

Office of the Special Representative and Co-ordinator  
for Combating Trafficking in Human Beings

# TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF ORGAN REMOVAL IN THE OSCE REGION: Analysis and Findings

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Office of the Special Representative and Co-ordinator  
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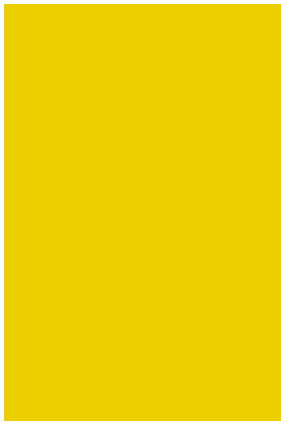
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## FOREWORD

Since the beginning of my mandate in 2010, one of my priorities has been to address some of the most invisible forms of trafficking in human beings (THB). Trafficking for the purpose of organ removal is included in the United Nations Palermo Protocol on Trafficking of 2000 in its definition of trafficking in Article 3, but in fact this form of trafficking remains one of the most unknown and least addressed. In recent years however, we have seen an increase in attention to the subject, in part due to several high profile cases within the OSCE region, as well as due to the long-standing efforts of investigative journalists, academics and victim advocates who have gone to great lengths to shed light on this phenomenon.

Trafficking in human beings for the purpose of organ removal (THB/OR) is, like all other forms of trafficking, a violation of the fundamental human rights and dignity of individuals, while also clearly representing a grave form of transnational organized crime. My mandate to address this form of trafficking stems back to the OSCE Action Plan to Combat Trafficking in Human Beings<sup>1</sup>. Other OSCE commitments throughout the years refer to all forms of trafficking;<sup>2</sup> most recently in the Vilnius Declaration<sup>3</sup>, participating States expressed their deep concern for this form of trafficking.

It is important to note at the outset what has not been included within the terms of reference for this

research because it is not within my mandate. Firstly, our research does not address allegations of organ trafficking related to alleged war crimes, since they do not involve trafficking in human beings. Secondly, it is important to clarify an important distinction between what is known as organ trafficking, and trafficking in human beings for the purpose of organ removal. My mandate is of course based on trafficking in human beings; organ trafficking is a separate issue as has been recognized by the United Nations and the Council of Europe<sup>4</sup>, it raises a whole other set of factual and legal considerations. Furthermore, our research does not cover trafficking of tissues and cells, as it is not widely recognized to fall within the meaning of “organ removal” within the relevant definition of trafficking for organ removal.<sup>5</sup>

This Occasional Paper is based on actual reported incidents or cases of THB/OR that have been investigated to different degrees, and in some cases, fully prosecuted. To the best of our knowledge, this is the first research paper based on an analysis of available case studies in the OSCE region. It is thus not possible to make any comparisons to the global context of the crime, even though the 2012 Global Report on Trafficking in Persons has identified a similar scope and scale of the crime.<sup>6</sup> A brief annex of cases where

1 OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005).  
2 Such as: OSCE Ministerial Council, *Decision No. 5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach* (Helsinki, 2008) as well as OSCE Ministerial Council Decisions from Madrid (2007), Brussels (2006) and others.  
3 OSCE Ministerial Council, *Declaration on Combating all Forms of Human Trafficking*, MC.DD/27/11/Rev.1 (Vilnius, 7 December 2011): “6. We are deeply concerned that human trafficking for the removal of organs, for the purpose of sexual exploitation, as well as for the purpose of labour exploitation, including domestic servitude, remains a serious problem.” And “7 [...] In particular, we commend recent efforts by the OSCE to highlight trafficking for labour exploitation, including domestic servitude, as well as child trafficking and trafficking in persons for the removal of organs.”

4 See for instance, Council of Europe and United Nations, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, Joint Council of Europe/United Nations Study (2009).

5 The paper thus does not consider, for instance, the trafficking of female ovaries or other type of cells or tissues, which are not considered to be within the definition of THB/OR. See the See Council of Europe and United Nations, Op. Cit.

6 UNODC, *Global Report on Trafficking in Persons 2012* (2012), pp. 38–39, <[http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf)>, accessed 30 May 2013: “Trafficking for the removal of organs may appear to be limited, as it accounts for less than 0.2 per cent of the total number of detected victims. Nonetheless, during the reporting period, cases or episodes of trafficking for organ removal were officially reported by 16 countries among those here considered. In addition, it appears that all regions are affected by trafficking for organ removal, which suggests that the phenomenon is not as marginal as the number of victims officially detected would suggest”.

formal criminal proceedings were initiated on THB/OR or related charges can be found in Annex A. The methodology for this report is explained in detail but it is important to stress that wherever possible we prioritized indictments, judgments, and official government sources, and we also requested and received official information from participating States, for which I am very grateful. The findings are also based on media and open source reporting, as well as interviews with key experts in relevant fields (medical, ethics, transplantation, victim care, among others). We have collated information and analysed more than ten cases of potential THB/OR, and at least two or three other incidents in which there were allegations of THB but there was insufficient evidence to proceed to investigation or prosecution. We have also included at least one case of organ trafficking which however seems to share many of the common elements of THB/OR cases. To this end, this paper confirms a trend amongst all THB cases: it remains a challenge for criminal justice actors across the OSCE region to identify and charge trafficking in human beings and not on related and in some cases, lesser, charges. If we are going to address the full scale of modern-day slavery, then we must also address the full criminality in prosecutorial strategies and charging documents.

I would like to stress at the outset that we commend law enforcement and judicial authorities in the countries identified for taking the first steps towards investigating and prosecuting this crime. Our findings thus far confirm that very many countries are affected or involved in this form of trafficking in one of a myriad of possible ways, including as: countries of origin for victims, so-called brokers, traffickers, organizers, facilitators, and organ recipients, and/or as sites of transplant centres, clinics, or hosts of medical professionals such as anaesthetists, surgeons, nurses, nephrologists. Taking into consideration all of these different roles, I can report to you that over a third of the OSCE region has been affected or involved in some way in this form of trafficking.<sup>7</sup>

Our research findings confirm a trend that we see across the board in all cases of trafficking, that is, that

7 Annex A contains a summary of cases analysed in the OSCE region for the purposes of this study, where formal criminal proceedings on THB/OR or related charges were initiated, and with links or alleged links to: Azerbaijan, Belarus, Bulgaria, Canada, France, Germany, Georgia, Israel, Kazakhstan, Moldova, Poland, Romania, Russia, Turkey, Ukraine, USA, Uzbekistan and Kosovo (All references to Kosovo, whether to the territory, institutions or population, in this text should be understood in full compliance with United Nations Security Council Resolution 1244).

Information is also included in Annex A on alleged incidents of THB/OR where no formal criminal proceedings were initiated in the Netherlands and Germany.

there is an apparent shift in the *modus operandi* of traffickers away from hierarchical structures towards loosely structured but highly competitive networks. A further feature of this evolving *modus operandi* is a highly specialized division of labour. There may be a core of key individuals, who operate with a cluster of “*subordinates, specialists and other more transient members, plus an extended network of disposable associates*”.<sup>8</sup> While seemingly less organized, these groups are arguably more complex and no less harmful. Another salient finding of this research has been the role of the so-called broker. Clearly in these cases, this is not a person who is merely facilitating the transaction or acting as an intermediary, but rather is actively involved in decision-making and whose acts are often essential to the transaction itself.

Persons trafficked for organ removal also face particular challenges, both during and after the organ removal and hence we have devoted a special chapter to these issues. Victims are reported to receive small amounts of money, and in some cases, no payment at all. They are often unaware of the long-term and debilitating medical consequences of organ removal and lack of post-operative care as well as the psychological impact of the operation. Victims report strong feelings of shame and social stigmatization within their communities, which may contribute to a lack of access to medical and psychological care. Victims should thus receive compensation for the full impact of the crimes, including not only the immediate and chronic health consequences, but also the effects on their psychological well-being, as well as on their financial situation, or impacts on their livelihood and social integration.

Another issue which I would like to call attention to is the link between trafficking for organ removal and corruption. We know that corruption is an important factor in all forms of trafficking. This is perhaps even more pronounced in cases of trafficking for organ removal because of the important role of “white collar criminals” — here I am referring to the administrators, medical professionals and in some cases, official representatives whose contribution to the criminality is often essential in terms of accessing the certification, approval and medical equipment necessary to set up a transplant clinic. Thus I would say that the role of corruption is decisive in these cases.

This evolving *modus operandi* of organized crime, especially in the context of human trafficking, often relies less on extreme violence for coercion of victims

8 Royal Canadian Mounted Police, *The Changing Structure of Organized Crime Groups* (Ottawa, 2005).



and increasingly on subtle means of control. Indeed in the documented cases of trafficking for organ removal, the means most frequently reported appear to be the abuse of a position of vulnerability and/or fraud. Victims of THB for organ trafficking tend to be socially and economically vulnerable groups of persons who are often lured by fraudulent promises of financial rewards. I would like to be clear though here on one point — in a situation of trafficking, consent to the exploitation is not a defence for the accused. The Palermo Protocol is unambiguous on this point. Thus the fact that an extremely vulnerable person agrees to the removal of an organ in exchange for financial compensation does not take away from the exploitative nature of the transaction. And it is also useful to keep in mind that we are talking about a very profitable business indeed. The profit margin in reported cases is quite significant, as our findings indicate.

We are clearly only at the beginning of a joint effort to further gather and analyse information on this form of THB and we hope that this research will serve as a starting point for further co-operation and exchange of information. We conclude this paper with a series of targeted next steps which address the range of actors involved. We look forward to future collaboration with our partners on the follow-up to this paper, and acknowledge the relevant efforts of some of our key partners, such as the Council of Europe<sup>9</sup> and UNODC<sup>10</sup> who are both in the process of finalizing work on the subject. It is my sincere hope that this research paper will concretely assist us in developing targeted and evidence-based prevention strategies as well as strengthening the criminal justice response and, crucially, our ability to assist and protect victims and potential victims of trafficking for organ removal.



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Combating Trafficking in Human Beings*

- 9 On 7 December 2012, the European Committee on Crime Problems (CDPC) of the Council of Europe passed the “Draft Council of Europe Convention against Trafficking in Human Organs”, which would be the first international convention on the subject of organ trafficking. While it does not address THB/OR specifically, it may address some overlapping issues: Council of Europe, European Committee on Crime Problems, *Draft Council of Europe Convention against Trafficking in Human Organs* (2012), <[http://www.coe.int/t/dghl/standardsetting/cdpc/CDPC%20documents/CDPC%20\(2012\)%2021%20-%20e%20-%20Draft%20Convention%20against%20Trafficking%20in%20Human%20Organs.pdf](http://www.coe.int/t/dghl/standardsetting/cdpc/CDPC%20documents/CDPC%20(2012)%2021%20-%20e%20-%20Draft%20Convention%20against%20Trafficking%20in%20Human%20Organs.pdf)>, accessed 30 May 2013.
- 10 UNODC, *Trafficking in Persons for the Purpose of Organ Removal: An Assessment Toolkit* (forthcoming).

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## ACRONYMS

<b>ACT</b>	Against Child Trafficking	<b>MC</b>	Ministerial Council
<b>AIUMC</b>	Azerbaijan International University Medical Center	<b>NGO</b>	Non-Governmental Organization
<b>AIDS</b>	Acquired Immunodeficiency Syndrome	<b>NRS</b>	National Referral System
<b>CCPCJ</b>	Commission on Crime Prevention and Criminal Justice	<b>OCEEA</b>	OSCE Office of the Co-ordinator for Economic and Environmental Activities
<b>CDBI</b>	Council of Europe Steering Committee on Bioethics	<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>CDPC</b>	Council of Europe European Committee on Crime Problems	<b>OSR/CTHB</b>	OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings
<b>CDSP</b>	European Health Committee	<b>OTC</b>	Organs, Tissues and Cells
<b>CEDAW</b>	Convention on the Elimination of Discrimination against Women	<b>PA</b>	Parliamentary Assembly
<b>CERD</b>	Committee on the Elimination of Racial Discrimination	<b>PACE</b>	Council of Europe Parliamentary Assembly
<b>CKD</b>	Chronic kidney disease	<b>PACE SHFAC</b>	Social, Health and Family Affairs Committee of the PACE (Council of Europe Parliamentary Assembly)
<b>CoE</b>	Council of Europe	<b>PC</b>	Permanent Council
<b>COFS</b>	Coalition for Organ-Failure Solutions	<b>PCC</b>	Provisional Criminal Code of Kosovo
<b>CRC</b>	Convention on the Rights of the Child	<b>SG</b>	Secretary General
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities	<b>SPMU</b>	Strategic Police Matters Unit
<b>CTHB</b>	Combating Trafficking in Human Beings	<b>SPRK</b>	Special Prosecution Office of Kosovo
<b>DICG</b>	Declaration of Istanbul Custodian Group	<b>SR</b>	OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings
<b>ECHR</b>	European Convention of Human Rights and Fundamental Freedoms	<b>THB</b>	Trafficking in Human Beings
<b>ELPAT</b>	European Platform on Ethical, Legal and Psychosocial Aspects	<b>THB/OR</b>	Trafficking in human beings for the purpose of organ removal
<b>EU</b>	European Union	<b>TNTD</b>	OSCE Transnational Threat Department
<b>EULEX</b>	European Union Rule of Law Mission in Kosovo	<b>TTS</b>	Transplantation Society
<b>Europol</b>	Europol European Union law enforcement agency	<b>UDHR</b>	Universal Declaration of Human Rights
<b>EUROSTAT</b>	European Union statistical office	<b>UK</b>	United Kingdom
<b>GAATW</b>	Global Alliance Against Trafficking in Women	<b>UN</b>	United Nations
<b>GTZ</b>	Deutsche Gesellschaft für Technische Zusammenarbeit	<b>UNCAT</b>	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>HIV</b>	Human immunodeficiency virus	<b>UN.GIFT</b>	United Nations Global Initiative to Fight Human Trafficking
<b>HTOR</b>	Human Trafficking for an Organ Removal	<b>UNDP</b>	United Nations Development Programme
<b>HOTT</b>	Project European Commission's Action against Human Organ Trafficking for Transplantation	<b>UNECE</b>	United Nations Economic Commission for Europe
<b>ICCPR</b>	International Covenant on Civil and Political Rights	<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>ICESCR</b>	International Covenant on Economic, Social and Culture Rights	<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination	<b>UN OHCHR</b>	United Nations Office of the High Commissioner for Human Rights
<b>ICMPD</b>	International Centre for Migration Policy Development	<b>UNTOC</b>	United Nations Convention against Transnational Organized Crime
<b>ICRMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	<b>US</b>	United States of America
<b>ILO</b>	International Labour Organization	<b>USAID</b>	United States Agency for International Development
<b>Interpol</b>	International Criminal Police Organization	<b>WHA</b>	World Health Assembly
<b>IOM</b>	International Organization for Migration	<b>WHO</b>	World Health Organization
		<b>WMA</b>	World Medical Association
		<b>XDOT</b>	eXpose and Disrupt Organ Trafficking

## CHAPTER I: INTRODUCTION

### 1.1 Overview

Trafficking in human beings for the purpose of organ removal (THB/OR) has long remained a subject of rumour and unconfirmed reports. Since the 1980s, however, a growing body of fieldwork and other research by journalists and medical anthropologists has documented cases of such trafficking, particularly in the past fifteen years, as the demand for organs continues to grow. That research has shed light on this phenomenon, in part, through detailed portraits of victims, recipients and those engaged in directing or otherwise furthering the organ removal networks. Patients in wealthier countries, languishing on waiting lists, are increasingly travelling abroad to obtain the required organ. The victim-donors are generally suffering from acute poverty and are deceived or coerced by the trafficking networks into giving up an organ for a mere fraction of the money the recipient has paid the traffickers.

Due in large part to the research of journalists and academics, THB/OR is now known to be a truly global phenomenon, occurring on every continent, involving both developed and developing countries. The World Health Organization has estimated that five to ten per cent<sup>11</sup> of the kidney transplants carried out each year around the world are the result of recipients travelling abroad to purchase an organ. It remains unclear, however, what percentage of that estimate would fit within the definition of THB/OR. Despite the acceptance of the WHO estimate and awareness of the widespread nature of THB/OR, a lack of reliable data persists, due to the secretive nature of the networks involved in the trafficking. In its *Global Report on Trafficking in Persons 2012*<sup>12</sup>, UNODC estimates that trafficking for organ removal accounts for less than 0.2 per cent of the total number of victims worldwide, although cases were reported from official sources from 16 countries during the reporting period and in all regions of the world.

11 There were estimated to be over 76,000 kidney transplants in 2011, see Global Observatory on Donation and Transplantation, *2011 Activity Report* (2011), <<http://www.transplant-observatory.org/Pages/Data-Reports.aspx>> accessed 2 June 2013. The WHO estimate is considered conservative. D. Budiani-Saberi, *Human Trafficking for an Organ Removal (HTOR): A Call for Prevention, Protection, Investigations, and Accountability* (2012), briefing before the Tom Lantos Human Rights Commission United States Congress, 23 January 2012, citing M. Goyal et al., "Economic and health consequences of selling a kidney in India", *JAMA*, Volume 288(13) (2002), p. 1589.

12 UNODC, *Global Report on Trafficking in Persons 2012* (2012), pp. 38–39, <[http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf)> accessed 30 May 2013.

In the OSCE region, there has been a growing number of investigations and prosecutions for THB/OR and related crimes in the past several years which are beginning to shed more light on this form of trafficking and on the challenges facing law enforcement authorities. Although several of these cases remain pending and information about many of these cases is limited, the available information corroborates, in many respects, the picture of THB/OR that had previously emerged from media reports and academic research.

Trafficking in human beings for the purpose of organ removal (THB/OR) is encompassed within the definition of trafficking set out in the Palermo Protocol to the 2000 UN Convention against Transnational Organized Crime, as well as in the trafficking definition set out in the 2005 Council of Europe Convention on Action against Trafficking in Human Beings. Although the specific inclusion of THB/OR within those conventions reflected growing awareness of this form of trafficking around the world, it has only been in fairly recent years that cases of THB/OR have been investigated or prosecuted in the OSCE region — or beyond, for that matter. Though still limited in number, these cases provide further insight into THB/OR, adding to the body of knowledge accumulated by academic research, including research by medical professionals, and media inquiries.

Altogether, this body of knowledge underscores the complexity of this form of trafficking. THB/OR involves networks across multiple countries where deception and coercion are used to lure or compel persons in acute poverty into selling an organ. Part of its complexity results also from ways in which THB/OR may differ from other forms of trafficking, such as: the role of the medical transplant community; the very brief time in which a victim may be transferred to another location before returning; the fact that the organ recipient (arguably the "customer" in this form of trafficking) is almost never criminalized and is himself or herself vulnerable; and, the fact that even absent a finding that trafficking occurred, the underlying transfer of an organ generally violates, in the OSCE region, prohibitions against the donation of an organ for financial gain.

Increasing case-based knowledge of THB/OR also highlights the challenges to successfully responding through law enforcement measures, prevention measures and comprehensive support for victims.

Much needs to be done to promote the sharing of this knowledge among the law enforcement entities that will respond to THB/OR cases. Among other things, shared information may reveal significant linkages among THB/OR networks as well as aspects of their *modus operandi*, knowledge of which would facilitate detection and investigation of the crime. Sharing knowledge and experiences with THB/OR is also essential to developing appropriate responses that encompass prevention and support. At the same time, responses to THB/OR should build on existing programmes that protect and support victims in other forms of trafficking, including trafficking for sexual and labour exploitation.

There are also a number of areas in which more in-depth research is needed to determine the implications of potential legislative and policy options in order to ensure that legal frameworks for THB/OR are appropriate. For example, as noted, organ recipients are generally not subject to prosecution. Whether this approach should shift — and what effect it would have on countering THB/OR — is a complex question<sup>13</sup> that may include consideration of the fundamental health interests of the organ recipient, a countervailing factor that would not appear comparable to the interests of the “customer” in other forms of trafficking.

An effective response may also involve addressing difficult health policy issues, such as measures to increase cadaver donations, as well as altruistic donations in the demand countries. These issues are particularly significant as the gap between the numbers of those in need of an organ and the available organs is expected to continue to grow. Even though the estimated scale of THB/OR may, at present, fall short of other forms of trafficking, the growing demand and the severity of consequences for the victims underscores the need to quickly develop effective responses.

THB/OR is a serious crime that represents a profound violation of human rights and human dignity. As the 2010 OSCE Annual Report of the SR emphasized, “health security is affected in the cruellest way” in cases of THB/OR.<sup>14</sup> In light of the severity of this crime as well as the threat of its expansion, countries should give greater priority to THB/OR.

<sup>13</sup> This question was raised, without any recommendation, by Rapporteur Ruth-Gaby Vermot-Mangold in her 2003 Report: PACE SHFAC, *Trafficking in organs in Europe* (2003), para. 37.

<sup>14</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Combating Trafficking as Modern-Day Slavery: A Matter of Rights, Freedoms and Security, 2010 Annual Report of the Special Representative for Combating Trafficking in Human Beings* (2010), p. 27.

## 1.2 Mandate and Terms of Reference

In line with the OSCE Action Plan to Combat Trafficking in Human Beings<sup>15</sup>, the SR is mandated to address trafficking in human beings for the purpose of organ removal. Since the date of the Action Plan, many OSCE commitments have referred to the need to address all forms of trafficking.<sup>16</sup> In the 2011 Vilnius Declaration, participating States expressed their deep concern for this form of trafficking.

The SR initiated the research project in 2011, supported by the Strategic Police Matters Unit (SPMU), to conduct a comprehensive overview of the current situation and a deeper qualitative analysis of this form of human trafficking within the OSCE region. The project aimed to identify vulnerable groups and the *modus operandi* of criminal organizations, to identify gaps in national legislation, as well as to disclose obstacles preventing efficient investigation and prosecution of this crime.

This study has restricted its focus to the trafficking of human beings for the purpose of organ removal in the OSCE region. It has, therefore, largely excluded analysis of cases involving the illegal sale and purchase of organs, tissues and cells (OTC) that do not involve the trafficking of a human being.<sup>17</sup> However, the study does examine some cases in which the facts appear to implicate THB/OR, even if not charged as such. There is also some debate within the field of study as to the amount of overlap between organ trafficking and THB/OR cases, with some researchers positing that it is in practice difficult to identify cases of organ trafficking where the so-called donor was not subject to

<sup>15</sup> OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005).

<sup>16</sup> Such as: OSCE Ministerial Council, *Decision No. 5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach* (2008), as well as OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation* (2007), OSCE Ministerial Council, *Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, Through a Comprehensive and Proactive Approach* (2006).

<sup>17</sup> See Council of Europe and United Nations, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, Joint Council of Europe/United Nations Study (2009), pp. 7, 11–12. This Joint Council of Europe/United Nations study underscores clearly that trafficking in persons for organ removal has features distinct from trafficking in organs, tissues and cells. Note that other studies have taken different approaches. For example, in his two-year study for a body of the Economic and Social Council, the UN Secretary-General, while recognizing that the Palermo Protocol would define THB/OR as requiring trafficking of the person, addresses jointly both THB/OR and trafficking of organs outside the body: see UNODC CCPCJ, *Report of the Secretary-General on preventing, combating and punishing trafficking in human organs* (2006). Others have suggested that trafficking in organs (as opposed to tissues and cells) cannot realistically occur without facts involving the trafficking in persons.

exploitation. Nevertheless, the present research study has restricted itself to THB/OR which is in line with the mandate of the SR.

The terms of reference indicated that the research project should examine cases of THB/OR in countries of origin, transit and destination, and co-operate with OSCE field operations, where relevant, to obtain data for qualitative research. The specific objectives of the research included: to collect information on actual cases including a description of traffickers' *modus operandi* and the complex relationships between brokers, medical personnel at transplant clinics and clients/recipients of organs with a focus on a few groups of origin-transit-destination countries; to inquire on the reported or perceived level of organization among the organized criminal groups, whether there was a clear hierarchy or whether they operated in a more loosely structured network, including what is known about the chain of command, means of communication if known; to conduct interviews with relevant officials (border authorities, medical personnel, law enforcement, prosecutors, criminologists, investigative journalists, etc.) through various forms of communication (conference calls, correspondence, duty travel), and analyse the information obtained, where available; to analyse secondary data offering similar cases and qualitative material to supplement the original data and to assist in the analysis of contextual factors in different countries or regions, including for instance any geographical and temporal crime patterns and whether any patterns were likely to be isolated or representative of greater trends; analyse the impact of general healthcare regulations, and regulation of organ transplantation, on the situation of recipients and their propensity to use illegal channels; analyse victim profiles (for example, personal and social background, geographical/ethnic/national origin, specific vulnerability factors (in addition to age, gender, family status), health conditions after the organ removal, life expectation, etc.); to analyse particular needs faced by victims in the short, medium and long-term, as well as a review of available assistance and protection schemes; to consult with relevant international organizations and NGOs working in the field; and to identify a list of concrete next steps for follow-up.

### 1.3 Methodology

The study uses the acronym THB/OR as shorthand for the phrase "trafficking of human beings for the purpose of organ removal". However, use of the term "organ trafficking" has been retained where that phrase has been used in a specific document, particularly in the case of earlier reports by international

organizations, where the phrase "organ trafficking" is used to encompass both THB/OR, trafficking in OTC and other organ sales that may not meet the international definition of THB/OR.

This study is based primarily on desk research and analysis. In addition, a number of interviews and meetings with persons knowledgeable about THB/OR were conducted<sup>18</sup>, mostly by telephone and e-mail. The research was focused on the following areas: (a) general research on THB/OR and responses by international organizations and national authorities; (b) focused research on countries, identified during the general research, where THB/OR has been identified; (c) further focused research to identify the progress and status of cases of THB/OR that had led to investigations and actual prosecutions.

Most research was conducted through Internet searches.<sup>19</sup> Searches on THB/OR touching on specific countries were initially conducted on www.google.com in English. When search refinements ceased producing new relevant results, searches were conducted on the Google pages for the particular country.<sup>20</sup> Quality control as to the accuracy of information was applied, to the extent possible, by seeking corroboration through other search results and by discussion of the results with experts. In addition, in some instances, unofficial translations were provided by OSCE colleagues.

The research for this study identified cases of human trafficking for organ removal in the OSCE region, some of which have not previously been identified, collated and analysed. In terms of the selection of cases for analysis, a requirement was that the case should include a link to a participating State.<sup>21</sup> Some of these cases had even been brought to trial years earlier, but information about them was nonetheless difficult to locate, much of it only available in national or local media. Others have been brought to court only in the past several years. These cases offer further insight

18 Please see Annex B, List of Experts Consulted, during the course of the research.

19 The sole search engine employed was Google. The general search began with variations on terms such as "organ trafficking" and "kidney trafficking". The searches were then gradually refined to focus more on sub-topics as they emerged.

20 For both the search and review of the results, at this stage, Google Translate and the country-specific Google page's translation functions were then used to render text into English. Google Translate was also used to refine searches by identifying relevant key phrases in the national languages. Fluent speakers of the languages of the sources cited in this report later reviewed and confirmed the accuracy of the information.

21 Exceptionally, one case is included where the transplant facility was located in an OSCE Partner for Co-operation where the case had strong links to an OSCE participating State.

into both the nature and *modus operandi* of the criminal networks that carry out trafficking in persons for organ removal, as well as on the challenges that criminal justice actors face in tackling these networks.

It must be underscored, however, that despite these research efforts official information about case proceedings has continued to remain incomplete. Therefore, while this study seeks to advance the discussion regarding THB/OR networks to a level of greater concrete detail, its findings must remain provisional and preliminary. The ultimate objective of the present study is to gather together the body of knowledge available about actual cases involving THB/OR in the OSCE region, together with an analysis of *modus operandi* as well as patterns and trends, in order to facilitate more systematic research into this form of trafficking. The next steps in such research will necessarily involve more formal and direct contact with relevant law enforcement authorities involved in the cases cited in this study. Such a study has recently been launched with funding by the European Commission (Directorate-General Home Affairs) and will be completed in 2015.<sup>22</sup> In July 2013, the OSCE TNTD/SPMU will also initiate a follow-up research study to the present one, which will review the existing legislative and regulatory framework on organ donation and THB/OR in the OSCE region.<sup>23</sup>

A number of experts in THB/OR and related issues were consulted and interviewed for this study. Special reference is made to Professor Nancy Scheper-Hughes and Dr. Debra Budiani-Saberi. Scheper-Hughes is a medical anthropologist who has been a pioneering and leading authority on THB/OR and related issues in the OSCE region and beyond. Her forthcoming book *A World Cut in Two – The Global Traffic in Organs*<sup>24</sup> will provide an extensive analysis of “organ trafficking” including a detailed treatment of THB/OR networks around the world. Budiani-Saberi is the Executive Director and Founder of the Coalition for Organ-Failure Solutions (COFS) and has conducted extensive research on THB/OR in the Middle East, Northeast Africa, and South Asia.

22 The EC’s Directorate-General Home Affairs has funded Action against Human Organ Trafficking for Transplantation (HOTT Project), a three-year programme, co-ordinated by the ELPAT Working Group on Organ Tourism and Paid Donation. The objective of the HOTT project is to gather detailed information about THB/OR investigations and prosecutions. This project can be expected to compile critical, concrete data from official sources.

23 The project “Regulating organ donation and preventing/criminalizing organ trafficking and trafficking in persons for the purpose of organ removal in the OSCE participating States – a legislative review” will be initiated in July 2013 under the direction of the OSCE Transnational Threat Department/Strategic Police Matters Unit.

24 N. Scheper-Hughes, *A World Cut in Two: The Global Traffic in Organs* (University of California Press: Berkeley, forthcoming).

## 1.4 Disclaimer

A significant limitation to the conduct of research for this study was the lack of access to official documentation, particularly court records. Accordingly, information about investigations, prosecutions and judicial outcomes are largely based on academic literature and media articles. Care has been exercised in seeking to corroborate wherever possible the status and outcome of investigations and court cases. Nonetheless, as a general principle for application throughout this study, statements as to the progress and outcomes of investigations and court cases should be treated as unconfirmed, absent citation to an official record. All statements relating to criminal conduct are to be read as allegations, absent citation to official judicial outcomes, consistent with the presumption of innocence until proven guilty according to law.<sup>25</sup> Even as allegations or unconfirmed statements, all references to instances of THB/OR (whether the subject of formal proceedings or not) in this study should be read as a summary or reflection of other sources, rather than as a conclusion of established facts resulting from an interpretation of those sources.

In general, a more detailed analysis of the challenges and obstacles resulting from the transnational aspect of THB/OR networks, as well as of responses and any lessons learned by law enforcement officials, would require further direct access to the investigators and prosecutors pursuing these cases.

## 1.5 Terminology

The terminology used in the literature and in the media regarding THB/OR is inconsistent. This inconsistency appears to reflect, in part, the broader vexed moral, legal and policy debates surrounding THB/OR. In particular, different terms are used for the persons whose kidney ends up in a THB/OR network, including “donor”, “seller”, “supplier”, “victim” and “commercial living donor”. A similar range of terms is also applied to persons who have a kidney implanted through a THB/OR network, including “recipient”, “buyer” and “purchaser”. Each of these terms can convey distinctly different moral, legal policy implications or biases. This study uses the term victim-donor to denote the person whose kidney is the commodity of a THB/OR network.

25 UN, *International Covenant on Civil and Political Rights* (16 December 1966), art. 14(2).

## CHAPTER II: THE LEGAL AND POLICY FRAMEWORK

### 2.1 The concept of THB/OR in law

Trafficking in persons for the purpose of organ removal is defined in the Palermo Protocol to the UN Convention Against Transnational Organized Crime, which provides in Article 3(a) that:

“*Trafficking in persons’ shall mean 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 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 of organs;***” [emphasis added]

This definition has been widely interpreted to entail three elements: an action, the means used to achieve that action, and the purpose (exploitation).<sup>26</sup>

Adopting the Palermo Protocol’s definition of “*trafficking in persons*”, the Council of Europe’s 2005 Convention on Action against Trafficking in Human Beings also enumerates the removal of organs as a form of exploitation that constitutes an element of trafficking.<sup>27</sup> In addition, the 2000 Council of Europe Convention on Human Rights and Biomedicine, and the 2002 Additional Protocol thereto on transplantation of organs, prohibits the financial gain from the sale of the human body and its parts as well as “*organ and tissue trafficking*”.<sup>28</sup>

As the 2009 Council of Europe/UN Study noted, there is no such legally binding instrument at the United Nations level which prohibits financial gain from the sale of the human body or its parts.<sup>29</sup> However, international organizations have repeatedly emphasized this principle. For example, in 2004, the World

Health Assembly called on member states to prevent the sale and purchase of organs for transplantation. In 2008, the World Health Organization after four years of consultations issued its Guiding Principles on Human Cell, Tissue and Organ Transplantation, updating guiding principles of human organ transplantation issued in 1991. The 2008 Guiding Principles include a prohibition on the sale or purchase of organs, grounding the principle in human dignity and underscoring the link between sale of organs and human trafficking.<sup>30</sup>

Principles regarding organ transplants were also reiterated and elaborated in the 2008 Declaration of Istanbul, following a conference convened by The Transplantation Society and the International Society of Nephrology. The Declaration of Istanbul, citing the World Health Assembly’s call to prevent the sale and purchase of organs, urges the prohibition of transplant commercialism, defined as the “*policy or practice in which an organ is treated as a commodity, including by being bought or sold or used for material gain*”.<sup>31</sup>

As most OSCE states criminalize the sale and purchase of organs, as well as certain irregularities in the conduct of organ transplants, a key challenge to countering THB/OR is ensuring that THB/OR is indeed charged as a trafficking offence, which generally carries more severe penalties, but is also more difficult to investigate and prosecute.

As in other forms of trafficking, the issue of consent can arise in THB/OR cases, particularly because victims may sign consent forms which are dictated by organ transplant regulations. However, the Palermo Protocol and the Council of Europe trafficking definition provide that any consent is vitiated where one of the “*means*” of the crime have been used — “*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*”. Even absent the more overt forms of coercion, any apparent consent

26 See A. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010), p. 29.

27 Council of Europe, *Convention on Action against Trafficking in Human Beings* (2005), art. 4(a).

28 Council of Europe, *Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin* (2002), arts. 21–22; Council of Europe, *Convention on Human Rights and Biomedicine* (1997), art. 21. The prohibition against financial gain from the human body or its parts is Council of Europe legal acquis: Council of Europe and United Nations, Op. Cit., p. 12.

29 Council of Europe and United Nations, Loc. Cit.

30 UN World Health Organization (WHO), *Guiding Principles on Human Cell, Tissue and Organ Transplantation* (2008), Guiding Principle 5 and commentary thereto; also see UN World Health Assembly, *Resolution Human organ and tissue transplantation*, WHA 63.22 (Geneva, 21 May 2010), p. 2, endorsing the updated WHO Guiding Principles and identifying areas of progress to optimize donation and transplantation practices.

31 The Transplantation Society and International Society of Nephrology, *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism* (2008), p. 1228.



would be vitiated where, for example, the victim has been defrauded or been deceived as to the nature of organ removal surgery or its consequences.

Furthermore, a likely relevant factor relating to the “means” element of trafficking will be whether the donor’s economic desperation, social marginalization, membership in a minority group, legal status, or other circumstance can give rise to the abuse of the position of vulnerability. While, of course, in any particular case, this issue will ultimately be determined by a court of law, the Explanatory Report to the Council of Europe trafficking definition suggests that these factors are indeed relevant. Under the Explanatory Report, “*abuse of a position of vulnerability [means] abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological...or economic. The situation might, for example, involve [...] economic dependence [...]. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited*”.<sup>32</sup> The Explanatory Report further specifies that the requisite “means” would be established in “*abusing the economic insecurity or poverty of an adult hoping to better their own and their family’s lot*”.<sup>33</sup> This study, therefore, follows the standard applied in most academic and media articles in referring to cases where a donor has been compelled by economic pressures to sell an organ as consent that is, under international norms, irrelevant.

In the Medicus Case which is discussed further below, the Appeals Panel of the EULEX Court in Pristina confirmed the charges of trafficking in human beings which had been dismissed by the Confirmation Judge, precisely on the question of the means of the abuse of a position of vulnerability.<sup>34</sup> The Appeals Panel found there was prima facie evidence that the victims had been coerced into the organ removals, either through abuse of power or a position of vulnerability, or through receiving payments or benefits to achieve the consent of a person having control over another person:

“*The persons who had come to Kosovo to donate their organs did not do so to assist a family member or for any of the usual reasons that people in a*

*civilised society chose freely to donate their organs. They did so because of their acute position of vulnerability. To suggest that persons would travel to a foreign country, endanger their health through such an invasive procedure on the say so of a stranger runs (if they were not in a position of vulnerability) contrary to common sense. The vulnerable position of YA and the balance of power in his relationship with those organising the operation is evidenced not only through his statements (statement of YA dated 5 November 2008 ‘I needed the money, I had a lot of debts, and thought of a better life’ and the fact he was approached in a park in Turkey to which he referred in his statement of 8 November 2008) but by the timing between his operation and him being taken to the airport and further by his state of health when he was at the airport.”<sup>35</sup>*

The Appeals Panel further goes on to conclude that a factual analysis allows no other conclusion but an inference of coercive means, via a manipulation of the vulnerability of the victim:

“*There is a strong inference that if he was not in such a vulnerable position he would have at least been able to demand better aftercare and choose whether or not to travel in his weakened physical state. His position of vulnerability is also evidenced by other matters such as his lack of a contract and the complete absence of any lawful enforcement mechanism to obtain payment despite his having donated a kidney.”<sup>36</sup>*

A report on the meaning of “abuse of a position of vulnerability” has recently been issued by UNODC which further details how the courts of certain countries have applied that concept.<sup>37</sup> The issue paper finds that “abuse of a position of vulnerability” is broadly understood by practitioners to encompass, among vulnerability factors, age, illness, gender and poverty. The paper also finds that, while “abuse of a position of vulnerability” is rarely the sole “means” used to establish a trafficking charge, evidence of this means has been relevant to establishing other elements of trafficking such as fraud or deception, as well as to resolution of any issues over apparent consent. In THB/OR, evidence of the “abuse of a position of vulnerability” may be particularly relevant, given not only the desperate poverty behind the susceptibility of most victim-donors. In this form of trafficking, given the medical-technical issues involved, more attention

32 Council of Europe, *Convention on Action against Trafficking in Human Beings*, Explanatory Report (2005), para. 83.

33 *Ibid.*, para. 84.

34 EULEX, Rule of Law Mission, District Court of Pristina, *Decision of the Appeals Panel*, P nr. 209/10, P Nr 340/10, KA Nr 278/10 and KA 309/10 (27 April 2011), pp. 5–6. Please note at the time of this writing, the trial judgment on the Medicus Case was unavailable although the verdict was issued in April 2013.

35 *Ibid.*

36 *Ibid.*

37 UNODC, *Issue Paper: Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons* (2013).

could perhaps be given by law enforcement authorities to lack of education or knowledge as a relevant vulnerability, given the inability of most victim-donors to assess the deceptive information regarding the potential health consequences of losing a kidney. At the least, this form of vulnerability should support proof of other “means” or “acts” in establishing a trafficking charge.

A broader set of legal issues is how conduct to be criminalized under the Palermo Protocol is legally qualified or charged by national law enforcement and prosecutorial authorities. This issue is addressed further below, in Chapter V on the Criminal Justice Response and Challenges.

## 2.2. The Policy Context of THB/OR

This study is focused predominantly on the current situation of THB/OR in the OSCE region, the *modus operandi* of THB/OR networks, and an analysis of the law enforcement response to these networks. Detailed treatment of the much broader and more complex ethical, moral and policy context within which these issues arise is beyond its scope. Nonetheless, at the risk of oversimplification and incompleteness, a brief outline of this broader context is provided here because it may be relevant not only to situate this study within that context, but also to indicate some specific ways in which that broader context may impact directly on legal proceedings related to trafficking networks.

Much of the ethical, moral and policy debate around organ transplantation surrounds the question of regulated markets. Those in favor of the creation of a regulated market would seek to legalize the purchase and sale of kidneys for financial gain, albeit with oversight and various protections for both the purchaser and seller.<sup>38</sup> They point to the numbers on transplant waiting lists, including the growing numbers who die waiting, and argue that prohibition of organ sales has only led to a vast black market for organs where circumvention of laws is rewarded. Some supporters of this approach point to the sole regulated market, in Iran, as being effective in reducing waiting lists for organs.

The opposing argument is that any such effort would, in essence, only formalize the systematic exploitation and brutalization of the poor for the enrichment of the wealthy and leave un-pursued (or even have a negative impact on) the many alternative steps that could yet be taken to increase the availability of organs through altruistic and deceased donations to alleviate demand.<sup>39</sup> Proponents of this view dispute assertions that the regulated market in Iran has been successful, arguing that the Iranian organ market has, in fact, become precisely the legally sanctioned process of exploiting the poor in the most literally visceral terms that any market in organs would become in practice. Those favoring a regulated market, it is argued, ignore or minimize the evidence that organ sellers suffer serious, negative health, economic and social consequences.

Fundamental shifts in this broader context, whether arising from scientific developments or from changes in policy will of course have an impact on trafficking networks. In the meanwhile, it is possible that elements of this debate may have an impact, overtly or subtly, on aspects of the criminal justice response of authorities to those involved in THB/OR networks, including in the exercise of prosecutorial discretion<sup>40</sup> and in sentencing, where parameters for relevant factors can be very broad.

38 See, e.g., F. Ambagtsheer and W. Weimar, “A Criminological Perspective: Why Prohibition of Organ Trade Is Not Effective and How the Declaration of Istanbul Can Move Forward”, *American Journal of Transplantation*, Volume 12 (3) (March 2012); S. Satel, “The Market for Kidneys, Livers and Lungs: It already exists, but unwise laws push it dangerously underground”, *Wall Street Journal* (8 November 2011), <<http://online.wsj.com/article/SB10001424052970204554204577023623689583052.html>>, accessed 23 May 2013.

39 For a clear, concise summary of arguments opposing the regulations of markets, see D. Budiani-Saberi & D. M. Golden, “Advancing Organ Donation Without Commercialization: Maintaining the Integrity of the National Organ Transplant Act”, *American Constitution Society for Law and Policy*, Volume 7(1) (June 2009).

40 E.g., S. Satel, Op. Cit.: suggesting that prosecutors’ pursuit of the broker alone in the first USA case of violation of organ transplant laws reflects a view that trying to save one’s life should not be punished.

## CHAPTER III: RESEARCH FINDINGS ON THB/OR

### 3.1 Global Context

The spread of advances in medicine has brought the technology and skills to perform organ transplant surgeries to countries across the globe. Transplanted organs can come from deceased or living donors.<sup>41</sup> While transplants of a number of different organs (including the lung, cornea and liver) are possible, the most common organ transplanted is the kidney, which is generally the technically simplest of organ transplants. The cases cited in this study deal exclusively with kidney transplants.

Trafficking of persons for the purpose of organ removal has long remained a subject of rumor and urban myth.<sup>42</sup> For example, the increasing capacity for organ transplants gave rise from time to time to rumors of “organ theft” – such as the unwilling or unsuspecting removal of an organ from an individual said to be kidnapped, murdered or otherwise coerced or deceived.<sup>43</sup> The more lurid of these rumors were determined to be untrue.<sup>44</sup>

Since the 1980s, however, a growing body of fieldwork and other research by journalists and medical anthropologists has documented cases of such trafficking, particularly in the past 15 years.<sup>45</sup> This research has shed light on this phenomenon, in significant part, through detailed portraits of victims, recipients and those engaged in directing or otherwise furthering the organ removal networks.<sup>46</sup>

As this body of work was developing, there were occasional reports by international organizations and NGOs that sought to provide a comprehensive overview of the status of human trafficking for organ

removal in the early 2000s. As information about specific cases from official sources remained otherwise scarce,<sup>47</sup> these reports were often limited to summarizing and collating work already done by journalists and social scientists.<sup>48</sup> In particular, these overview reports, relied for their descriptions of the THB/OR networks on academic research carried out by medical anthropologist Nancy Scheper-Hughes and Organs Watch, a programme she co-founded to monitor and research THB/OR and related issues around the world.

There were five reports that provided an overview of the state of knowledge of THB/OR and related issues. In 2003, rapporteur Ruth-Gaby Vermot-Mangold prepared a report on “Trafficking in Organs in Europe” for the Social, Health and Family Affairs Committee of the Council of Europe Parliamentary Assembly. In 2004, the German agency for international co-operation, “Deutsche Gesellschaft für Technische Zusammenarbeit”, (GTZ as it was known then), issued its report “Coercion in the Kidney Trade?: A background study on trafficking in human organs worldwide.” In 2006, the then UN Secretary-General issued a report to a commission of the Economic and Social Council on “Preventing, Combating and Punishing Trafficking in Human Organs”, in response to a 2004 General Assembly resolution on “Preventing, combating and punishing trafficking in human organs”<sup>49</sup>, which requested a study on the extent of trafficking in human organs. In 2008, UN.GIFT convened a workshop on THB/OR as part of the Vienna Forum, including a background paper.<sup>50</sup> In 2009, a Joint Council of Europe/United Nations report was issued on “Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of organ removal”.

Each of these reports underscored the absence of reliable information about THB/OR (as well as with other forms of organ trafficking). The 2006 UN report, for example, emphasizes at its outset the absence of reliable data, noting that “[d]etermining the real extent of trafficking in human organs and understanding the

41 For more general information on organ transplants, see e.g., <<http://www.unos.org/donation/index.php>>, accessed 23 May 2013.

42 N. Scheper-Hughes, “The Global Traffic in Human Organs”, *Current Anthropology*, Volume 41(2) (April 2000), p. 203.

43 For the broader social context in which these rumours may arise in Brazil, for example, see: N. Scheper-Hughes, *Death Without Weeping: The Violence of Everyday Life in Brazil* (University of California Press: Berkeley, 1992), pp. 233–239.

44 See Bellagio Task Force, *The Bellagio Task Force report on transplantation, bodily integrity, and the International Traffic in Organs* (1997); For example, “[n]ot one documented case exists of murdered or kidnap or sale of children for their organs. Indeed, each purported case, including that presented [in] “Baby Part”, produced under BBC auspices, has been effectively rebutted”.

45 See: PACE SHFAC, *Trafficking in organs in Europe* (2003), para. 9; also, see N. Scheper-Hughes, “Mr Tati’s Holiday and João’s Safari: Seeing the World via Transplant Tourism”, *Body & Society*, Volume 17(2–3) (June/September 2011), p. 64 (organized transplant tourism began in the 1970s, when patients from the Gulf States would travel abroad for transplant surgeries).

46 See, e.g., N. Scheper-Hughes, *Op. Cit.*

47 Interview with Elaine Pearson on 17 October 2011.

48 See, e.g., Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), *Coercion in the kidney trade? A background study on trafficking in human organs worldwide* (2004).

49 United Nations General Assembly, *Resolution Preventing, combating and punishing trafficking in human organs*, A/Res/59/156 (3 February 2005).

50 UN.GIFT/UNODC, *The Vienna Forum to fight Human Trafficking, 13–15 February 2008, Austria Center Vienna*, Background Paper to the Workshop: Human Trafficking for the Removal of Organs and Body Parts (2008), <<http://www.unodc.org/documents/human-trafficking/2008/BP011HumanTraffickingfortheRemovalofOrgans.pdf>>, accessed 3 June 2013.

*nature and modus operandi of such crime are difficult because of the clandestine nature of the problem and the different actors involved.... [and that such trafficking] has not yet received priority attention by Member States or close scrutiny*".<sup>51</sup> The report identifies specific factors that aggravate the difficulty of obtaining information, including the "lack of a uniform definition [of organ trafficking] and the absence of consistent statistics and criminal reports".<sup>52</sup> While referencing some responses from a formal questionnaire the Secretary-General had sent to all Member States, official data from states evidently was not an adequate source of information. With such constraints, the 2006 report also relied, for its very limited descriptions of the *modus operandi* of organ traffickers, on the work of Scheper-Hughes and on media reports.

More recent reports that address human trafficking for organ removal have continued to underscore the scarcity of information about this form of trafficking.<sup>53</sup> The 2009 Joint Study by the Council of Europe and the United Nations notes too that relevant data is incomplete and that even qualitative descriptions suffer from the limited amount of information from official sources. Drawing again on academic research and media reports, the Joint Study provides an extensive overview of the legal and policy issues related to THB/OR and trafficking in OTC, but still underscores the lack of information.<sup>54</sup>

As mentioned earlier, the UNODC Global Report on Trafficking in Persons 2012 asserts that persons trafficked for organ removal have been detected in 16 countries in all regions of the world.<sup>55</sup> The share of victims trafficked for organ removal accounted for about 0.1–0.2 per cent of the total number of detected cases for the reporting period. While this constitutes only a fraction of all cases, the geographical spread of those detected cases is said to be significant in the report. Given that it appears that all regions are affected by trafficking for organ removal, the report suggests that

the phenomenon is not as marginal as the number of victims officially detected would suggest.<sup>56</sup>

Despite continuing limitations of this nature, the growing body of media reporting, academic research, human rights investigations, and other research has been rich enough to offer a picture of THB/OR and other illicit organ trade, across the world. It is clear that such trafficking is a truly global phenomenon, growing over the last ten to 15 years, with THB/OR occurring in every continent, involving both developed and developing countries. Some of the countries frequently identified as locations of greater organ trafficking activity, whether as a locus of donors, recipients or brokers in THB/OR, include Brazil, Pakistan, India, China, the Philippines, Egypt, the Gulf States (including Kuwait, Saudi Arabia, Bahrain, Oman and the United Arab Emirates), Israel, Turkey, Colombia, and Moldova.<sup>57</sup>

It is also clear that a dominant dynamic of THB/OR is the exploitation of acute poverty for the procurement of organs. The 2006 UN report states that the "general trend is for the routes [of organ trafficking] to lead from South to North, from poor to rich [...] mostly target[ing] the poor and vulnerable members of the population".<sup>58</sup> The report states further that "[i]t appears that individuals in many developing countries are being exploited and that the selling of organs is the last resort to alleviate, though only temporarily, extreme poverty".<sup>59</sup> Other international organizations have emphasized that the exploitation of the poor and vulnerable is a fundamental aspect of the organ market. In 2004, the World Health Assembly specifically called on Member States to protect "the poorest and vulnerable groups from 'transplant tourism' and the sale of tissues and organs".<sup>60</sup>

The difficulty of deriving data from the growing body of qualitative research has also been noted by a

51 UNODC CCPCJ, *Report of the Secretary-General on preventing, combating and punishing trafficking in human organs* (2006), paras. 4 and 3.

52 *Ibid.*, para. 5.

53 E.g., Y. Shimazono, "The state of the international organ trade: a provisional picture based on integration of available information", *Bulletin of the World Health Organization*, Volume 85(12) (2007), p. 1: "Although the international organ trade is regarded as an important health policy issue, its current state remains obscure because of scarce data and the lack of efforts to synthesize available data".

54 Council of Europe and United Nations, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, Joint Council of Europe/United Nations Study (2009), pp. 57–59.

55 See footnote 12.

56 *Ibid.*

57 Bellagio Task Force, Op. Cit.; D. A. Budiani-Saberi, F. L. Delmonico, "Organ trafficking and transplant tourism: a commentary on the global realities", *American Journal of Transplantation*, Volume 8(5) (2008), pp. 926–927; Presentation by Michael Bos at the *ELPAT Session of the 22nd Congress of TTS*, "An update on global organ trafficking", Sydney (10–14 August, 2008).

58 UNODC CCPCJ, Op. Cit., para. 4, citing (and essentially quoting) Nancy Scheper-Hughes, "Keeping an eye on the global traffic in human organs", *Lancet*, Volume 361(9369) (2003), pp. 1645–1648 and pp. 29–71; N. Scheper-Hughes, "Parts Unknown: Undercover Ethnography of the Organs-Trafficking Underworld", *Ethnography*, Volume 5(1) (2004), p. 37.

59 E.g., UNODC CCPCJ, Op. Cit., para. 16.

60 UN World Health Assembly, *Resolution Human organ and tissue transplantation*, WHA57.18 (22 May 2004), para. 57.

leading organ transplant expert.<sup>61</sup> Despite the absence of comprehensive hard data, the international medical community has provided some estimates of the scale of illicit organ transplants. Several reports by international organizations have cited the estimate by the World Health Organization that five to ten per cent of the kidney transplants carried out each year around the world are the result of “transplant tourism”, with around 66,000 kidney transplants conducted globally in 2005.<sup>62</sup> The then President-Elect of The Transplantation Society has stated that about 5,000 people sell organs illegally each year.<sup>63</sup> It is unclear what percentage of these estimates would fall within the definition of THB/OR (as opposed to trafficking in OTC or other illegal transplant that may not meet the definition of THB/OR).

### 3.2 OSCE Region

As with the global picture for THB/OR, a clear picture of this form of trafficking in the OSCE region is elusive. A 2011 assessment by Europol on organ trafficking likewise noted that there is “*very little information at the EU level on this form of trafficking*”, though also noting that the scarcity of information may reflect in part the comparatively high level of security of EU health infrastructures.<sup>64</sup> In 2013, EUROSTAT released updated official statistics on reported cases of human trafficking within the EU for 2008–2010, including on THB/OR. It is important to note however that the EUROSTAT figures do not consider THB/OR in a separate category but rather include it among the category of “trafficking in other forms”, together with “criminal activities” and “selling of children”, which together

account for 14 per cent of identified and presumed victims.<sup>65</sup> The study reports that the lack of data on these other forms of human trafficking means that it is not possible to identify trends in terms of increases or decreases in reported cases.

The responses of Member States to questionnaires on organ trafficking, compiled in a 2004 report by the Council of Europe, sheds some light on this form of trafficking,<sup>66</sup> as does the 2011 Europol assessment which draws on the responses of Member States. But, as with the global picture, most information continues to come from academic research, media reports, and NGOs.

The investigation and prosecution of a number of cases in the OSCE region now provides a means of further developing the outline of THB/OR set out in those earlier reports. While official records are still not readily accessible for most of the cases addressed here, the actual conduct of trials and judicial outcomes, even as reported in media reports, provide concrete information on the approaches to investigating and prosecuting these cases and the challenges those efforts have faced. The cases referenced in this report are summarized in Annex A.

There are two broad aspects of the current situation in the OSCE region addressed here. The first is the scope and scale of the occurrence of THB/OR, to the extent it can be described from the available data. The second is the scope of investigations and prosecutions of THB/OR.

#### 3.2.1 Scope and Scale of THB/OR

Reports of THB/OR and related crimes in the OSCE region date back to the 1990s.<sup>67</sup> As the trafficking of persons for organ removal expanded globally, it has also extended to countries across the OSCE region whether as the departure points for organ recipients travelling for transplants abroad, as sources of organ donors, or as the locus of transplant surgeries.

61 J. Interlandi, “Not Just Urban Legend”, *Newsweek* (9 January 2009), <<http://www.thedailybeast.com/newsweek/2009/01/09/not-just-urban-legend.html>>, accessed 26 May 2013, quoting Dr. Francis Delmonico.

62 See, e.g., UN World Health Organization, “WHO Proposes Global Agenda on Transplantation”, Press Release (30 March 2007), <<http://www.who.int/mediacentre/news/releases/2007/pr12/en/index.html>>, accessed 26 May 2013; transplant tourism makes up ten per cent of global transplants; also cited in D. A. Budiani-Saberi, F. L. Delmonico, Op. Cit., pp. 925, 927. The five to ten per cent estimation appears to have been part of Yosuke Shimazono’s presentation at the WHO Second Global Consultation, although it does not appear in the section of the 2007 Report summarizing his presentation. In his November 2007 paper, Shimazono states that “*the total number of recipients who underwent commercial organ transplants overseas may be conservatively estimated at around 5 per cent of all recipients in 2005*”: see Y. Shimazono, “The state of the international organ trade: a provisional picture based on integration of available information”, *Bulletin of the World Health Organization*, Volume 85(12) (2007), p. 12.

63 Dr. Francis Delmonico, cited in Michael Smith, Daryna Krasnolutska and David Glovin, “Organ Gangs Force Poor to Sell Kidneys for Desperate Israelis”, *Bloomberg Markets Magazine* (1 November 2011), <<http://www.bloomberg.com/news/print/2011-11-01/organ-gangs-force-poor-to-sell-kidneys-for-desperate-israelis.html#print>>, accessed 26 May 2013.

64 Europol, *Trafficking in Human Organs – Europol perspective* (2010), p. 5.

65 European Commission, EUROSTAT, *Trafficking in human beings* (2013), <[http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130415\\_thb\\_stats\\_report\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130415_thb_stats_report_en.pdf)>, accessed 3 June 2013.

66 Council of Europe Steering Committee on Bioethics (CDBI)/European Health Committee (CDSP), *Replies to the questionnaire for member states on organ trafficking* (2004).

67 M. Jimenez and N. Scheper-Hughes, “‘Doctor Vulture’ At the Centre of Istanbul’s illicit kidney trade is a shadowy 44-year-old surgeon whose transplant ‘donors’ are not always willing ones”, *The [Toronto] National Post* (30 March 2002); trafficking beginning at the end of the 1990s; N. Scheper-Hughes, “The Global Traffic in Human Organs”, *Current Anthropology*, Volume 41(2) (April 2000), pp. 193–194; organ recipients from Gulf States and Israel travelling to Eastern Europe for organ transplants in the 1990s.

As noted, however, obtaining reliable data and statistics on THB/OR remains very difficult in the OSCE region, much as in the rest of the world. The purchase and sale of organs is illegal in nearly all countries and is, therefore, conducted secretly, as is generally true of criminal conduct, and organized crime in particular. Thus, even though THB/OR incorporates many elements of respected institutions (such as hospitals) and professionals (including doctors) there remains, nonetheless, no accessible way to measure this form of trafficking with specificity. Illegal transplants tend to be concealed or disguised as, for example, altruistic donations between relatives. The integration of career criminals and medical professionals in these trafficking networks may even have compounded the secrecy of these activities, as medicine has its own principles for confidentiality, as discussed further below. In addition, as with other forms of trafficking, both the victims and the organ recipients have strong reasons for maintaining their involvement a secret, including for fear of persecution, as well as feelings of shame and guilt, rendering detection difficult.

Reports by academics, journalists and NGOs identify areas of more prevalent involvement in THB/OR activities in Turkey, CIS states including Moldova and Ukraine, as well as other Eastern European countries, with links extending out to the west to the USA, Canada and South America, to the east to Israel and Asia, and to the south to South Africa. These reports are to some extent corroborated by the few instances in which national authorities have registered their own assessments of the occurrence of trafficking for organ removal. For example, in 2004, the Council of Europe issued a compilation of responses by Member States to a questionnaire on organ trafficking. Six Member States responded that they were aware of allegations that organs had been illegally removed within their borders: Armenia, Estonia, Georgia, Russia, Turkey, and Ukraine.<sup>68</sup> In addition, six Member States responded that they were aware of allegations that their residents had travelled abroad to illegally procure organs: Albania, Belgium, Croatia, Cyprus, France, and the United Kingdom.<sup>69</sup> In their detailed responses, these Member States specified the destinations for those seeking organs as: China, India and

Turkey.<sup>70</sup> Only Georgia acknowledged reports that its citizens had travelled abroad to sell organs.<sup>71</sup>

While these sources paint a consistent picture as to the geographical scope of THB/OR, measures of scale are elusive. The sparse data contained in the 2004 Council of Europe questionnaire offer little guidance as to overall numbers when juxtaposed with the scale suggested by academic research and media articles. In the absence of such data, a sense of the scale involved can only be hinted at by reference to the major THB/OR network cases.

Moldova, in particular, has been a focus of field research by Scheper-Hughes, as well as by Moldovan NGOs and journalists. While Moldovan authorities have publicly acknowledged that they charged seven persons with crimes involved in trafficking 11 persons, the Renal Foundation, a Moldovan NGO, has documented 31 victims who have sold a kidney.<sup>72</sup> Through broader research, Scheper-Hughes estimates that there are more than 300 victims.<sup>73</sup> In the Shalimov Institute Cases in Kyiv, Ukraine, local NGOs indicate that there were 38 victims, of which at least 25 were Ukrainians,<sup>74</sup> with the others from Moldova, Russia, Belarus and Uzbekistan.<sup>75</sup> In the Medicus Cases, one of the few THB/OR network cases in which the allegations against the defendants is publicly accessible, the indictments allege that at least 20 to 30 victims had organs removed and provide a list of 24 victims during a seven-and-a-half month period.<sup>76</sup> The St. Ekaterina Cases involved 20 victims. The Netcare Cases are reported to have involved over a hundred illicit organ removals,<sup>77</sup> although the number of victims originating from the OSCE region is unclear.

The increasing information available about these cases provides some indication of the scales involved,

68 Council of Europe Steering Committee on Bioethics (CDBI)/European Health Committee (CDSP), Op. Cit., p. 57. Ukraine actually did not respond "yes" to the question about allegations of illegal organ removal, but did expressly state in its comments that two pretrial investigations were ongoing in the Donetsk and Kharkov regions, under grounds of potential offences under Art. 143 of its Criminal Code ("Illegal activities related to transplantation of organs or other anatomical material of a person").

69 Ibid., p.59.

70 Croatia's response only stated "Far East" as the destination.

71 Council of Europe Steering Committee on Bioethics (CDBI)/European Health Committee (CDSP), Op. Cit., p. 59. Albania provided an ambiguous answer, which likely was intended also to acknowledge that it was aware of reports that citizens had travelled abroad to sell organs.

72 Summary report provided to the author by the Renal Foundation on 28 November 2011.

73 See N. Scheper-Hughes, "Parts Unknown: Undercover Ethnography of the Organs-Trafficking Underworld", *Ethnography*, Volume 5(1) (2005), p. 49: "According to Moldovan police and local human rights activists, more than 300 Moldovans have sold their kidneys abroad since 1998".

74 Interview with NGO Suchasnyk, 2 December 2011.

75 Irina Sandul, "Blow to the kidneys. On corruption in the organ transplant", *Kyiv Post* (21 December 2010), <<http://www.kyivpost.ua/ukraine/article/udar-po-pochkam-o-korruptcii-pri-transplantologii-organov-v-ukraine-11596.html>>, accessed 26 May 2013

76 EULEX, Rule of Law Mission, Kosovo Special Prosecution Office, *Indictment of S. and H.* (detailing 24 organ removal surgeries from 8 March 2008 to 31 October 2008)

77 J. Allain, "Trafficking of Persons for the Removal of Organs and the Admission of Guilt of a South African Hospital", *Medical Law Review*, Volume 19(1) (2011).

although hardly sufficient information to estimate the total figures for THB/OR in the OSCE region. At the least, even this brief overview of THB/OR networks cases shows that trafficking for organ removal can involve hundreds of victims in the space of a few years.

### 3.2.2 Gender Issues

The 2010 OSCE Annual Report of the SR expressly noted the poorly understood, thus far, impact of THB/OR on girls and women, citing the 2006 Council of Europe/UN Study.<sup>78</sup> The lack of clear evidence of gender impact is also reflected in the latter report, which states that the “[f]ew data available provide the impression that the gender issue, if it does exist in this case, might vary from country to country relying basically on cultural and societal issues”.<sup>79</sup>

The Council of Europe/UN report does note that “live donation is, even under legal circumstances, more frequently performed by females”.<sup>80</sup> It further notes the “female predominance as commercial living donors in some Asian countries”, citing a study on the selling of kidneys in India.<sup>81</sup> However, other studies indicate that the donors are predominantly male in other countries where the sale of organs is a significant phenomenon.<sup>82</sup> Indeed, the Council of Europe/UN report itself goes on to acknowledge that “the female predominance in the available reports is not constant” and that studies in Egypt and Iran have revealed the donors to be predominantly male.<sup>83</sup> The report thus finds that the “available information does not allow us to conclude that there is a gender issue” related to THB/OR.<sup>84</sup>

There is likewise a marked paucity of data on the gender dimension of THB/OR networks in the OSCE region. The limited information available on Moldova

suggests that the organ donors are predominantly male.<sup>85</sup> The Renal Foundation in Moldova has identified 31 victims of THB/OR networks, of whom only three were women.<sup>86</sup> On the other hand, the list of victims in the Medicus Cases, while not expressly designating gender yields at least seven out of 24 names that, on superficial review, may be identified as typically female names.<sup>87</sup>

Although the available information may, thus far, not reveal a clear pattern of victimization of women, the significant point for the purpose of identifying victims may be that THB/OR networks tend to target the most vulnerable in society, primarily focusing on acute poverty, but also taking advantage of a lack of education and other indicia of weaker social position. To the extent that societal factors render women disproportionately vulnerable to poverty in this way, special attention should be focused on women as targets and victims of THB/OR. This broader point is implied in the 2006 Council of Europe/UN Study, which notes economic and educational background as aspects of the vulnerability to THB/OR networks.<sup>88</sup> More qualitative research regarding the manner in which women decide to donate an organ may also shed light on their vulnerability to this form of trafficking. The Council of Europe/UN Study cites instances in which women were pressured to sell an organ by their husband, a dynamic that in particular requires further research.

In limiting the inquiry on the gender dimension to the question of whether women or men are in the majority among victims, international organizations also risk underestimating the impact of THB/OR on women. Even where the majority of victim-donors in a given population are men, further inquiry may yet reveal that the negative consequences and health prospects for donors fall disproportionately on women and children, as men, who may be the sole wage earner in a household, become unemployable due to poor health, exacerbated by social stigmatization.

### 3.2.3 Children

Reports of trafficking in children for the purpose of organ removal have circulated for years, though there has been little confirmation of such practices in the reports of international organizations. However, the Netcare Cases have confirmed that five of the

78 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Combating Trafficking as Modern-Day Slavery: A Matter of Rights, Freedoms and Security, 2010 Annual Report of the Special Representative for Combating Trafficking in Human Beings* (2010), p. 17.

79 Council of Europe and United Nations, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, Joint Council of Europe/United Nations Study (2009), p. 59. Likewise, the 2006 UN study found the gender aspect to be “less clear” than other characteristics of the victims (such as extreme poverty and lack of education) and that it varies from region to region: see UNODC CCPCJ, *Report of the Secretary-General on preventing, combating and punishing trafficking in human organs* (2006), para. 15.

80 Council of Europe and United Nations, Op. Cit., p. 59. For example, in the USA, wives are 70 per cent of the donors in spousal transplants, see A. J. Ghods, “Ethical Issues and Living Unrelated Donor Kidney Transplantation”, *Iranian Journal of Kidney Diseases*, Volume 3(4) (2009), p. 188.

81 Council of Europe and United Nations, Op. Cit., p. 60.

82 UNODC CCPCJ, Op. Cit., para. 15 (Brazil and Moldova).

83 Council of Europe and United Nations, Loc. Cit.

84 Ibid.

85 UNODC CCPCJ, Loc. Cit.

86 Summary report provided to the author by the Renal Foundation on 28 November 2011.

87 EULEX, Rule of Law Mission, Kosovo Special Prosecution Office, *Indictment of S. and H.*

88 Council of Europe and United Nations, Op. Cit., pp. 60, 88 and 95, referring to the “feminisation of poverty”.

trafficking victims were minors, bringing even those unconfirmed reports into reality.<sup>89</sup> There may be other more isolated cases, including one from Ukraine in 2007 in which a mother was convicted of offering her child's kidney for sale over the Internet.<sup>90</sup> Special measures seeking to focus on children as a group vulnerable to THB/OR include the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which specifically mandates criminalization of the trafficking of a child for the purpose of the transfer of organs for profit.<sup>91</sup> The Palermo Protocol and the Council of Europe Trafficking Convention itself provide a greater degree of protection for children by eliminating the need to prove that the child was subjected to one of the means set out in the trafficking definition.<sup>92</sup>

### 3.2.4 Cases Analysed in the OSCE Region

The challenges to determining the extent of THB/OR have been noted above. As reflected in earlier studies, it is likewise difficult to obtain a clear picture of the scope of investigations and prosecutions into such trafficking. The 2006 report of the UN Secretary-General attributed this, in part, to the fact that in some countries, forms of trafficking in organs may be reported as different offences as well as to the fact that organ trafficking has not received priority attention by countries.<sup>93</sup> As with assessing the scale of trafficking for organ removal overall, some information as to investigations into such trafficking rings can be gleaned from the limited self-reporting through the 2004 Council of Europe questionnaire. Ultimately, without direct access to the relevant officials, the only method for scoping the response of law enforcement authorities to THB/OR has been through review of the academic literature and through Internet searches, supplemented by e-mail and telephone inquiries with experts, including local NGOs located in some of the countries involved.

89 Three of the minors were from Israel; two were from Brazil. Email to OSCE consultant, dated 23 April 2012, from South African official.

90 P. Holmes, *Manual for Law Enforcement Officers on Detection and Investigation of Trafficking Related Crimes* (Kyiv, 2009), developed at the request of IOM in Ukraine in co-operation with the Ministry of Interior and General Prosecutor's Office of Ukraine.

91 UN, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (25 May 2000), Article 3(1)(a)(i)(b).

92 UN, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (15 November 2000), Article 3(c); Council of Europe, *Convention on Action against Trafficking in Human Beings* (16 May 2005), Article 4(c).

93 UNODC CCPCJ, *Report of the Secretary-General on preventing, combating and punishing trafficking in human organs* (2006), para. 11.

The research conducted for this study has identified cases where formal criminal proceedings have been initiated involving THB/OR or related charges in the OSCE region: Azerbaijan, Belgium, Bulgaria, Israel, Kosovo, Moldova, Romania, South Africa, Turkey, Ukraine, as well as alleged incidents of THB/OR in Germany and the Netherlands. These cases have been investigated by authorities to varying degrees, with most brought to judicial proceedings in recent years. On the whole, regardless of the timing of investigations or judicial proceedings, the relevant time period for the activities of the THB/OR networks were generally in the early 2000s, although several involved activities into 2008 or later. As the initiation of major investigations and judicial proceedings against THB/OR networks is a relatively recent trend, a number of the more complex cases are still pending at trial. In addition to these THB/OR network cases, there are also a number of reports of cases that appear not to have been the subject of official investigations yet, such as the trafficking of Moldovan donors into Georgia, which has been researched by Scheper-Hughes.<sup>94</sup>

More recently, media reporting on THB/OR has also highlighted a set of allegations regarding the harvesting of organs in a detention centre shortly after the end of hostilities in Kosovo in 1999. Following the release of an investigative report by Council of Europe Parliamentary Assembly Rapporteur Dick Marty at the end of 2010,<sup>95</sup> a special criminal investigation into those allegations has been initiated under the auspices of the European Union.<sup>96</sup> Those allegations are not addressed in this study, as they relate to allegations of violations of international humanitarian law and do not involve allegations of trafficking in human beings, and as such, fall outside the mandate of the SR.

The THB/OR network cases that have been identified and analysed in this study are listed below. A summary of each of these cases is set out in Annex A. The plural term "cases" is used here to refer to the investigation and prosecution of a THB/OR network, as the networks generally result in multiple defendants and multiple victims. Procedural developments in some of these cases, including plea arrangements, have in fact converted some larger cases into two or more sets of criminal proceedings.

94 N. Scheper-Hughes, "Parts Unknown: Undercover Ethnography of the Organs-Trafficking Underworld", *Ethnography*, Volume 5(1) (2004), p. 52.

95 Council of Europe Parliamentary Assembly, Committee on Legal Affairs and Human Rights, *Inhuman treatment of people and illicit trafficking in human organs in Kosovo*, Dick Marty, AS/JUR (2010) 46 (12 December 2010).

96 "Kosovo organ trafficking: Williamson to head EU probe", *BBC News Europe* (29 August 2011), <<http://www.bbc.co.uk/news/world-europe-14706242>>, accessed 26 May 2013.



## Cases Analysed in the OSCE Region<sup>97</sup>

	Date of Allegations	Name of Transplant Facility	Criminal Proceedings Initiated in
1	2001–2003	Netcare St. Augustine's	South Africa, Brazil
2	2001–2004	Unconfirmed	Moldova
3	2002–	Medicus Clinic and others	Turkey
4	2004–2006	St. Ekaterina University Hospital	Bulgaria
5	2006	Unconfirmed	Bulgaria
6	2006–2007	Unconfirmed	Israel
7	2007–2008	Unconfirmed	Ukraine, Israel
8	2008	Medicus Clinic	Kosovo <sup>98</sup>
9	2009	Azerbaijan International University Medical Center	Azerbaijan
10	2009–2010	Shalimov Institute	Ukraine, Azerbaijan
11	2009–	Unconfirmed	USA

In addition, reported allegations from Germany are also included in the annex, although the case was “considered not pertinent to the category of trafficking in human beings”<sup>99</sup>. It is noted that cases that may involve allegations of THB/OR will not always of course be investigated or qualified as such. The USA case noted above, for example, was qualified as a case involving the violation of organ transplant laws and conspiracy.<sup>100</sup> Three further incidents or allegations of potential THB/OR were reported by the Dutch National Rapporteur on Trafficking in Human Beings in 2006–2007, 2010 and 2012 but in all three episodes, there was insufficient evidence to proceed with an investigation.<sup>101</sup>

97 See Annex A for summaries of each case. Note that the legal qualification of the criminal charges in these cases varies. In several of these cases, the crimes charged ultimately did not include a trafficking charge. Nevertheless, where the factors, including evidence introduced before the court, indicate elements that would be consistent with THB/OR under the Trafficking Protocol, the case has been analysed.

98 All references to Kosovo, whether to the territory, institutions or population, in this text should be understood in full compliance with United Nations Security Council Resolution 1244.

99 Letter from the Permanent Mission of the Federal Republic of Germany to the OSCE SR, 2 May 2012.

100 United States District Court, District of New Jersey, *United States of America v. L.R.*, Criminal Information (July 2009).

101 Dutch National Rapporteur on Trafficking in Human Beings, *Trafficking in Human Beings*, Seventh Report of the Dutch National Rapporteur (2010), p. 552, <<http://www.dutchrapporteur.nl/reports/seventh/>>, accessed 3 June 2013; Dutch National Rapporteur on Trafficking in Human Beings, *Human Trafficking for the purpose of the removal of organs and forced commercial surrogacy* (December 2012), pp. 9–10, <<http://www.dutchrapporteur.nl/reports/organ-removal-forced-commercial-surrogacy/>>, accessed 3 June 2013.

## 3.3 Financial Scale

The desperation of those in need of organ transplants and the desperate poverty of those ready to offer an organ to survive create the opportunity exploited by trafficking networks. As the Council of Europe’s Parliamentary Assembly Rapporteur, Ms. Vermot-Mangold, has noted: “*International criminal organizations have identified this lucrative ‘gap’ between organ supply and demand, putting more pressure on people in extreme poverty to resort to selling their organs*”.<sup>102</sup> The lead prosecutor in the Medicus Cases puts it more bluntly: the traffickers “*recognize the obscene profit that can be made in the expanding black market in body parts [...] It keeps happening because there is so much money in this.*”<sup>103</sup>

An appreciation of the financial scales involved in trafficking for organ removal, including price ranges and profit distributions within trafficking networks, provides another means of better understanding the incentives and *modus operandi* of these networks. An understanding of the economics of this criminal enterprise may also offer guidance on how policy makers and criminal justice actors can disrupt trafficking networks by influencing their cost and benefit analyses.<sup>104</sup> Like much of the information about THB/OR, the available data is unfortunately limited. However, even this limited data offer some insight into these networks.

In her 2003 report of the Social, Health and Family Affairs Committee to the Council of Europe’s Parliamentary Assembly, Rapporteur Vermot-Mangold reported that in parts of Eastern Europe, kidneys were sold for USD 2,500 to USD 3,000, while recipients paid

102 PACE SHFAC, *Trafficking in organs in Europe* (2003), para. 3. In fact, the “gap” is not between supply and demand, but is rather the differential between two markets. In the countries of recipients, there is a seller’s market where the inadequate supply of kidneys render the sick vulnerable to arguably exorbitant prices that represent an extraordinary markup of some 15 times what the supplier earns. In the countries of commercial donors, there is a buyer’s market where the absence of demand for kidneys and the desperate poverty of donors afford brokers an opportunity to purchase kidneys at bargain prices. The trafficking middleman is, in essence, a financial broker, profiting from this arbitrage between two or more markets around the world.

103 M. Smith, D. Krasnolutska and D. Glovin, “Organ Gangs Force Poor to Sell Kidneys for Desperate Israelis”, *Bloomberg Markets Magazine* (1 November 2011), <<http://www.bloomberg.com/news/print/2011-11-01/organ-gangs-force-poor-to-sell-kidneys-for-desperate-israelis.html#print>>, accessed 14 June 2013.

104 See OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings and United Nations Global Initiative to Fight Human Trafficking, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (2010), p. 24: “[C]riminal business are profit-driven. Crime, as a business, is a rational choice to increase profits”.

between USD 100,000 and USD 200,000.<sup>105</sup> Those figures reflected information published in academic articles and media reports.

These figures are also broadly corroborated by the allegations in the cases reviewed for this study. For example, in the Medicus Cases, where the relevant events took place during 2008, the prosecution alleged that kidney recipients paid between EUR 80,000 to 100,000 for a kidney, deposited into the bank account of one of the defendants.<sup>106</sup> The indictments indicate that one victim from Belarus stated that he was offered USD 10,000 (though paid only USD 8,000), while another from Turkey was promised USD 20,000. They indicated also that one defendant asserted that the cost for the kidney transplant was EUR 8,000 (or USD 10,350 at the time of writing).<sup>107</sup> In the Shalimov Institute Cases, media articles have quoted the head of the Ministry of Interior's section on combating cybercrime and trafficking as alleging that recipients paid between USD 100,000 and USD 150,000, while the victim-donors were paid USD 10,000.<sup>108</sup> The transplant surgeons were paid USD 15,000 to USD 20,000 per transplant. According to that official, the trafficking network in the Shalimov Institute Cases earned about USD 18 million per year, for a total of more than USD 40 million before it was disrupted.<sup>109</sup> In the Netcare Cases, the prosecution alleged that kidney recipients paid between USD 100,000 and USD 120,000, while the kidney donors were initially paid USD 20,000, with later donors in Romania and Brazil paid on average USD 6,000.<sup>110</sup> In the Moldova Cases, kidney donors were paid USD 10,000 at first, while the alleged head of a trafficking network was paid ten times that.<sup>111</sup>

105 PACE SHFAC, Op. Cit., para. 6. See also PACE, *Recommendation 1611* (25 June 2003), reflecting debate on the 2003 PACE *Organ Trafficking Report*.

106 EULEX, Rule of Law Mission, Kosovo Special Prosecution Office, *Indictment of D. et al.*; EULEX, Rule of Law Mission, Kosovo Special Prosecution Office, *Indictment of S. and H.*

107 This figure is comparable to the EUR 9,000 that one recipient and his daughter claim they were to pay for the transplant, when bank records cited in the indictments show that in fact that recipient transferred EUR 90,000 to one of the defendants shortly before the transplant surgery.

108 Алла Дунина, "Врач-трансплантолог Владислав ЗАКОРДОНЕЦ: 'Нас держат в СИЗО, чтобы мы дали показания против себя'," *Комсомольская Правда в Украине* (14 May 2011), <<http://kp.ua/daily/140511/280130/>>, accessed 27 May 2013

109 Ibid.

110 J. Allain, "Trafficking of Persons for the Removal of Organs and the Admission of Guilt of a South African Hospital", *Medical Law Review*, Volume 19(1) (2011), citing Commercial Crime Court, Regional Court of Kwa-Zulu Natal, Durban, South Africa, *The State v Netcare Limited*, Case No. 41 (3 September 2010), see Summons Charge Sheet, Summary of Substantial Facts, para. 7.

111 V. Manole, "The 'Black Transplantologist' and Moldovan Victims", *Investigative Journalism Center* (12 August 2011), <<http://www.investigatii.md/eng/index.php?art=215>>, accessed 28 May 2013.

Similar price ranges have been alleged outside Europe as well. For example, in the first case in the US for a violation of transplant laws, the facts underlying the criminal complaint against the accused include a price of up to USD 160,000 for a kidney transplant.<sup>112</sup> By contrast, the 1997 Bellagio Task Force Report had found that, in Asia, costs for a kidney transplant were significantly lower than in Western countries. Data presented by one expert in 2008 underscores the continued significantly different financial scales between Asia and the West.<sup>113</sup>

There is more information about the prices and price trends for organ donors, available from the work of journalists and academic researchers, particularly Schepher-Hughes and journalists from Moldova and Romania. These sources indicate that in Moldova, a high price for a kidney donor is set around USD 10,000, with lower prices between USD 2,500 and USD 3,000.<sup>114</sup> These lower prices appear to occur later in time during the operation of a THB/OR network, although there is little information about why the kidney prices in Moldova decrease.

However, field research by Schepher-Hughes finds similar price trends among kidney donors in Brazil. She explains that the earlier Brazilian kidney donors were paid USD 10,000, a price which later fell to USD 3,000. The price drop occurred because of the strong interest generated in selling a kidney when news spread in Recife, creating an even stronger buyer's market.<sup>115</sup> Media accounts of statements by trafficking victims in Moldova who were later accused of becoming recruiters also indicate that news that a donor was paid USD 10,000 did indeed generate interest from neighbors and others in selling a kidney.<sup>116</sup> It remains unclear whether Moldova, as a result, experienced price dynamics similar to those researched by Schepher-Hughes in Recife, Brazil.

112 United States District Court, District of New Jersey, *United States of America v. L.R.*, Criminal Information (July 2009), 2.

113 Presentation by M. Bos at the *ELPAT Session of the 22nd Congress of TTS*, "An update on global organ trafficking", Sydney (10-14 August, 2008).

114 E.g., V. Manole, Op. Cit.; L. Gurez and I. Volnitchi, "Did trafficking in human organs disappear in Moldova?", *Investigative Journalism Center* (12 November 2007), <<http://www.investigatii.md/eng/index.php?art=149>>, accessed 28 May 2013. See also Summary report provided to the author by the Renal Foundation on 28 November 2011.

115 N. Schepher-Hughes, "Black Markets in Organs – Face to Face with Gaddy Tauber, Human Trafficker, Organs Broker, Holocaust Survivor", *Business Today*, Volume 46(1) (2009), pp. 64–65; N. Schepher-Hughes, "Mr Tati's Holiday and João's Safari: Seeing the World via Transplant Tourism", *Body & Society*, Volume 17(2–3) (June/September 2011), p. 75.

116 V. Manole, Op. Cit.

The data is too sparse to permit anything but the most preliminary and tentative hypotheses. However, they do raise some interesting questions. Despite settings across the OSCE region as well as South Africa and countries in South America, there may be a certain rough price stability across trafficking networks, with comparable ratios applied to recipients, donors and transplant centres, though with price fluctuations particularly dramatic for organ recipients. This approximate stability in prices may reflect actual expenses in an increasingly globalized economy. This, in part, may reflect a common starting price point – what organ recipients expect to, or are willing to pay. It may also reflect linkages among the THB/OR networks across the OSCE region.

Scheper-Hughes' work also provides insight into some of the financial flows relevant to other elements of the trafficking network in the Brazilian context, particularly the local recruiters. The lead recruiter in Brazil, an Israeli citizen, was paid USD 10,000 per kidney transplant, while his fellow local recruiter made USD 5,000.<sup>117</sup> Another man was paid USD 500 for every donor who was medically screened.<sup>118</sup> There is little information at this point about the amounts paid to the local recruiters in the OSCE region.

Trafficking networks in the OSCE region also appear to have sought to cut costs where they can, generating an ongoing search for cheaper locations to set up a transplant centre, as well as for cheaper markets for commercial living kidney donors.<sup>119</sup> Similarly, Scheper-Hughes has described plans for the Recife operation to reduce costs by locating the transplant surgeries in Brazil, plans which were never realized because the network was broken up by the police.<sup>120</sup>

These networks have demonstrated the capacity for flexibility and nimbleness, shifting operations in Eastern Europe, South Africa, or South America in a matter of a few years. For public health and law enforcement authorities, this means, at the least, that even countries with no history of involvement with THB/OR

OR networks may need to consider the factors that attracted these networks thus far.

One factor that might indicate potential victim-donors for these networks is the economic environment of the health care sector. Acute economic pressures work not only on the trafficking victims, but as Schep-er-Hughes has noted, also on economically struggling hospitals and clinics.<sup>121</sup> However, the involvement of some of the leading hospitals and medical institutions in organ trafficking, even in wealthy countries, raise questions whether even relatively financially stable medical facilities may be susceptible to the temptations of the kidney market.<sup>122</sup>

A better understanding of the economics of THB/OR networks may also assist authorities in setting appropriate financial penalties, whether under regulatory or criminal law frameworks, for both individual and medical facilities that are found to be involved in THB/OR networks. In order to have a deterrent effect, financial penalties must be stringent enough for those facilities to reconsider the economic calculus. Among the trafficking networks reviewed for this study, only the Netcare Cases include a corporate entity among the defendants. In that case, one of the then remaining defendants in the Netcare Cases had questioned the plea agreement entered into by that corporate entity, strongly implying that the financial penalties levied were inadequate in light of the profits it earned through its participation in the THB/OR network.<sup>123</sup> Netcare is reported to have grossed between 19 million and 21 million Rand<sup>124</sup> from an international kidney broker during the operation of the THB/OR network; under its plea agreement, it paid a 4 million Rand fine and was subject to a 3.8 million Rand confiscation order.<sup>125</sup>

117 N. Scheper-Hughes, "Black Markets in Organs – Face to Face with Gaddy Tauber , Human Trafficker, Organs Broker, Holocaust Survivor", *Business Today*, Volume 46(1) (2009), p. 64.

118 Ibid.

119 For example, networks were set up with transplant centres in Bulgaria and South Africa for anticipated low costs, but with the former closing down when the transplant costs were raised by Bulgarian doctors and the latter when the network was disrupted by law enforcement officials. See E. Kodinova and B. Petrov, "Kidneys for sale – An Israeli channel of semi-legal kidney transplants leads to Bulgaria", *Danish Association of Investigative Journalism*, <<http://i-scoop.org/scoop/blog/2009/08/26/kidneys-for-sale/>>, accessed 27 May 2013.

120 N. Scheper-Hughes, Op. Cit., p. 65.

121 See N. Scheper-Hughes, "Parts Unknown: Undercover Ethnography of the Organs-Trafficking Underworld", *Ethnography*, Volume 5(1) (2004), p. 36: "Transplant tourism has become a vital asset to the medical economies of rapidly privatizing hospitals and clinics in poorer countries struggling to stay afloat".

122 In the USA's first case with elements of THB/OR, though charged as a violation of organ transplant laws, the prosecution led testimony at the sentencing hearing indicating that the broker's commercial transplants occurred at a hospital in Minneapolis and at the Albert Einstein Medical Center in Philadelphia: D. Glovin and D. Voreacos, "Kidney Broker Sentenced to Prison as Donor Recalls Doubts", *Bloomberg* (12 July 2012), <<http://www.bloomberg.com/news/print/2012-07-11/n-y-man-gets-30-month-term-in-first-u-s-organ-case.html>>, accessed 3 June 2013. The prosecution did not claim that the hospitals were aware that the transplants were illegal.

123 F. Hassan and S. Sole, "Kidneygate: What the Netcare bosses really knew", *Mail & Guardian Online* (29 April 2011), <<http://mg.co.za/article/2011-04-29-kidneygate-what-the-netcare-bosses-really-knew>>, accessed 27 May 2013.

124 Around USD two million, at exchange rates on 3 June 2013.

125 F. Hassan and S. Sole, Op. Cit.

Finally, while financial gain remains the primary motive for THB/OR networks and their elements, certain other motives for participating in such a network have been highlighted by its members. One of the transplant surgeons charged in the Shalimov Institute Cases noted in a media interview that carrying out 40 transplants surgeries in Baku was “*an opportunity to work at an international level, an opportunity to grow in my profession*”.<sup>126</sup> Such a statement may, of course, be self-serving, intended to draw attention away from a profit motive. However, the absence of active transplant centres in economically depressed environments (where few can afford such surgeries) may present a particular challenge to medical specialists who wish to retain or improve their skills. Accordingly, a better understanding of non-monetary motives for participation in these trafficking networks may guide more effective prevention strategies.

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126 M. Smith, D. Krasnolutska and D. Glovin, “Organ Gangs Force Poor to Sell Kidneys for Desperate Israelis”, *Bloomberg Markets Magazine* (1 November 2011), <<http://www.bloomberg.com/news/print/2011-11-01/organ-gangs-force-poor-to-sell-kidneys-for-desperate-israelis.html#print>>, accessed 26 May 2006. >, accessed 26 May 2006

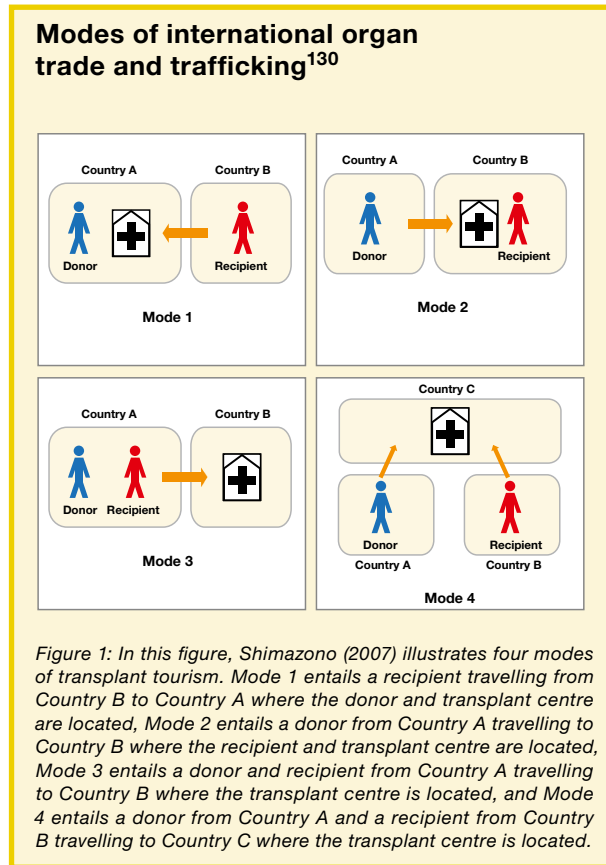
## CHAPTER IV: MODUS OPERANDI OF THB/OR NETWORKS

### 4.1 Introduction

Several reports by international organizations have addressed in basic terms the *modus operandi* of THB/OR networks.<sup>127</sup> In general, these reports have relied on media reports, as well as on academic research and basically outline a “*well-organized and extremely mobile*” operation run by a network of brokers, middlemen, doctors and nursing staff that operate as follows. The network exploits persons suffering from extreme poverty or other vulnerabilities. Marginalized in society and often without sufficient education to assess the risks of organ removal, these donors are susceptible to deception, fraud and coercion. At the other end of the transaction are the organ recipients who may be desperate due to insufficient organ donations in their home countries, leaving them on transplant waiting lists, surviving on dialysis. The network’s activities are facilitated by corruption.

An early tool for classifying the structure and operation of THB/OR for health policy experts was prepared by researcher Yosuke Shimazono who drew up a diagram which sets out the four basic modes of international THB/OR.<sup>128</sup> The diagram, reproduced below, sets out the transnational permutations in which THB/OR is conducted, based on the country of the donor, the recipient, and the transplant surgery locus.<sup>129</sup> It is important to note that the Shimazono diagram referred to “organ trafficking”, which encompassed THB/OR.

However, for law enforcement efforts to counter THB/OR, the analysis of trafficking cases for this study suggests that a different schematic is needed, one that focuses as much on the parties behind the movement of trafficking victim and organ recipient, as well as the identification of the transplant centre. These cases reveal complex links across many countries involving a broader set of essential participants. They suggest that there should, in particular, be greater focus on the international brokers who establish and direct trafficking networks, as well as on their interaction with



local recruiters and their selection of the transplant surgeons as well as the locus of transplant surgeries. While the trafficking victim must remain at the centre of consideration on how to respond to trafficking for organ removal, a shorthand diagram that seeks to capture the essence of this form of trafficking should be centred on the international broker, while also tracking other key elements.

### 4.2 Modus Operandi in the OSCE Region

The following description of the *modus operandi* of networks that traffic human beings for organ removal is broken down into several clusters of activities. It draws from the trafficking cases summarized in Annex A, and examples of specific aspects of the *modus operandi* can be found there. It must be reiterated that this is a preliminary analysis. As more information becomes available – especially from cases currently at trial – this analysis may be confirmed or modified, including with greater details.

<sup>127</sup> UNODC CCPCJ, *Report of the Secretary-General on preventing, combating and punishing trafficking in human organs* (2006), paras. 13–17. The brief overview of *modus operandi*, above, is drawn from these two reports.

<sup>128</sup> UN WHO, *Report on the Second Global Consultation on Critical Issues in Human Transplantation: Towards a Common Attitude to Transplantation* (Geneva, 28–30 March 2007), pp. 11–12.

<sup>129</sup> The schematic “captures the various ways recipients, [commercial living donors], and transplant centers may be coordinated for such a transplant”: see D. A. Budiani-Saberi, F. L. Delmonico, “Organ trafficking and transplant tourism: a commentary on the global realities”, *Am J Transplant*, Volume 8(5) (2008), p. 926.

<sup>130</sup> The diagram is by Yosuke Shimazono. This image is taken from a reproduction of his diagram in D. A. Budiani-Saberi, F. L. Delmonico, *Loc. Cit.*

#### 4.2.1 Establishing a THB/OR Network

THB/OR networks generally operate under the overall or strategic direction of international brokers who tend to move freely among the countries in which the network is active. These brokers make the strategic decisions for the networks, including the selection of target populations for victim-donors and the selection of local brokers to work with. The international brokers are usually the only continuous point of contact with the organ recipients. As such, these brokers control the funding stream that finances other parts of the network.

The international broker can also identify the location for the transplant surgeries, as well as the transplant surgeons. The location is generally a hospital or a private clinic. A fee per transplant is generally arranged with the clinic's administrators. This fee may be included in the organ recipient's payment to the international broker, or an additional cost paid directly to the clinic by the recipient. The transplant surgeons generally, but not always, include surgeons affiliated with the locus of the transplants. Other surgeons may originate from the donor recipient's country or some other third country. The selection and organization of the surgical team is left to the transplant surgeons.

#### 4.2.2 Victim-Donor Recruitment

The international broker works through local brokers to recruit the victim-donors. Local brokers then target persons who are vulnerable to recruitment due to acute poverty. The trafficking victims are generally also poorly educated, unemployed or underemployed, and often have limited experience with travel abroad. They lack medical knowledge, particularly relating to transplant surgery and its potential consequences.

The initial contact between the trafficking network and the potential donor is made through a variety of ways, including by word of mouth or through response to an Internet ad. Early in the recruitment process, blood samples are taken from the donor in order to carry out the lab tests to match the donor and recipient. The recruitment process can involve a variety of illicit methods, including coercion and fraud. In some cases, the donor is initially trafficked or smuggled to another country under the fraudulent pretence of a job.<sup>131</sup> When that job fails to materialize, and after the recruit finds himself or herself in a foreign country

131 M. Jimenez and N. Scheper-Hughes, "'Doctor Vulture' At the Centre of Istanbul's illicit kidney trade is a shadowy 44-year-old surgeon whose transplant 'donors' are not always willing ones", *The [Toronto] National Post* (30 March 2002), pp. 5-6.

without resources to return home, the recruiter will offer the donor, as the only alternative to repay the imposition of a false debt, the sale of an organ.

In the recruitment process, the victim is generally provided with misleading and inaccurate information about the risks of organ removal, including the potential consequences of living without the organ. The victims may come from the country in which the surgery is located or from the recipient's country. More often, the victim comes from a third country, one in which there is a sizable population living in deep poverty. In such a "buyer's market", the payment for a kidney can decrease with successive victims.

#### 4.2.3 Means

As noted above, throughout the trafficking process, the other participants in the THB/OR network may use threats, abuse of a position of vulnerability and other forms of coercion against the trafficking victims in order to achieve the network's objectives. In this way, even victim-donors who seek to change their mind about selling an organ are compelled to carry through with the process. Donors and recipients may be accompanied from their places of origin to the locus of the transplant surgery and back by "minders" who provide guidance to the donors and recipients as to the false statements, misrepresentation or other fraudulent actions necessary to clear immigration or other government controls. The minders also manage logistics and financial requirements. In addition, the minders may double as enforcers to ensure the donor goes through with the organ removal. In the course of travel, more specialized enforcers<sup>132</sup> may also play a part. In most cases, the means also involved various forms of fraud and deception, including fraud relating to payment and misinformation, or absence of information, about the health risks for both the victim-donor and the recipient.

#### 4.2.4 Transplant

The transplant surgery is carried out soon after the donor and recipient arrive. Fraudulent written consents and declarations are prepared with contents to comply with local legal requirements, such as disavowals of financial consideration for the organ, assertions of family relations, or assertions of informed and voluntary consent. Trafficking victims signing these documents are generally not informed of the content of the document and may well be functionally illiterate

132 OSCE OSR/CTHB and UN.GIFT, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (2010).

or, in any event, unable to read the local language. The surgical team may include transplant surgeon(s), anesthesiologist(s), nurse(s), and other medical staff. Other senior members of the THB/OR network who are also doctors might be in attendance, even if not part of the surgical team. The victim is generally placed on a flight back to his or her point of origin within days of the surgery.

#### 4.2.5 Consequences

As the victim is returned to his or her home shortly after the transplant surgery, generally before he or she has properly recovered from surgery, medical complications may arise. Payment is generally not made to the donor until after the surgery, and the amount promised is often not paid. Where the donor reveals any dissatisfaction with the experience, he or she may be subjected to threats and warned not to contact the police. From this point, the persons operating the THB/OR network are generally in contact with the donor for only two reasons — either as part of the donor's effort to receive the full payment promised, or because the donor, through a variety of arrangements, has become himself or herself, a recruiter of organ donors.

While the THB/OR network continues its operations, the health and social consequences for the donor are generally negative. Victim-donors go on to suffer from poor health, depression and shame, social stigma, a relapse into deep poverty, and further degraded employment opportunities as their deteriorating health often precludes even the poorly paid physical labour they might have engaged in prior to the transplant surgery.<sup>133</sup> The outcomes for the recipients are less well researched, but offer a mixed record including infections from the surgery, illnesses contracted from poorly screened donors, and rejection of the transplant organ.

#### 4.2.6 Logistics

The overall operation of the THB/OR networks encompasses a number of operations and logistics functions and tasks including:

- Travel-related arrangements, such as tickets, visas, passports;
- Ground/air transportation and accommodations;
- Preparation of fraudulent consents and declarations;
- Financial transactions, many in cash;
- Medical record-keeping;
- Blood and tissue typing.

These logistics and the degree of co-ordination required among them suggest that a certain degree of organization and overall management is required.

### 4.3 Elements of THB/OR Networks

This section examines some of the key characteristics of the main actors or elements in the trafficking networks. The elements of the networks identified here represent recurring functions in these networks. In practice, as described further below, networks do not necessarily demonstrate a clear division of labour or roles among their participants. Indeed, a given element, therefore, may represent functions rather than an individual, and the same individual may play multiple roles in the network.

The key elements of THB/OR networks include the following participants or functions:

#### 4.3.1 Participants

##### **International co-ordinators / brokers**

These persons are usually the head of the network, as they are the ones who establish the network. As described above, these brokers make the strategic decisions for the network. The international broker is also generally the primary point of continuous contact with the organ recipient and the channel for the recipient's payments. The brokers are generally responsible for providing the supply of organ recipients to the network. Given their role, terms such as "broker" or "intermediary"<sup>134</sup> risk conveying an inaccurately understated sense of the central role these international brokers play. There may be more than one international broker in a network. The international brokers, as reflected in the academic literature and by journalists, have in several instances been involved in establishing more than one network. Although relatively little is known about how organ recipients are targeted, there are indications that desperate patients or their family members often locate these brokers through word of mouth or through electronic media.

<sup>133</sup> D. A. Budiani-Saberi, F. L. Delmonico, "Organ trafficking and transplant tourism: a commentary on the global realities", *Am J Transplant*, Volume 8(5) (2008), pp. 927–928; D. Budiani-Saberi and D. M. Golden, "Advancing Organ Donation Without Commercialization: Maintaining the Integrity of the National Organ Transplant Act", ACS Issue Brief (9 June 2009), pp. 8–12; D. Budiani-Saberi, A. Mostafa, "Care for Commercial Living Donor: the Experience of an NGO's Outreach in Egypt", *Transplant International*, Vol. 24(4) (April 2011), pp. 317–323 (detailing COFS's research and work in Egypt and also analysing other studies on consequences for commercial living donors); N. Scheper-Hughes, "Mr Tati's Holiday and João's Safari: Seeing the World via Transplant Tourism", *Body & Society*, Volume 17(2–3) (June/September 2011), p. 63.

<sup>134</sup> PACE SHFAC, *Trafficking in organs in Europe* (2003), para. 38.

### Local Recruiters

Local recruiters (sometimes referred to as the “kidney hunters”) find or identify the victim-donors. They generally work in one country, of which they are nationals, but there have been some exceptions, particularly across borders with shared or similar languages. Some local recruiters may have been involved in other forms of trafficking previously. There are often multiple local recruiters, in which case there may be a national-level recruiter or another form of hierarchy. Many of the recruiters may be designated a specific geographic area they cover. Recruiters may themselves be former victims (or acting under coercion).

Recruiters are generally paid per successful recruit. They may carry out a range of tasks to ensure that a donor, once identified, goes through with the donation.

### Medical Professionals

Several categories of medical professionals are required for a THB/OR network. Specialist doctors include transplantation surgeons, nephrologists and anesthesiologists. The transplant surgeons may come from different countries. In addition, nurses and other assistants to the transplant surgical team are involved. Other doctors and medical staff may also be required for post-operative care for the organ recipient. Cases have so far focused on the transplant surgeons and, in the Medicus Cases, the anesthesiologists.

It is possible that the staff supporting the doctors could be charged with crimes for involvement in the trafficking network. The 2006 PACE Organ Trafficking Report advocated the inclusion of nursing staff and laboratory technicians among potential accused in prosecution of illegal transplants.<sup>135</sup> In general, however, these relatively ancillary functions in trafficking networks have been treated as witnesses, rather than defendants. The indictments in the Medicus Cases, for example, although indicting anesthesiologists and a senior clinic administrator, included on the prosecution’s witness list nursing staff and a medical technician, involved in supporting the transplant surgeries and in post-operative care.<sup>136</sup>

### Medical Facilities, Administrative Staff and Potential Role of Health Officials

Some form of medical facility is required for a THB/OR network, although the degree of technical sophistication required may not be very high. Medical

facilities are required not only for the transplant surgery itself, but also for the donor-recipient matching process (for blood and tissue cross-match compatibility). The Netcare Cases are the only example thus far in which the medical facility as a corporate entity was charged with a crime.

The need for some form of medical facility can result in the involvement of the administrators of that facility, particularly those with responsibilities related to organ transplants, such as the transplant co-ordinators.

A range of medical authorities or regulators may also be involved in a trafficking network, particularly where illicit licences and authorizations are needed. The relevant regulatory functions involved may include: licensing of medical doctors; licensing for the specific purpose of organ transplants; licensing of medical facilities; the approval of transplant surgeries.

The role of administrative or other health officials in THB/OR networks is as of yet unclear.<sup>137</sup> Administrative and/or health officials may assist the network directly, such as through alleged provision of official paperwork and licences in order to operate, or alleged provision of false titles<sup>138</sup>, or indirectly, through willful blindness in the face of indications of potential criminal activity. Since none of these allegations have thus far resulted in convictions, it is premature to draw any conclusions on this potential element of a THB/OR.

### Enforcers/Minders and Others

Trafficking networks involve supporting staff in a range of functions that are relatively minor but necessary to a network’s operation, including enforcers, minders, drivers, and translators. Minders accompany both the donor and the recipient during their travel to and from the locus of surgeries. Enforcers are minders who employ force, the threat of force or other means of conveying coercive pressure to ensure that the objectives of the THB/OR network are achieved. In some cases, the networks deploy individuals whose principle role is as an enforcer. In other cases, enforcement functions can be played by other elements of the THB/OR network. In the Netcare Cases, one of the defendants who pleaded guilty was an interpreter.<sup>139</sup>

<sup>135</sup> *bid.*

<sup>136</sup> EULEX, Rule of Law Mission, Kosovo Special Prosecution Office, *Indictment of D. et al.*; EULEX, Rule of Law Mission, Kosovo Special Prosecution Office, *Indictment of S. and H.*

<sup>137</sup> In Case No.8, one of the defendants was charged with abuse of a position of authority but he was acquitted.

<sup>138</sup> In Case No.6, one of the defendants was charged with impersonating a physician and use of a false medical title.

<sup>139</sup> The interpreter was fined 50,000 Rand and received a five-year suspended sentence: T. Broughton, “Kidney specialist fined in plea deal”, *The Mercury* [South Africa] (14 December 2010).



#### 4.4 Victims of THB/OR

The victim-donor of THB/OR is not viewed as an element in the network. As described above, the donors are generally in a position of vulnerability. In particular, they lack basic medical knowledge about the potential consequences of giving up an organ, and are often misled as to both the nature of the organ removal surgery and the health consequences. They are led to a decision to sell an organ through a combination of their financial desperation and their vulnerability to deliberately misleading and fraudulent inducements, as well as coercive factors. The donors in any particular network may come from a number of different countries. The trafficking network in the Medicus Cases recruited donors from at least eight countries including: Belarus, Israel, Kazakhstan, Moldova, Poland, Russia, Turkey, and Ukraine.<sup>140</sup> As described above, in the description of the *modus operandi*, the consequences of organ removal are clearly negative.

#### 4.5 Organ Recipients

Those who obtain transplant organs through trafficking networks have received comparatively less media and academic interest than the donors. Organ recipients generally come from economic situations dramatically better than those of the donors. The organ recipients provide the funds necessary to finance the activities of the THB/OR network.

In general, organ recipients have not been the target of criminal prosecution, even where the purchase of an organ is clearly criminalized. Among the cases reviewed for this study, a notable exception arises in the Netcare Cases, in which one organ recipient was charged with fraud and violations of South Africa's Human Tissues Act, pleaded guilty.<sup>141</sup>

The desperation and poor health of the organ recipient is generally acknowledged which may underlie the

<sup>140</sup> EULEX, Rule of Law Mission, Kosovo Special Prosecution Office, *Indictment of S. and H.*

<sup>141</sup> The organ recipient admitted to purchasing a kidney and to falsely stating in documentation that they were related. He was given a suspended sentence and subjected to a fine and forfeiture; see T. Broughton, Op. Cit.

<sup>142</sup> There is some dispute as to the circumstances of persons on organ waiting lists. Even while acknowledging the desperation of many who await organs, there is also some suggestion that there are also prospective organ recipients who are not in serious discomfort and are seeking to improve their quality of life through procurement of an illicit organ. See J. Sher, "Toronto man who bought kidney abroad is key witness in transplant sale trial in Kosovo", *The [Toronto] Star* (22 January 2012), <[http://www.thestar.com/news/canada/2012/01/22/toronto\\_man\\_who\\_bought\\_kidney\\_abroad\\_is\\_key\\_witness\\_in\\_transplant\\_sale\\_trial\\_in\\_kosovo.html](http://www.thestar.com/news/canada/2012/01/22/toronto_man_who_bought_kidney_abroad_is_key_witness_in_transplant_sale_trial_in_kosovo.html)>, accessed 27 May 2013: "Buying organs is illegal in Canada, but there is currently no Canadian law barring citizens from purchasing body parts abroad".

absence of charges brought against organ recipients.<sup>142</sup> Organ recipients are, instead, generally treated as witnesses, since they have knowledge of financial flows into the network, as well as direct interactions with the strategic-level international brokers.

The academic literature and media articles often hint at the status of organ recipients as potential victims, but this aspect is not reflected in the cases. The desperation of the organ recipient can, in some cases, leave him or her vulnerable to being misled about the prospect for a successful surgery.<sup>143</sup> Organ recipients may suffer complications or deaths following an organ implant due to medical negligence or incompetence, including as a result of poor matching conducted prior to the transplant surgery, flawed surgical procedures, poor post-operative care, or diseases incurred from the transplanted organ.

#### 4.6 Variation and Flexibility in THB/OR Networks

The enumeration here of network elements does not suggest that these trafficking networks are so rigidly or clearly structured. While all the functions listed recur in the networks, there can be a great deal of flexibility in how those functions are staffed. The international broker in a network might have a hand in a number of the functions noted above. The broker might himself/herself, for example, be a transplant surgeon or may directly take part in accompanying organ donors or recipients to and from the locus of the transplant surgery. Further below in the network, local recruiters can be enforcers, minders or drivers.

Flexibility in a trafficking network is also reflected in the possibility for individuals to transition from one role to another, most notably in the cases of victims who move on to become local recruiters of organ networks or network brokers who move on to establish their own networks.

The variable structure of networks means that even among those holding apparently similar functions, there can be a marked difference in overall roles within a network. Transplant surgeons in particular can function at various levels. One transplant surgeon may be limited solely to a technical role in removing and implanting kidneys. Another may also have a role in directing the network's activities. For example, in the Medicus Case, prosecutors have alleged that the two

<sup>143</sup> See M. Smith, "Desperate Americans Buy Kidneys From Peru Poor in Fatal Trade", *Bloomberg News* (12 May 2011), <<http://www.bloomberg.com/news/2011-05-12/desperate-americans-buy-kidneys-from-peru-poor-in-fatal-trade.html>>, accessed 27 May 2013.

transplant surgeons / defendants were both responsible for establishing and directing the trafficking network, as well as in carrying out transplant surgeries, while other doctors are alleged to have had more limited involvement. While several of the other doctors indicted are also alleged to have knowingly undertaken illegal transplant surgeries, they appear to have had distinctly subordinate roles to those played by the two leading surgeons, together with the international broker.

Therefore, depending on the structure and organization of a particular network, focusing primarily on the transplant surgeons may be less or more effective in disrupting the network, depending on their overall role in the network. Likewise, focusing on shutting down a clinic or revoking its licence, even if it is a useful and necessary action, might not ultimately disrupt a network for long. For example, the persistent career of one of the transplant surgeons/defendants across several countries, despite his multiple arrests, underscores the resilience of THB/OR networks, including across borders.

#### 4.7 Links to “Traditional Organized Crime”

An area of particular concern regarding trafficking of persons for organ removal is the extent to which organized crime groups are involved in this form of trafficking. In general, where this question is raised, the inquiry appears focused on whether “traditional” organized crime groups, are involved.<sup>144</sup> The answer is not clear, as several studies note.<sup>145</sup>

The review of THB/OR network cases for this study does not shed much further light on the question. There are indications that some of the lower level, local recruiters for organ sellers may engage in other forms of trafficking and organized crime.<sup>146</sup> There are

144 See UNODC CCPCJ, *Report of the Secretary-General on preventing, combating and punishing trafficking in human organs* (2006), para. 14, raising the issue of organized crime group and their potential interest in organ trafficking, but declining to make any conclusions, except to note: “[i]n contrast to the ‘criminal’ element associated with more common types of organized crime, persons involved in organized organ trafficking are drawn from a broader professional spectrum, including doctors [...] and hospital staff” [emphasis added].

145 E.g., *Ibid.*, para. 16, citing a “lack of evidence and information on the involvement of organized crime” in organ trafficking. N. Schepher-Hughes wrote that a 1994 law in India that criminalized organ sales expanded the domestic black market for organs, with involvement of organized crime previously engaged in the heroin trade, cited the work of journalists and medical anthropologists: see N. Schepher-Hughes, “The Global Traffic in Human Organs”, *Current Anthropology*, Volume 41(2) (April 2000), p. 195.

146 It has been reported that one of the transplant surgeons implicated in two of the cases analysed in this study began working with a local recruiter in Moldova, formerly involved in sex trafficking, to locate organ donors: see M. Jimenez and N. Schepher-Hughes, “‘Doctor Vulture’ At

also indications that some other lower level elements of THB/OR networks, such as enforcers, may have been involved in other forms of organized crime.<sup>147</sup> However, there is little indication yet that traditional organized crime groups as a whole have moved into THB/OR. Rather, the preliminary indications are that the international brokers reappear in new THB/OR networks, as reflected in the fact that the names of prominent brokers appear in a number of different alleged THB/OR networks. It remains unclear what affiliations, if any, these senior brokers may have with traditional organized crime groups.

The focus on traditional organized crime groups does not, of course, minimize the fact that THB/OR networks are, in fact, organized crime groups as defined under most national laws.<sup>148</sup> As alleged in the Medicus Cases, the activities of THB/OR networks may very well be consistent with the legal elements of organized crime as set out in criminal codes. Indeed, THB/OR networks are operated in a manner that in many ways reflect conceptions of traditional organized crime groups, including threats of violence both to carry out their activities and also to compel the silence of witnesses. As the lead prosecutor in the Medicus Cases stated in a media report, “*This is organized crime [...]. There is significant coercion and threats of violence.*”<sup>149</sup>

#### 4.8 An Alternative Look at THB/OR Modes

As noted above, Shimazono’s diagram provided a useful sketch of THB/OR dynamics for health policy experts. However, the review of cases for this study yields a more complex picture of the possible modes of THB/OR, highlighting the scale of the law enforcement challenge. The range of permutations of countries involved naturally expands as recipients and donors tend to arrive from multiple countries in most of the networks reviewed. Furthermore, there are indications that some networks use more than one country for the locus of the transplant surgery, further complicating efforts to establish the full scope of liability of a trafficking network.

the Centre of Istanbul’s illicit kidney trade is a shadowy 44-year-old surgeon whose transplant ‘donors’ are not always willing ones”, *The [Toronto] National Post* (30 March 2002).

147 See J. Allain, “Trafficking of Persons for the Removal of Organs and the Admission of Guilt of a South African Hospital”, *Medical Law Review*, Volume 19(1) (2011);

148 See PACE SHFAC, *Trafficking in organs in Europe* (2003), paras. 16, 48.

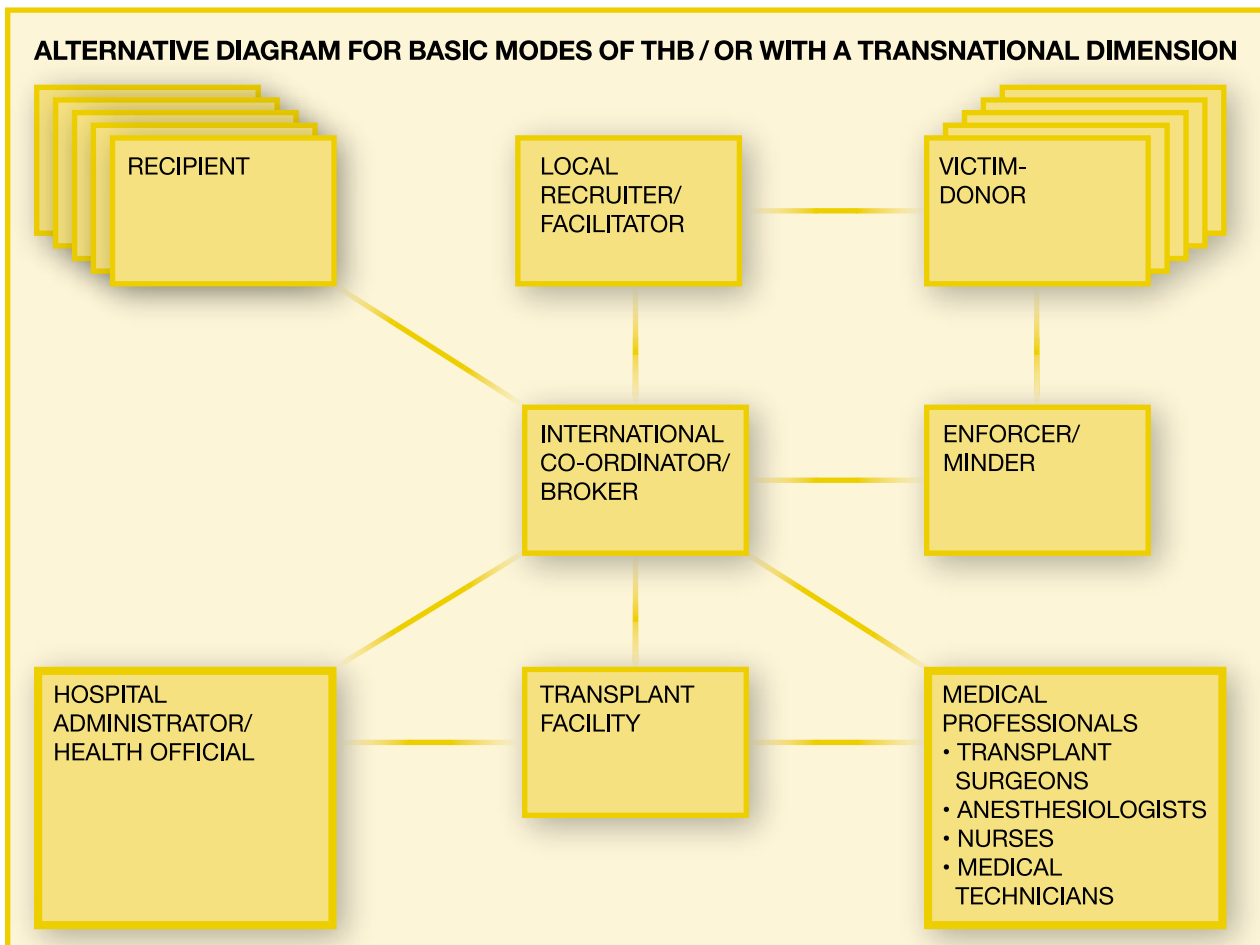
149 M. Smith, D. Krasnolutska and D. Glovin, “Organ Gangs Force Poor to Sell Kidneys for Desperate Israelis”, *Bloomberg Markets Magazine* (1 November 2011), <<http://www.bloomberg.com/news/print/2011-11-01/organ-gangs-force-poor-to-sell-kidneys-for-desperate-israelis.html#print>>, accessed 26 May 2006.

150 The recipient and victim-donor are not considered components of the THB/OR network, in any event.

Significantly, the core elements, for law enforcement purposes, of these trafficking networks are not necessarily the three identified by Shimazono.<sup>150</sup> Most importantly, the international broker or brokers – the strategic level of the THB/OR network – are not included. In addition, other important elements, each with the possibility of introducing a new country into the network, include: the transplant centre, surgeons (who may themselves come from various countries, even in one THB/OR network) and local recruiters. The cases reviewed for this study indicate that the international broker may not be a national of the country where the transplant centre is located,

nor the countries of the donors and the recipients. Other countries that are potentially relevant include: the locus of e-mail servers, bank accounts and phone records.

Building on the diagram provided by Shimazono, and reflecting a law enforcement perspective on THB/OR networks, an alternative diagram of the basic modes of international trafficking which focuses on the central participants, from a law enforcement perspective, might look as set out below. Each box could represent a different country.



## CHAPTER V: CRIMINAL JUSTICE RESPONSE AND CHALLENGES

### 5.1 Overview

The criminal justice response has had some success in disrupting THB/OR networks. But the prospects for long-term success remain unclear, in light of the persistent and expanding demand for illicit organs and the resilience of the central participants in THB/OR networks. While investigations and prosecutions appear to have focused on pursuing local recruiters and transplant surgeons, establishing the liability of international brokers is proving more difficult. The inability to effectively pursue international brokers may leave trafficking networks with the capacity to reconstitute in the same or other jurisdictions. Such challenges are consistent with difficulties in investigating and prosecuting members of criminal enterprises as well as THB generally. Several possible reasons for the difficulty specific to THB/OR network cases are discussed below.

### 5.2 General Analysis

Reports by international organizations that have addressed trafficking, including THB/OR, have pointed to the clandestine and secretive ways in which traffickers operate as key reasons why the crime is difficult to detect and investigate.<sup>151</sup> However, the clandestine nature of these trafficking networks does not itself distinguish them from other forms of organized crime or from many other forms of criminality for that matter. Accordingly, many of the tools employed to fight organized crime in other contexts should be applied in investigating and prosecuting cases of THB/OR networks. As one anti-trafficking expert has written, “As with other forms of trafficking, organ trafficking is visible – provided that [law enforcement authorities] are prepared to commit intelligent thought, time, effort and resources to uncover it”.<sup>152</sup> Several of the cases against traffickers suggest that the more ambitious investigations do indeed rely on an array of investigative tools used in other complex cases to counter the secretive nature of THB/OR.

In the Shalimov Institute Cases, the prosecution is using a *co-operating witness*, a medical doctor who is the only one of the doctors originally named in media

reports as defendants in that case who has pleaded guilty. This doctor was, also, the only doctor who media reports indicate carried out transplant surgeries in Ukraine. As a result, he may have been the only defendant doctor who would not, therefore, have had the option of arguing, as the other doctors have argued in the press, that their conduct was legal since the surgeries were alleged to have been conducted in Azerbaijan, where living organ donations between unrelated persons are permissible.<sup>153</sup>

The indictments in the Medicus Cases indicate that the prosecution is relying on *telephone metering* to obtain text message evidence of exchanges among certain defendants about blood types and logistics, as well as exchanges about one of the organ recipients and one of the organ donors. In addition, the prosecution sought and obtained, through its request for international legal assistance, information regarding certain e-mail accounts, which appears to have yielded *e-mail communications* among some of the defendants, as well as between one of the defendants and two of the organ recipients.

The indictments in the Medicus Cases also indicate that the prosecution pursued *financial evidence* through requests for international legal assistance in order to show links between recipients and a defendant, such as the purchase of airplane tickets for victim-donors, as well as the inflows of funds from organ recipients.<sup>154</sup> The Netcare Cases appear also to have closely pursued the financial evidence in the course of those investigations. The imperative to follow the financial trail, often essential in investigating criminal enterprises, should have similar value in investigating THB/OR networks.

It is less clear from the information available in this review what use was made of *witness protection* measures. A broad range of measures may be available depending on the jurisdiction. However, witness protection can be particularly challenging where

151 UNODC CCPCJ, *Report of the Secretary-General on preventing, combating and punishing trafficking in human organs* (2006); PACE SHFAC, *Trafficking in organs in Europe* (2003).

152 P. Holmes, *Manual for Law Enforcement Officers on Detection and Investigation of Trafficking Related Crimes* (Kyiv, 2009), p. 471.

153 Алла Дунина, “Расследование убийства школьниц приобретает новый оборот, а к Шкилю вопросов нет: ‘КП’ продолжает следить за ходом расследования резонансных уголовных дел. О том, каких успехов добилось следствие, рассказывает начальник Главного следственного управления МВД Украины Василий Фаринник”, *Комсомольская Правда в Украине* (16 June 2011), <<http://kp.ua/daily/160611/285593/>>, accessed 27 May 2013

154 EULEX, Rule of Law Mission, Kosovo Special Prosecution Office, *Indictment of D. et al.*; EULEX, Rule of Law Mission, Kosovo Special Prosecution Office, *Indictment of S. and H.*

witnesses come from small, tight-knit and homogeneous communities such as the ones that many organ donors come from. In such cases, witness relocation to elsewhere within her/his country may not be adequate. According to a media report, at least one victim in the Medicus Cases has been placed in a witness protection programme, after receiving a death threat.<sup>155</sup>

In sum, even based on the limited details available about investigative methods used in THB/OR network investigations (or about evidence at trial that might reflect such methods), it appears that law enforcement authorities are already seeking to counter the clandestine activities of the participants in such networks with the array of tools and methods that they would use to pursue other clandestine networks.<sup>156</sup> A major challenge will be ensuring adequate resources to support such investigative activities. In light of the fact that several of the international brokers are recurring actors in these networks, the particular opportunities to reduce burdens on limited resources through the sharing and exchange of information is discussed further below.

### 5.3 Regulatory/Administrative Measures

Regulatory sanctions against doctors and medical facilities, including the revocation of licences, have also been applied in cases of illicit transplants. In several cases, such actions have been taken parallel to criminal investigations that have, in any event, disrupted the transplant activities at issue. Therefore, it is not yet clear whether regulatory sanctions are an effective response or deterrent to THB/OR. Media reporting and academic research in certain cases suggests that they may not be. For example, a transplant surgeon who has had his medical licence suspended and later revoked in Turkey appeared again in another THB/OR network in Kosovo (he is currently wanted on an outstanding Interpol arrest warrant).<sup>157</sup> On the

other hand, greater publicity and information about possible sanctions against doctors and medical facilities may deter doctors who are less invested in a trafficking network from participating in organ transplant schemes that are suspect.

#### 5.3.1 Legal Qualifications / Charging

The 2006 report by the UN Secretary-General on organ trafficking raised concerns over the “*absence of internationally agreed definitions and legal standards to provide a framework for cooperation in...combating the trafficking of human organs*”.<sup>158</sup> The cases reviewed for this study do reflect variation in the ways in which the criminal conduct is qualified. Several of the cases appear to reflect a narrow approach to qualifying the criminal conduct, focusing on the criminal violation of laws regulating transplants, and not addressing the trafficking and organized criminal aspects of the crimes. That may, for example, have been the result in Case No. 7.

However, most of the investigations and prosecutions of trafficking for organ removal that have been undertaken in national jurisdictions do not seem to indicate that definitions or legal standards in themselves have been an obstacle to law enforcement efforts. Rather, they reflect a broad approach to qualifying the conduct of these traffickers, with cumulative charges that address the trafficking and organized crime aspects of the crimes, as well as the violation of legal requirements for carrying out a transplant operation.

For example, prosecutions in both the Netcare Cases and the Medicus Cases have cast a broad net for both the actors involved in furthering the trafficking network, as well as for ways of qualifying the criminal conduct. The Netcare Cases involved charges against not only the transplant surgeons, recruiters, and transplant co-ordinators, but also against a translator, a non-medical senior hospital official and the transplant centre itself, as a corporate person. The charges encompassed fraud and forgery crimes, serious assault, and money laundering (from the Prevention of Organized Crime Act), as well as violations of the Human Tissues Act. Such charges reflect the various aspects of trafficking of persons for organ removal as a crime of violence, fraud and theft, as well as a violation of more specific legal provisions that were tailored for

155 M. Smith, D. Krasnolutska and D. Glovin, “Organ Gangs Force Poor to Sell Kidneys for Desperate Israelis”, *Bloomberg Markets Magazine* (1 November 2011), <<http://www.bloomberg.com/news/print/2011-11-01/organ-gangs-force-poor-to-sell-kidneys-for-desperate-israelis.html#print>>, accessed 26 May 2006.

156 In Ukraine, a promising practice was the inclusion of an extensive chapter on THB/OR in the development of a manual for law enforcement on THB in 2009. The systematic analysis of the potential context in Ukraine for THB/OR includes an analysis of transplant capacities in that country. Perhaps of greatest value, the manual walks through the application of the elements of potential relevant crimes under the criminal code to the likely methods and evidence in Ukraine that will result in successful discovery and investigations of THB/OR. See P. Holmes, *Manual for Law Enforcement Officers on Detection and Investigation of Trafficking Related Crimes* (Kyiv, 2009) (developed at the request of IOM in Ukraine in co-operation with the Ministry of Interior and General Prosecutor’s Office of Ukraine).

157 M. Jimenez and N. Scheper-Hughes, “‘Doctor Vulture’ At the Centre of Istanbul’s illicit kidney trade is a shadowy 44-year-old surgeon whose transplant ‘donors’ are not always willing ones”, *The [Toronto] National Post* (30 March 2002).

158 UNODC CCPCJ, *Report of the Secretary-General on preventing, combating and punishing trafficking in human organs* (2006), p. 16.

this type of offence. However, trafficking in persons was not among the charges filed.

The Medicus Cases similarly charge not only the transplant surgeons, but also other members of the transplant surgery teams, as well as clinic officials and a corrupt health official. Furthermore, the indictments include crimes under both trafficking and organized crime provisions of the criminal code and also the unlawful exercise of medical authority and the abuse of authority. The charges reflect the fact that the trafficking network operated as an organized crime enterprise, facilitated by corruption, as well as involving the criminal violation of health regulations. The second Medicus investigation, initiated in May 2013, is reportedly targeting officials with knowledge of the activities of the transplant clinic, or who contributed to the criminal network's activities.<sup>159</sup>

In both cases, efforts were made to seek the extradition of the international brokers involved in the trafficking network. These efforts failed in the Netcare Cases and remain pending in the Medicus Cases. In these and in the other trafficking cases reviewed, the obstacles to bringing the international brokers to justice remain a key challenge and are discussed further below.

While the charging documents in the Netcare and Medicus Cases reflect some differences in approach, they reflect a recognition that trafficking of persons for organ removal is a complex crime that threatens a number of different societal interests represented in the criminal code. Given the very limited access to official records and law enforcement authorities in these cases, further analysis of the charging decisions in these cases is not possible. At a minimum, however, the variations in approaches to charging that are apparent suggest that an exchange of views among relevant law enforcement authorities may bring clearer charging standards in national jurisdictions, as well as greater consistency across jurisdictions in a manner that furthers the objectives of the Palermo Protocol,

as well as the Council of Europe Trafficking Convention and the Additional Protocol to the Convention on Human Rights and Biomedicine. In particular, further inquiry is needed into the reasons why the authorities in certain cases did not pursue a trafficking charge.

Recommendations that legal provisions ensure a broad scope of persons can be held criminally liable for THB/OR were raised in the 2003 PACE Organ Trafficking Report and in the 2004 GTZ Report. Both reports urge the imposition of criminal liability not only on brokers, but also on the medical teams involved in medical procedures related to the transplant surgery, with the PACE report recommending the inclusion of nursing staff and lab technicians.<sup>160</sup> As reflected in the cases cited above, it appears that current national legislation in at least some countries permits a broad approach to liability, extending to transplant surgeons and hospital staff. No cases yet appear to have charged nursing staff or lab technicians, but that may reflect the evidence or the exercise of discretion, rather than specific obstacles in the substantive law. Countries at risk for organ trafficking cases should review the relevant provisions of their criminal codes to ensure that there are no arbitrary bars in the criminal code to the prosecution of those responsible for THB/OR.

The 2003 PACE Organ Trafficking Report also recommended the criminalization of medical professionals involved in follow-up medical care for patients returning from obtaining organs abroad who fail to report that information to authorities. This issue is addressed further below under the section Role of Medical Professionals.

#### 5.4 Challenges Arising from the Transnational Dimension

The challenges arising from the complex and clandestine nature of THB/OR are exacerbated by the transnational dimension of the networks. The mere fact that the central participants may be present only for a brief time in the jurisdiction where an illegal transplant surgery is carried out can forestall or hamper investigations. As one police official has noted, without the organ donor and the recipient, it can be difficult even to establish that the sale of an organ occurred or that the donor and recipient were not related.<sup>161</sup>

159 "Eight other suspects under investigation related to the Medicus case", *EULEX Press Release* (30 April 2013), including: "The eight individuals are being investigated for the criminal offences of organized crime, trafficking in persons, grievous bodily harm, abusing official position of authority, fraud and trading in influence", <<http://www.eulex-kosovo.eu/en/pressreleases/0437.php>>, accessed 3 June 2013; See also, M. Radojic, "EULEX started investigation against Thaci associates", *InSerbia* (7 May 2013), <<http://inserbia.info/news/2013/05/eulex-started-investigation-against-thaci-associates/>>, accessed 3 June 2013; see also "Ex-Kosovo officials probed for organ trafficking: report", *Agence France Presse* (7 May 2013), <<http://www.google.com/hostednews/afp/article/ALeqM5hU3GI8DwEHObNFdcgRNwkVoZcdOw?docId=CNG.a5118980925489f43ab73cbcfef6acd4.3e1>>, accessed 3 June 2013, Originating from Serbian News Agency Tanjug, <<http://www.tanjug.rs/>>.

160 PACE SHFAC, *Trafficking in organs in Europe* (2003), para. 38; Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), *Coercion in the kidney trade? A background study on trafficking in human organs worldwide* (2004), p. 14.

161 B. Pancevski, "Bulgarian hospital admits role in illegal transplants", *The Lancet*, Volume 367(9509) (11 February 2006), <[http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(06\)68160-9/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(06)68160-9/fulltext)>, accessed 27 May 2013.

### 5.4.1 International Legal Assistance

The investigation of THB/OR networks must tackle the same array of problems any transnational crime would entail, including the need to seek mutual legal assistance and co-operation and the related expense and delay involved in awaiting responses as well as in any translation and interpretation thereafter. Efforts to seek the detention and extradition of fugitives can become major undertakings that may develop into mini-cases in themselves.

In the Medicus Case, the prosecution made requests for legal assistance to at least 11 countries, as well as six other countries from which victim-donors originated.<sup>162</sup> Even as of June 2011, most of the requests for legal assistance remained incomplete.<sup>163</sup> Likewise, media articles about the Shalimov Institute Cases show that prosecution authorities were concerned about the amount of time taken in awaiting evidence requested from authorities.<sup>164</sup> Even successful requests for international legal assistance, as in the Shalimov Institute Cases, raise further time and cost concerns as translations and other steps are required before that evidence can be presented.

The challenges of investigating trafficking networks can also be exacerbated by the sheer number of national jurisdictions involved. The indictments in the Medicus Cases, for example, indicate that the organ donors came from at least eight different countries, with the three defendants alleged to have directed the criminal enterprise themselves coming from three different countries, and the organ recipients from at least four different countries.<sup>165</sup> The location of e-mail servers, bank accounts, and cell phone providers may further add to the number of national jurisdictions relevant to the investigation of such a case.

A particular challenge in these transnational trafficking cases is the effort to extradite fugitives. This is an especially significant issue for these cases because the subjects of the extradition requests are generally the international brokers at the head of the trafficking networks. In the Medicus Cases, the prosecution is still seeking the extradition of two of the three accused alleged to be at the head of the network. Extradition

requests have proved difficult in other cases as well. Media articles indicate that in the Netcare Cases, South African police initially sought the extradition of a foreign national, reported to be involved in setting up the Netcare THB/OR network.<sup>166</sup> He was reportedly detained in Germany in 2006 on the basis of an Interpol notice requested by South Africa, but released after the flawed extradition process.<sup>167</sup>

Even where extraditions are successful, the prospects for a successful prosecution remain unclear. In Case No. 7, the defendant was arrested in Ukraine in 2007. Following what appears to have been a limited prosecution in Ukraine, and then an amnesty,<sup>168</sup> he was extradited to Israel. Although the specific details of such cases are difficult to confirm without direct access to official records, the criminal allegations against the defendant were dropped due to insufficient evidence.<sup>169</sup> <sup>170</sup> According to media articles, Moldovan authorities appear to have also contemplated seeking the same defendant's extradition, but they have been vague in response to media requests as to whether an extradition request was ultimately made.<sup>171</sup>

It is unclear, without further research into the relevant laws governing, and circumstances surrounding, these extradition requests, how to address the particular challenges raised. Because these extraditions target the international brokers who have otherwise proven successful thus far at evading criminal responsibility, this remains a priority issue for further consideration.

### 5.4.2 Need for Co-operation

In light of the challenges presented by the transnational aspects of these cases, and given the limited resources available to the States in which these

<sup>162</sup> SPRK Indictment of S. and H. at paras. 130–142.

<sup>163</sup> *Ibid.*

<sup>164</sup> А. Дунина, "Врач-трансплантолог Владислав ЗАКОРДОНЕЦ: "Нас держат в СИЗО, чтобы мы дали показания против себя", *Комсомольская Правда в Украине* (14 May 2011), <<http://kr.ua/daily/140511/280130/>>, accessed 28 May 2013.

<sup>165</sup> EULEX, Rule of Law Mission, Kosovo Special Prosecution Office, *Indictment of S. and H.*

<sup>166</sup> F. Hassan and S. Sole, "Kidneygate: What the Netcare bosses really knew", *Mail & Guardian Online* (29 April 2011), <<http://mg.co.za/article/2011-04-29-kidneygate-what-the-netcare-bosses-really-knew>>, accessed 27 May 2013.

<sup>167</sup> *Ibid.*

<sup>168</sup> V. Manole, "The 'Black Transplantologist' and Moldovan Victims", *Investigative Journalism Center* (12 August 2011), <<http://www.investigativejournalism.md/eng/index.php?art=215>>, accessed 28 May 2013.

<sup>169</sup> See *Ibid.*, describing this case and noting also an assertion by the defence lawyer, in the trial of the defendant's nephew in a separate trial for THB/OR in Moldova, that the defendant was acquitted in Israel. According to information from Israeli authorities, no regulatory offences were charged in this case, contrary to the information in some media reports.

<sup>170</sup> *Ibid.*, describing the defendant's case and noting also assertion by the defence lawyer, in the trial of defendant's nephew for THB/OR, that defendant was acquitted in Israel. Israeli officials confirmed by e-mail, dated 8 November 2011, to OSCE consultant that prosecutors there determined there was insufficient evidence to establish this individual's criminal responsibility.

<sup>171</sup> *Ibid.*, the anti-trafficking officer asserted that an extradition request had been made; the prosecutor's office denied that a request had been filed.

trafficking networks operate, improved co-operation across affected States by this form of trafficking seems essential. Under the current situation, there is a risk that national authorities will end up taking a splintered approach to investigating trafficking networks, missing key linkages and important evidence.

For example, in one of the trafficking network cases, the lead prosecutor in the jurisdiction where the transplant surgeries were taking place, learned entirely by chance that, in another country, a prosecution was under way of local recruiters who were part of the network he was pursuing; those recruiters were alleged to have trafficked several organ donors from that country into his jurisdiction.<sup>172</sup> The result of a splintered approach may be that full accountability for the more senior participants in the networks might not be achieved. Furthermore, overlooking elements of these networks may render them more capable of reconfiguring or reconstituting themselves in the same or different countries.

Absent closer co-operation, countries where a very limited segment of the network's activities took place may even be unwilling to conduct an investigation. For example, a country whose only link to a network is that the seller or the buyer of an organ resides in that country may have little incentive to conduct an investigation, particularly as the organ donor and the buyer are typically not prosecuted.

The trafficking cases reviewed for this study have generally been investigated by authorities in the State where the transplant surgeries took place. Only the Moldova Cases lacked jurisdiction over any of the transplant centres involved; but those cases involved a large number of organ donors, as well as significant international attention. However, it is unclear whether, for example, each of the eight countries from which donors were trafficked into Kosovo in the Medicus Cases would have an interest in investigating those cases, if relying solely on their own resources. Through improved cross-border co-operation, local prosecutions could be in a better position to further accountability and may more effectively yield information and evidence about local recruiters and the *modus operandi* of the trafficking network, such as the interactions between local recruiters and the international brokers that would assist related cases in other jurisdictions.

In some cases, individual investigators and prosecutors have undertaken extraordinary efforts to share

information across investigations and to seek assistance from other jurisdictions. In 2005, a reportedly successful investigation into THB/OR allegations was jointly conducted by Bulgarian and Turkish authorities.<sup>173</sup> In the Shalimov Institute Cases, the efforts of Ukrainian authorities to engage actively with authorities in Azerbaijan have been identified as the reason the latter not only provided international legal assistance for the Ukrainian Case, but also undertook their own investigations into the transplants carried out by Ukrainian surgeons at the Azerbaijan International University Medical Center Cases.<sup>174</sup> In addition, authorities in Istanbul appear to have taken up a case including two persons indicted in the Medicus Cases, as well as a third individual identified as an un-indicted co-conspirator in the Medicus Cases, after receiving a request for assistance from EULEX in Kosovo.<sup>175</sup>

The Netcare Cases provide a further example of the value of sharing information across jurisdictions. The investigations into the Netcare defendants in South Africa paralleled an investigation, as well as a parliamentary inquiry, into the kidney hunters in Recife, Brazil who were trafficked to Durban where their kidney was removed. The successful prosecutions in Brazil of the local recruiters may be attributable in part to the extensive expertise Scheper-Hughes shared with authorities in both cases, serving as a witness not only in the Netcare investigation and also in the parliamentary inquiry into the trafficking of person from Recife.<sup>176</sup> It is unclear whether Romanian authorities will find similar assistance to prosecute local recruiters connected to the Netcare Cases, despite interactions with investigators from South Africa.

Exchanges among national investigative authorities may be particularly relevant in building cases against, or blocking further activities of, the international brokers, who have largely escaped justice thus far. These brokers can otherwise continue to reappear in different networks.

173 Associated Press, "3 held for organ trafficking", *News 24* (9 March 2005), <<http://www.news24.com/Africa/News/3-held-for-organ-trafficking-20050309>>, accessed 27 May 2013.

174 K. Zarbaliyeva, "Azerbaijani Prosecutor General's Office: No one detained due to case of illegal transplants", *Trend* (15 December 2010), <<http://pda.trend.az/en/1797968.html>>, accessed 27 May 2013.

175 H. Yayın Tarihi, "Yasadışı Organ Nakli Yaptığı" İddia Edilen Dr Yusuf Erçin Sönmez Hakkında İddianame Hazırlandı", *Sondakika* (28 September 2011), <<http://www.sondakika.com/haber-yasadisi-organ-nakli-yaptigi-iddia-edilen-dr-yusuf-3023236/>>, accessed 3 June 2013

176 F. Hassan and S. Sole, "Kidneygate: What the Netcare bosses really knew", *Mail & Guardian Online* (29 April 2011), <<http://mg.co.za/article/2011-04-29-kidneygate-what-the-netcare-bosses-really-knew>>, accessed 27 May 2013; interview of N. Scheper-Hughes, 10 November 2011.

172 Telephone interview with lead prosecutor on 11 November 2011.



For example, the same doctor/defendant has allegedly been the head of, or at least a strategic-level participant in, THB/OR networks in Moldova, Bulgaria and Ukraine. Even before his appearance in the Medicus Cases a lead defendant, who remains a fugitive in that case, had long been the subject of media coverage and academic research for his involvement in other illicit transplant rings.<sup>177</sup> His history in THB/OR includes partnerships with another alleged doctor involved in THB/OR,<sup>178</sup> who has been the subject of research by Scheper-Hughes who traced his role from transplant surgeries in Turkey in 1998 with the same defendant involving trafficked Romanian donors and in Georgia involving a trafficked Moldovan.<sup>179</sup> The latter defendant also appears in the factual allegations of the Medicus Cases (although not charged). The reported head of the network in the Shalimov Institute Cases<sup>180</sup> was reported to be involved in the recruitment of a victim-donor in 2008 from Belarus. This same person allegedly trafficked the victim from Belarus to Kosovo.<sup>181</sup> A media report in November 2011 clearly identifies this to be the same person who trafficked a Medicus victim.<sup>182</sup>

Ultimately, investigating these trafficking networks is costly and time-consuming. Arrests were first made in the Netcare Cases in 2003.<sup>183</sup> Though several of the other defendants have pleaded guilty in the intervening years, charges against the six doctors were finally dropped in February 2013.<sup>184</sup> The investigations in the Medicus Cases began in 2008, and trial for seven defendants began on 4 October 2011 with the final verdict issued on 29 April 2013. Arrests were made in

the Shalimov Institute Cases in August 2010, and proceedings in the case were still ongoing as of May 2013. Improved co-operation among national authorities investigating and prosecuting cases of trafficking in human beings for the purpose of organ removal may make such cases more effective and efficient.

#### 5.4.3 Promoting Information Sharing

Greater efforts to share information about THB/OR would be a critical development in countering this form of trafficking. Thus far, THB/OR has been addressed largely in isolation by several communities of interest, including the organ transplant, trafficking, and to a much lesser extent, by the wider human rights communities. The Declaration of Istanbul Custodian Group has enhanced to some degree a cross-disciplinary approach to this issue, as discussed later in this study, but greater synergies are needed among the experts from different fields to broaden understanding of the complex and interlocking issues involved. Several initiatives currently under development and discussed in more detail later in this report, such as the XDOT reporting tool, could play a major role in facilitating such exchanges.

Organ transplants are the focus of a number of institutions and organizations, both at the international level and, in many countries, at the national level. Most of these address medical and health policy issues regarding organ transplants, including complex legal and ethical matters. Organ trafficking issues are also generally peripheral to most forums and entities that address other forms of trafficking. In discussions with experts in other forms of trafficking, there can be a tension between the smuggling and trafficking distinction drawn in other forms of trafficking and the more stringent view in the THB/OR world that is skeptical of any alleged consent that commercial organ donors may have provided to the sale of an organ.

There is also, in particular, a need for greater and sustained focus on the crime of trafficking for organ removal and the challenges facing law enforcement responses. The recent expansion of investigations and prosecutions of networks for this form of trafficking represent new challenges to the law enforcement authorities tackling these cases. However, these recent cases have also expanded the number of law enforcement officials who have knowledge of this form of trafficking and who may have valuable experiences to share with counterparts in other jurisdictions.

Consistent with calls for increased co-operation among law enforcement and prosecution agencies

177 E.g., N. Scheper-Hughes, "Mr Tati's Holiday and João's Safari: Seeing the World via Transplant Tourism", *Body & Society*, Volume 17(2-3) (June/September 2011), p. 59; M. Jimenez and N. Scheper-Hughes,

"'Doctor Vulture' At the Centre of Istanbul's illicit kidney trade is a shadowy 44-year-old surgeon whose transplant 'donors' are not always willing ones", *The [Toronto] National Post* (30 March 2002).

178 M. Jimenez and N. Scheper-Hughes, Op. Cit.: for trafficking beginning at the end of the 1990s.

179 N. Scheper-Hughes, "Parts Unknown: Undercover Ethnography of the Organs-Trafficking Underworld", *Ethnography*, Volume 4 (2005), p. 52.

180 А. Дунина, "Жертвы 'черныхтрансплантологов' по-прежнему зарабатывают на органах: Украинские доноры, продавшие почки иностранцам, хотят получить с врачей десятки тысяч гривен компенсации", *Комсомольская Правда в Украине* (3 August 2011), <[http://kp.ua/Default.aspx?page\\_id=3&city\\_id=1&date=030811&news\\_id=293872](http://kp.ua/Default.aspx?page_id=3&city_id=1&date=030811&news_id=293872)>, accessed 27 May 2013.

181 EULEX, Rule of Law Mission, Kosovo Special Prosecution Office, *Indictment of S. and H.*

182 M. Smith, D. Krasnolutska and D. Glovin, "Organ Gangs Force Poor to Sell Kidneys for Desperate Israelis", *Bloomberg Markets Magazine* (1 November 2011), <<http://www.bloomberg.com/news/print/2011-11-01/organ-gangs-force-poor-to-sell-kidneys-for-desperate-israelis.html#print>>, accessed 26 May 2006.

183 F. Hassan and S. Sole, Op. Cit.

184 L. Comins, "Surgeons Win Epic Battle", *Independent Online* (23 February 2013), <<http://www.iol.co.za/news/south-africa/kwazulu-natal/surgeons-win-epic-court-battle-1.1475781>>, accessed 3 June 2013.

of OSCE participating States set out in the 2003 OSCE Action Plan to Combat Trafficking in Human Beings<sup>185</sup> and the 2008 Ministerial Council Decision on Enhancing Criminal Justice Responses to Trafficking in Human Beings Through a Comprehensive Approach,<sup>186</sup> relevant trafficking and anti-crime organizations at the international and regional levels should consider measures to improve the exchange of information, lessons learned and good practices relating to the investigation and prosecution of THB/OR networks. The European Commission-funded HOTT Project is a promising development that could contribute to furthering such exchanges.<sup>187</sup>

Efforts at such co-operation could begin with a conference at the working level. In order to sustain and generate practical exchanges among law enforcement officials, a small, ad hoc, virtual working group of investigators and prosecutors with direct experience in responding to these crimes could be established prior to the conference, both to articulate the more complex issues that might be addressed at such a conference and, also, to ensure that the conference maintains a focus on providing practical support to combating this form of trafficking. The timely exchange of information may also assist in the prevention of THB/OR, and mitigate the risk that law enforcement activities in one jurisdiction will merely push other elements of a network to operate in another jurisdiction.

The involvement of academic researchers, journalists and human rights researchers in conducting inquiries into this form of trafficking should not be underestimated. In other contexts where investigators and prosecutors first encounter complex crimes, there is much that can be learned from journalists, anti-trafficking practitioners and activists, and academics from different fields (historians, medical anthropologists, human rights amongst others) particularly where the subjects of interest are secretive or elusive.<sup>188</sup> In THB/OR cases, experts such as Scheper-Hughes have already assisted law enforcement personnel in at least three jurisdictions. In that light, any working group of investigators and prosecutors should be alert to the relevant experts they can call upon.

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<sup>185</sup> OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005), paras. 3–4.

<sup>186</sup> OSCE Ministerial Council, *Decision No. 5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach* (2008), para. 11.

<sup>187</sup> See footnote 22.

<sup>188</sup> The international criminal tribunals have relied, particularly in their early years, on the expertise of analysts and human rights researchers in order to inform its investigative direction.

## CHAPTER VI: MEDICAL ETHICS AND OTHER ISSUES

Research for this study has pointed to three particular challenges in combating THB/OR networks. The following issues are explored further: (i) issues of medical ethics; (ii) transplant tourism; and (iii) linkages with trafficking in organs, tissues and cells.

### 6.1 Role of Medical Professionals

The role of doctors, nurses and other medical professionals, as well as medical facilities, is well recognized as an aspect of THB/OR that sets it apart from other forms of trafficking.<sup>189</sup> The juxtaposition of prominent and public career professionals next to the shadowy profile of career criminals in a THB/OR network may appear anomalous. In fact, however, there may be just enough ethical ambiguity in the medical profession to leave openings for THB/OR to operate and to lead unethical professionals to claim a “plausible deniability”<sup>190</sup> defence to their involvement in THB/OR networks. Confidentiality principles in the medical profession may also exacerbate the secretive world of trafficking and frustrate efforts to detect THB/OR and investigate and prosecute those involved. At the same time, the role of medical professionals in THB/OR networks can present opportunities for efforts to prevent or identify and investigate THB/OR, given the essential role of medical professionals in the crime, the regulatory and legal frameworks in which they operate, and the likelihood that they have more to lose than those in a criminal network who may be career criminals. Therefore, further efforts to engage the medical community could improve efforts to combat this form of trafficking.

The transplant community has made significant progress over the past decade in articulating clearer ethical principles and guidelines relating to organ transplants with the intent of creating safeguards against THB/OR and other illegal transplant surgeries. These standards have emphasized key principles,<sup>191</sup> including: the transplant surgeon’s responsibilities to the

potential donor (as well as the recipient); evaluation of the potential donor, including a psycho-social evaluation; the provision of full information to the potential donor, including donor risks, recipient outcomes, alternative therapies; the appointment of an advocate for the donor’s interests; the informed and voluntary nature of consent to organ removal surgery; the transplant centre’s responsibility for overseeing and monitoring the donor’s recovery.

These developments and a growing concern over organ commercialism, including THB/OR, led The Transplantation Society and the International Society of Nephrology to convene a meeting of experts in Istanbul in 2008 that led to the adoption of the Declaration of Istanbul.<sup>192</sup> The Declaration set out principles covering a number of organ transplant issues, such as the equitable allocation of organs, defined key concepts relevant to THB/OR such as “transplant commercialism” and “transplant tourism”, and proposed measures to ensure the welfare of the donor, including victims of trafficking.<sup>193</sup> The Declaration of Istanbul is a landmark document that has been endorsed by medical and scientific organizations around the world.<sup>194</sup> Despite these important developments, the cases reviewed for this study reflect a need for further efforts to implement these standards, as well as for more research into some areas where persistent ambiguity can be exploited by those participating in THB/OR.

### 6.2 Medical Professionals and Transplant Surgeries

There are at least three key ways in which medical professionals are involved in THB/OR.<sup>195</sup> First, they may be involved in the illicit transplant surgery itself, as well as related medical processes (such as matching tests) and related regulatory processes (such as obtaining licences or regulatory approvals for a transplant). Second, they may be involved in assisting a prospective organ recipient find an organ through illegal channels, such as a THB/OR network. Third, they

189 E.g., UNODC CCPCJ, *Report of the Secretary-General on preventing, combating and punishing trafficking in human organs* (2006), para. 14.

190 In general, ‘plausible deniability’ refers to one’s capacity to deny a fact plausibly, especially where one seeks to avoid responsibility. The Oxford English Dictionary defines it as: “the possibility of denying a fact (esp. a discreditable action) without arousing suspicion; the method of achieving this”.

191 E.g., F. Delmonico and O. Surman, “Is This Live-Organ Donor Your Patient?”, *Transplantation*, Volume 76(8) (27 October 2003), pp. 1257–60; The Ethics Committee of the Transplantation Society, “The Consensus Statement of the Amsterdam Forum on the Care of the Live Kidney Donor”, *Transplantation*, Volume 78(4) (27 August 2004); M. L. Barr et al., “A Report of the Vancouver Forum on the Care of the Live Organ Donor: Lung, Liver, Pancreas, and Intestine Data and Medical Guidelines”, *Transplantation*, Volume 81(10) (27 May 2006);

M. A. Dew & al., “Guidelines for the Psychosocial Evaluation of Living Unrelated Kidney Donors in the United States”, *American Journal of Transplantation*, Volume 7(5) (2007), pp. 1047–55.

192 See The Transplantation Society and International Society of Nephrology, *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism* (2008), para.1228.

193 *Ibid.*, paras. 1228–29; note that the Declaration uses the term “organ trafficking” to encompass THB/OR.

194 See <<http://www.declarationofistanbul.org>>.

195 Medical professionals may, of course, also be involved in THB/OR in ways that are not inherent to their profession – such as by acting as brokers, minders, or international brokers.

may have a role in the post-operative care of an organ recipient; their failure to provide post-operative care for an organ donor may also be relevant. In each of these modes of involvement, doctors operate within a legal, regulatory and ethical framework that raises issues which have attracted attention from the transplant community, including bio-ethicists. In particular, issues may arise from the potential for tension between ethical principles and legal obligations.

In several of the THB/OR cases reviewed, the accused transplant surgeons have argued (through the media) that they were entitled to accept, at face value, a written consent or declaration provided by donors and recipients regarding adherence to transplant laws, such as those requiring that the organ donation was voluntary, was done without compensation or that the donor and recipient are related. For example, one of the transplant surgeons charged in the Shalimov Institute Cases implicitly argued in press interviews that he was entitled to accept at face value written consents signed by kidney donors.<sup>196</sup>

Similarly, a kidney specialist in Ecuador who met with a victim-donor from Belarus who was allegedly trafficked to Quito by the Shalimov Institute Cases network similarly explained that if a patient shows a document indicating that he is voluntarily donating a kidney, “then that’s as far as we go[...]. I can’t investigate the life of the person. That’s not my job”.<sup>197</sup> Likewise, a transplant surgeon charged in the St. Ekaterina Cases argued in a press interview that his job was limited to merely ensuring that the donor and recipient sign a declaration that they are related and that the organ is not being donated pursuant to a commercial transaction and that he had no responsibility for false declarations.<sup>198</sup>

In the face of clear evidence that the written declarations in such cases are untrue, it is difficult to

understand how these surgeons could insist that they were entitled (or even obligated, as some surgeons argue that questioning the declarations goes beyond their surgical role) to rely on them. Such arguments appear not so much an attempt at plausible deniability (as they are manifestly implausible) but rather, as the lead prosecutor in the Medicus Cases has put it, “willful blindness”.<sup>199</sup>

Medical doctors and other health care professionals have a duty to care for their patients. This imperative can at times appear to be in conflict with legal obligations when the patient is a prospective organ recipient. Transplant surgeons involved in THB/OR may interpret their duty of care in a manner which they think supports a plausible deniability regarding knowledge of the illegal nature of the transplant. In some cases, assertions of ignorance will simply be implausible or may, of course, be overcome by contrary evidence establishing the doctor’s intent or knowledge, including willful or reckless disregard, regarding the THB/OR network. However, greater clarity regarding the interaction of a doctor’s legal and ethical obligations regarding transplants may be more effective at deterring doctors from risking involvement in THB/OR in the first place, and also to placing in proper context the basic imperative to care for a patient. For example, the nature of ethical obligations to the “other” patient<sup>200</sup> – the trafficking victim – may require further elaboration and more effective application, as transplant surgeons involved in ethically questionable operations persist in viewing only the organ recipient as their patient.

A firm starting point should be the ethics guidance provided by the World Medical Association on resolving the tension between the duty to care and the prohibition against THB/OR. In October 2006, the WMA issued a revised Statement on Human Organ Donation and Transplantation that expressly provides that a “physician’s responsibility for the well-being of a patient who needs a transplant does not justify unethical or illegal procurement of organs”.<sup>201</sup> The Statement also

196 А. Дунина, “МВД ‘бьет’ по почкам: Расследование ‘дела черных трансплантологов’, среди которых оказались украинские врачи Владислав Закордонец, Ярослав Романив и Петр Зайченко, со дня на день будет завершено. Задержание – в ответе из Азербайджана, который должна подготовить местная полиция”, *Комсомольская Правда в Украине* (25 January 2011), <<http://kr.ua/daily/250111/263524/print/>>, accessed 28 May 2013.

197 M. Smith, D. Krasnolutska and D. Glovin, “Organ Gangs Force Poor to Sell Kidneys for Desperate Israelis”, *Bloomberg Markets Magazine* (1 November 2011), <<http://www.bloomberg.com/news/print/2011-11-01/organ-gangs-force-poor-to-sell-kidneys-for-desperate-israelis.html#print>>, accessed 26 May 2006.

198 “Болница ‘Света Екатерина’ участвала в трафик на органи: 20 пъти през последните 2 години бедни чеченци и грузинци ‘дарявали’ бъбреци на богати израелци, трансплантации те стрували 15 000 евро”, *Български Фактор* (7 January 2006), <[http://www.factor-news.net/index\\_.php?cm=2&ct=1&id=6710](http://www.factor-news.net/index_.php?cm=2&ct=1&id=6710)>, accessed 28 May; “Съдят Чирков заради незаконни трансплантации: Разследват и трафик на органи през ‘Света

Екатерина”, *vsekiden* (14 April 2008), <<http://www.vsekiden.com/27543/прокуратурата-погна-чирков-заради-из->>, accessed 28 May 2013.

199 F. Hassan and S. Sole, “Kidneygate: What the Netcare bosses really knew”, *Mail & Guardian Online* (29 April 2011), <<http://mg.co.za/article/2011-04-29-kidneygate-what-the-netcare-bosses-really-knew>>, accessed 27 May 2013.

200 G. Danovitch, “The Doctor-Patient Relationship in Living Donor Kidney Transplantation”, *Current Opinion in Nephrology and Hypertension*, Volume 16(6) (2007), p. 503, citing the ethics principle “first, do not harm”, emphasizing that the “physician must be constantly aware that the moment the donor evaluation process commences the donor becomes his or her patient and, by definition, the physician becomes the patient’s health advocate” [emphasis added].

urges doctors to be proactive in determining the validity of an organ transplant: “*Transplant surgeons should attempt to ensure that the organs they transplant have been obtained in accordance with the provisions of this policy and shall refrain from transplanting organs that they know or suspect have not been procured in a legal and ethical manner*”. In particular, “*special efforts should be made to ensure that the choice about donation is free of coercion*”. In addition, the Statement provides that: donors should be informed of the risks, including the “*implications of living without*” the organ; financial incentives should be prohibited as they could be coercive; and, an organ suspected of having been obtained through a commercial transaction must not be accepted for transplantation.

The 2002 Additional Protocol to the Council of Europe Convention on Human Rights and Biomedicine provides protections that overlap, in part, with the 2006 WMA Statement, including the requirement that the donor’s risk be evaluated and that he or she be informed of consequences and risks of donation.<sup>202</sup> In particular, the Additional Protocol mandates medical follow-up for both the donor and the recipient following the transplantation.<sup>203</sup> It also mandates that the donor be informed of his or her right to have independent advice on risks, from a health professional not involved in the contemplated transplantation.<sup>204</sup>

While the 2002 Additional Protocol and the WMA guidelines offer clear resolution to egregious cases of willful blindness, more research should be conducted into areas where greater complexities arise regarding the extent of a doctor’s obligation to conduct an inquiry into the accuracy and veracity of written consents or declarations. Questions may arise, for example, where there are other authorities or entities with specific responsibilities to authorize a transplant option. Such issues arose in several of the THB/OR network cases. In the Netcare Cases, for example, one of the formerly accused transplant surgeons has argued in the media that doctors had repeatedly been assured by the hospital’s senior management that the transplant surgeries were legal.<sup>205</sup> Assertions have also been raised in the media by accused in the St. Ekaterina

Cases and the Shalimov Institute Cases that officials at health ministries authorized or were aware of the transplant surgeries at issue, although these assertions appear to be contradicted by health officials.<sup>206</sup>

Countries that have ratified the 2002 Additional Protocol to Convention on Human Rights and Biomedicine may have more detailed legal guidance on these issues. The value of the guidance provided in the 2006 WMA Statement in any particular national court proceedings will be influenced by the national framework of laws, ethics, and health regulation, and research should be carried out into ways the WMA Statement can be integrated into THB/OR prevention and awareness campaigns directed at the medical community. In general, further research should be conducted into the role ethics guidelines can play in countering THB/OR and on any need for their further elaboration. Ultimately, the promulgation of greater clarity on medical ethics in the context of transplant surgeries will be less important in cases where doctors engage in willful blindness, but may be significant to the early detection of THB/OR and in deterring doctors from taking on questionable transplant surgeries by eliminating perceived loopholes for participation in THB/OR networks.

### 6.3 Pre-operative and Post-operative Care

The potential tension between ethical precepts and adherence to the law also arises in the pre-operative and post-operative care for organ recipients. Here, again, medical professionals may deliberately avoid clear indications of a prospective recipient’s illegal organ procurement plans or of the likely illegal provenance of the new organ for a recipient who has returned from travel abroad. These issues are a significant step removed from the culpability of doctors who are directly involved in THB/OR networks. They may, nevertheless, raise questions of potential criminal

201 World Medical Association (WMA) General Assembly, *Revised Statement on Human Organ Donation and Transplantation* (Pilanesberg, October 2006); PACE SHFAC, *Trafficking in organs in Europe* (2003), quoting WMA GA, *Statement on Human Organ and Tissue Donation and Transplantation* (Edinburgh, October 2000).

202 Council of Europe, *Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin* (2002), articles 11 and 12.

203 *Ibid.*, article 7.

204 *Ibid.*, article 12.

205 F. Hassan and S. Sole, *Op. Cit.*

206 “Болница ‘Света Екатерина’ участвала в трафик на органи: 20 пъти през последните 2 години бедни чеченци и грузинци ‘дарявали’ бъбреци на богати израелци, трансплантации те стрували 15 000 евро”, *Български Фактор* (7 January 2006), <[http://www.factor-news.net/index\\_.php?cm=2&ct=1&id=6710](http://www.factor-news.net/index_.php?cm=2&ct=1&id=6710)>, accessed 28 May 2013; “Съдят Чирков заради незаконни трансплантации: Разследват и трафик на органи през ‘Света Екатерина’”, *vsekiden* (14 April 2008), <<http://www.vsekiden.com/27543/прокуратурата-погна-чирков-заради-из>>, accessed 28 May 2013; “Болница ‘Света Екатерина’ участвала в трафик на органи: 20 пъти през последните 2 години бедни чеченци и грузинци ‘дарявали’ бъбреци на богати израелци, трансплантации те стрували 15 000 евро”, *Български Фактор* (7 January 2006) <[http://www.factor-news.net/index\\_.php?cm=2&ct=1&id=6710](http://www.factor-news.net/index_.php?cm=2&ct=1&id=6710)>, accessed 28 May 2013; “Съдят Чирков заради незаконни трансплантации: Разследват и трафик на органи през ‘Света Екатерина’”, *vsekiden* (14 April 2008), <<http://www.vsekiden.com/27543/прокуратурата-погна-чирков-заради-из>>, accessed 28 May 2013.

liability for the organ recipient and for the doctors involved. Furthermore, a closer examination of the interplay of ethics principles and legal prohibitions may offer ways of better detecting and preventing the occurrence of THB/OR or providing authorities with access to organ recipients as a source of evidence of a trafficking network's operations.

The tension between the duty to care and legal prohibitions underlies the blind eye many doctors turn to clear signs that a prospective organ recipient is planning to obtain an organ through illicit processes. For example, in a study of the situation in the Netherlands, a researcher found that nephrologists deliberately refrain from asking questions to avoid making the suspected truth explicit, to reduce their involvement in conduct that may be unethical and illegal.<sup>207</sup> The same ethical tensions arise when doctors are faced with patients returning from commercial organ transactions from abroad.<sup>208</sup> The guidelines that call for the transplant surgeon to see the donor, as well as the recipient, as the patient may not apply clearly to a nephrologist who has contact only with one patient.

While the pre- and post-operative situations may not pose the potential tension between ethical obligations and legal prohibitions as sharply as the situation of organ transplants, crucial issues are raised that are relevant to the prevention or detection of THB/OR. In the pre-operative context, for example, a medical doctor may be in a position to alert authorities to the potential involvement of the prospective recipient in an illegal transplant, particularly at the point where such a patient requests his or her medical records. But any such policy may of course also result in harm to the prospective recipient, touching on an underlying policy ambivalence where the interests of the recipient are concerned. One leading transplant expert in the US has recommended that, in such a situation, the doctor should proactively discourage the patient from engaging in conduct that may be unethical or illegal, including by providing medical advice regarding the medical risks that patient may

face.<sup>209</sup> The World Health Assembly's 2010 resolution WHA 63.22 called on member states to "*encourag[e] healthcare professionals to notify relevant authorities when they become aware of [transactions involving human body parts, organ trafficking and transplant tourism] in accordance with national capacities and legislation*".<sup>210</sup>

In the post-operative context, there is of course less cause for a dilemma in a policy that imposes a reporting obligation on doctors. The 2003 PACE Organ Trafficking Report even urged that "*medical staff involved in follow-up care for patients who have purchased organs should be accountable if they fail to alert the authorities*".<sup>211</sup> Yet, even then, such an obligation may still raise countervailing concerns for the recipient, including a strain on the physician-patient relationship. It is currently unclear what the obligations are for doctors to report patients in such situations. While imposing inquiry and reporting obligations on doctors will likely put some strain on the patient-doctor relationship, lessons on the appropriate balance may be guided by reference to situations in various countries in which reporting obligations are imposed by legislation, such as in the case of gunshot injuries or suspected child abuse. In both the pre- and post-operative contexts, an underlying acknowledgement of the difficult situation facing a prospective organ recipient likely contributes to the ambivalence in instituting or enforcing reporting obligations.

More research should therefore be conducted on the ethical and legal obligations of medical professionals and the potential impact such obligations may have on preventing or countering THB/OR. Beneficial measures may include stricter protocols to prevent a conflict of interest between the two patients,<sup>212</sup> stricter reporting requirements regarding donor evaluations, and accountability for violations. Reporting requirements may also clash with the principle of confidentiality for medical treatment. Where ethical guidance for medical professionals is found to be insufficiently clear, options should be explored, recognizing that a proper balance may not be readily

207 One nephrologist is quoted summing up the dilemma, "*I did not want to interrogate the patient, for I am his doctor and I will remain his doctor [...]. I refrained myself from knowing [...]. I wanted to keep my hands clean and not be accessory to things that are ethically unacceptable. I did not want to feel guilty*"; see F. Ambagtsheer and W. Weimar, "A Criminological Perspective: Why Prohibition of Organ Trade Is Not Effective and How the Declaration of Istanbul Can Move Forward", *American Journal of Transplantation*, Volume 12 (3) (March 2012), p. 65. The 2003 PACE Organ Trafficking Report calls for liability for medical staff who "*encourage and provide information to patients in search of illegal transplant and donors*", see PACE SHFAC, *Trafficking in organs in Europe* (2003), para. 38.

208 F. Ambagtsheer and W. Weimar, Op. Cit., p. 66.

209 G. Danovitch, "The Doctor-Patient Relationship in Living Donor Kidney Transplantation", *Current Opinion in Nephrology and Hypertension*, Volume 16(6) (2007), p. 503. See also Declaration of Istanbul Custodian Group, "Thinking of Buying a Kidney?: What You Need to Know", *Patient Brochure* (undated), <[http://www.declarationofistanbul.org/index.php?option=com\\_content&view=article&id=113&Itemid=41](http://www.declarationofistanbul.org/index.php?option=com_content&view=article&id=113&Itemid=41)>, accessed 3 June 2013.

210 UN World Health Assembly, *Resolution Human organ and tissue transplantation*, WHA 63.22 (Geneva, 21 May 2010), para. 2(3).

211 PACE SHFAC, *Trafficking in organs in Europe* (2003), para. 38.

212 See G. Danovitch, Op. Cit., pp. 503-504; A. J. Ghods, "Ethical Issues and Living Unrelated Donor Kidney Transplantation", *Iranian Journal of Kidney Diseases*, Volume 3(4) (2009), p. 187;

found. Such research could offer significant insights into the role of medical professionals in countering THB/OR. In addition, such research may lead to means for a more equitable burden-sharing between “demand” countries and “supply” countries in countering THB/OR.

Even while recognizing that complex ethical issues exist, it should be underscored that the manufacture of false tensions between ethical principles and legal prohibitions by those complicit in THB/OR will be rejected, deterring complicit medical professionals from seeking to hide behind willful blindness when engaging in criminal conduct.

Scheper-Hughes has noted that, in her research, “[f]rom the outset I was stymied by unwritten codes of professional loyalty and secrecy and by the impunity enjoyed by a professional medical elite”.<sup>213</sup> Through a more public and transparent discussion of how medical professionals can help counter THB/OR and the nature of their obligations to both donors and recipients, it may be possible to reduce an important obstacle to revealing the extent and nature of THB/OR.

The need for greater clarity in some of the areas identified above was recently addressed by the Declaration of Istanbul Custodian Group (DICG) which convened a meeting in Doha, Qatar in April 2013 to mark the fifth anniversary of the Declaration and to assess progress on implementation of its principle and proposals. The DICG’s Doha Communique resolves, among other measures, to “develop, and recommend implementation of, systematic ways for physicians to identify and report to appropriate registries [...] patients returning with a donor organ from an ‘unverifiable’ source or manifesting other indications of a vended organ”.<sup>214</sup> The Communique also resolves to “develop a ‘white paper’ discussing professional responsibilities in responding to patients who travel or plan to travel abroad for a transplant that would be illegal in their country of residence, including professional and public policies on the access of such patients to short- and long-term treatment in the national healthcare and insurance systems”.<sup>215</sup>

213 N. Scheper-Hughes, “Parts Unknown: Undercover Ethnography of the Organs-Trafficking Underworld”, *Ethnography*, Volume 5(1) (2004), p. 37, noting further that “[t]ransplant surgeons vie only with the

214 Vatican and its cardinals with respect to their assumption of privilege, irrefutability and of a kind of ‘divine election’ that seems to place them above (or outside) the mundane laws that govern ordinary mortals”. Danovitch & al., “Organ Trafficking and Transplant Tourism: the Role of Global Professional Ethical Standards – the 2008 Declaration of Istanbul”, *Transplantation*, Volume 95(11) (15 June 2013), p. 5.

215 *Ibid.*, p. 7.

## 6.4 “Transplant Tourism”

As noted at the outset, one particular aspect of THB/OR has had limited treatment in this study – those cases where the sole component of the THB/OR network within the OSCE region is the organ buyer. No systematic research has been conducted on the scope and scale of this problem. It is evident, however, that this is a significant phenomenon. In 2004, the Council of Europe published responses by Member States to a questionnaire regarding organ trafficking.<sup>216</sup> Responses acknowledged that destinations for organ buyers from various Council of Europe Member States included China and India,<sup>217</sup> a phenomenon which had, in any event, already been extensively documented.<sup>218</sup>

This aspect of THB/OR has, in general, received little focus – in part, reflecting a view that it is not conduct that will be prosecuted. Indeed, with rare exceptions, organ recipients are not prosecuted, despite legal prohibitions against purchasing organs. In its 2011 Knowledge Product on Organ Trafficking, Europol notes that EU Member States are consistently not assessed as places for illicit transplant activity, even though the report elsewhere notes travel by residents of Greece and the UK for organs to India and the Philippines. When places of THB/OR are discussed, the focus generally falls on the locus of transplant surgeries and the country of the organ donors.

However, it may be necessary to revisit the current, largely benign view of the departure point of transplant tourism. Nationals of Western European countries travel for organs to Eastern European countries and places further east. Combating the trafficking networks, however, generally is seen as beginning at the transplant centre and with the donors. Recognizing this, in her 2003 PACE Organ Trafficking Report, Rapporteur Vermot-Mangold reminds that all trafficking is demand-driven and emphasizes that “[c]ombating [trafficking in organs] should not remain the sole responsibility of countries in Eastern Europe”.<sup>219</sup> Further thought should be given as to how the “demand” countries can alleviate the burden that countries in Eastern Europe carry to effectively investigate and prosecute the traffickers.

216 Council of Europe Steering Committee on Bioethics (CDBI)/European Health Committee (CDSP), *Replies to the questionnaire for Member States on organ trafficking* (2004).

217 *Ibid.*, pp. 58–59.

218 E.g., Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), *Coercion in the kidney trade? A background study on trafficking in human organs worldwide* (2004), pp. 20–23.

219 PACE SHFAC, *Trafficking in organs in Europe* (2003), para. 9.

## **6.5 Potential Linkages to Trafficking of OTC**

The issue of trafficking in organs, tissues and cells (OTC) – when not involving trafficking in human beings – has deliberately been excluded from this study. As the 2006 Council of Europe/UN Study emphasized several times, the trafficking of OTC is distinct from THB/OR under international standards.

From a law enforcement perspective, however, the potential for linkages between trafficking in OTC and THB/OR networks should be considered. As responses to THB/OR networks become more effective, a question arises as to whether such pressure will push these networks to seek their objectives through other means, given the growing demand for black market organs. If placed under pressure, some international THB/OR networks might seek to reconfigure themselves as largely domestic networks. As domestic networks, however, they would be subject to far more efficient and effective responses from regulatory and law enforcement entities and likely be less profitable.

The possibility remains, then, that a THB/OR network could turn to trafficking in OTC. Whether this is possible depends in large part on technical capacities. Deceased donations, however, already involve some transportation of an organ outside the body. Prudent law enforcement measures to combat THB/OR networks should remain abreast of medical and related technological advances that may have an impact on the activities of such networks.



## CHAPTER VII: ADDRESSING VICTIMS' RIGHTS AND NEEDS IN PRACTICE

M.K. is an illiterate 32 year-old single mother. Her job is poorly paid and she cannot support her child. One day, an acquaintance tells her that she could earn good money by selling her kidney and that she could be back on her feet two days later. She decides to sell her kidney and, thus, she is put in contact with two traffickers. At one point, the woman changes her mind, and in response the couple threatens to report her to the police, telling her it was a crime to agree to donate a kidney. She was then given a passport, a visa and is flown to another country where she undergoes the surgery. Prior to the operation, she is examined but no information is given to her on pre- and post-operative care. M.K. hardly understands what is happening to her because she does not understand the language spoken in the country. Four days later, upon her return home, the traffickers refuse to pay her the money promised. M.K. is now suffering post-operative complications and her chances of finding a suitable job to support her family have dramatically diminished. She cannot afford to see a doctor for her ceaseless pains and no governmental or non-governmental organization is available to turn to for health and social support, and legal counselling to seek compensation for the damages suffered.

N.B. lives in a small village with his wife, young child, and sick father. He does not have a house for his family, nor does he have an income to support them. One day, he meets a neighbour who offers him a job in a foreign country. N.B. decides to accept the offer and, a few days later, is given a passport, driven to a neighboring country, from where he flies to another country. Once he reaches the final destination, N.B. is segregated in an apartment, where a man reveals the final aim of his journey: to give his kidney away. 15 days later, N.B. is accompanied to a hospital to be examined and to sign consent documents written in a foreign language he does not understand. Shortly after, N.B. undergoes surgery and, five days later, he leaves the hospital with little money in his pockets and with no information on post-operative care and referral. Back home, he is in pain due to post-operative complications but he cannot afford to visit a doctor. Due to his poor health conditions, he cannot perform any heavy physical labour and, therefore, he is unable to provide for his family. Furthermore, no specialized social or other services are available to support his poor health and socio-economic condition.

After enduring prison and torture, A.T. decides to leave his country to seek asylum abroad. A friend of his takes care of all logistics and, through a smuggling channel, A.T. soon reaches a camp, where he is abandoned with other refugees. Other traffickers take over and subject A.T. and other migrants to serious abuses and threats to extract money through ransom. A.T. is then driven to the nearest capital to give his kidney to pay for his ransom. No pre- and post-operative information and care is given and, after a few days, he is left alone with no money and no contact details. A.T. is now irregularly living in the country, suffering from medical complications and with no help to improve his health and social condition.

*Sample victim accounts gathered during research into actual reported cases in the OSCE region.*

### 7.1 Overview of the Rights Framework for Victims of THB/OR

Persons trafficked for organ removal are victims of a heinous crime. They are victims of a form of trafficking that is relatively unknown, and which has rarely been investigated and addressed, even within the well-established anti-trafficking community. Yet, human trafficking for organ removal is provided for in all major international and regional, and many national, legal frameworks and policies addressing trafficking in human beings. Hence, men, women, boys, and girls

trafficked — internally or across borders — to have an organ removed, are legally recognized as victims of a criminal offence that directly causes them physical, psychological, and economic damage. As victims of a crime and severe human rights violations, States must ensure the full protection of their rights, as well as ensuring the provision of support and protection measures. Hitherto, though, very little has been done to reach out to victims and potential victims of THB/OR and to provide them with comprehensive short-, medium-, and long-term assistance as well as access to justice and compensation.

The evidence gathered through the available studies<sup>220</sup> and the work carried out by the very few NGOs engaged in the field show that several human rights<sup>221</sup> are breached during the process of the recruitment, transportation, transfer, harbouring or receipt of victims of trafficking for organ removal and upon return to their origin place, namely the:

- Right to non-discrimination, equality before the law and equal protection by the law<sup>222</sup>;

- Right to life, liberty and security<sup>223</sup>;
- Right to be free from slavery, servitude, and forced labour<sup>224</sup>;
- Right to freedom from torture or cruel, inhuman or degrading treatment or punishment<sup>225</sup>;
- Right to health<sup>226</sup>;
- Right to participation and access to information<sup>227</sup>;
- Right to an adequate standard of living<sup>228</sup>;
- Right to food<sup>229</sup>;
- Right to justice and access to effective remedy<sup>230</sup>;
- Right to seek asylum and to be protected from torture and inhuman or degrading treatment<sup>231</sup>.

220 M. Moniruzzaman, "'Living Cadavers' in Bangladesh: Bioviolence in the Human Organ Bazaar", *Medical Anthropology Quarterly*, Volume 26(1) (2012), pp. 69–91; R. L. Mendoza, "Transplant Management from a Vendor's Perspective", *Journal of Health Management*, Volume 14 (2012), pp. 67–74; D. Budiani-Saber, *Human Trafficking for an Organ Removal (HTOR): A Call for Prevention, Protection, Investigations, and Accountability*, briefing before the Tom Lantos Human Rights Commission United States Congress (23 January 2012); COFS, *Sudanese Victims of Organ Trafficking in Egypt. A Preliminary Evidence-Based, Victim-Centered Report* (2011); S. Lundin, "The Valuable Body. Organ Trafficking in Eastern Europe", *BalticWorld.com* (11 February 2010); S. Yea, "Trafficking in Part(s): The Commercial Kidney Market in a Manila Slum, Philippines", *Global Social Policy*, Volume 3 (2010), pp. 358–376; D. Budiani-Saber, A. Mostafa, "Care for Commercial Living Donors: the Experience of an NGO's Outreach in Egypt", *Transplant International*, Volume 24(4) (April 2011), pp. 317–323; F. Moazam, R. Moazam Zaman, and A. M. Jafarey, "Conversations with Kidney Vendors in Pakistan: An Ethnographic Study", *Hastings Center Report*, Number 3 (2009), pp. 29–44; UN.GIFT/UNODC, *The Vienna Forum to fight Human Trafficking, 13–15 February 2008, Austria Center Vienna*, Background Paper to the Workshop: Human Trafficking for the Removal of Organs and Body Parts (Vienna, 2008); M.A. Bos, *Transplant Tourism and Organ Trafficking. An Overview in Europe*, ELPAT Forum (Prague, 2 October 2007); Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), *Coercion in the kidney trade? A background study on trafficking in human organs worldwide* (Eschborn, 2004); N. Scheper-Hughes, "Parts Unknown: Undercover Ethnography of the Organs-Trafficking Underworld", *Ethnography*, Volume 4 (2005), pp. 29–71.

221 Human rights are protected under international law through the following treaties: United Nations, *Universal Declaration of Human Rights* (1948); United Nations, *International Covenant on Civil and Political Rights* (1966); United Nations, *International Covenant on Economic, Social and Culture Rights* (1966); United Nations, *International Convention on the Elimination of All Forms of Racial Discrimination* (1965); United Nations, *Convention on the Elimination of all Forms of Discrimination against Women* (1979); United Nations, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984); United Nations, *Convention on the Rights of the Child* (1989); United Nations, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (1990); United Nations, *Convention on the Rights of Persons with Disabilities* (2006); United Nations, *International Convention for the Protection of All Persons from Enforced Disappearance* (2006). The International Labour Organization (ILO) formulated key conventions to promote social justice and human and labour rights, including: ILO, *Convention on Forced Labour*, C29 (1930); ILO, *Abolition of Forced Labour Convention*, C105 (1957); and ILO, *Worst Forms of Child Labour Convention*, C182 (1999). Also regional treaties – enforced, *inter alia*, by the Council of Europe, the OSCE, and the European Union – and other legally binding instruments require the State Parties to fully protect the fundamental human rights of individuals. For a comprehensive guidance on trafficking in persons and the respect of human rights, see United Nations Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking, Commentary* (Geneva, 2010); AIM for Human Rights et al., *The Right Guide. A Tool to Assess the Human Rights Impact of Anti-trafficking Laws and Policies* (2010).

222 See UDHR, Articles 2, 6, 7, 8; ICCPR, Articles 2(1), 6, 7, 8, 14, 16, 26; ICESCR, Articles 2(2), 3; CEDAW, Articles 1, 2; CERD, Articles 1, 5; ICRMW, Articles 1, 24; ECHR, Article 14.

International, regional, and many national anti-trafficking legal frameworks clearly set forth the rights to protection, support, and access to justice and remedies and specify the related services to be provided to trafficked persons, including victims of THB/OR. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000); the OSCE Action Plan to Combat Trafficking in Human Beings (2003)<sup>232</sup>; the Council of Europe

223 UDHR, Articles 3, 9; ICCPR, Articles 6, 9; ICERD, Article 5; CRC, Articles 6, 37; ICRMW, Articles 9, 16; ILO, C143, Article 1; ECHR, Articles 2, 5.

224 UDHR, Article 4; ICCPR, Article 8; ICESCR, Article 10; Article CEDAW 6; CRC, Articles 11, 32, 34, 35, 36; Slavery Convention; Supplementary Convention on the Abolition of Slavery and Practices Similar to Slavery; ICRMW, Article 11; ILO C29, Article 11; ILO C105, Articles. 1, 2; ILO C182, Articles 1, 3; ECHR, Article 4.

225 UDHR, Article 5; ICCPR, Article 7; CAT, Articles 2, 4, 16; ICERD, Article 5; CRC, Articles 19, 37; ICRMW, Article 10; ECHR, Article 3.

226 UDHR, Article 25; ICESCR, Article 12; ICERD, Article 5; CEDAW, Article 14; CRC, Articles 24, 25, 39; ICRMW, Article 28; ECHR, Article 3.

227 ICCPR, Article 25.

228 UDHR, Articles 22, 25; ICESCR, Articles 10, 11.

229 ICESCR, Articles 2, 11, 23.

230 ICCPR, Articles 2, 8; ICERD, Articles 5, 6; UNCAT, Articles 12, 13, 14; ICRMW, Article 18.

231 UDHR, Article 14; UNHCR, *Convention Relating to the Status of Refugees* (1951); See also OSCE OSR/CTHB, *Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment, Occasional Paper Series no. 5* (June 2013), for a discussion of how certain cases of trafficking in human beings may amount to torture, and the clinical and legal consequences that flow therefrom.

232 OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005), Chapter V. Over the past years, the OSCE has called on participating States to protect its victims by enforcing comprehensive anti-trafficking legislation and frameworks. The OSCE specifically addressed the trafficked persons' support and protection needs that participating States are required to meet through professional measures and specialized services in several Ministerial Council Decisions, i.e., OSCE Ministerial Council, *Decision No. 1 Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings* (Vienna, 28 November 2000); OSCE Ministerial Council, *Declaration on Trafficking in Human Beings* (Porto, 7 December 2002); OSCE Ministerial Council, *Decision No. 13/04 the Special Needs for Child Victims of Trafficking for Protection and Assistance* (Sofia, 7 December 2004); OSCE Ministerial Council, *Decision No. 2/05 Migration* (Ljubljana, 6 December 2005); OSCE Ministerial Council, *Decision No. 13/05 Combating Trafficking in Human Beings* (Ljubljana, 6 December 2005); OSCE Ministerial Council, *Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, through a Comprehensive and Proactive Approach* (Brussels, 5 December 2006); OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human*

Convention on Action against Trafficking in Human Beings (2005)<sup>233</sup>; and the EU Directive 2011/36<sup>234</sup>, on preventing and combating trafficking in human beings and protecting its victims require their Member States or State Parties to provide — on a consensual and informed basis — the following services to trafficked persons, regardless of their legal status:

- Safe accommodation;
- Material assistance;
- Necessary medical treatment;
- Psychological assistance;
- Counselling and information;
- Legal counselling and representation;
- Access to justice and compensation schemes, including exercise of the non-punishment provision; (see below)
- Vocational training and education;
- Access to the labour market;
- Voluntary return to the place of origin;
- Translation and interpretation services.

In April 2013, the OSCE SR issued key recommendations on the implementation of the non-punishment provision for all victims of THB.<sup>235</sup> The non-punishment principle is a legally and politically binding obligation<sup>236</sup>, which means that victims of THB cannot be prosecuted for crimes that are directly linked to their trafficking experience. Importantly, the right to non-punishment also applies to administrative fines

or detention, so that victims of THB cannot be sanctioned for immigration offences or document forgery for instance. The application of the non-punishment principle may be particularly relevant for victims of THB/OR, since in nearly all jurisdictions, it is illegal to provide an organ in exchange for financial compensation, or to provide an organ to a non-family member. As discussed earlier, a reportedly frequent practice of traffickers is to compel or otherwise coerce victims to sign agreements or contracts indicating their consent to donate the organ freely, willingly, or for financial compensation. These fraudulent agreements or contracts are often not explained in full to the victim, in a language the victim does not understand, and are not provided in full to the victim — in sum, these documents could in no way constitute full and informed consent. These documents could however, make the victim of THB/OR particularly vulnerable to prosecution or other sanctions if the victim was not recognized as a victim of trafficking. They can also be used by the trafficker to threaten the victim (as the victim is likely not aware of the non-punishment principle), to coerce the victim into silence or to aid in further recruitment activities. As stated in the SR's Recommendations, once a reasonable grounds indication has been reached that the suspect of a crime is a victim of trafficking, any prosecution against them for a crime that is caused or directly linked to their trafficking should not be initiated or at least be discontinued without delay (or as soon as possible) by the competent judicial authority.

Further, the SR's recommendations on non-punishment make clear that the non-punishment principle applies to all means of trafficking including: *“threat/use of force, other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability”*. Being “compelled” to commit a crime thus includes *“the full array of factual circumstances in which victims of trafficking lose the possibility to act with free will, not only under the threat of physical violence or emotional coercion, but also in the devastatingly prevalent scenarios wherein traffickers exploit victims by abuse of a position of vulnerability”*.<sup>237</sup> Given that available research suggests that many victims of THB/OR are exploited through abuse of a position of vulnerability, such as economic hardship or economic-social and cultural marginalization, this is a particularly important point. It also further reinforces the need for victims of THB/OR to be identified as victims, and provided with legal assistance and representation.

*Beings for Labour Exploitation* (Madrid, 30 November 2007); OSCE Ministerial Council, *Decision No. 5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach* (Helsinki, 5 December 2008); OSCE Ministerial Council, *Ministerial Declaration on Combating All Forms of Human Trafficking*, MC.DOC/1/11/Corr.1 (Vilnius, 7 December 2011).

233 Council of Europe, *Convention on Action against Trafficking in Human Beings*, CETS No. 197 (Warsaw, 16 May 2005), Article 12.

234 European Union, *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA* (5 April 2011), in Official Journal L 101, Article 11. Furthermore, in compliance with: *European Union, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA* (4 November 2012), in Official Journal L 315: EU Member States are required to ensure and provide victims of crime, including victims of all forms of trafficking, appropriate information and a wide range of protection and support services.

235 See OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking* (June 2013), <<http://www.osce.org/cthb/101002>>, accessed 28 May 2013.

236 See: Council of Europe, *Convention on Action against Trafficking in Human Beings* (2005), Article 26; European Union, *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA* (5 April 2011), in Official Journal L 101, Article 8; and UN Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (2002).

237 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Op. Cit., para. 12.

Many OSCE participating States have not only transposed the main international human rights standards into their domestic laws but they have also developed comprehensive assistance frameworks for the detection, identification, protection, social and labour inclusion of potential, presumed, and identified trafficked persons. In many cases, the protection and support measures are distinctly described in National Action Plans and provided within the National Referral Mechanisms or similar informal co-ordination mechanisms<sup>238</sup>.

The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2008) – developed at the Istanbul Summit on Organ Trafficking and Transplant Tourism (30 April–2 May 2008) – specifically addresses the needs of protection and safety of living donors, who may include victims of THB/OR. It calls upon States and health care institutions to routinely and transparently provide – during the screening and the follow-up care – the following set of measures to ensure the physical and psychological well-being of donors<sup>239</sup>:

- Evaluation of the donor’s understanding, including assessment of the psychological impact of the procedure, as part of mechanisms for informed consent (both for donation and for follow-up procedures);
- Psychosocial assessment by mental health professionals during the screening;
- Medical and psychosocial care during the donation event and for any short- and long-term period required by the consequences resulting from the organ donation;
- Psychosocial services during the follow-up care;
- In case of organ failure in the donor, medical care (including dialysis, if necessary) and priority access to transplantation, *“integrated into existing allocation rules as they apply to either living or deceased organ transplantation”*.<sup>240</sup>

238 See, *inter alia*, ICMPD, *The Way Forward in Establishing Effective Transnational Referral Mechanisms. A Report Based on Experiences in Cases of Human Trafficking in South-Eastern Europe* (Vienna, 2012); E-notes, *E-notes Report on the Implementation of Anti-trafficking Policies and Interventions in the 27 EU Member States from a Human Rights Perspective (2008 and 2009)*, Capodarco di Fermo (2010); OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Efforts to Combat Trafficking in Human Beings in the OSCE Area: Co-ordination and Reporting Mechanisms, 2008 Annual Report of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings* (Vienna, 2008).

239 The Transplantation Society and International Society of Nephrology, *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism* (2008), p. 1228.

240 Ibid.

The Declaration of Istanbul also comprises recommendations to ensure that countries with universal health insurance as well as countries lacking universal health insurance provide donors with proper medical care related to the organ donation. It also underlines that *“health and/or life insurance coverage and employment opportunities of persons who donate organs should not be compromised”*<sup>241</sup>. Currently, the Council of Europe is finalizing a convention to combat trafficking in organs, tissues and cells of human origin which might include provisions to protect victims.<sup>242</sup>

## 7.2 A Preliminary Assessment of the Needs of Victims of THB/OR

Against this background, the question is: do victims of THB/OR have access to the comprehensive legal and operational framework, described above, that allows for the protection of the human rights of all trafficked persons? According to official statistics of anti-trafficking national bodies and the reports of NGOs and international organizations providing services to trafficked persons in the OSCE region, very few victims of THB/OR are identified<sup>243</sup> and benefit from available protection systems.

While no systematic study has been conducted on THB/OR victims in the OSCE region, studies from other contexts are instructive. Victims in Egypt, for example, who have been part of longitudinal studies by the NGO Coalition for Organ Failure Solutions, are overwhelmingly reluctant to reveal their identity as a victim, with 91 per cent expressing social isolation due to their donation and 85 per cent unwilling to be publicly known as an organ vendor.<sup>244</sup> These findings are consistent with anecdotal accounts of victims in OSCE participating States, particularly in Moldova, who also appear to be unwilling to identify themselves due to shame or embarrassment. These feelings of shame and regret are exacerbated by the deterioration

241 Ibid.

242 Parliamentary Assembly Council of Europe, Committee on Social Affairs, Health, and Sustainable Development, *Towards a Council of Europe convention to combat trafficking in organs, tissues and cells of human origin*, Doc. 13082 (20 December 2012).

243 UNODC, *Global Report on Trafficking in Persons* (Vienna, 2012); United States Department of State, *Trafficking in Persons Report 2012* (Washington, 2012); See also European Commission, EUROSTAT, *Trafficking in human beings* (2013), <[http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130415\\_thb\\_stats\\_report\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130415_thb_stats_report_en.pdf)>, accessed 3 June 2013.

244 D. A. Budiani-Saberi and F. L. Delmonico, “Organ Trafficking and Transplant Tourism: A Commentary on the Global Realities”, *American Journal of Transplantation*, Vol. 8(5) (2008), pp. 927–928, citing D. Budiani, *Consequences of living kidney donors in Egypt*, Presentation at the Middle East Society on Organ Transplants Meetings, Nov. 2006, Kuwait.

of health and long-term financial disadvantage resulting from being trafficked for organ removal.<sup>245</sup>

And yet, the present study confirms the existence of several cases of THB/OR in the OSCE region, following on years of investigative research by journalists and academics “on the trail of organ stealing rumors”.<sup>246</sup> Nevertheless, very limited or sporadic — if any — contact seems to exist between the “traditional” anti-trafficking service providers and victims of THB/OR. Whereas such service providers perform outreach and provide a wide range of services mainly to persons trafficked for sexual exploitation and — to a certain extent — to those trafficked for labour exploitation, for forced begging, or forced criminality, victims of THB/OR largely remain undetected, unidentified, without access to support, assistance and protection measures. As a result, they have no access to fundamental human rights.

In the course of the present research, only a very small number of NGOs directly addressing THB/OR and/or supporting victims on a regular basis were identified and contacted. Among this short list, only two are located within the OSCE region: Chernivtsi Public Youth Association “Suchasnyk” (Ukraine) and Renal Foundation (Moldova). Others are located outside of the OSCE region: Coalition for Organ Failure Solutions — COFS (Egypt, India, and Nepal), Asia ACTs (Philippines), and Casa Alianza (Colombia). Otherwise, NGOs regularly engaged in the anti-trafficking field in the OSCE region have rarely assisted victims of THB/OR — generally upon a police referral; in addition they do not implement systematic prevention or awareness-raising activities to address this form of trafficking. International and regional organizations are increasingly becoming aware of the need to focus attention on THB/OR prevention and awareness-raising issues among their work on combating THB; in some instances, they support awareness-raising initiatives in co-operation with local NGOs. For instance, the OSCE Project Co-ordinator’s Office in Ukraine and IOM Ukraine provided support to a training seminar for general practitioners and medical staff on “Protecting and assisting victims and potential victims of

human trafficking for harvesting organs within NRS”. The event was held in the Moldovan town of Hincesti (25 June 2008) and organized by the NGO Renal Foundation in collaboration with the NGO La Strada Moldova.<sup>247</sup> Both the OSCE Project Co-ordinator’s Office in Ukraine and the IOM also provide support to Chernivtsi Public Youth Association “Suchasnyk”, a local NGO in the Chernivtsi region which has provided victim assistance and protection to at least one victim of THB/OR, in addition to outreach activities (see textbox for further details).

The lack of organizations providing regular outreach and services to victims of THB/OR in the “hotspots” of the OSCE region can be the result of a combination of factors. The latter may include: poor or non-existent data and research on the phenomenon in most countries; potential victims and victims live in hard-to-reach villages; victims are afraid or ashamed to discuss their experience; victims do not perceive themselves as victims of a crime; “mainstream” anti-trafficking professionals lack knowledge, know-how, and operational tools to map, reach out to, and support victims; lack of contact between mainstream anti-trafficking organizations and those assisting potential victims and victims of THB/OR; poor or no exchange between scholars and transplant surgeons engaged in the fight against THB/OR and the mainstream anti-trafficking community; lack of available funding to investigate the phenomenon and to set up ad hoc services for victims; THB/OR is not on the agenda of the national and local bodies responsible for anti-trafficking policies.

Indeed, available evidence-based research reveals that victims of THB/OR do indeed exist in some places of the OSCE region and these victims need to be reached out to and properly assisted. The few organizations within the OSCE region that have accumulated experience and know-how in supporting victims of THB/OR should be inspirational for organizations operating in OSCE participating States, and encourage them to develop methodologies and tools to address the phenomenon and to map, detect, identify, and assist victims. On the other hand, the practices and instruments used by the mainstream anti-trafficking community to map, detect, identify, and assist persons trafficked for purposes other than organ trafficking can be used and adapted by organizations supporting victims of THB/OR. In this framework, the exchange, transferability, and adaptation of practices are key as well as the inclusion of the NGOs supporting victims of THB/OR into the existing anti-trafficking local,

245 D. A. Budiani-Saberi and F. L. Delmonico, Op. Cit., p. 928.

246 See, N. Scheper-Hughes, “Min(d)ing the body: On the trail of organ stealing rumors”, in J. McClancy (Ed.), *Exotic no more: Anthropology on the front lines* (Chicago: University of Chicago Press, 2002), pp. 33–63; S. Lundin, “Organ Economy: Organ Trafficking in Moldova and Israel”, *Public Understanding of Science*, Vol. 21(2) (2012), pp. 226–241; N. Codreanu (Renal Foundation), “Identification of Victims and Collection of Cases on Organ Trafficking”, Presentation held at the 3<sup>rd</sup> ELPAT Invitational Working Groups Meeting (Sofia, 8 October 2010); N. Scheper-Hughes, “Illegal Organ Trade: Global Justice and the Traffic in Human Organs,” in R. Grussner, E. Bedeti (Eds.), *Living Donor Organ Transplants* (McGraw-Hill: New York, 2008), pp. 107–121.

247 House of Commons, Home Affairs Committee, *The Trade in Human Beings: Human Trafficking in the UK*, Sixth Report of Sessions 2008–2009 (London, 2009), p. 221.

national, and transnational networks and assistance mechanisms. In this process, the views of trafficked persons must always be taken into account to allow their full participation in the decision-making process concerning all procedures and measures affecting them.

### 7.3 Considerations for Addressing Victims' Needs

In the following paragraphs, some preliminary observations and proposals are made with a view to fostering the development of tailor-made measures for the protection and assistance of victims of THB/OR. These recommendations are based on a review of available findings and the knowledge gathered by organizations assisting victims of THB/OR, but also victims of sexual exploitation, forced labour, and forced begging.

Persons trafficked for organ removal have very distinct needs to be addressed. A thorough needs assessment must therefore be carried out in order to design and implement comprehensive services to fully support and assist them. As in the case of victims of other forms of THB, protection and assistance programmes should ensure that victims of THB/OR have access to the opportunities and resources necessary to achieve their potential, participate in economic and social life, and secure a sound standard of living (i.e., empowerment). The following suggestions are thus intended to serve as an initial basis to start to reflect on the protection and support measures that victims of THB/OR could be provided with in the OSCE region.

#### 7.3.1 Outreach Work

Detection and identification of presumed trafficked persons are crucial elements of any anti-trafficking response and, most of all, they are essential operational procedures to allow victims to acknowledge and access their fundamental rights. Victims of more visible forms of trafficking (e.g., forced street prostitution, forced begging or peddling, forced labour in agriculture, construction, and other economic sectors) are more reachable than victims of concealed forms of trafficking (e.g., domestic servitude, forced indoor prostitution, forced labour in sweatshops or factories). Persons trafficked for organ removal largely belong to the second group. They are especially difficult to reach out to often because of their unwillingness to be identified due to feelings of shame associated with disclosing their experience.<sup>248</sup> Victims of THB/OR may also not perceive themselves as victims of a crime.

248 S. Lundin, Op. Cit., p. 7.

Yet, the long-standing experience of the mainstream anti-trafficking NGOs as well as the few practices of NGOs combating THB/OR clearly show that outreach work is key to making contact with victims.

Outreach work comprises activities aimed at mapping the places where victims of THB/OR live as well as at reaching out to victims to provide them with:

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

Outreach activities may take different forms depending on the cultural context and the specific needs of the target groups. Such activities may be performed simply on foot or by using, for instance, a “mobile unit” (i.e., a car or a minivan) or they could be carried out in a more discreet fashion in places where victims are not willing to come forward. In fact, in most countries, organ removal is taboo and being identified as a victim may result in social stigmatization, reduced employment prospects, jeopardy to immigration or refugee status, or affect victims’ ability to find a spouse.<sup>249</sup>

The composition of an outreach team may vary according to the resources of both the organization and the network involved. However, at a minimum it should comprise a social worker and a doctor; in the case of migrant victims, a cultural mediator should also

249 M.A. Bos, *Transplant Tourism and Organ Trafficking. An Overview in Europe*, ELPAT Forum (Prague, 2 October 2007); Coalition for Organ-Failure Solutions, *Sudanese Victims of Organ Trafficking in Egypt* (December 2011), <<http://cofs.org/home/sudanese-victims/>>, accessed 3 June 2013.

be present. Peer educators are particularly important for any outreach activities because they facilitate the trust-building process with victims and can serve as a “positive model”. In the context of mainstream anti-trafficking work, peer educators are persons who experienced situations similar to those of the victims (e.g., forced prostitution, labour exploitation, forced begging) and managed to overcome it. Once trained, they counsel victims and support their empowerment. Formerly assisted victims also play an important role, as they can refer other victims to outreach workers or suggest places where victims can be found.

Outreach work should be carried out in remote villages as well as in urban areas where potential and presumed victims of THB/OR may be found according to mapping activities and evidence-based research. It should also target public and private hospitals performing transplantations, and venues where vulnerable groups are “hosted” or gather, such as, asylum seekers’ centres, detention centres, prisons, and irregular migrants’ living, working and meeting places.<sup>250</sup> Outreach activities can also be used for prevention purposes to target potential victims and the local community at large to raise awareness of all the implications, consequences, and risks associated with organ donation, as well as of the related human rights.

### 7.3.2 Health Care

Trafficking for the purpose of organ removal entails life-long health consequences for victims. Due to inadequate — if any — screening, follow-up, and care, victims’ health and general well-being may greatly worsen as years go by. In fact, research to date indicates that their daily lives are marked by weakness, dizziness, pain, seizures, or pricking that prevent them from performing any labour-intensive job and generating income for their own and their family’s self-sufficiency.<sup>251</sup> Victims can also develop serious and infectious diseases, such as, for instance, hypertension, hepatitis, chronic renal disease (CKD), diabetes, haemorrhages, HIV, and AIDS.<sup>252</sup> All of these physical conditions or consequences may be exacerbated by poor nutrition, alcohol or substance abuse, and hard physical labour.<sup>253</sup>

The right to health is a fundamental human right that victims of THB/OR rarely enjoy. Some of the reasons

<sup>250</sup> Ibid.

<sup>251</sup> D. A. Budiani-Saberi, Op. Cit. p. 2.

<sup>252</sup> F. Moazam, R. M. Zaman, and A. M. Jafarey, “Conversations with Kidney Vendors in Pakistan: An Ethnographic Study”, *Hastings Center Report*, Number 3 (2009), p. 30;

<sup>253</sup> Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), *Coercion in the kidney trade? A background study on trafficking in human organs worldwide* (Eschborn, 2004), p. 17.

#### COFS (USA, Egypt, Bahrain, India, Nepal)

Established in the United States of America, the Coalition for Organ-Failure Solutions (COFS) is an international health and human rights NGO “with a mission to combat the trafficking of humans for an organ and ending the reliance upon the poor as a source of organ supplies”. COFS carries out prevention, outreach and support programmes for actual and potential persons trafficked for an organ (including medical follow-up care; health education; counselling/peer support; economic empowerment and income generation assistance; and referral to legal services). It carries out advocacy activities targeting a wide range of actors, including vulnerable populations, transplant professionals, policy makers, human rights activists, anti-trafficking workers, journalists, and the public at large.

COFS investigates organ trafficking-related issues and publishes their evidence-based findings in medical and social sciences journals and human rights reports. Moreover, it produces multi-media materials of their findings (e.g., the documentary *Organ SOS*, video clips of victim testimonies).

COFS is currently developing XDOT (eXpose and Disrupt Organ Trafficking), an online reporting tool to collect, standardize and assist with analysis of case reports and examine linkages and patterns around the activities of the HTOR abuses. The tool will be supplemented by a mobile phone-based resource/reporting line to provide further resources to actual and potential persons trafficked for an organ.

COFS currently works in Egypt, Nepal, and India and also have programme development in Bahrain, Bangladesh, Kuwait, Pakistan, the United Arab Emirates, and Yemen.

Source: <<http://www.cofs.org>>

for this include the fact that health facilities are out-of-reach; medical services are expensive, of poor quality, disrespectful of culturally sensitive issues, or gender-blind; victims are fearful of disclosing their conditions or are not aware of the medical follow-up and care they need.

Health is a right to be ensured throughout ad hoc services comprising:

- Regular clinical assessment;
- Follow-up exams, including urine and blood tests, ultrasonic determination of the kidney size, to be performed right after the organ removal, one month, six months, and one year afterwards, and, then, annually for life;<sup>254</sup>
- Accompaniment to health services;
- Health education sessions.

<sup>254</sup> D. Budiani-Saberi, Op. Cit., p. 5

Licensed doctors and nurses should provide these services in hospitals, health centres, and NGO premises or during outreach work. In the case of migrant victims, a cultural mediator should also be present to allow language interpretation and a culturally sensitive approach.

### 7.3.3 Psychological Counselling

Victims may face very serious psychological consequences as a result of the organ removal and the cultural, social, and religious values and positions of their community on organ donation and trafficking. Victims may experience anxiety, fear, concern, shame, guilt, humiliation, a sense of hopelessness as well as appetite loss, insomnia, crying spells and can fall into depression and alcoholism.<sup>255</sup> They may develop “a perception of the self as somehow halved and incomplete following the nephrectomy [and] a constant anxiety for the remaining kidney”<sup>256</sup>; they feel “an empty space here”<sup>257</sup>. Consequently, their “individual’s self image and basic sense of self are [...] affected”<sup>258</sup>. This psychological state combined with the poor health conditions and the relapse into the poor living conditions they tried to improve by selling a kidney severely undermines the victim’s well-being and strongly affects the life of their family and the fabric of their community.

Psychological counselling is thus especially relevant for persons trafficked for organ removal. It is a crucial instrument to help them recover their welfare and to promote their self-identification process as holders of rights<sup>259</sup>. This measure can be offered on an individual basis or through support group sessions as a means to collectively discuss their experiences and feelings<sup>260</sup>. In some cases, victims may also require psychiatric care.

Psychological counselling and psychiatric care can be delivered by licensed psychologists and psychiatrists associated with anti-trafficking organizations, or through mental health services or psychologists and psychiatrists who volunteer their services. Due to some victims’ reluctance or unavailability to travel to the psychologist’s practice, it might be necessary to consider the provision of psychological counselling in

another format. For instance, this measure could be part of the services provided through outreach work.

### 7.3.4 Legal Counselling and Representation

Persons trafficked for organ removal are victims of a crime and severe abuses of their fundamental human rights during the process of trafficking and upon their return to their place of origin. Human rights violations can be perpetrated by a wide range of actors, including recruiters, traffickers, hospital staff, medical professionals and surgeons, and support organizations.<sup>261</sup> States and local authorities can also violate the human rights of victims of THB/OR when they do not take the necessary measures to ensure them, for instance, the right to non-discrimination, equality before the law and equal protection by the law; the right to health; the right to an adequate standard of living; the right to food; the right to seek asylum and to be protected from torture and inhuman or degrading treatment; and the right to justice and access to effective remedy. As is the case with other forms of trafficking, few cases of THB/OR have gone to court, either for criminal prosecution or civil claims.

In the course of the last decade, some mainstream anti-trafficking organizations<sup>262</sup> operating in the OSCE region have developed legal counselling services for persons trafficked for sexual and labour exploitation than may be relevant for establishing legal counselling services specifically addressing victims of THB/OR.

Legal counselling should be provided by licensed lawyers and paralegals to assist victims:

- To acquire full information about their legal rights and opportunities;
- To file a complaint against their perpetrators;
- To participate in legal proceedings;
- To have granted all necessary protection measures and needs before, during, and after the trial (both if the victims do not co-operate with the competent authorities or if they act as witnesses);

255 See, *inter alia*, F. Moazam, R. Moazam Zaman, and A. M. Jafarey, Op. Cit.

256 *Ibid.*, p. 42.

257 *Ibid.*

258 S. Lundin, “The Valuable Body. Organ Trafficking in Eastern Europe”,

259 *BalticWorld.com* (11 February 2010), p. 6.

European Commission, *Report of the Experts Group on Trafficking in Human Beings* (Brussels, 2004), p. 182.

260 D. Budiani-Saberi, Op. Cit.

261 On the “collateral damage” of support services, see OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Combating Trafficking as Modern-Day Slavery: A Matter of Non-Discrimination and Empowerment. 2012 Annual Report of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings* (Vienna, 2012); and GAATW, *Collateral Damage. The Impact of Anti-Trafficking Measures on Human Rights around the World* (Bangkok, 2006).

262 See, for instance, the Comp. Act national reports on legal counselling services provided to victims of trafficking and mechanisms to access compensation and restorative justice at <<http://www.compactproject.org>>.



**Chernivtsi Public Youth Association  
"Suchasnyk" (Ukraine)**

Since 1998, this local NGO has been providing support and assistance measures to victims of THB in the Chernivtsi region of Western Ukraine, which borders Moldova and Romania. The NGO began addressing THB/OR in 2010, providing support, assistance and protection measures to victims and potential victims of THB/OR, and undertaking a regional awareness-raising and prevention campaign on this form of trafficking. The NGO has provided psycho-social support, facilitated medical assistance (including arrangements for disability status and assistance), legal counselling and access to justice, and vocational training for self-employment (mini-agricultural business) to victims and potential victims of THB/OR.

The NGO is supported in their work by the OSCE Project Co-ordinator's Office in Ukraine, the IOM in Ukraine in addition to the Ukrainian State authorities who have provided at least one victim of THB/OR with official status as a victim of THB, and respective social assistance.

From the perspective of this NGO, the main short-term needs of victims are vocational training and the development of job skills taking into consideration the victim's possible limitations due to physical disability related to the organ removal. The main long-term need of victims is for ongoing medical assistance, including annual treatment and care in the hospital. The NGO worked closely with a victim of THB/OR in order to address long-term, part-time employment needs taking into consideration what kind of work the victim could perform due to physical constraints, what was available in the labour market and what was realistic in terms of generating sufficient income to be sustainable.

The NGO's experience confirms that victims of THB/OR may be particularly difficult to identify and assist because of the different perception of the trafficking even by the victim themselves; even though victims have endured severe mental and physical abuse, they may blame themselves for



*This poster was part of a regional awareness raising campaign by the NGO Chernivtsi Public Youth Association "Suchasnyk" in Ukraine. The text highlights the legal prohibitions on buying/selling organs in Ukraine, and warns that potential organ donors can be deceived or lured with false promises of financial rewards and put their health and their lives at risk. A potential organ donor has the right to full information about their rights and possible health consequences.*

the trafficking, and not consider themselves to be a victim of trafficking in the first place, particularly due to a lack of awareness among the general public about the crime.

In order to address this lack of information in the community, the NGO undertook a regional awareness raising campaign to prevent this form of THB.

*Source: Interview of NGO Chernivtsi Public Youth Association "Suchasnyk" by the OSCE Project Co-ordinator's Office in Ukraine, May 2013*

- To apply for temporary or permanent residence permits or for asylum (for migrants);
- To ensure application of the non-punishment principle, including legal action to contest any administrative fines, detention, as well as to defend the victim from any criminal prosecution;
- To seek redress and compensation for the harm suffered during the trafficking experience and/or upon the return to the place of origin.

Lawyers and paralegals can meet the victims within the premises of the anti-trafficking organizations, in their law firms, in the victims' homes or in another agreed upon place. In some cases, they meet victims through outreach work as regular or occasional members of the outreach team. In all cases, legal counselling and representation should be free-of-charge and should aim to provide all effective remedies for victims.

Compensation for victims can be sought on the basis of criminal proceedings, in terms of the confiscation of assets or profits of the organized criminal activity. Victims may also consider pursuing civil judgments against traffickers which will pose a challenge vis-à-vis those traffickers, especially the international brokers, who reside or keep assets in other countries.<sup>263</sup>

**7.3.5 Vocational Training and Labour Inclusion**

All people have the right to work and, through their salary, to enjoy decent living conditions for themselves and their families. Persons trafficked for organ

<sup>263</sup> Better use of financial investigation techniques as well as seizure and confiscation of the assets of perpetrators in anti-trafficking investigations may increase the opportunities for victims' compensation; see OSCE OSR/CTHB and OCEEA, *Leveraging Anti-Money Laundering Regimes to Combat Trafficking in Human Beings* (forthcoming).

removal often cannot enjoy this fundamental human right because of their poor health and psychological conditions. As already described, they cannot afford to work for long hours or to perform heavy jobs. Through the support of anti-trafficking organizations and the collaboration of other agencies, victims can be provided with different services aimed at acquiring new professional skills, finding employment solutions suiting

their specific health needs and, most of all, achieving stable economic empowerment, such as:

- Vocational training;
- On-the-job training;
- Employment counselling;
- Job placement assistance;
- Income generating programmes;

### Asia ACTs (Philippines)

Asia Against Child Trafficking (Asia ACTs) is a regional network of more than 100 organizations working together to fight child trafficking in Southeast Asia, including in the Philippines, Cambodia, Indonesia, Lao People's Democratic Republic, Thailand, and Vietnam. Since its inception in 2001, Asia ACTs has been working towards advancing the fight against child trafficking by collaborating with various organizations and agencies at the international, regional, and national levels.

Asia ACTs has developed two distinct projects to specifically address organ trafficking-related issues in the Philippines.

Between 2011 and 2012, the “Inter-Agency Approach to Address Organ Trafficking in the Philippines” project was implemented in the Camarines Norte, Camarines Sur, and Davao areas to assess the extent of the phenomenon; to gather evidence-based findings on the trafficking process, the profiles of victims involved, and the available support services; and to conduct medical missions to assess the health status of the identified victims (i.e., “kidney vendors”).

Starting in 2012, the “Engaging Communities in the Fight against Organ Trafficking” project is currently being carried out in Rizal, Cavite, and Batangas areas. Its activities aim at advocating for the stringent implementation of the national anti-trafficking law (Republic Act 9208/2003) and the enactment of national and local regulations and policies to prevent and fight organ trafficking as well as to protect the rights of victims; at establishing partnerships with different stakeholders, including Government authorities and relevant agencies, to ensure and provide protection and support measures to victims; and at identifying kidney vendors in other areas.

Within the framework of these projects, Asia ACTs has carried out the following activities:

- Education sessions targeting the local communities and the victims and potential victims to raise their awareness on organ trafficking-related issues, also in partnership with the Social Welfare and Development Department (Region IV-A). Brochures and comics strips in form of fans were also distributed;
- Interviews with potential victims and victims of organ trafficking upon contacts and information provided by local governments, ACTs network, and previously identified victims;
- Medical mission to provide identified victims with health information, medical check-ups and lab tests, in



This cartoon was developed as part of a joint awareness raising campaign in the Philippines by Asia ACTs, Terre des Hommes, UNOHCHR and the Philippine Society of Nephrology. “Kiko” is a construction worker and is looking to supplement his low salary. His fellow construction worker had spoken to a recruiter and was told of a man called “Pedro”, who “felt fine after selling his one kidney”. “Kiko” and his wife visit a health centre to find out more. They are told about the importance of regular check-ups for those who have an organ removed. A social worker explains the difference between organ donation, and trafficking for organ removal, wherein recruiters may use tricks to deceive potential victim-donors into agreeing to the surgery.

- collaboration with doctors of the Philippines Society of Nephrology and municipal health and social workers;
- Training sessions on the organ trafficking phenomenon and related rules and regulations aimed at health professionals, health workers, and social workers;
- Lobbying initiatives targeting national and local policy makers to call on the stricter implementation of the anti-trafficking law; the passing of anti-organ trafficking regulations and municipal ordinances for the protection and support services for victims; and stricter screenings for organ donors at the hospitals.

Source: E-mail exchanges with M.E. Jacinto-Escobedo (Asia ACTs) and <www.asiaacts.org>

- Micro-credit programmes;
- Financial assistance;
- Language training (for migrants).

A wide range of professionals can be involved in the provision of these measures since they usually result from co-operation among anti-trafficking organizations, schools, vocational training agencies, labour agencies, trade unions, employers' associations, local or national social welfare and labour departments. Also in this case, the analysis of practices developed in the last decade by anti-trafficking NGOs assisting victims of trafficking for sexual and labour exploitation are extremely relevant to designing services capable of meeting the needs of victims of trafficking for organ removal.

### 7.3.6 Accommodation

Little information has been gathered about the need to provide emergency or transitional shelter or other accommodation solutions to persons trafficked for organ removal. This could be because the available sources concern victims mostly met in their place of origin or while being hosted by a support organization. There are probably cases of victims who cannot return home because they fear social stigmatization or because their safety would be in danger. They should be hosted in a safe place to recover, to be assisted, and to plan their future. Future research may consider investigating this specific issue.

### 7.3.7 Partnership and Multi-agency Work

These are two key working principles of the traditional anti-trafficking community that apply also to organizations providing support to persons trafficked for organ removal. This is to say that comprehensive and professional assistance services to victims of THB/OR should be implemented with the full participation, co-operation, and co-ordination of anti-trafficking NGOs, health associations, health care professionals' associations, human rights organizations, international organizations, local healthcare and social welfare departments, relevant national and local authorities, schools and training agencies, labour agencies, trade unions, volunteer health and legal practitioners, and community-based groups (i.e., multi-disciplinary and cross-sectorial approach).

Towards this aim, it is fundamental that all necessary steps be taken to bridge health and human rights organizations currently providing outreach to and assisting victims of THB/OR with the mainstream anti-trafficking community and related support networks.

Moreover, the relevant health and human rights organizations should become constituent components of the existing or to-be-developed local, national, and transnational mechanisms such as National Referral Mechanisms or any other informal co-operation systems. Their activities would then be included in the standard operating procedures regulating the co-ordinated work performed by the support agencies and institutions providing protection and assistance mostly to persons trafficked for sexual, labour, and begging exploitation. Against this background, multi-agency training and exchanges are prerequisites to acquiring the necessary knowledge and know-how to operate in a rather "unknown" field of assistance (i.e., capacity building development). Sharing the same "language" is a key starting point for professionals to employ terms and tools referring to the same conceptual and operational framework. For this reason, all currently available training schemes on human trafficking-related issues should include also modules on THB/OR and be open to professionals who are or may be in contact with victims of THB/OR.

### 7.3.8 Research

Comprehensive research on THB/OR is still lacking in the OSCE participating States and beyond. Yet, it is much needed to understand the features and the scope of the phenomenon as well as to investigate a wide range of issues, including — *inter alia* — the human rights abuses suffered by victims and their impact on the victims and the communities concerned; the gender and age dimensions of the phenomenon; the legal and policy gaps to fill in to ensure the full protection, health, well-being, social and economic empowerment of trafficked persons; available services and gaps of the existing support and healthcare systems.

The circle of transplant surgeons, cultural anthropologists, bioethics scholars, health and human rights activists who have developed remarkable knowledge on THB/OR and the circle of mainstream anti-trafficking experts and practitioners must finally gather around the same table. Research on organ trafficking and victims must go beyond the medical, health management, cultural anthropological, ethnographic, and political science journals and conferences to inform a larger audience and especially anti-trafficking practitioners and policy makers. At the same time, anti-trafficking advocates and scholars must start to enlarge their areas of interest to also include trafficking for organ removal in their investigations. Multi-disciplinary studies and action-research are crucial to exploring the multidimensional aspects of THB/OR and identifying the necessary steps to

improve the legislation and policy framework, and the measures to prevent and fight THB/OR and protect its victims.

The above-mentioned considerations and suggestions on measures targeting persons trafficked for organ removal certainly need to be further explored, expanded, and discussed among different stakeholders, including victims themselves. It is time to finally start assessing and addressing the rights of a group of victims duly listed in all major international, regional, and many national anti-trafficking legislation and policies but rarely reached out to and assisted. As duty bearers, States are obliged to respect, protect, and fulfil the human rights of the individuals on their territory, including victims of THB/OR. Along with all anti-trafficking stakeholders, States must respect, protect, fulfil, and promote the full range of civil, cultural, economic, political, and social rights that every trafficked person unconditionally holds at any stage of their detection, identification, referral and support process. Indeed, persons trafficked for organ removal are not mere “organ sellers”, “organ vendors” or “organ donors” — as most literature frame them — but they are victims of a crime and holders of rights. They must be viewed as such, and, most of all, finally acknowledged and supported in all OSCE participating States and beyond.

## CHAPTER VIII: CONCLUSION AND RECOMMENDED NEXT STEPS

### 8.1 Conclusion

THB/OR is carried out by trafficking networks headed by international brokers who work with corrupt transplant surgeons and local kidney recruiters to exploit the desperation of both the trafficking victims and the organ recipients, using coercion and deception to advance the objectives of the networks. The transnational nature of these networks greatly complicates the efforts of law enforcement authorities to detect and investigate these crimes. The international brokers in particular have in the past demonstrated resilience in avoiding accountability and have established or appeared in new trafficking networks after earlier networks were disrupted. Greater co-operation among national law enforcement and prosecutorial authorities is essential to bringing those traffickers to justice and to preventing the establishment of new networks.

The prevention of THB/OR also needs to become a higher priority for national authorities. Public awareness campaigns among potential target populations are needed that provide information on the risks and potential consequences of selling an organ as well as on the potential risks for recipients of buying an organ.

More attention should also be focused on the essential role that medical professionals play in these networks, an aspect that sets THB/OR apart from other forms of trafficking. Efforts to make sure transplant surgeons are aware of their legal and ethical obligations are also needed to prevent doctors' participation in trafficking networks. They may also shift a professional culture adopted by some transplant surgeons in which a willful and deliberate blindness to the illicit nature of an organ transplant seems to them defensible on the basis of their professional ethics. The fact that medical professionals are essential for these networks should be seen as an opportunity to take a focused approach to preventing this form of trafficking.

Ultimately, these trafficking networks are motivated by the profits generated by the illicit market, for which the demand continues to grow. Unfortunately there is a widespread view that THB/OR is not a pressing concern for the demand countries, which are generally wealthier. Unless this view is addressed, the burden will remain fully on the countries from which trafficking victims tend to originate, as well as the countries where the organ transplants are conducted, both generally less wealthy countries. The burden entails not

only the resources required for the complex investigation and prosecution of THB/OR networks, but also the healthcare and rehabilitation costs, as well as lost productivity, resulting in the aftermath of organ removal for the majority of trafficking victims. These costs are not limited to the victim alone, but also extend to any dependents that will likewise fall further into poverty when the victim's health declines.

The "demand" countries should consider ways in which they can support the efforts of "supply" countries in countering THB/OR. Demand countries can assist in the detection, investigation, and prosecution of persons responsible for THB/OR, by responding in a timely manner to requests for international legal assistance, and by providing other forms of support to investigations and prosecutions, including expertise and technical forensic capacities. Consideration should also be given to support for prevention and victim support programmes in countries of origin for trafficking victims. Demand countries should also continue to aggressively find ways of encouraging deceased and altruistic donations. In short, trafficking for organ removal should not be seen as a phenomenon limited to countries of origin. Moreover, as detailed in Chapter VII, victims of trafficking for organ removal may face particular challenges in terms of being identified in the first place, as well as in receiving appropriate assistance and protection over the short, medium and long-term. At the same time, victims of trafficking for organ removal may also benefit from some of the developments in the well-established anti-trafficking movement, such as an emphasis on access to justice. The provision of legal assistance and representation will be decisive in terms of ensuring that persons trafficked for organ removal have access to effective remedies such as compensation.

The fact that several investigations and prosecutions have been carried out in recent years against THB/OR networks in the OSCE region has brought into sharper focus a phenomenon that, only in the space of some two decades, has moved from unconfirmed reports to a vivid reality. Both the transnational nature of these criminal networks and the disproportionate burden these crimes place on less wealthy countries demand greater co-operation among States on all aspects of combating this form of trafficking.

Despite recognition to the contrary, there is a persistent belief in many quarters that organized crime

offences do not apply to trafficking cases unless ‘traditional’ organized crimes groups are involved. Where evidence of the activities of a THB/OR network satisfy the legal definition of organized criminal activity, bringing forward that charge may be appropriate. In light of the analyses of THB/OR networks in this report, the pursuit of organized crime charges would indeed appear to be an important way of combating this phenomenon.

For the investigation and prosecution of these crimes, greater co-operation among national law enforcement authorities is essential in the face of criminal networks that stretch across countries, particularly in light of the difficulties in bringing to justice the heads of these networks. In light of indications that most of the THB/OR networks have linkages involving a handful of international brokers, improved co-operation may even succeed in disrupting the networks now in operation.

Ultimately, however, progress in combating THB/OR may only shift this form of trafficking to other countries within the OSCE region or beyond. The growing numbers of persons in need of organ transplants will generate a continuously growing demand for illicit organs, creating incentives for traffickers. Nor will progress against these THB/OR networks, in itself, do much to alleviate the root causes of this form of trafficking — the acute poverty which compels these victims to consider selling an organ. A comprehensive approach to tackling this form of trafficking will ultimately need to become a greater priority for all the countries affected, within the OSCE and beyond.

## 8.2 Recommended Next Steps

### 8.2.1 Assessment of Legislative Framework

While the numbers of THB/OR cases that have been investigated or prosecuted are still limited, there now appears to be a sufficient basis to initiate reviews of the adequacy of national legislative frameworks for achieving full accountability for those responsible for perpetrating this form of trafficking. The cases point to several salient elements to consider. Among them:

- *Forms of exploitation.* Does domestic anti-trafficking legislation include organ removal among the illicit forms of exploitation? The absence of this element may tend to focus law enforcement officials on investigating and charging violations of organ transplant laws, which generally carry lower penalties than anti-trafficking provisions. Moreover, where law enforcement officials proceed

on the narrower elements of criminal violations of organ transplant laws, they will have little incentive or reason to investigate fully the victimization of the donor victim.

- *Consent.* Is it sufficiently clear under the law that consent is irrelevant where one of the prohibited means is present? The issue of consent in trafficking continues to generate confusion. This confusion is, perhaps, further aggravated in THB/OR cases by the policy debate in some areas over the feasibility or desirability of responding to the ever-growing shortage of transplant organs through the establishment of regulated markets, where the purchase and sale of organs would be legal. At present, the sale and purchase of an organ for financial gain is illegal nearly everywhere; and, in any event, the law under the Trafficking Protocol is clear that consent becomes irrelevant where one of the prohibited means is involved. The review of cases for this study indicates clearly that fraud and other prohibited means take many different forms in THB/OR but, when adequately investigated, can resolve the consent issue for purposes of pursuing a trafficking charge.
- *Other provisions of the criminal code.* Is it sufficiently clear that other provisions of the criminal code may be applicable to THB/OR? Provisions ranging from corruption to organized crime to the infliction of bodily injury may be relevant, in addition to trafficking charges, in order to address the full range of criminality involved in the conduct that furthers THB/OR networks. In addition to ensuring that the full range of THB/OR and related provisions are provided for in domestic criminal law, it is also important to ensure that criminal justice actors are sensitized to the full range of actors and abuses involved in a THB/OR network.

In general, an assessment of the legislative framework for THB/OR may be guided by the recommendations set out in the OSCE Action Plan to Combat Trafficking in Human Beings and Ministerial Council Decision No. 5/08 with particular reference to THB/OR, including by:

- (a) Ensuring that all forms of THB/OR are criminalized in national legislation;
- (b) Adopting such measures as may be necessary to establish the liability of legal persons;
- (c) Considering legislative provision for confiscation of the instruments and proceeds of trafficking and related offences, specifying that the confiscated proceeds of trafficking will be used for the benefit

- (especially health care) of victims of THB/OR;
- (d) Ensuring that THB/OR and related offences constitute extraditable offences under national law and extradition treaties;
  - (e) Ensuring that expertise in THB/OR is incorporated in any special anti-trafficking units;
  - (f) Improving law enforcement co-operation and information exchange among participating States with respect to THB/OR, including by considering bilateral witness relocation agreements and by supporting the establishment of a working group to exchange information, lessons learned and best practices regarding THB/OR;
  - (g) Supporting training for law enforcement authorities and medical professionals on THB/OR, including relevant laws, penalties, and ethical obligations and guidelines;
  - (h) Developing and implementing an awareness-raising programme, in co-operation with civil society and NGOs.

### 8.2.2 Expanded Use of International Legal Co-operation

The review of cases for this study repeatedly underscored the significance of mutual legal assistance and other forms of transnational legal co-operation in combating THB/OR. From the informal exchange of information to more formal measures including joint investigations or extraditions, the highly internationalized nature of the THB/OR cases that have come to light thus far emphasize the need for all forms of co-operation. In this context, the comparative availability of resources should be considered. On this point, the recommendation of Rapporteur Vermot-Mangold in her 2003 report on organ trafficking remain equally valid ten years later; countries from which organ recipients originate (the “demand countries”), should recognize that THB/OR is not a problem for “supply” countries alone.

### 8.2.3 Knowledge Sharing: Strengthening Capacity to Investigate and Prosecute THB/OR

The review of cases for this study indicate that there are already a number of lessons and good practices that have been gathered by authorities in several participating States; there are also certainly cautionary tales that, if shared, may save other anti-trafficking efforts from repeating mistakes made by others. There do not appear, however, to be adequate opportunities thus far for law enforcement practitioners to share their experiences in a forum that would focus on disseminating practical guidance and lessons learned. Thought could be given by international or regional organizations to

convening a workshop that brings together the very practitioners who have tackled THB/OR to share their knowledge. Depending on the assessed value of such a workshop, thought may be given in due course to the creation of a more structured working group of experts on THB/OR. An ongoing, rigorous review of the successes and failures of law enforcement efforts may also provide policymakers with a solid basis for assessing any need for further developments of the law.

### 8.2.4 Preventive Measures

Even as there has been an increase in the number of THB/OR cases investigated or prosecuted, each successive case seems to reflect a persistent lack of awareness of many aspects of THB/OR, including a limited understanding of the health implications of losing an organ, as well as a lack of understanding of when one may be engaging in culpable conduct. To further prevention efforts, international or regional organizations may consider developing a pilot project for a public awareness campaign, including a specialized parallel programme for medical professionals. For the general public, particularly in States that have previously been source countries for victim-donors, information could be provided concerning the legal prohibitions against commercial donations, together with information regarding the health and social risks of organ donation, in the absence of the kind of holistic programmes that generally exist for altruistic donors. For medical professionals and health officials, particularly in States that have served as the transplant locus for THB/OR networks, broader public discussion of relevant ethical and legal obligations, as well as specific examples of conduct that is illegal, may assist in rendering this essential role unavailable for prospective THB/OR networks.

### 8.2.5 Gathering Data on THB/OR

There are promising developments to bring standardization and rigour to the collection of information on THB/OR. The XDOT platform’s case-based approach should yield a significantly clearer understanding of the nature and scope of THB/OR around, shedding light on linkages and *modus operandi* of THB/OR networks. States, however, will of course continue to have a core role in collecting and analysing information about THB/OR. As more cases of THB/OR come to light, there is a much greater awareness and understanding of THB/OR, and a correspondingly greater degree of openness in discussing this form of trafficking than during efforts to gather information reflected in earlier reports, such as the Council of Europe’s 2004

report<sup>264</sup> and the 2011 Europol Knowledge Product on Organ Trafficking.<sup>265</sup> Within the OSCE region, a new and updated questionnaire from an international or regional body would provide essential information on the scope and scale of this form of trafficking.

#### 8.2.6 Promoting Multi-disciplinary Synergies

One of the challenges of researching trafficking for organ removal is that data and analysis tend to be dispersed among different fields such as medical, anti-trafficking, health management, cultural anthropological, ethnographic, and political science, amongst others. In order to promote sound evidence-based policies to prevent THB/OR and to effectively assist and protect persons trafficked for organ removal, as well as prosecute those responsible, there is a need to join forces in further multi-disciplinary research. At the same time, anti-trafficking advocates and scholars must start to enlarge their areas of interest to also include trafficking for organ removal in their investigations. Multi-disciplinary studies and action-research are crucial to exploring the multidimensional aspects of THB/OR and identifying the necessary steps to improve the legislation and policy framework, and the measures to prevent and fight THB/OR and protect its victims.

#### 8.2.7 The Gender Dimension

Concern over the gender dimension of THB/OR has repeatedly been raised by studies, but information about the impact of THB/OR on women continues to be limited. More research is needed on all aspects of such an impact as well as of the particular vulnerabilities of women to THB/OR.

#### 8.2.8 Addressing Victims' Rights and Needs

Specialized services to meet the specific health, social, and legal needs and protect the human rights of persons trafficked for the purpose of organ removal should be developed. Towards this aim, the OSCE participating States should promote comprehensive assessments to identify victims' needs and map the available services and service providers that can respond to the identified needs. In this framework, multi-disciplinary and multi-agency working groups

should be established to share and discuss the current knowledge and detect the gaps of the existing support and healthcare systems. Such working groups should involve all relevant stakeholders, including at least anti-trafficking experts and practitioners, potential and former victims, transplant surgeons, policy makers, health and social service providers, legal counselors and lawyers, psychologists, psychiatrists, cultural-language mediators, health and human rights activists, cultural anthropologists and bioethics scholars. Based on the findings of the needs assessment and the working groups' discussions, a policy and action plan should be drafted and proper economic and human resources allocated to set up and/or strengthen the identified support services for persons trafficked for organ removal. All support measures should be gender and culturally sensitive and non-discriminatory, fully in line with international human rights standards.

<sup>264</sup> Council of Europe Steering Committee on Bioethics (CDBI)/European Health Committee (CDSP), *Replies to the questionnaire for member states on organ trafficking* (2004).

<sup>265</sup> Europol, *Trafficking in Human Organs – Europol perspective* (2010). The request to Member States, as well as Switzerland and Moldova, was issued in February 2010; see Council of Europe Steering Committee on Bioethics (CDBI)/European Health Committee (CDSP), *Op. Cit.*, p. 3.



## ANNEX A: SUMMARY OF CASES

### Case 1: Netcare Proceedings in South Africa (with links to citizens of Brazil, Israel, Romania)

*Allegations:* In November 2010, the private company Netcare Kwa-Zulu (Proprietary) Limited (“Netcare”), which owned and operated St. Augustine’s Hospital, pleaded guilty to 102 counts of activity relating to illegal kidney transplant operations.<sup>266</sup> Charged along with the private company were four transplant doctors, a nephrologist, two transplant administrative coordinators, and an interpreter. The charges against the parent company, Netcare Limited and its CEO were dropped. Netcare pleaded guilty to 109 illegal kidney operations performed on Israeli, Romanian, and Brazilian citizens between June 2001 and November 2003, including five minors. These citizens received cash following their surgeries, while the private company was paid up-front for its involvement in the operation.<sup>267</sup>

*Charges:* The charges include fraud, forgery, assault with intent to do grievous bodily harm, unlawful acquisition, use or supply of tissue (including with specific reference to minors), violations of the Human Tissues Act, and laundering (under provisions relating to the prevention of organized crime).

*Status:* Arrests were first made in 2003. Since December 2003, five plea agreements relating to the main Netcare Case and related cases have been reached by accused persons including an organ recipient, a Durban-based broker/minder, an interpreter, a Johannesburg-based facilitator, and Netcare itself. Netcare pleaded guilty to charges of performing illegal kidney transplant operations and agreed to pay nearly eight million rand (USD 1.1 million) pursuant to fines and a confiscation order: 4,020,000 rand in fines for contravening the Human Tissue Act and four million rand pursuant to the confiscation order for being in receipt

266 For the Netcare Cases, see J. Allain, “Trafficking of Persons for the Removal of Organs and the Admission of Guilt of a South African Hospital”, *Medical Law Review*, Volume 19(1) (2011); F. Hassan and S. Sole, “Kidneygate: What the Netcare bosses really knew”, *Mail Guardian Online* (29 April 2011), <http://mg.co.za/article/2011-04-29-kidneygate-what-the-netcare-bosses-really-knew>, accessed 27 May 2013; D. Smith, “South African hospital firm admits ‘cash for kidney’ transplants”, *The Guardian* (10 November 2010), <http://www.guardian.co.uk/world/2010/nov/10/south-africa-hospital-organ-trafficking>, accessed 28 May 2013; F. Kockett, “Israel South Africa: Netcare coughs up about illegal organ trafficking”, *Mail and Guardian Online* (12 November 2010), <http://mg.co.za/article/2010-11-12-netcare-coughs-up>, accessed 28 May 2013.

267 “South African hospital pleads guilty to organ trafficking case”, *The Telegraph* (10 November 2010), <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/southafrica/8124710/South-African-hospital-pleads-guilty-to-organ-trafficking-case.html>, accessed 3 June 2013.

of monies derived from the kidney transplants and participating in unlawful activities under the Prevention of Organised Crime Act.

In February 2013, the remaining accused (four surgeons and two transplant unit staff members) had all the charges against them withdrawn in the Commercial Crimes Court.<sup>268</sup>

A related case in Brazil resulted in the conviction of two recruiters to terms of imprisonment of eight years.<sup>269</sup>

### Case 2: 2001–2004 Proceedings in Moldova (with links to citizens of Israel and Turkey)

*Allegations:* Various local brokers recruited Moldovans who were trafficked to Istanbul, Turkey, where a kidney was removed.<sup>270</sup> These cases involved multiple proceedings against various local brokers/recruiters, including several recruiters who were themselves victims of trafficking first.<sup>271</sup> Law enforcement authorities worked together with the Center for Combating Trafficking in Persons to gather evidence.<sup>272</sup> Most of the

268 L. Comins, “Surgeons Win Epic Battle”, *Independent Online* (23 February 2013), <http://www.iol.co.za/news/south-africa/kwazulu-natal/surgeons-win-epic-court-battle-1.1475781>, accessed 28 May 2013; N. Barbeau, “Kidney Doctor Case Collapses”, *The Post* (14 December 2012), <http://www.thepost.co.za/kidney-doctor-case-collapses-1.1441346>, accessed 28 May 2013.

269 N. Nair, “Netcare charged in organs-for-cash scam”, *Times Live* (15 September 2010), <http://www.timeslive.co.za/local/article661067.eco/Netcare-charged-in-organs-for-cash-scam>, accessed 3 June 2013. See also N. Scheper-Hughes, “Black Markets in Organs – Face to Face with Gaddy Tauber, Human Trafficker, Organs Broker, Holocaust Survivor”, *Business Today*, Volume 46(1) (2009), p. 65.

270 See Letter received 16 August 2012, from the Permanent Representative of Moldova to the International Organizations in Vienna to the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings (“Letter from the PR of Moldova”). See also the following items providing additional information on Moldovan cases of THB/OR: I. Sandul, “Desperate Lives”, *Kyiv post* (4 March 2011), <http://www.kyivpost.com/content/ukraine/desperate-lives-98927.html>, accessed 3 June 2013; Prosecutor General’s Office of the Government of Moldova, “Trafic de organe cu prelevare de rinichi de la 11 cetățeni moldoveni”, *Press Release*, <http://www.procuratura.md/md/news/1211/1/4117/>, accessed 3 June 2013; “Moldova charges 7 with Organ Trafficking”, *Organized Crime and Corruption Reporting Project* (29 July 2011), <http://www.reportingproject.net/occrp/index.php/ccwatch/cc-watch-briefs/1029-moldova-charges-7-with-organ-trafficking>, accessed 3 June 2013; V. Manole, “The ‘Black Transplantologist’ and Moldovan Victims”, *Investigative Journalism Center* (12 August 2011), <http://www.investigatii.md/eng/index.php?art=215>, accessed 3 June 2013; L. Gurez and I. Volnitchi, “Did trafficking in organs disappear in Moldova?”, *Investigative Journalism Center* (12 November 2007), <http://www.investigatii.md/eng/index.php?art=149>, accessed 3 June 2013; L. Lee, “Moldova’s Organ Trafficking Misery”, *Al Jazeera Youtube*, <http://www.youtube.com/watch?v=uKbAjoGDPfU>, accessed 3 June 2013; K. Ryan, “Moldova leads in illegal organ trafficking”, *Tiraspol Times* (29 April 2008); and PACE SHFAC, *Trafficking in organs in Europe* (2003), para. 16.

271 See Letter from the PR of Moldova, received 16 August 2012.

272 *Ibid.*

allegations stem from the period 2001–2004 although the exact timeline was not available.

*Charges:* Charges were brought in at least 18 cases and included violations of trafficking in persons (Article 165 of the Criminal Code of Moldova), as well as severe bodily injury (Article 151 of the Criminal Code of Moldova). In addition to the head of the network, ten Moldovan citizens were charged for being involved or complicit in the criminal activity.<sup>273</sup> Pursuant to an international warrant, the alleged head of the network was arrested in Ukraine, and later extradited to his native Israel.

*Status:* Proceedings have been concluded against at least six individuals, with five convictions with sentences ranging from a fine up to ten years in prison, one acquittal and four others still at trial.<sup>274</sup>

**Case 3: 2011 Medicus Proceedings in Turkey (see also below in Case No. 8), (with alleged links to citizens of Belarus, Canada, Germany, Israel, Kazakhstan, Moldova, Poland, Russia, Turkey, Ukraine, USA)**

*Allegations:* The allegations arise from the Medicus Cases (see below) in Kosovo. A THB/OR network was established using the Medicus clinic in Pristina and was allegedly headed by a Turkish transplant surgeon, who collaborated with an international broker/mediator based in Israel.<sup>275</sup> The transplant surgeon had been identified for his alleged involvement in THB/OR activity as early as 2002.<sup>276</sup>

*Charges:* The transplant surgeon was charged with performing at least 11 illegal organ removal surgeries at the Medicus clinic, illicit organ trafficking, and forming a criminal gang.<sup>277</sup> Three other persons were charged, two of whom are also alleged to have been involved in the THB/OR network which is the subject of the Medicus Cases.

*Status:* In September 2011, a Turkish prosecutor requested a 171-year prison sentence for the transplant

273 See Letter from the PR of Moldova, received 16 August 2012.

274 Ibid.

275 "Kosovo organ trafficking case surgeon bailed in Turkey", *BBC News Europe* (12 January 2011), <<http://www.bbc.co.uk/news/world-europe-12172901>>, accessed 3 June 2013.

276 M. Jimenez and N. Scheper-Hughes, "'Doctor Vulture' At the Centre of Istanbul's illicit kidney trade is a shadowy 44-year-old surgeon whose transplant 'donors' are not always willing ones", *The [Toronto] National Post* (30 March 2002).

277 P. Lewis, "The doctor at the heart of Kosovo's organ scandal", *The Guardian* (17 December 2010), <<http://www.guardian.co.uk/world/2010/dec/17/kosovo-medicus-organ-clinic>>, accessed 3 June 2013.

surgeon. The prosecutor demanded the same sentence for the accused mediator/broker, a Turkish-Israeli citizen.<sup>278</sup>

The Istanbul court indicted the transplant surgeon for illicit organ trafficking and for the establishment of a criminal organization, but he is now a fugitive and the subject of an Interpol red notice.<sup>279</sup>

**Case 4: St. Ekaterina Proceedings in Bulgaria (with links to citizens of Georgia, Israel, Russia)**

*Allegations:* The St. Ekaterina University Hospital was used to conduct at least 20 illegal transplants in 2004–2006. The victim-donors included Russians and Georgians. The organ recipients were mostly Israelis.<sup>280</sup>

*Charges:* Two pre-trial proceedings were initiated. One for potential violation of Article 159a of the Bulgarian Criminal Code, the THB provision of the criminal code which includes among its specified prohibited purposes the dispossession of bodily organs; the other for potential violation of Article 349a of the Bulgarian Criminal Code, which prohibits the obtaining or provision of human organs in violation of law.

*Status:* The proceedings in the St. Ekaterina University Hospital Cases were stopped at the pretrial stage due to insufficient evidence, because the perpetrators and donors were foreign citizens and only the organ transplants were conducted in Bulgaria; requests for mutual legal assistance were made to Israel. The director of the St. Ekaterina University Hospital and the head of the national transplant agency were both dismissed following reports of the St. Ekaterina Cases.<sup>281</sup>

278 J. Bone, "'Turkish Frankenstein' linked to trial of doctors over organ-trafficking ring", *The Times* (8 October 2011), <<http://www.thetimes.co.uk/tto/news/world/europe/article3187864.ece>>, accessed 3 June 2013; EU Business, "Kosovo organ trafficking case is major test for EU mission" (5 October 2011), <<http://www.eubusiness.com/news-eu/kosovo-turkey.cp3>>, accessed 3 June 2013; H. Yayın Tarihi, "Yasadışı Organ Nakli Yaptığı" İddia Edilen Dr Yusuf Erçin Sönmez Hakkında İddianame Hazırlandı", *Sondakika* (28 September 2011), <<http://www.sondakika.com/haber-yasadisi-organ-nakli-yaptigi-iddia-edilen-dr-yusuf-3023236/>>, accessed 3 June 2013; and EU Business, "Turkey detains doctor over Kosovo organ-trafficking: report" (12 January 2011), <<http://www.eubusiness.com/news-eu/kosovo-rights.81f/>>, accessed 3 June 2013.

279 See Interpol, Wanted Person: *Sonmez, Yusuf Erçin*, <[http://www.interpol.int/Wanted-Persons/\(wanted\\_id\)/2010-39869](http://www.interpol.int/Wanted-Persons/(wanted_id)/2010-39869)>, accessed 3 June 2013.

280 Emails to OSCE consultant from official of the National Commission for Combating Trafficking in Human Beings (NCCTHB), between December 2011 and June 2012; B. Pancevski, "Bulgarian hospital admits role in illegal transplants", *The Lancet* (11 February 2006), <[http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(06\)68160-9/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(06)68160-9/fulltext)>, accessed 3 June 2013.

281 See B. Pancevski, "Bulgarian hospital admits role in illegal transplants", Op. Cit.; "Съдят Чирков заради незаконни трансплантации: Разследват и трафик на органи през 'Света

### Case 5: 2006 Proceedings in Bulgaria (with links to citizens of Turkey)

*Allegations:* Three Bulgarian nationals recruited nine Bulgarians to travel to a private clinic in Turkey to sell a kidney.<sup>282</sup> The victim-donors received approximately USD 3,000 to USD 5,000.

*Charges:* The three accused were charged in 2005 as constituting an organized crime group engaging in the recruitment and transportation of six Bulgarians to Turkey for the purpose of organ removal. The specific criminal charges brought are unclear.

*Outcomes:* The three accused were convicted of recruiting nine Bulgarian nationals to sell their kidneys in Turkey. The three received sentences between 2½ and 4 years, as well as financial penalties.

### Case 6: 2007 Proceedings in Israel (with links to citizens of Ukraine)

*Allegations:* In 2006–2007, victim-donors and recipients were taken from Israel to Ukraine.<sup>283</sup> The defendants worked with a doctor, whose role included the identification of organ recipients, who paid between USD 125,000 and USD 135,000 for a kidney. The doctor is also alleged to have met at least four victim-donors in Ukraine, accompanying them to the clinic. The two defendants (neither of them the aforementioned doctor), were primarily engaged in recruiting Israeli victim-donors, also performing enforcer functions<sup>284</sup>.

Екатерина", *Vsekiden* (14 April 2008), <http://www.vsekiden.com/27543/прокуратурата-погна-чирков-заради-из>, accessed 28 May 2013; "Hospital 'St. Ekaterina' involved in trafficking" Factor News (7 January 2006), <http://www.factor-news.net/index.php?cm=2ct=1id=6710>, accessed 28 May 2013; M. Blagoeva, "Проф. Александър Чирков: Психопати ме обвиняват, че правя незаконни трансплантации", *blitz.bg* (26 March 2010), <http://www.blitz.bg/article/17244>, accessed 28 May 2013.

282 Emails to OSCE consultant from official of the National Commission for Combating Trafficking in Human Beings (NCCTHB), between December 2011 and June 2012; see also "Sofia, Istanbul Bust Human Organ Trafficking Ring", *Sofia News Agency* (9 March 2005), [http://www.novinite.com/view\\_news.php?id=45415](http://www.novinite.com/view_news.php?id=45415), accessed 28 May 2013; "Three held for organ trafficking", *Associated Press* (9 March 2005), <http://www.news24.com/Africa/News/3-held-for-organ-trafficking-20050309>, accessed 28 May 2013.

283 State of Israel Ministry of Justice, *Report of the National Coordinator for the Battle against Trafficking in Persons on Trafficking in Persons in Israel* (April 2011), <[http://www.ungift.org/doc/knowledgehub/resource-centre/Governments/Israel\\_Ministry\\_of\\_Justice\\_TIP.pdf](http://www.ungift.org/doc/knowledgehub/resource-centre/Governments/Israel_Ministry_of_Justice_TIP.pdf)>, accessed 3 June 2013; F. Eyadat, "Two Haifa men sentenced to jail for organ trafficking", *Haaretz* (17 December 2007), <<http://www.haaretz.com/print-edition/news/two-haifa-men-sentenced-to-jail-for-organ-trafficking-1.235355>>, accessed 3 June 2013; E. Ashkenazi, "Court extends remand of suspected 'organ brokers'", *Haaretz* (24 July 2007), <<http://www.haaretz.com/print-edition/news/court-extends-remand-of-suspected-organ-brokers-1.226108>>, accessed 3 June 2013; See also *Amended Indictment, Israel v. M.B.T.J. et al.* (12 August 2007 and October 2007), in State of Israel Ministry of Justice, Op. Cit.

284 State of Israel Ministry of Justice, Op. Cit., pp. 26–28.

In many cases, victims were developmentally challenged or mentally ill, and impoverished. When one victim-donor changed her mind prior to the operation, the defendants allegedly threatened to report her to the police, and told her that it was a crime to agree to donate a kidney.<sup>285</sup> In some cases the defendants also imposed debt bondage, demanding exorbitant fees for travel expenses as well as imposing other psychological pressure.<sup>286</sup>

*Charges:* In addition to the charge of trafficking for organ removal, the two defendants were charged with committing crimes of grievous injury, exploitation of a vulnerable population and obtaining something by deceit under aggravating circumstances. One of the defendants was also charged with assault and the other with impersonating a physician and use of a false medical title.

*Status:* Both defendants were convicted in 2007, and the central defendant was sentenced to four years.<sup>287</sup>

### Case 7: 2007–2008 Proceedings in Ukraine (with links to citizens of Israel)

*Allegations:* The transplantation centre in Donetsk, Ukraine was used to attempt the conduct of transplants involving victim-donors and recipients largely originating from Israel.<sup>288</sup>

*Charges:* Initial charges under the trafficking in human beings provision of the criminal code (Article 149 of the Criminal Code of Ukraine) were amended to charges under the illegal organ transplant provision

285 F. Eyadat, Op. Cit.; State of Israel Ministry of Justice, Loc. Cit.

286 State of Israel Ministry of Justice, Loc. Cit.

287 Ibid.

288 See Letter, dated 9 October 2012, from the Permanent Representative of Ukraine to the International Organizations in Vienna to the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings; A. Дунина, "МВД 'бьет' по почкам: Расследование 'дела черных трансплантологов', среди которых оказались украинские врачи Владислав Закордонец, Ярослав Романив и Петр Зайченко, со дня на день будет завершено. Задержка – в ответе из Азербайджана, который должна подготовить местная полиция", *Комсомольская Правда в Украине* (25 January 2011), <<http://kp.ua/daily/250111/263524/print/>>, accessed 28 May 2013; Statement of the Ministry of Internal Affairs of Ukraine, Розслідування справи "чорних трансплантологів", *Ministry of Internal Affairs of Ukraine* (4 July 2008), <<http://mvs.gov.ua/mvs/control/mai0n/uk/publish/article/121830;jsessionid=3C66BF8119332598E19824AD644937D4>>, accessed 3 June 2013; Israel News, "Surgeon suspected of organ trafficking lands in Israel", *ynetnews.com* (20 October 2009), <<http://www.ynetnews.com/articles/1,7340,L-3792511,00.html>>, accessed 3 June 2013; O. Gouresky, "Israeli surgeon jailed for organ trafficking to be extradited from Ukraine", *ynetnews.com* (31 August 2009), <<http://www.ynetnews.com/articles/0,7340,L-3769748,00.html>>, accessed 3 June 2013; I. Tkachenko, "'Black' transplant surgeon detained in Donetsk yet again", *Ukrinform* (28 July 2008), <<http://photo.ukrinform.ua/eng/current/photo.php?id=214535>>, accessed 3 June 2013.

of the criminal code (Article 143 of the of the Criminal Code of Ukraine). Charges were initially filed against two persons: one citizen of Israel and the second a citizen of Ukraine. Both of them were investigated in Donetsk region of Ukraine for aiding and abetting an attempt to commit a crime under Article 143 of the Criminal Code of Ukraine.

*Status:* According to the decision of the court, one defendant was convicted of aiding and abetting an attempt to commit a crime under Article 143 of the Criminal Code of Ukraine and was sentenced to a fine. The criminal case regarding the second defendant was closed by the court on December 2008 on the basis of Article 1.B of the Article 6 of the Law of Ukraine “On Amnesty”. He was subsequently extradited to Israel to face related charges.

### **Case 8: Medicus Clinic Proceedings in Kosovo (with links to citizens of Belarus, Canada, Kazakhstan, Germany, Israel, Poland, Russia, Turkey, Ukraine, USA)**

#### **Medicus I**

*Allegations:* A THB/OR network was established using the Medicus clinic in Pristina, Kosovo.<sup>289</sup> The organ recipients included nationals of various countries, including Canada, Germany, Israel, Poland, and the United States. The victim-donors included nationals of Belarus, Israel, Kazakhstan, Moldova, Turkey, Russia and Ukraine. The network was allegedly headed by a Turkish transplant surgeon, a Kosovo transplant surgeon, and an Israeli broker. The network was in operation in 2008 and included at least 24 victims.<sup>290</sup>

*Charges:* The charges include trafficking in persons, organized crime, unlawful exercise of medical authority, and abuse of authority.

*Status:* Trial in the case began in October 2011 against seven persons, including a urologist, anesthesiologists,

a clinic official, and a government health official. Extradition was sought for the Turkish transplant surgeon and the Israeli broker, but Turkey does not extradite its citizens, and Israeli extradition law has relevant restrictions. Related criminal proceedings are underway in Turkey against the Turkish transplant surgeon, as well as two other surgeons — one of whom is listed as a witness in the Medicus Clinic Cases.

At the end of April 2013, the Court in Pristina found the former owner of the Medicus clinic guilty of organized crime and trafficking in persons, and sentenced him to eight years in prison and imposed a fine of EUR 10,000. His son was found guilty of the same charges and sentenced to seven years and three months in prison, and fined EUR 2,500. Both were ordered to pay partial compensation of EUR 15,000 to each of seven victims of the trafficking ring.<sup>291</sup>

The clinic’s head anesthesiologist was found guilty of grievous bodily harm and sentenced to three years in prison. Assistant anesthesiologists were found guilty of grievous bodily harm and sentenced to a year’s imprisonment, suspended for two years. A senior official at the Kosovo health ministry was acquitted of abusing his official position, while another defendant, who was also a doctor, had his charge of illegal medical activity thrown out by the court due to lack of evidence.<sup>292</sup>

The transplant surgeon defendant in the case was not on trial in Pristina as he was not available to the court and is still listed as wanted by Interpol. The Israeli broker was also wanted on an Interpol arrest warrant but was arrested in May 2012 in Israel.<sup>293</sup> The indictment issued by EULEX named the Israeli broker as the mastermind of the network for recruiting donors and finding recipients, while the Turkish doctor is said to have performed organ removal surgery at the clinic. Both were charged for the violation of article 139, paragraph 1 of the Provisional Criminal Code of Kosovo (PCCK) acting in co-perpetration, pursuant to article 23 of the PCCK.<sup>294</sup>

289 For further information on the Medicus Cases, see EULEX Kosovo, “Twenty years imprisonment for five defendants in Medicus case”, *EULEX Press Release* (29 April 2013), <<http://www.eulex-kosovo.eu/en/pressreleases/0436.php>>, accessed 3 June 2013; Kosovo Special Prosecution Office, *Amended Indictment against L.D. et al*, District Court of Pristina, Case No. PPS no. 02/09 (22 March 2013); J. Sher, “Toronto man who bought kidney abroad is key witness in transplant sale trial in Kosovo”, *The [Toronto] Star* (22 January 2012), <[http://www.thestar.com/news/canada/2012/01/22/toronto\\_man\\_who\\_bought\\_kidney\\_abroad\\_is\\_key\\_witness\\_in\\_transplant\\_sale\\_trial\\_in\\_kosovo.html](http://www.thestar.com/news/canada/2012/01/22/toronto_man_who_bought_kidney_abroad_is_key_witness_in_transplant_sale_trial_in_kosovo.html)>, accessed 3 June 2013; “Medicus: Five guilty in Kosovo human organ trade case”, *BBC News Europe* (29 April 2013), <<http://www.bbc.co.uk/news/world-europe-22343589>>, accessed 3 June 2013.

290 EULEX Kosovo, “Summary of Justice Proceedings in April” (14 May 2013), <<http://www.eulex-kosovo.eu/en/executive/00013.php>>, accessed 3 June 2013.

291 “Convictions in international organ trafficking ring”, *USA Today* (29 April 2013), <<http://www.usatoday.com/story/news/world/2013/04/29/organ-trafficking-ring-convictions-kosovo/2121595/>>, accessed 4 June 2013.

292 D. Bilefsky, “5 Are Convicted in Kosovo Organ Trafficking”, *New York Times* (29 April 2013), <[http://www.nytimes.com/2013/04/30/world/europe/in-kosovo-5-are-convicted-in-organ-trafficking.html?\\_r=0](http://www.nytimes.com/2013/04/30/world/europe/in-kosovo-5-are-convicted-in-organ-trafficking.html?_r=0)>, accessed 3 June 2013.

293 “Key suspect in Kosovo organ case ‘arrested in Israel’”, *BBC News* (25 May 2012), <<http://www.bbc.co.uk/news/world-europe-18203920>>, accessed 3 June 2013.

294 EULEX Kosovo, Op. Cit.

## Medicus II Investigation

*Allegations:* A new investigation was launched at the end of April 2013 into persons suspected of involvement in the organized criminal group which conducted trafficking of persons for organ removal that operated from the Medicus clinic in 2008.<sup>295</sup> They are suspected of having used their influence to cover up the case in which around 30 illegal kidney removals and transplants were carried out at the Medicus clinic in 2008.

*Charges:* Eight individuals are being investigated for the criminal offences of organized crime, trafficking in persons, grievous bodily harm, abusing official position of authority, fraud and trading in influence. As of May 2013, sources from the EU prosecutor's office put forward that the suspects "are expected to be charged very soon".<sup>296</sup>

*Status:* The investigation was launched in early May and as of this writing no charges have yet been filed.<sup>297</sup>

## Case 9: Azerbaijan International University Medical Center Proceedings in Azerbaijan (with alleged links to citizens of France, Israel, USA, Ukraine)

*Allegations:* Illegal organ transplant surgeries were conducted at the Azerbaijan International University Medical Center (AIUMC) during 2009 by Ukrainian surgeons, involving 13 Ukrainian victim-donors and foreign recipients from three countries.<sup>298</sup> The AIUMC did not have the proper licence for conducting organ transplants, and transplant surgeries were not properly registered. The allegations include the participation of a fugitive indicted in the Medicus Case. This case is linked to the Shalimov Case in Ukraine.

*Charges:* AIUMC employees from Israel, Ukraine and Azerbaijan<sup>299</sup> were charged with causing grave

consequences as a result of an abuse of power (Article 308.2 of the Criminal Code of Azerbaijan); establishment of a criminal organization (Article 255.1), trafficking of organs or cells or their forceful taking with aim of transplanting (Article 143.3) and human trafficking (Article 149.3).<sup>300</sup>

*Status:* The Azerbaijani Health Ministry suspended AIUMC's licence to provide medical services. An investigation is currently ongoing.<sup>301</sup>

## Case 10: Shalimov Institute Proceedings in Ukraine (with alleged links to citizens of Azerbaijan, Belarus, Ecuador, Israel, Kosovo<sup>302</sup>, Moldova, Russia, Uzbekistan)

*Allegations:* Surgeons at the Shalimov National Institute of Surgery and Transplants (Shalimov Institute) from Kyiv, Ukraine conducted transplants at the Azerbaijan International University Medical Center in Baku, Azerbaijan, as well as in Ukraine.<sup>303</sup> Other transplant operations were conducted in Ecuador and Kosovo.<sup>304</sup> The victim-donors included nationals of Ukraine, Moldova, Uzbekistan, Russia and Belarus. The allegations address events in 2009–2010. While law enforcement authorities have made references, in public, to 25 instances of trafficking<sup>305</sup> (of which 15 involved transplant surgeries in Azerbaijan), the number of victims has been estimated to be as high as 100. International legal assistance was provided

300 Ibid.

301 Ibid.

302 All references to Kosovo, whether to the territory, institutions or population, in this text should be understood in full compliance with United Nations Security Council Resolution 1244.

303 See Letter, dated 9 October 2012, from the Permanent Representative of Ukraine to the International Organizations in Vienna to the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings ("Letter from the PR of Ukraine"). See also M. Smith, D. Krasnolutska and D. Glovin, "Organ Gangs Force Poor to Sell Kidneys for Desperate Israelis", *Bloomberg Markets Magazine* (1 November 2011), <<http://www.bloomberg.com/news/print/2011-11-01/organ-gangs-force-poor-to-sell-kidneys-for-desperate-israelis.html#print>>, accessed 26 May 2013; А. Дунина, "Жертвы 'черных трансплантологов' по-прежнему зарабатывают на органах: Украинские доноры, продавшие почки иностранцам, хотят получить с врачей десятки тысяч гривен компенсации", *Комсомольская Правда в Украине* (3 August 2011), <[http://kp.ua/Default.aspx?page\\_id=3&city\\_id=-1&date=030811&news\\_id=293872](http://kp.ua/Default.aspx?page_id=3&city_id=-1&date=030811&news_id=293872)>, accessed 27 May 2013; Алла Дунина, "Врач-трансплантолог Владислав ЗАКОРДОНЕЦ: 'Нас держат в СИЗО, чтобы мы дали показания против себя'", *Комсомольская Правда в Украине* (14 May 2011), <<http://kp.ua/daily/140511/280130/>>, accessed 28 May 2013.

304 Ukraine News Agency, "Verdict against Kyiv's transplant surgeons could be given by end of 2012", *Interfax* (1 November 2012), <<http://en.interfax.com.ua/news/general/125367.html>>, accessed 3 June 2013.

305 See Letter, dated 9 October 2012, from the Permanent Representative of Ukraine to the International Organizations in Vienna to the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings ("Letter from the PR of Ukraine").

295 Ibid.

296 Agence France Presse, "Ex-Kosovo officials probed for organ trafficking", *Global Post* (7 May 2013), <<http://www.globalpost.com/dispatch/news/afp/130507/ex-kosovo-officials-probed-organ-trafficking>>, accessed 3 June 2013.

297 Ibid.

298 S. Abbasov, "Azerbaijan: Baku Backtracks in Ukrainian Organ Transplant Investigation", *Eurasianet.org* (3 December 2010), <<http://www.eurasianet.org/node/62501>>, accessed 28 May 2013. See also K. Zarbaliyeva, "Azerbaijani Prosecutor General's Office: No one detained due to case of illegal transplants", *Trend* (15 December 2010), <<http://pda.trend.az/en/1797968.html>>, accessed 27 May 2013; see also Prosecutor General's Office, "Azerbaijan publishes results of investigation into illegal transplants", *Press Release* (24 November 2010), <<http://pda.trend.az/en/1786711.html>>, accessed 3 June 2013.

299 Letter received 7 September 2012, from the Permanent Representative of Azerbaijan to the International Organizations in Vienna to the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings ("Letter from the PR of Azerbaijan").

by authorities in Azerbaijan. The criminal organization consisted of six persons, including three medical practitioners, recruiters of potential donors as well as an organizer of the group. This case is linked to the Azerbaijan AIUMC Case.

**Charges:** In 2011, the accused were charged under the Articles 143 (Violation of the statutory order of transplantation of human organs or tissues), 149 (Trafficking in human beings or other illegal agreement with regard to a person), and 255 (Establishment of a criminal organization) of the Ukrainian Criminal Code regarding the members of a transnational organized criminal group was finalized.<sup>306</sup>

**Status:** Arrests were made in August and October 2010. Trial proceedings in this case commenced in October 2011, in the Obolon district court in Kyiv, Ukraine.<sup>307</sup> As of March 2013, the trial was reported to be ongoing.

### Case 11: Operation Bid Rig Proceedings in USA (with links to citizens of Israel)

**Allegations:** Operation Bid Rig<sup>308</sup> was an investigation into political corruption in New Jersey, which resulted in the indictments of more than 60 public officials and politically connected individuals since its inception. During the third phase of the investigation (Operation Bid Rig III), an Israeli citizen and resident of Brooklyn was among the 40 arrested in July 2009.<sup>309</sup>

<sup>306</sup> Ibid.

<sup>307</sup> Ibid.

<sup>308</sup> K. B. Richburg, "Rabbis, Politicians Snared in FBI Sting", *Washington Post* (24 July 2009), <[http://articles.washingtonpost.com/2009-07-24/news/36779574\\_1\\_fbi-informant-chief-rabbi-secaucus-mayor-dennis-elwell](http://articles.washingtonpost.com/2009-07-24/news/36779574_1_fbi-informant-chief-rabbi-secaucus-mayor-dennis-elwell)>, accessed 3 June 2013.

<sup>309</sup> United States District Court, District of New Jersey, *United States of America v. L.R.*, Criminal Information (July 2009); S. Henry, "Brooklyn Man Sentenced 2½ Years in Fed Organ Trafficking Case", *NBC News* (11 July 2012), <<http://www.nbcnewyork.com/news/local/Kidney-Organ-Trafficking-Levy-Izhak-Rosenbaum-Brooklyn-Federal-Conviction-Sentencing-162046565.html>>, accessed 3 June 2013; D. Glovin, M. Smith and D. Voreacos, "Kidney Broker Pleads Guilty in First U.S. Organ-Traffic Case", *Bloomberg Business Week* (27 October 2011), <<http://www.businessweek.com/news/2011-10-27/kidney-broker-pleads-guilty-in-first-u-s-organ-traffic-case.html>>, accessed 27 May 2013; Associated Press, "Guilty Plea to Kidney-Selling Charges", *New York Times* (27 October 2011), <[http://www.nytimes.com/2011/10/28/nyregion/guilty-plea-to-kidney-selling-charges.html?\\_r=1&src=rechp](http://www.nytimes.com/2011/10/28/nyregion/guilty-plea-to-kidney-selling-charges.html?_r=1&src=rechp)>, accessed 3 June 2013; D. Tao, "Worldwide Market Fuels Illegal Traffic in Organs", *New York Times* (30 July 2009), <[http://www.nytimes.com/2009/07/30/nyregion/30organs.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2009/07/30/nyregion/30organs.html?pagewanted=all&_r=0)>, accessed 3 June 2013; D. Porter and C. K. Johnson, "First case of organ trafficking in U.S.? NYC man accused of buying kidneys abroad, selling at hefty profit", *MSNBC* (24 July 2009), <[http://www.msnbc.msn.com/id/32132371/ns/us\\_news-crime\\_and\\_courts/t/first-case-organ-trafficking-us/#](http://www.msnbc.msn.com/id/32132371/ns/us_news-crime_and_courts/t/first-case-organ-trafficking-us/#)>, accessed 3 June 2013; T. Sherman, "Brooklyn man pleads guilty to trafficking black market kidneys to N.J. residents", *New Jersey* (27 October 2011), <[http://www.nj.com/news/index.ssf/2011/10/man\\_pleads\\_guilty\\_in\\_human\\_org.html](http://www.nj.com/news/index.ssf/2011/10/man_pleads_guilty_in_human_org.html)>, accessed 3 June 2013; T. Sherman and J. Margolin, "The Body Politic", *New York Post* (20 March 2011), <<http://www.nypost.com/p/news/opinion/>

He was alleged to have conspired to arrange the sale of an Israeli citizen's kidney for as much as USD 160,000. Other information indicates that the defendant had been involved in the sale of kidneys for ten years — involving victim-donors in Israel for USD 10,000 and American recipients. In several reports, he admitted to law enforcement authorities that the donors had agreed to the removal of their kidney because of economic hardship.<sup>310</sup>

**Charges:** The defendant was charged with brokering three illegal kidney transplants and with conspiracy to broker illegal kidney sales.<sup>311</sup> Each of the four counts carried a maximum five-year prison sentence plus a fine of up to USD 250,000.

**Status:** In October 2011, the defendant admitted in Federal Court in Trenton that he had brokered three illegal kidney transplants for New Jersey-based customers in exchange for payments of USD 120,000 or more. He also pleaded guilty to one count of conspiracy to broker an illegal kidney sale. On July 2012, he was sentenced to 2½ years in prison. He was due to begin his sentence in October of the same year. As he is not a US citizen, immigration authorities will decide whether to attempt to deport him once he has finished his sentence.<sup>312</sup>

### Incidents Reported but no Formal Criminal Proceedings

#### Alleged Incidents in 2001–2002 in Germany (with alleged links to citizens of Israel, Moldova, Russia, Ukraine)

Authorities investigated four cases in 2001–2002, in which three Israeli organ recipients travelled to

books/the\_body\_politic\_iNhlvfa6P1QC8AKz7FX5JK>, accessed 3 June 2013.

<sup>310</sup> D. Porter and C. K. Johnson, "First case of organ trafficking in U.S.? NYC man accused of buying kidneys abroad, selling at hefty profit", *MSNBC* (24 July 2009), <[http://www.msnbc.msn.com/id/32132371/ns/us\\_news-crime\\_and\\_courts/t/first-case-organ-trafficking-us/#](http://www.msnbc.msn.com/id/32132371/ns/us_news-crime_and_courts/t/first-case-organ-trafficking-us/#)>, accessed 3 June 2013; T. Sherman, "Brooklyn man pleads guilty to trafficking black market kidneys to N.J. residents", *New Jersey* (27 October 2011), <[http://www.nj.com/news/index.ssf/2011/10/man\\_pleads\\_guilty\\_in\\_human\\_org.html](http://www.nj.com/news/index.ssf/2011/10/man_pleads_guilty_in_human_org.html)>, accessed 3 June 2013; T. Sherman and J. Margolin, "The Body Politic", *New York Post* (20 March 2011), <[http://www.nypost.com/p/news/opinion/books/the\\_body\\_politic\\_iNhlvfa6P1QC8AKz7FX5JK](http://www.nypost.com/p/news/opinion/books/the_body_politic_iNhlvfa6P1QC8AKz7FX5JK)>, accessed 3 June 2013.

<sup>311</sup> United States District Court, District of New Jersey, *United States of America v. L.R.*, Criminal Information (July 2009).

<sup>312</sup> Associated Press, "Guilty Plea to Kidney-Selling Charges", *New York Times* (27 October 2011), <[http://www.nytimes.com/2011/10/28/nyregion/guilty-plea-to-kidney-selling-charges.html?\\_r=1&src=rechp](http://www.nytimes.com/2011/10/28/nyregion/guilty-plea-to-kidney-selling-charges.html?_r=1&src=rechp)>, accessed 3 June 2013; "Black market" cash-for-kidneys trader Rosenbaum gets 2½ years in prison", *NBC News* (12 July 2012), <[http://usnews.nbcnews.com/\\_news/2012/07/12/12695621-black-market-cash-for-kidneys-trader-rosenbaum-gets-2-12-years-in-prison?lite](http://usnews.nbcnews.com/_news/2012/07/12/12695621-black-market-cash-for-kidneys-trader-rosenbaum-gets-2-12-years-in-prison?lite)>, accessed 3 June 2013.

Essen and one to Jena, each with an allegedly related organ victim-donor from Moldova, Ukraine or Russia.<sup>313</sup> Prosecutors ultimately closed the investigation because they were unable to gather adequate evidence showing that payments had been made for the organs.<sup>314</sup> The clinic in Jena voluntarily adopted a ban on organ transplants from living donors following the investigation.<sup>315</sup> According to German authorities, the incidents did not involve trafficking in human beings.<sup>316</sup>

### **Alleged Incidents in 2006–2007, 2010 and 2012 in The Netherlands (with alleged links to citizens of India, Pakistan, Turkey)**

The National Rapporteur on Trafficking in Human Beings received some preliminary information from law enforcement authorities in 2006 and 2007 concerning possible incidents of trafficking for organ removal. The information available did not provide the responsible investigation services with sufficient information to proceed.

The National Rapporteur also reported on information received by a Dutch NGO, La Strada Netherlands (also known as CoMensha). La Strada reported one possible case of THB/OR in September 2007, wherein an Indian national in the Netherlands informed police that he was being forced to donate a kidney. The investigation did not proceed because the man left the country for an unknown destination.<sup>317</sup>

313 "Der illegale Handel mit Organen floriert. Viele Spender stammen aus Moldawien, transplantiert wird auch Deutschland", Zeit Online (2002), <[http://www.zeit.de/2002/50/Organhandel\\_2](http://www.zeit.de/2002/50/Organhandel_2)>, accessed 3 June 2013; Klaus-Peter Goerlitz, "Organhandel-Ermittlungen eingestellt, Bundesverdienstkreuz überreicht" (September 2004), <<http://www.goerlitzer.homepage.t-online.de/sta27.html>>, accessed 3 June 2013; "Verdacht auf Organhandel: Uniklinik Jena untersagt Transplantationen", Der Spiegel (03 March 2003), <<http://www.spiegel.de/panorama/verdacht-auf-organhandel-uniklinik-jena-untersagt-transplantationen-a-238555.html>>, accessed 3 June 2013; "Verdacht auf Organhandel im Klinikum Jena", Frankfurter Allgemeine (3 March 2003), <<http://www.faz.net/aktuell/gesellschaft/medizin-verdacht-auf-organhandel-im-klinikum-jena-189778.html>>, accessed 3 June 2013.

314 A. Ginzel, M. Kraushaar and S. Winter, "Vera's Kidney, Walter's Money: Desperation, Greed and the Global Organ Trade", Spiegel Online International (3 August 2012), <<http://www.spiegel.de/international/world/the-illegal-trade-in-organ-is-fueled-by-desperation-and-growing-a-847473-3.html>>, accessed 3 June 2013.

315 B. Meijer Van Putten, "German transplant surgeon Christoph Broelsch embroiled in payment for live donor dispute", Transplant News (14 April 2003), <<http://www.thefreelibrary.com/German+transplant+surgeon+Christoph+Broelsch+embroiled+in+payment+for...+a0100232705>>, accessed 3 June 2013.

316 Letter from the Permanent Mission of the Federal Republic of Germany to the OSCE SR, 2 May 2012.

317 Dutch National Rapporteur on Trafficking in Human Beings, Trafficking in Human Beings, Seventh Report of the National Rapporteur on Trafficking in Human Beings (2010), p. 552, <<http://www.dutchrapporteur.nl/reports/seventh/>>, accessed 3 June 2013; Dutch National Rapporteur on Trafficking in Human Beings, Human Trafficking for the purpose of the removal of organs and forced commercial surrogacy (December 2012), pp. 9–10, <<http://www.dutchrapporteur.nl/reports/organ-removal-forced-commercial-surrogacy/>>, accessed 3 June 2013.

In 2012, the Dutch National Rapporteur reported an alleged attempted incident of trafficking for organ removal in the Netherlands. According to the report, an Iranian political refugee was smuggled to the Netherlands via Istanbul, where he was detained and threatened with organ removal. The man was able to escape and informed the police about his experience. He was then accommodated in a reception centre and an asylum procedure was initiated.<sup>318</sup>

318 Dutch National Rapporteur on Trafficking in Human Beings, Human Trafficking for the purpose of the removal of organs and forced commercial surrogacy (December 2012), pp. 9–10, <<http://www.dutchrapporteur.nl/reports/organ-removal-forced-commercial-surrogacy/>>, accessed 3 June 2013.

## ANNEX B: LIST OF EXPERTS CONSULTED

**Fred Abrahams**, Special Advisor, Program, Human Rights Watch

**Professor Jean Allain**, Professor of Public International Law, School of Law, Queen's University, Belfast, Ireland

**Frederike Ambagtsheer**, Coordinator of the HOTT project: Combating Trafficking in Human Beings for the Purpose of Organ Removal and Coordinator of the European Platform on Ethical, Legal and Psychosocial Aspects (ELPAT)

**Dr. Debra Budiani-Saberi**, Executive Director and Founder of the Coalition for Organ-Failure Solutions

**Diana Cano**, Executive Director at Fundación Esperanza Colombia

**Natalia Codreanu**, Administrative Director, Renal Foundation, Moldova

**Dr. Francis Delmonico**, President, The Transplantation Society

**David Ellero**, Senior Specialist in Italian Organized Crime (formerly Project Manager of human trafficking project), Europol

**Captain Louis F. Helberg**, Banking Crime Task Team KZN, Commercial Crime Durban, Directorate for Priority Crime Investigation, South African Police Service

**Magnolia Eva Jacinto-Escobedo**, Regional Coordinator of Asia ACTs

**Nicole Maric**, Crime Prevention Expert, United Nations Office on Drugs and Crime

**Elvira Mruchkovska**, NGO Suchasnyk

**Elaine Pearson**, Deputy Director of Human Rights Watch's Asia Division

**Alina Radu**, Director, Ziarul de Garda, Moldova

**Jonathan Ratel**, Head of Special Prosecution Office (SPRK), European Union Rule of Law Mission, Kosovo

**Professor Nancy Scheper-Hughes**, University at California, Berkeley

**Maria Vasylieva**, International Organization for Migration, Kyiv, Ukraine

**Dr. Cathy Zimmerman**, Senior Lecturer, London School of Hygiene and Tropical Medicine



## ANNEX C: MAIN REFERENCES

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