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Protection of Human Beings Trafficked for the Purpose of Organ Removal: Recommendations

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Abstract: This report presents a comprehensive set of recommendations for protection of human beings who are trafficked for the purpose of organ removal or are targeted for such trafficking. Developed by an interdisciplinary group of international experts under the auspices of the project Trafficking in Human Beings for the Purpose of Organ Removal (also known as the HOTT project), these recommendations are grounded in the view that an individual who parts with an organ for money within an illegal scheme is *ipso facto* a victim and that the crime of trafficking in human beings for the purpose of organ removal (THBOR) intersects with the crime of trafficking in organs. Consequently, the protection of victims should be a priority for all actors involved in antitrafficking activities: those combating organ-related crimes, such as health organizations and survivor support services, and those combating trafficking in human beings, such as the criminal justice sectors. Taking into account the special characteristics of THBOR, the authors identify 5 key stakeholders in the protection of human beings trafficked for organ removal or targeted for such trafficking: states, law enforcement agencies and judiciary, nongovernmental organizations working in the areas of human rights and antitrafficking, transplant centers and health professionals involved in transplant medicine, and oversight bodies. For each stakeholder, the authors identify key areas of concern and concrete measures to identify and protect the victims of THBOR. The aim of the recommendations is to contribute to the development of a nonlegislative response to THBOR, to promote the exchange of knowledge and best practices in the area of victim protection, and to facilitate the development of a policy-driven action plan for the protection of THBOR victims in the European Union and worldwide.

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Objectives

The primary purpose of the recommendations presented hereafter is to contribute to the development of a nonlegislative response to trafficking in human beings for the purpose of organ removal (THBOR) by focusing on the necessary measures to ensure the protection of victims of

THBOR. Guided by the definition of THBOR given in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,¹ we posit that an individual who parts with an organ (usually a kidney) for money within an illegal scheme becomes *ipso facto* a victim. (For a discussion of the definition of THBOR and a THBOR victim, see THBOR: a comprehensive literature review.²) Our aim is to facilitate the

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exchange of knowledge and best practices in the area of victim protection, which could help the relevant target groups to identify and protect individuals who are victims of THBOR or are targeted for THBOR. It is our hope that the recommendations will help policy makers and other authorities at the EU level to develop a policy-driven EU action plan for the protection of victims of THBOR in the EU and in the respective countries of origin and transfer of victims.

The proposed recommendations are guided by the general requirements for the protection of victims of THBOR stated in 3 binding international legal instruments: the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,¹ the Council of Europe Convention on Action against Trafficking in Human Beings,³ and the EU Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims.⁴ These recommendations reflect the views and expertise of its authors and incorporate the invaluable input of numerous international experts who participated in a writers workshop and a day-long international symposium at the EUROPOL Headquarters in The Hague on November 20, 2014. The recommendations aim to identify areas of particular need and concern to the protection of victims of THBOR and in no way represent an exhaustive list of measures.

Target Groups

The group identified the following parties to be key stakeholders in the protection of human beings trafficked for the purpose of organ removal or targeted for such trafficking: states, law enforcement agencies and judiciary, nongovernmental organizations working in the areas of human rights and antitrafficking, transplant centers and professionals, other health professionals involved in transplant medicine, oversight bodies, and financial institutions. Although not all of the identified stakeholders are in a position to offer direct assistance to victims or potential victims, all of them can play a part in the fight against THBOR and, consequently, they need to be informed and integrated into a comprehensive system of measures aimed at eradicating THBOR. For example, financial institutions do not interact directly with THBOR victims because the victims are paid in cash. Nonetheless, banks might play a role in the process of protection, prevention, and prosecution of THBOR by enforcing the recommendations of the Financial Action Task Force,⁵ which sets the global antimoney laundering standard. The approach to money laundering could help to identify financial transactions between individuals involved in THBOR.

SPECIFIC RECOMMENDATIONS BY TARGET GROUP

Recommendations Concerning the Role of Nongovernmental Organizations

The crime of THBOR intersects with the crime of trafficking in organs. Therefore, preventing and combating THBOR require collaboration between actors involved in combating trafficking in human beings, such as the criminal justice sectors, and those involved in combating organ-related crimes, such as health organizations and survivor support services.⁶ The protection of victims should be a priority for all actors

involved in antitrafficking activities. Taking into account, the special characteristics of THBOR identified by the HOTT project and other experts in the field, the non-governmental organizations (NGO) which assist victims of THBOR should:

- (a) have sufficient specialization required for the assistance of victims of THBOR. Antitrafficking NGOs should use the available know-how and accumulated experience, methodologies, and tools to help to detect, identify and assist victims of THBOR;
- (b) receive support from public authorities so as to allow the NGOs to provide tailored psychosocial, medical, legal and vocational assistance to victims of THBOR;
- (c) implement a proactive approach to victim identification with special efforts focused on rural and remote areas⁷;
- (d) undertake awareness-raising campaigns and prevention campaigns focusing on THBOR⁸;
- (e) assure the protection of the privacy of THBOR victims in their field work, advocacy efforts and when communicating with the authorities;
- (f) coordinate legal assistance for protection of victims; and
- (g) facilitate long-term medical follow-up of victims of THBOR and help them in accessing the health care system in order to identify, report, and manage any negative consequences that may result from the illegal donation.⁹

Recommendations Concerning the Role of States

States should offer victims of THBOR the same kind of protection and services that they provide to other victims of human trafficking (eg, victims of labor and sex trafficking). States are also uniquely positioned to prevent THBOR by removing socioeconomic conditions that make persons vulnerable to trafficking and by implementing measures to reduce the demand for organs. To this effect, states should:

- (a) develop campaigns to promote public awareness regarding the threat posed by THBOR, its causes and gravity and encourage research on best practices, methods and strategies for preventing THBOR;
- (b) develop strategies to alleviate the factors that make persons vulnerable to trafficking, such as poverty, underdevelopment, and lack of opportunity;
- (c) take measures to discourage and reduce the demand through campaigns to promote a healthy lifestyle (to counter the increasing incidence of diabetes and kidney failure), maximization of deceased donation rates, and improvement of regular living donation programs in the countries of origin of recipients of organs obtained from victims of THBOR;
- (d) enable the temporary or permanent closure of medical facilities used to carry out THBOR and impose temporary or permanent suspension of practice privileges and professional licenses of medical professionals implicated in the commission of THBOR;
- (e) support programs designed to assist victims of THBOR (p. 11¹⁰);
- (f) implement measures to aid THBOR victims by offering “temporary visas, permanent residency, healthcare, housing and rehabilitative services, and witness protection program eligibility for victims who are willing to aid in the prosecution of human trafficking” (p. 10¹⁰);
- (g) ensure that THBOR victims have access to information on relevant judicial and administrative proceedings, have the right to legal assistance and are guaranteed full compensation;
- (h) recognize the vital importance of early identification of victims of THBOR and ensure that officials who

may come into contact with trafficked persons, such as anti-trafficking agencies, border police, and medical personnel are adequately trained to identify and assist victims of THBOR;

- (i) ensure that specific assistance, support and protective measures are available to child victims, consistent with a child rights approach (sections 22, 25⁴); and
- j) design and develop, together with specialized NGOs, suitable programs for research, education, and training to better assist the victims of THBOR(section 6⁴).

Recommendations to Law Enforcement Agencies and Judiciary

Law enforcement agencies and the judiciary should be made aware that they are under the obligation not to punish victims of THBOR. Victims of THBOR may have been involved in unlawful activities as a direct consequence of being subject to trafficking. Accordingly, they may risk criminal liability for the sale of an organ and possibly also for other criminal offenses directly linked to their experience as a trafficked person, such as the use of forged or altered documents, illegal border crossings or participation in a criminal organization (p. 49, 50⁸). After the recommendation of the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking, Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings and Article 8 of the EU Directive 2011/36/EU, victims of THBOR are to be protected from prosecution or punishment for criminal activities that they have been compelled to commit as a direct consequence of being subject to trafficking. This obligation of nonpunishment of victims of THBOR creates an absolute legal right on their part. Consequently:

- (a) law enforcement agencies and the judiciary are not allowed to make exemption from criminal liability conditional upon the co-operation of victims in the identification and prosecution of the perpetrators;
- (b) persons should be kept immune from prosecution, detention and the applicability of a penalty not only when it becomes evident that they are a victim of THBOR but as soon as there is credible suspicion that they might have been trafficked (pp. 16, 23⁸); and
- (c) regular training should also be provided to prosecutors and judges so that they are aware of the specificities of THBOR and the circumstances under which victims of THBOR may commit offenses.

Recommendations Concerning the Role of Health Professionals

Medical and other professionals involved in organ transplantation and transplant centers can contribute substantially to the prevention of THBOR and the protection of victims and potential victims of THBOR by following the recommendations of the Declaration of Istanbul,¹¹ and of the Amsterdam¹² and Vancouver Forums.¹³ Of particular relevance to the protection of THBOR victims are Recommendations 3, 4 and 5 of the Declaration of Istanbul. They require the establishment of standardized, transparent, and accountable systems of donation and emphasize the need to obtain informed consent for donation. They stress that “mechanisms for informed consent should incorporate provisions for

evaluating the donor's understanding, including assessment of the psychological impact of the process” and that all “donors should undergo psychosocial evaluation by mental health professionals during screening.”¹¹ In addition, they require the provision of appropriate care, including medical and psychosocial care, at the time of donation and during follow-up, where particular attention should be paid to victims of THBOR. Professionals “should ensure proper knowledge of the origin of every single organ for transplantation and confirm that it has been obtained in accordance with international standards and local legislation”(p. 95¹⁴).

In line with the approach favored in these recommendations, professionals from any discipline involved in the transplantation process also should:

- (a) be trained in the identification of a victim or potential victim of THBOR and be informed about the appropriate victim protection measures to be taken;
- (b) refrain from directly participating in or facilitating THBOR in any way;
- (c) discourage waitlisted patients from resorting to illicit means for obtaining an organ; and
- (d) inform patients who might be considering the use of illicit means to obtain an organ about the exploitative nature of THBOR, the likely poor health outcomes for the recipient and donor, and about the fact that knowingly receiving an organ from a victim of THBOR is a serious crime in many countries.

Similarly, transplant centers can contribute to the prevention of THBOR by:

- (a) implementing a transparent decision-making protocol and evaluation process with representation of professionals from all disciplines involved in the transplantation process;
- (b) appointing a dedicated donor advocate to accompany the donor throughout all stages of the evaluation procedure. The advocate should provide the donor with information to assure adequate understanding of the organ removal and its risks. Advocates should also be adequately trained to provide information about THBOR, the relevant laws and protections against THBOR, and about traffickers' interests and manipulations to pressure vulnerable individuals to participate in the illegal activity; and
- (c) requiring documentation from the donor's primary physician or the Ministry of Health in the country of origin about the donor's medical history and health insurance, the donor-recipient relationship, the donor's circumstances and health status.

Recommendations Concerning the Role of Oversight Bodies

Strengthening the role, capacity, and effectiveness of the different oversight bodies involved in organ transplantation may greatly contribute to curtailing THBOR and protecting potential victims. In this respect, 2 types of oversight bodies can be discerned: the national transplant authorities responsible for the supervision of all transplant activities carried out on national territory and the bodies responsible for final approval of living organ donation.

Ideally, a tightly regulated transplantation system should be established at national level, governed by a national transplant

authority with extensive powers of supervision. This central competent body should ensure the implementation of a variety of measures which could effectively reduce the risk of THBOR and protect potential victims. Following the best practice examples set forth in, for instance, EU Directive 2010/53/EU on Standards of Quality and Safety of Human Organs Intended for Transplantation¹⁵ and the Canadian Safety of Human Cells, Tissues and Organs for Transplantation Regulations,¹⁶ these measures should include:

- (a) strict requirements for the accreditation of organ procurement and transplantation centers;
- (b) regular inspection of accredited establishments by independent medical experts who have the obligation to notify authorities of criminal offenses;
- (c) issuing Codes of Practice which lay down standards to enhance transparency, safety, and accountability in organ procurement and transplantation;
- (d) development of a centralized system for organ traceability at each stage in the chain from donation to transplantation; and
- (e) establishment of a central living organ donor registry and a reporting and management system for serious adverse events and reactions.

In addition to the national transplant authority, a crucial role is also played by the bodies responsible for final approval of living organ donation. Depending on the national approach favored, authorization may be given by the transplant team or by an independent body, such as a medical council or multidisciplinary ethics committee at the level of the healthcare facility, a multidisciplinary ethics committee at state or regional level, a notary, or a judge. In countries at increased risk of THBOR, final approval of living donation should not be left to the discretion of the transplant team itself but should be subject to an examination by an independent body, such as a local or national ethics committee unaffiliated with the transplant center.¹⁷ Where an independent authorizing body exists, it should have the following responsibilities:

- (f) determining the identity of the prospective donor and intended recipient and ensuring that they stand in a qualifying relationship which under domestic law allows living organ donation;
- (g) ensuring that the prospective donor is able to give consent;
- (h) ensuring that the prospective donor has received and understood the legally required information, including on the prohibition of the illicit transplant-related activities; and
- (i) ensuring the voluntary and altruistic nature of the donation. Should any doubts arise on the part of the authorizing body, organ removal must be prohibited and the relevant authorities should be notified.

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