

ISSUE DESCRIPTION

COMMITTEE World Health Organization

ISSUE Combating and Suppressing Organ Commercialism and Trafficking

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Introduction

Organ transplantation surgery has saved lives since its first appearance in the 1950s, from the beginning it has been the most effective method for restoring end-stage organ failures. The demand for this treatment, however, far exceeds organ availability. It is estimated that legal transplants can only cover the needs of only 10% of all patients on waiting lists worldwide. As a result, thousands of people die every year waiting for this procedure.

The desperate need for available organs has given rise to profit-seeking organ transactions that occur outside the legal system, making it possible for people in need of such treatment to purchase organs from donors. This action, commonly referred as organ commercialism or trafficking, is illegal in all nations except Iran. According to WHO estimates from 2007, organ trade accounts for up to 10% of all transplantations performed worldwide, with profits estimated at between \$600 million and \$1.2 billion per year. Kidneys are the most popular, with the WHO estimating that 10000 are sold every year. Consequently, organs have become a highly lucrative black-market commodity involving transnational crime networks.

Considering the direct harms of organ trade involving human trafficking for organ trade, in 1987 WHO declared it as offensive to the Universal Declaration of Human Rights, furthermore, a legal organ transplantation surgery must follow a guiding framework published by the WHO. However, the question of whether to decriminalize organ trade in order to combat organ shortage and make organ failure preventable is highly debated.

Definition of Key Terms

Organ trafficking - An umbrella term used to describe a range of illegal activities involving organ removal and the means used to achieve having control on the potential donor.

Organ commercialism - A policy or practice in which an organ is treated as a commodity, including by being bought or sold or used for material gain.

Forced organ harvesting - The practice of removing a victim's organ against their will.

Organ theft - Removing a victim's organ without their explicit consent of being a donor; most cases involve coercion, occurrences in wartime, and thefts within hospital settings.

Medical tourism/health tourism - Traveling abroad mainly for the purpose of receiving health care.

Black market - An underground economic activity where people trade goods or services that are prohibited by the governments and conduct all transactions via secretive and illicit channels.

Brain death - The permanent and irreversible loss of all functions of the brain, including the brainstem.

Autotransplantation - The transplant of living cells, tissues, or organs from one part of the body to another in the same person.

Allotransplantation - The transplant of living cells, tissues, or organs from one individual to another of the same species with another genotype.

Xenotransplantation - The transplant of living cells, tissues, or organs from one species to another, these body parts are called xenografts or xenotransplants.

Organ exporting countries/supply countries - Countries where organs from local donors are regularly transplanted to foreigners through sale and purchase. A WHO report in 2007 recognized India, Pakistan, China, Egypt, and Brazil under this category.

Organ importing countries: Defined as the countries of origin of the patients who go overseas to purchase organs for transplantation. A report by Organs Watch, an organization based at the University of California, USA, identified Australia, Canada, Israel, Japan, Oman, Saudi Arabia, and the USA as major organ-importing countries.

General Overview

The shortage of available organs is a universal problem; deceased organ donation is often limited by sociocultural and legal factors, even in countries where the rate of organ donation from this source tends to be higher than in other countries, the availability fails to meet the demand. Organ trade is also frequently practiced, usually internationally, because the restriction on the activity differs in countries.

The most common way to trade organs internationally is via recipients who travel abroad to undergo transplantation surgery. This is called transplantation tourism, which first appeared in the 1980s, when wealthy Asians travelled to Southeast Asia and India to obtain organs from poor donors. Nowadays the recipients usually travel from a wealthy country with a long waitlist to countries with a shorter waitlist. The international movement of potential recipients is often arranged or facilitated by intermediaries and health-care providers who arrange the travel and recruit donors. The internet is frequently used as a method of attracting foreign patients: many sites offer all-inclusive „transplant packages“.

The phenomenon raises concerns because it involves the transport of healthy organs in one direction, which may lead to exploitation of individuals in underprivileged countries.

Other forms of international organ trade include cases where human trafficking is also involved, however, ‘human trafficking for organ removal’ and ‘organ trafficking’ are two distinct terms which are criminalized by separate but complementary frameworks. According to the Trafficking in Persons Protocol, this offense involves the transportation of persons and some form of manipulation (coercion, deception, or fraud etc.) to achieve the consent of a person having control over another person. It is reported that live donors have been brought from the Republic of Moldova to the USA, or from Nepal to India: in the latter case, middlemen have convinced impoverished villagers to trade their kidney in exchange of money or land, and not return the promised amount of profit. In other cases, victims are deceived into thinking they are traveling for work opportunities or other opportunities.



A synonym to the legal expression „organ trafficking” is organ harvesting, which is essentially the killing of people in order to gain profit from their organs. For example, reports indicate that China is a major harvester and trafficker of forcibly acquired organs; a study has shown that there is a high possibility that physicians in the People's Republic of China have participated in executions of prisoners by organ removal, since brain deaths have not been declared in some

of the reports. The allegedly 1 billion-per-year worth organ trafficking industry in China is estimated to be fuelled by arbitrarily jailed prisoners from labour and re-education camps. On the Sinai Peninsula, the victims are refugees from East Africa. In some emerging nations, victims are generally people living in abject poverty who do not understand the consequences of organ removal, and whose desperate situation is exploited.

From a socio-economic perspective, impoverished individuals from developing countries are most likely to be donors in organ trade; 71% of all donors in India fall below the poverty line; the most impoverished ones are viewed as the most possible targets for transplant tourists. Furthermore, reports on the outcomes of transplants for non-local residents show a general decreased overall health; substandard conditions during a transplant surgery can also lead to transmission of diseases like hepatitis B, hepatitis C and HIV.

Iran is the only nation where organ trade is legalized, the trade of organs is controlled by nonprofit governmental charity organizations, which supports recipients who cannot afford the cost of the organ. Donors also receive tax credit compensation from the government, free health care insurance, and often direct payment from the recipient with the average donor being paid \$1,200. Some donors are also offered employment opportunities, although evidence shows that donors still experience highly negative health outcomes. Governmental compensation for donors are also legalized in Australia and Singapore, although the measures in these nations are claimed to merely compensate donors for the costs associated with the process.

Currently, another legally accepted organ transplant living donor transplant measure is kidney paired donation, which allows incompatible recipient-donor pairs to exchange kidneys with other pairs in a similar situation. Individuals can also sign for organ donor registries indicating their willingness to donate their organs upon death.

The ethical debate upon whether organ trade should be allowed in respect of one's personal rights to freely choose what happens to their body, and whether the harms caused by organ trade override this right. Legally, the closest example of respecting one's bodily autonomy for financial gain is legalizing prostitution, but only in cases where the sex workers' human rights and health are undamaged; some argue that if participants in organ trade are also provided the safety, then it would be ethically acceptable for organ trade to exist. Further arguments for legalizing organ trade includes shortening the waitlist; each organ sold on the market could potentially save a life. Proponents also address that due to the kidney donors having a slightly increased risk for kidney diseases than non-donors, offering a comparative safety of donation should be allowed; thus, donors should be allowed to participate in a donation with payment.

Major Parties Involved

India: a well-known destination for transplant tourists, India was also named as one of the organ-exporting countries in WHO's 2007 report. It is estimated that since 1990, 2000 organs originating from India are sold annually.

Pakistan: Pakistan is known for its high numbers in human trafficking but also its progressing enforcement on combating it; consequently, the illegal trade of human organs is a serious issue in Pakistan, and it often involves individuals in vulnerable situations, such as migrants.

The Philippines: a stricter anti-human trafficking law was brought in in 2009. This contributed to declining rates of living donor transplantation, according to the WHO. The trend was also influenced by increased regulations at hospitals; however, due to the increasing organ failure rates the organ supply still fails to meet the demand. In 2016, 21,535 Filipino patients were on dialysis due to kidney failure, according to the Philippine Renal Disease Registry's annual report. The number increased from 9,716 cases in 2010.

China: in 2006, China's health ministry banned organ trade and enforced regulation which requires written consent of organ donors. Nowadays about two million people in China need transplants each year, but there are only around 20,000 operations because of shortages of hearts, kidneys, and other organs, according to local reports. Although the former market system was based on obtaining the organs of executed criminals, the new Chinese ethical guidelines strongly disapprove of organ harvesting from prisoners, however, recent proofs strongly suggest that the government with the collaboration of military-owned hospitals have not stopped this kind of practice.

Israel: after the legalization of organ donation in 2008, a standard model for organ donation was determined by two laws; one defined brain death, the other ensured that living organ donors receive various benefits, such as reimbursement for medical expenses and lost work up to 18,000 NIS (roughly US\$5,000). An organ donor card system was established, which tolerates organ harvesting from the potential donor only if brain death is determined according to the strictest letter of the law.

The orthodoxy of the Jewish population made Israel perform one of the lowest organ donation rates in the Western world.

Iran: In Iran, organ commercialism is legalized and regulated with strict policies.

Timeline of Events

1954 - The first successful kidney transplantation

1980 - The appearance of transplant tourism

1987 - The WHO first prohibited organ commercialism

1991 - Endorsement of Guiding Principles on Human Organ Transplantation

2008 - Declaration of Istanbul

Previous Attempts to Solve the Issue

In order to improve the general awareness about the issue, international authorities have published legal frameworks and declarations on regulating organ trafficking.

In resolution WHA 40.13(1987), the World Health Assembly expressed its concerns regarding trafficking in organs and the need for a unified framework for transplantation. As a result, in 1991 a set of Guiding Principles on Human Organ Transplantation was published. These Guiding Principles – whose priorities include voluntary donation, non-commercialization, genetic relation of recipients to donors and a preference for deceased over living donors as sources – have considerably influenced regional professional codes, legislation, and policies.

After organs have rapidly become more profitable items to sell in black market, resolutions trying to combat organ trade were established. For example, the Council of Europe's Convention on Action against Trafficking in Human Beings, and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children contain appropriate measures to combat trafficking in human beings for organ removal.

The first International Summit on Transplant Tourism and Organ Trafficking was held in Turkey, in 2008. This conference involved organizations from over 70 countries to specifically address the commercialism of the organ trade and the exploitation of poor populations for the purpose of harvesting organs for sale. The conference developed the Declaration of Istanbul, which

condemns “victimizing the world’s poor as the source of organs for the rich” and seeks to “preserve the nobility of organ donation” by combating the threat to “the legacy of transplantation…by organ trafficking and transplant tourism”. Moreover, the Declaration proposed a ban on advertising for illegal organ donors, called for legal repercussions for illegal organ trade brokers and solicitors, requested developing countries to establish organ donor registries, and asked countries with long waitlists for organs to create incentives for organ donation.

In the European Union, an Action Plan on Organ Donation and Transplantation (2009-2015) concerns a 6-year plan with the purpose of the key goals of enforcing the coordination between Member States, establishing a high coverage donor registration system and provide proper protection of live donors, but only compensating them for the costs of donation. It influences countries to create an effective international collaboration. On the basis of these actions, member states should develop their own sets of national priority actions.

Possible Solutions and Approaches

The prohibitionist solution mainly consists of enforcing stringent laws and regulations to criminalize organ trafficking. This involves imposing severe penalties for those engaged in illegal organ trade and establishing mechanisms for investigating and prosecuting offenders. Additionally, international collaboration is essential to address cross-border organ trafficking and harmonize legal frameworks across jurisdictions and organizations; moreover, action plans can be improved by acknowledging the importance of the enforcement of the crime beside the legislative improvement.

As for protecting populations who are vulnerable to coercion, the underlying reason of the victims’ vulnerability is socio-economic disparities and lack of safeguarding their rights; therefore, creating an aiding plan for such individuals can resolve the fundamental driver for organ trafficking.

At the same time, promoting ethical organ donation, thus establishing a fair and transparent allocation of organs from coercion-free sources (from voluntary live donors or deceased donors) could solve the shortage of available organs.

On the other hand, legalizing organ commercialism or allowing governmental compensation for donors may also be a proper solution if the created system functions idealistically and is able to ease human rights violating social problems caused by the issue. Generally, the main arguments against it claim that the legalization would lead to an unequal situation where only the rich have access to available organs. Some pre-existing organ commercialism models, such as the Erin-Harris model, or the free market model, might serve as a reference for other possible solutions.

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