



## BACKGROUND PAPER

# TRAFFICKING IN HUMAN ORGANS: AN OVERVIEW

Publication No. 2020-83-E

**21 October 2020**

Jean-Philippe Duguay, Brian Hermon and Alexandra Smith

Parliamentary Information and Research Service

## AUTHORSHIP

21 October 2020	Jean-Philippe Duguay	Legal and Social Affairs Division
	Brian Hermon	Economics, Resources and International Affairs Division
	Alexandra Smith	Legal and Social Affairs Division

## ABOUT THIS PUBLICATION

Library of Parliament Background Papers provide in-depth studies of policy issues. They feature historical background, current information and references, often anticipating the emergence of the issues they examine. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations in an objective, impartial manner.

This publication was prepared as part of the Library of Parliament's research publications program, which includes a set of publications, introduced in March 2020, addressing the COVID-19 pandemic. Please note that, because of the pandemic, all Library of Parliament publications will be released as time and resources permit.

© Library of Parliament, Ottawa, Canada, 2021

*Trafficking in Human Organs: An Overview*  
(Background Paper)

Publication No. 2020-83-E

Ce document est également publié en français.

# CONTENTS

EXECUTIVE SUMMARY	
1	INTRODUCTION.....1
2	TERMINOLOGY.....1
3	KEY ISSUES IN ORGAN TRAFFICKING .....3
4	INTERNATIONAL INITIATIVES TO COMBAT FORCED ORGAN REMOVAL AND TRAFFICKING OF ORGANS.....5
4.1	<i>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime</i> .....5
4.2	<i>Declaration of Istanbul on Organ Trafficking and Transplant Tourism</i> .....6
4.3	World Health Organization's Guiding Principles on Human Cell, Tissue and Organ Transplantation .....7
4.4	<i>Council of Europe Convention Against Trafficking in Human Organs</i> .....7
4.5	United Nations General Assembly Resolution 71/322.....8
5	NATIONAL INITIATIVES TO COMBAT FORCED ORGAN REMOVAL AND TRAFFICKING OF ORGANS.....8
5.1	Canada .....8
5.1.1	Prohibition of Trafficking in Persons for the Purpose of Organ Removal .....9
5.2	Other Jurisdictions .....10
5.2.1	Prohibition of Organ Trafficking.....10
5.2.2	Legalization of the Organ Trade.....11
6	PREVENTATIVE MEASURES AND THE ROLE OF HEALTH CARE PROFESSIONALS.....11
7	CONCLUSION .....12

## EXECUTIVE SUMMARY

Organ transplantation surgery has saved countless lives since its advent in the 1950s. As the techniques and technologies used in transplantation medicine improve, positive outcomes for donors and recipients are increasing. Demand for this treatment, however, far exceeds organ availability. It is estimated that legal transplants performed cover the needs of only 10% of all patients on waiting lists worldwide. As a result, thousands of people die every year waiting for this procedure.

The desperate need for organ transplantation surgeries has given rise to a lucrative, transnational criminal enterprise that enables organ seekers to purchase organs from donors. This enterprise, commonly referred to as organ trafficking, is a global phenomenon. Even though it is illegal in most countries, some estimates indicate that trafficked organs account for up to 10% of organ transplants performed around the world, with profits conservatively estimated to be between US\$840 million to US\$1.7 billion annually.

Illegally trafficked organs are very expensive. According to some reports, the cost of a kidney, the most commonly trafficked organ, can range from US\$50,000 to US\$120,000. Thus, purchasers are normally wealthy persons from developed nations such as Canada. Because the purchase is generally conducted through a vast network that includes a broker who acts as an intermediary between the organ buyer and seller, a local recruiter, as well as medical professionals and local hospitals performing the illicit organ removal, very little money is left for the “donor.” Victims are commonly from poor and vulnerable populations in developing countries. Many are reported to have been misled, coerced or otherwise forced into selling their organs.

While organ trafficking is an internationally recognized problem, and attempts to prevent and prohibit it have experienced limited success, this underground crime remains a pervasive problem in many parts of the world. Part of the challenge is that many countries, including Canada, do not explicitly prohibit travelling abroad for organ transplantation surgeries that have been organized through illicit means. Thus far, legislative attempts in Canada to strengthen federal laws relating to organ trafficking have been unsuccessful.

This Background Paper provides an overview of organ trafficking and Canada’s involvement in this illicit activity. It identifies key terms; lays out some of the main issues; and summarizes actions taken by the international community, as well as Canada, to combat organ trafficking.

# TRAFFICKING IN HUMAN ORGANS: AN OVERVIEW

---

## 1 INTRODUCTION

A global shortage of organs for transplantation has given rise to a lucrative trade in trafficking organs or trafficking in persons for the purpose of organ transplantation.<sup>1</sup> These practices, conventionally referred to as organ trafficking, are prohibited by international law as part of a general prohibition on human trafficking.<sup>2</sup> Governmental and non-governmental organizations, including medical associations, have agreed in an official declaration that this prohibition includes any transplantation where the organ donor receives financial gain or comparable advantage from the transaction.<sup>3</sup>

Organ trafficking has become a global problem. Estimates indicate that trafficked organs account for up to 10% of organ transplants performed around the world, with profits conservatively estimated at US\$840 million to US\$1.7 billion annually.<sup>4</sup> Increasingly, in an effort to exploit the gap between the supply and demand for organs, criminal organizations that traffic in human beings are expanding their practice to include organ trafficking.<sup>5</sup>

Over the past several decades, over 100 countries have passed legislation banning or strengthening existing laws prohibiting the trade in organs.<sup>6</sup> Additionally, several governmental and professional bodies have advanced initiatives to regulate domestic and international organ transplantation and to prevent organ trafficking.<sup>7</sup> Taken together, these initiatives propose professional, regulatory and international law solutions to address an increasingly complex global criminal enterprise.

This Background Paper identifies key terms and elements of the illegal practice of organ trafficking and summarizes the actions that the international community and Canada have been taking to combat the practice.

## 2 TERMINOLOGY

The following definitions include some of the most commonly used terms in the literature on organ transplantation and organ trafficking:<sup>8</sup>

- **“Organ donation”** is defined as the consented donation, without compensation, of human cells, tissues, organs or a part of an organ intended for transplantation into another person.<sup>9</sup> According to the World Health Organization (WHO), organs may be removed from a deceased person when legal requirements pertaining to consent have been met “and there is no reason to believe that the deceased person objected” to organ removal.<sup>10</sup>



- **“Organ donors”** can be deceased or living people. Deceased donors can give their kidneys, pancreas, liver, lungs, heart and intestinal organs. Living donors can give a kidney or a portion of the liver, lung or intestine.<sup>11</sup>
- **“Organ removal/harvesting”** means the process of removing and preserving vital and healthy organs from living or deceased donors for the purpose of transplantation.
- **“Organ trafficking”** is an umbrella term that covers a number of unethical or illegal practices. It consists of any of the following activities:
  - a) removing organs from living or deceased donors without valid consent or authorisation or in exchange for financial gain or comparative advantage to the donor and/or a third person;
  - b) any transportation, manipulation, transplantation or other use of such organs;
  - c) offering any undue advantage to, or requesting the same by, a healthcare professional, public official, or employee of a private sector entity to facilitate or perform such removal or use;
  - d) soliciting or recruiting donors or recipients, where carried out for financial gain or comparative advantage; or
  - e) attempting to commit, or aiding or abetting the commission of, any of these acts.<sup>12</sup>
- **“Trafficking in persons for the purpose of organ removal”** means  
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 the removal of organs.<sup>13</sup>
- **“Transplant/organ commercialism”** is “a policy or practice in which an organ is treated as a commodity, including by being bought or sold or used for material gain.”<sup>14</sup>
- **“Transplantation”** is “[t]he transfer ... of human cells, tissues or organs from a donor to a recipient with the aim of restoring function(s) in the body.”<sup>15</sup>
- **“Travel for transplantation”** is defined as “[t]he movement of persons across jurisdictional borders for transplantation purposes.”<sup>16</sup>

The *Declaration of Istanbul on Organ Trafficking and Transplant Tourism* (Declaration of Istanbul), widely recognized as an important guide for governmental and professional bodies in the field of transplantation, also distinguishes between travel for transplantation and “transplant tourism.” Travel for transplantation becomes transplant tourism if it

involves trafficking in persons for the purpose of organ removal or trafficking in human organs, or if the resources (organs, professionals and transplant centres) devoted to providing transplants to non-resident patients undermine the country’s ability to provide transplant services for its own population.<sup>17</sup>

Transplant tourism includes, for example, a patient travelling from Canada to another country to obtain a kidney commercially, or receiving an organ from a foreign donor outside of an officially regulated bilateral or multilateral organ-sharing program.<sup>18</sup> By contrast, an example of proper travel for transplantation would be a recipient having dual citizenship in their country of residence and the destination country, and wishing to undergo transplantation from a live donor who is a relative in the destination country.<sup>19</sup>

### 3 KEY ISSUES IN ORGAN TRAFFICKING

Since its advent in the 1950s, organ transplantation as treatment for patients with terminal organ failure has become increasingly common across the globe.<sup>20</sup> Continuous advances in medical technology and transplantation medicine have led to an increase in the demand for organs.<sup>21</sup> However, demand for organs far exceeds the supply. It is estimated that the current number of legal transplants performed covers the needs of only 10% of all patients on waiting lists worldwide.<sup>22</sup> The shortage of available organs has prompted countries to develop procedures and systems to increase supply, mainly through the improvement, expansion and promotion of deceased donation programs. This alone, however, “is not enough to fill the gap between demand and supply of organs.”<sup>23</sup>

As the demand for organs outpaces the supply, transplant commercialism and organ trafficking, both of which involve the illegal buying and selling of organs, is increasing. This trend has been observed despite the fact that almost all countries in the world prohibit compensated organ donation, a practice widely viewed as “unethical and exploitative” and harming “poor and powerless people.”<sup>24</sup> The WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation (discussed in section 4.3 of this Background Paper) permit compensation for the costs of making donations (including medical expenses and lost earnings for live donors), but prohibit payment for organs, which is “likely to take unfair advantage of the poorest and most vulnerable groups, undermines altruistic donation, and leads to profiteering and human trafficking.”<sup>25</sup>

Consequently, organs have become a valuable and profitable black-market commodity involving transnational crime syndicates operating “highly organized” networks across national borders.<sup>26</sup> According to the United Nations Office on Drugs and Crime (UNODC), the illicit practices involved in the illegal organ trade remain among the most difficult crimes to detect. As a result, awareness of the crime among criminal justice practitioners, law enforcement and policymakers remains low, and enforcement of the crime is generally not a priority, although some jurisdictions have improved on this front.<sup>27</sup> This lack of awareness exists in spite of the sheer number of actors involved in the trade in illicit organs, including the broker who acts as the intermediary between the organ buyer and seller, the local recruiter who identifies vulnerable people willing to sell their organs, and the medical professionals and local hospitals performing the illicit organ removal.<sup>28</sup>

As noted in the introduction to this Background Paper, organ trafficking is estimated to generate between US\$840 million and US\$1.7 billion in illegal profits per year. A 2017 report by Global Financial Integrity estimates that in 2014, approximately 12,000 illegal transplantations were performed around the globe, of which two thirds involved kidneys.<sup>29</sup> The same report estimates that an organ buyer can pay anywhere from US\$50,000 to US\$120,000 for a kidney on the black market. Meanwhile, vendors on average receive less than 10% of the buyer’s payment, with the majority going to traffickers and other intermediaries.<sup>30</sup> By way of comparison with the cost of sanctioned kidney transplantation operations, in the United States, the estimated average billed charge for the transplantation of a kidney is US\$442,500, including pre- and post-operative care.<sup>31</sup> In Canada, in 2019, the first-year cost of a transplant to the health care system was estimated to be \$66,000. Costs related to the transplant in subsequent years are estimated to be \$23,000 per year.<sup>32</sup>

Cases of organ trafficking are reported all over the world. According to UNODC, trafficking for the removal of organs was detected in 25 countries between 2003 and 2016, mainly in North Africa and the Middle East, but cases have been noted in Western, Central and Eastern Europe, as well as in Central and South America.<sup>33</sup> Other commentators have noted that those who are most commonly targeted for organ trafficking, commercialization or transplant tourism appear to be vulnerable and impoverished people in China, Egypt, India, Iraq, Pakistan and the Philippines, as well as countries in Central and South America and in Eastern Europe. Victims are predominantly male and between 20 and 40 years of age. They are often misled about the nature and medical consequences of the transplantation procedure, and numerous studies reveal that nearly all organ sellers regret having done so. Once recruited, victims having doubts are often coerced into going through with the procedure by violence or intimidation.<sup>34</sup>



On the demand side, the practice of travelling abroad for a commercial transplant has been reported among nationals of Australia, Canada, Japan, South Korea, the United States, and countries in the Middle East and Western Europe. Organ recipients travelling abroad typically do so out of desperation due to declining health and poor prospects for obtaining a legitimate organ transplant in their home country. Recipients may learn of transplant tourism opportunities by word-of-mouth or online advertisements, among other sources.<sup>35</sup>

Commercial transplants performed abroad are dangerous not only for the donors but also the recipients, possibly because a regulatory framework to ensure safety of the procedure and organ viability is lacking. A study conducted between 1998 and 2013 at a Toronto hospital found that patients who had a kidney transplant outside Canada were three to four times as likely to die or lose the organ as those who received a kidney transplant in Canada and were also at greater risk of returning home with diseases like hepatitis or tuberculosis, among other complications.<sup>36</sup>

Organ trafficking is global in scope and targets typical donor and recipient profiles. Donor countries include countries in South America, Eastern Europe, and South and East Asia. Recipient countries include Canada, the United States, Australia and countries in the Middle East and East Asia. The typical organ donor is a 28-year-old male with an average annual income of \$480, while the typical organ recipient is a 48-year-old male with an average annual income of \$53,000.<sup>37</sup>

#### **4 INTERNATIONAL INITIATIVES TO COMBAT FORCED ORGAN REMOVAL AND TRAFFICKING OF ORGANS**

International organizations, governments and professional associations around the world have agreed on several major international initiatives to regulate organ transplantation and combat organ trafficking. What follows are short descriptions of three major international initiatives.<sup>38</sup>

##### **4.1 *PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME***

On 13 May 2002 Canada ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* (Palermo Protocol).<sup>39</sup> It is the first global legally binding instrument with an agreed definition of trafficking in persons, which is defined to include trafficking in persons for the purpose of removing their organs:

“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.<sup>40</sup>

#### 4.2 *DECLARATION OF ISTANBUL ON ORGAN TRAFFICKING AND TRANSPLANT TOURISM*

The Declaration of Istanbul is the first international declaration to distinguish between transplant tourism and travel for transplantation while also encouraging direct, specific action from states. It was first adopted in 2008 at an international meeting organized by the Transplantation Society and the International Society of Nephrology.

The Declaration of Istanbul Custodian Group (DICG) was established in 2010 to oversee the dissemination and endorsement of the document. The DICG published a new edition of the declaration in 2018 following public consultations with relevant stakeholders. The Declaration of Istanbul is intended to be a guidance document for policymakers and health professionals rather than a legally binding instrument. Numerous national and international medical societies and governmental bodies involved in organ transplantation have endorsed (i.e., agreed to uphold the principles of) the declaration, including several from Canada.<sup>41</sup> According to its preamble, the Declaration of Istanbul

expresses the determination of donation and transplant professionals and their colleagues in related fields that the benefits of transplantation be maximized and shared equitably with those in need, without reliance on unethical and exploitative practices that have harmed poor and powerless persons around the world.<sup>42</sup>

The Declaration of Istanbul sets out 11 principles.<sup>43</sup> Some focus on prevention, such as Principle 1, which calls on governments to “develop and implement ethically and clinically sound programs for the prevention and treatment of organ failure”<sup>44</sup> and Principle 6, which asks governments to ensure transparency and accountability in organ donation, allocation and transplantation practices. Others focus on prohibition, including calling for the criminalization of organ trafficking and trafficking in persons for the purpose of organ removal (Principle 3) and the implementation of strategies to discourage or prevent transplant tourism (Principle 10). The principles also underscore the importance of equitable access to donation and transplantation services (Principle 7) and the need for countries to strive to achieve self-sufficiency in organ donation and transplantation (Principle 11).

#### 4.3 WORLD HEALTH ORGANIZATION'S GUIDING PRINCIPLES ON HUMAN CELL, TISSUE AND ORGAN TRANSPLANTATION

The WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation (WHO Guiding Principles) build on previous WHO resolutions that expressed the WHO's "concern over commercial trade in organs and the need for global standards for transplantation."<sup>45</sup> Its 11 guiding principles are aimed at ensuring that states provide an "orderly, ethical and acceptable framework for the acquisition and transplantation"<sup>46</sup> of organs, including

- prohibiting any monetary payment or other financial reward for organ donation;<sup>47</sup>
- allowing live donations only on condition of voluntary informed consent and free of any undue influence or coercion;<sup>48</sup>
- ensuring that organs, cells and tissues are allocated solely according to clinical criteria and ethical norms, and not based on financial gain or other considerations;<sup>49</sup>
- banning health insurers from covering transplantation involving organs obtained through exploiting, coercing or offering payment to the donor or the deceased donor's next of kin;<sup>50</sup>
- advocating for deceased organ donation so that it may achieve its maximum therapeutic potential;<sup>51</sup> and
- recommending that living donations be domestically regulated and, in general, come from donors that have a genetic, legal or emotional connection to the recipients.<sup>52</sup>

Overall, the WHO Guiding Principles provide a road map for member states to establish ethically sound transplantation programs. However, since the principles are not legally binding, they lack an enforcement provision or mechanism and do not require member states to report on their implementation of the recommendations. While the WHO Guiding Principles do not address organ trafficking directly, they do provide clear standards by which countries can address the supply side of organ transplantation.

#### 4.4 COUNCIL OF EUROPE CONVENTION AGAINST TRAFFICKING IN HUMAN ORGANS

The *Council of Europe Convention against Trafficking in Human Organs* (Council of Europe Convention) opened for signature on 25 March 2015 and entered into force on 1 March 2018 upon receiving sufficient ratifications.<sup>53</sup> As of October 2020, 10 states had ratified the Council of Europe Convention: Albania, Croatia, Czech Republic, Latvia, Malta, Moldova, Montenegro, Norway, Portugal and Switzerland.<sup>54</sup> The Council of Europe Convention is the first legally binding international instrument devoted solely to organ trafficking and is also open to Canada for ratification. According to Article 1, the purposes of the Council of Europe Convention are as follows:

- a) to prevent and combat the trafficking in human organs by providing for the criminalisation of certain acts;
- b) to protect the rights of victims of the offences established in accordance with this Convention; [and]
- c) to facilitate co-operation at national and international levels on action against the trafficking in human organs.<sup>55</sup>

Article 23 also establishes a committee of the parties to the Council of Europe Convention to monitor its implementation.

#### 4.5 UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 71/322

On 8 September 2017, the United Nations General Assembly adopted resolution 71/322, entitled *Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs*.<sup>56</sup> The resolution urges member states to, among other measures,

- “prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs, in accordance with their obligations under international and national law,” including by prosecuting and punishing the illicit activities involved in organ trafficking;
- ratify or accede to the Palermo Protocol;<sup>57</sup>
- consider adopting a number of measures related to organ transplantation, in accordance with their domestic legal systems and national legislation and in line with the WHO Guiding Principles;<sup>58</sup> and
- develop “ways of protecting victims of trafficking in persons for the purpose of organ removal and, as appropriate, ways of addressing the vulnerability of those individuals who sell their organs” in their domestic legislation.<sup>59</sup>

## 5 NATIONAL INITIATIVES TO COMBAT FORCED ORGAN REMOVAL AND TRAFFICKING OF ORGANS

### 5.1 CANADA

As is the case in other countries, the demand for organs in Canada significantly outpaces supply. In 2019, over 4,300 people were waiting for organ transplants, 3,014 organs were transplanted, and 249 people died waiting for a transplant.<sup>60</sup> Canada ranked 19<sup>th</sup> among 70 countries in 2019 for the deceased organ donor rate, with a rate of 20.56 per million persons (PMP).<sup>61</sup> By comparison, the deceased organ donor rate of the top-ranked country, Spain, was 49 PMP. For living organ donors,

Canada ranked 16<sup>th</sup> in 2019, with a rate of 14.98 PMP. Turkey ranked first the same year, with 53.02 PMP.<sup>62</sup>

Canada is one of the top countries of origin for patients seeking organs abroad.<sup>63</sup> Currently, Canada does not have a law that bans Canadians from travelling abroad to receive a transplant, also known as transplant tourism.<sup>64</sup> However, as will be explained in section 5.1.1 of this Background Paper, the *Criminal Code* (the Code) does prohibit Canadian citizens and permanent residents from exploiting someone outside Canada to have an organ or tissue removed.

#### 5.1.1 Prohibition of Trafficking in Persons for the Purpose of Organ Removal

Under the Code,<sup>65</sup> trafficking in persons for the purpose of organ removal is prohibited. Sections 279.01 to 279.03 criminalize trafficking in persons and related offences, such as receiving a material benefit from trafficking in persons or withholding travel documents to facilitate trafficking in persons. According to section 279.01(1),

[e]very person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence.

“Exploitation” is defined under section 279.04(1) of the Code, which states:

[A] person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

Section 279.04(3) of the Code clarifies that trafficking in persons for the purpose of organ removal is included in the definition of exploitation:

For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.

Trafficking in persons is an indictable offence. If the perpetrator kidnaps, commits an aggravated assault or sexual assault, or causes the victim’s death during the commission of the offence, the offence is punishable by a maximum term of life imprisonment and a mandatory minimum sentence of five years (six years if the victim was under 18). In all other cases, trafficking in persons is punishable by a maximum of 14 years



and a mandatory minimum of four years' imprisonment (five years if the victim was under 18).

In addition, according to section 7(4.11) of the Code, any Canadian citizen or permanent resident who commits an offence listed in sections 279.01 to 279.03 outside Canada "shall be deemed to commit that [offence] in Canada." This section of the Code ensures that the offence of trafficking in persons applies extraterritorially.

There have been several attempts in the last 10 years to amend the Code to deal more explicitly with the trafficking of human organs and other body parts through private members' bills in the Senate and the House of Commons.<sup>66</sup> For example, Bill S-240, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs) died on the *Order Paper* at the dissolution of the 42<sup>nd</sup> Parliament, having passed third reading in the House of Commons. Sponsored by Senator Salma Ataullahjan, Bill S-240 would have amended the Code to add a specific provision criminalizing trafficking in human organs, including the removal of organs without the person's informed consent or for financial consideration, by anyone in Canada or by a Canadian citizen or permanent resident outside Canada. These offences would have been punishable by a maximum of 14 years' imprisonment. The bill would also have established an organ transplant registry to help authorities identify instances of organ trafficking. Finally, the bill would have amended the *Immigration and Refugee Protection Act* to make a permanent resident or foreign national inadmissible to Canada if they had engaged in organ trafficking.

## 5.2 OTHER JURISDICTIONS

### 5.2.1 Prohibition of Organ Trafficking

Most countries' legislation banning organ trafficking has focused on organ sales within the country's jurisdiction. This approach does not impose liability for nationals engaging in transplant tourism abroad. Several countries, however, have enacted laws to discourage or prevent their nationals from travelling abroad for organs for transplantation. Israel, for example, prohibits health insurance companies from reimbursing the medical expenses of patients who travel abroad to receive transplants while providing for full reimbursement of legitimate expenses associated with organ donation.<sup>67</sup> Legislation in Taiwan stipulates that patients who receive organ transplants abroad must provide certain information in writing regarding the transplant they received in order to be eligible for medical care in Taiwan.<sup>68</sup>

Destination countries for transplant tourism have also implemented laws to curb this practice, with some success. For example, legislation enacted by the Philippines in 2009 prohibiting living local donors from providing organs for transplantation to foreign nationals led to a significant decrease in transplant tourism to the country, from 531 cases in 2007 to two in 2011.<sup>69</sup> India enacted legislation in 1994 that restricted

living organ donations to related individuals in order to discourage transplant tourism. However, the law permitted non-related living organ donations in “altruistic” cases. As a result, organ traffickers disguised illegal organ transactions as voluntary donations, leading the Indian government to impose harsher penalties for, and increased oversight of, the organ trade.<sup>70</sup>

#### 5.2.2 Legalization of the Organ Trade

Iran is the only country in the world that allows living paid kidney donation. Prospective donors in Iran must obtain approval from the government. If approved, they receive US\$2,000 to US\$5,000 in compensation from recipients, in addition to receiving one year of free health insurance and a US\$1,200 government subsidy.<sup>71</sup> The costs of the transplant are paid by the government with no incentives allowed to transplantation teams. Regulations aim to prevent kidney transplant tourism by requiring that both the donor and recipient be Iranian. The Iranian Society of Organ Transplantation is tasked with monitoring all living unrelated kidney donations for ethical violations.<sup>72</sup>

Despite the program’s apparent successes and robust regulations, most kidney vendors in Iran fall below the poverty line, highlighting the systemic inequality between donors and recipients in the organ trade even when made legal.<sup>73</sup> Furthermore, many sellers still turn to the black market to sell their kidneys to buyers willing to pay thousands more than the government offers.<sup>74</sup>

## 6 PREVENTATIVE MEASURES AND THE ROLE OF HEALTH CARE PROFESSIONALS

As previously stated, the root cause of organ trafficking is the significant lack of organs available for transplantation via legitimate means. Following the Third WHO Global Consultation on Organ Donation and Transplantation in 2011, participants, including government representatives and medical professionals, issued the Madrid Resolution on Organ Donation and Transplantation, which calls on governments to pursue “self-sufficiency in organs for transplantation” as “it is the only safeguard against the temptation of yielding to trade in human organs.”<sup>75</sup> Self-sufficiency requires not only strategies aimed at increasing the availability of organs but also those intended to prevent diseases leading to organ failure.<sup>76</sup>

With respect to human trafficking for the purpose of organ removal specifically, the *Routledge Handbook of Human Trafficking* states that essential prevention measures include

the establishment of a regulatory framework and the development of professional guidelines for the comprehensive screening of prospective living donors, particularly from the psycho-social perspective, so as to rule out coercion, fraud, deception or abuse of a position of

vulnerability. In addition, incorporating a living donor advocate into transplant programmes should become a standard practice. Living donation programmes should pay special attention to non-resident living donors – for whom appropriate psycho-social screening may be particularly challenging. Protocols in place should be able to differentiate between proper travel for transplantation and situations where the apparently willing prospective donor may be subject to exploitation. Transplantation practises should be developed within highly regulated and transparent systems subject to strict oversight. Similarly, transplant centres should be subject to specific authorization and regular audits.<sup>77</sup>

The handbook also highlights the need for states to raise awareness of the illegal organ trade and to conduct outreach to populations at risk of being trafficked for their organs. It further maintains that states should equip health care professionals and public officials dealing with potential organ donors and recipients with adequate information aimed at preventing and combatting the illicit organ trade.<sup>78</sup>

Physicians have also been identified as playing “a pivotal role in discouraging” transplant tourism in source countries such as Canada, “particularly if they are supported by law and policy reform.”<sup>79</sup> For example, physicians could advise patients considering transplant tourism of the medical risks associated with receiving a transplant abroad, as well as the harms to the organ donor and illegality of the organ trade.<sup>80</sup>

## **7 CONCLUSION**

Organ trafficking is a global issue that persists largely undetected despite netting significant profits for organized crime groups. All countries are affected – the victims of organ trafficking are typically found among poor and vulnerable populations in developing countries, while the recipients of illicit organs are usually from wealthier countries such as Canada. Organ trafficking is fuelled by a significant lack of organs available by legitimate means in virtually all jurisdictions, including in Canada where patients can wait years for a transplant. Legislative attempts in Canada to strengthen federal laws relating to organ trafficking have been unsuccessful thus far. While some international and domestic initiatives to prevent and prohibit organ trafficking have had positive results, this underground crime remains a pervasive worldwide problem.

## NOTES

1. Sonya Norris, [Organ Donation and Transplantation in Canada: Statistics, Trends and International Comparisons](#), Publication no. 2020-28-E, Parliamentary Information and Resource Service, Library of Parliament, Ottawa, 1 April 2020, pp. 5–6; and United Nations Office on Drugs and Crime [UNODC], [Assessment Toolkit: Trafficking in Persons for the Purpose of Organ Removal](#), Vienna, 2015, p. 10.
2. “Human trafficking” is defined to include exploitation for the purpose of the removal of organs. See United Nations [UN] General Assembly, [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime](#) [Palermo Protocol], 15 November 2000, art. 3(a).
3. [The Declaration of Istanbul on Organ Trafficking and Transplant Tourism \(2018 Edition\)](#) [Declaration of Istanbul – 2018 Edition].
4. Ibid., p. 1; and Channing May, [Transnational Crime and the Developing World](#), Global Financial Integrity, March 2017, p. 29.
5. UNODC (2015), p. 11.
6. Fikresus Fikrejesus Amahazion, “Human rights and world culture: The diffusion of legislation against the organ trade,” *Sociological Spectrum*, Vol. 36, No. 3, 2016, pp. 158–182; and Emily Kelly, “[International Organ Trafficking Crisis: Solutions Addressing the Heart of the Matter](#),” *Boston College Law Review*, Vol. 54, No. 3, 23 May 2013.
7. See, for example, Council of Europe, [Council of Europe Treaty Series - No. 216: Council of Europe Convention against Trafficking in Human Organs](#), 25 March 2015; and Declaration of Istanbul – 2018 Edition.
8. The United States Department of Health and Human Services has a comprehensive glossary of organ donation terms with useful definitions beyond those provided in this Background Paper. See United States, Department of Health and Human Services (DHHS), Health Resources and Services Administration Division, “[Glossary](#),” [organdonor.gov](#).
9. For the purposes of this paper, references to organs include, unless otherwise noted, human cells, tissues, organs or parts of organs.
10. World Health Organization [WHO], [WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation](#), 63<sup>rd</sup> World Health Assembly, Resolution WHA63.22, May 2010.
11. United States, DHHS, “Glossary,” [organdonor.gov](#).
12. Declaration of Istanbul – 2018 Edition, p. 2. This definition is based on the *Council of Europe Convention against Trafficking in Human Organs*.
13. Ibid. This definition is derived from the Palermo Protocol.
14. [The Declaration of Istanbul on Organ Trafficking and Transplant Tourism \(2008 Edition\)](#), p. 2
15. WHO, [Global Glossary of Terms and Definitions on Donation and Transplantation](#), Geneva, November 2009, p. 14.
16. Declaration of Istanbul – 2018 Edition, p. 2.
17. Ibid., p. 2–3.

18. C. Rudge et al., "[International practices of organ donation](#)," *British Journal of Anesthesia*, Vol. 108, Supplement No. 1, 1 January 2012, p. i53.
19. John S. Gill and Francis L. Delmonico, American Association for the Study of Liver Diseases, "[Transplant Tourism Versus Proper Travel for Transplantation](#)," *Clinical Liver Disease*, Vol. 6, No. 4, October 2015, p. 90.
20. Sarah Shepp, "Priceless Kidney: The Ineffectiveness of Organ Trafficking Legislation," *Syracuse Journal of International Law and Commerce*, Vol. 46, No. 2, Spring 2019, p. 384.
21. Canadian Institute for Health Information, "[Despite progress, Canada's organ supply still isn't meeting demand](#)," News release, 5 December 2019; and European Parliament, Directorate-general for External Policies, Policy Department, [Trafficking in human organs](#), July 2015, p. 18.
22. Stefania Negri, "Transplant Ethics and the International Crime of Organ Trafficking," *International Criminal Law Review*, Vol. 16, No. 2, 2016, p. 288.
23. 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*, Vol. 12, No. 3, 2012, p. 573.
24. Declaration of Istanbul – 2018 Edition, "Preamble," p. 1. The WHO first declared the prohibition of organ trade during the 40<sup>th</sup> World Health Assembly in 1987, later adopting resolution WHA44.25 at the 44<sup>th</sup> World Health Assembly in 1991. See Global Observatory on Donation and Transplantation, [Resolution WHA44.25 endorsing the 1991 Guiding Principles](#).
25. WHO (2010), "Commentary on Guiding Principle 5," p. 5.
26. UNODC, [Global Report on Trafficking in Persons 2018](#), Vienna, 2018, pp. 30–31.
27. UNODC (2015), p. 13.
28. European Parliament (2015), pp. 20–21.
29. May (2017), p. 29. It is not possible to obtain accurate and up-to-date figures on the number of organs that are trafficked each year due to the secrecy of the trade.
30. Ibid., p. 30.
31. T. Scott Bentley and Nick J. Ortner, [2020 U.S. organ and tissue transplants: Cost estimates, discussion, and emerging issues](#), Milliman Research Report, January 2020, p. 3.
32. Kidney Foundation of Canada, "[The Kidney Foundation of Canada statements regarding the 2019 Federal Budget](#)," News release, 25 March 2019.
33. UNODC (2018) p. 30.
34. Marta López-Fraga et al., "Human trafficking for the purpose of organ removal," Chapter 10 in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl, eds., *Routledge Handbook of Human Trafficking*, Routledge International Handbooks, 2017, pp. 120 and 124.
35. European Parliament (2015) p. 20.
36. G.V. Ramesh Prasad et al., "[Commercial kidney transplantation is an important risk factor in long-term kidney allograft survival](#)," *Kidney International*, Vol. 89, No. 5, 1 May 2016, pp. 1119–1124. See also Tom Blackwell, "[Canadian 'transplant tourists' putting their lives at serious risk: study](#)," *National Post*, 15 April 2016.
37. European Parliament (2015), [Trafficking in human organs](#), p. 19.



38. For information about international initiatives beyond those discussed in this Background Paper, see Asian Task Force on Organ Trafficking, [\*Recommendations on the Prohibition, Prevention and Elimination of Organ Trafficking in Asia\*](#), January 2008; United Nations Educational, Scientific and Cultural Organization, “[Universal Declaration on Bioethics and Human Rights](#),” *Legal Instruments*, 19 October 2005; and European Union, “[Directive 2010/53/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation](#),” Consolidated version, *EUR-Lex*, 6 August 2010. See also UNODC (2015), pp. 14–23.
39. For the status of ratification of the Palermo Protocol, see UN Treaty Collections, “[12. a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#),” *Chapter XVIII: Penal Matters*.
40. UN, Palermo Protocol, art. 3(a).
41. They are the Canadian Society of Nephrology, Canadian Blood Services, the Canadian Donation and Transplantation Research Program, the Canadian Society of Transplantation, the Canadian Association of Nephrology Nurses and Technologists, and The Kidney Foundation of Canada. See Declaration of Istanbul on Organ Trafficking and Transplant Tourism, “List of Endorsing Organizations,” [Endorsement](#).
42. Declaration of Istanbul – 2018 Edition, “Preamble,” p. 1.
43. Declaration of Istanbul – 2018 Edition, pp. 3–4.
44. *Ibid.*, p. 3.
45. WHO (2010), “Preamble,” p. 1, para 3.
46. *Ibid.*, p. 1, para. 4.
47. WHO (2010), “Guiding Principle 5,” p. 5.
48. *Ibid.*, “Guiding Principle 3,” p. 3.
49. *Ibid.*, “Guiding Principle 9,” p. 7.
50. *Ibid.*, “Guiding Principle 7,” p. 6.
51. *Ibid.*, “Guiding Principle 3,” p. 3.
52. *Ibid.*, pp. 3–4.
53. Council of Europe, Treaty Office, [Details of Treaty No. 216: Council of Europe Convention against Trafficking in Human Organs](#).
54. Council of Europe, Treaty Office, [Chart of signatures and ratifications of Treaty 216: Council of Europe Convention against Trafficking in Human Organs](#).
55. Council of Europe, *Council of Europe Treaty Series - No. 216: Council of Europe Convention against Trafficking in Human Organs*, 25 March 2015, art. 1, p. 2.
56. UN General Assembly, [Resolution 71/322: Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs](#), 71<sup>st</sup> Session, Agenda item 106, A/RES/71/322, Adopted 8 September 2017, 25 September 2017.
57. *Ibid.*, para. 2, p. 3,
58. *Ibid.*, para. 3, p. 3,
59. *Ibid.*, para. 9, p. 5.
60. Government of Canada, [Blood, organ and tissue donation](#).

61. The 2019 rankings are based on numbers from 2018.
62. IRODaT [International Registry in Donation and Transplantation], "Donation Activity Charts – 2019," [Database](#), accessed 12 October 2020.
63. Yosuke Shimazono, "[The state of the international organ trade: a provisional picture based on integration of available information](#)," *Bulletin of the World Health Organization*, Vol. 85, No. 12, December 2007, pp. 955–962.
64. Royal Canadian Mounted Police, "[Just the facts: Illegal organ trade](#)," *Gazette*, Vol. 76, No. 3, 3 October 2014.
65. [Criminal Code](#), R.S.C. 1985, c. C-46
66. [Bill C-500, An Act to amend the Criminal Code \(trafficking and transplanting human organs and other body parts\)](#), 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament; [Bill C-381, An Act to amend the Criminal Code \(trafficking and transplanting human organs and other body parts\)](#), 2<sup>nd</sup> Session, 40<sup>th</sup> Parliament; [Bill C-381, An Act to amend the Criminal Code \(trafficking and transplanting human organs and other body parts\)](#), 3<sup>rd</sup> Session, 40<sup>th</sup> Parliament; [Bill C-561, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act \(trafficking and transplanting human organs and other body parts\)](#), 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament; [Bill S-240, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act \(trafficking in human organs\)](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament; and [Bill C-350, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act \(trafficking and transplanting human organs and other body parts\)](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
67. Gabriel M. Danovitch and Mustafa Al-Mousawi, "[The Declaration of Istanbul – early impact and future potential](#)," *Nature Reviews. Nephrology*, Vol. 8, No. 6, June 2012, p. 360. [SUBSCRIPTION REQUIRED]
68. Alison Hsiao, "[Organ transplant laws tightened](#)," *Taipei Times*, 13 June 2015; and Taiwan, [Human Organ Transplantation Act](#).
69. Danovitch and Al-Mousawi (2012), p. 360; and Benita Padilla, Gabriel M. Danovitch and Jacob Lavee, "[Impact of legal measures prevent transplant tourism: the interrelated experience of The Philippines and Israel](#)," *Medicine, Health Care, and Philosophy*, Vol. 16, No. 4, 2013, p. 918. [SUBSCRIPTION REQUIRED]
70. Kelly (2013), pp. 1333–1334.
71. *Ibid.*, p. 1330.
72. Aparna R. Dalal, "[Philosophy of organ donation: Review of ethical facets](#)," *Word Journal of Transplantation*, Vol. 5, No. 2, 24 June 2015, pp. 41–54.
73. Kelly (2013), pp. 1330–1331.
74. Shashank Bengali and Ramin Mostaghim, "[‘Kidney for sale’: Iran has a legal market for the organs, but the system doesn’t always work](#)," *Los Angeles Times*, 15 October 2017.
75. "[The Madrid Resolution on Organ Donation and Transplantation: National Responsibility in Meeting the Needs of Patients, Guided by the WHO Principles](#)," *Transplantation*, Vol. 91, No. 11S, 15 June 2011, pp. S29–S31.
76. Francis L Delmonico et al., "[Organ Transplantation 1: A call for government accountability to achieve national self-sufficiency in organ donation and transplantation](#)," *The Lancet*, Vol. 378, 15 October 2011, p. 1417.
77. Marta López-Fraga et al. (2017), p. 129.
78. *Ibid.*

79. Timothy Caulfield and Amy Zarzeczny, "[Curbing transplant tourism: Canadian physicians and the law](#)," *Canadian Medical Association Journal*, Vol. 188, No. 13, 20 September 2016, p. 935.
80. Ibid.; and Marta López-Fraga et al. (2017), p. 130.