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Preventing Trafficking in Organs for Transplantation: An Important Facet of the Fight Against Human Trafficking

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Most countries now have national legislation that outlaws both human trafficking and organ trafficking. However, international conventions and domestic laws alone have not been enough to stop the trade in organs. As of 2007, a conservative estimate was that 5% of the approximately 100,000 organs transplanted annually were derived from exploiting the poorest and most vulnerable people in society; anti-trafficking efforts have since reduced, though not eliminated, this practice. The Declaration of Istanbul (DoI) was created in 2008 to engage medical professional societies to collaborate with governments and others in combating organ sales, transplant tourism, and trafficking in human organs. In 2010, the Declaration of Istanbul Custodian Group (DICG) was formed to actively promote and to monitor the implementation of the DoI principles. The removal of prohibitions on organ purchases, which is now being promoted in some wealthy nations, is unlikely to shorten transplant waitlists (because organ sales crowd out voluntary, unpaid donation) and would be based on the false view that such sales do not exploit the sellers. To combat such exploitation, the DICG advocates for ratification and enforcement of the new "Council of Europe Convention against Trafficking in Human Organs," as a complement the Palermo Protocol to the United Nations organized crime convention that prohibits human trafficking for organ removal. To increase ethical organ donation by living related donors, the DICG encourages countries to adopt means to cover donors' financial costs, which now discourage donation. It also works with the World Health Organization to encourage ministries of health to develop deceased donation to its maximum potential toward the goal of achieving national self-sufficiency in organ transplantation so that patients do not need to travel to foreign destinations to undergo organ transplantation using kidneys and partial livers purchased from

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poor and vulnerable people. Success in combating human trafficking for organ removal and organ trafficking will be greatly enhanced through organizations like the DICG forging strong relationships with human rights organizations.

Keywords: Council of Europe, Declaration of Istanbul, human trafficking for organ removal, kidney transplantation, organ donation, organ trafficking, Palermo Protocol, World Health Organization

National and intergovernmental efforts to end trafficking in human beings are usually associated with preventing sexual exploitation and forced labor. But the best-known legal instrument on human trafficking, the Palermo Protocol (formally, the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children," adopted by the UN in 2000 to implement the Convention against Transnational Organised Crime) includes "the removal of organs" among the forms of exploitation it prohibits (United Nations Office on Crime and Drugs, 2004). Moreover, on July 9, 2014, the Council of Ministers approved the "Council of Europe Convention against Trafficking in Human Organs" that recognizes the related crime of trafficking in organs and explicitly reaches the activities of physicians and hospitals who utilize organs that have been obtained through payment or involuntarily (López-Fraga et al., 2014). Most countries now have national legislation that outlaws both human trafficking and organ trafficking.

Unfortunately, conventions and laws alone are not enough to stop the trade in organs. A study performed for the World Health Organization (WHO) found that each year at least 5% of the 100,000 transplants globally are performed using purchased organs (Shimazono, 2007), though recent reforms in places such as China and Colombia have reduced that number. As WHO, which since 1987 has repeatedly opposed organ sales, and others—including a joint United Nations–Council of Europe study (Caplan, Domínguez-Gil, Matesanz, & Prior, 2009)—have recognized, the provision of purchased organs is not a normal commercial activity but involves the exploitation of the poorest and most vulnerable people in society.

Trafficking occurs in several ways. Sometimes organ donors themselves are moved from their place of residence to another country where their kidney (or, less frequently, a portion of their liver) is removed and transplanted into a waiting patient. Thus, for decades, patients from Europe and the Middle East have travelled to Turkey, and in the past decade to the former Yugoslavia, where unemployed young men from countries in southeastern Europe, such as Moldova and Romania, who had been lured with the promise of a job, become their kidney suppliers. Similar activities led to young Brazilians being the source of kidneys transplanted to foreign patients in a South African hospital in the early years of this century (Shimazono, 2007). More commonly some hospitals and clinics in low-income countries whose laws against selling organs are weak or not well enforced, such as Egypt, India, Pakistan, the Philippines, and Sri Lanka have used the Internet to offer transplants including not only the surgery but the organ as well. In the past decade, the country with the largest program in this category has been China, which has announced an end, as of January 1, 2015, to the practice of hospitals directly sourcing organs through courts and prisons, where the payment has gone to those who supply the organs rather than to the person executed so that the organs can be removed (Huang et al., 2015). In these commercial transplant "hotspots" (Danovitch et al., 2013), brokers recruit financially desperate and poorly informed persons from the slums to supply kidneys for "transplant tourists" from wealthy countries who pay, for example, $70,000–160,000 for a "renal transplant package"

(Shimazono, 2007, p. 956). Little—sometimes none—of such a payment typically ends up going to the person from whom the kidney was removed (Ghosh, 2014).

THE DECLARATION OF ISTANBUL

Leaders in transplantation have long supported international efforts to bring an end to such practices, which violate human rights norms and damage the reputation of the field and its proud legacy of life-prolonging treatment. On April 30, 2008, The Transplantation Society (TTS) and the International Society of Nephrology (ISN) convened in Istanbul a Summit Meeting of more than 150 representatives of scientific and medical bodies, government officials, social scientists, and ethicists from around the world to take a stand on the urgent and growing problems of organ sales, transplant tourism, and trafficking in organs. On May 2, 2008, the meeting adopted the "Declaration of Istanbul on Organ Trafficking and Transplant Tourism," which has since been endorsed by 130 medical societies, government bodies, and other groups involved with organ transplantation (Declaration of Istanbul Custodian Group, 2014).

Although the Declaration was widely disseminated in medical journals and online (World Health Organization, 2015), beginning with an article in *The Lancet* on July 5, 2008 (Steering Committee of the Istanbul Summit, 2008), TTS and ISN were determined that the Declaration would be more than merely a statement in the literature. Therefore, in 2010, they created the Declaration of Istanbul Custodian Group (DICG) as a means of actively promoting, sustaining, and monitoring the implementation of the Declaration's principles. The DICG works with partner organizations to complement the efforts of governments and intergovernmental bodies in stopping organ trafficking by mobilizing professional opinion and facilitating practices that can reduce the global shortage of organs for transplantation and thus meet patient needs in an ethical fashion. The DICG aims to combat trafficking by helping individual transplant centers, national medical societies, and health ministries initiate or enhance programs for deceased organ donation as well as for carefully managed living donation by persons who are biologically or emotionally related to their recipients and who will receive ongoing postdonation evaluation and care to ensure their safety and well-being.

COLLABORATION WITH THE WORLD HEALTH ORGANIZATION

The DICG has cooperated with the WHO to put into effect the objectives of the resolution on "Human organ and tissue transplantation" adopted by the World Health Assembly (WHA) on May 21, 2010 (WHA63.22). In that resolution, the WHO Member States reaffirmed their determination that the growing "utility of human cell, tissue and organ transplantation for a wide range of conditions in low-resource as well as high resource countries" (WHO, 2010a, p. 1) be firmly grounded in the "principles of human dignity and solidarity which condemn the buying of human body parts for transplantation and the exploitation of the poorest and most vulnerable populations and the human trafficking that result from such practices" (WHO, 2010a, p. 1).

The DICG has supported the WHO Secretariat in its efforts to develop a common framework for regulating medical products of human origin so as to ensure that the human body as such is not used for material gain. Through its members both in "donor" and "recipient" countries and in

cooperation with other nongovernmental organizations that map human trafficking for organ removal, the DICG has collected data on commercial transplants, especially to foreign patients, in order not only to illuminate the epidemiology and ethics of donation but also to provide documentation that can be used by health and law enforcement officials to close down, and even to prosecute, organ traffickers and facilities that rely on them (Sack, 2014). Donors and recipients become vulnerable to poorer outcomes when commercialism and transplant tourism are involved (Capron, Danovitch, & Delmonico, 2014). Further, DICG members have provided WHO Member States with "technical support for developing national legislation and regulation on, and suitable and traceable coding systems for, donation and transplantation of human cells, tissues or organs, in particular by facilitating international cooperation" (WHO, 2010a, p. 3) as requested by the World Health Assembly in 2010.

The DICG also works with the WHO to encourage ministries of health to move their country towards national (or regional) self-sufficiency in organ transplantation ("The Madrid Resolution," 2011). The emphasis of this work differs by each nation's characteristics as either a "donor" or "recipient" country. For the former, the necessary steps are to close transplant programs that divert the country's donated or purchased organs to foreign transplant tourists and to improve transplant programs for the country's own population, especially by increasing the capacity for deceased donation and ensuring that donated organs are fairly distributed. Through meetings with ministries of health and the provision of technical and ethical guidance, DICG has assisted colleagues in South and East Asia, the Philippines, the Balkans, and Latin America to put an end to organ trafficking in their countries.

Equally important as ending human rights abuses in these countries is creating a system of transplant medicine that serves the population. For countries to foster a broad-based willingness to donate among potential donors and, especially, the families of potential deceased donors, the public must first be assured that everyone who is a potential donor is also eligible to be a recipient of a transplanted organ when in need. Second, to build public confidence, the processes by which organs are allocated must be transparent to all. Third, as Principle 3 of the Declaration of Istanbul makes clear, the distribution criteria must accord with human rights and, in particular, should not be based on a recipient's personal characteristics, such as gender, race, religion, or economic condition. As further elaborated in Guiding Principle 9 of the "WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation," a document that was endorsed in 2010 by the Health Assembly in resolution WHA63.22:

> The allocation of organs, cells and tissues should be guided by clinical criteria and ethical norms, not financial or other considerations. Allocation rules, defined by appropriately constituted committees, should be equitable, externally justified, and transparent. (WHO, 2010b, p. 7)

In "recipient" countries—namely, middle- and high-income countries that have not fully developed their own transplant capacity and hence "export" patients to countries where organ trafficking occurs—moving toward self-sufficiency means building up their own capabilities. Working with people within such countries that are committed to this goal, the DICG has encouraged ministries of health to exercise the proper role of government to provide for its people rather than abdicating this responsibility, leaving patients to find their lifesaving organ in a foreign destination (Delmonico, Domínguez-Gil, Matesanz, & Noel, 2015). Recent developments in Israel show what a huge difference can be achieved when a country stops supporting its citizens to travel abroad for transplants with vended kidneys and instead builds popular support for deceased donation for all organs and living, related donation for kidneys (Lavee & Stoler, 2014).

RESISTING ATTEMPTS TO UNDERMINE OR ABANDON THE PROHIBITION ON PAYING FOR ORGANS

The precepts set forth in the "WHO Guiding Principles" (2010b) align very well with the efforts of the DICG to work with countries to ensure that their laws and regulations reflect the goals of the Declaration of Istanbul. For example, WHO Guiding Principle 5 states that

> Cells, tissues and organs should only be donated freely, without any monetary payment or other reward of monetary value. Purchasing, or offering to purchase, cells, tissues or organs for transplantation, or their sale by living persons or by the next of kin for deceased persons, should be banned. The prohibition on sale or purchase of cells, tissues and organs does not preclude reimbursing reasonable and verifiable expenses incurred by the donor, including loss of income, or paying the costs of recovering, processing, preserving and supplying human cells, tissues or organs for transplantation. (WHO, 2010b, p. 5)

The firm commitment of bodies such as the WHO and the DICG to uncompensated donation has been challenged in recent years by some groups in wealthy countries, where most patients have access to treatment for end-stage organ failure and the resulting large demand for organs for transplantation is not met by the existing system of voluntary, unpaid donation. They have argued that a regulated system of financial incentives would close the gap in organ donations (Matas, Hippen, & Satel, 2008) or, somewhat more modestly, that the longstanding prohibitions on organ purchases in laws such as the National Organ Transplant Act (NOTA), which was adopted by Congress with bipartisan support in 1984, should be modified to allow "pilot trials" of such incentives (Satel, 2014). The editorial board of the *New York Times* cited the work of the DICG when it rejected such a change in the law (The Editorial Board, 2014). As we have argued more fully elsewhere (Delmonico et al., 2015), practical as well as ethical reasons support such a rejection.

First, instead of providing financial "benefits" to organ donors, the *New York Times*, like the DICG, favors removing the ancillary costs of donating—such as lost wages and travel and housing expenses to undergo donor screening and the surgery itself—from the shoulders of organ donors. The need to pay such costs, which may average as high as $6000 (Warren, Gifford, Hong, Merion, & Ojo, 2014), is a disincentive that lowers the rate of donation, especially among people of limited means (Gill, Dong, & Gill, 2014). NOTA actually permits reimbursing such costs, leaving organ donation a financially neutral act, but adequate mechanisms are not in place to make sure this occurs. Potential living organ donors—and the next of kin of deceased donors—should neither be motivated by financial rewards nor deterred by financial burdens (Delmonico et al., 2015).

Second, as already described, removing—rather than providing—payments has been shown to increase donation; indeed, countries where it has been possible to purchase a kidney have generally not had robust systems of deceased donation or living related donation. The phenomenon of one behavior "crowding out" another has been seen in many settings including organ donation and persists even if the prior policy is reinstated (Capron, Danovitch, & Delmonico, 2014). Finally, while the proponents of regulated payments for organs have suggested that this system should be limited to wealthy Western countries where they believe it could be well policed, the clinics and hospitals in developing countries that previously relied on organ trafficking to supply kidneys and liver segments from living donors would use a legal change

in developed countries to pressure their governments to drop their bans on organ sales (Capron, 2014).

HUMAN TRAFFICKING AND ORGAN TRAFFICKING: ARE THEY BOTH HUMAN RIGHTS VIOLATIONS?

Recognizing the abuses of human rights that have been documented to follow from organ sales in developing countries, proponents of paying for organs agree that human trafficking for organ removal should be prohibited but argue that organ trafficking should be allowed when it involves the purchasing of organs without the overt use of force or coercion. In the view of the DICG, which participates in the Council of Europe committee that produced the new convention against organ trafficking, both forms of trafficking entail human rights violations and the best approach is to regard treaties and laws that prohibit either one as complementary and mutually reinforcing (López-Fraga et al., 2014).

The experience of the DICG, in working alongside organizations that are promoting voluntary kidney donation around the world, is that the commentary to the WHO Guiding Principle 5 is correct when it states "Payment for cells, tissues and organs is likely to take unfair advantage of the poorest and most vulnerable groups, undermines altruistic donation, and leads to profiteering and human trafficking. Such payment conveys the idea that some persons lack dignity, that they are mere objects to be used by others" (WHO, 2010b, p. 5). Indeed, Principle 6 of the Declaration goes further in stating that organ trafficking and transplant tourism should be prohibited because they "violate the principles of equity, justice and respect for human dignity," resting as they do on the purchase of organs that "targets impoverished and otherwise vulnerable donors" and hence "leads inexorably to inequity and injustice" (Participants in the International Summit, 2008, p. 6). That inequity is stark: In the countries in the "Global South" that have been the principal source of vended kidneys (Gresham, 2010), the typical organ supplier is a male aged 28.9 years with an annual income of US$480, while most purchasers of kidneys—the average one being a 49.1-year-old male with an annual income of US$53,000—come from countries in the "Global North" (Ginzel, Kraushaar, & Winter, 2012).

The Palermo Protocol clearly states that "The consent of a victim of trafficking in persons to the intended exploitation [removal of organs] shall be irrelevant where any of the means set forth have been used" (United Nations Office on Crime and Drugs, 2004, p. 43). Therefore, an organ supplier's agreement to sell a kidney does not negate a finding of human trafficking, but it also does not establish human trafficking. Rather, to violate the Palermo Protocol, the means used to obtain consent must involve coercion, threats, or use of physical force, deception, or abuse of power or a position of vulnerability. A few cases brought against traffickers have relied upon some form of coercion but, in most cases, those who recruit organ "donors" in the slums of Manila, Delhi, rural Pakistan, or comparable places are relying on people's financial desperation to lead them to sell an organ. Common sense shows that the vulnerability of such people—their poverty and their existence on the margins of society—is being exploited, but proving that an organ broker accused of human trafficking intentionally took advantage of that vulnerability may be difficult. The category of "abuse of a position of vulnerability" was the least fully developed provision when the Palermo Protocol was adopted and, as elaborated by courts in cases

involving people who have been sexually exploited or placed into forced labor, it does not always fit the situation of persons from whom an organ has been obtained.

Thus, efforts to combat human trafficking can be aided by the prohibitions on trafficking in human organs in the laws against organ sales that exist in most countries and especially in the expanded definitions of the crime and the facilitation of cross-border collaboration contained in the new Council of Europe convention. Indeed, while the human-trafficking protocol was the basis for the UN prosecution of a transplant surgeon in Kosovo, most of the other successful prosecutions, such as those of organ brokers in Israel and the United States, have been brought under national laws that outlaw organ sales. The latter are more directly connected to the conduct being prosecuted—the buying of organs—since they do not require proof that the person from whom the organs were obtained was coerced or deceived or that his or her vulnerability was exploited. In cases where such proof is lacking, it is, therefore, appropriate to make use of applicable laws against organ trafficking. Since the prohibition on organ sales rests on a large body of evidence that persons who sell their organs are being exploited, the punishment of persons who violate such laws should be comparable to the punishments applied to trafficking in human beings. Where that is not now the case under national laws, the danger is that prosecutors will bring, or accept defendants' pleas to, a charge of organ trafficking rather than the more serious crime of human trafficking; by removing significant differences in the ways that the two acts are punished, nations could more effectively combat both forms of trafficking.

ADDITIONAL EFFORTS OF THE DICG

For the past decade, the country with the largest number of transplant tourists—and the resulting neglect of the needs of its own people—has been China, which differs from other countries where organ trafficking occurs in having relied principally on executed prisoners as the source of organs for transplantation. The procurement of organs involves a commercial transaction, but the money has gone to brokers and people in the prison system rather than to the donor. The DICG has worked diligently to persuade Chinese officials to discontinue the use of organs from executed prisoners. The number of hospitals catering to transplant tourists has been reduced and promises have been made to develop other sources of organs (Huang et al., 2014), but, thus far, it is not clear whether these efforts will fully eliminate the human rights abuses involved in relying on prisoners (Delmonico et al., 2014).

One very powerful tool used by the DICG to push Chinese colleagues to stop using organs from executed prisoners (and other transplant professionals from relying on trafficked organs) has been its ability to persuade many medical societies to disallow presentations at their congresses and publications in their journals that involve transplants derived from organ sales or from executed prisoners. Being denied the connections and the recognition that follow from visibility in such venues has led Chinese physicians and researchers to pressure their government to remove this blot on their collective professional standing internationally.

Much remains to be done to prevent human trafficking for organ removal and organ trafficking. The DICG will continue to work toward that goal, encouraged by the successes it has had, which have been widely recognized, such as by a private audience in 2014 with Pope Francis, who endorsed the principle of "financial neutrality" in organ donation. Further progress

will depend not only on continued collaboration with existing partners in governments, medical institutions, and nongovernmental organizations but on forging strong new relationships with human rights organizations and experts who are experienced in fighting all forms of illegal trafficking.

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