



Law Relating to Trafficking of Human Body: Challenges and Issues

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Abstract:

Organ trafficking it is perhaps the most obscure form of human trafficking. It is an international problem with transnational dimensions and involves the intersection between the world of organized crime, impoverished organ donors, sick recipients and unscrupulous medical staff. This article starts out by exploring the global patterns of organ trafficking, highlighting the physical and psychological harm caused to victims. The statistics on organ transplants and patterns of organ trafficking as well as the social, economic and legal dimensions of this type of crime are examined. The article subsequently continues with a discussion of the domestic, regional and international legal and semi-legal instruments established to battle organ trafficking and reflects upon whether or not these instruments are effective in curtailing this growing problem. This article sum up with a discussion of alternative approaches to deal with the problem of organ trafficking and makes a case for more problem-driven solutions, such as increased extra-legal measures, international cooperation and a focus upon the causes and victims of organ trafficking rather than focusing upon criminal law alone¹

Key words: Organ Trafficking, illegal organ trade, human trafficking, organ donors, organ recipients, organ donations, presumed consent, legal instruments, international legislation, supranational legislation, domestic legislation, extra-legal measures

I. INTRODUCTION

Organ trafficking is perhaps the least understood and investigated form of human trafficking. It is a growing international problem with transnational dimensions. Organ trafficking involves the intersection between the criminal world of traffickers, impoverished donors, sick recipients and unscrupulous medical staff. This article explores the dimensions of organ trafficking, global patterns and physical and psychological harm to victims. It concludes with a discussion of domestic and international instruments used to regulate the trade in organs, and examines whether or not legal instruments can be effective in regulating and controlling this trade. Today, 90% of human trafficking in India happens domestically, not across borders. In many cases, traffickers lure children or young adults from rural villages to the city with the promise of well-paid work. Then, victims transferred to people who are in a real sense become their slave masters. Some slave work without pay as household maids. Others enter forced marriages with strangers they have never met. Some are forced into bonded labor in the mining or in agricultural sectors.

II. HUMAN TRAFFICKING: MEANING AND CONCEPT

On 25 December 2003 the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, entered into force.³ Human trafficking, according to Article 3 of the Protocol, is defined as: [...] the recruitment, transportation, transfer, harboring 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 exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution

of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁴ For an act to be considered human trafficking, it must comprise the three constituent elements and one element from each must be present for trafficking to occur: (1) an action (recruitment, transportation, transfer or reception of persons); (2) through means of (threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim); and (3) goals (for exploitation or the purpose of exploitation - which includes exploiting the prostitution of others, other forms of sexual exploitation or forced services, slavery or similar practices, and the removal of organs). Based upon Article 3 of the UN Trafficking Protocol, the Declaration of Istanbul on Organ Trafficking and Transplant Tourism defines organ trafficking as the: [...] 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.⁵ The discussion around the phenomenon is not about the trafficking of organs per se, but the trafficking of human beings for the purpose of organ removal.²

III. ORGAN TRAFFICKING: ITS RELEVANCE AND CONSEQUENCES

Organ trafficking is perhaps the least profiled and understood form of human trafficking. It often involves the intersection of donor, recipient, medical experts and (organized) criminal groups facilitating the trade. While the United Nations Office on Drugs and Crime.⁷ Council of Europe.⁸ Also refer to the trafficking in organs or tissues (often from cadaver donors), the focus of this United paper will be on the trafficking of live

human beings for the purpose of organ removal. In 2006, the United Nations came to the conclusion that it was impossible to provide any estimation on the scope of organ trafficking. 9 The topic was not a priority nor had it received close scrutiny in Member States. Most cases included in the report involved the illegal removal and trafficking of organs or tissue from deceased persons.¹⁰ A year later, however, at the Second Global Consultation on Human Transplantation of the World Health Organization (WHO) in March 2007, it was estimated that "...the extent of organ sales from commercial living donors (CLDs) or vendors has now become evident..." and was estimated at 5-10% of the annual kidney transplants performed around the world.¹¹ The improvement of health care in many parts of the developed world has contributed to an increased life expectancy, resulting in a larger population of older people. At the same time, technological and medical developments have facilitated the transplantation of organs, making this an almost routine procedure. The demand for organs far exceeds the supply and the shortage is acute. Between 1990 and 2003, kidney donations in the States increased only 33%, but those awaiting a kidney for transplant increased by 236%.¹² According to the United States Department for Health and Human Services, there were, as of 5 June 2013, 118,226 candidates waiting for organs (75,643 of whom are active waiting list candidates), but only 3,412 donors registered in the U.S. as of March that year.¹³ Data on organ transplants from the WHO shows that of the 106,879 organs known to have been transplanted in ninety five Member States in 2010, slightly more than two thirds (68.5%) were kidneys. But those 106,879 operations satisfied only 10% of the global need, according to the WHO. ¹⁴ The wait for a kidney in the U.S. in 2008 was twenty one days to eight and a half years.¹⁵ this problem has been identified elsewhere as well. The chronic shortage in Europe means between 15% and 30% of European patients will die while waiting for a kidney transplant, which averages about three years.¹⁶ The US Department of Health and Human Services estimates eighteen people in the U.S. will die each day waiting for an organ.¹⁷ Organs can be obtained from living or deceased donors. Waiting times for an organ from a cadaver, usually kidney, differs from one country to the next. This ranges from an average wait in Britain and the United States of two to three years, to six to eight years in Singapore, and a longer wait in the Gulf States and Asia.¹⁸ The shortage in organs from cadaver donors has been driven, in part, by religious beliefs that the body should be buried intact, and to a fear of hospitals intentionally allowing patients to die in order to harvest their organs for paying patients.¹⁹ A shortage in cadaver organs and lengthy waiting times for organ transplant has led many in need of a kidney to seek to obtain one from a live donor.²⁰ There are a number of reasons that a person seeking an organ prefers one from a live donor. According to the International Association of Living Organ Donors, the quality of organs from live donors "tends to be superior to organs from deceased donors".²¹ The European Directorate for Quality of Medicines and Health Care emphasizes the fact that organs from living donors are more desirable as surgeries can be planned in advance, patients can be prepped with pre-operative treatment²² and that "long-term survival is usually better, due to a much shorter period of time and a superior physiological state of the transplanted organ".²³ Recipients also have a decreased likelihood of rejection of the transplanted organ. According to the International Association of Organ Donors, the United Network on Organ Sharing (UNOS) data for kidney transplants in the U.S. from 1996 to 2006, kidney graft survival rates are higher for recipients who have received

organs from living donors.²⁴ After five years, the survival rate is 68% from deceased donors and 81% from living donors; after a ten year period, the survival rate is 42% for those whose kidney has been grafted from a deceased donor, compared to a 58% survival rate for those receiving an organ from a living donor.²⁵ It is for this reason that recipients prefer to have transplants from live donors. Estimates put the number of women in prostitution in India between 2 and 3 million, many of whom are children. These sextrafficked minors live in squalid conditions in the red light districts of major cities, servicing multiple clients a day. Kolkata, the sprawling metropolis of 14 million people, is a global hub of forced prostitution. Neighborhoods known for prostitution shifted over time. Organs harvested from deceased donors are packed on ice and can be transported around the world. On the other hand, the harvesting of organs from live donors may involve the travel of both donor and recipient (and possibly the transplant experts) to the place where the transplant will occur. One of the world's leading experts on human trafficking for organ transplant, Dr. Nancy ScheperHughes, describes it as a trade that can bring together parties from three or more countries – the donors and recipients often come from different countries while the transplantation may occur in yet a third country. While donor and recipient may originate in the same country, transplant tourism involves the travel of donors and recipients. Shimazono (2007) introduces four modes of transplant tourism during which organ trafficking may occur. These involve situations in which the donor travels to the recipient's country, the recipient travels to the donor's country, a donor and recipient from the same country travel to a third country where the transplant center is located, and a situation where a donor and recipient travel from different countries to a third country for the transplant procedure. The transnational nature of this crime raises questions about the possibility of the later. Historically, certain patterns have been observed. In the 1990's most recipients of kidneys were residents of the Gulf States who traveled to India to purchase an organ or they were Asians who traveled to China or India. rgans.pdf> (accessed 27 November 2013), citing Scheper-Hughes, N., 'Illegal Organ Trade: Global Justice and the Traffic in Human Organs' (forthcoming India remains a popular destination for both purchase and transplant,²⁶ and buyers come from India's middle class and from around the world and include the United States, Canada, England and the countries in the Middle East.²⁷ The market has expanded, but general patterns can be observed. The trade in kidneys from live donors generally flows from poor, underdeveloped countries to rich, developed ones. recipient nations.²⁸ Common countries of origin for those selling kidneys are Bolivia, Brazil, China, Columbia, Egypt, India, Iran, Iraq, Israel, Moldova, Nigeria, Pakistan, Peru, the Philippines, Romania and Turkey. Countries of origin for those purchasing kidneys are Australia, Canada, Hong Kong, Israel. There are about 6,000 international kidney transactions a year.³⁰ Donors and recipients vary from one country to the next and even between regions within particular countries. There are, however, some very general trends. Organs are supplied by desperately poor people in poor countries to recipients in more affluent ones. Donors are generally minorities, and recipients of the organs - white or Middle Eastern. While donors may be male or female, most recipients of purchased organs are male, rarely female. Donors are young; recipients generally older. Few empirical studies exist on organ trafficking. Research in Nepal indicates that the trafficking of human beings the purpose of organ removal occurs predominantly in one district (Kavree). Donors are young men between the ages of eighteen and forty two

(average age is thirty). They come from different ethnic minority groups in the district and are extremely poor.³² In the state of Tamil Nadu, India, 71% of the 305 respondents in a study of kidney sellers were women. Almost all of the men and 60% of the women were labourers or street vendors. Two of the participants reported that they were forced to sell a kidney by their husband.³³ Other studies have also found that many organ sellers in India are women, however in the State of Punjab, India, it is generally poor young men (labourers) between the age of eighteen and thirty who agree to sell a kidney.³⁴ A kidney is sometimes sold to pay the dowry for a daughter's wedding. In Moldova, kidney sellers are poor young men from rural areas between the ages of eighteen and twenty eight, most of whom were deceived or coerced in selling their kidney. While they were paid between \$2,500 and \$3,000 to forfeit their kidney.

IV. THE HARM TO ORGAN DONORS: ECONOMIC, PHYSICAL AND PSYCHOLOGICAL CONSEQUENCES

Studies on those who have been trafficked for their organs, including those who have willingly sold their organs, show that the quality of the life of these patients is not better off than it was prior to the operation. The consequences can be dire, manifesting themselves in economical, physical and psychological hardships. In a study of 305 Indians who had sold a kidney in Chennai, India, an average of six years before the survey, doctors found that 96% of the sellers had sold their kidney to escape debt. On average, the sellers received \$1,070 which was spent on food and clothing, and repaying debts. Due to the weakened condition of the donor, the average family income declined after the operation, families were still in debt and the number who now lived below the poverty line had increased. Further studies on kidney sellers in Iran, India, Moldova and the Philippines indicate that they experience unemployment, reduced income and economic hardship. Unable to sustain the heavy demands placed upon them after the operation, workers previously involved in agriculture or construction work found themselves unemployed.⁵³ In Moldova, kidney sellers reported having to spend their earnings to hire workers to compensate for the heavy agricultural work they could not do.⁵⁴ Victims are exposed to serious consequences to their health either during or after the operation. Police in the Philippines raided apartments and found surgical operations were being carried out to remove kidneys under poor hygienic conditions. Persons have reportedly died under such circumstances.⁵⁵ Without proper postoperative care, the physical health of kidney sellers often deteriorates after the operation; patients complain of chronic pain, weakness and ill-health. This was reported in 86% of the patients interviewed in India.⁵⁶ Donors in the Philippines and Eastern European countries reportedly suffered from hypertension and kidney insufficiency. In many of the cases investigated, few of the donors in Turkey, Moldova, the Philippines or Brazil had seen a doctor or received post-operative health care – a year after the operation. Patients were

either unable to pay for the services or refused medical care.⁵⁷ Deceived donors are unable to report their victimization to police as they are often participating in the illegal act of selling an organ. Police in Punjab, India reported that donors were not provided proper postoperative care, were thrown out of the hospital one week after the surgery and threatened with imprisonment for participating in illegal organ transplants. Six persons died as a result of the transplants.⁵⁸ Health authorities in the Philippines report that due to lack of postoperative treatment for poor patients, many donors develop health problems such as high blood pressure and urinary tract diseases. ⁵⁹ Donors also suffer psychologically as a consequence of the transplant. Reports of a sense of worthlessness, serious depression, social isolation and family problems are not uncommon.⁶⁰ In Moldova, sellers are excommunicated from the local Orthodox Church, their chances of marriage are non-existent and many are alienated from their families. There are reports of kidney sellers disappearing from their families and one committed suicide. Fear of being labelled disabled or weak results in male kidney donors from seeking follow-up medical care.

IV. LEGAL INSTRUMENTS DEALING WITH ORGAN TRAFFICKING AND DEMOGRAPHIC DATA OF ORGAN SELLERS IN DIFFERENT COUNTRY

Putting the responsibility of combating the crime of organ trafficking, and of human trafficking in general, in the hands of individual states ignores the transnational nature of trafficking. Therefore, it is important to consider the establishment of international legal initiatives to ensure cooperation between State parties and the international criminalization of organ trafficking. To date, there are no legally binding international instruments devoted to organ trafficking alone. There are several international documents, however, which deal with medicine, health sector and/or human trafficking in general and incorporate the crime of organ trafficking therein. The most important binding international legal document considering human trafficking with the purpose of the removal of organs is the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,⁷¹ supplementing the United Nations Convention against Transnational Organized Crime. ⁷² The Protocol is directed at human trafficking in general but includes trafficking with the purpose of the removal of organs within the scope of its definition. India should consider itself lucky not to find mention in the list of Tier-3 countries given the fact that India is a major point for sourcing, destination and trafficking of women and children. However, India is included amongst the Tier-2 countries, as per the US Government's 2014 TIP Report. The problem is real and widespread. The report clearly refers to the existing situation of human exploitation and trafficking that involves men, women and children in India. Over 90% of the trafficking is done within the borders and 10% is from overseas. The problem is spread over various forms of exploitation.

| COUNTRY(state) | GENDER | AGE | EDUCATION | OCCUPATION | SALARY |
|-------------------|---------------------|-------|-----------|------------|------------------|
| INDIA(tamil nadu) | Female 71% Male 29% | 35 | 2.7 YRS | Labour | Below pover line |
| INDIA(punjab) | Male | 18-30 | N.A | Labour | BPL |
| PHILIPPINES | Male | 29 | N.A | Labour | N.A |

Trafficking of women and young girls from Nepal and Bangladesh into India for sexual exploitation is the most

common. These girls from poor families and often in the age group of

9-14 years are brought into India and sold to brothel owners in Kolkata, Mumbai and Delhi, amongst several other cities.

V. CONCLUSION

India shows alarming rates of human trafficking. With an estimated 400 million children between 0 and 18 years, the country's per capita income remaining low and 26 percent of the population living below the poverty line. India has become a source, destination and transit country for men, woman, and children trafficked for forced labour and commercial sexual exploitation. India has become a transit hub for human trafficking with estimated millions, victim to human trafficking. Trafficking in India is often disguised as migration, commercial sex or disgustingly even marriage. It is estimated that ninety percent of the India's sex trafficking is internal. Women and girls are trafficked internally for commercial sex. Children are subject to involuntary servitude as factory workers, domestic servants, beggars, agricultural workers and many times they are also sexually abused by their owners. No crime can be worse than this. The child is mentally handicapped for the rest of his or her life. Hand embroidery factories mostly employ boys below the age of twelve. The most beautiful carpets and hand embroidered designer gowns are often works of art created by victims of human trafficking. Girls are also trafficked from the neighboring countries like Bangladesh, and Nepal into India. Many help lines like Child line have been set up to reach out especially to the street children, child labourers, and abused children. rehabs like Akanksha help in rehabilitating the victims. Don Bosco National Forum has launched a website which is closely monitored by child welfare organizations in all cities of the country and a search for the child is started immediately after a complaint is registered. The governments of some cities in India like Maharashtra have banned dance bars. However so much more needs to be done, yet. The problems must be tackled at grass roots. Also change must start with the people for the people.

SUGGESTION

The people must become the eyes and the arms of the government and make this crusade their own cause. Then and only then will we see an end to human trafficking. Take Action **1: Read All About It.**

There are a wide range of books that chronicle the personal experiences of victims, survivors and campaigners against human/sex trafficking. Organise your book club or your social club's reading list to include these books and share these stories of struggle, triumph and hope. GoodReads provides a list of books that speak to human trafficking and can be a great resource place!

Take Action 2: Share on Social Media.

We live in an increasingly connected world. With one click we can share an informative meme, a change-inspiring photo, or a YouTube documentary with our social networks. This amazing Tedex San Joaquin video is a really informative and thought-provoking. Please share it! http://www.youtube.com/watch?feature=player_embedded&v=iU9TeVofkDo.

Take Action 3: Use Every Opportunity to Raise Awareness! Be creative. Any event is an opportunity to raise awareness and make a difference. Hope for the Sold has an amazing package that enables wedding guests to donate to Hope for the Sold in lieu of wedding favors. Perhaps your birthday is coming up, an anniversary or, a company launch; these are all great avenues to raise awareness

Take Action 4: Blog About It!

The blogosphere is another area that we can use to advocate! Cool Cat Teacher Blog used the Christmas season to launch a campaign to free the Slaves for Christmas amongst bloggers. This Christmas season is almost here; it's a great time to make a change.¹¹

Action 5: Donate your old cell phones.

Be environmentally friendly AND save the lives of others through the Phones4Freedom program. The Phones4Freedom program reuses and recycles old or broken cellphones and uses them to help warn remote villages in impoverished communities and areas of trafficking operations.

Action 6: Write a Victim, Support a Victim!

Survivors throughout the world are often comforted by these simple gestures. Alternatively you can support Sanctuary Spring, an organization that offers some of these survivors the opportunity to rebuild their lives by creating job opportunities through crafting greeting cards. Purchasing one of these cards would be a small step in helping to rebuild a survivor's life

Action 7: Organise Screenings of Documentaries.

Sharing a documentary beyond the realm of the world of social media remains an excellent way to get support on the Ground. MTV EXIT Latin America, the Pan American Development Foundation (PADF)¹² amongst others, shared this year a three-week long series of outdoor film presentations that showcased the human trafficking documentary "Invisible Slaves (The Animation)" to impoverished communities

Action 8: Work through Art.

One of the most powerful means of telling and sharing stories, emotions, and life experiences has always been Art. Arts Aftercare, as one example, produces the Healing Arts Toolkit, and trains human trafficking aftercare groups how to use the toolkit to help restore life and health in survivors of human trafficking.

VI. REFERENCE

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[2]. Elif Isitman received her MSc in International Crimes and Criminology and an MA in Journalism from the Vrije Universiteit Amsterdam. Her MSc dissertation concerned the trafficking of women and girls in postconflict areas, using Bosnia & Herzegovina and Kosovo as case studies. Following her MSc studies, she interned and worked at the Bureau of the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (BNRM), where she conducted research into child pornography and corresponding perpetrator profiles

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