

# Trafficking for human organs

Vladimir Makei

**Trafficking of people for their organs is an emerging transnational crime that has failed to receive sufficient international attention.**

The 23rd session of the United Nations Commission on Crime Prevention and Criminal Justice held in May 2014 adopted a Belarus-sponsored resolution titled 'Preventing and Combating Trafficking in Human Organs and Trafficking in Persons for the Purpose of Organ Removal'. The resolution mandated the United Nations Office on Drugs and Crime (UNODC) to conduct an extensive study on the issue and report back to the Commission in 2016, in the expectation of better understanding this crime and consequently helping to devise effective policies against it.

There is neither a universally agreed definition of the crime of organ trafficking, nor a relevant universal legally binding tool. The lack of both, however, does not indicate that the crime is insignificant. Rather, it is a reflection of the emerging nature of the crime, the scope of which the international community is only now beginning to grasp.

This crime occurs in three specific forms. First, while trafficking in persons for the purpose of organ removal is a form of human trafficking as set out in the 2000 Palermo Human Trafficking Protocol, there is a growing realisation that it is also a form of organ trafficking. Second is what is known as 'transplant tourism'.<sup>1</sup> This involves travel by potential recipients mainly (but

not exclusively) from developed countries to developing ones, where they undergo transplantation of organs purchased from local donors. Viewed in this light, organ trafficking is not about the movement of organs; rather it is about the movement of people – from developing and emerging economies to affluent countries in the form of human trafficking for the purpose of organ removal, and back from affluent to developing countries in the form of transplant tourism. The third form is organ trafficking in a narrow sense, namely, the illicit movement of human organs themselves between countries.

What has been giving rise to this transnational challenge is the growth of the organ transplantation industry worldwide. However, the crime of trafficking in organs has emerged not because of the industry *per se* but because of an ever-growing gap between the demand for human organs and the legitimate supply. As with all clandestine activities, the scope of organ trafficking is not exactly known. There was an attempt to learn more about it in 2004 when the UN General Assembly passed a resolution on 'Preventing, combating and punishing trafficking in human organs'. However, a subsequent report by the UN Secretary General acknowledged that Member States provide insufficient information and that hence the challenge of trafficking in organs remains largely unexplored. Yet,

while there is insufficient official data, there is plenty of information on trafficking in organs from unofficial sources. It is claimed that trafficking in organs for the purpose of transplantation accounts for 10% of all transplantation cases in the world, producing up to US\$1.2 billion in illicit revenue each year.<sup>2</sup>

### International approaches

Generally, the international community sticks to a prohibitionist approach in organ transplantation. In other words, states prohibit the purchase and sale of human organs. Instead, the industry operates on the basis of altruistic voluntary organ donation where, predicated on moral and ethical considerations, organ transplantation can be justified only when it is a voluntary act of organ donation, because in most cases such an act brings together people who are already close to each other.

The prohibitionist approach stems from the Guiding Principles on Human Cell, Tissue, and Organ Transplantation developed by the World Health Organization in 1991. These are not binding, and not every country upholds the principles. Another non-binding tool is the Declaration of Istanbul on Organ Trafficking and Transplant Tourism, which came out of an international conference in 2008. The 1997 Council of Europe's Convention on Human Rights and Biomedicine and its 2002 Additional Protocol do, however, prohibit the purchase and sale of human organs. The Council of Europe is also working towards the adoption of the Convention against Trafficking in Human Organs, which affirms the need for an international legally binding document dealing exclusively with the crime of organ trafficking.

In anticipation of a study on organ trafficking that is to be released by UNODC in 2016, Belarus initiated discussion on the issue of a possible universal legally binding tool against trafficking in human organs in late 2014, at the 7th session of the Conference of the States Parties to the UN Convention against Transnational Organized Crime in Vienna, and in New York on the margins of the 69th session of the UN General Assembly.

The rationale for a possible new tool is, firstly, the need to address the main cause of organ trafficking, which is the acute shortage of human organs; this could be done by building on successful national organ procurement models such as 'presumed consent' which essentially means that every citizen of a country is an organ donor unless they expressly withdraw consent. Second is the lack of an internationally agreed definition of the term 'organ trafficking'. Thirdly, a new universal document should tackle not just the causes of organ trafficking but also its consequences. In other words, it should set out provisions for criminalising not only trafficking in persons for that purpose but also trafficking in human organs; while many states have already criminalised purchase of organs in their domestic jurisdictions, very few have criminalised purchase by their citizens of organs abroad.

A new instrument must serve to significantly enhance international cooperation on the issue, above all in such areas as extradition, confiscation of assets and proceeds, and mutual legal assistance. Lastly, a new document should contribute to the objective of enhancing public education about the importance of organ donation, as well as about the threat posed by the crime of organ trafficking.

While human trafficking for the purpose of organ removal is covered by the legally binding Palermo Human Trafficking Protocol, transplant tourism and trafficking of organs are not. The intersection of this crime with the trafficking of persons emphasises the need to fully cover the scope of organ trafficking, while reflecting also its intricacies.

**Vladimir Makei is the Minister of Foreign Affairs of Belarus. He can be contacted through [iravelichko@gmail.com](mailto:iravelichko@gmail.com).**

1. Transplant tourism should not be confused with travel for transplantation, as the latter is a legitimate activity.

2. Emily Kelly (2013) 'International Organ Trafficking Crisis: Solutions Addressing the Heart of the Matter', *Boston College Law Review*. <http://tinyurl.com/Kelly2013-organ-trafficking>