org/Documents/Issues/Trafficking/A-68-256-English.pdf)

<sup>3</sup>Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings. "Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region: Analysis and Findings.", Organization for Security and Co-operation in Europe, Vienna, 2013, [www.osce.org/secretariat/103393?download=true](http://www.osce.org/secretariat/103393?download=true)

<sup>4</sup>E.g. E/RES/2013/41, 2013/41. Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons, 25 July 2013 and A/RES/68/192, Improving the coordination of efforts against trafficking in persons, 18 December 2013

<sup>5</sup>Y. Shimazono, "The State of the International Organ Trade: A Provisional Picture Based on Integration of Available Information," *Bulletin of the World Health Organization* 2007;85:955–962.

<sup>6</sup>These 2013 data are based on the Global Observatory on Donation and Transplantation (GODT) data, produced by the WHO-ONT (Organización Nacional de Trasplantes-Spanish National Transplant Organization) collaboration; [www.transplant-observatory.org/Documents/Data%20Reports/Basic%20slides%202013.pdf](http://www.transplant-observatory.org/Documents/Data%20Reports/Basic%20slides%202013.pdf), last updated version from 12/02/2015.

<sup>7</sup>Donation after brain death can take place when the death of a patient is established after diagnosing brain death, meaning irreversible loss of brain functions. Donation after circulatory death takes place from persons whose death has been determined by so-called circulatory criteria. See for instance the critical pathway developed by Beatriz Domínguez-Gil et al., "The Critical Pathway for Deceased Donation: Reportable Uniformity in the Approach to Deceased Donation," *Transplant International* 24, no. 4 (2011). Donation takes place after death is determined, usually in controlled circumstances, i.e., after withdrawal of life sustaining therapies when a clinical condition is considered to be of an ominous prognosis and further treatment is deemed futile. It can also take place in uncontrolled circumstances.

<sup>8</sup>R. Coppen, "Organ Donation, Policy and Legislation. With Special Reference to the Dutch Organ Donation Act", (Universiteit van Tilburg, 2010).

<sup>9</sup>A. E. Courtney and A. P. Maxwell, "The Challenge of Doing What Is Right in Renal Transplantation: Balancing Equity and Utility," *Nephron Clin Pract* 111, no. 1 (2009).

<sup>10</sup>A.J. Cronin et al., "Directed and Conditional Donation: Reflections on Principles and Practice," in *Organ Transplantation: Ethical, Legal and Psychosocial Aspects. Expanding the European Platform.*, ed. W. Weimar, M.A. Bos, and J. Busschbach (Lengerich: Pabst, 2011).

<sup>11</sup>T. Gutmann, "Allocation and Transplantation of "Marginal" Donor Organs - Ethical and Legal Questions," in *Ethical, Legal and Social Issues in Organ Transplantation*, ed. T. Gutmann, et al. (Munich: Pabst, 2004).

<sup>12</sup>WHO Guiding Principles on Human Cells, Tissue and Organ Transplantation, as endorsed by the sixty-third World Health Assembly in May 2010, in Resolution WHA63.22, Guiding Principle 3.

<sup>13</sup>UNOS, "United Network for Organ Sharing," [www.unos.org](http://www.unos.org). (Accessed 15 September 2013)

<sup>14</sup>Eurotransplant International Foundation, "Annual Report 2012," (Leiden 2013). Available at [www.eurotransplant.org](http://www.eurotransplant.org)

<sup>15</sup>The Ethics Committee of the Transplantation Society, "The Consensus Statement of the Amsterdam Forum on the Care of the Live Kidney Donor," *Transplantation* 78, no. 4 (2004).

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<sup>16</sup>"The Declaration of Istanbul on Organ Trafficking and Transplant Tourism," *Transplantation* 86, no. 8 (2008).

<sup>17</sup> Eurotransplant International Foundation, "Annual Report 2012," [www.eurotransplant.org/cms/mediaobject.php?file=AR2012.pdf](http://www.eurotransplant.org/cms/mediaobject.php?file=AR2012.pdf)

<sup>18</sup> Commission of the European Communities, "Communication from the Commission to the European Parliament and the Council. Organ Donation and Transplantation: Policy Actions at Eu Level," (Brussels European Commission, 2007)

<sup>19</sup> United States Department of Health and Human Services, "Organ Procurement and Transplantation Network," Available at [optn.transplant.hrsa.gov](http://optn.transplant.hrsa.gov) (Accessed 6 January 2014)

<sup>20</sup> N. Scheper-Hughes, "Theft of Life," *Society* 6(1990).

<sup>21</sup> Y. Shimazono, "Mapping Transplant Tourism," in World Health Organizations Second Global Consultation on Human Transplantation (Geneva 28-30 March 2007).

<sup>22</sup> J. Haken, "Transnational Crime in the Developing World," (Washington DC: Global Financial Integrity, 2011).

<sup>23</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region: Analysis and Findings*, Occasional Paper Series no. 6 (July 2013).

<sup>24</sup> *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, 2009.

<sup>25</sup> United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children Child Prostitution and Child Pornography, ed. p. 227 Doc A/RES/54/263 United Nations Treaty Series Vol. 2171 (2000).

<sup>26</sup> Council of Europe Convention on Action Against Trafficking in Human Beings, in *16.V.2005. CETS 197* (Warsaw2005). Article 4

<sup>27</sup> As of 20 Feb 2015, the Convention has been ratified or acceded to by 43 States, i.e. 42 CoE Member States and one non-member State, Belarus, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=&DF=&CL=ENG>; CoE Treaty Office.

<sup>28</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (2011).

<sup>29</sup> See for instance Articles 19 and 20 of the Council of Europe Convention on Human Rights and Biomedicine; Articles 13 and 14 of the Additional Protocol to the Convention concerning Transplantation of Organs and Tissues of Human Origin.

<sup>30</sup> Decision-making body of the Council of Europe, comprising the Foreign Affairs Ministers of all the member states, or their permanent diplomatic representatives in Strasbourg, [www.coe.int/t/cm/aboutCM\\_en.asp](http://www.coe.int/t/cm/aboutCM_en.asp).

<sup>31</sup> Opened for signature on 25 March 2015.

<sup>32</sup> The Convention is open for signature by Council of Europe member States, the European Union, and States enjoying observer status with the Council of Europe; non-member States can, subject to an invitation by the Committee of Ministers, sign and ratify the Convention even before its entry into force.

<sup>33</sup> DIRECTIVE 2004/23/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells, L 102/48.

<sup>34</sup> Council of Europe, Convention on Human Rights and Biomedicine, CETS 165 (4 April 1997); 29 parties as of 6 March 2015.

<sup>35</sup> Council of Europe, "Additional Protocol to the Convention on Human Rights and Biomedicine Concerning Transplantation of Organs and Tissues of Human Origin, Strasbourg, 24.I.2002" <http://conventions.coe.int/Treaty/en/Treaties/html/186.htm>, accessed on 13 September 2013. (2002).

<sup>36</sup> "Explanatory Report to the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin available at [conventions.coe.int/treaty/en/Reports/Html/186.htm](http://conventions.coe.int/treaty/en/Reports/Html/186.htm).

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<sup>37</sup> Ibid.

<sup>38</sup> The Declaration of Istanbul Organ Trafficking and Transplant Tourism, Preamble, [www.declarationofistanbul.org/about-the-declaration/structure-and-content](http://www.declarationofistanbul.org/about-the-declaration/structure-and-content).

<sup>39</sup> [www.who.int/gb/ebwha/pdf\\_files/WHA57/A57\\_R18-en.pdf](http://www.who.int/gb/ebwha/pdf_files/WHA57/A57_R18-en.pdf)

<sup>40</sup> According to reference 6 provided in the Istanbul declaration, this definition is based on article 3a of the Trafficking in Persons Protocol. It covers, however, in addition, also deceased persons and their organs and refers to organ trafficking, not trafficking in persons for organ removal.

<sup>41</sup> [www.declarationofistanbul.org/about-the-declaration/list-of-endorsing-organizations](http://www.declarationofistanbul.org/about-the-declaration/list-of-endorsing-organizations) (accessed 10 March 2015).

<sup>42</sup> Asian Taskforce on Organ Trafficking, "Recommendations on the Prohibition, Prevention and Elimination of Organ Trafficking in Asia (Taipei Recommendations)", 2008, Available at [www.apm.org/sigs/transplant/Taipei\\_recommendation-summ.pdf](http://www.apm.org/sigs/transplant/Taipei_recommendation-summ.pdf) (Accessed 25 September 2013).

<sup>43</sup> Pascalev et al., *Trafficking in Human Beings for the Purpose of Organ Removal: A Comprehensive Literature Review*, published by the EU funded 'HOTT Project' (Combating Trafficking in Human Beings for the Purpose of Organ Removal); OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, "Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region: Analysis and Findings" (2013); UN Special Rapporteur on Trafficking in Persons, Especially Women and Children, "Thematic analysis of the issue of trafficking in persons for the removal of organs", (2013).

<sup>44</sup> As per March 2015

<sup>45</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, "Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region: Analysis and Findings" (2013), p.33

<sup>46</sup> [www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/zaf/2010/state\\_v.\\_netcare\\_kwa-zulu\\_limited.html?tmpl=old](http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/zaf/2010/state_v._netcare_kwa-zulu_limited.html?tmpl=old); the case itself has become known as "Netcare Case", in reference to the health care company involved.

<sup>47</sup> Z. Dyer, "Costa Rica Doctor Accused of Running Organ Trafficking Ring Promoted Services in YouTube," *Tico Times.net*. 2013.

<sup>48</sup> [www.telegraph.co.uk/news/worldnews/africaandindianocean/southafrica/8124710/South-African-hospital-pleads-guilty-to-organ-trafficking-case.html](http://www.telegraph.co.uk/news/worldnews/africaandindianocean/southafrica/8124710/South-African-hospital-pleads-guilty-to-organ-trafficking-case.html)

<sup>49</sup> Mendoza, "Price Deflation and the Underground Organ Economy in the Philippines", *Journal of Public Health* | Vol. 33, No. 1, pp. 101–107, 2010.

<sup>50</sup> See "The Declaration of Istanbul on Organ Trafficking and Transplant Tourism.", mentioned above in chapter 2.5

<sup>51</sup> Shimazono, "The State of the International Organ Trade: A Provisional Picture Based on Integration of Available Information", *Bulletin of the World Health Organization* 2007;85:955–962.

<sup>52</sup> The Christian Science Monitor, "The Rise and Fall of the South African Organ-Trafficking Ring," 2004. Available at <http://www.csmonitor.com/2004/0609/p12s01-wogi.html>

<sup>53</sup> According to an expert at the UNODC expert group meeting (December 2013) who has been involved in investigating this case. Please note that there were no convictions of trafficking in persons for organ removal because South Africa lacked this legislation at the time the case occurred.

<sup>54</sup> Excerpts taken from Closing Statement of the Prosecutor., at p. 129 and further

<sup>55</sup> Lundin, Gunnarson, and Bystrom, "Organ Suppliers.". See also Tong et al., "The Experiences of Commercial Kidney Donors: Thematic Synthesis of Qualitative Research."

<sup>56</sup> Available at [www.declarationofistanbul.org/images/stories/patient\\_brochure\\_legal\\_lores.pdf](http://www.declarationofistanbul.org/images/stories/patient_brochure_legal_lores.pdf) (accessed 5 January 2014)

<sup>57</sup> Recommended Principles and Guidelines on Human Rights and Human Trafficking; report of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1), Guideline 4.

<sup>58</sup> According to "The Declaration of Istanbul on Organ Trafficking and Transplant Tourism.", Principles 6 a and b.

<sup>59</sup> The Ethics Committee of the Transplantation Society, "The Consensus Statement of the Amsterdam Forum on the Care of the Live Kidney Donor."; See part 2, tool 1 of the present toolkit.

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<sup>60</sup>World Health Organization (WHO), "World Health Organization Guiding Principles on Human Cell, Tissue and Organ Transplantation." M.E. Olbrisch et al., "Psychosocial Assessment of Living Organ Donors: Clinical and Ethical Considerations," *Progress in Transplantation* 11, no. 1 (2001), p.5.

<sup>61</sup>This decision was established in The Netherlands by all national health insurance companies in 2010.

<sup>62</sup> Also the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1) offer considerations on non-punishment of trafficked persons, in recommended principles 7 and 8. The Organization for Security and Co-operation in Europe provides a practical overview of "Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking", (2013), [www.osce.org/secretariat/101002?download=true](http://www.osce.org/secretariat/101002?download=true)

<sup>63</sup>Shimazono, "The State of the International Organ Trade: A Provisional Picture Based on Integration of Available Information", *Bulletin of the World Health Organization* 2007;85:955–962.

<sup>64</sup>[www.who.int/transplantation/publications/ConsensusStatementShort.pdf](http://www.who.int/transplantation/publications/ConsensusStatementShort.pdf)

<sup>65</sup>[www.livingdonorassistance.org/documents/Report%20of%20Vancouver%20Forum.pdf](http://www.livingdonorassistance.org/documents/Report%20of%20Vancouver%20Forum.pdf)

<sup>66</sup>Questions taken from WHO Global Observatory on Donation and Transplantation: Organ donation and transplantation: Activities, Laws and Organization, 2010, p.8.

<sup>67</sup>Also see tool on Legal Assessment. This question is aimed both at identifying relevant laws in place in respect of trafficking in persons for the purpose of organ removal and also at assessing awareness of such laws.





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