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### International cooperation in combating transnational crime: preventing, combating and punishing trafficking in human organs

## Preventing, combating and punishing trafficking in human organs

### Report of the Secretary-General\*\*

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction . . . . .	1-8	3
II. Basic facts about organ and tissue transplantation . . . . .	9-14	4
III. Preliminary overview of the legal framework and work of the main relevant organizations . . . . .	15-20	5
IV. Replies received from States . . . . .	21-72	6
A. Statistics on the transplantation of human organs and tissues . . . . .	22	6
B. Legal provisions regulating the transplantation of human organs and tissues . . . . .	23-42	5
C. Illegal removal of and trafficking in human organs and tissues: definitions, sanctions, liability and international cooperation . . . . .	43-52	10
D. Cases involving trafficking in human organs and tissues . . . . .	53-65	11
E. International legal framework and good practices . . . . .	66-72	12

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\*\* The submission of the present report was delayed owing to the late receipt of the required information.



V.	Involvement of organized criminal groups in trafficking in human organs and tissues . . . . .	73-84	13
VI.	Other reported cases . . . . .	85-88	15
VII.	Conclusions and recommendations . . . . .	89-100	16

## I. Introduction

1. In its resolution 59/156 of 20 December 2004, entitled “Preventing, combating and punishing trafficking in human organs”, the General Assembly requested the Secretary-General, in collaboration with States and organizations concerned, to prepare a study on the extent of the phenomenon of trafficking in human organs for submission to the Commission on Crime Prevention and Criminal Justice at its fifteenth session.
2. Pursuant to that request, the Secretary-General sent to Member States a note verbale on 9 February 2005, followed by a reminder on 12 October 2005, to which a structured questionnaire was attached, inviting Member States to submit information to the United Nations Office on Drugs and Crime (UNODC) on their efforts to implement the resolution, as well as information on relevant statistics, national legislation, practical experience and measures taken.
3. The present report, which is based on a summary and initial analysis of the replies received from Member States by 6 January 2006, provides an assessment of the extent of trafficking in human organs and tissues and the involvement of organized criminal groups in that activity. Its purpose is to provide the Commission with a preliminary overview of the scope and nature of trafficking in human organs, including global trends and an initial assessment of the degree to which organized criminal groups are involved. Moreover, the report addresses the existing legal framework relating to the regulation of organ donation and transplantation and measures taken by Member States to counter trafficking in human organs and tissues.
4. Determining the real extent of trafficking in human organs and understanding the nature and modus operandi of such crime are difficult because of the clandestine nature of the problem and the different actors involved. It is also a complex issue that includes technical, ethical, legal and medical considerations that may lead to controversy. It has not yet received priority attention by Member States or close scrutiny.
5. A global comparison of trafficking in human organs and tissues is constrained by the lack of a uniform definition and the absence of consistent statistics and criminal reports. Organ trafficking offences are either associated with other types of crime and therefore registered as such or, because of the fear or shame experienced by the victims, are not reported at all. The information contained in the present report has been drawn from official national reports, academic research, international organizations and media reports, in addition to the replies received from Member States,
6. Trafficking in organs is not recognized as an offence in many jurisdictions. It is, however, included in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex II).<sup>1</sup> According to the Trafficking in Persons Protocol, organ removal is one of the forms of exploitation that characterize trafficking in human beings. The Trafficking in Persons Protocol does not take into full consideration trafficking in human organs, as it does not cover the transfer of organs (for profit) alone; trafficking in organs only occurs if an individual is transported for the

purpose of organ removal.<sup>2</sup> For the purpose of this report, however, the transfer of illegally removed organs in an organized way for commercial purposes is considered trafficking in human organs and tissues.<sup>3</sup>

7. The growing trade in human organs and tissues with the involvement of brokers and traffickers operating internationally is stimulated by steadily growing demand for human organ transplants that exceeds the supply of human organs. The trade in human organs and tissues is forbidden in almost all countries, but there are indications pointing to a growing black market for human organs and tissues in several regions of the world. The lack of adequate laws to regulate organ transplantation and to address related commercial interests, corrupt practices and fraud creates many opportunities for illegal trade in human organs to develop.

8. Following an overview of the transplantation situation worldwide, the present report identifies geographical areas where major problems involving the illicit trade in human organs and illegal transplantations take place. The routes used for trafficking in human organs span the entire globe; the general trend is for the routes to lead from South to North, from poor to rich. Those engaged in supplying illicit markets for human organs mostly target the poor and vulnerable members of the population.<sup>4</sup>

## **II. Basic facts about organ and tissue transplantation**

9. Organ transplantation is often the last resort for patients confronted by organ failure. The organ may be obtained from a family member, an unrelated living donor or a deceased person. In the case of a deceased person, the organ must be removed quickly and transplanted within 48 hours after death. The most common source of organs is cadaveric donation. Suitable donors are those who are diagnosed brain-dead, usually following brain haemorrhage or severe head injury.

10. Due to rapid improvements in transplant surgery, the number of organ transplants is steadily growing. While it is difficult to estimate the exact number of organ transplantations, it is almost impossible to provide an estimation of the number of tissue transplantations. Access of patients to transplantation surgery varies widely throughout the world, depending on the level of development and on factors such as the availability of organs, cells and tissues, as well as the availability of specialized health services. Of the 70,000 organs transplanted annually, 50,000 are kidneys; more than one third of kidney transplantations are carried out in low or medium-income countries.<sup>5</sup>

11. In Europe, it is estimated that 120,000 patients are on dialysis treatment and approximately 40,000 people need a new kidney. The waiting list for a transplant, currently about three years, is expected to increase to 10 years by 2010.<sup>6</sup> Some 15-30 per cent of patients die because organs are not available.

12. Religious, legal and cultural barriers in many parts of the world have led to growing resistance to post-mortem donation, increasing even more the gap between demand and supply. As a result, there has been a progressive rise in the need for organs from living donors, creating a lucrative black market for organs. Though they constitute gross violations of human rights, the procurement and allocation of organs for transplant surgery are occurring in many parts of the world. Moreover, in

the absence of an effective legal framework regulating organ transplantation and donation, there is great risk that organs being transplanted carry infectious diseases due to insufficient donor screening.

13. The continuing advancement of surgical technology, improving organ preservation, and the development of more effective drugs to prevent rejection of transplanted organs have increased the number of successful transplantations and extended the life expectancy of patients. These developments are occurring not only in developed countries, but also in developing countries.<sup>7</sup>

14. The advances in technology, especially biotechnology, have created a demand not only for organs to be donated for patients, but also for organs to be used for scientific purposes by pharmaceutical companies or academic institutions.

### **III. Preliminary overview of the legal framework and work of the main relevant organizations**

15. The rapid advancement of technology in the area of transplantation, coupled with the increasing demand, has raised medical, ethical and legal concerns. In most countries, the sale of organs is banned. However, the limited availability of organs forces many patients to turn to the international black market. International medical and human rights organizations, concerned about the abuse of organ transplantation, condemn the buying and selling of human organs taken from living persons, and international norms and regulations have been established to curb the growing trade in organs.

16. In 1991, the World Health Assembly approved the Guiding Principles on Human Organ Transplantation, placing emphasis on voluntary donation, non-commercialization and a preference for cadavers over living donors and for genetically-related over non-related donors.<sup>8</sup> In its resolution WHA57.18 of 22 May 2004, entitled “Human organ and tissue transplantation”, the World Health Assembly, concerned by the growing insufficiency of available human material for transplantation to meet patient needs, urged member States to take measures to protect the poorest and vulnerable groups from “transplant tourism” and the sale of tissues and organs, including attention to the wider problem of international trafficking in human tissues and organs.

17. An important step in the fight against trafficking in organs was the inclusion of the words “removal of organs” in the definition of exploitation, in the Trafficking in Persons Protocol (art. 3, subpara. (a)).

18. The Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine<sup>9</sup> is another important tool in the fight against trafficking in human organs. Article 21 of the Convention criminalizes the receipt of financial gain from the sale of the human body and its parts. In addition, article 22 of the Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on Transplantation of Organs and Tissues of Human Origin,<sup>10</sup> prohibits illicit trafficking in organs and tissues of human origin.

19. Article 3, subparagraph 1 (a) (i), of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (General Assembly resolution 54/263, annex II), requires the criminalization of offering, delivering or accepting, by whatever means, a child for the purpose of transfer of organs of the child for profit.

20. The World Medical Association has condemned the purchase and sale of human organs for transplantation and has called on the Governments of all countries to take effective steps to prevent the commercial use of human organs.<sup>11</sup>

#### **IV. Replies received from States**

21. Replies to the questionnaire were received from 40 States: Afghanistan, Australia, Belarus, Belgium, Brazil, Cambodia, Canada, Chile, Czech Republic, Egypt, Estonia, Finland, Germany, Holy See, Hungary, Italy, Japan, Latvia, Luxembourg, Madagascar, Malta, Mexico, Morocco, Netherlands, New Zealand, Norway, Oman, Poland, Portugal, Qatar, Romania, Serbia and Montenegro, Slovakia, Slovenia, Spain, Switzerland, Tunisia, Turkey, Ukraine and United Arab Emirates.

##### **A. Statistics on the transplantation of human organs and tissues**

22. Several States<sup>12</sup> provided data on the number of transplantations, including patients on waiting lists. The number of transplantations carried out between 2000 and 2005 increased in almost all countries that provided data. The statistics illustrated that kidneys, followed by livers, were the organs in greatest demand for transplantation. As regards tissues, corneas were transplanted the most frequently.

##### **B. Legal provisions regulating the transplantation of human organs and tissues**

23. Several States<sup>13</sup> reported on laws or technical guidelines in place covering the use of organs and tissues for scientific research and medical education. In Finland, Malta and Slovenia, the consent of an ethical commission or medical board, as well as of the deceased, was needed to use the organs for scientific or medical educational purposes.

24. Italy, Japan, Morocco and Switzerland reported that the use of organs or tissues for scientific research or medical education was strictly prohibited. Luxembourg did not allow the use of organs and tissues for scientific or educational purposes, with the exception being the pancreas, which could not be transplanted. Latvia stated that the use of fetuses for scientific and commercial purposes was prohibited. In Malta, organs and tissues were only to be used for transplantation purposes; however, in cases where there were no matches, the organs and tissues could be sent to other countries.

25. A number of States<sup>14</sup> reported that their domestic legal frameworks permitted the export and import of organs. Morocco stated that only hospitals were allowed to exchange organs, with the approval of the Ministry of Health, at the advice of the

National Medical Council. Italy stated that the import and export of organs was allowed except in cases to those countries that illegally traded organs. In Australia, the law stipulated that the export of “human substances”, which included human body fluid, organs and other tissue, in a container with an internal volume of more than 50 ml was prohibited. Spain reported that an organ could only be exported if there was no suitable recipient for the organ in Spain.

26. Organ and tissue transplantation, as well as the donation of organs from living or deceased donors, were subject to extensive regulation in almost all the reporting countries except Afghanistan and Cambodia. In most cases, transplantation laws were nationally enacted, except in countries where states, provinces, territories, cantons or regions had legislative autonomy.<sup>15</sup>

#### **Donation of organs from deceased persons**

27. There were two main systems for the retrieval of organs from cadavers: presumed consent (opting out) and express consent (opting in). Under the system of presumed consent, an organ could be removed from a deceased person for the purpose of transplantation unless the person had registered his or her objections to organ removal. In the majority of the reporting countries,<sup>16</sup> the presumed consent system was the established procedure regulating organ procurement from deceased donors.

28. Under the express or informed consent system,<sup>17</sup> only persons who had expressed a will to donate organs were considered as donors. New Zealand reported that, if no informed consent was available, the family of a deceased person would be asked to authorize the removal of organs and tissues.

29. In relation to post-mortem organ donation, several States reported on the criteria for diagnosing brain death. Brain death was defined as a complete and irreversible cessation of brain activity. Absence of apparent brain function was not sufficient for diagnosing brain death. Seven of the responding States reported that the diagnosis must be confirmed by one or more doctors that were not a member of the transplantation team.<sup>18</sup>

30. In some countries,<sup>19</sup> the removal of organs, their preservation and transplantation could be carried out only in qualified medical centres identified by competent health authorities.

#### **Donation of organs from living persons**

31. In principle, the use of organs from living donors was generally accepted all over the world. In some jurisdictions, however, national transplantation laws restricted donation to organs from living relatives. In the majority of reporting States, statutory laws stipulated that only regenerative organs and tissues, as well as kidneys, could be donated by living donors. Italy and Malta allowed for organ donation only in the case of kidneys.<sup>20</sup> In addition, several States reported that donation by a living donor was forbidden if the transplantation would result in serious health consequences for the donor or when a suitable organ could be obtained from a deceased donor.<sup>21</sup>

32. The majority of reporting States prohibited donation of organs from persons with mental disorders. Finland included persons with mental disorders in the list of

possible donors but required authorization from a legal representative. Estonia reported that persons with restricted legal capacity might act as donors if regenerative tissues were transplanted, there was no other compatible donor available who had legal capacity, the recipient was a brother or sister and the consent of the legal representative of the donor and permission of a court judge for transplantation had been obtained. Moreover, persons in custody were likewise excluded from acting as organ donors in a number of jurisdictions.<sup>22</sup> In Italy the importation of organs from prisoners sentenced to death was strictly prohibited.

33. In general, specific criteria, which differed from country to country, must be met to allow the donation of living organs from living persons. Those criteria included non-remuneration, minimum age, relationship between donor and recipient, voluntary donation, written consent, prior information about possible risks, anonymity and the right to withdraw from the operation. Malta reported that decisions regarding the different criteria to permit a kidney donation were made on a case-by-case basis by the Renal Transplant Committee.

34. To be able to give valid consent, the competent donor must be thoroughly informed about the purpose and nature of the removal, as well as its consequences and risks. In addition, the consent must be voluntary, free from coercion and undue pressure. Some States<sup>23</sup> referred to additional provisions relating to the consent criteria, such as the presence of one or more witnesses, including their signature. In Spain, the magistrate responsible for public records in the area concerned must be present and must sign the consent; in addition, a written report by the ethical committee of the hospital was required. Italy and Morocco required the presence of a judicial authority. Poland reported that written consent from both the donor and the recipient was required.

35. In certain jurisdictions,<sup>24</sup> there was a minimum age for donors, which ranged from 12 to 20 years. Several States completely prohibit the donation of organs from minors, while other States were more permissive. In Chile, Finland and Slovenia, authorization from the parents or a legal representative was required for donors who were below the minimum age. In Finland, the law stipulated that donors who were under the required minimum age or who were incapacitated were allowed to donate only renewable tissues. Luxembourg and Slovenia reported that a minor who was able to give consent could donate an organ if the recipient was his or her brother or sister.

36. Several States<sup>25</sup> reported that a family or genetic relationship was required between the recipient and the donor. Italy reported that organ transplantation involving non-relatives was permitted when the patient had no relatives or when his or her relatives were not suitable. Some States<sup>26</sup> were more permissive, indicating that they allowed organ donation from non-related living donors. The Czech Republic and Poland reported that, in the case of organ donation from an unrelated donor, the approval of a special ethics committee was required. In Germany, the donation of non-regenerative organs could take place only in cases involving relatives of first or second degree, spouses, fiancés or other persons who were in an especially close relationship; in addition, after having received extensive information from two doctors, a commission of experts must approve the donation. Malta stated that non-related donations were permitted, but they required prior authorization by the Unrelated Living Transplant Authorization Committee. Poland stated that renewable tissue donation from an unrelated donor was permitted.



### **Buying and selling**

37. In conformity with several international conventions and declarations, buying and selling of organs and dealing in organs were strictly prohibited by law in all the responding countries. However, in some countries that prohibited trading in organs,<sup>27</sup> it was possible to receive compensation for financial loss or the costs of the transplantation and of the necessary care for the recovery of the donor.

38. In addition, Japan reported that pecuniary benefits did not include expenses incurred through travel, organ removal, conservation, transfer and the transplantation operation, as they were regarded as necessary procedures for the transplantation.

### **Control and monitoring of transplantations and the procurement of organs**

39. Several States reported on the establishment of a national public organ transplantation institution or a national organ registry system in charge of the supervision of organ allocation and transplantation. Moreover, in a number of jurisdictions,<sup>28</sup> allocation decisions were subject to state supervision and regulatory oversight. In addition, some countries reported on international or regional organizations, collaborating with relevant national bodies.<sup>29</sup>

40. In Japan, a person might act as an intermediary in the provision of organs in accordance with the law and with the permission of the Minister of Health, Labour and Welfare. Canada reported on the foundation of a non-profit organization that acted as a focal point for collaboration among relevant health authorities, hospitals, researchers and health-care professional associations. Norway indicated that there was no official control mechanism in place; however, full transparency of organ registers and waiting lists was guaranteed with the rights and protection of donors and recipients ensured by the National Transplantation Centre. Finland reported that it had no central registry for tissues. Slovakia reported that a health-care professional could provide organs and tissues with the approval of the Ministry of Health.

41. Spain reported on its National Transplant Organization, which consisted of transplant coordinators in every hospital. The goals of the organization were: to coordinate the removal, conservation and distribution of human organs and tissues; to manage and update the waiting list for transplants; to develop and maintain the registry system for organs, including their origin and destination; and to coordinate the logistics and equipment for transportation of the organs and tissues. In addition, the organization promoted research relating to transplant technology and provided training and education for health personnel. It cooperated with relevant international organizations and other bodies.

42. Madagascar reported that a biomedical commission for the protection of the integrity and dignity of the individual and its rights, as well as for the prevention of abuse of biomedical research, had been established.

**C. Illegal removal of and trafficking in human organs and tissues: definitions, sanctions, liability and international cooperation**

43. The replies from States reflect the variety and limitations of legislation relating to illegal removal of and trafficking in human organs and tissues. Only a couple of States<sup>30</sup> explicitly define and criminalize trafficking in human organs and tissues. Statutes relating to trafficking in and illegal removal of organs are either enacted as a part of the penal code or as part of acts on transplantation, organ donation or health.

44. Several reporting countries<sup>31</sup> have established trafficking in organs as a criminal offence in compliance with the Trafficking in Persons Protocol, considering the illegal removal of human organs and tissues as an exploitative purpose of victims of trafficking in persons. A number of States<sup>32</sup> reported that new legislation in line with the Trafficking in Persons Protocol was under consideration. Australia indicated that “exploitation” should include the removal of the victim’s organ when the removal was contrary to a law of the state or territory where it was carried out and neither the victim nor the victim’s guardian consented to the removal and the removal did not meet a medical or therapeutic need of the victim.

45. In a number of States<sup>33</sup> where specific legislation regarding removal of or trafficking in human organs and tissues had not been established, laws on related criminal acts applied, such as assault offences, offences causing bodily injury, violation of transplantation laws, homicide and kidnapping.

46. Mexico reported that trafficking in human organs and tissues with the involvement of an organized criminal group was dealt with under the organized crime act. Where it concerned the illegal removal and transferring of organs without the participation of such a group, the transplantation acts applied.

47. Germany reported that its transplantation act prohibited trafficking in organs and tissue. Trafficking was to be understood as any activity undertaken for personal gain and oriented towards the sale of goods, even if the activity was occasional, undertaken only once or involved only brokering. Pursuant to section 17 of the transplantation act,<sup>34</sup> trafficking in organs for therapeutic purposes was prohibited, as was the removal of organs that were the subject of illegal trafficking and the transplantation of those organs.

48. In a number of countries,<sup>35</sup> offences relating to the illegal removal of organs from a deceased person, including violations with regard to medical procedures and the proper storing, registering and transferring of organs were in most cases regulated separately and sanctioned with less severe penalties, ranging from fines to imprisonment.

49. Reporting States indicated that sanctions for the illegal removal of human organs and tissues, trafficking in human organs and tissues and related laws regarding bodily injury and assault offences varied greatly across jurisdictions, ranging from a minimum of two years to 20 years imprisonment with hard labour and fines. Some States<sup>36</sup> reported that in certain cases professional licences might be withdrawn. In all States, punishment for removal and/or trafficking in human organs was higher in cases involving aggravated circumstances, including death of

or severe injuries to the victim, use of coercion, kidnapping, acting in an organized manner and the age of the victim.

50. As regards liability, some countries<sup>37</sup> indicated that special liability had been established for brokers, intermediaries and health professionals. In Romania, recipients of organs or tissues could equally be held liable. Mexico reported that hospital staff and directors could be held liable when they tolerated illicit activities in their hospitals.

51. Eight of the responding States,<sup>38</sup> reported that criminal liability of legal persons relating to the illegal sale of or trafficking in human organs and tissues was not established under their domestic law. Three States<sup>39</sup> reported that civil and administrative forms of liability have been established.

52. A number of States<sup>40</sup> reported that, in cases involving organ removal and/or trafficking, extraterritorial jurisdiction could be applied on a number of grounds. In some countries,<sup>41</sup> the ground could be that the offences had been committed extraterritorially against a national of the State. In a number of countries,<sup>42</sup> the ground could be that the offences had been committed abroad by a national or a stateless person whose habitual residence was in the State's territory. In one country,<sup>43</sup> the ground could be that offences had been committed outside the State's territory with a view to the commission of an offence within that territory.

#### **D. Cases involving trafficking in human organs and tissues**

53. Responses from States indicated that there was insufficient information on trafficking in human organs and tissues to permit an accurate assessment of the extent of the problem. Only limited information was available on the situation with regard to trafficking in organs in reporting countries.

54. Providing accurate figures or estimates on the extent of trafficking in human organs was a difficult if not impossible task for many Member States. The lack of information was partly attributable to the fact that trafficking in organs was not specified as a criminal act in the criminal codes and therefore acts involving that type of crime were reported as different offences.

55. The Czech Republic reported one case of illegal post-mortem removal and abuse of human organs and/or tissues under its laws. From 2002 to 2004, five employees of a tissue bank were engaged in illegally removing skin grafts from deceased persons. In return for financial benefits, they subsequently sent the skin grafts to the Euro Skin Bank in the Netherlands using official public transport companies. The persons involved were acting in an organized manner and making extensive use of the Internet for their communications and the transfer of their illegal income to accounts abroad. An investigation was carried out in cooperation with police authorities in Estonia, the Netherlands and Slovakia.

56. Finland reported on one alleged case of trafficking in children for the purpose of organ removal, where a Russian suspect was transporting several children from the Russian Federation to Spain. Authorities in Finland and Spain collaborated in the investigation; however, due to insufficient evidence, no charges were made against the suspect.

57. Germany reported that, since 2001, 56 of the cases handed over to the Federal Criminal Police Office could be categorized under the broader definition of the crime of illegal organ commerce. Of the investigations initiated, only one had ended in a conviction pursuant to the transplantation act.

58. Latvia reported on a case in which bone tissue had been removed from a deceased person without permission from the person's relatives and had been sent to Germany.

59. Romania reported four cases involving the illegal removal of organs and tissues. In one case, charges had been laid; the other cases were still under investigation. One case was allegedly related to the involvement of organized crime.

60. Slovakia reported on several cases. Between 2002 and 2003, a number of persons, including two doctors, had been sentenced for the offence of illegal removal of human organs and tissues under the Penal Code. The accused had subsequently been prohibited from carrying out their functions within the health services for a period of five years.

61. Ukraine reported that intelligence operations in 2005 had uncovered a case in which organs and tissues had been illegally removed from corpses in order to be sold to transplantation centres. The case was still under investigation.

#### **Use of special measures to investigate cases involving trafficking in human organs and tissues**

62. None of the reporting States indicated the establishment of a specialized agency to investigate offences involving trafficking in human organs and tissues. However, some States<sup>44</sup> mentioned that the investigation of trafficking in organs would fall under the responsibility of either departments investigating organized crime or specialized units of the police or prosecution for investigating offences of that nature.

63. In Portugal, special investigative techniques, including controlled deliveries, undercover operations, intelligence-gathering, financial investigation and witness protection programmes, were used to investigate all varieties of organized criminal activity.

64. In Norway, each police district was responsible for the investigation of cases in its own jurisdiction. However, in cases concerning organized crime and other serious forms of crime, the police districts might request assistance from the National Criminal Investigation Service.

65. Germany reported that the investigative competence in cases involving trafficking in human organs and tissues would lie with the *Länder*<sup>45</sup> in the areas of health care and criminal prosecution and that they were therefore responsible for measures taken in those areas.

### **E. International legal framework and good practices**

66. Several States<sup>46</sup> reported on the ratification of the Trafficking in Persons Protocol. Some States were still in the process of drafting and adopting legislation in that area. A number of States<sup>47</sup> indicated that, while they had not yet ratified the

Trafficking in Persons Protocol, under their domestic legal systems elements of the crime concerned were considered to be offences.

67. Several States indicated they were parties to one or both of the following legal instruments: the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;<sup>48</sup> and the Additional Protocol to the Convention on Human Rights and Biomedicine, on Transplantation of Organs and Tissues of Human Origin.<sup>49</sup>

68. With regard to good practices and lessons learned, the Czech Republic recommended the establishment of financial controls or reporting relating to the procurement of organs, in cooperation with the Ministry of Health and financial authorities.

69. Germany reported on the successful application of criminal liability at a very early stage of trafficking in organs, prior to the transplantation stage. Trafficking was understood to be an activity undertaken for personal gain and oriented towards the sale of goods. Criminalization of that activity in the early stages had had a preventive effect.

70. Norway indicated that it was a member of the Council of Europe's Committee of Experts on the Organizational Aspects of Cooperation in Organ Transplantation and had been responsible for a draft recommendation on the use of kidneys from living donors who were not genetically related to the recipient.

71. Slovenia stressed the need and importance of training. It had a police training system on trafficking in human beings that included all forms of exploitation.

72. The United Arab Emirates noted that it had participated in the work of the Council of Arab Justice Ministers of Justice of the League of Arab States to draft an Arab framework law on harvesting human organs and preventing and combating their trafficking.<sup>50</sup>

## **V. Involvement of organized criminal groups in trafficking in human organs and tissues**

73. A clear distinction needs to be made between selling organs and trafficking in organs. Not every organ sold is a case involving trafficking. Cases involving the selling of organs by individuals in poor regions of the world for illegal transplantations are much more common than cases involving trafficking by organized criminal groups. However, in reality, the line between voluntarily selling and the use of force or deception by brokers or intermediaries is blurred. Victims may agree to sell their body parts but may be deceived regarding the amount or benefit to be received as compensation; they may even receive nothing at all. Moreover, victims may not be informed about transplantation procedures and of possible adverse health consequences, including the need for aftercare.<sup>51</sup> Because adequate post-operative care is often lacking, medical problems may occur; if they remain untreated, they may lead to severe kidney problems, placing the donor in the position of needing a new organ.

74. Another method used to obtain organs is luring people abroad under false promises, such as employment opportunities or economic benefits, which are not

met. In the destination countries, victims are either convinced or forced to sell their organs in order to repay their debts of travel cost, often receiving only a small financial return if any.<sup>52</sup> In contrast, recipients of organs must pay a much higher price, part of which benefits brokers, surgeons and hospital directors, who are reported to be part of an organized criminal network.

75. Organized criminal groups have diversified their criminal activities. They respond flexibly and swiftly, taking advantage of new emerging markets and discovering new illegal commodities that provide high profits and are associated with low risk of detection.<sup>53</sup> Trafficking in organs is therefore an attractive and lucrative area because of the high demand and the chronic shortage of supply. Organs may be obtained from living persons or deceased persons without the consent of their relatives or may be stolen from mortuaries.

76. Trafficking in human organs reflects the social and economic realities of the donors' and recipients' countries. The illegal trade flourishes where the institutions of governance are weak or have become corrupt. In addition, poverty is a pervasive and enduring factor behind the organ supply market.

77. Corruption is also strongly linked to trafficking in human organs. The pervasive influence of corruption is evidenced in the circumvention of rules and regulations concerning organ transplantation: charging fees to enrich hospital staff or medical institutions or to enable wealthy patients to move to the top of waiting lists for organ transplantation.

78. Trafficking in organs is a complex criminal activity, frequently requiring the complicity of different actors, including the police, mortuary workers, medical staff, ambulance drivers, the recipient and the donor. Moreover, the removal of a kidney for example is not feasible everywhere, as specialized skills as well as adequate medical facilities and experience are necessary to carry out the operation. In addition, donors and recipients must be carefully matched and the organs must be transplanted within a few hours.<sup>54</sup>

79. In 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, ambulance drivers, morticians and hospital staff.<sup>55</sup> The procurement and distribution of organs are complex undertakings requiring careful organization. It is therefore reasonable to assume that criminals cooperate with health professionals and intermediaries or brokers. There must be strong links between doctors and brokers, making the detection and criminalization of the crime even more difficult.

80. Anecdotal evidence suggests that unscrupulous middlemen and brokers are involved in persuading impoverished people to sell their kidneys. If necessary, coercion or deception is used to obtain the organs. Moreover, trafficking in human organs might involve a whole range of other related offences, such as corruption, murder, fraud and breach of duty or care. The exponential growth of the Internet is another factor contributing to the illicit trade in organs because it offers anonymous forms that facilitate the selling and buying of organs and enables brokers to operate worldwide.

81. The extent of the relationship between trafficking in organs and trafficking in persons (and other forms of organized crime) is unclear. There are indications that

several common grounds exist, including similar trafficking routes and victim profiles. Mostly vulnerable people facing unemployment, lack of educational opportunities and often extreme poverty are affected. Regarding the gender issue, the case is less clear, as it varies from region to region. For example, in India, mostly poor women<sup>56</sup> act as donors for mainly affluent male patients: however, in Brazil and the Republic of Moldova young men<sup>57</sup> are the principle donors. While cases of persons trafficked for the purpose of organ removal appear to be the exception, some have been reported.

82. As regards trafficking in children for the purpose of organ removal, although there is no conclusive evidence, a number of reports indicate that many abducted or missing children have subsequently been found dead, their bodies mutilated and certain organs removed.<sup>58</sup> It should be noted that the transplantation of a child's organ into an adult's body is medically possible.

83. There has been reporting on organized criminal networks that deal in human organs from hospitals and morgues in cooperation with hospital staff in Brazil. An investigation resulted in the dismantling of a ring of mortuary workers engaged in this practice, resulting in criminal proceedings. Apparently this is not a rarity: it appears that many organs are harvested for profit from the bodies of poor people.<sup>59</sup>

84. Another dimension of trafficking in human organs in Africa is the use of body parts for so-called witchcraft practices, often described as "muti" killings. "Muti" is based on the assumption that human blood and parts of the body mixed with herbs and/or plant roots are essential for the preparation of medicine (muti).<sup>60</sup> Certain body parts, such as skulls, genitals, bones, hearts and eyes, are sold to increase fertility, health, wealth or influence. An investigation in the United Kingdom of Great Britain and Northern Ireland led to the arrest of 21 people in connection with the discovery of the mutilated body of a child, indicating the involvement of a network of traffickers; the case is still under investigation.<sup>61</sup> A similar case was reported in Malawi, where six women were strangled or stabbed to death and that their breasts, intestines and eyes were removed.<sup>62</sup>

## VI. Other reported cases

85. The issue of trafficking in human organs by organized crime and related kidnappings and murder became particularly prominent in the 1980s and early 1990s, when several sensational stories about kidnapping, "body snatching" and "organ stealing" emerged in the media. Despite clear indications of involvement of organized crime in the black market for human organs, the extent of the problem remains unclear.

86. The non-governmental organizations Organs Watch estimates that each year thousands of illegal organ transplantations are carried out in many parts of the world.<sup>63</sup> The countries in which such operations are carried out are technically capable but still have inadequate laws in place to control organ donation and transplantation. It is estimated that at least several thousand kidneys from living and unrelated donors are transplanted each year.<sup>64</sup>

87. Numerous cases of alleged organ trafficking have been reported in Asia.<sup>65</sup> Such cases are also increasingly being reported in Central and Eastern Europe. In

Ukraine, there are currently two investigations of cases involving illegal removal of organs and in Albania, there is an ongoing investigation of a couple arrested for allegedly sending children to Italy with the intention of having their organs removed.<sup>66</sup> In Bosnia and Herzegovina several doctors were allegedly involved in illegal organ removal, in cooperation with traffickers in the Czech Republic. Similar incidents have occurred in the past in this region.<sup>67</sup> Other cases were reported in Bulgaria, where police arrested three people for trafficking in human kidneys to be transplanted in patients in neighbouring Turkey. The Republic of Moldova is reported to be another source of potential organ donors, persons who are willing to sell their kidneys.<sup>68</sup>

88. It has also been reported that another identified organ trafficking route operates between Brazil and South Africa.<sup>69</sup> Brazilian and Romanian nationals were identified as donors and then travelled to South Africa and sold their kidneys to Israeli nationals. The case is still under investigation. In South Africa, a man was sentenced to life imprisonment for the murder of six children whose bodies were mutilated for hearts, livers and penises (<http://sunsite3.berkeley.edu/biotech/organswatch/pages/southafrica.html>).

## **VII. Conclusions and recommendations**

89. The assessment of existing information and the analysis of the replies received from Member States indicate that the extent of the problem of trafficking in human organs and tissues remains unclear. It appears that the issue has not yet received priority attention. Despite numerous reports from the media and international organizations, the role played by organized crime in the trade in human organs and tissues remains poorly understood.

90. It 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. The lack of evidence and information on the involvement of organized crime in this criminal activity often impedes the creation of an effective national strategy to combat trafficking in human organs and tissues.

91. It is evident that human organs have become a commodity, being traded in an unfair and inequitable manner across the globe. The situation requires careful monitoring to prevent exploitation of vulnerable people. It is also evident that there is a clear and organized black market in human organs.

92. The clandestine nature of trafficking in organs and the complex combination of the different actors involved require a multifaceted response. In many countries, the trafficking is often facilitated through corruption and has severe adverse effects on the lives of individuals and their communities. It is recommended that, to address this problem, specific acts be established as criminal offences and appropriate legislation be implemented.

93. The absence of internationally agreed definitions and legal standards to provide a framework for cooperation in the area of combating the trafficking in human organs makes it more difficult to understand and analyse the problem and its extent and eventually to take appropriate countermeasures at the national, regional and international levels.



94. States should be encouraged to formulate and implement comprehensive national policies that provide for more severe penalties for organ trafficking. Member States should consider the application of comprehensive legislation that addresses criminalization, prevention and victim protection.

95. Victims often are reluctant to cooperate with law enforcement agencies for a number of reasons, including pressure from traffickers and brokers, a feeling of shame or fear of being considered criminals. Lack of adequate protection and support for victims and witnesses may hamper investigations, prosecutions and court proceedings.

96. The application of international agreements to address the regulation of organ procurement and broker activities should be considered, as well as a voluntary system of organ donation in accordance with the World Health Organization Guiding Principles on Human Organ Transplantation. States should establish oversight and monitoring tools, which are critical to preventing, detecting and countering illicit trading in human organs, in order to ensure the existence and maintenance of hospital safety standards aimed at reducing the risk of disease transmission by organs and tissues used for transplantations. It is crucial to guarantee sufficient donor screening so that organs that may transmit incurable infections, such as hepatitis and HIV, may be excluded prior to transplantation.

97. Some Member States do not have the resources and capacity to respond adequately to the problem of trafficking in human organs and tissues, because awareness, law enforcement resources, judicial expertise and cooperation between national and international law enforcement agencies are insufficient or lacking. Effective law enforcement efforts and international cooperation are necessary. In particular, the role of law enforcement agencies in investigating, gathering more information and sharing intelligence about possible cases should be strengthened. Law enforcement agencies should acknowledge that the investigation of organ trafficking requires a different approach than the investigation of other types of crime. Law enforcement officers should be trained and equipped accordingly. It was necessary to raise the awareness of medical and paramedical services regarding such crime. Moreover, collaboration among law enforcement agencies, financial institutions and health officials should be strengthened.

98. At the international level, Member States should develop and enhance cooperation with national and international law enforcement agencies, such as the International Criminal Police Organization (Interpol) and the European Police Office (Europol).

99. On the demand side, the organization of awareness-raising campaigns about the risks and possible health consequences of organ donation should be promoted. Patients should be made more aware of the necessity of regular follow-up care. In particular, civil society should play the leading role in promoting public discussions, conducting research and monitoring the donation of organs.

100. In the light of these conclusions, States may wish to consider ways to address the issue of trafficking in human organs. In this regard, they might wish to consider holding a meeting of a group of experts to discuss further the extent of the problem of trafficking in human organs and possible remedies at the national, regional and international levels.

*Notes*

- <sup>1</sup> The Trafficking in Persons Protocol stipulates that trafficking in persons occurs in case of recruiting, transporting, transferring, harbouring or receiving a person by a third party, using threats (or use) of force, coercion, abduction, fraud, deception, or abuse of authority or a position of vulnerability for the purpose of exploitation, such as removing that person's organ/s (art. 3, subpara. (a), of the Trafficking in Persons Protocol).
- <sup>2</sup> *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5). American Bar Association and Central European and Eurasian Law Initiative, *An Introduction to the Human Trafficking Assessment Tool: an assessment tool based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (Washington, D.C., American Bar Association, December 2005).
- <sup>3</sup> Greece has proposed to the Council of the European Union a draft framework decision on the prevention and control of trafficking in human organs and tissues, which would extend the scope of the Trafficking in Persons Protocol and encompass trafficking in human organs and tissues alone, without the necessity of the individual being trafficked.
- <sup>4</sup> Nancy Scheper-Hughes, "Keeping an eye on the global traffic in human organs", *Lancet*, vol. 361, No. 9369 (2003), pp. 1645-1648.
- <sup>5</sup> World Health Organization, Executive Board, "Human organ and tissue transplantation: report by the secretariat" (EB112/5), 2 May 2003, para.2.
- <sup>6</sup> Council of Europe, Parliamentary Assembly, Social, Health and Family Affairs Committee, "Trafficking in organs in Europe", document 9822, 3 June 2003.
- <sup>7</sup> For example, in Argentina, Brazil, China, India and South Africa.
- <sup>8</sup> WHA44/1991/REC/1, annex 6.
- <sup>9</sup> United Nations, *Treaty Series*, vol. 2137, No. 37266.
- <sup>10</sup> Council of Europe, *European Treaty Series*, No. 186.
- <sup>11</sup> World Medical Association, "Statement on Human Organ and Tissue Donation and Transplantation", adopted by the fifty-second General Assembly of the World Medical Association, held in Edinburgh in October 2000.
- <sup>12</sup> Brazil, Canada, Chile, Finland, Germany, Italy, Japan, Latvia, Malta, Luxembourg, Mexico, Morocco, New Zealand, Norway, Poland, Slovakia, Slovenia, Spain and Switzerland.
- <sup>13</sup> Canada, Chile, Finland, Italy, Norway, Poland, Slovakia, Slovenia and Spain.
- <sup>14</sup> Latvia, Morocco, Romania, Slovenia and Spain.
- <sup>15</sup> Australia, Canada, Germany, Spain and Switzerland.
- <sup>16</sup> Chile, the Czech Republic, Belgium, Brazil, Finland, Hungary, Italy, Japan, Latvia, Luxembourg, Norway, Poland, Portugal, Slovakia and Spain.
- <sup>17</sup> Australia, Canada, Chile, Estonia, Germany, the Holy See, Japan, Malta, the Netherlands, New Zealand, Romania, Slovenia, Switzerland and Turkey reported having such systems in place.
- <sup>18</sup> Estonia, Germany, Italy, Japan, Latvia, Oman and Poland.
- <sup>19</sup> Italy, Morocco, Poland, Slovenia, Spain, Tunisia and the United Arab Emirates.
- <sup>20</sup> Italy also allowed the transplantation of segments of the liver.

- <sup>21</sup> Belgium, the Czech Republic, Estonia, Finland, Germany, Latvia, Mexico, Norway, Oman, Romania, Slovenia, Spain, Turkey, Switzerland and the United Arab Emirates.
- <sup>22</sup> The Czech Republic, Germany, Latvia, Mexico, Morocco, Spain and the United Arab Emirates.
- <sup>23</sup> Belgium, Turkey and the United Arab Emirates.
- <sup>24</sup> Belgium, Canada, Germany, Italy, Japan, Latvia, Mexico, Morocco, Norway, Oman, Poland, Romania, Slovenia, Spain, Tunisia, Turkey and the United Arab Emirates.
- <sup>25</sup> Estonia, Morocco, Slovakia and Slovenia, with the approval of an ethics commission, and Oman.
- <sup>26</sup> Canada, Chile, Italy, Malta, New Zealand, Norway and Romania.
- <sup>27</sup> Belgium, Norway, Slovenia and Spain.
- <sup>28</sup> Belgium, Canada, Chile, Germany, Italy, Malta, Mexico, Morocco, New Zealand, Slovakia and Slovenia.
- <sup>29</sup> In Finland: Scandiatransplant and the European Liver Transplant Registry.
- <sup>30</sup> Turkey and the United Arab Emirates.
- <sup>31</sup> Belgium, Canada, the Czech Republic, Finland, Italy, Malta, the Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Turkey and Ukraine.
- <sup>32</sup> Australia, the Czech Republic, Luxembourg and Portugal.
- <sup>33</sup> Australia, Egypt, Finland, Italy, Japan, Madagascar, New Zealand, Oman, Portugal, Slovenia, Spain and Switzerland.
- <sup>34</sup> "Gesetz über die Spende, Entnahme und Übertragung von Organen" *Bundesgesetzblatt, Teil I*, 5 November 1997, S. 2631.
- <sup>35</sup> The Czech Republic, Finland, Germany, Hungary, Italy, Qatar and Slovakia.
- <sup>36</sup> Belgium, Chile, Latvia, Morocco, Poland, Qatar and Spain.
- <sup>37</sup> Italy, Romania, Slovenia and Switzerland.
- <sup>38</sup> The Czech Republic, Germany, Italy, Japan, Luxembourg, Morocco, Portugal and Slovakia.
- <sup>39</sup> Germany, Luxembourg, Morocco and Turkey.
- <sup>40</sup> Belarus, the Czech Republic, Finland, Germany, Japan, Latvia, Norway, Poland, Slovakia, Slovenia, Spain, Switzerland and Turkey.
- <sup>41</sup> Poland, Slovakia and Slovenia.
- <sup>42</sup> Belarus, Finland, Germany, Japan, Latvia, Norway, Poland, Slovakia, Slovenia, Spain, Switzerland and Turkey.
- <sup>43</sup> The Czech Republic.
- <sup>44</sup> Belgium, Chile, the Czech Republic, Estonia, Hungary, Latvia, Mexico, Peru, Poland, Romania, Serbia and Montenegro, Slovenia and Turkey.
- <sup>45</sup> Germany is a federal republic made up of 16 states, known in German as *Länder*.
- <sup>46</sup> Belarus, Belgium, Cambodia, Canada, Chile, Estonia, Germany, Latvia, Madagascar, Malta, Mexico, New Zealand, Norway, Poland, Romania, Slovakia, Slovenia, Spain and Turkey.
- <sup>47</sup> The Czech Republic, Finland and Hungary.
- <sup>48</sup> Belarus, Belgium (in the process of ratification), Cambodia, Canada, Chile, the Czech Republic (signed but not ratified), Estonia, Finland (signed but not ratified), Hungary (signed but not

- ratified), Japan, Latvia (signed but not ratified), Malta, Mexico, Morocco, Norway, Poland, Romania, Spain and Turkey.
- <sup>49</sup> Belarus, Cambodia, the Czech Republic (signed but not ratified), Estonia, Finland (signed but not ratified), Germany, Hungary (signed but not ratified), Malta and Norway.
- <sup>50</sup> The secretariat of the Council of Arab Ministers of the Interior, concerned about the new dimensions of organized crime, devoted the tenth meeting of the special committee on new crimes held in 2002, to the discussion of new forms of organized crime, including the issue of trading in human organs.
- <sup>51</sup> Elaine Pearson, “Coercion in the Kidney Trade? A Background Study on Trafficking in Human Organs Worldwide”, (Eschborn, Germany, Deutsche Gesellschaft für Technische Zusammenarbeit, 2004).
- <sup>52</sup> Nancy Scheper-Hughes, “Parts unknown: undercover ethnography of the organs-trafficking underworld”, *Ethnography*, vol. 5, No. 1 (2004), pp. 29-73.
- <sup>53</sup> Council of Europe, Parliamentary Assembly, Social, Health and Family Affairs Committee “*Trafficking in organs in Europe*”, document 9822, 3 June 2003.
- <sup>54</sup> D.J. Rothman and others, “The Bellagio Task Force report on transplantation, bodily integrity, and the international traffic in organs”, *Transplantation Proceedings*, vol. 29, No. 6 (1997), pp. 2739-2745.
- <sup>55</sup> Nancy Scheper-Hughes, “Keeping an eye on the global traffic in human organs”...
- <sup>56</sup> Nancy Scheper-Hughes, “Keeping an eye on the global traffic in human organs”...
- <sup>57</sup> Madhav Goyal and others, “Economic and health consequences of selling a kidney in India”, *Journal of the American Medical Association*, vol. 288, No. 13 (2002), pp. 1589-1593.
- <sup>58</sup> Rothman and others, op. cit.
- <sup>59</sup> Nancy Scheper-Hughes, “The global traffic in human organs”, *Current Anthropology*, vol. 41, No. 2 (2000), pp. 191-224.
- <sup>60</sup> National Geographic Channel, “The Witchcraft Murder”, (April 2005).
- <sup>61</sup> Paul Valley, “21 people arrested in England over human sacrifice of African boy”, *Independent*, 3 August 2003.
- <sup>62</sup> “Chiradzulu case”, Malawi Supreme Court of Appeal, criminal appeal No. 10, 2000.
- <sup>63</sup> Nancy Scheper-Hughes, “A grisly global trade: a taboo tumbles; the market for ‘fresh’ human organs is expanding worldwide, with the poor providing the rich”, *Los Angeles Times*, 3 August 2003.
- <sup>64</sup> Elaine Pearson, “Coercion in the kidney trade?” ...
- <sup>65</sup> Nancy Scheper-Hughes, “The global traffic in human organs” ...
- <sup>66</sup> Council of Europe, Steering Committee on Bioethics and European Health Committee, Replies to the Questionnaire for Member States on Organ Trafficking (Strasbourg, Council of Europe, June 2004), document CDB/INF (2003) 11 rev. 2.
- <sup>67</sup> Seeurope.net, “Bosnia and Herzegovina: investigation on human organ trafficking under way”, 26 August 2005.
- <sup>68</sup> “Organ trafficking and transplantation pose new challenges”, *Medical News Today*, 7 September 2004.
- <sup>69</sup> Pat Sidley, “South African doctors arrested in kidney sale scandal”, *British Medical Journal*, vol. 331, 3 September 2005, p. 473.