2

Organ trafficking: a neglected aspect of modern slavery

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This chapter aims to raise the profile of organ trafficking among the academic community researching human trafficking in general. It explains how the various elements of organ trafficking are defined and how they relate to and differ from transplant tourism and organ markets. Some of the most important international declarations on organ trafficking are outlined, as well as some selective national legislation. Shifting global patterns of organ trafficking will be illustrated with an emphasis on India, Pakistan, Nepal and China. Some of the difficulties in curbing such trafficking are considered before outlining recommendations for increasing effective prevention, improving prosecution of perpetrators, and offering protection and support for victims.

Keywords: organ trafficking; organ transplantation; prevention; transplant tourism; victim support

Introduction

Organ trafficking is a heinous violation of both human rights and medical ethics but nevertheless it remains, if not entirely forgotten, the often-overlooked element of trafficking in people. Though organ trafficking involves thousands of people globally, it gains far less attention in terms of research output and media coverage than any other element of people trafficking.

This chapter aims to raise the profile of organ trafficking among academics researching in human trafficking overall. It explains how the various elements of organ trafficking are defined and how they relate to and differ from transplant tourism and organ markets. Some of the most important international declarations on organ trafficking are outlined, alongside some selective national legislation. Shifting global patterns of organ trafficking are illustrated with an emphasis on Asia. Some of the difficulties in curbing such trafficking are then considered followed by some recommendations for increasing effective prevention, prosecution of perpetrators, and protection and support of victims.

Organ transplantation, human trafficking for the purpose of organ removal and organ trafficking

It is a medical truism that organ transplantation in the 21st century has become a victim of its own success. Since the first successful kidney transplant was carried out in 1954 (Merrill et al, 1956), organ transplantation has grown exponentially as a life-saving procedure across the globe. The World Health Organization’s (WHO) Global Observatory on Donation and Transplantation records the total number of solid organ transplants in 2019 at 153,863.

However, this is only a fraction of the ever-rising need for organs, a need greatly increased by the 2020–1 COVID-19 pandemic. No country in the world, even prior to the pandemic, has been able to meet the demand for organs from within its own borders, except for Iran (Ghods and Mahdavi, 2007). If people know they will die from organ failure, some will not hesitate to acquire an organ illegally if they cannot get one legitimately within their own healthcare system. Organ traffickers know this and are only too willing to profit from their victims’ bodies being utilised to meet this demand. Regrettably, some healthcare professionals are also willing to either knowingly collude in organ trafficking for profit or at least turn a blind eye to it.

The victims of human traffickers are typically members of hidden populations for whom no reliable sampling frame exists. Characterising them has been likened to ‘describing the unobserved’ (**Error! Hyperlink reference not valid.**[Tyldum and Brunovskis, 2005](#CBML_BIB_ch02_0053" \o "Tyldum, G., & Brunovskis, A. (2005). Describing the unobserved: Methodological challenges in empirical studies on human trafficking. International migration, 43(1–2), 17–34.): 1). If this is true overall, it is especially difficult in the case of those trafficked for organs. In a recent paper characterising 128 victims from Association of Southeast Asian Nations countries, only one was trafficked for organs ([Cho et al, 2018](#CBML_BIB_ch02_0009" \o "Cho, Y., Gamo, M. D., Park, G., & Lee, H. (2018). Characteristics of victims of trafficking in persons and determinants of police reports of victims in ASEAN countries. Asia Pacific Journal of Multidisciplinary Research, 6(2), 101–112.): 108). Donor victims of organ trafficking are usually young men (except in India where most are young women) and economically deprived (Lomero-Martínez et al, 2017). Even some of the latest specialist reports are remarkably short on detail concerning the vulnerabilities of organ-trafficked people. For example, a July 2021 Interpol Analytical Report on organ trafficking in North and West Africa simply notes that the victim-donors ‘are usually unemployed youth and people in vulnerable situations (for example, victims of multiple ways of exploitation such as sexual or labour trafficking or asylum seekers)’ (Interpol Analytical Report, 2021: 16). They only receive a fraction of the money they were promised and are unlikely to report the offences against them because of shame or fear of retaliation.

It has taken a long time for organ trafficking to be eventually recognised, defined with increasing clarity and incorporated into both national and international law and protocols, the most important of which are considered next, particularly in regard to definitions of types of organ trafficking and related activities.

The Palermo Protocol and the Declarations of Istanbul 2008 and 2018

The adoption by the 2000 UN General Assembly of its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, now widely known as the ‘Palermo Protocol’, is probably the most significant milestone in combating human trafficking.

The Protocol in Article 2 defined ‘trafficking in persons’ as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal, manipulation or implantation of organs.

What is now referred to as Human Trafficking for the purpose of Organ Removal (HTOR), came at the very end of this lengthy definition and its location was to prove symbolic of the neglect of this element of human trafficking in subsequent years. In 2008, the Transplantation Society and the International Society of Nephrology convened in Turkey a Summit specifically on organ trafficking. This resulted in the Declaration of Istanbul ([International Summit on Transplant Tourism and Organ Trafficking, 2008](#CBML_BIB_ch02_0027" \o "International Summit on Transplant Tourism and Organ Trafficking. (2008) The Declaration of Istanbul. Istanbul, Turkey: Transplantation, 2008, pp. 1013–1018.)), which strongly condemned not only organ trafficking but also what it termed ‘transplant tourism’ and ‘transplant commercialism’. The Declaration received considerable criticism for putting these three in the same moral category (Radcliffe Richards, 2013: 83–7). Furthermore, it did not distinguish clearly between trafficking in organs and trafficking people for their organs.

When the Declaration of Istanbul was eventually updated in 2018, its definitions of both organ trafficking and HTOR became much more precise in response to criticism of the earlier version. “Organ trafficking consists of any of the following activities:

• removing organs from living or deceased donors without valid consent or authorisation or in exchange for financial gain or comparable advantage to the donor and/or a third person;

• any transportation, manipulation, transplantation or other use of such organs;

• offering any undue advantage to, or requesting the same by, a healthcare professional, public official, or employee of a private sector entity to facilitate or perform such removal or use;

• soliciting or recruiting donors or recipients, where carried out for financial gain or comparable advantage; or

• attempting to commit, or aiding or abetting the commission of, any of these acts.

Trafficking in persons for the purpose of organ removal is the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of the removal of organs’ “, Transplantation Society and International Society of Nephrology (2018).

The 2018 updated Declaration also made much clearer the distinction between travelling abroad for a transplant and transplant tourism, stating:

Travel for transplantation becomes transplant tourism, and thus unethical, if it involves trafficking in persons for the purpose of organ removal or trafficking in human organs, or if the resources (organs, professionals and transplant centres) devoted to providing transplants to non-resident patients undermine the country’s ability to provide transplant services for its own population. ([Transplantation Society and International Society of Nephrology, 2018](#CBML_BIB_ch02_0050" \o "Transplantation Society and International Society of Nephrology. (2018). Declaration of Istanbul on Organ Trafficking and Transplant Tourism. 2018 https://declarationofistanbul.org/the-declaration Accessed 7 September 2021))

With these influential definitions in mind, the different patterns of tackling organ trafficking are illustrated with a focus on India, Nepal, Pakistan and finally China, where it remains a particularly persistent crime. The type of offences vary greatly however from one country to another and illustrate the difficulties of both effective legislation against and policing of HTOR and organ trafficking.

Organ trafficking in India

The Transplantation of Human Organs Act (THOA) 1994 (Indian Society of Organ Transplantation, 1994) was implemented in India in early 1995. The Act was needed both to recognise the criteria of brain death as acceptable to permit organ donation and also to combat trafficking in human organs. Under THOA, permitted expenses included reimbursement of loss of earnings to the donor, but other payments were restricted. Donation was only permitted to close family members. Advertisements to obtain or sell an organ were also regulated and violations punishable.

One of the legal loopholes however was that non-related donations were allowed, where the donor could prove evidence of ‘affection and attachment’ to the recipient to a local authorisation committee, to demonstrate it was not a commercial transaction. This resulted in organ traders staging photos and forging documents to mislead such committees into thinking brokered vendors were friends of the recipient (Raza and Skordis-Worrall, 2012: 87). The effectiveness of THOA 1994 in reducing organ trafficking also appears to have been severely compromised by India’s determination to maintain its importance as a centre for medical tourism (including provision of transplants to foreign nationals) while simultaneously trying to comply with increasing international pressure against organ trafficking. Even after the Declaration of Istanbul 2008 stated both organ trafficking and transplant tourism should be banned, India appeared reluctant to curb the latter.

‘The Government of India opposes organ trafficking and has a nuanced position on medical tourism’, cautiously suggest some Indian researchers, who continue:

India is hub [*sic*] of ‘Medical Tourism’ since many of the hospitals in India are comparable in expertise with the western standards while the cost is much cheaper. India is promoting ‘Medical Tourism’ as a policy. Transplant of Human Organs Act, 1994, does not prohibit foreign nationals from getting the transplant done in India. ([Agarwal et al, 2012](#CBML_BIB_ch02_0001" \o "Agarwal, S. K., Srivastava, R. K., Gupta, S., and Tripathi, S. (2012) Evolution of the Transplantation of Human Organ Act and Law in India Transplantation 2012;94: 110Y113): 112)

It was perhaps such apparent ambivalence that at least in part meant that illegal practice in transplants continued. In 2004, police apprehended a senior surgeon in Mumbai for his alleged role in facilitating trade in human kidneys (**Error! Hyperlink reference not valid.**Mudur, 2004: 246). Dr Suresh Trivedi, a nephrologist at the Bombay Hospital and Medical Research Centre was arrested for allegedly passing requests for kidneys to agents who would find poor donors and fabricate documents showing they were distant relatives or friends of the patients. Each donor would receive 30,000–50,000 rupees, but a recipient would be charged up to 200,000 rupees for the kidney.

In January 2008, police uncovered an Indian organ trafficking ring of four doctors and 40 support staff who transplanted 400–500 kidneys into ‘transplant tourists’ ([Gentleman, 2008](#CBML_BIB_ch02_0019)). [Sarkar (2014](#CBML_BIB_ch02_0043): 487) comments on this case that ‘the severe shortage of organs for transplant in India reflects the international imbalance in supply and demand. Inevitably, there are people who see the potential for making a lot of money; hence there is a flourishing black market in organs in India’.

[Goyal et al (2002](#CBML_BIB_ch02_0021): 1591) reported finding ‘widespread evidence of the sale of kidneys by poor people in India despite a legal ban’. Within a month, these researchers were able to identify and interview over 300 people in Chennai who had sold a kidney, 96 per cent of them to pay off existing debts. Nearly all of their interviewees would not recommend selling a kidney.

With continuing widespread evidence of trafficked organs in India well after the passing of the THOA 1994, the Act was amended in both 2008 and 2011. Penalties under the Act were increased from a maximum of five years’ to ten years’ imprisonment. Though the gradual tightening of the law did not eliminate organ trafficking in India, it did curb it to some extent. However, it also resulted in an influx of transplant tourism to surrounding countries such as Pakistan and more recently Nepal.

Organ trafficking in Pakistan

The first successful kidney transplant in Pakistan was carried out in 1979 ([Rizvi and Naqvi, 1996](#CBML_BIB_ch02_0040" \o "Rizvi, S. A., & Naqvi, S. A. (1996). Renal replacement therapy in Pakistan. Saudi Journal of Kidney Diseases and Transplantation, 7(4), 404.)) but organ trafficking there has a more recent history. A report (**Error! Hyperlink reference not valid.**[Ilyas et al, 2009](#CBML_BIB_ch02_0026" \o "Ilyas, M., Alam, M., & Ahmad, H. (2009). The Islamic perspective of organ donation in Pakistan. Saudi Journal of Kidney Diseases and Transplantation, 20(1), 154.)) from Pakistan’s largest public transplantation centre, the Sindh Institute of Urology and Transplantation, showed that 75 per cent of renal transplantation in 1991 was from living, related donors. But by 2003, 80 per cent of transplants were from living, *unrelated* donors. One of the main reasons for this reversal involved India’s introduction of the 1994 THOA, banning all commercial organ dealings there. Consequently, large numbers of international patients travelled to Pakistan, which had no organ trafficking legislation at the time.

Around two-thirds of the population of Pakistan live in rural areas with around a quarter of the population living below the national poverty line in 2005; life expectancy was 65 years, and half the population was illiterate (National Archives, 2013). Many, especially in Punjab, were ‘bonded labourers’ working for wealthy landowners and, given such pre-existing vulnerabilities, they were targeted to supply organs to transplant tourists from the Middle East, Europe and the US (Walsh, 2005[Evans, 2017](#CBML_BIB_ch02_0015" \o "Evans, R. (2017). Pakistani police rescue 24 from organ trafficking gang https://www.bbc.co.uk/news/health-38722052 [Accessed 29th August 2021])).

The universal story of poor outcomes for ‘vendors’ is played out in Pakistan with up to 98 per cent of them reporting a deterioration in their health up to a year after organ removal ([Naqvi et al, 2007](#CBML_BIB_ch02_0032" \o "Naqvi, S. A. A., Ali, B., Mazhar, F., Zafar, M. N., & Rizvi, S. A. H. (2007). A socioeconomic survey of kidney vendors in Pakistan. Transplant International, 20(11), 934–939.)). Mental health also deteriorated not only in those providing organs but also in their families, who suffered both stigmatisation in their communities and felt pressure to sell their organs also ([Moazam et al, 2009](#CBML_BIB_ch02_0034" \o "Moazam, F, Zaman R M, Jafarey, A.M. (2009). Conversations with kidney vendors in Pakistan. Hastings Cent Rep, 39, 29–44.)). Organ-selling frequently led to the vendor being in a worse economic situation, being unable to work as well as they had done before the surgery ([Budiani-Saberi and Delmonico, 2008](#CBML_BIB_ch02_0005" \o "Budiani‐Saberi, D. A., & Delmonico, F. L. (2008). Organ trafficking and transplant tourism: a commentary on the global realities. American Journal of Transplantation, 8(5), 925–929.)). ‘Instead of families moving up the socioeconomic ladder, they remained in the same social strata with the kidney trade only reinforcing and further increasing social and economic inequality within Pakistan’s society’ (Raza and Skordis-Worrall, 2012: 86).

Two-thirds of the 2,000 transplants carried out in Pakistan in 2006 were into foreign nationals ([Efrat, 2013](#CBML_BIB_ch02_0014" \o "Efrat, A. (2013). The politics of combating the organ trade: lessons from the Israeli and Pakistani experience. American Journal of Transplantation, 13(7), 1650–1654.)). With growing international pressure to curb the organ trade, Pakistan passed its ‘Transplantation of Human Organs and Tissues Ordinance’ (THOTO) in 2007 (Government of Pakistan, 2007). This legislation, *inter alia*, specifies that ‘donation by Pakistani citizens shall not be permissible to citizens of other countries’ with a penalty for violation of ten years’ imprisonment and a substantial fine. Living donors also must be 18 years old or over, donation must be voluntary and to a close blood relative defined as spouse, parent, son, daughter or sibling. A Human Organ Transplant Authority was also mandated to be set up to monitor institutions carrying out transplantations nationally. THOTO eventually resulted in the Transplantation of Human Organs and Tissues Bill being passed in 2010 ([Bile et al, 2010](#CBML_BIB_ch02_0004" \o "Bile, K. M., Qureshi, J. A. R. H., Rizvi, S. A. H., Naqvi, S. A. A., Usmani, A. Q., & Lashori, K. A. (2010). Human organ and tissue transplantation in Pakistan; when a regulation makes a difference. EMHJ-Eastern Mediterranean Health Journal, 16 (Supp.), 159–16)).

Following the passage of the initial Pakistan Ordinance and then, the 2010 Bill, illegal organ trafficking fell markedly. Documented patient numbers travelling for a kidney transplant in Pakistan from Kuwait alone, for example, fell from a high of 23 in 2002 to zero between 2008 and 2011 (Al-Mous cited in [Ali, 2016](#CBML_BIB_ch02_0002" \o "Ali, N.S. (2016) Of human organs, desperate poverty and greed. Of human organs, desperate poverty and greed - Pakistan - DAWN.COM Accessed 1st Sept 2021)) However, over time, networks of private hospitals in Pakistan have recommenced trafficking in vended organs and transplanting them into transplant tourists from other countries. A Jordanian recipient died in 2014 during an illegal transplant carried out in a private hospital near Lahore by Dr Fawad Mumtaz and Dr Altamash Kharal. Dr Kharal was reported as having forged the woman’s death certificate in an attempt to cover up the two doctors’ involvement in organ trafficking. They were eventually arrested (***Error! Hyperlink reference not valid.****[Dawn](#CBML_BIB_ch02_0003" \o "Anonymous Staff Reporter. Dawn (2017) ‘Jordanian woman died during illegal transplant in Lahore’ - Pakistan - DAWN.COM [Accessed 1st September 2021])*[, 2017](#CBML_BIB_ch02_0003" \o "Anonymous Staff Reporter. Dawn (2017) ‘Jordanian woman died during illegal transplant in Lahore’ - Pakistan - DAWN.COM [Accessed 1st September 2021])), reportedly while preparing to transplant kidneys into two Omani transplant tourists.

This incident precipitated a plea in 2017 from a team of Karachi doctors for the Pakistan government to focus on increasing awareness of deceased donation and promoting it as a means to reduce the pressure from organ shortages, which, in part, drives both organ trafficking and transplant tourism. Pakistan, with a population at that time of 200 million, had deceased donors numbering in single figures only ([Fatima et al, 2017](#CBML_BIB_ch02_0016" \o "Fatima, H., Fatima Qadir, T., Moin, A., & Bilal Pasha, S. (2017). Pakistan: a transplant tourism resort?. Journal of Public Health, 1-1.)).

Organ trafficking in Nepal

Nepal is another of India’s neighbours where organ trafficking has increased, in part due to the tightening of the law in India. According to the National Human Rights Commission, Office of the Special Rapporteur on Trafficking in Women and Children’s (2011) report, at least 22 of the 77 districts on Nepal had an organ trade present in 2009. In one district, Kavrepanalchok, close to Kathmandu, 300 people had sold their kidneys. Another report in 2012 estimated the number of kidney sellers at ten times that (Centre for Legal Research and Resource Development,2012) . Two-thirds of victims were male, most between 20 and 50 years of age, and were

driven by extreme poverty and were lured by the promise that they would earn a large amount of money that they could use to pay off loans or to buy a house or a piece of land. Many were illiterate and deceived into believing that the organ removal would have no adverse effects on their health or that the kidney would regrow. ([Gawronska, 2021](#CBML_BIB_ch02_0018" \o "Gawronska, S. (2021). Illicit Organ Removal in Nepal: An Analysis of Recent Case Law and the Adequacy of Human Trafficking and Transplantation Frameworks. Journal of Human Trafficking, 1–22.): 2)

Traffickers in Nepal have had no hesitation in capitalising on the chaos and misery in the wake of natural disasters. *The Lancet* (Cousins, 2016 reported on how the April 2015 earthquake not only worsened the poor medical condition of those who had already been trafficked to India for their kidneys but also suggested that HTOR had increased in the Kavre region. The founder of the Nepal Institute for Development Studies in Kathmandu, Ganesh Gurung, commented: ‘After the earthquake, people were so vulnerable. When you have no option and no money, you sell a kidney … a higher percentage than before have gone to sell their organs’ (Cousins, 2016 833).

The use of trafficked organs within Nepal has also increased since the establishment of a national domestic transplant system in 2017 ([Shrestha, 2018](#CBML_BIB_ch02_0045)). [Gawronska (2021](#CBML_BIB_ch02_0018): 3) cites three reasons for believing the illicit organ trade in Nepal is likely to increase:

1. With some three million patients with diabetes in Nepal, the numbers requiring kidney transplantation are going to increase.

2. Anecdotal evidence continues of physicians in Nepal being approached by patients willing to purchase a kidney.

3. The growing transplant infrastructure in Nepal where over half the population lives either below or on the poverty line means inevitably it will be a target country for the wealthy to look for organs for transplantation.

Organ transplantation in Nepal is regulated by the Human Body Organ Transplantation (Regulation and Prohibition) Act, 2055 (1998) ([Nepal Law Commission, 1998](#CBML_BIB_ch02_0038" \o "Nepal Law Commission (1998) The Human Body Organ Transplantation (Regulation and Prohibition) Act, 2055 (1998) – Nepal Law Commission [Accessed 4th September 2021])) and the subsequent regulations introduced in 2015 by the Human Body Organ Transplantation (Regulation and Prohibition) Legislation, 2073. Under paragraph 24, those carrying out illicit transplants ‘shall be punished with imprisonment for a term not exceeding five years and a fine not exceeding five hundred thousand rupees’. However, ‘if the person from whom an organ is extracted dies as a result of that wound or pain within three months, the person who commits such an offense shall be punished with life imprisonment, with confiscation of entire property’.

Human trafficking is separately regulated by the Human Trafficking and Transportation (Control) Act 2007. Section 4.1 specifically includes HTOR as one of the forms of human trafficking punishable under Section 15 of the Act by up to ten years in prison and a fine of 200,000 rupees.

This all sounds very watertight, but the UN Palermo Protocol 2008 defined human trafficking as the ‘recruitment, transportation, transfer, harboring or receipt of persons’. The Nepali Human Trafficking Act however distinguishes the offence of human transportation from that of human trafficking. ‘This distinction was inspired by the wish to emphasize the element of movement present in the offense of human transportation and to adjust the penalties’ ([Gawronska, 2021](#CBML_BIB_ch02_0018" \o "Gawronska, S. (2021). Illicit Organ Removal in Nepal: An Analysis of Recent Case Law and the Adequacy of Human Trafficking and Transplantation Frameworks. Journal of Human Trafficking, 1–22.): 5). Though the definition of human trafficking in the Human Trafficking Act includes ‘the removal of a human organ in breach of transplant regulations’, it does not include any of the acts and illicit means specified by the Palermo Protocol. As Gawronska notes, not including acts of recruitment means that ‘the Nepali definition may pose problems for prosecutors who wish to indict a recruiter of an organ donor for human trafficking’ (2021: 11). One of her principal concluding recommendations (Gawronska, 2021: 12) is for Nepal to merge the separate offences of human transportation and trafficking into one as in the UN Protocol.

Organ trafficking in China

China represents particularly difficult issues since the country is associated with both transplant tourism and providing trafficked organs for its own citizens. It is the only country in the world known to systematically use organs from prisoners ([Huang et al, 2008](#CBML_BIB_ch02_0025" \o "Huang, J., Mao, Y., & Millis, J. M. (2008). Government policy and organ transplantation in China. The Lancet, 9654(372), 1937–1938.)), many of whom are prisoners of conscience, mainly Falun Gong practitioners, but also Uyghur Muslims and Christians. There are also reports of organ harvesting from still living prisoners, who are killed by the removal of vital organs ([Paul et al, 2017](#CBML_BIB_ch02_0039" \o "Paul, N. W., Caplan, A., Shapiro, M. E., Els, C., Allison, K. C., & Li, H. (2017). Human rights violations in organ procurement practice in China. BMC Medical Ethics, 18(1), 1–9.): 12–13). Despite substantial evidence of their occurrence, these practices were consistently denied up until 2005 ([Sharif et al, 2014](#CBML_BIB_ch02_0044" \o "Sharif, A., Singh, M. F., Trey, T., & Lavee, J. (2014). Organ procurement from executed prisoners in China. American Journal of Transplantation, 14(10), 2246–2252.)). Even subsequently, there can be little doubt widespread organ trafficking continued on a national scale ([Trey et al, 2016](#CBML_BIB_ch02_0052" \o "Trey, T., Sharif, A., Schwarz, A., Fiatarone Singh, M., & Lavee, J. (2016). Transplant medicine in China: need for transparency and international scrutiny remains. American Journal of Transplantation, 16(11), 3115–3120.)). It is estimated that 90 per cent of transplants carried out in China in 2010 were removed from prisoners ([Delmonico et al, 2014](#CBML_BIB_ch02_0012" \o "Delmonico, F., Chapman, J., Fung, J., Danovitch, G., Levin, A., Capron, A., ... & O’Connell, P. (2014). Open letter to Xi Jinping, President of the People’s Republic of China: China’s fight against corruption in organ transplantation. Transplantation, 97(8), 7)).

In 2014, in accordance with the Hangzhou Resolution agreed at the China Transplant Congress ([Huang et al, 2014](#CBML_BIB_ch02_0024" \o "Huang, J. F., Zheng, S. S., Liu, Y. F., Wang, H. B., Chapman, J., O’Connell, P., ... & Delmonico, F. (2014). China organ donation and transplantation update: the Hangzhou Resolution. Hepatobiliary Pancreat Dis Int, 13(2), 122–4.)), the Chinese government announced it would no longer harvest organs from prisoners from 2015. The Chinese leadership stated that civilian organ donation cannot coexist alongside the transplantation of organs from executed or coerced prisoners ([Huang et al, 2015](#CBML_BIB_ch02_0023" \o "Huang, J., Millis, J. M., Mao, Y., Millis, M. A., Sang, X., & Zhong, S. (2015). Voluntary organ donation system adapted to C hinese cultural values and social reality. Liver Transplantation, 21(4), 419–422.)). A group of Chinese psychiatrists hailed the new guidance as an ‘important step in the right direction for medical ethics in China’ ([Xiang et al, 2016](#CBML_BIB_ch02_0058" \o "Xiang, Y. T., Meng, L. R., & Ungvari, G. S. (2016). China to halt using executed prisoners’ organs for transplants: a step in the right direction in medical ethics. Journal of Medical Ethics, 42(1), 10–10.)). They however received a stinging rebuttal:

Contra Xiang et al, when people are being killed for their organs, a mere ‘step in the right direction’ is insufficient and unacceptable in medical ethics. A real step in the right Thndirection would be providing uncensored and transparent access to China’s transplant and organ donation numbers and permitting independent international inspections. ([Rogers et al, 2016](#CBML_BIB_ch02_0042" \o "Rogers, W. A., Trey, T., Singh, M. F., Bridgett, M., Bramstedt, K. A., & Lavee, J. (2016). Smoke and mirrors: unanswered questions and misleading statements obscure the truth about organ sources in China. Journal of Medical Ethics, 42(8), 552–553.):553

There was no change in 2015 in China’s transplant regulations or laws; prisoners of conscience were even excluded in the guidance and the practice of organ removal remained legal in all prisoners provided it was with their alleged ‘consent’. Organisations such as the Transplantation Society, however, refuse to accept the validity of such consent, as imprisonment, by definition, implies the deprivation of liberty and vulnerability to coercion that renders voluntary consent unreliable. A 2017 review paper of the state of organ transplantation in China has a chilling set of conclusions:

The unethical practice of organ procurement from executed prisoners in China is associated with a large scale of abuse and a cascade of severe human rights violations, including, we contend, organ explantation from still alive human beings, and, upstream, conditioning the supply of prisoners exploited per se or then solicited to ‘freely’ offer organs as atonement for real or supposed crimes. Those involved in organ harvesting from still alive prisoners must be prosecuted. The unethical practice of lethally procuring vital organs from the living must be prevented by a law prohibiting use of prisoner organs generally, supporting change in the practical legal, medical and popular culture surrounding transplantation in China. ([Paul et al, 2017](#CBML_BIB_ch02_0039" \o "Paul, N. W., Caplan, A., Shapiro, M. E., Els, C., Allison, K. C., & Li, H. (2017). Human rights violations in organ procurement practice in China. BMC Medical Ethics, 18(1), 1–9.): 8–9)

Further evidence that little has changed in China since the supposed reforms is found in a recently published forensic analysis of data from the China Organ Transplant Response System and the Red Cross Society of China. This concluded that:

[The] evidence points to what the authors believe can only be plausibly explained by systematic falsification and manipulation of official organ transplant datasets in China. Some apparently non-voluntary donors also appear to be misclassified as voluntary. This takes place alongside genuine voluntary organ transplant activity, which is often incentivized by large cash payments. ([Robertson et al, 2019](#CBML_BIB_ch02_0041" \o "Robertson, M. P., Hinde, R. L., & Lavee, J. (2019). Analysis of official deceased organ donation data casts doubt on the credibility of China’s organ transplant reform. BMC medical ethics, 20(1), 1–20.))

Further evidence of the ability of accessing organs at very short notice is provided by reports early on in the COVID-19 pandemic that a patient in respiratory failure due to COVID-19 infection had successfully been given a double lung transplant. The report states that ‘[t]he transplanted lungs were donated by a non-local patient after brain death and transported to Wuxi by high-speed railway in seven hours’ ([Keyue, 2020](#CBML_BIB_ch02_0029" \o "Keyue, X. World’s first double-lung transplant for COVID-19 infection succeeds in China https://www.globaltimes.cn/content/1181228.shtml Accessed 7th September 2021)). This however prompts questions about how they were obtained so quickly when the waiting time for a single lung from a suitable donor often runs into years. Coincidentally, within days of the lung transplant in China, the judgement of the independent China Tribunal in the UK (China Tribunal 2020) into forced organ harvesting was published. The present author attended one day of the hearings and heard harrowing first-hand accounts of systematic organ harvesting from prisoners of conscience. Paragraph 382 of the judgement, noting the short waiting times of typically two weeks for organs in China, states:

Such waiting times are not compatible with conventional transplant practice and cannot be explained by good fortune. Predetermining the availability of an organ for transplant is impossible in any system depending on voluntary organ donation. Such short-time availability could only occur if there was a bank of potential living donors who could be sacrificed to order.(China Tribunal 2020)

Improving prevention of organ trafficking and protection of victims

The patterns of organ trafficking in India, Pakistan, Nepal and China, though very different, all demonstrate clearly the difficulty of drafting and implementing effective legislation both to protect victims and prosecute traffickers. There are, however, particular elements of organ trafficking that, in theory at least, should make it easier to prevent and prosecute than human trafficking for sex work or forced labour. This section considers some of the factors specific to preventing organ trafficking and other relevant issues related to the prevention of human trafficking in general.

Education and prosecution of healthcare professionals

In spite of almost universal condemnation of organ trafficking in medical literature, there are healthcare professionals, specifically of course transplant surgeons, across the world who are prepared to engage in it and many more prepared to turn a blind eye to it. The present author has heard of cases in the UK where doctors have suspected that their patient has been transplanted with a trafficked organ but have preferred to not follow up on their suspicions. Many medical staff will be totally unaware of the existence of organ trafficking in their country, or of what to look for and ask about in order to detect it.

There are a few organisations specifically seeking to educate healthcare professionals about human trafficking (including organ trafficking) such as Relentless in the US and Vita Network in the UK; a few articles on clinical indicators of patients who may have had trafficked organs removed or transplanted are also now available ([De Jong and Ambagtsheer, 2016](#CBML_BIB_ch02_0011" \o "de Jong, J., & Ambagtsheer, F. (2016). Indicators to identify trafficking in human beings for the purpose of organ removal. Transplantation direct, 2(2).)).

Medical staff as a whole, and doctors especially, have the lives of other people in their hands daily and should be held accountable to a high standard of ethical conduct. If no medics were prepared to facilitate the transplantation of trafficked organs, the whole chain involved in such crimes would immediately be ended ([Stammers, 2022](#CBML_BIB_ch02_0046" \o "Stammers, T. (2022 in press) Organ Trafficking: Why do healthcare workers engage in it? Cambridge Quarterly of Healthcare Ethics.)). The punishments for direct involvement by doctors should be commensurately high. The legal loopholes which encourage lighter sentences for clinicians in Nepal, for example, need to be closed and international pressure increased on those states such as China, which expect surgeons to participate in transplanting trafficked organs.

Part of the education surrounding organ trafficking is about the nature of the crime and placing it on a continuum with transplant tourism and organ trading ([Stammers, 2019](#CBML_BIB_ch02_0047" \o "Stammers T. (2019) Trafficking, tourism and trading. A dark convergence in transplantation in Phillips, A.M., De Campos, T.C. and Herring, J. (eds), Philosophical Foundations of Medical Law. OUP 2019 pp237–252): 237–53). One of the reasons identified for the failure of Nepal’s legislation to curb organ trafficking was the desire to retain and indeed promote Nepal as a thriving centre for transplant tourism ([Gawronska, 2021](#CBML_BIB_ch02_0018" \o "Gawronska, S. (2021). Illicit Organ Removal in Nepal: An Analysis of Recent Case Law and the Adequacy of Human Trafficking and Transplantation Frameworks. Journal of Human Trafficking, 1–22.): 5).

Reducing the domestic need for organs

Both the Madrid Resolution on Organ Donation (2011: SS29–31) and the Declaration of Istanbul (Transplantation Society and International Society of Nephrology, 2018: Principle 1) point out that reduction in domestic organ needs would minimise illegal organ removals. Such reduction can be attempted by both instituting public health programmes to reduce the incidence of conditions causing organ failure, especially diabetes and alcohol liver damage, and by maximising the number of deceased and living donations. The COVID-19 pandemic, however, has badly hit the effectiveness of both of these.

An increase in obesity has been widely noted during the pandemic and obesity is a major factor in the development of diabetes – one of the most common causes of kidney failure, thereby building up a legacy of increasing need for kidneys for decades ahead. COVID-19 itself also causes both respiratory and renal failure leading to increased need for those lungs and kidneys. In terms of donation, COVID-19 reduced living donations in the UK to a third of pre-pandemic levels – a pattern repeated across the globe. The likely overall effect of the pandemic as global travel reopens is a large surge in organ trafficking ([Greenbaum et al, 2020](#CBML_BIB_ch02_0022" \o "Greenbaum, J., Stoklosa, H., & Murphy, L. (2020). The public health impact of coronavirus disease on human trafficking. Frontiers in public health, 685.); United Nations Office on Drugs and Crime, 2021 **Error! Hyperlink reference not valid.**[Todres, 2021](#CBML_BIB_ch02_0051" \o "Todres, J., & Diaz, A. (2021). COVID-19 and human trafficking—the amplified impact on vulnerable populations. JAMA pediatrics, 175(2), 123–124.)).

Improving successful prosecution of the entire trafficking chain

A large number of individuals are involved in an organ trafficking ring. Of the total of 24 people indemnified in the trafficking networks of four cases prosecuted in Nepal, only five were convicted ([Gawronska, 2021](#CBML_BIB_ch02_0018" \o "Gawronska, S. (2021). Illicit Organ Removal in Nepal: An Analysis of Recent Case Law and the Adequacy of Human Trafficking and Transplantation Frameworks. Journal of Human Trafficking, 1–22.): 13). The domestic law tends to focus on charged individuals rather than on breaking up entire trafficking networks. A tendency compounded by the next factor – a lack of both domestic and international law to tackle organised crime in general and organ trafficking in particular.

Improving drafting of domestic and international law to tackle organised crime

Mention was made earlier that China only drew up official guidance and made no change in the law to curb domestic organ trafficking from prisoners and to deter transplant tourism. In Nepal, the drafting of separate offences of human trafficking and of human transportation has also meant that those guilty of organ trafficking have either escaped prosecution or obtained lighter sentences. Even these laws are drafted for specific individual criminals and neither the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, or the SAARC Convention on Mutual Assistance in Criminal Matters, 2008, has even a definition of organised crime.

Things are little better beyond Asia. A repeated pattern of domestic laws is that where there is opportunity to apply their force on their own citizens for involvement abroad (usually in being the recipients of trafficked organs) this is rarely taken. For example in the US, though the National Organ Transplant Act 1984 prohibits the sale of organs, it is difficult to trace any prosecutions of US citizens who have been transplanted with purchased organs abroad and returned to the US. In 2008, Gill from the University of California Los Angeles (UCLA), described a series of 33 patients who had a kidney transplant in this way. Delmonico, commenting on this series, wryly notes: ‘The UCLA group makes no conclusion regarding the ethical propriety of this practice, disclaiming social circumstances that may have propelled these patients to travel for transplantation’ (Delmonico, 2009: 249). There is certainly plenty of evidence that ‘[t]he difference between domestic enforcement regimes for sex trafficking against children and for labor trafficking of illegal immigrants, and the enforcement regime for international organ trafficking remains noteworthy’ ([Francis and Francis, 2010](#CBML_BIB_ch02_0017" \o "Francis, L. P., & Francis, J. G. (2010). Stateless crimes, legitimacy, and international criminal law: the case of organ trafficking. Criminal Law and Philosophy, 4(3), 283–295.) 288 ). This remains a big obstacle to tackling a global organised crime.

In an attempt to improve the record on curbing HTOR and organ trafficking, there have been suggestions to separate it from organ trading, since the latter does not necessarily involve the trafficking of humans for organs or trafficked organs ([Columb et al, 2017](#CBML_BIB_ch02_0010" \o "Columb, S., Ambagtsheer, F., Bos, M., Ivanovski, N., Moorlock, G., Weimar, W., & ELPAT Working Group on Organ Tourism and Paid Donation. (2017). Re‐conceptualizing the organ trade: separating trafficking from trade and the implications for law and policy. Tran)). Some leading experts in the field though have argued this move would not help and would probably make matters worse ([Capron and Delmonico, 2015](#CBML_BIB_ch02_0007" \o "Capron, A. M., & Delmonico, F. L. (2015). Preventing trafficking in organs for transplantation: An important facet of the fight against human trafficking. Journal of human trafficking, 1(1), 56–64.)). A separation that might well help combat organ trafficking, however, is that of organ trafficking from the other two main areas of people trafficking – for sex work or for forced labour. Whereas efforts to curb sex trafficking and forced labour are complex and expensive, organ trafficking should be much easier in comparison. For example, essential participants in organ trafficking such as physicians and hospital administrators can and should engage in open political process to prevent this particular form of trafficking. The same does not apply so readily in sex trafficking ([Efrat, 20135](#CBML_BIB_ch02_0014" \o "Efrat, A. (2013). The politics of combating the organ trade: lessons from the Israeli and Pakistani experience. American Journal of Transplantation, 13(7), 1650–1654.)).

Conclusion

If those most adversely affected by organ trafficking are to receive the protection, help and long-term support they require and deserve, it is essential that they are recognised as victims under domestic law and that adequate funding is made available to provide and pay for the necessary services. Those who undermine the status of organ vendors as victims (Radcliffe Richards, 2012 ; Columb et al, 2016) by insisting that would not sell their organs if they did not foresee overall benefit, do these victims no favours by their attempts to defend organ sales.

Though the Nepali Human Trafficking Act establishes the rights of victims to medical treatment and support, its focus is solely on victims of sex trafficking sold into prostitution and it is therefore unclear whether a person from whom an organ has been illegally removed actually qualifies as a victim under the Act. Even if they do, victims are unaware they qualify for help and their funding for such help is totally inadequate (Gawronska, 2021: 14). Furthermore, the Act does not guarantee protection from the perpetrators and brokers involved as mandated by the UN Convention against Transnational Organized Crime (2000: Article 25). There is a still a long way to go before the many victims of organ trafficking in Nepal receive any adequate protection in law, let alone in practice. This story is repeated across the world and the plight of victims will only be intensified by the ongoing knock-on effects from COVID-19. There is much yet to be done.

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