

**Background Guide Topic Three:**  
**Trafficking of human organs and medical tourism**

*Introduction*

The World Health Assembly currently prohibits the commercial dealing of human organs, and human organ trafficking is also prohibited by law in all countries of the world except Iran. Unfortunately, these laws have not prevented the illegal trade of human organs. Patients on endless waiting lists are becoming increasingly desperate to obtain organs by any means, which has led to an increase in the black market organ trade. Unfortunately, there is very little, if any, reliable data available on organ trafficking, which causes the United Nations many problems in trying to combat this issue.

The gap between supply and demand for organ transplants is continually increasing, particularly in countries where cultural or religious norms prohibit organ donation. This lack of legally available organs has given way to black market organ trafficking. Desperate patients, unwilling or unable to wait years on a waiting list, are willing to venture outside of the law to obtain the organs they need. Some are willing to undergo surgery in developing nations (where the cost is significantly lower), while others pay to bring citizens of developing countries to their developed nation to undergo surgery. In the latter case, surgeons either allow this illicit behavior, or simply turn a blind eye.

In these underground transactions, the organ brokers charge the recipients of the organs as much as \$150,000 for a kidney, while they pay the donor as little as \$1000. These brokers capitalize off of the people of impoverished nations who may have no other way to feed their families. These organ “donors” are often illiterate and jobless, and therefore see no other way in which they can provide for their families. Unfortunately, these sales generally fail to lift the donors out of poverty, and can also have negative results due to lack of follow-up care.

In some underdeveloped nations, organs of executed prisoners are sold on the black market. Some less fortunate people are lured by ruthless organ traders to their deaths, where the traders steal their organs to sell illegally.

The World Health Organization believes that a binding international treaty is needed to combat the issue of human organ trafficking. Measures must be taken to protect victims, to prosecute brokers who

exploit the impoverished, and to implement consequences for surgeons who participate in illegal organ trafficking. Steps must also be taken to shorten the supply and demand gap for organ transplants, without creating a system where only the wealthy can afford vital organ transplants.

### *History*

Organ transplants were not possible to conduct until the 1970s when pharmaceuticals that prevented organ rejection were introduced to the medical community. Until then, there was no reason for legislation on the matter of organ trafficking, and as a result, there has been little international cooperation on the matter since then.

There are a few countries that have attempted a legal trade of human organs. Prior to 1994, India had a legal human organs market. In the early 1980s, anti-rejection drugs became available to India. At this time, one in every three people in India lived in poverty. These conditions, combined with a lack of medical regulations led to a booming organ transplant industry in India<sup>1</sup>. It was commonplace for the impoverished to willingly sell their organs to provide for their families. The recipients of these organs would be wealthy elite, generally from foreign countries. During this time period, India, along with China, became an international hub for organ (mostly kidney) transplants.<sup>2</sup> These loose medical standards, however, led the government to pass the Organ Transplant Laws in 1994, which criminalized financial transactions in exchange for human organs<sup>3</sup>. The black market organ trade, however, survived this legislation, and organs remain readily available in India. The situation was brought to the public eye in 1995 when Delhi police officers uncovered a kidney trafficking ring that convinced donors to travel outside of India to have the procedure done<sup>4</sup>. It is believed that hundreds of donors participated in these “kidney tours.”

China also provides a legal market for organ trading, though the Chinese government only legalized the market to deal in organs from executed prisoners, which provide for two-thirds of all organ transplants

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1 Lee, Dr. James R. “India Kidney Trade.” *TED Case Studies*. American University, The School of International Service. Washington, DC. January 1997.

2 Lee, Dr. James R. “India Kidney Trade.” *TED Case Studies*. American University, The School of International Service. Washington, DC. January 1997.

3 IndianHoliday Pvt. Ltd. “Indian Government Laws for Organ Transplant.” *Medical Tourism in India*. Delhi, India. 2009. <http://www.medicalindiatourism.com/medical-tourism/human-organs-transplant-laws-india.html>

4 Lee, Dr. James R. “India Kidney Trade.” *TED Case Studies*. American University, The School of International Service. Washington, D.C. January 1997.

in the People's Republic of China.<sup>5</sup> This harvesting of prisoners' organs, however, cannot provide enough organs for the 1.5 million transfers that are currently needed in China, where approximately 10,000 operations are performed each year.<sup>6</sup> This growing supply and demand gap has led to a burgeoning black market in China. The Chinese government passed a law in 2007 banning organ trafficking and donation to unrelated recipients to combat this black market. The Chinese government is also attempting to set up a voluntary donation system, though traditional Chinese culture rejects the removal of organs from a body after death<sup>7</sup>, a common cultural view in many East Asian countries.

Iran is another country that has allowed a legal organ trade to exist within its borders, and is the only country in the world that maintains a legal organ trading system. Iran's first successful kidney transplant came in 1967, 16 years after the first United States' kidney transplant.<sup>8</sup> Up until the early 1980s, Iran, like most other countries, relied on dialysis for the treatment of kidney disease. The Iranian government, however, began using its medical insurance programs to pay for kidney transplants as soon as the pharmaceuticals became available in the 1980s because of the expense of dialysis and the economic collapse after the 1979 revolution.<sup>9</sup> In 1988, the Iranian government legalized the coverage of transplants from unrelated donors, which resulted in the decrease patients on the organ recipient waiting list. The waiting list for kidneys was eliminated in Iran in 1999.<sup>10</sup>

There are many countries throughout the world that are considered major hubs of organ trafficking, including Egypt, Brazil, South Africa, Indonesia, Iraq, and Israel<sup>11</sup>. Israel is generally regarded as the most notorious of these countries. According to a BBC report in 2001, Israel buys more kidneys per capita than any other country in the world, though they have one of the lowest donor rates (due to religious customs).<sup>12</sup> Nancy Scheper-Hughes, founder of the organization Organ Watch, claims that

5 British Broadcasting Corporation. "China Admits Death Row Organ Use." *BBC News*. London, UK. August 2009. <http://news.bbc.co.uk/2/hi/asia-pacific/8222732.stm>

6 British Broadcasting Corporation. "China Admits Death Row Organ Use." *BBC News*. London, UK. August 2009. <http://news.bbc.co.uk/2/hi/asia-pacific/8222732.stm>

7 British Broadcasting Corporation. "China Admits Death Row Organ Use." *BBC News*. London, UK. August 2009. <http://news.bbc.co.uk/2/hi/asia-pacific/8222732.stm>

8 Hippen, Benjamin E. "Organ Sales and Moral Travails: Lessons from the Living Kidney Vendor Program in Iran." *Policy Analysis*. Issue No. 614. Cato Institute. Washington, D.C.. March 2008.

9 Hippen, Benjamin E. "Organ Sales and Moral Travails: Lessons from the Living Kidney Vendor Program in Iran." *Policy Analysis*. Issue No. 614. Cato Institute. Washington, D.C.. March 2008.

10 Hippen, Benjamin E. "Organ Sales and Moral Travails: Lessons from the Living Kidney Vendor Program in Iran." *Policy Analysis*. Issue No. 614. Cato Institute. Washington, D.C.. March 2008.

11 Cholia, Ami. "Illegal Organ Trafficking Poses a Global Problem." *The Huffington Post*. July 2009. [http://www.huffingtonpost.com/2009/07/24/illegal-organ-trafficking\\_n\\_244686.html](http://www.huffingtonpost.com/2009/07/24/illegal-organ-trafficking_n_244686.html)

12 Weir, Allison. "Israeli Organ Trafficking and Theft: From Moldova to Palestine." *The Washington Report on Middle*

Israel “is at the top” of the organ trafficking market, and that “It has tentacles reaching out worldwide.”<sup>13</sup> Scheper-Hughes describes the Israeli organ trafficking system as a pyramid system with brokers, doctors, bank accounts, translators, and recruiters all over the world, and they even have a network of travel agents to secure visas for donors.<sup>14</sup> It is believed that the Israeli organ trafficking syndicate has ties with surgeons in many countries, most notably Turkey, Moldova, Estonia, Russia, Georgia, Romania, Brazil, and New York City.<sup>15</sup>

Israel did not pass legislation against human organ trafficking until 2008, though the Israeli health system gives subsidies to those who participate in “transplant holidays.”<sup>16</sup> Scheper-Hughes also claims that the Israeli Ministry of Defense is directly involved in the illicit organ trade.<sup>17</sup>

In 2008, the United Nations and the Council of Europe participated in a joint study on human organ, tissue, and cells trafficking, as well as the trafficking of human beings for the purpose of removal of organs.<sup>18</sup> The study concluded that the trafficking of human beings for the purpose of organ removal is just a small part of the larger problem of organ, tissue, and cell trafficking. The study also uncovered a great amount of legal and scientific confusion between trafficking organs/tissues/cells and trafficking humans for the purpose of removing their organs. The study also concluded that there must be two different solutions to the two different types of objects being trafficked. The study advocates the prohibition of financial compensation for organ/tissue/cell donation, which is consistent with the 1997 *Council of Europe Convention on Human Rights and Biomedicine* [CETS No. 164] and the *Additional*

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*East Affairs*. Washington D.C. November 2009. <http://www.wrmea.com/component/content/article/321-2009-november/6602-israeli-organ-trafficking-and-theft-from-moldova-to-palestine.html>

13 Weir, Allison. “Israeli Organ Trafficking and Theft: From Moldova to Palestine.” *The Washington Report on Middle East Affairs*. Washington D.C. November 2009. <http://www.wrmea.com/component/content/article/321-2009-november/6602-israeli-organ-trafficking-and-theft-from-moldova-to-palestine.html>

14 Weir, Allison. “Israeli Organ Trafficking and Theft: From Moldova to Palestine.” *The Washington Report on Middle East Affairs*. Washington D.C. November 2009. <http://www.wrmea.com/component/content/article/321-2009-november/6602-israeli-organ-trafficking-and-theft-from-moldova-to-palestine.html>

15 Weir, Allison. “Israeli Organ Trafficking and Theft: From Moldova to Palestine.” *The Washington Report on Middle East Affairs*. Washington D.C. November 2009. <http://www.wrmea.com/component/content/article/321-2009-november/6602-israeli-organ-trafficking-and-theft-from-moldova-to-palestine.html>

16 Weir, Allison. “Israeli Organ Trafficking and Theft: From Moldova to Palestine.” *The Washington Report on Middle East Affairs*. Washington D.C. November 2009. <http://www.wrmea.com/component/content/article/321-2009-november/6602-israeli-organ-trafficking-and-theft-from-moldova-to-palestine.html>

17 Weir, Allison. “Israeli Organ Trafficking and Theft: From Moldova to Palestine.” *The Washington Report on Middle East Affairs*. Washington D.C. November 2009. <http://www.wrmea.com/component/content/article/321-2009-november/6602-israeli-organ-trafficking-and-theft-from-moldova-to-palestine.html>

18 Caplan, Arthur, PhD; Domínguez-Gil, Beatriz, MD, PhD.; Matesanz, Rafael, MD, PhDm; Prior, Carmen, Mag. Iur. *Trafficking Organs, Tissues and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs: Joint Council of Europe/United Nations Study*. Council of Europe. 2009.

*Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origins* [CETS No. 166].<sup>19</sup> Altruistic donations, however, should still be welcome. The study advocates avid promotion of organ donation and increased measures to insure organ availability, with preference given to deceased organ donation. The study also promotes further investigation of human organ/tissue/cell trafficking and the trafficking of human beings for the purpose of organ removal, as there is little official information on the subject. A binding international agreement on the issue of human organ trafficking is also highly recommended in the study, as well as the mentioning of human organ/tissue/cells and the trafficking of human beings for the purpose of organ removal to the United Nations definition of trafficking in human beings in *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime*.<sup>20</sup>

### *Current Situation*

Currently, there is little differentiation in international law between human organ/tissue/cell trafficking and the trafficking of human beings for the purpose of organ transplants. Internationally, the United Nations, the World Medical Authority, and the Council of Europe are the leaders in human organ trafficking study and legislation. The issue, however, is a fairly recent problem, and there is not an abundance of accurate information on the subject.

In its Trafficking Protocol, Optional Protocol on the sale of children, child prostitution and child pornography (2000), and Convention on the Rights of the Child (1989), the United Nations prohibits the trafficking of human beings for the intent of organ transplants<sup>21</sup>. The Trafficking Protocol also instructs member states to consider providing counseling, health, legal, and compensation services to voluntary donors, and states that living donors should be second to deceased donors.

The World Medical Authority (WHA) has remained staunchly against human organ/tissue/cell

19 Caplan, Arthur, PhD; Domínguez-Gil, Beatriz, MD, PhD.; Matesanz, Rafael, MD, PhDm; Prior, Carmen, Mag. Iur. *Trafficking Organs, Tissues and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs: Joint Council of Europe/United Nations Study*. Council of Europe. 2009.

20 Caplan, Arthur, PhD; Domínguez-Gil, Beatriz, MD, PhD.; Matesanz, Rafael, MD, PhDm; Prior, Carmen, Mag. Iur. *Trafficking Organs, Tissues and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs: Joint Council of Europe/United Nations Study*. Council of Europe. 2009.

21 Pearson, Elaine. *Coercion in Kidney Trade: A background study on trafficking in human organs worldwide*. Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH. Eschborn, p. 12. Germany. 2004.  
<http://www.gtz.de/de/dokumente/en-organ-trafficking-2004.pdf>

trafficking since 1985. In October 2000, the WHA released a statement regarding organ trafficking, stating that any compensation for organ donation can be coercive, and should absolutely be prohibited<sup>22</sup>.

The Council of Europe (COE) has also done its share of research and legal work on human organ/tissue/cell trafficking. In the European Convention on Human Rights and Biomedicine (1997), the COE states that no financial gain should result from the sale of the human body or its parts.<sup>23</sup> In 2002, the COE drafted the Additional Protocol to the Convention on Human Rights and Biomedicine Concerning Transplantation of Organs and Tissues of Human Origin, which outright prohibits human organ/tissue/cell trafficking, and calls on member states to instate appropriate sanctions for organ traffickers.<sup>24</sup> The protocol also establishes the right of voluntary donors to information regarding the risks and legal rights, as well as the right to independent advice. Additionally, the protocol states that a donation cannot be made without informed consent, nor can it be made without appropriate follow-up care.<sup>25</sup> The protocol was signed by 20 member states (Bulgaria, Croatia, Estonia, Finland, Georgia, Greece, Hungary, Iceland, Italy, Luxembourg, Moldova, Montenegro, Netherlands, Portugal, Serbia, Slovenia, Spain, Switzerland, Macedonia, and Ukraine) and ratified by 12 member states (Bulgaria, Croatia, Estonia, Finland, Georgia, Hungary, Iceland, Moldova, Montenegro, Slovenia, Switzerland, Macedonia).<sup>26</sup>

There are many non-governmental organizations, as well as non-profit groups that support human organ/tissue/cell trafficking awareness and prevention. Prominent amongst these groups are the Bellagio Task Force and the Coalition for Organ Failure Solutions (COFS). The Bellagio Task Force is

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22 Pearson, Elaine. *Coercion in Kidney Trade: A background study on trafficking in human organs worldwide*. Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH. Eschborn, p. 13. Germany. 2004.  
<http://www.gtz.de/de/dokumente/en-organ-trafficking-2004.pdf>

23 Pearson, Elaine. *Coercion in Kidney Trade: A background study on trafficking in human organs worldwide*. Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH. Eschborn, p. 13. Germany. 2004.  
<http://www.gtz.de/de/dokumente/en-organ-trafficking-2004.pdf>

24 Pearson, Elaine. *Coercion in Kidney Trade: A background study on trafficking in human organs worldwide*. Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH. Eschborn, p. 13. Germany. 2004.  
<http://www.gtz.de/de/dokumente/en-organ-trafficking-2004.pdf>

25 Pearson, Elaine. *Coercion in Kidney Trade: A background study on trafficking in human organs worldwide*. Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH. Eschborn, p. 13. Germany. 2004.  
<http://www.gtz.de/de/dokumente/en-organ-trafficking-2004.pdf>

26 Council of Europe. "Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin CETS No.: 186." 2010.  
<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=186&CM=&DF=&CL=ENG>

an organization of transplant surgeons, organ procurement specialists, human rights activists and social scientists that are concerned with international organ trafficking, organ transplantation, and bodily integrity. The task force concluded that commercialization of organs from live donors should absolutely be illegal, but stated that commercialization of organs from deceased donors may be considered.<sup>27</sup> The task force also found that the current inequities in the organ trafficking system put poor and powerless donors at risk.<sup>28</sup>

The Coalition for Organ Failure Solutions (COFS) is an international organization that staunchly opposes human organ/tissue/cell trafficking. The COFS defines its mission as “encourag[ing] state accountability for establishing solutions to the problem of organ trafficking; support[ing] movements to secure solutions for patients in need of organs and tissues other than the reliance upon global underclasses of living unrelated, solicited donors as a source of organ supplies; provid[ing] assistance to individuals who have already been solicited for donorship.; and provid[ing] outreach to vulnerable groups of potential donors<sup>29</sup>.” The COFS has prevention programs and survivor programs in countries such as Bahrain, Egypt, India, Iran, Nepal, Pakistan, Qatar, Sudan, Turkey, the United Arab Emirates, and the United States.

As it was previously stated, human organ/tissue/cell trafficking is illegal in all countries except Iran. Without international laws, however, traffickers often find loopholes or loosely enforced national laws that do little to discourage human trafficking. Organizations such as the Council of Europe, the Bellagio Task Force, and the Coalition for Organ Failure Solutions, and many more are calling for strict international law to prevent human organ/tissue/cell trafficking. There are several recommendations for a solution to this issue. The most common potential solutions can be summed up by the German Agency for Technical Cooperation (GTZ). The GTZ (using chiefly the research from the COE) lists the following recommendations<sup>30</sup>:

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27 Pearson, Elaine. *Coercion in Kidney Trade: A background study on trafficking in human organs worldwide*. Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH. Eschborn, p. 14. Germany. 2004. <http://www.gtz.de/de/dokumente/en-organ-trafficking-2004.pdf>

28 Pearson, Elaine. *Coercion in Kidney Trade: A background study on trafficking in human organs worldwide*. Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH. Eschborn, p. 14. Germany. 2004. <http://www.gtz.de/de/dokumente/en-organ-trafficking-2004.pdf>

29 Coalition for Organ Failure Solutions. “What We Do.” 2005. <http://www.cofs.org/what.htm>

30 Pearson, Elaine. *Coercion in Kidney Trade: A background study on trafficking in human organs worldwide*. Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH. Eschborn, p. 31-35. Germany. 2004. <http://www.gtz.de/de/dokumente/en-organ-trafficking-2004.pdf>

Recommendation 1: “Brief research study for campaigning purposes into the impact of organ trafficking on human rights. Research to be carried out in a number of selected countries such as those already identified by Organs Watch and to draw on existing materials such as those produced by Organs Watch that advocate a medical human rights agenda to the organ trade.”

Recommendation 2: “Organize a conference of key stakeholders i.e. medical professionals, NGOs and IGOs working on issues of health and trafficking to discuss:

- Effective strategies taken to combat organ trafficking at local, national and international levels.
- Ethical issues and strategies concerning regulation of commercial organ transplantation.
- Practical strategies and alternatives to reduce the human rights abuses suffered by victims of organ trafficking.
- Enactment of a Donors' Bill of Rights,<sup>134</sup> setting out the human rights of donors such as right to free, informed consent, counseling, legal support and immediate health care.”

Recommendation 3: “Research to assess the socio-economic and health status of kidney sellers prior to and post-kidney selling in Brazil, India and Moldova.<sup>135</sup> In examining the health status of kidney sellers, medical tests will be required. This research should also examine the extent and type of coercion used on kidney sellers, to more accurately determine the extent of organ trafficking. On the basis of the research, local anti-trafficking NGOs will have a clearer idea of what kind of follow-up activities and services are required to prevent organ trafficking and ensure protection of the rights of organ-sellers.”

Recommendation 4: “NGO currently engaged in anti-trafficking prevention and assistance activities should expand those activities and tailor them to organ trafficking on basis of outcome of Recommendation 3. First a needs assessment to be done in conjunction with local human rights activists that have been working on organ trafficking and with people who have had organs removed by deception/coercion (this may be done as part of Recommendation 3). Training by Organs Watch and partners in Recommendation 3 to provide conceptual clarity on the issue and by health professionals to explain implications of transplantation procedures. NGO to design and implement prevention and assistance activities which might include:

- Free counseling and information about health and kidney care to potential kidney sellers and kidney sellers via hotline (or in person)
- Information about the health risks of organ selling disseminated in target areas - Health services for kidney sellers such as providing a medical check-up
- Legal services for victims filing complaints against traffickers
- Campaign to reduce stigmatization of organ sellers in communities.”

Recommendation 5: “NGO to counsel kidney donors that come before Authorization Boards in India to ensure they are aware of the health issues related to donating a kidney, what will be the impact of donating and how to reduce negative consequences. NGO also to prepare some informative materials that can be disseminated about the health and legal issues and the effects of donating a kidney, including harm reduction.”

Recommendation 6: “NGO to conduct a lobbying and advocacy campaign to reform the 1994 law so that donors are not criminalized and to tighten the legal loophole allowing for live unrelated donation on basis of attachment or affection. NGO to advocate for closer monitoring of the Authorization Boards granting live unrelated donations of kidneys. Clear guidelines should be established for Authorization Boards to follow, such as to ensure counseling of donors by an NGO to ensure donors are giving free and informed consent and are fully aware of the risks involved.”

The issue of human organ/tissue/cell trafficking is a major issue in the world today. Individual national policy depends on many socio-cultural viewpoints in particular nations. The delegates should be mindful of their individual country’s situation, while keeping in mind international standards.

#### *Directive*

Medical Tourism and trafficking of human organs refers to the rapidly-growing practice of traveling across international borders to obtain health care, and the illegal purchase of organs and tissues for transplantation. Currently, over 50 countries have identified medical tourism as a national industry. However, accreditation and other measures of quality vary widely across the globe, and there numerous ethical and humanitarian issues that make this method of accessing medical care controversial. In the

varying degrees of quality in healthcare worldwide have led to cases of fraud, and safety violations, to the point where many destinations may become hazardous for medical tourists. In addition, countries such as India and China have been alleged in the practice of sale and collection of human organs, both within the countries and across international borders. In addition, this industry has led to a decline in the number of native patients who are able to obtain healthcare in their countries.

Debate of this topic should address cooperation between the UN and the countries implicated in these issue, in order to make medical tourism safer, or less prominent. An example of this could be regulatory measures to control the amount or types of medical tourism, or a more uniform standard for medical procedures that could make this medical tourism safer. In addition, delegates should address the second issue at hand, which is the collection of human organs, and the human trafficking and sale that occurs for these purposes.