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GloACT

**Toolkit on the Investigation
and Prosecution of
Trafficking in Persons
for Organ Removal**



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MODULE 3: PROTECTING AND ASSISTING VICTIMS

The international legal framework for protecting and assisting victims of trafficking in persons for organ removal

1. WHO ARE VICTIMS OF TRAFFICKING FOR THE PURPOSE OF ORGAN REMOVAL?

Timely and accurate identification of victims of trafficking for purpose of organ removal, addressing their immediate protection needs and providing required support are critical aspects of the criminal justice process. These aspects are discussed in this module and then, relevant aspects of assistance and protection are integrated in the investigation and prosecution modules respectively. Before discussing States' obligations under international law with respect to providing victims of trafficking in persons with protection and assistance in recovery, it is important to understand who the victims are and the impact of the trafficking experience and the organ removal on their physical and mental health, challenges in social reintegration, future employability and overall wellbeing. This will provide law enforcement personnel and service providers with a better understanding of their needs and how to assist them on a difficult path towards recovery and redress.

A. Victims' profile- basic characteristics

The nationalities of organ donors vary but research indicates that the majority come from low income countries (with a large proportion of the population living below the poverty line), middle income countries, or from countries affected by political turmoil. Existing data indicates that men are the main source of organs, with women and occasionally children, being reported as trafficked and exploited for their organs to a lesser extent. For medical reasons, organ donors between 20 and 40 years of age are preferred due to the optimal organ size and its vitality. The majority of victims are considered within their communities to have lower social status or belong to a lower cast, and having a low level of education. One study based on interviews with 103 confirmed victims, revealed that they did not have any education beyond the secondary level, and only half had primary education or below.¹ Those general characteristics do not preclude persons with a higher level of education to become paid organ donor-victims if they find themselves in a precarious life

situation, or persons who are completely unaware that they have been targeted for their organ, irrespective of their financial or social position.

B. Root causes

Trafficking in persons for organ removal has the same root causes as the other forms of trafficking, namely economic and social inequity, or other pre-existing vulnerabilities related to person's legal or social status. But trafficking in persons for organ removal is unique in the form of exploitation, and the subsequent impact it has on victims. Most victims who are trafficked for the purpose of organ removal will experience some form of violation of their human rights at some point in their lives.² It might be with regards to access to equality before the law and access to equal protection by the law; access to the right to justice; the right to justice and access to effective remedy; access to health services; the right to an adequate standard of living, including food; the right to seek asylum and the rights to be protected from torture and inhuman or degrading treatment; access to education, or economic opportunities. The latter form of violation is the most visibly manifested in cases of trafficking in persons for organ removal. Very often organ donor-victims suffer from acute poverty or economic hardship. Financial hardships, such as debt, were recognized as the main motivation for selling an organ, in combination with desperation and lack of choice resulting from one's economic circumstances³.

For many economically and opportunity deprived persons, receiving a lumpsum of money is the only opportunity they might have to advance their goals, address their immediate needs, or improve their life circumstances, however difficult and damaging it might be. Similar to victims of other forms of trafficking, in their desperation many of them do not feel exploited nor see themselves as victims. Some persons who sold an organ to elevate their economic hardship consider the organ sale as the act of empowerment and/ or the necessary act of self-help.⁴

The situation is equally, if not more, drastic for migrants moving irregularly, asylum seekers and refugees whose vulnerability is specifically acute due to conflict, threat of violence, displacement, irregular status, lack of employment, shortages or inability to access assistance services and lack of feasible long-term options to secure livelihood and safety for themselves and their families. For many organ removal is not a matter of opportunity, it is a matter of survival.

C. Consequences of organ removal

There are a number of negative consequences of organ removal on victims. Starting with stigmatization, one of the common post-removal experiences is feelings of shame, humiliation, social isolation, or marginalization. Victims often try to hide their experience. Their access to healthcare and job opportunities might be hindered as a result. One study revealed that organ donors involved in paid donation were excommunicated from the local religious institution, alienated from their families, with little chance of starting their own families.⁵ Moreover, a number of research studies on post-removal experiences report feelings of anxiety, fear, guilt, a sense of hopelessness, appetite loss, insomnia, and "a perception of the self as somehow halved and incomplete following the nephrectomy, a constant anxiety for the remaining kidney", they feel "an empty space here".⁶ Without proper support and psychosocial counselling, it is not uncommon for victims to feel regret and fall into depression and alcoholism.⁷ The "individual's self-image and basic sense of self are [...] affected".⁸ This psychological condition combined with the fact that there is rarely any tangible improvement of their life situation, and the poor health conditions, undermines the victim's short- and long-term well-being and their family situation.

The health impact cannot be overlooked or underplayed. While kidney donation is considered to be a relatively safe procedure in the context of regular and reliable medical care, this scenario might not apply to organ donor-victims who does not enjoy the same level of social or economic privilege, and access to post-operative health care system, including lifelong access to monitoring and care. Stigma, shame, lack of money, or fear of being reported to authorities may result in a situation where beyond receiving painkillers during the first days in the hospital, victims rarely, if ever, are provided with medical screening and follow-up care. One research study found that in four countries organ donors were suffering from weakness and pain, but were not treated by a physician in the year after their operation, despite frequent complaints. In some instances, they had even been turned away from the same hospitals which had performed the surgery.⁹ The fear of prosecution results in a lack of access to medical care. This was for example the case in one prosecuted trafficking ring in Asia, where it was revealed that the 'donors' were not given proper postoperative care, and in some cases were reminded of the illegal nature of the act and discharged from hospital a week after the transplant. A victim identified by NGO staff in 2019 revealed that she went to see a physician months after the organ removal but was sent away as there was a suspicion that the removal was illegal. This made the victim too scared to approach another

physician until an NGO offered to provide her with necessary medical assistance.¹⁰ In their daily lives, even years after the removal, organ donor-victims experience weakness, dizziness, pain, seizures, or pricking that prevent them from performing labour-intensive work. Victims can also develop more serious conditions, including but not limited to hyper-tension, hepatitis, chronic renal disease (CKD), diabetes, hemorrhages, HIV, and AIDS. In the worst case scenario, organ donor-victims might die as result of organ removal, as documented in one study.¹¹

The long-term and debilitating medical consequences of organ removal may be exacerbated by poor nutrition, alcohol or other substance abuse. This directly affects the victim-donors' employability and long-term financial sustainability. Organ donor-victims are commonly engaged in physical or manual labour. In some cases, such physically demanding jobs could affect their health further. In 2015 a Syrian refugee, a man struggling to provide for basic needs for his family was exploited for his kidney by a trafficking ring. He agreed to sell his kidney for US\$8,000 and received only US\$1,000. After being cheated, and experiencing rapidly deteriorating health, he expressed the view that people who sell or are forced to sell an organ are "cannibalizing themselves", and added: "health is the only thing poor people have, and I sold mine".¹² A female victim, who agreed to donate her kidney to improve her family's poor financial situation, indicated after suffering from physical and psychological consequences: "it was not worth it for US\$1,000. It is not worth it for any money."¹³

2. HUMAN RIGHTS-BASED APPROACH

International human rights law provides essential guidance to States in developing an effective and rights-based criminal justice response to trafficking in persons. In addition to well-established obligations and legal principles that are an integral part of any domestic legal system, such as the right to a fair trial, the prohibition of discrimination, and the right of victims of human rights violations to access remedies, there are also a number of obligations specific to trafficking in persons, and the unique assistance needed after organ removal.

Any comprehensive trafficking response should be grounded in a human rights-based approach. The Commentary to the Recommended Principles and Guidelines on Human Rights and Human Trafficking explains that "a human rights-based approach is a conceptual framework for addressing trafficking in persons that is normatively based on international human rights standards and that is operationally directed to promoting and protecting human rights. Implementation of this approach requires analysis

of the ways in which human rights violations arise throughout the trafficking process, and States' obligations arising from international human rights law. The main objective is to identify and eliminate the discriminatory practices and address unjust distributions of power present in trafficking, that makes it more difficult to prosecute offenders, and that putting more obstacles in the path of accessing justice to victims of trafficking".¹⁴

A human rights-based approach provides the basis for incorporating the rights and obligations established by international human rights law in every aspect of the national, regional and [international response to trafficking in persons](#). The following key points should guide the development of any comprehensive response to trafficking, including through the criminal justice system.

- In formulating policies and programmes the main objective should be to promote and protect human rights.
- Rights-holders and their legal entitlements should be identified, including those persons who are part of the trafficking cycle, those susceptible to being trafficked, and those implicated and accused or convicted of trafficking-related offences. Similarly, duty-bearers and their obligations should be identified to ensure that rights-holders are able to secure their rights.
- Internationally agreed standards derived from international human rights law, such as equality and non-discrimination, universality of all rights, and the rule of law, should guide all aspects of the response at all stages.¹⁵

3. NON-PUNISHMENT PRINCIPLE

Article 2(b) of the UN Trafficking Protocol states that one of its purposes is "to protect and assist the victims of such trafficking, with full respect for their human rights". This purpose materializes in one of the most important and well-established principles "not to subject trafficked persons to arrest, charge, detention, prosecution, or penalization or other forms of punishment for illegal conduct that they committed as a direct consequence of being trafficked."¹⁶ The principle not to impose penalties on victims of trafficking stems from a human rights approach that recognizes and seeks to protect the dignity, fundamental rights and freedoms of trafficked persons.

The Inter-Agency Coordination Group against Trafficking in Persons further noted that: "failure to inquire about the circumstances surrounding the commission of a crime; ineffective training

or capacity-building for those implementing the non-punishment principle; or inadequate victim identification (...) adversely impacts victims, undermines their rights, discourages reporting and cooperation on with investigations and prosecutions, and negatively affects the justice system at large."¹⁷

In practice, "the non-punishment principle applies to all levels of the criminal justice system, and can also apply in non-criminal proceedings (e.g. immigration or administrative proceedings)."¹⁸ Additionally the application of the non-punishment principle should not be conditional upon any decision to prosecute an alleged trafficker, or a successful prosecution of a trafficker.¹⁹

In Europe, the non-punishment principle was explicitly recognized by the Council of Europe and, subsequently, by the European Union in their counter-trafficking instruments. Article 26 of the Council of Europe Convention against Trafficking in Human Beings provides that: "Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so."²⁰ The use of the word 'possibility' might indicate that the implementation is optional. However, the Group of Experts on Action against Trafficking in Human Beings report clarifies that: "Article 26 of Council of Europe Convention against Trafficking in Human Beings, read in conjunction with the Explanatory Report, establishes a positive obligation on Parties to adopt measures that specifically deal with the non-liability of victims of trafficking."²¹ State Parties have flexibility in deciding "how the national authorities apply such measures, but legislation specific to victims of human trafficking must first be provided for."²² The Explanatory Report states that such legislative measures can be "a substantive criminal or procedural criminal law provision, or any other measure."²³ The European Court of Human Rights also confirmed that States have positive obligations of protection. More specifically, it was ruled that states must have in place legislation "adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking".²⁴ Effective protection of the rights of victims extends to not punishing them for acts amounting to offences committed when they could not be considered as free agents.

The European Union's 2011 Anti-trafficking Directive solidifies and expands the obligation on non-punishment in Article 8, which reads: "Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings

for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2."²⁵ The discretion granted to States' prosecutors not to prosecute or punish trafficked persons allows for a full assessment of the circumstances of the alleged victim. If it is sufficiently clear that the offence was the de facto result of the trafficking process and of the intent of the traffickers, and that the person concerned had no choice, no penalties should be imposed.

Beyond the European counter trafficking instruments reference to the non-punishment principle can be also found in the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (Article 14(7)), Article 5 of the Model Law on Providing Assistance to the Victims of Trafficking, Commonwealth of Independent States, and the Arab Model Law on Combating Human Trafficking of 2012 (Articles 27 and 28).

Principle of non-punishment and victims of trafficking for purpose of organ removal

Persons trafficked for the purpose of organ removal are often in fact trafficked to commit a criminal offence. Organ buying and selling is criminalized under nearly all domestic laws and considered to be of serious enough nature to carry a considerable penalty.²⁶ In the view of the Special Rapporteur on trafficking in persons, "the standard of treatment of trafficked persons applies equally to victims of trafficking in persons for the removal of organs".²⁷ Thus, if the trafficked person is found to be recruited through coercion, deception, fraud or abuse of a position of vulnerability which might have been later used to control the victim, that person should not be criminalized for their very own exploitation. Put differently, criminalization of persons exploited for their organs is "the antithesis of a victim-centered approach".²⁸

If there is a suspicion that a victim of trafficking in persons "purportedly consented (either to the intended exploitation or to committing the alleged offence) that must not be used to deny access to measures that implement the non-punishment principle at the national level."²⁹ The application of the non-punishment principle extends to enable criminal records to be vacated or expunged for individuals who were convicted of crimes committed as a direct result of trafficking.³⁰

During the process of criminal investigation and prosecution, it might not always be apparent what type of crime involving illicit organ removal has occurred. It was noted that when there is evidence that "victims of trafficking have been involved in criminal activities, the investigation and the decision

of whether or not to pursue charges, and, if so, any subsequent proceedings must be approached with the greatest sensitivity" [...].³¹

Beyond states' positive obligation towards trafficked persons, not punishing victims could "encourage them to report crimes committed against them and participate as witnesses in trials against traffickers without fear of being censured themselves."³²

4. KEY OBLIGATIONS UNDER THE UN TRAFFICKING PROTOCOL

All individuals within a State's jurisdiction, including non-citizens, are holders of basic human rights. The obligation to investigate and prosecute TIP for OR, requires procedures for immediate and accurate identification of victims of trafficking. Identification failures will inevitably compromise the quality of that response.³³ Moreover, without victim identification, States will not be able to effectively fulfil the prevention and protection objectives set out in the UN Trafficking Protocol.

The protection provisions contained in the UN Trafficking Protocol must be understood in the wider context of the international normative framework for assistance and protection of victims of trafficking, and should be aligned with international law, including international human rights law, humanitarian law and refugee law (Article 14(1)).

Needs assessment, assistance and protection measures should take into account the age, gender and individual needs of victims of trafficking, in particular the special needs of children (Article 6(4)). Importantly, States should not link, or condition the provision of assistance and protection to cooperation with national criminal justice agencies. The UN Trafficking Protocol makes no specific reference to this issue, but the Legislative Guide to the Protocol states that: "support and protection shall ... not be made conditional upon the victim's capacity or willingness to cooperate in legal proceedings."³⁴ The Council of Europe Convention against Trafficking in Human Beings upholds this notion and requires separation does not make cooperation in a criminal proceeding a condition of receiving assistance and protection. Additionally it requires states to: "adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness."³⁵ Similar requirements feature in the EU Trafficking Directive, which requires Member States to: "take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial".³⁶

The complexity of trafficking in persons for organ removal and evidentiary requirements to establish the crime might result in a situation where the only way to establish the exploitation is with the victim's participation and cooperation. Victims of trafficking are often unwilling to assist in criminal investigations for fear of retaliation or harm. In order for victims to participate safely and effectively in the criminal justice process the UN Trafficking Protocol requires States to "endeavor to provide for the physical safety of victims" (Article 6(5)). Additionally, the UN Trafficking Protocol provides that States shall "in appropriate cases and to the extent possible, protect the privacy and identity of victims, including by making legal proceedings confidential" (Article 6(1)).

Trafficked persons also have a right to be informed of their legal options and be "provided information on court and administrative proceedings, and assistance to present their views and concerns to the court in criminal proceedings" ((Article 6(2)). In considering available legal options and next steps, victims should be provided with support and adequate time to do so. Domestic counter-trafficking legislation often introduced provisions allowing for a 'reflection period' to enable the victim to recover from their experience.³⁷

With regards to assistance to victims of trafficking Article 6(3) of the UN Trafficking Protocol calls on states "to provide for the physical, psychological and social recovery of victims, including by providing appropriate housing; counselling and information; medical, psychological and material assistance; and employment, educational and training opportunities". A requirement regarding access to remedies is included in Article 6(6) of the UN Trafficking Protocol which obligates states to ensure that the legal system provides victims with the possibility of obtaining compensation for damage suffered. Article 25 of the Organized Crime Convention echoes the obligations set out in the counter-trafficking instruments, and obliges States Parties to provide assistance to and protection to victims, in particular from the threat of retaliation or intimidation, and to establish appropriate procedures that provide access to restitution and compensation for victims.

5. PROTECTION AND ASSISTANCE STAGES³⁸

Protection and assistance to victims can be divided into three crucial stages; initial protection, protection throughout the criminal justice process, and long-term protection. All stages should individually and collectively provide the basis for victims to regain their autonomy, become fully functioning members of society, and to develop self-sustainability to ensure

they are not re-trafficked or become traffickers themselves. As such they form 'sustainable protection solutions'.³⁹ The initial protection and the long-term protection stages are discussed below. The protection measures during the criminal justice process are discussed in Modules 5 and 6 respectively.

A. Initial protection stage

With regards to the first stage of protection, after the presumed victims of trafficking are identified, the objective is to address their immediate needs and concerns. Firstly, due to the trafficking process and the unique form of exploitation, protection measures should first focus on:

- providing for victims' physical safety by conducting a risk assessment to determine the possibility of retaliation from traffickers and others, and placing them in safe accommodation (if required);
- providing medical assistance to evaluate their physical condition and the impact of the organ removal; note that victims must provide their consent to be examined.
- informing victims about a short- and long-term health consequences with feasible treatment plan that includes physical screening and access to national health care services. Psychological support should be offered as soon as possible to assist victims in addressing the trauma they might have experienced;
- if required, providing victims with basic needs such as food, clothing and accommodation.

Secondly, assistance efforts should focus on:

- allowing victims to communicate safely with their family, if there is no suspicion that these persons might be involved in their trafficking;
- providing victims with an adequate reflection period;
- providing victims with assistance to understand their rights, and the next steps in the process. In practical terms, this could entail providing a translator who can explain the situation to a victim in a language he/she understands and the opportunity to consult with appropriate advisers to assist in decision-making regarding cooperation with law enforcement and their participation in judicial proceedings;
- providing victims, who remain in the country without being legally admitted or holding a valid permit, with migration advice, and the possibility to obtain a temporary residence permit;⁴⁰
- ensuring that victims enjoy the protection of the non-punishment principle, ie that they will not be prosecuted, or/and deported to ease their concerns about being implicated and prosecuted for organ sale.

The first stage of protection, specifically the reception of the victim and the assistance measures provided, are essential in establishing a positive rapport and trust between the victim and criminal justice practitioners (if involved) and service providers. This in turn could result in a positive cooperation between the victim of trafficking and members of the law enforcement. It should be remembered that addressing victims needs should not be dependent on their willingness to cooperate with authorities.

B. Long term protection needs

After the criminal justice process is over, regardless of the cooperation of the victim, it is important to ensure that their protection continues and the rights of victims of trafficking for the purpose of organ removal are fully upheld. This is to be achieved by 1) ensuring that victims have access to justice and effective remedies, and 2) providing the required assistance to facilitate victims' long-term recovery and rehabilitation.

i. Improving access to justice and remedies for victims

Addressing victims' exploitation does not end with a successful conviction of their abusers. For many victims the fact that traffickers are prosecuted might only bring a small sense of justice, especially if they might not have any financial means to return home and start a new life. Victims should be provided with adequate access to compensation.⁴¹ Compensation is the most common form of remedy and is an essential component of delivering sustainable protection solutions.

Compensation is a recognition of the injury, loss or harm suffered by the victim of trafficking for organ removal. Importantly compensation can significantly improve the victims' prospects of recovery and possibly address the economic vulnerability that made them susceptible and vulnerable to exploitation in the first place. Compensation may be awarded be for material and non-material damages. Material damage can include the costs of medical treatment, transportation, damage to property and lost earnings (specifically when the victim has not been able to earn during the trafficking process). Whereas non-material damage encompasses physical and mental suffering, fear, severe disability, and /or reduced working capacity (future non-pecuniary damage).⁴²

Victims themselves are often not aware of their rights and are not informed of how to access remedies, whether in criminal, or civil proceedings. This remedy is not always readily accessible to trafficked persons whose organs were removed in a

foreign country. Due to the rather short timeframe of exploitation in cases of TIP for OR, victims of organ removal often leave the country a few days or weeks after the removal takes place, sometimes without being identified as a victim. In such circumstances the duty to identify victims of trafficking rests on the authorities of the country of origin. When they are identified as a victim of trafficking in a country where the removal took place, they might not have the opportunity to seek any remedy due to lack of legal and other assistance, including lack of residence status necessary to access it. Importantly for this form of exploitation, there may be a need for forensic support to the victim's claim for compensation. Forensic investigators may be able to substantiate the claim for compensation. Some victims, domestic and foreign, might decide not to participate in the criminal justice process, which might also hinder their access to compensation. Unfortunately in jurisdictions which offer assistance on the condition of participation in a criminal justice proceeding, victims may opt not to do so and not access justice.

To address this issue, States should consider making sources of compensation available to victims of trafficking, including those who are non-citizens, outside of criminal justice proceedings. Additionally, victims should be provided with adequate information and legal aid in making their claim to ensure that the procedural requirements are met. Assistance and cooperation with investigators and prosecutors is essential in this process.

ii. Recovery and rehabilitation

Victims of TIP for OR are exploited for their organs for little or no payment, and often suffer from serious physical and psychological harm that requires long-term medical attention. They often return to the situation that forced them into the trafficking situation in the first place. This, for example, includes incurred debts, sickness of a family member, poverty, lack of employment or lack of livelihood. Returning the trafficked person to the pre-existing situation without addressing the root causes, may place him or her at risk of further human rights violations. Equally worrying, victims, to escape their dire situation, might turn into recruiters and brokers themselves, or be trafficked for other purposes, for example, labour or sexual exploitation.

The Recommended Principles and Guidelines on Human Rights and Human Trafficking reaffirm the right to fair and adequate remedies and include "the means for as full a rehabilitation as possible."⁴³ As such, sustainable protection solutions encompass measures that ensure victims have access to long-term opportunities that create social and economic stability. To develop and effectively implement victims' sustainable protection plan,

victims should play an active role in its creation, alongside a dedicated social welfare agency acting as case manager helping a victim to identify their needs. Victims should be informed of all available and realistic options; understand their roles, responsibilities, and personal limitations; and be able to express their opinions and what type of assistance and support they need. A multi-agency approach is recommended where by a social welfare agency mobilizes other stakeholders to provide a victim with the services and assistance needed.⁴⁴ The long-term assistance and protection measures might include:

- access to education for victims and their children;
- access to professional skills training (based on labour market demand, and the victims' skills and capacities)
- language training;
- access to legal aid, for example, providing advice or representation in stabilizing their housing or family situation, asserting land rights, etc.;
- livelihood support and monitoring (i.e. providing livestock and medication),
- providing entrepreneurship opportunities, including financial capital for a small business;
- employment opportunities;
- access to health services and monitoring; and
- access to restorative justice.

Assistance and support measures that might have been initiated upon identification of a victim of organ removal might need to continue during delivery of the long-term assistance. These may include:

- providing adequate accommodation, especially if the victim faces a return to abusive or dangerous living conditions;
- medical and psychological access and counselling; and
- providing for the safety and security of the victim and their families, if there is a reasonable threat to their wellbeing.

Depending on the victims' trafficking experience, and based on the outcome of the risk assessment, it might be of equal importance to provide victims with the opportunity to remain in a State's territory where the exploitation occurred, temporarily or permanently. The Special Rapporteur has recommended that: "trafficked persons are allowed to lawfully remain in the country in which the remedy is being sought for the duration of any criminal,

civil, labour or administrative proceedings, without prejudice to any claim they may have to the right to remain on a more permanent basis as a remedy in itself.”⁴⁵ The right to remain, either on a temporary or permanent basis, should be made available to victims who are refugees, asylum seekers or those who might be facing a serious threat or harm from traffickers upon returning to their country of origin.

If a victim is to be returned to his/her country of origin, such a return should, to the extent possible, be voluntary and carried out with regard for the rights and dignity and include adequate protection safeguards, assistance and support necessary to achieve reintegration and prevent re-trafficking.⁴⁶

If the relocation of a victim is to a third State, the State in question should assist in the facilitation of safe relocation and integration.⁴⁷ Where there are safety concerns, humanitarian considerations or other risks that prevent victims from being returned, temporary or permanent residency in the country of destination should be considered.⁴⁸

Returning a person who is recognized to be in need of protection could amount to a violation of the principle of non-refoulement.⁴⁹ If an asylum seeker or a refugee is a minor, the Committee on the Rights of the Child stipulated that: “Return to the country of origin is not an option if it would lead to a ‘reasonable risk’ that such return would result in the violation of fundamental human rights of the child, and, in particular, if the principle of non-refoulement applies. Return to the country of origin shall in principle only be arranged if such return is in the best interests of the child.”⁵⁰

c. Proactive approach - outreach work

Due to the specific type of exploitation that results in removing a healthy organ, victims of TIP for OR are exposed to long term health consequences that might turn into a number of illnesses. For this reason, access to healthcare and monitoring is one aspect of long-term needs that must be considered and provided on unconditional basis. However, the stigma of having an organ removed in the context of TIP or the organ trade, is significant enough to deter victims from seeking medical help and speaking honestly about the circumstances in which the organ was removed. Only a fraction of victims of illicit organ removal are, identified, and assisted in a meaningful way. To address this considerable gap, beyond having appropriate legal frameworks and resources, it is also important to take a proactive approach and reach out to the victims. As outlined

by the OSCE report, “outreach work comprises activities aimed at mapping the places where victims live as well as at reaching out to victims to provide them with”⁵¹:

- ✓ Providing comprehensive information on:
 - Health risks involved in organ removal and on the related short- and long-term health affects;
 - Human rights violations occurring in the trafficking of organs and upon return;
 - Individual side-effects and social consequences involved in trafficking for organ removal;
 - Health behaviours to attain and maintain good health and to prevent illness after the organ removal;
 - Available health and assistance services;
 - Available psychological counselling services; and
 - Legal rights and available legal counselling and representation services;
- ✓ Health assessment and follow-up exams;
- ✓ Referral to health care providers, social-work counselling, and psychological counselling;
- ✓ Referral to legal counselling and assistance; and
- ✓ Information materials and health devices (e.g. with regard to kidney removal, urine test dip-stick kits), in different languages, when required.⁵²

These activities are often delivered, or can be delivered, by local, or specialized NGOs. However, there is a considerable gap of specialized agencies, NGOs, or charitable organizations who work with victims of organ removal in providing assistance to victims of organ removal. This gap should be addressed by States and international organizations by providing necessary support, including financial means to sustain their operation, and when necessary, training on the rights and needs of victims of trafficking for organ removal.

Identification and assistance of victims of TIP OR by non-governmental organizations

In 2008, the Coalition for Organ-Failure Solutions began its work in one of the countries in Asia by conducting a preliminary study on TIP for OR abuses in a target village. COFS has returned to the country in 2017 to conduct a follow-up study, needs assessment and to provide victim assistance services with a field team that consists of field workers/ activists, nurses and a leading transplant surgeon. COFS has partnered with a local organization to identify victims (including victims of trafficking for the removal of skin) in various areas of the country, provide basic needs and livelihood aid for victims in

highly targeted villages and facilitate restorative healing circles for victims. Additionally, COFS provides medical assistance to victims of organ removal and has done this in coordination with other parties offering localized medical check-up for vulnerable communities to avoid the risks of exposing victims who suffered stigmatization or could be discriminated based on their experience. Moreover, COFS learned that providing livestock as part of livelihood support (e.g. goats) can serve as a meaningful protection measure for victims and their families from further exploitation. This approach is tailored to, and frequently evaluated, to give consideration to the domestic and cultural context of the survivors.

i. Operationalizing protection

Addressing the needs of persons trafficked for organ removal in a comprehensive way is often beyond police and prosecutor's capacity. Effective support to victims (who are also witnesses) in the context of sustainable protection solutions, requires cooperation between criminal justice agencies, victim support agencies (including NGOs), and health care agencies.

There are a number of steps that need to be taken in order to deliver effective protection and assistance services to victims. Firstly, due to a number of specific needs areas that should be met to achieve a sustainable protection solution, and "to facilitate multidisciplinary cooperation, member States and/or civil society groups should undertake a mapping exercise and compile an inventory of NGOs, civil society groups, academics, government health, justice ministries and others who may be active in relation to organ-related issues. Such a list should be disseminated among those individuals and other relevant actors"⁵³.

Secondly, national health care providers should be included in the comprehensive protection and assistance response plans. This also encompasses developing response protocols for practitioners who encounter persons whose organ was removed illicitly, to providing immediate, to long term medical assistance. Medical professionals who suspect a possible victim of TIP for OR should refer potential victims to mandated agencies. Similar efforts should be made to integrate TIP for OR into the work of medical or health organizations working among rural and vulnerable communities, including in conflict zones and refugee camps. In the course of developing this toolkit, many medical practitioners have commented on the fact that they did not learn about TIP for OR in any coursework and that this is a further gap to be covered – developing tertiary education modules to equip all medical professionals with baseline indicators and knowledge to identify possible victims of TIP for OR.

Thirdly, when victims return to their country of origin, providing sustainable assistance and protection measures has to be coordinated among the authorities and service providers in the relevant State. To ensure that services are appropriate and given in a timely and coordinated manner States could rely on the existing referral systems established between origin and destination States, and, where relevant, assistance programmes of specialized agencies (e.g. IOM, UNHCR). Lastly, relevant agencies and specialized NGOs should together develop suitable education, and training to better assist victims of trafficking in person for organ removal, bearing in mind the victim's cultural context and victim's background⁵⁴.

ii. Gender dimension

Due to the lack of reliable data, little is known about the true scope and nature of the gender dimensions of TIP for OR. To deliver sustainable protection solutions, while guaranteeing gender equality, more data collection and research must be carried out with regards to the impact of TIP OR on men and women. Women and men are not necessarily trafficked in the same way. The purpose may also differ in cases of TIP for OR, specifically with regards to the type of organ or tissue, for example women might be additionally trafficked for their skin and human egg cells (ova)⁵⁵. As such, their experience of trafficking can be very different. It is possible then that the whole trafficking cycle might be shaped by the gender of the victim, from the root causes that make women and girls more vulnerable, through to methods of their recruitment, recruiters (husbands, fathers, employers), to the consequences.

While existing research points towards the trend of a higher exploitation rate of young to middle-age men, considering that in many places around the world women's rights, including the right to self-determination, access to health, employment market, land, are limited, the impact of TIP for OR might manifest itself differently. For example, gender data with regards to organ donation presents a significant disparity between men and women (women being the primary organ source), which might be a subtle manifestation of "an unethical component of coercion and family/social pressures", or gendered discrimination rooted in the unequal patriarchal system⁵⁶. Another study into gender dimensions of organ donation revealed that "economic factors may contribute to the overall gender disparity"⁵⁷. Similarly, in cases where it is a man who is exploited for his organ, the burden of hardship to provide for the family often falls disproportionately on women. More studies on the gender dimension in TIP for OR could show how to address the harm caused, and how to incorporate gender equality into counter-trafficking prevention and protection strategies.

Key Principles for Protecting Victims of Trafficking in Persons for Organ Removal⁵⁸

- Effective protection starts with identification of victims of trafficking for organ removal.
- Protection and assistance measures must be implemented in accordance with international principles of non-discrimination. A person cannot be discriminated against on the basis of any characteristic, including his or her migration or other status⁵⁹.
- Victims should not be detained, charged or prosecuted for violation of transplant regulations, and/or for engaging in paid organ donation, which is a direct result of being trafficked. In cases of victims who are non-citizens, also for irregularly entering or remaining in a State.
- Victims' personal safety and those close to them should be protected from potential retaliation and intimidation.
- Victims should have access to adequate physical (including medical) and psychological care.
- Victims should be provided with legal and other required assistance throughout any criminal, civil or other proceedings.
- Victims should be provided with information and access to effective and appropriate legal remedies, including obtaining compensation.
- Child victims of trafficking should be provided with appropriate assistance and protection, in accordance with their rights and needs arising from their vulnerability.
- Victims should be guaranteed safe (and where possible, voluntary) return by receiving and origin States.

Key Considerations in Providing Protection and Assistance to Victims

- ✓ Presumed victims of TIP for OR should be immediately referred to appropriate authorities to undergo victim assessment, age determination and to receive immediate assistance.
- ✓ A thorough needs assessment must be carried out in order to design and implement comprehensive assistance strategy to fully support and assist victims of organ removal in their recovery.
- ✓ When medical staff and health care practitioners suspect that a person might be a victim of trafficking in persons for the purpose of organ removal, they should refer that person to providers of protection and assistance services⁶⁰.

- ✓ Protection must be tailored to the needs of individuals and utilized by service providers with specific skills and experiences in addressing the challenges faced by victims of organ removal. Some victims may be at risk of physical harm from traffickers, and legitimate but complicit institutions (e.g. medical facilities) while others may not be aware of their rights, or face difficulties accessing protection and assistance services.
- ✓ Victims' autonomy should be respected, and they should be involved in decisions related to their assistance and protection. Victims' characteristics, including age, sex, gender, sexual orientation, nationality, ethnic or social origin, disability, should be considered in the design and the delivery of the protection services.
- ✓ Victims' confidentiality should be protected. Any breaches of confidentiality, either during criminal justice redress or in public reporting of the crime can compromise their safety, and hinder recovery. Victims' information should only be shared with their consent to as few people as possible. Where information is shared with specialized agencies for further assistance, the respective agencies must be briefed about the confidentiality requirement.
- ✓ Some victims might experience stigmatization for being trafficked and for their involvement in paid donation. Public and private media should be informed of the confidential nature of the case and informed of details that might or could be shared. Similarly, victims should not undergo medical evaluation and necessary treatment in hospitals where the initial medical treatment occurred (medical testing and organ removal), or where there is a suspicion of compromised medical professionals.
- ✓ When a victim is not a citizen of the identifying country, a diplomatic mission (consular agents) should be contacted as they might play a role in providing victims with immediate assistance and protection needs. This, however, should occur when there is no risk that the consular staff is involved in the trafficking process.
- ✓ Depending on the case, a victim might not be able to immediately return home, or to his/her community. Some victims may require more time to recover or require access to particular services. For example, traumatized victims might require counselling and psychological treatment. Victims who developed a medical condition or suffer from a post-surgery complication might require more comprehensive medical treatment. Some victims might wish to seek legal redress for the harm suffered, which often is a time-taking process and might require access to legal aid.
- ✓ Some victims will not be able to return to their countries at all because traffickers may continue

to pose a threat to them. In these cases, best practice is to provide them with sustainable protection solutions in States where they are identified or in third States.

- ✓ In case of participating in the investigation and prosecution of trafficking cases victims should be provided with support for the duration of their recovery and the legal proceeding, including regularization of their status in the country of trafficking (if not done already).
- ✓ The protection needs of trafficked victims may change from the moment of initial identification, through their involvement in criminal justice processes (if applicable), the conclusion of such procedures, to their long-term recovery. Service providers should monitor their recovery process and continually undertake risk assessments to ensure that protection services and members of enforcement address their changing needs.
- ✓ Child victims, or victims presumed to be children, should be referred immediately to child protection authorities for age assessments, appointment of legal guardians and best interest determinations while providing interim care arrangements as required. If the child is accompanied by an adult, first and foremost an assessment should be conducted to ensure that the guardian is not involved in the child's exploitation, confirm his/her identity and establish whether he/she is in fact the child's legal guardian and can represent the child's interests.
- ✓ Those with legal responsibility over a victim who is a child should ensure that the child has appropriate care, accommodation, health care, psycho-social support, education and language support. Irrespective of age the child should be provided with information regarding his or her rights and be allowed to participate in developing sustainable protection solutions in the child's best interests⁶¹.
- ✓ Asylum seekers and refugees who are also victims of trafficking for the purpose of organ removal should not be returned to the territory where there is a risk their life or freedom would be threatened, or they would be persecuted, or re-trafficked.

ENDNOTES

- 1) Debra Budiani-Saberi and others, "Human Trafficking for Organ Removal: A Victim-Centred, Evidence-Based Report", *Transplantation* vol.97, No. 4 (2014), p. 380 et seq.
- 2) Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings. "Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region: Analysis and Findings", (OSCE, 2013) (OSCE Paper); p. 48.
- 3) Lawrence Cohen, "Where It Hurts: Indian Material for an Ethics of Organ Transplantation", *Bioethics and Beyond* vol. 128, No.4 (1999), pp. 135 et seq.
- 4) Sallie Yea, "Masculinity under the knife: Filipino men, trafficking and the black organ market in Manila, the Philippines", *Gender, Place & Culture* vol.22, No. 1 (2013), pp. 123-142.
- 5) Nancy Scheper-Hughes, "Keeping an Eye on the Global Traffic in Human Organs", *The Lancet* vol. 361 (2003), p. 1645-1648
- 6) *Ibid.*
- 7) *Ibid.*
- 8) Susanne Lundin, "The Valuable Body. Organ Trafficking in Eastern Europe" *Baltic Worlds*, vol. 1:1 (2008), p.6-9
- 9) Nancy Scheper-Hughes, Loic Wacquant (eds.) 'Commodifying Bodies' (SAGE Publications, 2002).
- 10) COFS field work conducted in 2019.
- 11) Death of 6 organ donors was directly connected to the organ removal. See Kumar, "Police uncover large scale organ trafficking in Punjab" (footnote 14).
- 12) Sylwia Gawronska, 'Health Is the Only Thing Poor People Have, and I Sold Mine': Illicit Organ Removal from Syrian Refugees in Neighboring Countries and the Suitability of Existing Legal Frameworks" (forthcoming).
- 13) Case identified by COFS field team in 2019.
- 14) Commentary to the Trafficking Principles and Guidelines, pp 49-50
- 15) Commentary to the Trafficking Principles and Guidelines, pp 49-50
- 16) The Inter-Agency Coordination Group against Trafficking in Persons, Non -Punishment of Victims of Trafficking, Issue Brief 8, April 2020 (ICAT Brief); Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, Non-Punishment and Non-Prosecution of Victims of Trafficking in Persons: Administrative and Judicial Approaches to Offences Committed in the Process of Such Trafficking, UN Doc. CTOC/COP/WG.4/2010/4, 2009; Also see Principle 7 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1), Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking (Vienna, 2013).
- 17) ICAT Brief, p.2.
- 18) ICAT Brief, p. 3
- 19) ICAT Brief, p. 4
- 20) Art. 26 Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197, 2005;
- 21) Meeting Report of the Committee of the Parties, Convention on Action against Trafficking in Human Beings, Seventh meeting of the Committee of the Parties, Strasbourg, THB-CP (2012) RAP7 (30 January 2011), p. 12
- 22) Meeting Report of the 7th meeting of the Committee of the Parties, THB-CP (2012) RAP7 (30 January 2011), Appendix II, para 7.
- 23) Explanatory Report on the Convention against Trafficking in Human Beings, paras 272 -274.
- 24) *Rantsev v Cyprus and Russia*, European Court of Human Rights, Judgment, 7 January 2010, Application No. 25965/04, para 284.
- 25) Council Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
- 26) For offering or receiving a financial gain or comparable advantage in exchange for organ removal, the minimum penalty ranges from a fine (Germany, United Kingdom) to 5 years of imprisonment (Turkey), and the maximum penalty ranges from 1 year of imprisonment (Belgium) to 12 years of imprisonment (Spain)- see Belgium, Law on the Removal and Transplantation of Organs, Article 17, §3; Germany, Law on the Donation, Removal, and Transfer of Organs and Tissues, §18(1); Turkey, Criminal Code, Article 91(3); United Kingdom, Human Tissue Act 2004, section 32(4).
- 27) UN Special Rapporteur, Report on the issue of trafficking in persons for the removal of organs, A/68/256, 2013 (), p. 17.
- 28) UN Special Rapporteur Report p.17.
- 29) ICAT Brief, p. 6
- 30) *Ibid.*

31) L, HVN, THN and T v R, [2013] EWCA Crim 991, para 13

32) ICAT Brief p. 2

33) Commentary to the Trafficking Principles and Guidelines, p. 73 (See earlier comment in module 3 – there is an updated version from 2017)

34) Legislative Guide, at Part 2, para. 62.

35) Council of Europe Convention against Human Trafficking, art. 12(6). The Explanatory Report to the Convention confirms the intention of the drafters that this provision refers to both investigations and criminal proceedings. Council of Europe Convention against Human Trafficking Explanatory Report, at para. 168. Note that the Report also highlights the fact that in the law of many countries, it is compulsory to give evidence if required to do so. Under such circumstances, it would not be possible to rely on the above provision in refusing to act as a witness when legally compelled to do so, paras 170, 176

36) EU Trafficking Directive, art. 11(3).

37) Reflection periods typically range from 30 to 90 days, for more see Cathy Zimmerman et al., "Stolen Smiles: The physical and psychological health consequences of women and adolescents trafficked into Europe", London School of Hygiene and Tropical Medicine, 2006, p.3

38) <https://publications.iom.int/books/iom-handbook-migrants-vulnerable-violence-exploitation-and-abuse>

39) Bali Process, Policy Guide on Protecting Victims of Trafficking (May 2015), p. 14

40) For a detailed analysis of these and other rights to which all trafficked persons are entitled, see Commentary to the Trafficking Principles and Guidelines, Part 2.3.

41) UN TIP Protocol, art. 6(6); Organized Crime Convention, art 25(2). Also see the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly Res. 40/34)

42) UNODC Anti-human trafficking manual for criminal justice practitioners, Module 13;

43) Guideline 9, para.

44) Bali Process Policy Guides on Victim Protection, p. 15.

45) OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (Principle 9, Guideline 4.7)

46) Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1), United Nations High Commissioner for Human Rights, Guideline 6(8); also see art. 8(3), art.8(4), art. 9(1)(b) of the UN Trafficking Protocol concerning safe return.

47) Ibid.

48) See Commentary to the Recommended Principles and Guidelines on Human Rights and Human Trafficking, OHCHR, 2010, pp.180-182.

49) 1951 Refugee Convention relating to the Status of Refugees, art. 33(1); the Convention against Torture, art 3; the International Convention for the Protection of All Persons from Enforced Disappearance, art 16; the International Covenant on Civil and Political Rights, art 7; the UN TIP Protocol, art 14, and the International Covenant on Civil and Political Rights, 16 December 1966, arts. 6 and 7. The principle of non-refoulement has also become a rule of customary international law.

50) Committee on the Rights of the Child, General Comment No. 6, (2005), Treatment of unaccompanied and separated children outside their country of origin, para. 84. States should ensure that authorities designated to determine the best interests of the child are able to do so without having to balance the interests of the child against other interests, including those of the State. For more, see: UNHCR Guidelines on Determining the Best Interests of the Child, UNHCR, May 2008.

51) OSCE Paper, p. 52

52) Ibid. p. 52

53) United Nations Office on Drugs and Crime, Assessment Toolkit: Trafficking in Persons for Organ Removal (Vienna, 2015), (UNODC Assessment Toolkit) p. 55

54) The European Parliament and the Council. Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA; 2011

55) The Danish Council of Ethics, International trade in human eggs, surrogacy and organs, 2013.

56) Nikola Biller-Andorno, "Gender imbalance in living organ donation" Med Health vol. 5 (2002), pp. 199- 203; Wendy Bloembergen, and others, "Gender discrepancies in living related renal transplant donors and recipients" Journal of the American Society of Nephrology: JASN vol. 7, No. 8 (1996), p. 1139-1144; S. Avula and others, "Age and Gender Discrepancies in Living Related Renal Transplant Donors and Recipients", Transplantation Proceedings, vol. 30 (1998)

57) Deborah Zimmerman and others, "Gender disparity in living renal transplant donation", America Journal of Kidney Diseases, vol. 36, No. 3 (September 2000), p. 534-540.

58) For more see Office of the High Commissioner for Human Rights (OHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking.

59) The UN TIP Protocol, art. 14(2).

60) UNODC Assessment Toolkit p. 53

61) Committee on the Rights of the Child, General Comment No. 6, (2005), Treatment of unaccompanied and separated children outside their country of origin, para 84. States should ensure that authorities designated to determine the best interests of the child are able to do so without having to balance the interests of the child against other interests, including those of the State. For more, see: UNHCR Guidelines on Determining the Best Interests of the Child, UNHCR, May 2008.



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