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Stimulating and Enhancing Partnerships Between Transplant Professionals and Law Enforcement: Recommendations

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Abstract: To help combat trafficking in human beings for organ removal (THBOR), transplant professionals need to do more than carry out careful, multidisciplinary screening of potential living donors; they also need to communicate and collaborate with law enforcement professionals. This will involve transplant professionals educating investigators and prosecutors about transplant practices and in turn learning about THBOR and how it is prosecuted. Cases of illegal organ transplantation need to be detected at different levels. First, the victims of the crime itself need to be identified, especially when they present themselves for screening. Physicians have a collective responsibility to prevent exploitation of people, including THBOR victims. The second level involves the more difficult matter of making reports that involve transplant tourists who have returned home after receipt of an organ and need follow-up care. Besides counseling patients prospectively about the legal as well as medical risks in receiving a vended organ in a foreign transplant center, physicians treating such patients could have an obligation to report what has happened, if the government has established a mechanism that either allows reporting THBOR that does not include the identity of the patient or that treats patients as victims provided they cooperate in investigation and prosecution of the persons responsible for obtaining or implanting the organs. The third level of cooperation involves transplant professionals who participate in THBOR. Professional societies need to undertake programs to make physicians and nurses aware that their responsibility to protect their professions' reputation includes identifying members of their professions who depart from professional ethics. Doing so allows the local professional societies and state boards to discipline such violators. All 3 of these functions would be facilitated by the creation by an international body such as World Health Organization of a registry of patients who travel internationally to receive a legitimate organ transplant.

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The conclusions and recommendations set out below represent a composite summary of the findings of the members of group 4 and reflect their collective views.

Three categories of transplant professionals exist: (a) clinicians who oppose human trafficking for the purpose of organ removal (THBOR); (b) those who participate in it, for example, by operating transplant centers that rely on trafficked

organs; and (c) those who participate unknowingly and are not aware that a donor is being paid or trafficked.¹ Many transplant professionals consciously ignore signals that might indicate that a patient wishes to obtain an organ in an illegal manner or that he is returning from abroad with an organ that seems to have been acquired illegally. "Partnerships" between transplant professionals and law enforcement necessarily involve the first category and might involve the last category.

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To prosecute THBOR, law enforcement needs evidence that the defendants—be they recruiters, brokers, or health care professionals—were involved with, or knowingly relied upon, the act of trafficking the person from whom an organ was removed. Assembling this evidence involves many sources other than those that cooperating professionals can provide. Nonetheless, an effective partnership between health care professionals and law enforcement can be very valuable in combating THBOR (as well as organ trafficking) because professionals are in a position to recognize and report suspicious cases.² Yet such a partnership is also difficult because the 2 groups move in different professional realms and speak “different languages.” Such partnerships thus depend on members of each group seeing the value that can arise from collaborating with the other.

LAW ENFORCEMENT'S NEED FOR COLLABORATION BY HEALTH PROFESSIONALS

Law enforcement agencies benefit from the collaboration of health professionals to prevent and detect cases of illegal transplantation. When a physician becomes aware of a colleague who is involved in illegal transplants or treats a patient who has been involved, whether as a recipient of an illegal transplant or as a paid living donor, it is important that he or she collects evidence about the facts of the case. In some jurisdictions, physicians have a professional obligation to report colleagues who are facilitating illegal transplants.³⁻⁵ However, for any cooperation to occur, transplant experts need to understand what constitutes THBOR, and prosecutors should also be more familiar with transplantation practices.

Information About Donors

Cases of illegal organ transplantation need to be detected at different levels. First, the victims of the crime itself need to be identified. Because potential donors are usually screened by health care professionals, the latter—in particular, nephrologists—need to be aware of how and where illegal transplantation occurs (either in their own country or in other countries) and of the risks that it poses both for donors and recipients and for the legal system of organ donation and transplantation. This awareness is necessary because statutes, regulations, and even professional standards are not enough to curb illegal activities. The screening of potential cases and hence the possibility of detecting people who are either being coerced or financially induced to provide organs for transplantation take place at the level of local hospital committees and individual doctors.

Information About Recipients

Second, all patients who receive an organ transplant need a physician for follow-up care. It is well known that recipients who have received organs from (potentially) trafficked persons are seldom reported because doctors are generally reluctant to alert law enforcement agencies when they see this crime. This is probably related to doctors respecting the issue of doctor-patient confidentiality as well as a reluctance from medical practitioners to be the whistle blowers for their patients. It is not only important that doctors become more aware of this criminal phenomenon to detect these cases more effectively but also that they clearly communicate in advance to their patients why getting an organ from a trafficked

person or unknown source may not only involve them in a criminal investigation but also might have a serious impact on their long-term medical outcome because often clinical information is missing after such a procedure. It is important that doctors clearly communicate to their patients why receiving an organ in an illegal way is medically and ethically questionable and legally forbidden.^{6,7}

Varying views exist in the medical community about restricting follow-up care and needed immunosuppression for patients who received an illegal transplant. Often, such a person has taken part in a crime and obtained an organ at the expense both of the health (or perhaps even life) of a paid or coerced “donor” and of the orderly functioning of the country's legal system of organ donation. Nonetheless, in the Hippocratic tradition, physicians would find it difficult to deny such patients posttransplant care, including immunosuppression, because physicians are bound to serve their patients' interests rather than to sit in judgment on them. Allowing such patients to have access to drugs and medical care, but not paying through the public or private medical insurance plan that would otherwise cover a patient's care, might seem to be an option, yet that would result in allowing patients with substantial financial resources to obtain needed medical care while leaving poorer patients without it. In some ways, a patient with end-stage organ failure who feels impelled to obtain an organ illegally seems like a victim of a transplant system that is unable to meet his or her needs in a prompt fashion. A compromise could be to treat such recipients as victims and to provide them with needed care so long as they cooperate in any official investigation of the persons responsible for obtaining or implanting the organs they received.

Information About Healthcare Professionals as Traffickers

Often, medical staff are unaware of the problem of THBOR and lack knowledge of how to respond to these cases.⁸ Professional societies need to undertake programs to make physicians and nurses aware that their responsibility to protect their professions' reputation involves more than ensuring that the transplant cases they undertake do not involve trafficking but also includes identifying members of their professions who depart from professional ethics. Doing so allows the local professional societies and state boards to discipline such violators.

The group considered whether the process of naming and shaming individual doctors and nursing staff that take part in illegal transplantation practices should or should not be public. On the 1 hand, exposure in local papers and television might deter professionals from participating in THBOR, but the tendency of members of professions to shield one another might deter some from reporting incriminating information because they would feel uneasy in exposing a colleague to public disgrace, though they would be willing to aid the imposition of professional sanctions. It is true that when a transplant professional becomes a suspect in a THBOR case, his/her name will become public anyway.

HEALTH PROFESSIONALS' DUTY TO COLLABORATE WITH LAW ENFORCEMENT

If prosecutors expect health care professionals to report suspicious cases, especially when the information relates to

patients who seem to have received illegal transplants, they will need to arrange means of shielding the doctor-patient relationship. For example, they could make reporting process anonymous, and some form of immunity could be provided to the recipient if he or she cooperates with the investigation.

The legislative framework should be able to accommodate this anonymous approach, which is a central tenet of human trafficking protocols such as the Palermo Protocol of the UN Convention Against Transnational Crime as well as the Council of Europe's new convention against trafficking in human organs (open for signature since March 2015). As trafficking crimes often go beyond national borders, it is furthermore important that the legislative framework be able to accommodate cross-border investigations.

Even better, prosecutors could work with officials in the health ministry to establish a formal registry of transplants (through the national government or perhaps a not-for-profit organizations, and linkable with registries in other countries, forming an intergovernmental mechanism). Legitimate transplants, including those that involve travel for transplantation (such as persons traveling to their country of origin to obtain an organ from a relative who still lives there), could be registered. Such an act, if mandated by law, would not infringe on the important interests protected by the usual duty of physician-patient confidentiality. Then, transplants not registered could presumptively be regarded as involving illegal transplant tourism and trafficking.

THE NEED TO EDUCATE LEGAL AND HEALTH PROFESSIONALS AND PATIENTS

The need for education about unethical practices in transplantation is just as necessary for health care professionals as for their counterparts in the legal profession. Plainly, education of legal staff and prosecutors in the field of transplantation is essential if they are to understand why THBOR is harmful both to participants and to the system of voluntary living and deceased donation. One means to achieve this end would be for transplant professionals to make presentations at meetings of lawyers and prosecutors regarding the technicalities of transplantation, including the clinical risks of illegal transplants.

Yet it is as least as important to familiarize health care workers both with the potential legal risks of getting involved in illegal transplantation practices and with the harm they do to all patients waiting for a transplant when they fail to report illegal acts of which they become aware. Furthermore doctors should not only take into account the legal risks but also the ethical impact of decisions they make, so it might be useful to have more presentations on the ethics of transplantation at meetings aimed at transplant professionals. The ethics of recruiting, transporting and transferring these organ vendors to provide organs to potential recipients need to be communicated to medical professionals on a regular basis. Furthermore, in some professional circles, a gap in understanding exists regarding the concept of exploitation. Medical staff needs to become more aware of the principles of equality, justice, and respect and when human rights are violated. This suggests that a major educational effort is needed for the medical profession.

Lastly, patients who are considering seeking organs from trafficked persons need to be made aware that transplants using organs from people who are coerced or deceived or

whose vulnerability is exploited into parting with a kidney (or a partial liver) can hold serious risks to the health and even the life of recipients.¹⁰⁻¹² It is also important that patients realize that the practice of THBOR exploits people who are already socially disadvantaged. This education needs to be provided by practitioners on an individual, clinical level as well as to groups that offer support to people with end-stage organ failure.

The best preventive strategy to stop the use of purchased organs is by making legal changes in countries where laws against organ trafficking are still absent. Second, physicians and surgeons working in the field of transplantation as well as professional societies and patient-support groups need to create awareness of the need for more deceased donors for life-enhancing and lifesaving transplants. Improving the nonlegislative public response by educating the public about deceased donation, illegal transplantation, and THBOR should be supported by legal as well as clinical groups. It is only through increasing the availability of deceased and living donor organs that the problem of THBOR will be overcome.

RECOMMENDATIONS FROM THE GROUP DISCUSSION

The Responsibilities of Medical Professionals

- (a) To engage in careful, multidisciplinary screening of potential living donors, which should occur for all transplants, to ensure the absence of THBOR.
- (b) To adopt local or international guidelines in relation to THBOR similar to those put forward by professional societies, the Declaration of Istanbul, and the local Department of Health.
- (c) To act in ways that embodies collective responsibility to prevent exploitation of people.
- (d) To cooperate with disciplining members of the profession who knowingly disobey the law and professional guidelines for legitimate transplantation.
- (e) To consider exposing individual professionals who refuse to adhere to ethical and legal standards for organ transplantation in their professional societies and among the public.
- (f) To cooperate in joint working relationships with legal professionals to look at ways in which doctors could report cases in an anonymous way that does not compromise doctor patient relationships.
- (g) To understand that the responsibility to stop this practice lies not only with organ suppliers and brokers but also with those who transplant the organs and provide service afterwards.
- (h) To make sure patients are educated about the potential clinical complications, an illegal transplant can have on them as well as on person from whom the organ was obtained and the system of legitimate transplantation.

The Responsibilities of Hospital Leadership

- (a) To provide a proper monitoring mechanism composed of trained individuals to oversee unrelated living donor transplants.
- (b) To operate an official screening programme for foreign living donors and transplant recipients upon entry back in their country or region as well as when admitted to a hospital.
- (c) To become aware of ethical considerations in the field of transplantation and should encourage ethical practices in their local area.

- (d) To become more aware of the crime phenomenon when it comes to THBOR.

The Responsibilities of Governments

- (a) To consider including a question on the documents travelers must execute on entering a country about whether the entrant was hospitalized within the previous 10 days (as a way of detecting potential organ vendors or recipients), with penalties for false statements (national governments).
- (b) To create transplant registries, including of patients who travel to other countries to receive an organ, and impose strict monitoring mechanisms for transplantation, particularly of unrelated living donors (national governments).
- (c) To increase awareness and knowledge across society to improve the nonlegislative responses of individuals toward THBOR (all governments).
- (d) To ratify the Palermo protocol and amend national laws to incorporate its provisions, and, given the difficulty of prosecuting all actors involved in illicit transplantation under that protocol, to clearly define the liability of each group of actors who are complicit in this organized crime and to consider including criminal prohibitions against purchasing organs as well (national governments).

The Responsibilities of Prosecutors in Relation to Medical Professionals

- (a) To understand that doctors have a patient-centered approach and that most doctors will act to protect their patients' well-being and dignity.
- (b) To understand that physicians, whose clinical work depends upon trust, would be more likely to provide information about organ recipients or vendors if these patients are treated as victims and, particularly for organ recipients, are protected from liability if they cooperate with investigations and prosecutions.
- (c) To give presentations at conferences of medical (and particularly, transplant) professionals about human and organ trafficking and the impact of these crimes (and their potential impact on the treating physicians) to create awareness within the medical profession and increase their role in detection and reporting of the crimes.
- (d) To help all criminal justice stakeholders to obtain the training they need in how to detect, investigate, and prosecute THBOR in a manner that takes into account and respects the ethical obligations of healthcare professionals.

The Responsibilities of Professional Societies

- (a) To increase awareness of THBOR and organ trafficking by regularly organizing sessions on this topic at professional congresses or meetings.
- (b) To improve knowledge and awareness of THBOR and organ trafficking by offering training on recognizing these crimes and by distributing educational material to their members.
- (c) To improve the local community's understanding of human rights and the bioethical principles of nonmaleficence, justice and respect for persons.
- (d) To give presentations to prosecutors and law enforcement officers about transplantation science and practices so that they understand the field and the adverse impact of human and organ trafficking on it.
- (e) To develop means, such as registries and standards, that might enable the easy separation of illegal transplant tourism (where purchased organs will be obtained through a transplant in another location) from acceptable travel for transplantation.

- (f) To encourage their members to collaborate with law enforcement personnel to help to prevent and prosecute THBOR and organ trafficking.
- (g) To elaborate the ethical grounds for reporting criminal activities, especially when victims need protection, and to seek legal protection for physicians who do so.

The Need for a Registry at the Level of a Human Rights Monitoring Body

- (a) It might be useful to have an intergovernmental organization, such as the World Health Organization, involved in creating a registry for patients who travel to receive (or provide) a transplanted organ.
- (b) The gap between such legitimate (and perhaps pre-approved) cross-border transplants and the total number would be a useful mechanism to establish the incidence of human trafficking.
- (c) Existing international convention on THBOR could facilitate international cooperation (such as for extraterritorial jurisdiction) and reach actors who escape prosecution in the context of human trafficking.
- (d) A registry could potentially also facilitate support for trafficked victims because there should be a section on this registry where doctors could report illegal transplants anonymously.

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REFERENCES

1. Ambagtsheer F, van Balen LJ, Duijst-Heesters WL, et al. Reporting organ trafficking networks: a survey-based plea to breach the secrecy oath. *Am J Transplant.* 2015;15:1759–1767.
2. Budiani-Saberi DA, Raja KR, Findley KC, et al. Human trafficking for organ removal in India: a victim-centered, evidence-based report. *Transplantation.* 2014;97:380–384.
3. Bruzzone P. A new Israeli transplant law. *Transplantation.* 2012;94:e28.
4. Lavee J. Ethical amendments to the Israeli Organ Transplant Law. *Am J Transplant.* 2013;13:1614.
5. Uehlinger NB, Beyeler F, Weiss J, et al. Organ transplantation in Switzerland: impact of the new transplant law on cold ischaemia time and organ transports. *Swiss Med Wkly.* 2010;140:222–227.
6. Jafar TH. Organ trafficking: global solutions for a global problem. *Am J Kidney Dis.* 2009;54:1145–1157.
7. Danovitch GM, Chapman J, Capron AM, et al. Organ trafficking and transplant tourism: the role of global professional ethical standards—the 2008 Declaration of Istanbul. *Transplantation.* 2013;95:1306–1312.
8. Glazier AK, Delmonico FL. The declaration of Istanbul is moving forward by combating transplant commercialism and trafficking and by promoting organ donation. *Am J Transplant.* 2012;12:515–516.
9. Levin A, Muller E, Alrukhaimi M, et al. Transplant commercialism and organ trafficking: the Declaration of Istanbul with special relevance to disadvantaged populations living with kidney disease. *Clin Nephrol.* 2015; 83(7 Suppl 1):85–89.
10. Aung AK, Trubiano JA, Spelman DW. Travel risk assessment, advice and vaccinations in immunocompromised travellers (HIV, solid organ transplant and haematopoietic stem cell transplant recipients): a review. *Travel Med Infect Dis.* 2015;13:31–47.
11. Rodriguez-Reimundes E, Soler-Pujol G, Diaz CH, et al. Travel for transplantation and transplant commercialism in Argentina: a 4-decade experience from a University Hospital. *Clin Transplant.* 2014;28:377–382.
12. Wright L, Zaltzman JS, Gill J, et al. Kidney transplant tourism: cases from Canada. *Med Health Care Philos.* 2013;16:921–924.