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## Original Article

# Social world of organ transplantation, trafficking, and policies

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**Abstract** Although success of organ transplants reflects advances in medical procedures, the success has generated debates about the ethical standards and policies that govern transplants, especially the acquisition of organs for transplants. We focus on laws, policies, and organ trafficking to highlight the interdisciplinary perspectives that can shape our understanding of transplantation as a social phenomenon. We discuss international policies and country-specific legislation from Pakistan to point to gaps and their implications for protecting vulnerable people who are exploited for organ removal. International collaboration and the legal framework need to be strengthened to fight the menace globally and to deal with the cases of organ trafficking within the legal ambit of human trafficking so that the rights of victims are upheld by states, justice systems, and ultimately medical establishments and practitioners.

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## Introduction

Since the second half of the twentieth century, the success of organ transplantation has enabled doctors to save the lives of many people who faced death from organ failure. While these transplants reflect advances in medical procedures, they have also generated debates about the ethical standards and policies that govern transplants. A particular aspect of these debates is how organs are acquired for transplants. Social scientists have documented the rise in organ trafficking as a high-profit illegal enterprise. Rather than the medical successes, we focus on the larger social world of laws, policies, and illegal organ transplants that exploit donors.

We highlight the interdisciplinary perspectives that can shape our understanding of transplantation as a social phenomenon.

While the global trade in human beings for sex or labor fall within the ambit of trafficking policies, organ trafficking is not generally situated within the legal framework of human trafficking. Consequently, victims of organ trafficking are often treated as criminals who are involved in an illegal transaction instead of victims who have been exploited for organ removal. When organ trafficking constitutes the supply chain for transplantations, this does not meet ethical and legal standards for protecting humans.

We consider international policies and country-specific legislation from Pakistan. Do they target conditions under which human beings can be exploited for removal of body parts – usually kidneys?<sup>1</sup> We also draw upon our previous ethnographic field research experience with victims of organ trafficking in Sargodha district of Punjab province in Pakistan to highlight exactly where and how existing policy does not work.<sup>2</sup> Pakistan is not a unique case, thus it allows us to point to gaps in public policies governing organ transplants and their implications for protecting vulnerable people everywhere who are exploited for organ removal.

Complex definitions and the multi-faceted, clandestine nature of organ trafficking lead to under-reporting and unreliable statistics.<sup>3</sup> Several estimates suggest that increasing demand for human organs and their scarcity have generated a worldwide black market in human organs – a multi-billion dollar industry.<sup>4,5</sup> According to the US Department of State, more than 114 000 organ transplants are performed each year around the world, meeting less than 10 per cent of the need.<sup>6</sup> The World Health Organization (WHO) estimates that approximately 10 per cent of all organ transplants in the world involve illegal aspects.<sup>7,8</sup>

Many people who need transplantation feel compelled to contact organ traffickers to obtain an organ for transplant as there is no donor in the family or because waiting lists are very long. According to US Department of Health and Human Services statistics, on 25 October 2015, 122 562 candidates for transplants were on the waiting lists in the United States. The total number of donors (deceased and living) available between January and July 2015 was only 8757.<sup>9</sup> Internationally, organ trafficking involves webs of local and transnational actors – health industry managers, doctors, paramedical staff, organ brokers, donors, and recipients.<sup>1,10</sup> The absence of international cooperation and

agreement on the legal implications of organ trafficking, organ trade, illegal transplantation, and the status of victims contribute to the failure to check the rapid growth of organ trafficking.<sup>11</sup>

## Policies at International Level

In 1991, the World Health Assembly of the WHO endorsed *Guiding Principles on Human Cell, Tissue, and Organ Transplantation* in resolution WHA44.25. WHO intended these guidelines to check the growing traffic in human organs and illegal transplantations by providing an ethical framework for acquisition and transplantation of human organs for therapeutic purposes. After consultations, the World Health Assembly adopted resolution WHA63.22 on 21 May 2010 with a new provision that condemned the purchase of human body parts and the exploitation of the vulnerable people to obtain organs. Guiding Principle 5 stated:

Cells, tissues and organs should only be donated freely, without any monetary payment or other reward of monetary value. Purchasing, or offering to purchase cells, tissues or organs for transplantation, or their sale by living persons or by the next of kin for deceased persons, should be banned ....<sup>12</sup>

The *Guiding Principles* clearly prohibited the commercial transactions for human organs and exploitation of people for the purpose of organ removal. For the first time, at the international level, exploitation of human beings for the purpose of organ removal was identified as *human trafficking* under the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, 2000 (hereafter the UN Trafficking Protocol).<sup>13</sup>

To strengthen global efforts to fight organ trafficking and illegal transplants, in 2008 in Istanbul, the Transplantation Society and International Society of Nephrology convened a summit meeting of more than 150 experts, practitioners, and advocates. The Declaration of Istanbul further refined the UN trafficking definition and specified organ trafficking as “the recruitment, transport, transfer, harboring or receipt of living or deceased persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of

the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation”.<sup>14</sup>

The Declaration explained *transplant commercialism* as “a policy or practice in which an organ is treated as a commodity, including by being bought or sold or used for material gain”. It recommended prohibition of transplant commercialism, as that generally involves exploitation of vulnerable donors.<sup>14</sup> The US Department of State distinguishes illegal *organ trade* from *organ trafficking* and notes that illegal organ trade can be organ trafficking if and when it involves elements of coercion or abuse of a position of vulnerability of a donor to achieve his/her consent.<sup>6</sup> In 2012, the (UN) Office on Drugs and Crime published an issue paper to explain abuse of a position of vulnerability as a means to trafficking defined under the UN Trafficking Protocol.<sup>15</sup>

It may seem easy to distinguish organ trade from organ trafficking using the criterion of consent or coercion, but for victims of organ trafficking, the boundary between consent or coercion may be less clear, especially when doctors do not inform living donors about risks or long-term implications on their lives of donating an organ.<sup>10,15</sup> To determine whether organ donation or the transaction involves abuse of a position of vulnerability of a donor is an extremely challenging task. It is difficult to establish that ‘submitting to the will of an abuser was the only real or acceptable option available to a victim’.<sup>15</sup> Brokers, doctors, or other people in the trafficking chain are rarely the sole abusers; prior severe economic and social exploitation often make the sale of an organ the only viable option for the victims.<sup>2</sup> Efforts to define trafficking worked from descriptions of sex or labor trafficking. People who engage in trafficking of an organ that has already been separated from its ‘donor’ are more easily able to deny they engaged in any form of recruitment or coercion. For the victims to convince the authorities that organ ‘donation’ was the only solution available to them would require indicting the entire system of exploitation within which they make their ‘choices’.

## Issues in Convicting Actors Involved in the Exploitation

Owing to lack of international efforts at the global level, no clear legal framework exists to prosecute and convict individuals involved in illegal organ transplantation or organ trafficking rings that operate in and across various countries. No international consensus nor international

or local law exists for convicting and punishing those who commit the crime outside their countries of residence — buying, selling, or undergoing illegal transplantation abroad.<sup>16,17</sup> Moreover, the crime of illegal organ transplantation cannot be committed without the active involvement of highly trained surgeons, many of whom enjoy good social standing and reputation. They perform the procedure, often failing to inform the donors and recipients about post-transplant complications. Sometimes a surgeon declares a donor dead when he/she has not yet died, in order to harvest an organ or organs. Such behavior is rarely prosecuted nor the surgeons convicted.<sup>1,4</sup>

In the absence of any physical coercion, it becomes difficult to identify the act as illegal transplantation or organ trafficking. Ambiguities in the legal implications of the crime and its complex nature, even in developed and highly regulated countries, mean that cases of illegal transplantation and organ trafficking are rarely prosecuted or punished by justice systems. The United States of America, for example, prohibited the sale and purchase of human organs in the National Organ Transplant Act of 1984. But since its enactment, and despite several reported cases of illegal organ transplantation and trafficking, only one person has been convicted of organ trafficking.<sup>5,8,18</sup>

## Illegal Organ Transplantation and Trafficking in Pakistan

Pakistan's Prevention and Control of Human Trafficking Ordinance of 2002 defines human trafficking.<sup>11,19</sup> Despite calling the exploitation of human beings for the purpose of organ removal a form of human trafficking under the UN Trafficking Protocol, Pakistan's legislation does not include exploitation of people for the purpose of organ removal under 'human trafficking'. The absence of legislation about illegal transplantation and organ trafficking allowed the country to become a global hub for transplant tourism and illegal organ trade.<sup>20,21</sup> The Supreme Court of Pakistan, taking notice of illegal transplantation and exploitation of poor persons for the purpose of organ removal, directed the Government to regulate organ transplantation. In 2007, the Government adopted an ordinance that was later refined and promulgated in March 2010 as the Transplantation of Human Organs and Tissues Act 2009 (THOTA).<sup>22</sup> In 2010, after the 18th Constitutional Amendment, Pakistan devolved health services (among others) to provincial level

where provincial level Human Organ Transplant Authorities began to register and monitor institutions offering organ transplantation.<sup>2,3</sup>

No doubt, enactment of THOTA was a very significant (first) step to counter illegal organ transplantation and trafficking in the country. The law also prohibits transplantation of organs from Pakistanis to foreign recipients. Enactment of the legislation was not, however, a solution to the problem. Optimism that the law was discouraging illegal transplantation soured with reports that weak enforcement again encouraged the practice.<sup>2,4</sup> Exploitation of vulnerable people for organ removal is frequently reported in the media, although not as a form of human trafficking.<sup>2,5</sup> According to a local media report, over the last 5 years, more than 6000 people from one small town in Sargodha district, Punjab, Pakistan, sold a kidney to repay debt and gain freedom from bonded labor ([www.youtube.com/watch?v=fN-1BQPzfMY](http://www.youtube.com/watch?v=fN-1BQPzfMY)). On the basis of the media reports and our previous ethnographic research with victims of organ trafficking in that region, it becomes evident that the law has not eradicated illegal transplantations that exploit poor people.<sup>2,11</sup> Under THOTA, trade in human organs or organ commercialism is prohibited and whoever is found to be involved in illegal transplantation or sale or purchase or commercial dealing of human organ shall be punished for a term that may extend to 10 years and carry a fine of up to one million rupees. But THOTA has weaknesses as drafted:

- It does not address the status of victims coerced or deceived into organ removal. The victims cannot seek help from the justice system because of the fear of being convicted as criminals involved in organ trade. They and their families may be further victimized by traffickers and state institutions.<sup>2</sup>
- It does not provide for legal or economic assistance or rehabilitation for the victims of illegal organ transplant and organ trafficking like other forms of human trafficking. Surviving this exploitation, over the long-term, remains a daunting challenge.<sup>2</sup>

Implementing THOTA remains the greater challenge:

- Perpetrators are well organized and have political connections or links with authorities and easily escape the law.<sup>6,26</sup>
- THOTA provides few guidelines and no mechanism to distinguish voluntary organ donations from organs obtained through coercion.

When close blood-related donors are not available, THOTA allows donation from a non-related donor, if approved by the Evaluation Committee mandated to ensure that it does not involve coercion, deception, or any form of commercial exchange. THOTA requires every medical institution and hospital – where at least 25 transplants are carried out annually – to establish such evaluation committees. The formation/notification of such committees is still in the process.

- In the absence of any national registry for organ donation, and waiting lists for organ transplantation, exactly who is allowed by the system to receive or donate or transplant organs in cases of non-related organ transplantation? (It remains a question of empirical investigation).
- No mechanism exists to report or compile data on the number of cases tried or convicted under THOTA.

## Curbing Organ Trafficking

International and national policies tend to focus only on individual level perpetrators and victims. They neglect the root causes of exploitation including socio-economic-political factors that produce vulnerabilities and marginalization leading to organ trafficking. Moazam emphasized that the phenomena of illegal transplantation and organ trafficking cannot be reduced simply to ‘medical-scientific’ and ‘donor-recipient’ transactions.<sup>27</sup> We agree. Previous research shows that organ traffickers easily trap vulnerable segments of the population, those who cannot stop or break the vicious cycle of their exploitation and marginalization.<sup>2,11</sup> The causes of vulnerability and the cycle of exploitation further suggest that regularizing organ transplantation alone might not be sufficient. Our previous ethnographic research on organ trafficking in Pakistan also revealed that after the enactment of THOTA, many illegal organ transplant centers closed, at least publically. Those seeking to sell their organs to pay debts may still have found brokers, but very likely the brokers would pay them less because THOTA had increased brokers’ risks.<sup>2</sup>

Interventions should not rely solely on deterrence policy. It is also critically important to develop a more integrated approach, protecting the rights of the disadvantaged groups and empowering them. Society must assure that persons who have been exploited for organ removal are

categorized as victims of organ trafficking and in need support and protection like victims of other forms of human trafficking.<sup>28</sup>

Government should also invest resources to prevent kidney failure in Pakistan. According to an estimate presented at a conference of the Pakistan Society of Nephrology, because of rapidly growing chronic kidney disease, approximately 20 000 Pakistanis die of kidney failure every year.<sup>29</sup>

Moreover, as organ trafficking, organ trade, and transplant commercialism crosses geographical boundaries, more concentrated international efforts are needed to punish the perpetrators, whether the trafficking happened within the country of residence or in a foreign country. As the recipients of organs generally need long-term medical care and follow-up medical examinations, one possible way to identify such patients would be to make it mandatory for the doctors to report organ transplantation to concerned law enforcement agencies, whether the procedure is performed locally or in some other country.<sup>30</sup>

## Conclusion

The world must think about the channels through which organs move from ‘donors’ to ‘receivers’. Apart from altruistic motives of family or close friends, it is important to think about the ethical contours of the social world in which organ transplants take place. While local ethics/evaluation committees attempt to protect human subjects, the separation of organs and human beings, especially the ‘donors’ who are less visible, make this an urgent question for all people involved in transplantations at all levels. Although organ trafficking is a transnational phenomenon involving local and global networks of exploiters, there is a lack of international collaboration and an adequate legal framework to fight the menace at global level and to convict those who commit the crime outside their country of residence.

An essential step will be placement of organ trafficking within the legal ambit of human trafficking, as provided in the UN Trafficking Protocol, so that the rights of victims of organ trafficking are upheld by states, justice systems, and ultimately by medical establishments and practitioners. In addition to deterrence policy, public health policy should include a comprehensive strategy for addressing the preventable causes of organ failure and to promote deceased organ donation to minimize the gap between demand and supply.



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