Med Health Care and Philos
DOI 10.1007/s11019-013-9488-y

REVIEW ARTICLE

A human rights approach to Human Trafficking for Organ Removal

Debra Budiani-Saberi · Seán Columb

Abstract Human trafficking for organ removal (HTOR) should not be reduced to a problem of supply and demand of organs for transplantation, a problem of organized crime and criminal justice, or a problem of voiceless, abandoned victims. Rather, HTOR is at once an egregious human rights abuse and a form of human trafficking. As such, it demands a human-rights based approach in analysis and response to this problem, placing the victim at the center of initiatives to combat this phenomenon. Such an approach requires us to consider how various measures impact or disregard victims/potential victims of HTOR and gives us tools to better advocate their interests, rights and freedoms.

Keywords Human trafficking for organ removal · Organ trafficking · Human rights

Socio-economic conditions should not be determinants for an organ "donation".

Introduction

Various initiatives to address human trafficking for organ removal (HTOR) have been developed since the late 1980s and emerged from concerns of organ trading brought to the attention of the World Health Organization (WHO). Since 1987, the WHO developed and updated guiding principles for human organ transplantation (WHO Guiding Principles). Since 2006, the International Transplantation Society (TTS) has worked in collaboration with the WHO to employ these principles and in 2008 partnered with the International Society of Nephrology (ISN) to develop the Istanbul Declaration on Organ Trafficking and Transplant Tourism (The Declaration of Istanbul). Media and civil society responses have created awareness of what is known about the scope and operations of the organ trade with some efforts to also provide victim[1] assistance. The United Nations Office on Drugs and Crime (UNODC) has principal carriage for human trafficking within the United Nations system and has addressed organ trafficking in some of its criminal justice resources on human trafficking. These efforts have contributed to improved legal and policy frameworks to prohibit the organ trade in key host countries including Pakistan, Egypt, China and the Philippines with an aim to harmonize policies in accordance with the WHO Guiding Principles. The Declaration of Istanbul has also obtained the endorsement of transplant professional societies, pharmaceutical companies and governmental entities across the globe.

D. Budiani-Saberi (✉)
Coalition for Organ Failure Solutions (COFS), Bethesda, MD, USA
e-mail: debra@cofs.org

S. Columb
School of Law, Queen's University Belfast, Belfast, Northern Ireland, UK
e-mail: scolumb01@qub.ac.uk

[1] Use of the term "victim" of HTOR in this paper relies upon the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power that defines "victims" in the broad sense as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are violations of national criminal laws or of internationally recognized norms relating to human rights. The term victim is an advancement from prior terms used in the discourse including "organ seller/vender," "commercial living (organ) donor." COFS is transitioning to the preferred term "trafficked person" or in this case, "person trafficked for organ removal" (PTOR) to better express individuals' agency in this experience. Above all, COFS' intention is to seek legal recognition that these persons have had rights abused by being trafficked for organ removal.

Published online: 07 June 2013

These measures have created better recognition of the problem and worked to reduce it. Yet, HTOR still thrives in many countries and will continue to challenge opposition measures as the demand for organs continues to outpace supplies. Improved laws related to transplantation are an important element. However, as we have seen in countries such as India and Egypt (countries where the authors' affiliate organization has worked and identified many cases of HTOR), even sophisticated legal frameworks on transplantation have loopholes that enable violations and complicate law enforcement.

Centering anti-HTOR efforts within a human rights framework in analysis and response to this problem enables us to mobilize and employ various international legal instruments to better elicit regional and state obligations to further address the multiple human rights violations that may occur in the trafficking process. This requires us to consider how various measures impact or disregard victims/potential victims of HTOR and to better advocate their interests, rights and freedoms. Accordingly, this paper first presents a brief discussion on the problem of exploitation in organ donation followed by a description of key concepts and terms. A background of the international response is then elaborated and it is argued that a human rights-based approach should be employed to assure that HTOR is not reduced to a problem of supply and demand of organs for transplantation, of organized crime and criminal justice or of voiceless, abandoned victims but rather maintains a focus on the victims/survivors of HTOR and the advocacy of their interests.

The problem of exploitation in organ transplantation

The development and success of organ transplantation since the mid-1950s paved the path to an era where donors and recipients no longer had to be relatives but could be biologically, socially and geographically distant. Following these developments in recent decades, transplant technologies advanced worldwide as did an explosion in the demand for organs, mostly kidneys. Thus, transplantation in recent decades is not just a medical technology restricted to Western cities like Boston, London and Geneva but is a common procedure in much of the globe including urban centers such as Chennai, Cairo, Manila, Shanghai, Singapore and Bogota.

In a growing number of countries since the late 1970s, the major or a significant source of organs used for transplant procedures have been and continue to be from poor and vulnerable individuals who are solicited or resort to an organ removal via material incentives. The clandestine nature of HTOR makes it difficult to derive an accurate estimate of cases across the globe. However, in March 2007, WHO) estimated that illicit kidney removals for transplantation account for 5–10 % of the approximately 65,000 kidney transplants performed annually throughout the world. The WHO estimate is considered the most reliable, albeit conservative, estimate as the number of kidney transplants in China (from executed prisoners) alone in 2006, estimated at 8000, would have exceeded this estimate (Budiani-Saberi and Delmonico 2008). This estimate is also based on credible information from countries where this information can be gathered and does not include figures in countries where allegations of kidney trafficking occur and where there is little transparency, reporting or regulation of transplant practices. It also does not include an estimate for trafficking for a partial liver for transplantation, still likely to be several.

HTOR occurs within and across national borders. A border crossing is not required for a case to be considered human trafficking.[2] The legislative guide for the implementation of the United Nations Convention on Transnational Organized Crime and its Protocols thereto is clear on this, stating that, 'while offences must involve transnationality and organized criminal groups for the Convention and its international cooperation provisions to apply, neither of these must be made elements of the domestic offence' (UNODC 2004, para 18). In countries such as India and Egypt, the majority of cases are in fact forms of intra-state trafficking (Budiani-Saberi and Mostafa 2010; COFS 2012). That is trafficking mainly occurs within national boundaries. In fact, in these countries it has been easier to curb foreigners from purchasing and receiving an organ in a host country than it has been to control nationals purchasing and receiving an organ within their own country.

Reports from human rights activists, the media and social/health scientists over the last two decades have shed light on the networks and *modus operandi* of organ traffickers and the suffering of victims of HTOR. Various studies in Egypt, India, Pakistan, the Philippines and Iran document the long-lasting negative health, economic, psychological and social consequences for victims of HTOR (Budiani-Saberi and Delmonico 2008; Goyal et al. 2002; Zargooshi 2001a, b; Shimazono 2006; Naqvi 2007). Victims are also left without avenues for recourse to legal representation, protection or effective remedies. Casework undertaken by the Coalition of Organ-Failure Solutions

[2] According Article 3 (2) of the United Nations Convention on Transnational Organized Crime an offence is transnational in nature if:

a. It is committed in more than one State;
b. It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
c. It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
d. It is committed in one State but has substantial effects in another.

(COFS) includes the identification of numerous victims of HTOR (particularly in Egypt and India) and reveals the difficulties victims face receiving assistance. For example, an Israeli citizen of Eastern European origin who was trafficked to Istanbul for an organ removal has been denied access to support services or legal advocacy. A woman in West Bengal, India, who was trafficked for a kidney by her husband, does not have the necessary resources to acquire support for consequences that have resulted from her commercial kidney removal or to protect her son from being trafficked as well. Sudanese asylum seekers in Egypt made victim of HTOR via people smugglers who worked in collaboration with organ trafficker's fear reporting their cases out of concern for retaliation. There are no mechanisms in place to protect their identities, provide shelter or temporary residence. In many jurisdictions HTOR is not recognized as a trafficking offence. Therefore victims of HTOR are denied entitlements available to victims of other trafficking offences.

Significant progress has been made in recent years to strengthen laws intended to curb organ trafficking in key countries that host the organ trade such as India, China, Pakistan, the Philippines and Egypt. However, in these and many other countries, renal failure is now reaching proportions similar to that of tuberculosis, in large part because of the astounding growth in diabetes worldwide. With transplants as the preferred therapy for renal failure, demand for kidneys will continue to outpace supplies. Until nations can build transparent, reliable systems of organ donation through altruistic donations from healthy individuals and deceased donors, poor and vulnerable individuals are at risk for continued targeting to supply organs to privileged patients.

Key terms and concepts

HTOR was first defined as part of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereinafter referred to as "the Trafficking Protocol"), supplementing the United Nations Convention against Transnational Organized Crime (hereinafter the Organized Crime Convention). Article 3(a) of the Trafficking Protocol defines trafficking as:

> the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs (UNODC 2000b).

In 2008, at the International Summit on Transplant Tourism and Organ Trafficking *a more nuanced definition of* "organ trafficking"*, derived from Article 3*(*a*) *of the Trafficking Protocol, was established as part of the Declaration of Istanbul*. The definition reads as follows:

> Organ trafficking is the recruitment, transport, transfer, harboring, 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 (The Declaration of Istanbul 2008).

The above definition of 'organ trafficking' is thus largely harmonious with the definition of trafficking for the purpose of 'the removal of organs' as articulated in the Trafficking Protocol. The cases that are generally considered in discussions on organ trafficking, and in the many cases that COFS has addressed, fall within the scope of the definition articulated in the Trafficking Protocol which require an action (the recruitment, transportation, transfer, harbouring or receipt of persons) and a means (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 an organ removal (UNODC 2000b, Art 2(a)). However, three key concepts have been continuously misconceived in efforts to address this issue: (1) trafficking in organs, cells and tissues versus HTOR (2) consent and (3) the legality of payment.[3]

Trafficking in organs versus HTOR

The definition of organ trafficking in the Declaration of Istanbul does not exclusively refer to trafficking of organs independent of persons. Although tissues and cells remain viable for longer periods and commonly travel independent

[3] This section is borrowed from the first author's elaboration of these points in briefings to US Congressional committees on this issue, January 2012. See, http://tlhrc.house.gov/docs/transcripts/2012_1_23_Organ_Trafficking_Briefing/Budiani_testimony.pdf.

of their donors, organs are largely not transported independent of persons in commercial transplants. Upon removal, they are transplanted. Thus most abuses occur when an organ is removed from a victim within a location where the recipient awaits and the transplant is performed. However, preservation techniques certainly make the independent transporting of organs possible presently and this practice is likely to increase across the globe in the future. Nevertheless, even if organs are transported independently in countries where there is insufficient regulation on organ donation and commercial transplants are being commonly practiced, a person may have been trafficked in order to remove that organ.[4] Such cases, often dismissed by law enforcement, require further investigation.

Similar misconceptions have been expressed in major anti-human trafficking initiatives. For example, within a list of topics of special interest in the 2010 US State Department Trafficking in Persons (TIP) report, it is explained that:

> The trade in human organs – such as kidneys – is not in itself a form of human trafficking. The international trade in organs is substantial and demand appears to be growing. Some victims in developing countries are exploited as their kidneys are purchased for low prices. Such practices are prohibited under the Palermo Protocol, for example when traffickers use coercive means, such as force or threats of force to secure the removal of the victim's organs (US State Department 2010).

While explicit threats or use of force or coercion for an organ removal are employed in some cases, the majority of traffickers do not use violence and force but rather more manipulative methods to obtain an organ. Most cases thus involve implicit coercive measures and/or the variety of other means included in these definitions—namely fraud, deception, the giving of payments or benefits and the abuse of power or vulnerability for the removal of an organ (see, Eulex 2011; Allain 2011). For example, COFS work has shown how Sudanese asylum seekers in Egypt are put into situations in which smugglers who assisted them to cross the border later provide food and housing for them in Cairo and then demand exorbitant sums for this assistance (COFS 2011). Smugglers collaborate with kidney traffickers to suggest the idea of a kidney sale as a way to remedy the financial problem. COFS work has also shown that debt collectors in India who suggest a kidney sale to settle a debt also often suggest that the indebted target would "want to see that their family remains safe." Organ traffickers typically do not explain risks and often do not complete or make) the payment after the kidney removal.

At the time of writing this paper, the Council of Europe published a draft Convention against trafficking in human organs (THO).[5] This document does not address how THO may be occurring or the extent of such a phenomenon. It rather makes a clear prohibition of material gain for an organ and extends the culpability of illicit organ removals.

Consent

On the surface it may seem reasonable that one should be given the "freedom"/autonomy to sell his/her organ if he/she chooses. However, in practice rarely is such a drastic decision determined by a rational singular choice. When faced with an option to sell an organ amidst destitute conditions and few other options, the choice becomes somewhat insignificant. This is made clear by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime:

> …what might appear to be consent by a victim is nullified or vitiated by the application of any improper means by the trafficker. Furthermore, consent of the victim at one stage of the process cannot be taken as consent at all stages of the process and without consent at every stage of the process, trafficking has taken place (United Nations 2011).

In all cases that COFS has encountered in which "consent" is claimed, the individual's vulnerability has been exploited. That is, individuals have agreed to something they would not have otherwise, if conditions were less pressing. As in other forms of human trafficking, consent in cases of HTOR is not a matter of free will but rather a result of the manipulation of vulnerable, often desperate persons. Further, consent does not signify that the victim had a clear understanding of the consequences of the procedure. Often the victims are intentionally defrauded (i.e. duped, deceived, mislead, given false information). Under most legal systems that cannot constitute consent and may even run afoul of criminal laws.

[4] The language on this issue in the Guiding Principles may have facilitated some of this understanding about how organs travel. For example, the WHO Guiding Principles state the need to "prevent trafficking in human materials" and that a shortage in supplies has "stimulated commercial traffic in human organs." The Guiding Principles also acknowledge that the commercial traffic in human organs are especially from living donors who are unrelated to recipients and that such commerce is related to the traffic in human beings. See http://www.who.int/transplantation/Guiding_Principles Transplantation_WHA63.22en.pdf.

[5] http://www.coe.int/t/dghl/standardsetting/cdpc/CDPC%20documents/CDPC%20(2012)%2021%20-%20e%20-%20Draft%20Convention%20against%20Trafficking%20in%20Human%20Organs.pdf.

Payment

The Trafficking Protocol stipulates that the receipt of payments or benefits does not exclude cases from being exploitative, in this case for an organ. Just as an individual trafficked for domestic servitude may get paid and still be considered a victim of human trafficking, it is not the payment or the amount of money that is relevant, but rather an individual's position of vulnerability that is manipulated and controlled for the purpose of labor and in other cases, for sex or an organ. Similarly, in situations of debt bondage/bonded labor-consent and payment do not deem the practice permissible. Furthermore, the sale of organs is in fact illegal in every country (except for Iran), regardless of whether payments were received. This is important to recognize and has also been misconceived. For example, one of the few statements on HTOR in a TIP Report (2009) incorrectly holds that, 'The UN TIP Protocol does not cover this voluntary sale of organs for money, which is considered lawful in most countries' (United Nations 2009).

While it can be argued that organ sales might be considered exploitation (where the intention to exploit is not evident) it is important to note that an unsolicited organ sale can be considered trafficking where a person is *received* for the purpose of an organ removal by way of payment or benefits to achieve the consent of a person (UNODC 2000b, Art 3(a)). Further, although the removal of an organ is not in itself a form of exploitation, it is exploitive to remove an organ where a position of vulnerability is in existence and knowledge of that vulnerability is abused in order to recruit, transport, transfer, harbour or receive a person for the purpose of an organ removal (UNODC 2012a, b).[6] Under such conditions an organ sale can be considered a trafficking offence, regardless of 'consent' (UNODC 2000b, Art 3 (b)). Accordingly, in a recent case in Kosovo regarding HTOR the Three Judge Panel found that:

> …the person who had come to Kosovo to donate their organs did not do so to assist a family member or for any of the usual reasons that people in a civilised society chose freely to donate their organs. They did so because of their position of vulnerability. To suggest that a person would travel to a foreign country, endanger their health through such invasive procedure on the say so of a stranger runs (if they were not in a position of vulnerability) contrary to common sense… (Eulex 2011)

In India the majority of commercial transplants come from donors who invariably 'agree' to sell an organ due to the presence of a social determinant/vulnerability of some kind. Findings from COFS-India field research reveal that many victims felt they had no option but to sell a kidney because of a personal (i.e. gender, ethnicity, age), situational (i.e. migration status/administrative situation) or circumstantial (i.e. unemployment, debt bondage) vulnerability (UNODC 2012a).[7] Offenders of HTOR (brokers, criminal groups, doctors, corrupt officials) exploit this vulnerability to induce destitute individuals to sell their organs. Further, the existence of vulnerability is not assessed by the medical committees responsible for overseeing the compliance of ethical standards in transplantation. This is a key factor as to why the organ trade has continued unabated in key host countries and continues to operate internationally.

International responses

Health and transplant professional organizations

World Health Organisation

In recognition of a growing trade in human organs, in May 1987 the 40th World Health Assembly (WHA) requested the Director-General to study the possibility of developing appropriate guiding principles for human organ transplants and to report to the Health Assembly on the action taken in this regard. This led to the development and endorsement of the first WHO Guiding Principles on Human Organ Transplantation in resolution WHA44.25 in 1991. These Principles outlined a framework for living and deceased organ donation to increase organ supplies while prohibiting the giving or receiving of material gain in exchange for an organ. The Principles became a key reference to influence practices for the development of legislation in various

[6] Abuse of a position of vulnerability occurs when an individual's personal, situational or circumstantial vulnerability is intentionally used or otherwise taken advantage of, to recruit, transport, transfer, harbour or receive that person for the purpose of exploiting him or her, such that the person believes that submitting to the will of the abuser is the only real or acceptable option available to him or her, and that belief is reasonable in light of the victim's situation. In determining whether the victim's belief that he or she has no real or acceptable option is reasonable, the personal characteristics and circumstances of the victim should be taken into account". The Guidance Note is available from: http://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Guidance_Note_-_Abuse_of_a_Position_of_Vulnerability_E.pdf. The Issue paper on which it is based is available from: http://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf.

[7] Victims of Human Trafficking for Organ Removal in India. Report by the Coalition for Organ-Failure Solutions. Forthcoming December 2013.

countries.[8] For example, the Human Organ Transplantation Act (HOTA) was formulated according to the standards set forth in the Guiding Principles in 1994 as a response to the widespread kidney market in India that served international patients.

Concerns of exploitation of persons for an organ removal gained official attention elsewhere within the UN in 2000 (elaborated below). In response to a request from the Government of Colombia, the WHO re-examined the issue in 2003 and in 2004 resolution WHA57.18 was adopted to urge member states to continue to harmonize with the WHO Guiding Principles with specific mention to "take measures to protect the poorest and most 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" (WHO 2004). Although the Principles had not yet established a clear definition, 'organ trafficking' was the term employed to describe the use of material incentives for an organ removal and it was recommended that this should be prohibited.

The WHO facilitated informal and regional consultations thereafter and a formal global consultation in 2007 which resulted in updated WHO Guiding Principles as endorsed by the WHA (WHA63.22) in 2010. The increase in live donations from unrelated organ donors due to advances in immunosuppressive drugs caused further concern about the extent of commercial transplants from living persons. This updated version was developed to reflect 'current trends in transplantation, particularly organ transplants from living donors and the increasing use of human cells and tissues' (WHO 2010).[9] These updates were also an important reference for additional countries, such as the Philippines, Pakistan and Egypt, as they established improved laws on transplantation in 2009 and 2010.

The Declaration of Istanbul

Shortly after the formal global consultation to develop the updated Guiding Principles, the inclusion of "trafficking for the removal of organs" within the Trafficking Protocol began to be brought into the conversation of transplant professionals with respect to the need for a definition of organ trafficking and related terms (Budiani-Saberi 2007). Soon after, the TTS and the ISN organized a summit in Istanbul in May 2008, to address the growing problem of organ trafficking. The Summit convened over 150 representatives of 'scientific and medical bodies around the world, government officials, social scientists and ethicists' and resulted in the Istanbul Declaration (The Declaration of Istanbul 2008).

The Declaration includes a set of Principles to guide transplantation practices and Proposals to outline goals to prevent the organ trade. The Declaration has been endorsed by over a hundred professional organizations and government agencies around the world, medical and scientific journals are requiring statements of conformance with the Declaration in the publication of clinical studies, and major pharmaceutical companies are committed to conducting clinical trials only with transplant programs that conform to the principles of the Declaration.

The definition of organ trafficking in the Declaration of Istanbul (included above) does not indicate that the combination of all three elements (the act, means, and purpose) is necessary for a particular case to be considered a trafficking offence. Rather it speaks to a process of exploitation that can drive an organ removal, and was not intended for prosecution purposes as is the definition of a trafficking offence (outlined above) in the Trafficking Protocol. The Declaration emphasizes donor safety and notes that 'a positive outcome for a recipient can never justify harm to a live donor' (The Declaration of Istanbul 2008). Distinction is made between transplant tourism, transplant commercialism and travel for transplantation. This is critical to the development of targeted strategies to combat exploitative transplant practices. Further, the Declaration emphasizes the vulnerability of live donors and promotes equitable access to health care and prevention of organ failure.

As with the WHO Guiding Principles however, organ trafficking is, in the main, represented as an issue of supply and demand. Although it is important to encourage deceased and altruistic organ donation, increasing the donor pool/organ supplies only addresses part of a much broader issue grounded in questions over criminal justice and human rights. There will long be a demand for replacement organs. In addition to increasing organ donor safety and medical follow-up, the primary objective should be to recognize rights of victims of this form of exploitation and provide them with protection, support and remedies.

Criminal justice response

The Trafficking Protocol was the first multilateral treaty to explicitly recognise HTOR as a practice that should be

[8] The Guiding Principles are explicitly referenced in India's national transplant law.

[9] See, WHO 'Guiding Principles on Human Cell, Tissue and Organ Transplantation' (2010) available at: https://docs.google.com/document/d/1FawvwUconlqSYaKSlXBD4SyAv0fDxNXdtv9CWYuTdYs/edit?ndplr=1; The updated guidelines specify conditions for live donation, underlining the importance of informed consent. This is outlined in Guiding Principle 3: 'Live donations are acceptable when the donor's informed and voluntary consent is obtained, when professional care of donors is ensured and follow-up is well organised, and when selection criteria for donors are scrupulously applied and monitored. 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 information; and they should be acting willingly, free of any due influence or coercion.'

criminalised and punished. As discussed above, under the terms of the Protocol the offence of trafficking can only be established where an action (recruitment, transportation, transfer, harbouring or receipt of persons) followed by the means (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 (in this case, the removal of organs) can be proven. Under Article 3 (c) the means are irrelevant in any case involving a child.

The decision to include 'the removal of organs' was made late in the negotiations, at the ninth session of the Ad hoc Committee on the Elaboration of a Convention against Transnational Organised Crime (United Nations General Assembly 2000). In support of recommendations made by Argentina and the United States during the first session of the Committee, several delegations requested that the exploitative purposes outlined under Article 3 (a) should 'include the removal of organs or trafficking in human organs, tissue or body parts' (United Nations General Assembly 2000). Consequently, it was decided 'to include such a reference for purposes of further discussion' (United Nations General Assembly 2000).

Thus, unlike other exploitative purposes specifically referred to in the Trafficking Protocol HTOR was not previously considered in international law and as such had no prior legal definition. This combined with the fact that 'the removal of organs' was introduced at the final drafting stage of the Protocol meant that the concept had been introduced into international law, despite not being well understood or defined. This is evident in the absence of any nuanced provisions targeting the specific ethical, legal and medical dimensions that HTOR presents. For example, there was no real understanding of how HTOR occurs nor distinctions made between the activities involved (i.e. HTOR/organ trafficking, transplant tourism). Therefore the substantive scope of the Trafficking Protocol as it applies to HTOR and related practices are not elaborated. It was only in a subsequent report by the Conference of Parties to the Convention that it was explained that trafficking in organs, tissue or cells independent of the body is not covered by the Trafficking Protocol (United Nations 2011). Moreover, Article 3 (a) includes the only reference to HTOR in the Trafficking Protocol, where the term 'removal of organs' is listed as form of exploitation.

Further developments

Over the 12 years since the establishment of the Trafficking Protocol, there has been a rapid development of a legal framework on human trafficking that comprises international and regional treaties. The Council of Europe Convention on Action against Trafficking in Human Beings (2005) (hereinafter the European Trafficking Convention), while largely synonymous with the Trafficking Protocol makes some notable developments. Contrary to the Trafficking Protocol the European Trafficking Convention established a group of experts on action against trafficking in human beings (GRETA) charged with monitoring the implementation of the Convention through country reports. Another important provision to note here, in relation to the legality of organ sales, is Article 19 which invites states to impose liability on persons who 'use the services of a victim of trafficking', with the knowledge that the person is a victim of trafficking. Accordingly, recipients of a trafficked organ could be held liable by States Parties to this convention. In Israel, the Organ Transplant Act (2008) sentences anyone who receives or gives compensation for an organ, from a person who is not his relative, to 6 months imprisonment or a financial penalty.

Countless anti-trafficking initiatives involving governments, businesses, academia, civil society organizations and the media have also emerged to develop effective tools to fight human trafficking. In 2010, consultant to the Office of the High Commissioner of Human Rights (OHCHR), Anne Gallagher, developed an extensive commentary to the UN Principles and Guidelines on Human Trafficking in order to provide clear direction on the issue of legal status by identifying those aspects 'that can be tied to established international legal rights and obligations' (OHCHR 2010). Although relevant to the regulation of the organ trade these initiatives did not directly address HTOR and were instead committed to targeting sex and labour trafficking.

The inclusion of HTOR as an exploitative purpose in the Trafficking Protocol and the heightened awareness of global organ trading networks resulted in a panel on this issue at the UN Global Initiative to Fight Human Trafficking (UNGIFT) in February 2008. Following this the United Nations Office of Drugs and Crime (UNODC) developed a 'toolkit' in 2008 to combat human trafficking; chapter 9 of which concerns HTOR. The toolkit describes HTOR as a service 'driven by extreme poverty and abuse of vulnerability' (UNODC 2008). Subsequently it outlines four steps towards preventing HTOR. These are listed as follows:

- Thus far, there is inadequate information available about trafficking in persons for the purpose of organ removal. This hails a need for increased data collection and research.
- The crime of trafficking in persons for the purpose of organ removal intersects with the crime of trafficking of organs. Therefore, there must be greater collaboration and co -operation between actors involved in combating

organ-related crimes, such as health organizations and survivor support services, and those involved in combating trafficking in persons, such as criminal justice sectors.
- Law enforcers are at the front line for identifying both trafficking victims and traffickers. Police officers, and customs and border officials should be provided with training that equip them to identify potential and actual victims, and perpetrators of organ trafficking and trafficking for the purpose of organ removal.
- As with all measures which go towards combating trafficking in persons, victim protection and assistance are paramount. Support services for survivors of organ removal should therefore work cooperatively with support services for victims of trafficking.

The suggested steps provide an important framework in response to HTOR, in particular illustrating the need for victim protection and assistance. However, a key limitation of these steps is that no additional guidance is provided for the interpretation, implementation and enforcement of existing instruments and legislation (namely the Trafficking Protocol and respective domestic trafficking laws) to prohibit the organ trade and to support victims of this distinct form of trafficking. Balancing the interests of organ recipients with those of organ donors is identified as the key challenge. However, rather than elaborating on how this can be achieved, the 'toolkit' proceeds to make a reductive analysis of the phenomenon; once again framing the issue within an economic paradigm of supply and demand and hence calling on states to introduce measures to increase the organ supplies rather than centering efforts on the rights of victims.

Alongside these efforts, there has been much discourse about the need for an international treat or convention to address the specific concerns around HTOR. At the time of writing (March 2013), the Council of Europe drafted the first international criminal law convention to address HTOR. The Convention against Trafficking in Human Organs is anticipated to be considered by the Council of Ministers to gain signatures in 2013 (European Committee on Crime Problems 2012).

Fieldwork and civil society responses

In addition to these initiatives by UN agencies and medical societies, over the course of the last decade there have also been significant field based inquiries from social scientists, journalists, transplant professionals and health and human rights activists. Their research and reports have provided evidence of how the abuses have been organized, the inner-country and transnational reach of coordinating victims of HTOR with patients and transplant centres, and victims' long-lasting consequences (Budiani-Saberi and Mostafa 2010; Goyal et al. 2002; Shimazono 2006; Zargooshi 2001a, b).[10]

Several of these parties have organized initiatives to conduct studies on victims of HTOR; some have included a medical follow-up service (Budiani-Saberi and Mostafa 2010; COFS 2011; Moazam et al. 2009; Zargooshi 2001a, b). However, researchers have generally not arranged care provision after obtaining the study's findings. COFS has aimed to provide victim assistance to include on-going medical follow-up as well as health education (about living with one kidney or a partial liver), counselling/peer support, employment assistance and referrals to legal services/legal aid. This range of services has become standard for victims of sex and labour trafficking, typically delivered by state supported and/or private victim support agencies. Yet, the UN has continued to struggle with distinguishing HTOR from organ trafficking and many countries have not yet included HTOR into their human trafficking laws. Consequently, adequate resources have not been committed (either at the International or national level) to provide support services to victims of HTOR. Thus, although COFS has identified thousands of victims of HTOR, it has only had the capacity to provide outreach to several hundred of them in very few countries. Further, protection measures developed for victims of other forms of human trafficking largely do not exist for victims of HTOR. Law enforcement needs to guarantee the physical safety of victims, protection of their privacy and safety for them to testify against their offenders (UNODC 2008). Without this, victims fear reprisal from their traffickers and potential criminalization for being involved in an unlawful act (particularly if they have untruthfully stated that they did not anticipate payment for an organ donation).

The need for a rights-based response

What a rights-based response means

HTOR can be dealt with from a number of perspectives including health care, economics, migration, and crime control. Prioritising human rights however affords a comprehensive response, with the capacity to protect vulnerable persons, and to prevent and suppress the organ trade. Such an approach takes into consideration the complex causes and consequences of HTOR, seeking not only legal,

[10] See also, Coalition for Organ Failure Solutions (COFS): www.cofs.org; Organs Watch http://sunsite.berkeley.edu/biotech/organswatch/; Budiani-Saberi and Mostafa (2010). http://cofs.org/home/wp-content/uploads/2012/06/Care-for-Commercial-living-donors-Feb-28-2011-Wiley-copy.pdf; Goyal et al. (2002), Zargooshi (2001a, b), Naqvi (2007), Shimazono (2006).

but also political, economic and social solutions accordingly.

A human rights-based approach to HTOR infers that any analysis or response to HTOR should be guided by human rights norms and principles, placing the protection of rights holders at the center of all efforts/strategies to combat this phenomenon. It is the only way to retain a focus on vulnerable persons: to ensure that HTOR is not simply reduced to a problem of migration, a problem of supply and demand or a problem of organized crime. As conveyed in the UN Commentary on Recommended Principles and Guidelines on Human Rights and Human Trafficking (2010), this approach requires us to consider, at each and every stage, the impact that a law, policy, practice or measure may have on persons who have been trafficked and persons who are vulnerable to being trafficked. Any response (i.e. financial incentives to increase organ supplies) that could potentially compromise the rights of individuals must be rejected. Furthermore, it is a general rule of international law that states are obliged to provide a domestic legal remedy for victims of human rights violations (Gallagher 2010a; Bassiouni 2006). Recognising that human trafficking invariably involves human rights violations the European Trafficking Convention (2005) contains provisions to this effect (Art 12–16).

HTOR disproportionately affects those whose basic human rights are already comprised. For example, brokers invariably target individuals who are vulnerable in their personal, situational or circumstantial conditions (UNODC 2012a, b). Victims of HTOR are often subjected to threats and held under degrading conditions during the stages from the initial solicitation through to poor post-operative care (COFS 2011). By articulating the human rights violations that occur during this process pressure can be brought on states to enforce provisions that adequately prevent, protect and prosecute against this crime. Thus a rights-based response to HTOR would start by identifying the human rights claims and the corresponding rights obligations of states, as well as the underlying social determinants and structural issues behind this abuse. Crime control efforts would be implemented in accordance with human rights norms and principles ensuring adequate provision for protection and prevention measures.

Further, mechanisms should be put in place to ensure that victims have the capacity to seek effective remedies proportionate to the abuse involved. In the context of HTOR such mechanisms should include free legal aid and access to judicial review, to the effect that post-operative follow-up care, health education (about living with one kidney or a partial liver), counselling/peer support, shelter and other such remedies are provided. To this end, strategic partnerships should be developed and sustained with key human rights organizations, experts and committees to monitor and evaluate the enforcement of human rights standards and principles as they apply to HTOR.

A rights-based framework would not only identify and prosecute offenders but would ensure that comprehensive measures are in place to adequately prevent and protect victims and potential victims against HTOR. Multilateral cooperation at the international and regional level has moved towards such an approach to combat human trafficking—albeit inter-state cooperation remains a difficulty (see, Salt 2000; Bassiouni 1992). However, the question remains: how can international law be mobilised in regards to HTOR specifically? Before addressing this question, the repercussions of proceeding without a rights based approach is first discussed.

Repercussions of working outside of a rights-based approach

The responses to address HTOR have made significant progress to improve legal frameworks and reduce HTOR. Despite these achievements, HTOR continues and strategies must be expanded to further combat these abuses. This is most concerning in (1) loopholes around consent processes in laws on transplantation, (2. the lack of elaboration of the means of exploitation (beyond the prohibition of payment) to see beyond just a "crisis in the supply of organs" and more towards the ways in which human rights are violated in the process and (3) the subsequent limited commitment to develop victim protection, support and remedies.

Loopholes in the consent processes

Although consent is rendered insignificant where illegal means are used to recruit, transport, harbour or receive a person for the purpose of an organ removal, it remains imperative that loopholes in the consent process are addressed in transplant laws. For it is the lack of oversight and accountability in the organ donor consent processes that enables trafficked persons to pass through legal channels undetected. Addressing such loopholes would work to prevent HTOR by identifying potential victims before an organ is removed.

The majority of transplant laws require voluntary and informed consent to be obtained for a transplant to be approved by relevant authorities. Yet, the consent process has proved to be a loophole in the transplant laws that facilitate HTOR. For example, the HOTA passed in 1994 in India requires an unrelated donor to file an affidavit in the court of a magistrate stating that the organ is being donated voluntarily by reason of 'affection or attachment'. However, the term 'affection or attachment' is not defined in the act, nor is there an explanatory note to clarify how this term is fulfilled. While this serves an important

purpose, it is on this point of ambiguity that the law has been repeatedly abused. The victims of HTOR that COFS has identified in India explain that they were either told to lie about the payments they were to receive or brokers arranged to send a proxy "donor" to make statements on their behalf.

Similarly, in Egypt an unrelated donor must attend an interview with an ethics committee established by the Ministry of Health (MOH) in which the donor must explicitly declare that they will receive no material benefit in return for their donation (Arab Republic of Egypt The People's Assembly Law No. (64) 2010). The MOH has provided clearances for such statements with inadequate assessments of donor risks thereby deeming these transplants "legal". In so doing, HTOR has been able to continue in Egypt in both clandestine and legal manners. The law is particularly mocked when "unrelated" donors are permitted but with a vow of affection. Further, increasingly transplant centers are arranging witnesses, video recording or otherwise documenting these consent statements. This effectively places the burden of responsibility on the donor and subsequently protects the transplant professionals involved from any legal liability. It does not however address that the individual may be a victim of HTOR and thus "consent" may have been given via coercion, deception or abuse of an individual's desperate financial situation. To this end, the assessment processes would benefit from closer evaluation.

An investigation and case preparation of such instances within an application of human trafficking or international human rights laws (IHRLs), would serve to recognize victimization and not just that procedures to obtain consent were followed lawfully. For example, legal aid services to victims of HTOR could assess vulnerability (and the intent to abuse it), rather than just check if consent was obtained for an organ removal.

Lack of elaboration of the "means" of exploitation

The WHO Guiding Principles are driven by the priority to advance transplants as a preferred therapy for organ-failure patients and to increase organ supply sources within an ethical framework. The WHO Guiding Principles' insistence on informed and voluntary consent, medical follow-up and standardized donor selection criteria is intended to "guard against coercion of the donor or the commercialism banned by principle 5" (WHO 2010). The commentary on the WHO Guiding Principles does well to express these concerns and recommends that psychosocial evaluations are conducted to identify vulnerabilities. The means of exploitation however are not sufficiently elaborated to address the human rights abuses that occur in the context of HTOR.

The Declaration of Istanbul added a strength that was not yet addressed in the WHO's Guiding Principles by deriving its definition of organ trafficking from the Trafficking Protocol which specifies the means for which trafficking may occur. Recognising and identifying the various means through which a person is trafficked is essential to successful crime control efforts and the subsequent prosecution of perpetrators. When the means are not well defined and employed with a legal instrument to back them, ambiguities facilitate the continuation of HTOR. For example, when consent is obtained to remove an organ via means listed in the Trafficking Protocol, victims of HTOR do not have legal recourse. A response to address these concerns through existing legal instruments is addressed below.

Insufficient commitment to victim assistance and protection

The Amsterdam Forum on the Care of Live Kidney Donor (Delmonico 2005) and the Ethics Statement of the Vancouver Forum on the Live Lung, Liver, Pancreas, and Intestine Donor (Pruett et al. 2006) are tools that transplant professionals have developed in their efforts to improve standards for follow- up clinical care for all living organ donors. Various schemes for the provision of follow-up care exist in transplant settings where the living donor is altruistic and commercialism does not characterize transplantation. Yet this care is insufficient and only a fraction of organ donors actually receive it (Mandelbrot et al. 2009). Follow-up care is largely absent in cases of organ trafficking where victims are amongst the world's poorest and most destitute. The Declaration of Istanbul also made an important advance by including the recommendation that victims must also be given medical follow-up. Yet, there are still no commitments to assure the provision of care for individuals who are trafficked within the variety of conditions that this occurs. This care provision is especially challenging in developing countries where advanced medical services like transplants are conducted but universal health care is non-existent and primary health care services are inadequate for the majority of the population. Care must be provided to these individuals as a basic right (as well as an important step towards reconciliation and to obtain public trust in transplants where transplants have been characterized by commercialism).

Within a limited capacity, COFS has worked to deliver such services extend them with low-cost technologies (i.e. a mobile phone/sms resource line to coordinate services via COFS' partner NGOs). As confirmed in COFS victim assessment studies, victims of HTOR require not only special medical follow-up attention but also other areas of assistance including: health education (about concerns after an organ removal), counselling/peer support, income generation assistance, and legal aid and in some cases, shelter. These support services are extremely underdeveloped and not accessible to most victims of HTOR across the globe.

Similar to victims of other forms of human trafficking and other crimes, victims of HTOR also require protection from traffickers. Depending on the circumstances, this may include mechanisms to protect identities, shelter, resettlement (especially in the case of refugees), and possibly immigration relief. Victims fear sharing their stories out of fear that traffickers will find out and further threaten or hurt them or their family members. Further, victims of HTOR who are not provided protection may be especially unable to access care due to fear of further consequences if their organ removal is revealed to certain parties. For example, Sudanese asylum seekers made victim of HTOR in Egypt fear going to a doctor out of fear that the organ removal will be revealed and that this could make them ineligible to be granted refugee status or to be resettled if it is understood that they "agreed" to participate in a criminal act (COFS 2011). As another example, a victim of HTOR in the Middle East fled to Europe on a tourist visa. In order to stay, he participated in a "paper marriage" with a European citizen and his residency is now in jeopardy as his "wife" may need to end this contract. Although he has concerns about his health, he has not tried to obtain follow-up medical care in this country for fear that authorities will uncover more about his case and his illegal status there. This would not be the case if the crime of HTOR and his victim experience were better recognized in this country. Accordingly, legal aid needs to be developed for victims. Once established, victims must be aware of how they can be supported and protected and how they can hold traffickers accountable.

Implementing a rights-based approach

In consideration of a trafficking offence it is important to examine the interaction among different branches of law, specifically international/transnational criminal law (ICL/TCL) and IHRL. Taken together the various provisions outlined in international legal instruments are mutually re-enforceable, applying legal provision to developing norms and principles upon which a rights based framework can be built (Obokata 2006).

Human rights are universally accepted entitlements necessary for the security of freedom, justice and peace in the world (UDHR 1948). Our human rights, as enunciated in the Universal Declaration of Human Rights (1948), are protected and substantiated in numerous international treaties and codified into national constitutions throughout the world. State Parties who have ratified particular human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR 1966a) and the International Covenant on Economic, Social and Cultural Rights (IC-ESCR 1966b) are legally bound to ensure, respect and fulfil their human rights obligations. Consequently, any state action or inaction that leads to a human rights abuse either directly or indirectly through a failure to investigate and apply the rule of law in a situation where a person or persons' rights have been compromised, will be subject to international condemnation.[11] Fundamental rights accorded the status of *jus cogens* (i.e. prohibitions against slavery, torture, genocide etc.) cannot be suspended, limited or compromised, even in a situation of national emergency (Vienna Convention on the Law of Treaties, 1969, Article 53).

Under the standard of due diligence the legal and moral responsibility to uphold the integrity and dignity of the human person extends, via State enforcement under domestic law, to the commission of crimes and other human rights abuses committed by non-state actors (see, Gallagher 2010b, pp. 241–248; Barnidge 2006; Case 1988). Thus although treaty obligations do not directly apply to private individuals, State Parties are obliged to pass laws that impose duties to this effect. A treaty only has effective force when codified into domestic law. Therefore if states are to honor their human rights obligations they must ensure that there is a legal process in place to prevent, protect and prosecute accordingly.

As Bassionuni explains criminal proscription has become the *ultimo ratio* modality of protection (Bassiouni 1982). To protect fundamental rights and freedoms it is necessary that certain acts are criminalised. In other words, to effectively enforce a right the constituent acts that violate or compromise a recognised right under international law needs to be criminalised. Accordingly international law has developed to criminalise particular violations of human rights which constitute a serious crime [subject to a prison sentence of 4 or more years (UNODC 2000a, Art 2(b))] or international concern. Specific conventions i.e. the Convention against Torture and Other Cruel, Inhuman and Degrading Punishment (1984), have been established to enforce particular rights through penal proscription. While trafficking, in its various forms, is not necessarily recognised as a human rights offence it is a serious crime that invariably constitutes violations of internationally protected rights. Therefore states that are party to the relevant conventions of IHRL (explored in more detail below) have a duty to ensure counter trafficking measures are enforced in concert with their human rights obligations.

As discussed above, the Trafficking Protocol supplementing the Organized Crime Convention is the principal international instrument establishing provisions against human trafficking in its various forms. Supplementing the Organized Crime Convention the Protocol was developed

[11] Fundamental rights accorded the status of *jus cogens* (i.e. prohibitions against slavery, torture, genocide etc.) cannot be suspended, limited or compromised, even in a situation of national emergency (Vienna Convention on the Law of Treaties, 1969, Article 53).

to promote interstate cooperation to prevent trafficking, protect trafficking victims and to prosecute traffickers (UNODC 2000b, Art 2). Nevertheless, it is first and foremost an instrument of crime control. As discussed in the following section the Protocol does include provisions to protect victims of human trafficking and to prevent future instances from occurring. However, in practice such provisions are optional and open to State interpretation.

State Parties must ensure that the exigencies of crime control are tempered by a consideration of human rights. Any framework designed to respond to human trafficking should adopt a comprehensive approach with a balanced emphasis on protection, prevention and prosecution. In short, any legislative response or any other such measure should be made in accordance with recognised human rights norms and principles. The Council of Europe Convention on Action against Trafficking in Human Beings (and its working group, GRETA) embodies such an approach recognising, 'that respect for victim's rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives' (COE 2005).

The trafficking protocol

While the Trafficking Protocol is primarily a tool for crime control, it does have a human rights dimension. Human rights bodies, including the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations High Commissioner for Refugees (UNHCR) were key stakeholders in the drafting of the Protocol (reference). Accordingly, the Protocol understands trafficked persons as victims of a serious crime, as opposed to being considered criminals/accessory to a crime or illegal migrants' when trafficked across a national border.

Article 2(b) affirms that the protection and assistance of trafficked persons 'with full respect to their human rights' is one of the three major purposes of the Protocol. Subsequently, Article 6(a) suggests (albeit weakly) a number of measures to be taken by states to assist and protect victims of trafficking in persons. States are urged to 'consider' implementing measures in cooperation with civil society to provide for the physical, psychological and social recovery of victims of trafficking in persons. Article 6(b) goes further requiring states to 'ensure' that their domestic legal systems provide measures for compensation for damage suffered. However, it is important to note that the Trafficking Protocol does not oblige states to guarantee a victim's right to compensation or other such remedies but rather calls on states to adopt all necessary legislative measures, such that remedies can be pursued (Legislative Guide Part 1 para 368).

Regarding repatriation the Protocol provides that, 'such return shall be with due-regard for the safety of that person and for the status of legal proceedings related to the fact that is a victim of trafficking and shall preferably be voluntary' (UNODC 2000b: Art 8 (2)). Other key provisions such as Article 3(b) which states that the 'consent of the victim to the intended exploitation … shall be irrelevant' where any of the listed means are employed are critical to redressing loopholes in domestic transplantation laws, that allow for trafficked persons to be perceived as willing participants in commercial transplants. The Provisions of the Protocol apply to natural and legal persons (UNODC 2000b: Art 10). Therefore hospitals, clinics or other institutions involved in illegal transplants are liable and subject to penalties, albeit contingent on State interpretation and subsequent enforcement in their domestic penal codes. Further to the provisions above, Article 14 (1) provides that nothing in the Protocol shall affect the rights, obligations, and responsibilities of states and individuals under international humanitarian and human rights law. Essentially then the Protocol underlines specific measures to be undertaken by states 'in accordance' with the universally accepted principles of IHRL to prevent, suppress and punish trafficking offences.

At the regional level the Council of Europe Convention on Action against Trafficking (hereinafter the European Trafficking Convention) imposes much stronger obligations on State Parties to prevent, protect and prosecute against trafficking offences. For example, provisions such as Article 5 (1) provides that each party 'shall' take measures for preventing and combating trafficking in human beings. Article 12 (1) provides for such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. And, as discussed previously, Article 19 provides for the prosecution of persons who knowingly use the services of a victim of trafficking. Further, in contrast to the Trafficking Protocol the European Trafficking Convention includes a monitoring mechanism to ensure its provisions are upheld. While this may seem to illustrate the limitations of the Trafficking Protocol, conversely the European Trafficking Convention underlines its influence and potential for development in other regions.

The main strength of the Trafficking Protocol is that it brought states together under a common definition to combat human trafficking in all its forms. However, HTOR remains relatively misunderstood and ill defined. Regrettably, many countries that have ratified the Trafficking Protocol have not fulfilled their obligation to address HTOR; as most domestic laws on human trafficking continue to focus on sexual exploitation. Further, many do not recognize trafficking for 'the removal of organs' as a form of exploitation.[12] This has a direct impact on the ability of

[12] Such countries include the UK, US, China, India, Pakistan, and South Africa, amongst others. For laws pertaining to human trafficking in the United Kingdom, see: Sexual Offences Act 2003 (United Kingdom). URL: http://www.legislation.gov.uk/ukpga/2003/42/pdfs/ukpga_20030042_en.pdf Accessed 16 March 2013;

states to prosecute HTOR offences. Moreover, this impairs the ability of victims of HTOR to pursue legal redress. For example in the US, potential victims of HTOR could not avail of the "T" visa as trafficking for an organ removal does not fit the criteria of a 'severe form of trafficking in persons' as contained in the Victims of Trafficking and Violence Protection Act (VTVPA 2000).

HTOR presents unique ethical challenges. The complexity and novelty of techno-scientific procedures, such as transplantation, confound the moral legitimacy of legislative action. As discussed previously, despite laws prohibiting the sale of organs medical committees continue to tolerate the commercial exchange of organs for transplantation; organs which are regularly sourced from trafficked persons (Cohen 1999; Ram 2011). This trend of legal ambiguity is manifest in numerous states where laws have been passed to prohibit the organ trade.[13] Hence, despite the fact that the World Health Organisation (WHO) Guiding Principles on Human Cell, Tissue and Organ Transplantation and the Declaration of Istanbul have condemned commercial transplants, HTOR continues to have trouble gaining traction as a recognised transnational criminal norm.

The margins of criminal responsibility are particularly nebulous. The lines between consent and exploitation need to be clarified (the Council of Europe's recently drafted Convention against Trafficking in Human Organs may better address these ambiguities). Existing provisions of international law only apply to human trafficking in general. A more nuanced understanding of this issue needs to inform future legislation. In particular targeted measures are required to 'prevent' HTOR. These might include initiatives to improve primary health care, awareness-raising about organ failure and donation, steps to identify illegal donors, restricting insurance cover to operations performed in a patients home state, and logistical development to strengthen existing transplant systems, amongst others. Critically, there must be a more accountable system for organ procurement. Indicators and benchmarks should be developed to ensure that all organs used in transplant procedures are traceable to a legitimate source.

State obligations under international human rights law

Human trafficking is best understood as a collection of crimes rather than a single offence; a criminal process rather than a criminal event (Bales 2005). As Ann Jordan (2011) notes, trafficking almost always involves some form of forced labour, debt bondage and or slavery. Victims of HTOR, and trafficking in general, routinely have their rights abused. Their freedom of movement is restricted, access to health care denied, they may be starved and beaten, forced to live in inhumane conditions, and sometimes die as a result of the organ removal. Some also face the possibility of sexual assault before an organ removal (COFS 2011). In sum, they are denied basic human rights and freedoms.

Evidently then various fundamental rights are violated in the context of HTOR that are protected under core human rights instruments including the International Covenant of Civil and Political Rights (ICCPR 1966a), and the International Covenant of Economic, Social and Cultural Rights (ICESCR 1966b) among others. As previously discussed, such treaties and their constituent principles and rules are adopted into national constitutions and domestic penal codes of State Parties. Thus although individual criminal liability cannot be applied directly through the international human rights system, liability can be applied indirectly at the domestic level in criminal and civil proceedings. Clearly then, it is important to consider the application of IHRL in response to HTOR offences.

The prohibition of human trafficking is firmly established under IHRL. Various human rights instruments oblige states to prohibit trafficking of human beings and other related acts. They include the Convention on the Elimination of All Forms of Discrimination against Women (1979: Art 6), the Convention on the Rights of the Child (1989), and the Optional Protocol on Sales of Children, Child Prostitution and Child Pornography (2000). Regionally, the Charter of Fundamental Rights of the European Union (European Parliament 2000), the Council of Europe Convention on Action against Trafficking in Human Beings (2005), the American Convention on Human Rights (1969), the Inter-American Convention on International Traffic in Minors (1994), and the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2000) are also pertinent. In regards to HTOR specifically, Article 3(a) (i) (b) of the

Footnote 12 continued
Immigration Act 1971 (United Kingdom). URL: http://www.legislation.gov.uk/ukpga/1971/77/pdfs/ukpga_19710077_en.pdf Accessed 16 March 2013. In the United States, see: The Victims of Trafficking and Violence Protection Act of 2000 (United States). URL: http://www.state.gov/documents/organization/10492.pdf Accessed 15 March 2013. In China, see: Criminal Law of the People's Republic of China Arts 237–363 (China). URL: http://www.unhcr.org/refworld/docid/3ae6b5cd2.html Accessed 16 March 2013. In India, see: The Immoral Traffic (Prevention Act) 1956 (India). URL: http://www.info.gov.za/view/DownloadFileAction?id=77866 Accessed 16 March 2013. In Pakistan, see: Prevention and Control of Human Trafficking Ordinance 2002 (Pakistan). URL: http://www.fia.gov.pk/pchto2002.htm Accessed 16 March 2013. In South Africa, see: Sexual offences and Related Matters Amendment Act 32 OF 2007 (South Africa). URL: http://www.info.gov.za/view/DownloadFileAction?id=77866. Accessed 15 March 2013.

[13] Despite national laws prohibiting organ sales in Egypt, Pakistan, India and the Philippines the organ trade continues.

Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000) requires all State Parties to ensure that the 'transfer of organs of the child for profit' are covered under criminal or penal law, 'whether such offences are committed domestically or transnationally or on an individual or organized basis'.

In regards to related acts, the prohibition of slavery and slavery like practices as well as forced labour, torture and/or inhuman or degrading treatment are established, *inter alia*, under the Slavery Convention (1926), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), and the Convention against Torture, and Other Cruel, Inhuman or Degrading Punishment (1984). The ILO Conventions on Forced Labour are also relevant.[14] Furthermore, related acts such as slavery, discrimination and torture are part of customary international law and *jus cogens*.[15] According to the Vienna Convention on the Law of Treaties (1969) 'customary rules operate to bind all states, not just those parties to the convention.' Arguably then, when HTOR can be said to involve torture and discrimination or lead to the condition of slavery, universal jurisdiction can apply. Moreover the constituent acts of trafficking for the removal of organs can fulfil the criteria of a crime against humanity where such acts are 'part of a widespread and systematic attack directed against any civilian population, with knowledge of the attack' (United Nations 1998). Therefore the International Criminal Court could claim jurisdiction over certain trafficking offences when domestic systems fail to intervene or lack the capacity to do so (Obokata 2005).

Additionally, it is important to note that HTOR is also an issue of health rights (as articulated in article of ICESCR). Health is not limited to a physical and mental condition; rather the right to health infers an ability to be healthy. Its realisation is contingent on other rights, i.e. rights to food, housing, work, education, human dignity, bodily integrity, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement (ICESCR 1966b). As discussed, in many countries where HTOR has been identified, such as India and Egypt, medical committees have been established to oversee transplant practices. Nevertheless, organs continue to be commercially sourced from live donors, with a priority on profit rather than the well-being of the donor (or the recipient). As this paper illustrates, socio economic conditions should not determine an organ removal; such practice discriminates along lines of privileged and disadvantaged individuals and groups.

Most significantly, when human rights principles are violated, victims have a right to legal remedies. This right is a critical aspect of the human rights framework dictating acceptable national responses. A number of human rights treaties contain provisions to this effect.[16] Where a remedy is provided in a treaty, failure to provide such remedies becomes an additional breach of that instrument. Guideline 9 of the Recommended Guidelines on Human Rights and Human Trafficking confirms that states have an obligation to provide 'effective and appropriate' remedies (OHCHR 2010). That is, remedies must be proportionate to the gravity of the harm done. In the case of HTOR an effective and proportionate remedy should include: access to medical care, legal aid and compensation payable for physical and mental harm as well as loss of livelihood.

Accordingly, State and civil society organizations committed to anti-human trafficking measures have maintained a victim-focus and provided a range of support services to victims of other forms of human trafficking (counselling, legal assistance, medical care, rehabilitation, shelter). Victims of HTOR must be understood to have similar entitlements and must be provided such services and measures.

Towards the future

The international community of related UN and affiliate councils and agencies, related health and transplant professional organizations and social scientists, civil society and human rights activists with expertise in human rights, human trafficking and HTOR should mobilize to enhance the development and carrying out of responses to HTOR. The development of responses in previous the decades reveals overlap of discussions and we must now gain from lessons learned from those with relevant experiences and exercises in confronting this issue.

[14] ILO developed a sub-regional program in 2004 to combat trafficking in children and young people for labor and sexual exploitation in the Balkans and Ukraine. It has conducted a study on trafficking patterns in Albania, Moldova, Romania, and the UK based on surveys of returned migrants, as well as comprehensive case studies of France, Germany, Russia and the UK.

[15] Article 53 of the Vienna Convention on the Law of Treaties 1969, 1155 United Nations Treaty Series 33, provides that jus cogens is' a peremptory norm if general international law' which is 'accepted and recognized by the international community of states as whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character'.

[16] See, Article 2 (3) of the ICCPR; Article 13 of the European Convention on Human Rights; Article 7 1(a) of the African Charter of Human Rights; Article 6 of the Convention Against all Forms of Racial Discrimination; Article 14 of the Convention Against Torture; Article 39 of the CRC; Article 83 of the Migrant Workers Convention; Article 73 of the Statute of the International.

Recommendations for the international community

Relevant United Nations agencies and entities (OHCHR, UNHRC, UNODC, WHO) should first recognize the HTOR primarily as a human rights abuse and employ a rights-based approach to address this issue. In so doing, these parties should work in close collaboration to enable lessons learned and best practices developed to address other human rights abuses (especially other forms of human trafficking) to assist with advancing advocacy towards abuses of HTOR. For example, in recent years and months, experts have refined various concepts with the Trafficking Protocol (i.e. protection, abuse of a position of vulnerability and other means within the UN Trafficking Protocol). As advocates of anti-HTOR efforts rely further upon human rights instruments and the UN Trafficking Protocol, it will be important to learn from these experiences and incorporate these refinements. It will also enable anti-HTOR advocates to assure that measures do not adversely affect the human rights or dignity of persons, in particular the rights of those who have been trafficked, or of migrants, internally displaced persons, refugees or asylum-seekers (Gallagher 2008).

Recommendations for states

Additionally, loopholes in domestic transplant laws that allow for trafficked persons to be perceived as willing participants in commercial transplants must be redressed.

Apart from consent procedures (usually operated by a hospital or health ministry committee), a third party must first serve as an advocate for potential organ donors and to assess their vulnerability. This builds on the concept of a psychosocial evaluation to include a broader assessment of vulnerability with a trafficking lens.

Although it was not within the confines of this paper to elaborate a discussion on transplant tourism, states should also develop domestic legislation to prohibit it. Namely, almost every State across the globe has a domestic law that prohibits the buying and selling of human organs and should extend the jurisdiction of these laws to ban citizens and residents from purchasing an organ outside of its borders (Budiani-Saberi 2012).[17] For example, patients in North America or Europe should be prohibited from buying an organ in Mexico, China or the Philippines or elsewhere; patients in Persian Gulf countries should be prohibited from buying an organ in Egypt or Syria or elsewhere states should also create barriers to transplant tourism by including a prohibition for insurance companies to cover the expenses of immuno-suppressant drugs for patients who purchased an organ abroad.[18]

Recommendations for health organizations and transplant professionals

Health organizations and transplant professionals should continue to recognize the limitations of the consent procedures and support the advancement of a third-party process to assess risk with a psycho-social assessment tool (as health professionals have already suggested) but also to assess vulnerabilities with a trafficking lens.

Recommendations for social scientists, civil society and human rights activists

Reports on HTOR should no longer be fragmented. Rather reports should be collected and analysed towards producing effective responses. Social scientists, civil society and human rights activists should also work towards standardizing information gathering to include relevant information to address and manage cases. COFS forthcoming data tool is being developed for this purpose. Such efforts should work towards addressing cases with law enforcers to end impunities for organ traffickers and protect and advance victims' rights.

Social scientists, civil society and human rights activists should also work with experts on HTOR to develop a standardized tool that builds on a psychosocial evaluation to also include a broader assessment of vulnerability according within a trafficking framework. A third party should then be established to play this role of advocacy and to conduct vulnerability assessments. Relevant human rights groups should be considered to take on this role.

Conclusion

HTOR is not merely an issue of supply and demand governed by rules of consent and autonomy. It is primarily a human rights concern. One that violates our fundamental human rights including, the right to life; the right not to be

[17] See, Budiani Testimony (2012) Recommendation No 2 states that: To recognize the participation that US citizens or legal residents of the US have in the chain of demand in HTOR practices, the United States government should extend the extraterritorial jurisdiction of the National Organ Transplant Act (NOTA) to ban US citizens or legal residents to engage in organ tourism.

[18] Up until 2008 insurance companies provided reimbursement to Israeli patients who had purchased organs abroad. See, The Organ Transplant Law (2008) available at: http://www.declarationofistanbul.org/index.php?option=com_content&view=article&id=267:israel-transplant-law-organ-transplant-act-2008&catid=83:legislation&Itemid=130; According to Dr. Jacob Levee Over the last few years, it is estimated that about 200 Israelis have travelled to China for kidney transplants and about 15 have sought heart transplants. Several dozen others have bought kidney transplants in the Philippines.

submitted to slavery, servitude, forced labour or bonded labour; the right not to be submitted to torture and/or cruel, inhuman or degrading treatment or punishment; the right to the highest attainable standard of physical and mental health; the right to be free from gender based violence; and the right to an adequate standard of living, among others. Thus, although it is important that states develop their national transplant systems and introduce measures to achieve national self-sufficiency in the supply of organs, this will only address part of much broader issue.

On the basis of this analysis it is clear that states have an international obligation to prevent, protect and punish in respect to HTOR. Nevertheless current trends in medical and legal practice suggest the demand for organs is anticipated to increase. While the intricacies of state responsibility are outside the scope of this article, it is important to consider the role civil society can play on bringing pressure on states to comply with their human rights obligations. To this end, understanding HTOR as human rights abuse is crucial to the development of future strategies. Applicable human rights instruments and principles can be leveraged and enforced at the national level through criminal and civil proceedings against traffickers. However, in order to initiate criminal or civil proceedings specific laws and regulations to prohibit the act in question must first be established.

Therefore international/transnational legal instruments (such as the UN Trafficking Protocol) that encourage states to criminalize trafficking activities and cooperate in the investigation and prosecution of serious crimes are vital to the protection of these human rights. It is critical that states include HTOR in their domestic legislation while taking measures to ensure the primacy of human rights are 'at the centre of all efforts to prevent and combat trafficking and assist and protect victims.'[19]

We should thus assure the development and enforcement of laws that both curb HTOR as well as transplant tourism states need to ensure that their citizens are not travelling abroad to purchase organs and there are currently few barriers to this. Thus Americans can continue to buy heart, lung, liver or kidney in China, Kuwaitis can continue to buy a kidney or partial liver in Egypt. If a patient buys an organ in a state that does not directly prohibit the act or where transplants are not performed according to international ethical standards, criminal liability becomes difficult to enforce. Therefore laws must be applied extraterritorially to prohibit the commercial exchange of organs between states and their citizens. Laws also need to be in place to prevent insurance companies from reimbursing transplants overseas, without prior information of where the organ(s) are being sourced.[20] Significantly then, it is incumbent upon states under IHRL to ensure, respect and fulfil their obligations to enforce measures to protect the welfare of their citizens, particularly those vulnerable to exploitation.

Acknowledgments The authors thank Milbert Shin, Francis Delmonico and Anne Gallagher and for their thoughtful expert comments on this paper.

References

Allain, J. 2011. Trafficking of persons for the removal of organs and the admission of guilt of a South African hospital. *Medical Law Review* 19(1): 117–122.

Arab Republic of Egypt The People's Assembly Law No. (64) Regarding Combating Human Trafficking. 2010. URL: http://www.protectionproject.org/wp-content/uploads/2010/09/Egypt_TIP-Law_2010-Ar+En.pdf. Accessed August 2012.

Bales, K. 2005. *Understanding global slavery*. Berkeley: UC Press.

Barnidge Jr., R.P. 2006. The due diligence principle under international law. *The International Commissioner of Law Review* 8: 81.

Bassiouni, M.C. 1982. The proscribing function of international criminal law in the processes of international protection of human rights. *The Yale Journal of World Publications Ord.* 9: 193.

Bassiouni, M.C. 1992. Policy considerations on interstate cooperations in criminal matters. *Pace Yale Book International Law* 4(1): 123.

Bassiouni, M.C. 2006. International recognition of victims' rights. *Human Rights Law Review* 6(2): 203–279.

Budiani-Saberi, D. 2012. *Human trafficking for an organ removal (HTOR): A call for prevention, protection, investigations and accountability. Briefing before the Tom Lantos Human Rights Commission United States Congress.* URL: http://tlhrc.house.gov/docs/transcripts/2012_1_23_Organ_Trafficking_Briefing/Budiani_testimony.pdf. Accessed November 2012.

Budiani-Saberi, D. 2007. *Organ trafficking and responses from Civil Society*. Rotterdam: Presentation at the Meetings of the European Society of Organ Transplantation. URL: http://www.esot.org/Files/Elpat/Content_Files/txmed_1-2007.pdf. Accessed August 2012.

Budiani-Saberi, D., and A. Mostafa. 2010. Care for commercial living donors: The experience of an NGO's outreach in Egypt. *Transplant International,* 24(4): 317–323.

[19] In recent recommendations to US Congressional Committees, the recommendation was made that HTOR should be included in the US law—the Trafficking Victims Protection Act (TVPA). Congressman Chris Smith, sponsor of the reauthorization of the TVPA, has stated his consideration to amend this law to in fact include HTOR. See, http://tlhrc.house.gov/docs/transcripts/2012_1_23_Organ_Trafficking_Briefing/Budiani_testimony.pdf.

[20] Up until 2008 insurance companies provide reimbursement for Israeli patients who had purchased organs abroad. See, The Organ Transplant Law (2008) available at: http://www.declarationofistanbul.org/index.php?option=com_content&view=article&id=267:israel-transplant-law-organ-transplant-act-2008&catid=83:legislation&Itemid=130; According to Dr. Jacob Levee Over the last few years, it is estimated that about 200 Israelis have travelled to China for kidney transplants and about 15 have sought heart transplants. Several dozen others have bought kidney transplants in the Philippines.

Budiani-Saberi, D., and F.L. Delmonico. 2008. Organ trafficking and transplant tourism: A commentary on the global realities. *American Journal of Transplantation* 8(5): 925–929.

Case, V.R. 1988. Judgment of July 29, 1988. *Inter American Court of Human Rights (Ser. C) No. 4*.

Coalition of Organ-Failure Solution. 2011. *Sudanese victims of organ trafficking in Egypt: A preliminary victim-centred, evidence-based report*. URL: http://cofs.org/home/wp-content/uploads/2012/06/REPORT-Sud-Victims-of-OT-in-Egypt-NEW-COVER-16-Jan-20124.pdf. Accessed August 2012.

Coalition for Organ-Failure Solutions. 2013. *Human trafficking for organ removal in India: A victim-centered, evidence-based report*. URL: http://cofs.org/home/publications/reports/ (forthcoming).

Council of Europe. 2005. *Convention on action against trafficking in human beings*. http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=197&CM=1&CL=ENG. Accessed January 2013.

Council of Europe. 2013. *Draft Council of Europe convention against trafficking in human organs*. URL: http://www.coe.int/t/dghl/standardsetting/cdpc/CDPC%20documents/CDPC%20(2012)%2021%20-%20e%20-%20Draft%20Convention%20against%20Trafficking%20in%20Human%20Organs.pdf. Accessed February 2013.

Cohen, L. 1999. Where it hurts: Indian material for an ethics of organ transplantation. *Daedalus* 128(4): 135–165.

Committee on Economic, Social and Cultural Rights, General Comments No. 14. 2000. *The right to the highest attainable standard of health*. UN Doc. No. E/C.12/2000/4.

Delmonico, F.L. 2005. A report of the Amsterdam forum on the care of the live kidney donor: Data and medical guidelines. *Transplantation* 79: S53–S66.

Eulex. Medicus Case. 2011. KA 278/20, P 309/10, KA 309/10, P 340/10.

European Committee on Crime Problems. 2012. *Draft Council of Europe convention against trafficking in human organs*. 2012. URL: http://www.coe.int/t/dghl/standardsetting/cdpc/CDPC%20documents/CDPC%20(2012)%2021%20-%20e%20-%20Draft%20Convention%20against%20Trafficking%20in%20Human%20Organs.pdf. Accessed March 2013.

European Parliament. 2000. *Charter of the fundamental rights of the European Union*. URL: http://www.europarl.europa.eu/charter/pdf/text_en.pdf. Accessed July 2012.

Gallagher, A. 2008. Using international human rights law to better protect victims of trafficking: The prohibitions on slavery, servitude, forced labour and debt bondage. In *The theory and practice of international criminal law: Essays in honour of M. Cherif Bassiouni*, ed. L.N. Sadat, and M.P. Scarf, 397–430. Leiden: Martinus Nijhoff.

Gallagher, A. 2010a. *The right to an effective remedy for victims of trafficking in persons: A survey of international law and policy*. http://works.bepress.com/cgi/viewcontent.cgi?article=1013&context=anne_gallagher. Accessed 16 July 2012.

Gallagher, A. 2010b. *The international law of human trafficking*. Cambridge: Cambridge University Press.

Goyal, M., R.L. Mehta, L.J. Schneiderman, and A. Sehgal. 2002. Economic and health consequences of selling a kidney in India. *The Journal of the American Medical Association* 288(13): 1589–1593.

Human Organ Transplantation Act (India). 1994. URL: http://india.gov.in/allimpfrms/allacts/2606.pdf. Accessed 21 October 2012.

Jordan, A. 2011. *Slavery, forced labour, debt bondage and human trafficking: From conceptual confusion to targeted solutions*. http://rightswork.org/wp-content/uploads/2011/09/Issue-Paper-2.pdf. Accessed October 2012.

Mandelbrot, D.A., M. Pavlakis, S.J. Karp, S.R. Johnson, D.W. Hanto, and J.R. Rodrigue. 2009. Practices and barriers in long-term living kidney donor follow-up: A survey of US transplant centers. *Transplantation* 88(7): 855–860.

Naqvi, A. 2007. A socio-economic survey of kidney vendors in Pakistan. *Transplant International* 20(11): 934–939.

Obokata, T. 2006. A human rights framework to address trafficking of human beings. *Netherlands Quarterly of Human Rights* 24: 377–409.

Obokata, T. 2005. Trafficking of human beings as a crime against humanity: Some implications for the international legal system. *The International and Comparative Law Quarterly* 54(2): 445–457.

Office of the High Commissioner of Human Rights. 1926. *The slavery convention*. http://www2.ohchr.org/english/law/slavery.htm. Accessed October 2012.

Office of the High Commissioner of Human Rights. 1966a. *International covenant on civil and political rights*. URL: http://www2.ohchr.org/english/law/ccpr.htm. Accessed October 2012.

Office of the High Commissioner of Human Rights. 1966b. *International covenant on economic, social and cultural rights*. URL: http://www2.ohchr.org/english/law/cescr.htm. Accessed October 2012.

Office of the High Commissioner of Human Rights. 1989. The convention on the rights of the child. http://www.un.org/documents/ga/res/44/a44r025.htm. Accessed October 2012.

Office of the High Commissioner of Human Rights. 1990. *International convention on the protection of the rights of all migrant workers and members of their families*. URL: http://www2.ohchr.org/english/law/cmw.htm. Accessed October 2012.

Office of the High Commissioner of Human Rights. 2000. Optional protocol on sales of children, child prostitution and child pornography. http://www.un-documents.net/a54r263.htm. Accessed October 2012.

Office of the High Commissioner for Human Rights. 2010. *Recommended guidelines and principles of human rights and human trafficking commentary*. URL: http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf. Accessed September 2012.

Pruett, T.L., A. Tibell, A. Alabdulkareem, and M. Bhandari. 2006. Ethics statement of the Vancouver forum on the live lung, liver, pancreas, and intestine donor. *Transplantation* 81(10): 1386–1387.

Ram, V. 2011. Karnataka's unabating kidney trade. *The International Trafficking of Human Organs: A Multidisciplinary Perspective* 10: 59.

Salt, J. 2000. Trafficking and human smuggling: A European perspective. *International Migration* 38(3): 31–56.

Shimazono, Y. 2006. *What is left behind?* Presentation at an informal consultation on transplantations at the World Health Organization. Geneva.

The Declaration of Istanbul on organ trafficking and transplant tourism. 2008. URL: http://multivu.prnewswire.com/mnr/transplantationsociety/33914/docs/33914-Declaration_of_Istanbul-Lancet.pdf Accessed 10 September 2012.

UN Global Initiative to Fight Human Trafficking (UNGIFT). 2008. http://www.unodc.org/pdf/gift%20brochure.pdf. Accessed 13 November 2012.

United Nations. 1948. *Universal declaration of human rights*. URL: http://www.un.org/en/documents/udhr/index.shtml. Accessed August 2012.

United Nations. 1969. *Vienna convention on the law of treaties*. United Nations Treaty Series. URL: http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

United Nations. 1984. *United Nations convention against torture and other cruel, inhuman and degrading punishments*. http://untreaty.un.org/cod/avl/pdf/ha/catcidtp/catcidtp_e.pdf. Accessed October 2012.

United Nations. 1998. *Rome statute of the international criminal court.* URL: http://untreaty.un.org/cod/icc/statute/english/rome_statute%28e%29.pdf Accessed July 2012.

United Nations. 2011. *Conference of the parties to the United Nations convention against transnational organized crime*. URL: http://www.unodc.org/documents/treaties/organized_crime/2011_CTOC_COP_WG4/2011_CTOC_COP_WG4_2/CTOC_COP_WG4_2011_2_E.pdf. Accessed August 2012.

United Nations Division for the Advancement of Women. 1979. *Convention on the elimination of all forms of discrimination against women*. URL: http://www.un.org/womenwatch/daw/cedaw/. Accessed November 2012.

United Nations General Assembly. 2000. *Ad Hoc committee on the elaboration of a convention against transnational organised crime: Revised draft protocol to prevent, suppress and punish trafficking, in persons especially women and children supplementing the United Nations convention on transnational organised crime.* URL: http://www.uncjin.org/Documents/Conventions/dcatoc/10session/31e.pdf. Accessed September 2012.

United Nations Office of Drugs and Crime. 2000a. *United Nationals convention against transnational organized crime*. URL: https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf. Accessed September 2012.

United Nations Office of Drugs and Crime. 2000b. *Protocol to prevent, suppress, and punish trafficking in persons especially women and children supplementing the United Nations convention on transnational organized crime*. URL:http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf. Accessed October 2012.

United Nations Office of Drugs and Crime. 2004. *Legislative guides for the implementation of the United Nations convention on transnational organized crime and the protocol thereto*. URL: http://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf. Accessed September 2012.

United Nations Office of Drugs and Crime. 2008. Toolkit to combat trafficking in persons. http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook%5B1%5D.pdf. Accessed 12 April 2013

United Nations Office of Drugs and Crime. 2012a. *Guidance note on 'abuse of a position of vulnerability' as a means of trafficking in persons in Article 3 of the protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime*. URL: http://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-Abuse_of_a_Position_of_Vulnerability.pdf. Accessed November 2012.

United Nations Office of Drugs and Crime. 2012b. *Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons*. URL: http://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-Abuse_of_a_Position_of_Vulnerability.pdf. Accessed November 2012.

US Government. 2000. Victims of trafficking and violence protection act 2000. URL: http://www.state.gov/documents/organization/10492.pdf. Accessed November 2012.

US State Department. 2009. Trafficking in persons report. http://www.state.gov/j/tip/rls/tiprpt/2009/index.htm. Accessed 15 April 2013.

US State Department. 2010. Trafficking in persons report. http://www.state.gov/j/tip/rls/tiprpt/2010/. Accessed 15 April 2013.

World Health Organisation. 2004. *Fifty seventh World Health Assembly 'human organ and tissue transplantation' resolution WHA57*. http://www.who.int/transplantation/en/A57_R18-en.pdf. Accessed 12 October 2012.

World Health Organisation. 2010. *WHO guiding principles on human cell, tissue and organ transplantation*. http://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf. Accessed 12 October 2012.

Zargooshi, J. 2001a. Iranian kidney donors: Motivations and relations with recipients. *Journal of Urology* 165(2): 386–392.

Zargooshi, J. 2001b. The quality of life of Iranian kidney donors. *Journal of Urology* 166(5): 1790–1799.