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## Working Group on Trafficking in Persons

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### Trafficking in persons for the removal of organs and related conduct

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### Background paper prepared by the Secretariat

#### I. Introduction

1. The present background paper has been prepared by the Secretariat to facilitate the discussions of the Working Group on Trafficking in Persons at its fourteenth meeting. Organ transplantation can be the only way to prolong the life of patients with organ failure. A shortage of organs for transplantation around the world costs hundreds of people their lives every year. Although numerous Governments have developed policies, laws and campaigns to facilitate the transplantation of organs from deceased persons, the gap between supply and demand is still large. With demand exceeding supply, patients can wait for years for a transplant, sometimes in vain. This situation generates despair for patients with organ failure and has given rise to a lucrative underground criminal business – trafficking in persons for organ removal. In this specific form of trafficking, the victim is exploited for the removal and subsequent transplantation of an organ.

2. Since transplantation surgery started 70 years ago, trafficking in persons for the purpose of organ removal has increasingly developed and has the potential to become one of the most profitable forms of exploitation, generating millions of dollars of criminal income per annum.<sup>1</sup> However, only a small percentage of cases have so far been prosecuted.

3. The present paper outlines the major obstacles that continue to prevent the detection, prosecution and adjudication of this particular form of trafficking in persons, and provides information to aid understanding of the *modi operandi* of traffickers and the different actors involved. It also focuses on the victims of this crime, the majority of whom are in a situation of great vulnerability, and underlines the importance of the non-punishment principle and of a comprehensive victim-centred approach throughout criminal justice proceedings for this form of trafficking in persons.

\* [CTOC/COP/WG.4/2024/1](#).

<sup>1</sup> United Nations Office on Drugs and Crime (UNODC), *Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal*, module 1 (Vienna, 2022), p. 5.



## II. Issues for discussion

4. Delegations may wish to consider their own national legal, policy and operational frameworks, as well as local knowledge, practice, challenges and cross-border experience in relation to the following questions to facilitate the deliberations of the Working Group on this topic:

(a) In the response to trafficking in persons for organ removal, which investigative practices have been successful so far, and which could be replicated? Which detection and investigation tools have had the most effective and enhanced results?

(b) What practices, specific actors and roles have States parties identified in actual or suspected instances of trafficking in persons for organ removal?

(c) What safeguards have States parties put in place in the process of authorization of organ transplants from living donors to prevent trafficking in persons? Are current vetting and screening processes, such as those used by ethics committees, sufficiently robust to detect trafficking in persons? Which of these mechanisms and protocols constitute effective practices that might be considered by other countries for replication?

(d) Have States parties established positive and promising processes and mechanisms in medical facilities to enable the reporting by medical staff and other employees of cases of trafficking in persons for organ removal and illicit organ transplantation?

(e) In terms of capacity-building, do States parties see the need to improve criminal justice practitioners' responses to the crime of trafficking in persons for organ removal? How can the United Nations Office on Drugs and Crime (UNODC) best support States parties' related efforts?

(f) States parties have the obligation to protect and assist victims of trafficking in persons. How do States parties currently ensure that they protect and assist persons who have been compelled to have their organs removed by traffickers, and that such persons are not considered to be perpetrators of organ trafficking or organ selling themselves and punished for the forced removal of their organs?

(g) How can States parties better address transplant tourism? What would enhance cooperation and information exchange between States parties whose nationals are organ recipients and those in which the operations are carried out?

## III. International and regional legal frameworks and standards

5. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, explicitly refers to trafficking in persons for organ removal in its article 3 and requires States to criminalize this form of trafficking in persons. In addition, the Trafficking in Persons Protocol obliges States parties to take a comprehensive set of measures to prevent and combat trafficking in persons, including the provision of appropriate assistance to and the protection of victims, including measures for their physical, psychological and social recovery.

6. According to article 3 (b) of the Trafficking in Persons Protocol, a trafficked person's consent to organ removal is irrelevant in establishing the offence when one or more of the means listed in the international definition are used to exploit the adult donor. In other words, the consent of the trafficked person to organ removal is irrelevant or invalid where deception, coercion, abuse of a position of vulnerability or other illicit means have been used. In the case of children, these illicit means are irrelevant and do not need to be proved.

7. Most States parties to the Protocol have criminalized trafficking in persons in their domestic legislative framework, including by making the removal of organs a form of exploitation in their trafficking law.

### **A. Difference between trafficking in organs and trafficking in persons for the purpose of organ removal**

8. Trafficking in organs and trafficking in persons for the purpose of organ removal are often used as interchangeable terms and frequently confused in public debate, despite the fact that they constitute distinct crimes and are governed by different legal frameworks.

9. Organ trafficking consists of removing organs from living or deceased donors without valid consent or authorization or in exchange for financial gain or comparable advantage to the donor and/or a third person, according to the Declaration of Istanbul on Organ Trafficking and Transplant Tourism, a key guidance document adopted in 2008 and updated in 2018. In cases of organ trafficking, depending on national law, a donor may therefore be criminally liable for profiting from selling an organ, while the object of the trafficking is the relevant organ or organs. The organ trafficking framework should apply when an organ is removed, transported and used in breach of the existing conditions regarding the ethical removal and implantation of an organ.<sup>2</sup>

10. Under the Trafficking in Persons Protocol, the donor is a victim of a crime who was compelled by traffickers, via any of the means noted in paragraph 6 above, to have his or her organ removed. The object of trafficking is the person who is exploited by organ removal, and not the organ itself.

11. This distinction is not just of a semantic nature, as it has concrete consequences. Although there can be a degree of overlap between trafficking in organs and trafficking in persons for the purpose of organ removal, a misunderstanding of the difference between the two concepts and/or a decision, for example, to pursue charges for organ trafficking in cases of trafficking in persons for organ removal, can hinder criminal justice efforts to punish perpetrators and protect victims. While the present paper focuses on the crime of trafficking in persons for organ removal, it is important to establish a clear distinction between the two crimes.

### **B. Regional legal frameworks and other relevant standards**

12. At the regional level, article 4 (a) of the Council of Europe Convention on Action against Trafficking in Human Beings and article 2 (a) of the Association of Southeast Asian Nations Convention against Trafficking in Persons, Especially Women and Children, recognize organ removal as a form of exploitation for which people may be trafficked.

13. The Declaration of Istanbul on Organ Trafficking and Transplant Tourism calls on health-care professionals to prevent and address both trafficking in persons for organ removal and organ trafficking, and defines transplant tourism, a practice often categorized as trafficking in persons for organ removal whereby citizens, typically from wealthier countries, travel to poorer countries, or countries lacking regulations and oversight, to receive organ transplants. In these cases, the organ donors are either recruited in the country where the operation is carried out or in a third country to and from which travel is organized by brokers. This underlines an economic imbalance between the organ recipient and the victim of trafficking in persons for organ removal, who usually receives poor, if any, post-operative care. However, many domestic laws do not prohibit organ transplants carried out abroad involving their nationals, despite clear ethical concerns and dangers not only to the donors but also the recipients. A

<sup>2</sup> Sylwia Gawronska, “Organ trafficking and human trafficking for the purpose of organ removal, two international legal frameworks against illicit organ removal”, *New Journal of European Criminal Law*, vol. 10, No. 3 (September 2019), pp. 268–286.

study undertaken by a Canadian hospital over a period of 15 years revealed, for example, that patients who had a kidney transplant outside Canada were three to four times more likely to die or lose the organ as those who received a transplant in Canada, and were more exposed to hepatitis, tuberculosis and other diseases.<sup>3</sup> In addition, experts have argued that States that prohibit trafficking in persons for organ removal within their borders but do not hold their residents accountable for engaging in such activities abroad unfairly impose burdens on other countries, to the detriment of those countries' residents and their law enforcement systems.<sup>4</sup>

14. The removal of organs from both deceased and living donors for transplantation is governed by several broadly accepted standards. The World Health Organization (WHO) Guiding Principles on Human Cell, Tissue and Organ Transplantation,<sup>5</sup> endorsed in 2010 by the World Health Assembly, provide, for example, an ethical framework for the transplantation of organs, including regarding consent to organ donation, as well as the prohibition of monetary payment or other financial reward for organ donation. These two ethical principles, namely, the need for the free, informed and specific consent of the donor and the prohibition on making a financial profit in exchange for an organ, are largely accepted worldwide.

15. Other instruments, recommendations and guidelines govern organ transplantation from living and deceased donors.<sup>6</sup> Several General Assembly resolutions contain commitments by States to prevent and combat trafficking in persons for organ removal; most notably, a recurring resolution dedicated to this topic since 2017 encourages States, in its 2022 iteration,<sup>7</sup> to criminalize trafficking in persons for organ removal as a specific form of exploitation in the Trafficking in Persons Protocol. It also calls on States to consider developing control measures such as oversight and audits of medical facilities and encourages them to further strengthen international cooperation in the fight against this crime, including by combating illicit financial flows, while progressing towards national self-sufficiency in the transplantation of human organs.

## IV. Overview of issues, related topics and relevant guidance

### A. Profile of the crime

16. Compared with the most frequently detected cases of trafficking in persons, for sexual exploitation or forced labour, there are relatively few detected cases of trafficking in persons for organ removal.<sup>8</sup> However, experts have suggested that the lack of detection does not mean a lack of prevalence, and that the few detected cases are the tip of the iceberg of a flourishing underground crime.<sup>9</sup>

17. The Global Observatory on Donation and Transplantation reported 157,494 official organ transplants worldwide in 2022, primarily of kidneys, followed

<sup>3</sup> Jean-Philippe Duguay, Brian Hermon and Alexandra Smith, "Trafficking in human organs: an overview", Publication No. 2020-83-E (Ottawa, Library of Parliament, 2020), p. 5.

<sup>4</sup> Dominique E. Martin and others, "Strengthening global efforts to combat organ trafficking and transplant tourism: implications of the 2018 edition of the Declaration of Istanbul", *Transplantation Direct*, vol. 5, No. 3 (March 2019), p. 8.

<sup>5</sup> WHA63/2010/REC/1, annex 8 (updated from their 1991 version).

<sup>6</sup> See, for example, "The consensus statement of the Amsterdam Forum on the Care of the Live Kidney Donor", *Transplantation*, vol. 78, No. 4 (August 2004) and the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin (Council of Europe, *European Treaty Series*, No. 186).

<sup>7</sup> Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs (General Assembly resolution 77/236).

<sup>8</sup> By 2018, UNODC had collected information on about 700 victims of trafficking in persons for the removal of organs detected in 25 countries, compared with 225,000 victims of trafficking in persons for all other purposes (*Global Report on Trafficking in Persons 2018* (United Nations publication, 2018), p. 30).

<sup>9</sup> *Global Report on Trafficking in Persons 2018*, p. 30.

by livers, hearts and lungs. This corresponds to the fact that in detected cases of trafficking in persons for organ removal, the most frequently transplanted organs are kidneys and, to a lesser extent, parts of livers.<sup>10</sup>

18. From 2014 to 2017, UNODC received reports of approximately 100 detected victims of trafficking for organ removal. All the victims were adults, which underlines that this type of trafficking targets adult bodies with fully developed organs. Two thirds of the victims were men.<sup>11</sup>

19. Identified victims come from diverse backgrounds, but the majority have a low economic and social status. They may be approached by recruiters who work for organ brokers directly or reached through advertisements in newspapers or online. Economic desperation also pushes persons in a situation of vulnerability to offer or advertise their willingness to donate their organs in exchange for benefits. These victims receive an estimated amount of between \$1,000 and \$20,000 for the removal of their organ,<sup>12</sup> which represents a very small share of the profit generated by one operation. This profit can vary, but has in some cases amounted to \$200,000 per organ.<sup>13</sup> Frequently, in court cases consulted, donors received nothing at all.

20. Victims of organ removal are often vulnerable to exploitation because of their economic or social situation. Crises such as conflict, economic crises and health and environmental emergencies can further exacerbate existing vulnerabilities and societal inequalities and drive more victims into this form of exploitation.<sup>14</sup> UNODC research shows that traffickers have targeted persons who suffer from hardship using false promises and deception.<sup>15</sup> Victims are often not properly informed of the consequences of operations to remove an organ for their body, including the deterioration of their health or the impossibility of continuing to perform strenuous physical labour. Coercion is another means used by traffickers to force victims into exploitation.

21. Criminal groups engaging in trafficking in persons for organ removal usually have a complex structure involving a wide range of actors. They may include brokers who coordinate the logistics, actors from the medical field, such as surgeons, anaesthetists, nephrologists, nurses, laboratory specialists and hospital administrators, as well as public officials, such as police officers, customs officers and consular staff.<sup>16</sup> A case from South Africa, for example, involved the active participation of a hospital's chief executive and five surgeons in trafficking in persons for kidney removal.<sup>17</sup> In the plea agreement, the hospital administration admitted guilt for having knowingly allowed its employees and facilities to be used for what amounted to trafficking in persons for organ removal. In Egypt, an investigation into organ trafficking led to the arrest of 45 people in 2016, including owners of medical centres, doctors and university professors.<sup>18</sup> Similar police operations were successfully conducted in other countries, including Costa Rica, India, Nepal, the Philippines, South Africa and Türkiye.

22. Due to the hidden nature of this crime and low awareness among the public, the medical field and the criminal justice system, some traffickers may have been able to

<sup>10</sup> UNODC, *Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal*, module 2, p. 14.

<sup>11</sup> *Global Report on Trafficking in Persons 2018*, p. 29.

<sup>12</sup> Ana Manzano, "Trafficking in persons for the purpose of organ removal", in *Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approach*, Rochelle L. Dalla and Donna Sabella, eds. (Oxford, United Kingdom, Routledge, 2020), p. 302.

<sup>13</sup> See, for example, "Case No. 277: Costa Rica, 2017", in *Global Report on Trafficking in Persons 2022: Collection of Court Case Summaries*, in which a doctor in a public hospital was convicted of recruiting victims for kidney removal and subsequent transplantation into Greek clients. p. 403.

<sup>14</sup> Inter-Agency Coordination Group against Trafficking in Persons, "Trafficking in persons for the purpose of organ removal", Issue Brief, No. 11 (2021), p. 8.

<sup>15</sup> *Global Report on Trafficking in Persons 2018*, p. 31.

<sup>16</sup> *Ibid.* p. 2.

<sup>17</sup> See *State v. Netcare Kwa-Zulu Limited*, 2010.

<sup>18</sup> DW, "Egypt says organ trafficking racket busted", 12 June 2016.

conduct hundreds of operations. For example, a trafficking ring discovered last year in Pakistan is accused of having trafficked more than 300 victims to remove their kidneys, with operations conducted in private houses to evade scrutiny from hospitals.<sup>19</sup>

23. Traffickers are making increasing use of social media platforms, such as Facebook and Instagram, to identify, recruit and interact with victims of trafficking for organ removal.<sup>20</sup> The dark web is also used to conceal profits.<sup>21</sup> Trafficking in persons for organ removal thus follows the same pattern as other forms of exploitation, which are also increasingly being committed through the misuse of new technologies.

## **B. Difficulties in preventing and combating this crime**

24. Although this form of trafficking in persons has received increasing attention from States, international organizations, health organizations, the media and other non-governmental stakeholders, very few cases of trafficking in persons for organ removal are prosecuted globally.

25. To address the lack of relevant capacity and knowledge among investigators and prosecutors and to provide an analysis of specific challenges in the identification and investigation of such cases, UNODC published the *Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal* in 2022. It was developed over the course of five years, with extensive peer review by medical, legal and criminal justice practitioners, and was endorsed by WHO. The Toolkit constitutes a groundbreaking resource for practitioners that provides concrete guidance on tackling this crime at the intersection of medical, legal and criminal investigative spheres. Several elements detailed in the Toolkit are recounted in the present paper. The Toolkit provides a description of the characteristics of the crime and a detailed description of the medical transplant process, identifying red flags for kidney and liver transplants, and discusses challenges and suggested strategies to overcome them during investigation and prosecution. In addition, the Toolkit includes an innovative virtual reality training tool, which facilitates the training of criminal justice investigators in the clinical setting.

26. Among major impediments to the detection and investigation of trafficking in persons for organ removal is the fact that the crime is mostly committed in medical settings that are often legitimate. The fact that the crime can be committed, for example, in large and legal medical facilities by accredited doctors and medical personnel makes it difficult to identify and, as a result, a certain level of knowledge of medical facilities, tools and processes is required in order to detect the existence of cases. Trafficking in persons for organ removal can be perpetrated in such facilities despite mechanisms and safeguards being put in place to prevent its occurrence or reduce its likelihood. Patients or criminal networks may try to use the services of regular transplant systems by deceiving medical professionals and screening mechanisms. Traffickers, when they are not medical professionals themselves,<sup>22</sup> make use of medical staff for various purposes, including to test the compatibility of donors and recipients in hospital laboratories, conduct medical procedures such as organ removal or provide post-surgery recovery or treatment.<sup>23</sup>

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<sup>19</sup> Rachel Russell, “Pakistan police bust organ trafficking ring that took kidneys from hundreds”, BBC, 2 October 2023.

<sup>20</sup> See, for example, “Case No. 2: Armenia, 2012”, in *Global Report on Trafficking in Persons 2022: Collection of Court Case Summaries*, in which the victims were recruited through the website “list.am”, pp.17 and 18. See also Pichayada Promchertchoo, “Kidney for sale: how organs can be bought via social medial in the Philippines”, CNA, 31 December 2020.

<sup>21</sup> UNODC, *Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal*, module 1, p. 7.

<sup>22</sup> See UNODC, Sharing Electronic Resources and Laws on Crime (SHERLOC) case law database, Costa Rica, Case No. 13-000227-1219-PE.

<sup>23</sup> UNODC, *Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal*, module 1, p. 6.

27. Alternatively, but more rarely, traffickers may make use of transplant surgeons and other health-care professionals who operate clandestinely in private houses, basements and other facilities to better avoid detection by the monitoring systems put in place by health facilities.

28. In order to identify and investigate trafficking in persons for organ removal in these different settings, as well as recognize and preserve evidence, criminal justice investigators therefore need specific skills and knowledge. While the General Assembly has repeatedly encouraged Member States to provide capacity-building for law enforcement and border control officials and health-care professionals in identifying potential cases, including with the support of UNODC,<sup>24</sup> most jurisdictions still lack the specific training and expertise to efficiently combat this crime.

29. As trafficking in persons for organ removal is frequently transnational, with victims in one country, the medical facility in another and the recipient sometimes in a third country, international cooperation between law enforcement authorities is required. Beyond the common issues related to international cooperation in transnational organized crime investigations, such as lengthy formal request processes, a lack of willingness to cooperate or a lack of capacity to do so, additional obstacles specific to trafficking in persons for organ removal can hamper international cooperation. These include the lack of identification systems to trace organs from donor to recipient and vice versa, as well as uncertainty regarding the sharing of information arising from balancing medical professional confidentiality with the obligation for health-care professionals and other actors to report indications of trafficking in persons for organ removal when performing organ transplants or assessing transplant recipients or organ donors. To address this, health authorities should ensure that regulatory frameworks and policies provide clear guidance on reporting duties, to ensure that they are in accordance with medical confidentiality requirements.<sup>25</sup>

30. Since trafficking in persons for organ removal is poorly detected and underreported, data are scarce, contributing to a lack of analysis of its true scope. Trafficking for the purpose of organ removal may also be more challenging to detect due to the fact that the exploitative act, that is, the transplant, is carried out only once, as opposed to other forms of exploitation that may be carried out multiple times over much longer periods of time, such as forced labour or forced prostitution. In addition, victims are hesitant to report the crime out of fear of being prosecuted for organ selling, stigma, the risk of deportation if their status in a country is irregular and possible retaliation from traffickers. This relative invisibility compared with other forms of trafficking in persons has resulted in the reduced prioritization of this crime in national anti-trafficking action plans and policies and the impression that it might be a marginal issue. Consequently, Governments often allocate limited resources to address this crime, thereby inadvertently allowing traffickers and networks to continue and expand such practices.

31. Lastly, corruption often plays a role in the commission of trafficking in persons for organ removal at various levels.<sup>26</sup> For example, administrative offices that accredit medical centres and health-care providers may be bribed to issue false licences to cover up illicit organ transplantation activities,<sup>27</sup> or immigration officers to facilitate the entry into the territory of persons to be trafficked for organ removal.<sup>28</sup>

<sup>24</sup> General Assembly resolution 77/236, paras. 11 and 19; and 2021 Political Declaration on the Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons (General Assembly resolution 76/7, annex, para. 27).

<sup>25</sup> Dominique E. Martin and others, "Strengthening global efforts to combat organ trafficking and transplant tourism", pp. 7 and 8.

<sup>26</sup> UNODC, *Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal*, module 2, p. 19.

<sup>27</sup> Michael Bos, *Trafficking in Human Organs* (Brussels, European Parliament, Directorate-General for External Policies, Policy Department, 2015), p. 21.

<sup>28</sup> Reuters, "Indonesia arrests 12 for human trafficking in illegal organ trade", 20 July 2023.

More data and research are needed to understand precisely the role and scope of corruption in enabling trafficking in persons for organ removal.<sup>29</sup>

### C. The issue of donor consent

32. In trafficking in persons for organ removal, the “consent” of victims to donate their organs is never obtained, since traffickers use various means, such as deception, fraud, abuse of the position of vulnerability of the victim or coercion, to exploit them.

33. The Special Rapporteur on trafficking in persons, especially women and children, has noted that “passports are commonly withheld as a means of maintaining control over the movement of the victim before the operation. Efforts to back out of an agreement to sell an organ are met with violence and threats of violence. After the transplantation, organizers continue to threaten victims in order to ensure their silence”.<sup>30</sup> In a case in Israel, the traffickers had threatened the victims by telling them after the operation that they would be arrested if they complained to the police, since they would be treated as offenders.<sup>31</sup> Other means of coercion include kidnapping, sedation, debt bondage or extortion.

34. Traffickers often use more subtle means than plain physical coercion to convince prospective donors to undertake the procedure. Many victims are deceived about the nature of the surgery, the risks involved and the follow-up medical care required. Traffickers often do not explain to the victims the lifelong negative physical consequences, often made worse by a lack of medical screenings and adequate post-operative care. Often, traffickers promise much larger amounts of money than a victim eventually receives.<sup>32</sup> The abuse of a position of vulnerability,<sup>33</sup> one of the elements of the definition of trafficking in persons in the Trafficking in Persons Protocol, is particularly relevant in cases of trafficking in persons for organ removal because, as described above, victims of this form of trafficking often come from impoverished or socially disadvantaged backgrounds, may be illiterate and may feel that they have no realistic alternative to submitting to the exploitation.<sup>34</sup> People in a particularly vulnerable situation include undocumented migrants, asylum seekers, refugees, homeless persons, illiterate persons and persons living in poverty. Cases have been reported where brokers have approached refugees and migrants to falsely offer them a passage to Europe by boat on the Mediterranean Sea in exchange for donating a kidney, for example. The abuse of a position of vulnerability may often be used by traffickers in conjunction with other means, such as coercion, deception and fraud, to exploit their victim.

35. In a recent case<sup>35</sup> in the United Kingdom of Great Britain and Northern Ireland, a Nigerian senator and his wife organized the travel of a young man from Lagos, Nigeria, to the United Kingdom to have his kidney removed and transplanted to the couple’s daughter who was suffering from a kidney disease. The young man was from a poor background and had hoped to one day live in the United Kingdom. Under the promise that he could emigrate there, he agreed to undergo medical checks in Nigeria, which, he thought, were required for his visa.

36. The abuse of a position of vulnerability is one of the most common means used to exploit donors, but it is less tangible than the other means utilized by traffickers due to its broad scope and room for interpretation and is therefore more challenging to prove. Expert witnesses, such as psychologists, social workers and persons with

<sup>29</sup> See also [CTOC/COP/WG.4/2023/2](#).

<sup>30</sup> [A/68/256](#), para. 25.

<sup>31</sup> UNODC, SHERLOC case law database, Trafficking in persons, *J.A. v. State of Israel*, 2007.

<sup>32</sup> *Global Report on Trafficking in Persons 2018*, p. 31.

<sup>33</sup> For more information on this concept, see UNODC, *Issue Paper: Abuse of a Position of Vulnerability and Other “Means” within the Definition of Trafficking in Persons* (Vienna, 2013).

<sup>34</sup> Inter-Agency Coordination Group against Trafficking in Persons, “Trafficking in persons for the purpose of organ removal”, p. 6.

<sup>35</sup> Judiciary of England and Wales, *R v Obeta and others*, 5 May 2023.



knowledge of the victim's situation, may be required to substantiate abuse of a position of vulnerability. Proving the existence of such abuse to obtain a donor's consent is, however, useful in establishing the existence of trafficking in persons for organ removal and distinguishing it from organ trafficking. Most importantly, it contributes to invalidating the donor's consent to the commission of the crime and enables the donor to be considered a victim.<sup>36</sup>

37. In practice, questions around consent may arise in both cases of trafficking in persons and cases involving organ trafficking. Those accused of either crime may invoke the consent of the victim as a defence strategy, thereby shifting the focus away from their acts to those of the victim. However, cases in which consent has not been given or in which the consent was not free, informed or specific, but rather achieved through deception, coercion or abuse of a position of vulnerability could amount to trafficking in persons for the removal of organs.<sup>37</sup>

#### **D. The importance of a victim-centred approach**

38. A victim-centred approach that places the needs of the trafficking victim at the core of the criminal justice process and ensures that the victim is not harmed or re-traumatized by the response to a crime is essential in all trafficking in persons cases, and particularly so for organ removal cases. Beyond physical disability, victims may experience other consequences from the operation, such as social isolation, stigma and exclusion, as well as a range of psychological effects such as post-traumatic stress disorder, shame, fear, anxiety, hopelessness or a feeling of uselessness.

39. A victim-centred approach starts with the identification of the victim of the crime. However, trafficking in persons for organ removal may technically result in a victim committing a criminal act, as in most countries, organ selling is prohibited. Consequently, persons compelled to donate organs are often charged with organ selling or organ trafficking instead of being recognized as victims.

40. The General Assembly has urged Member States, in the context of trafficking in persons for organ removal, to consider adopting all necessary measures, including legal measures, guidelines or policies, to protect the rights and interests of victims in the course of all phases of criminal prosecution and judicial proceedings and to ensure accountability, and intensifying efforts, subject to national laws, rules and regulations, to implement the principle of non-punishment of victims of trafficking, under which victims are not to be inappropriately punished or prosecuted for acts that traffickers compelled them to commit or that they committed as a direct consequence of being trafficked.<sup>38</sup>

41. Charging a victim with organ selling in trafficking in persons cases contravenes the non-punishment principle and has negative consequences for both the victim and the criminal justice response. Despite urgent medical needs, victims may be discouraged from seeking help from law enforcement authorities or be afraid to do so for fear of being prosecuted. This may result in the underreporting of cases of trafficking in persons for organ removal and a lack of data on and visibility of the crime. It may also entail grave psychological and physical consequences for the victim.

42. Charging a victim with a crime they were compelled to commit also has an impact on their access to services. The Trafficking in Persons Protocol requires the provision of protection and assistance to victims of this crime, to which organ donors cannot have access if they are not recognized as victims. This includes appropriate housing; counselling and information, in particular regarding their legal rights, in a language that the victims of trafficking in persons can understand; medical,

<sup>36</sup> For more details, see UNODC, *Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal*, module 2, pp. 11–17.

<sup>37</sup> A/75/115, paras. 26–30.

<sup>38</sup> General Assembly resolution 77/236, para. 15 (a).

psychological and material assistance; and employment, educational and training opportunities, taking into account the age and gender and any special needs of the victim. Furthermore, a State party to the Protocol should endeavour to provide for the physical safety of victims of trafficking in persons while they are within their territory.

43. Trafficking victims require protection and assistance not only immediately but also in the medium and long term. This includes medical and psychosocial care, as well as broader support and assistance, including livelihood support so that trafficked persons are not revictimized but can instead exit the situation of economic and social vulnerability that they are in. Such services provided by States should not be made conditional on the participation of victims in criminal proceedings against their traffickers. Victims who decide to contribute to the investigation and prosecution of traffickers might need additional protection measures to ensure their safety. In trafficking in persons for organ removal prosecutions, brokers, in particular, may pose open threats to the safety of the donors.

44. The criminalization of victims also hampers their access to justice and to remedies. Related to this, the General Assembly, echoing article 6, paragraph 6, of the Trafficking in Persons Protocol, has urged Member States to consider ensuring that domestic legal systems take measures based on a victim-centred approach that offer victims of trafficking in persons for the purpose of organ removal and individuals who sell their organs the possibility of obtaining effective compensation and other remedies, including legal remedies, for the damage suffered, without fear of facing retaliation.<sup>39</sup>

45. However, in practice, implementation of the non-punishment principle is, at best, uneven. One study found that criminal justice practitioners may be unfamiliar with or lack sufficient understanding of the non-punishment principle, its purpose and their role in applying it in practice, due to, inter alia, a lack of capacity-building efforts in the area of counter-trafficking in general and non-punishment in particular.<sup>40</sup> Another reason that the non-punishment principle is not upheld is that the crime of organ trafficking is comparatively easier to investigate, prosecute and adjudicate than trafficking in persons for organ removal, which requires the establishment of a number of other elements such as the abuse of a position of vulnerability. This might explain the preference among authorities for pursuing such cases under the organ trafficking framework, which, however, might result in trafficked persons being charged for selling their organs.<sup>41</sup>

46. The UNODC *Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal* is in this regard a valuable tool for criminal justice actors, as it gives detailed guidance on how to adopt a victim-centred approach, including how to apply the non-punishment principle. It facilitates the analysis of the factual circumstances surrounding a possible case of trafficking in persons for organ removal, the issue of donor “consent” and the means used by the traffickers.

## **E. Related crimes involving illicit trade in body parts, tissues and cells**

47. There are other crimes that involve illicit trade in body parts, tissues and cells, in addition to organs.

48. The human rights situation of people with albinism,<sup>42</sup> a condition characterized by a deficit in the production of melanin, varies worldwide, but certain challenges are

<sup>39</sup> Ibid., para. 15 (d).

<sup>40</sup> Marika McAdam, *Implementation of the Non-Punishment Principle for Victims of Human Trafficking in ASEAN Member States*, ASEAN-Australia Counter Trafficking (March 2022), pp. 7 and 8.

<sup>41</sup> Inter-Agency Coordination Group against Trafficking in Persons, “Trafficking in persons for the purpose of organ removal”, p. 7.

<sup>42</sup> Ikponwosa Ero and others, *People with Albinism Worldwide: A Human Rights Perspective*

common everywhere as a result of a deep misunderstanding and mystification of the condition. The physical appearance of people with albinism has led to erroneous beliefs and myths influenced by superstition and witchcraft. In several African countries in particular, persons with albinism are at great risk of being attacked for the removal of some of their body parts, such as teeth, bones, genitals and limbs, which are then used in rituals by witch doctors to supposedly bring success and wealth.

49. Victims may be abducted, transported from another village or country, killed and dismembered for body parts or organs.<sup>43</sup> Since violence and deception are often used against the victims, who are taken to a place where their organs are removed, it might be possible to prosecute this crime as trafficking in persons for organ removal. This, however, will depend on the individual case, on domestic trafficking law and on how trafficking in persons is defined, including the term “organ”. In some instances, prosecutors might decide to charge perpetrators with murder. The Trafficking in Persons Protocol does not include trafficking in tissues and cells in its definition. However, in view of the fact that the Protocol’s definition provides a non-exclusive, minimum list of forms of exploitation, some States have added the removal of body parts to their domestic definition to capture cultural and ritualistic practices.<sup>44</sup> Some States have tried to address the issue of rituals related to persons with albinism by adopting laws on trafficking in persons for organ removal that go beyond the strict concept of “organs”. The United Republic of Tanzania, for example, defines the term “organs”, in its Anti-Trafficking in Persons Act, as including “any part of the human body which can be removed and used to sustain life or for any purpose.”<sup>45</sup> A similar approach has been taken by Malawi, which states in its Trafficking in Persons Act of 2015 that “exploitation includes the removal of body parts or the extraction of organs or tissues.”

## V. Overview of good or promising practices and lessons learned

### A. Strengthening the evaluation process

50. Further to core public health policy objectives, States have established criteria and a process to authorize medical institutions with legitimate medical facilities, accredited surgeons and medical personnel to perform organ transplants and to prevent and respond to trafficking in persons for organ removal, to ensure equity and transparency in the transplantation of organs.

51. When it comes to the process of evaluating individual cases of organ transplantation, the UNODC *Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal* describes various practices among States, which offer the opportunity to discover potential trafficking in persons cases at different stages.<sup>46</sup> The practice of psychosocial screening in living organ donation is highly recommended to ensure voluntary, informed and safe organ donation. The evaluation may take the form of an interview by an independent expert to detect any irregularities, doubts, lack of authenticity of the claimed family relationship between donor and recipient, possible coercion or other signs that could indicate that the donor is not donating an organ voluntarily.

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(June 2021), pp. 2 and 3.

<sup>43</sup> Mohamed Daghar, “Tanzanians hard hit by trafficking in people with albinism”, Institute for Security Studies, 19 April 2022. See also Lameck Masina, “Malawi court convicts 12 people in albino attack”, Voice of America, 29 April 2022.

<sup>44</sup> UNODC, *Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal*, module 1, p. 8.

<sup>45</sup> United Republic of Tanzania, Anti-Trafficking in Persons Act (2008).

<sup>46</sup> For a detailed account of the evaluation process, see UNODC, *Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal*, module 4, p. 5.

52. However, not all States mandate in-person psychosocial evaluation, and often, only a psychiatric assessment is carried out to ensure that organ donors and recipients are legally competent and do not suffer from a psychiatric disorder. Domestic evaluation procedures in which a formal psychosocial evaluation is not systematically conducted may include such an evaluation if underlying problems are identified or suspected during the medical evaluation, or if the donor is unrelated to the intended recipient. Nevertheless, in the States that carry out psychosocial evaluations, there is so far no standardized format for them. Furthermore, in the cases where psychosocial evaluations exist, experts<sup>47</sup> warn that traffickers have increasingly sophisticated methods, and train the victim and the recipient specifically to pass the evaluation, rehearsing fake relationships and counterfeiting documents.

53. In the case mentioned in paragraph 35 above,<sup>48</sup> the traffickers stated that the victim was the cousin of their daughter and coached him to answer questions from the medical team to falsely convey that this was an altruistic, family donation. However, the medical consultant became suspicious about the circumstances surrounding the proposed transplant and the apparent lack of knowledge of the prospective donor and decided to put a halt to the transplant process. The psychosocial evaluation of living donors can thus detect suspicious cases and should be seen as a good practice before the authorization of an organ removal procedure. In this case, the victim undertook, himself, to report his trafficking to the police before the operation.

54. Most detected cases of trafficking in persons for organ removal involve illicit organ donation by victims who are not related to the organ recipients, where financial and other benefits are offered as inducement, and/or deception, coercion and other means are used to obtain the donors' consent. This is not always easy for national authorities to detect as the donor will be portrayed as an altruistic, related organ donor to comply with national transplant requirements. The experts conducting the evaluation should therefore be thoroughly trained to detect indicators of possible trafficking in persons.

55. In most countries, an ethics committee or transplant authority is in place to approve the organ removal and transplantation, either at the national, regional or hospital levels. The ethics committee's role is to guide the policies and procedures related to organ donation, removal, allocation and transplantation to ensure that they are in accordance with legal and ethical principles. The ethics committee reviews transplant documentation, such as medical test results, and the assessment of the organ donor and the recipient before approving the transplantation.

56. For unrelated living donors, the ethics committee might also interview the donor to ensure that the consent is valid and no payment is involved. The committee should remain alert when the prospective donor is interviewed in the presence of an interpreter who is supposed to be a family member and who, in reality, could be a broker. Reliance on interpreters might also not allow an effective interview to be conducted by the ethics committee or the psychosocial evaluators.

57. When the donor is a relative, proof of kinship should be provided in the form of documentation such as birth certificates, family genealogy, passports, marriage certificates and photographs showing the prospective donor and the recipient together on different occasions.<sup>49</sup> Traffickers have, however, become expert in preparing fake versions of such documents. Contact with embassies and consular services for verification of document authenticity can help an evaluation function, such as an ethics committee, in determining that an application is genuine. In 14 cases in Bulgaria,<sup>50</sup> young people from the Republic of Moldova and Ukraine were presented

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<sup>47</sup> Dominique Martin, quoted in Matthew Weaver, "‘There is a level of complacency’: trial exposes UK's vulnerability to organ harvesting", *The Guardian*, 23 March 2023.

<sup>48</sup> Judiciary of England and Wales, *R v. Obeta and others*.

<sup>49</sup> See undercover investigation: Samuel Lovett, Nandi Theint and Nicola Smith, "Revealed: global private hospital group embroiled in 'cash for kidneys' racket", *The Telegraph*, 3 December 2023.

<sup>50</sup> Reuters, "Bulgarian organized-crime police probing 14 illegal kidney transplants", 24 June 2021.

as relatives of kidney recipients from Germany, Israel and Oman, among other countries. Since Bulgarian law only allows transplants among family members, the traffickers had provided fraudulent identification documents, which were discovered by their respective embassies when they were contacted by law enforcement officials.

## **B. Strengthening oversight and reporting procedures**

58. UNODC, WHO and other international organizations have advocated for years for the establishment of national transplant registers that include information about each organ transplantation procedure and outcomes for the donor and recipient and can enable the tracing of organs through regular audits.<sup>51</sup> In an effort to collect data on transplant tourism and combat this issue, the General Assembly has also urged States to ensure that these registers are designed to record information on procedures that take place within a country and on transplant and living donation procedures involving residents of that country carried out in other jurisdictions.<sup>52</sup> A way to identify such transplants is to analyse national transplant waiting lists, since organ recipients who have obtained a transplant abroad might be taken off the waiting list upon returning with a new organ to their country, and after medical consultation. Patients who are taken off a waiting list without having received an organ through the domestic transplant system may have received it illegally. It would also be helpful to publish data at the national level on the number of transplants declined and the reasons for this refusal, including risks of trafficking in persons.

59. Systematic and rigorous oversight of both public and private medical facilities and professionals involved in organ transplantation, including through periodic audits and other control measures such as inspections, can help detect trafficking in persons for organ removal.

60. The General Assembly has called upon Member States to establish targeted guidelines and clear frameworks for health-care professionals to report any confirmed or suspected case of trafficking in persons for the purpose of organ removal to law enforcement authorities and to ensure that medical personnel can do so as an exception to the principle of confidentiality that they otherwise need to apply in their profession.<sup>53</sup> A good practice would be to offer targeted training to medical and other health professionals involved in organ transplantation on this crime and the process for reporting it in order to enhance detection of such trafficking.

61. Unwittingly, insurance companies may contribute to legitimizing illicit organ removal by directly covering the costs of living donor surgery, hospitalization, diagnostic tests and the transplant in cases where they ignore the origin of the transplanted organ.<sup>54</sup> The General Assembly has correspondingly urged Member States to ensure that health authorities and/or insurance providers do not reimburse the costs of transplant procedures that have occurred in the context of trafficking in persons for the purpose of organ removal or trafficking in human organs, although the costs of medications and post-transplant care should be covered under the same conditions that apply to any other transplant recipient.<sup>55</sup>

## **C. Strengthening the capacity of criminal justice actors**

62. Capacity-building for law enforcement and investigative teams should be carried out systematically. The General Assembly requested UNODC, in collaboration with other entities of the United Nations system, to continue providing

<sup>51</sup> See, for example, Inter-Agency Coordination Group against Trafficking in Persons, “Trafficking in persons for the purpose of organ removal”, p. 8.

<sup>52</sup> General Assembly resolution 77/236, para. 6 (i).

<sup>53</sup> *Ibid.*, para. 12.

<sup>54</sup> UNODC, *Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal*, module 5, p. 11.

<sup>55</sup> General Assembly resolution 77/236, para. 13.

capacity-building and technical assistance to States, upon request, to assist them in strengthening national capacities to effectively prevent and combat trafficking in persons for the purpose of organ removal.<sup>56</sup> The UNODC *Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal* offers the most in-depth and practical information currently available for the efficient investigation and prosecution of cases of trafficking in persons for organ removal and constitutes a solid tool for practitioners who need to better understand the indicators of this crime, how to investigate medical facilities, what forms of evidence are acceptable in the medical field and how illicit transplants are organized.

63. Cross-border joint task forces or joint investigation teams involving two or more jurisdictions should be considered from the early stages of an investigation due to the recurrent transnational dimension of cases of trafficking in persons for organ removal. In addition, in order to cover the complexity of investigating trafficking in persons for organ removal, investigative teams nearly always require a multidisciplinary team of specialists who bring together a range of skills and expertise, such as police officers, mental health experts, transplant experts, digital technologies specialists and financial investigators.<sup>57</sup> Related cooperation efforts and the involvement of different sets of expertise have proved successful in facilitating the conduct of investigations.

#### **D. A victim-centred approach**

64. A human rights-based, victim-centred and trauma-informed approach to trafficking in persons for organ removal is recommended as a good and essential practice to undertake throughout the entire criminal justice process.<sup>58</sup> This includes not punishing victims for crimes they were compelled to commit. This approach should contribute to ensuring that victims' immediate and longer-term needs are addressed and that child victims are treated according to their best interests.

#### **E. Prevention efforts**

65. The Inter-Agency Coordination Group against Trafficking in Persons, which draws together all key United Nations entities and currently consists of 31 member institutions, has recommended that greater priority be given to trafficking in persons for organ removal in anti-trafficking programmes and policies. The Group has observed that this form of exploitation is often not included in national action plans, awareness-raising campaigns or anti-trafficking strategies. The systematic collection of data would provide a solid base for the development of such policies and efforts and should thus be encouraged.

66. In connection with this, voluntary and periodic contributions to international registers for organ donation and transplantation activity, such as the Global Observatory on Donation and Transplantation, which also collects data on cases of travel for transplantation, can provide additional information. International efforts to shed more light on the magnitude of trafficking in persons for organ removal and collect data on the *modi operandi* of traffickers, including for the UNODC *Global Report on Trafficking in Persons* and the UNODC Sharing Electronic Resources and Laws on Crime (SHERLOC) knowledge management portal case law database also contribute to policies, awareness-raising campaigns and anti-trafficking programmes.

67. Policies to tackle this crime also need to look at the root causes that make it possible and, in some instances, unavoidable for people to become victims, in order to reduce vulnerabilities.

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<sup>56</sup> Ibid., para. 19.

<sup>57</sup> UNODC, *Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal*, module 5, p. 2.

<sup>58</sup> See Inter-Agency Coordination Group against Trafficking in Persons, "Trafficking in persons for the purpose of organ removal".

68. Regular intergovernmental meetings, expert round tables and other international or regional forums for criminal justice practitioners can contribute to a more effective global response to trafficking in persons for organ removal.

## F. Efforts in demand reduction

69. Some States have tackled the discrepancy between supply and demand for organs by introducing organ transplants from deceased persons. Some States have adopted an opting-out system for deceased organ donations, whereby persons are presumed to have consented to donation unless otherwise indicated, as in Spain and Switzerland, to increase the number of organs available for transplantation and improve State self-sufficiency.

70. Other efforts include paired exchanges for kidneys linking willing donors with suitable matches, improving quality and safety in transplant procedures and prohibiting insurance reimbursement for illegal transplant services.<sup>59</sup> Recently, the transplantation of a kidney from a genetically modified pig into a human recipient in the United States of America was successful and could represent groundbreaking progress, should xenotransplantation be further developed and optimized.<sup>60</sup>

71. Awareness-raising campaigns have also increased public knowledge of the importance of organ donation. Increased prevention measures for diseases that might eventually lead to the need for an organ transplant can also contribute to reducing demand. Health professionals can also raise awareness by informing patients awaiting an organ of the ethical issues and medical risks associated with illegal transplants performed abroad, and thus deter them from undertaking transplant tourism.

## G. Legal framework

72. The Trafficking in Persons Protocol currently has 182 States parties and constitutes a good legal framework for fighting trafficking in persons for organ removal. Although the Protocol has been widely domesticated, in some manner, to date, it remains important for States to specifically criminalize organ removal as a form of exploitation, in line with the Protocol, and to criminalize all illicit transplant-related activities within their jurisdiction, including by establishing extraterritorial jurisdiction over such activities of their residents in other countries.<sup>61</sup> A clear distinction needs to be established with the crime of organ trafficking, sale and purchase, to allow both frameworks to be used in a complementary manner.

## VI. Points of reflection

73. Despite major progress in transplantation therapies, the global shortage in organs for transplants is a factor fuelling trafficking in persons for organ removal. While a number of factors still impede States' detection, investigation and prosecution of this form of trafficking, sound policy guidance and practices that can support States in responding have been developed. International cooperation should be fostered to better combat transnational cases. Considering the situation of vulnerability most victims find themselves in, significant work could be done in better recognizing their status as victims of crime and providing them with appropriate assistance and protection, including for the long term and without discrimination. As traffickers often prey on victims' economic despair with fake advertisements and promises,

<sup>59</sup> Ibid., p. 12.

<sup>60</sup> Harvard Medical School, "In a first, genetically edited pig kidney is transplanted into human, 21 March 2024.

<sup>61</sup> See also the Santander Statement, made at the global summit entitled "Towards global convergence in transplantation: sufficiency, transparency and oversight", held in Santander, Spain, on 9 and 10 November 2023.

including online, States could reflect on better ways to strengthen the prevention of this crime, including by enhancing the awareness of targeted populations about the dangers associated with illicit transplantations and to address the root causes of victimhood, such as economic, social and gender inequalities.

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